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Australian and Canadian Perspectives on Offshore Management

Donald R. Rothwell
University of Sydney

David VanderZwaag
Dalhousie University

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Donald R. Rothwell*
David VanderZwaag**

Australian and Canadian Perspectives on Offshore Management

Challenges in ocean and coastal management are facing all coastal states of the world, including Australia and Canada. Overharvesting of fish stocks, increasing pressure from land-based sources of pollution, expanding offshore petroleum developments, and rising risks of ship-sourced pollution in fragile marine ecosystems have caused both countries to begin a process of reassessment and rethinking. In January 1997 Canada adopted a new *Oceans Act*,[1] which called for the development of a *National Oceans Management Strategy* based on principles of sustainable development, precaution and integration, and a new national marine protected areas network. In December 1998, Australia released a *National Oceans Policy*[2] which, in addition to highlighting oceans issues in need of attention, also proposed a national strategy for addressing these urgent questions.

Both Australian and Canadian approaches to oceans policy have some common themes. These include the establishment of regional marine planning processes, improvements in fisheries technologies and management, resolution of Aboriginal marine resource access and allocation, development of high environmental standards, protection of marine natural and cultural heritage, and sustainable development of marine resources with a respect for biological diversity. Australia and Canada also face the challenge of implementing a national oceans policy within federal structures which demand participation by state/provincial and local governments.

For both Australia and Canada, the challenge is to work within international and national legal frameworks while implementing a national oceans policy which integrates ocean and coastal management. The international legal framework is dominated by the 1982 *United Nations Convention on the Law of the Sea (LOS Convention)*,[3] which in turn is supported by supple-

* Challis Chair in International Law, Faculty of Law, University of Sydney; Co-Chair - Australian-Canadian Oceans Research Network (ACORN).

** Canada Research Chair, Ocean Law and Governance, Faculty of Law, Dalhousie University, Co-Chair - Australian-Canadian Oceans Research Network (ACORN).

1. S.C. 1996, c. 31. Introduced as Bill C-98 in 1995, it was re-introduced as Bill C-26 and adopted in the 1995-96 legislative session. The *Oceans Act* was assented to on 18 December 1996 and came into force on 31 January 1997.
2. Commonwealth of Australia, *Australia's Oceans Policy* (Environment Australia, Canberra: 1998).
3. 1833 U.N.T.S 396 (entered into force 16 November 1994).

mentary agreements regarding the deep seabed,[4] and straddling and highly migratory fish stocks.[5] In addition, there exists a multitude of additional global, regional and sub-regional international legal instruments in related fields such as international environmental law[6] and maritime law[7] which all impact on national oceans policy. These instruments confer upon Australia and Canada certain rights (such as the capacity to exploit marine resources) but also obligations (such as the obligation to preserve the marine environment). Reconciling these obligations is a major issue for both countries which have both sovereignty and jurisdiction over vast offshore domains.

As to national legal frameworks, both Australia and Canada have founding constitutional instruments in which management and protection of the marine environment does not figure prominently.[8] However, over time as a result of constitutional agreements between the federal and provincial/state governments, and as a result of significant decisions by both the Supreme Court of Canada and High Court of Australia, there has been a gradual development of an offshore constitutional framework upon which oceans policy can sit. A range of additional legal, policy and political mechanisms which in total create the regulatory framework for the Australian and Canadian offshore exist in support of these core elements.

While there have been significant developments in the past decade at the global level in creating a legal framework for the management of the

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4. 1994 Agreement Relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, 33 I.L.M. 1309 (done in New York, 28 July 1994, entered into force 28 July 1996).

5. 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, 34 I.L.M. 1542 (done in New York, 4 August 1995, entered into force 11 December 2001).

6. For an overview of the international environmental law obligations as they relate to oceans, see Patricia W. Birnie & Alan E. Boyle, *International Law and the Environment*, 2nd ed. (Oxford: Oxford University Press, 2002) 347-403.

7. For a listing of international maritime agreements, see Edgar Gold, Aldo Chircop & Hugh Kindred, *Maritime Law* (Toronto: Irwin Law, 2003) 838-49.

8. For example, the Australian Constitution was drafted in the 1890s at a time when there was neither an appreciation of the importance of ocean and coastal management nor an appreciation that Australia would eventually have the capacity to conduct its own international relations. Under these circumstances, it is unsurprising that the Australian Constitution (*Commonwealth of Australian Constitution Act* 1900 (Imp)) makes no reference to management of Australia's offshore, other than by way of s. 98, which refers to Commonwealth laws dealing with trade and commerce extending to "navigation and shipping": see Donald R. Rothwell & Stuart B. Kaye "Australia's Legal Framework for Integrated Oceans and Coastal Management" in Marcus Haward, ed., *Integrated Ocean Management: Issues in Implementing Australia's Oceans Policy* (Hobart, Australia: Cooperative Research Centre for Antarctica and the Southern Ocean, 2001) 11 [Haward, *Integrated Ocean Management*].

oceans, the real challenge now exists in the implementation of this framework at the national level. Australia and Canada have been at the forefront of this process and the recent initiatives by both countries to develop an "Oceans Policy" framework has taken these national initiatives to new levels.[9]

The papers which follow in this special edition of the Dalhousie Law Journal are the result of the work of the Australian-Canadian Oceans Research Network (ACORN) and arose from workshops held in Vancouver (2000)[10] and Canberra (2002). ACORN comprises a group of Australian and Canadian ocean researchers, scholars and practitioners. First formed in 1993, the group has met on an occasional basis for the past ten years in areas as diverse as Hobart and Halifax. Phase I of ACORN's work resulted in the publication of a major work[11] which sketched the legal, political and policy framework for Australia and Canada's offshore engagement. Phase II of ACORN commenced in 1998, culminating in the 2002 Canberra Workshop. Some of the papers from that workshop with a sectoral theme — shipping, fisheries, oil and gas, tourism — are reproduced in this collection. Other papers with a theoretical perspective on oceans policy implementation will be published in 2006 by Routledge Press (London).

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9. At the time of writing, Australia was on the brink of finalising the first regional marine plan for the Australian marine environment as part of the Oceans Policy strategy. See National Oceans Office, *Draft South-east Regional Marine Plan* (Hobart, Australia: National Oceans Office, 2003), online: National Oceans Office <www.oceans.gov.au>.

10. Some of the papers from the 2000 Vancouver workshop were published in Haward, *Integrated Ocean Management*, *supra* note 8.

11. Lorne K. Kriwoken, Marcus Haward, David VanderZwaag & Bruce Davis, eds., *Oceans Law and Policy in the Post-UNCED Era: Australian and Canadian Perspectives* (London: Kluwer, 1996).

Andrew Brooke (Canberra) and Shelley Schnurr (Vancouver). Sam Baird, Chief, Oceans Policy, Fisheries and Oceans Canada-Pacific Oceans Directorate, was instrumental in providing logistical support for ACORN and facilitating participation by ACORN researchers in APEC integrated ocean management workshops in 2000 and 2002.