

Chapter 3

Comparing the Integrated Maritime Policy of the European Union and the Oceans Policy of Canada

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3.1. Introduction

This contribution compares the European Union's newly-adopted Integrated Maritime Policy (IMP)¹ to the integrated ocean policy of Canada, which in 1996 became the first country to declare that it had a full-scale integrated ocean policy.² It can be presumed that the European Union (EU) can benefit from the

¹ The term Integrated Maritime Policy (IMP) is used here to denote the following three documents: The Integrated Maritime Policy, adopted via a Communication (the so-called Blue Book), its accompanying Action Plan (which specifies the broad guidance given in the IMP) and the “environmental dimension” of the IMP, the Marine Strategy Framework Directive (MSFD). The European Council, which adopted the Integrated Maritime Policy, understood it as composing of these three elements. It is important to keep in mind that references will also be made to the Communication and the Action Plan using the term IMP. Additionally, specific references will be made directly to the MSFD. See European Commission, *An Integrated Maritime Policy for the European Union, Communication from the Commission to the European Parliament, the Council, and the Committee of the Regions*, COM(2007) 575 final (Brussels, 10 October 2007) [hereinafter IMP]. The IMP was adopted by the European Council in December 2007; available: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0575:FIN:EN:PDF>> (retrieved 20 November 2008). The IMP was accompanied by an Action Plan that. See also, European Commission, *Accompanying document to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: An Integrated Maritime Policy for the European Union, Commission Staff Working Document*, SEC(2007) 1278 (Brussels, 10 October 2007), available: <http://ec.europa.eu/maritimeaffairs/pdf/ActionPaper/action_plan_en.pdf> (retrieved 20 November 2008) [hereinafter Action Plan]; and Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (Text with EEA relevance), *Official Journal* L 164, 25 June 2008 P. 0019 – 0040, available: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0056:EN:HTML>> (retrieved 20 November 2008) [hereinafter MSFD].

² As provided in Canada's Oceans Strategy: “On January 31, 1997, the Government of Canada brought the Oceans Act into force, making Canada the first country in the world to have comprehensive oceans management legislation,” *Canada's Oceans Strategy: Our Oceans, Our Future* (Ottawa: Fisheries and Oceans Canada, 2002), available: <http://www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/cos-soc/pdf/cos-soc_e.pdf> (retrieved 10 December

Canadian ocean policy, both as a model to construct an integrated ocean policy as well as from the experience gained in Canada while implementing its ocean policy. This analysis focuses on the basic documents laying out integrated ocean policies in Canada and the European Union, respectively. First, however, it is important to examine in general the evolution of integrated ocean policies, which will assist in understanding the place of Canadian and EU integrated ocean policies in a larger trajectory.

3.2. The Emergence of National Integrated Ocean Policies: Problems and Possibilities

It is a formidable task to create an effective national integrated ocean policy. The reasons for this are well known, but useful to review. It is difficult to find an area of policy comparable in scope to integrated oceans policy: it goes beyond the co-ordination of maritime policies, not least because 70–80 per cent of marine pollution is caused by land-based activities. The coordination of the policy areas that an integrated oceans policy may interact with is not an easy task. Established policy areas typically operate on the basis of their own values and traditions, which is reflected in the legal system, where various legal regulations guide action on sectoral issues related to ocean areas and policy supervision is entrusted to a variety of ministries and agencies.

Another important factor making effective national integrated ocean governance challenging is the comparatively marginal role of ocean issues in national or local politics. In most constituencies, political issues related to the ocean — the immediate coastline being an exception — escape the attention of politicians, who should take the lead in advancing such a challenging policy initiative. Ocean policy as an instrument of coordinated planning and supervision is also a relatively new phenomenon, for until the mid-twentieth century, ocean activities remained at a relatively low level and their environmental impact was negligible.

2008) [hereinafter Oceans Strategy]. It should be noted, however, that the Netherlands and India already had integrated oceans policies in the 1980s; see, e.g., “Ocean Development,” Government of India website, available: <http://india.gov.in/sectors/science/ocean_development.php> (retrieved 20 November 2008); and M. Barry, I. Elema and P. Molen, “Governing the North Sea in the Netherlands,” Paper presented at the International Federation of Surveyors (FIG) Working Week and 125th Anniversary of FIG: “Still on the Frontier,” available: <http://www.fig.net/pub/fig_2003/TS_20/TS20_2_Barry_et_al.pdf> (retrieved 20 November 2008).

It is also important to note the main reasons why these integrated ocean policies have emerged. The frustration related to conflicting decisions and plans by various arms of the state, resulting from a fragmented agency and legal structure, certainly induces many to at least think about how the situation might be improved.³ The ever-increasing degradation of the oceans, an awareness of which has been made possible by the more sophisticated findings of the marine sciences (and whose publicity is guaranteed by dedicated environmental non-governmental organisations), has provided additional impetus for integrated policies, since ocean ecosystems can only produce their services up to a certain point.⁴ A zonal approach to national ocean policy is also many times the preferred option. While this approach makes the ocean policy coherent internally (that various maritime zones are established and legislated on the basis of the law of the sea and function consistently as part of national ocean

³ Both the IMP and the Canadian ocean policy express this in explicit terms. Chapter 2 (Context) of the IMP (n.1 above) contains the following passage:

Increasing competition for marine space and the cumulative impact of human activities on marine ecosystems render the current fragmented decision-making in maritime affairs inadequate, and demand a more collaborative and integrated approach. For too long policies on, for instance, maritime transport, fisheries, energy, surveillance and policing of the seas, tourism, the marine environment, and marine research have developed on separate tracks, at times leading to inefficiencies, incoherencies and conflicts of use.

Canada's Oceans Strategy (id.) provides in "The Context for Canada's Oceans Strategy" as follows:

Canada's oceans are governed by a complex web of laws and regulations managed by different levels of government. This governance structure points to the need for developing a unified vision and integrated approach to ocean management that effectively considers the impact of individual sector activities on each other, and on the oceans as a whole.

⁴ Chapter 2 (Context) of the IMP (id.) contains the following statement:

Ensuring that use of the marine environment is genuinely sustainable is a prerequisite for these industries to be competitive. The growing vulnerability of coastal areas, increasingly crowded coastal waters, the key role of the oceans in the climate system and the continuous deterioration of the marine environment all call for a stronger focus on our oceans and seas.

Canada's Oceans Strategy (id.) provides in "The Context for Canada's Oceans Strategy" as follows:

Oceans are facing severe environmental threats from over-exploitation, pollution from land-based and sea-based activities and the alteration and destruction of habitats and ecosystems. The health of oceans is affected by sewage and pollutant discharge in marine waters, excessive growth of marine plant life, alien species introduction and changes to hydrology and sediment flow. Despite efforts to improve environmental quality of coasts and seas both in Canada and abroad, degradation of ocean environments has continued.

policy), it has caused problems of uncoordinated development (given that for different policy areas, the maritime zones mean different things) and has led to calls for integrated ocean management.⁵

The first generation of ocean policies was focused on the coordination of various ocean uses rather than on how their overall impact on the marine ecosystems could be addressed.⁶ With the rise of the environmental movement, and especially its culmination in the 1992 United Nations Conference on the Environment and Development (and, more recently, the 2002 World Summit on Sustainable Development), the trend changed towards full-scale integrated ocean governance policies. Such a policy was adopted in Canada already in 1996 with the *Oceans Act* and the ensuing policy instruments. As has been pointed out in the literature, the coming into force of the United Nations Convention on the Law of the Sea (LOS Convention) in 1994 strengthened this trend, but only indirectly⁷ as the LOS Convention itself did not encourage the use of integrated ocean governance policies. However, since it laid out so many new powers and duties in the marine environment, the LOS Convention clearly served as a catalyst for integrated ocean policies. The various legal and policy instruments aimed at closing the gaps on the path to using oceans as commons, with the related danger of a tragedy of the commons, were very important in inducing states to think of their maritime areas in a new way. The management tools developed in science and nationally were gradually transferred to the instruments adopted by various intergovernmental organisations. Together they pushed states to adopt integrated management approaches, one of which was the designation of marine protected areas (MPAs) in their coastal areas and in large marine ecosystems.

In principle, there is an overwhelming consensus that more holistic ways to manage the oceans are imperative.⁸ Yet, as the research has pointed out, such approaches face many kinds of problems.⁹ States may well opt nationally for

⁵ See, e.g., Y. Tanaka, "Zonal and Integrated Management Approaches to Ocean Governance: Reflections on a Dual Approach in International Law of the Sea," *International Journal of Marine and Coastal Law* 19 (2004): 483–514.

⁶ For a historical overview, see L. Juda, *International Law and Ocean Use Management: The Evolution of Ocean Governance* (London: Routledge, 1996).

⁷ The preamble of the LOS Convention provides: "Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole." *United Nations Convention on the Law of the Sea*, 10 December 1982, 21 *I.L.M.* 1261 (1982).

⁸ For an early but useful theoretical insight into the basic requirements for an integrated ocean policy see A. Underdal, "Integrated Marine Policy: What? Why? How?" *Marine Policy* 4 (1980): 159–169.

⁹ See, e.g., J.-P. Lévy, "A National Ocean Policy: An Elusive Quest," *Marine Policy* 17 (1993): 75–80. For a recent authoritative comparison, see International Oceanographic Commission,

divergent policies — not uniform ones — and try to expand (even abuse) their already expanded ocean powers on the basis of national interests. If there had been a meeting of states parties to the LOS Convention, national ocean governance might have developed in more co-ordinated and uniform manner than it has. States parties could have closely followed the development of one another's ocean policy through meetings of the parties and implementation committees. Such a process would have arguably also meant that national ocean policies would have paid more attention to the international law of the sea than to national interests.

3.3. Comparison Between the European Union and Canadian Approaches to Ocean Policy

The IMP is clearly a unique exercise in the history of ocean governance. Even though the EU is acting like a federal state in many ways in some policy areas in an even more integrated manner than federal entities — its ocean powers differ vastly from those of federal states. While federal states may have constitutionally delegated many of their powers to their sub-units in many policy areas, this does not usually apply to maritime areas where the federal level exercises most powers affecting areas beyond the immediate coastal zone or territorial sea. This fundamental fact does not hold true for the EU, which, apart from having exclusive jurisdiction over fisheries, has only shared powers over many of the maritime policies. The Member States legislate the extent of their maritime areas and exercise and enforce most powers therein. This is a significant difference between the EU and federal states with respect to ocean governance, and prevents any straightforward comparison between them. This is not to say that useful lessons cannot be found, but care must be taken in such comparisons.

The IMP should, in the opinion of the present author, be seen as the first-ever social experiment in integrated ocean policy where the governing entity is a supranational organisation. The increasing legal development towards holistic

National Ocean Policy. The Basic Texts from Australia, Brazil, Canada, China, Colombia, Japan, Norway, Portugal, Russian Federation, United States of America (Paris: Unesco, 2007) (IOC Technical Paper, 75, Law of the Sea Dossier 1), available: <http://ioc3.unesco.org/abelos/index.php?option=com_docman&task=doc_download&gid=267> (retrieved 20 November 2008). See also R. Friedheim, "Designing the Ocean Policy Future: An Essay on How I Am Going To Do That," *Ocean Development & International Law* 31 (2000): 183–195, pp. 187–189.

ocean management has justified increasing the EU's powers in maritime areas. Yet, the overwhelming challenge of coordinating the actions of sovereign nations that exercise most of the powers pertaining to their sea areas clearly distinguishes the EU's formulation of an integrated maritime policy from the efforts of federal states to create a regional policy. In addition, the IMP can be seen as the most comprehensive policy ever adopted by the EU as it criss-crosses all possible policy areas, adding to the challenge of co-ordinating action within the EU.

The strong maritime traditions of European nation-states would seem to pose difficulties for creating integrated ocean governance at the EU level. Given the EU structure in maritime affairs, one might have assumed that an integrated maritime policy would never have materialised, and if it had, that it would certainly not have been able to borrow from earlier federal integrated ocean policies, in particular Canada's. Yet some interesting similarities exist between the two policies. A review of the similarities and differences between the ocean policies of the EU and Canada follows.

No similarities are evident in the way the ocean policies were legally constructed in the EU and Canada. The Canadian ocean policy was very logically constructed. It was given a clear legal foundation through the 1996 *Oceans Act*,¹⁰ which established the various maritime zones and laid down institutional powers and management structures. The goals, values, principles and management strategies were then specified by political means through the 2002 Oceans Strategy,¹¹ which implements the section 29 obligation of the minister and is based on practical experience gained in the interim, and the 2005 Action Plan.¹² Specific guidance for implementing integrated management plans pursuant to the *Oceans Act* is provided in the "Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada,"¹³ which was adopted in conjunction with the Oceans Strategy.

¹⁰ The *Oceans Act* came into force in 1997; see *Oceans Act*, S.C. 1996, c. 31, available: <<http://laws.justice.gc.ca/en/O-2.4/>> (retrieved 20 November 2008).

¹¹ Oceans Strategy, n. 2 above.

¹² Fisheries and Oceans Canada, *Oceans Action Plan* (Ottawa: Fisheries and Oceans Canada, 2005), available: <http://www.dfo-mpo.gc.ca/oceans-habitat/oceans/oap-pao/index_e.asp> (retrieved 20 November 2008) [hereinafter Oceans Action Plan].

¹³ Fisheries and Oceans Canada, *Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada* (Ottawa: Fisheries and Oceans Canada, 2002), available: <http://www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/cosframework-cadresoc/page01_e.asp> (retrieved 20 November 2008) [hereinafter Policy and Operational Framework].

The development process was essentially the reverse in the case of the IMP, even though it also started with a legal act, the Marine Strategy Framework Directive (MSFD).¹⁴ The process started with the sixth environmental action program, which identified marine environment protection as a priority area. This paved the way to the adoption of the MSFD (part of the European Marine Strategy) under the lead of DG Environment. The MSFD focused on protecting marine ecosystems and was later deemed by the European Council to be the “environmental pillar” of the IMP.¹⁵ The MSFD requires the Member States to identify their marine regions and sub-regions and to achieve good environmental status in all of them by the year 2020. The Commission started the process of creating the full-scale IMP in 2005. It was adopted on 10 October 2007 (and later by the European Council in December 2007) as a political initiative, not through formal legal procedures. The IMP is led by DG Mare.¹⁶

This difference in how the integrated policies of the EU and Canada were implemented has concrete consequences. In the EU, work on holistic ocean governance started from the “environmental pillar,” which was adopted through

¹⁴ Since the Directive was subject to the co-decision procedure, it had to be accepted by both the European Parliament and the Council. MSFD, n. 1 above.

¹⁵ The heads of states and governments of the EU agreed to the following conclusions on maritime policy at the meeting of the European Council of 14 December 2007 as follows:

The European Council welcomes the Commission Communication on an integrated maritime policy for the European Union and the proposed Action Plan which sets out the first concrete steps in developing an integrated approach to maritime affairs. The broad participation in the preceding public consultation and the comprehensive debate at the Lisbon Ministerial Conference reflected the interest which stakeholders show for the development of such a policy. The future integrated maritime policy should ensure synergies and coherence between sectorial policies, bring added value and fully respect the principle of subsidiarity. Furthermore it should be developed as a tool to address the challenges facing Europe's sustainable development and competitiveness. It should take particularly account of the different specificities of Member States and specific maritime regions which should call for increased cooperation, including islands, archipelagos and outermost regions as well as of the international dimension. The European Council welcomes the conclusion of the Marine Strategy Framework Directive as the environmental pillar of this policy. The European Council invites the Commission to come forward with the initiatives and proposals contained in the Action Plan and calls on the future Presidencies to work on the establishment of an integrated maritime policy for the Union. The Commission is invited to report on progress achieved to the European Council at the end of 2009.

Conclusions from the European Council (14 December 2007), available: <http://ec.europa.eu/maritimeaffairs/conclusions_20071214_en.html> (retrieved 20 November 2008).

¹⁶ For a useful overview, see V. Frank, *The European Community and Marine Environmental Protection in the International Law of the Sea* (Leiden: Martinus Nijhoff Publishers, 2007), pp. 94–104.

a legal act (the MSFD) in 2008. The MSFD requires, among other things, that “Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 15 July 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions.”¹⁷ Hence, the process of identifying the marine regions and sub-regions, as well as actions to achieve good environmental status for these waters, has started in full because it is legally required of the Member States. The same does not hold true for the IMP, which is a political document and is co-ordinated by a different directorate (DG Mare) than that supervising the implementation of the MSFD. The Commission has recently issued guidance to assist Member States in creating their national IMPs. However, the problem may be that in practice there is no legal backing for this guidance. In Canada, by contrast, all of the goals of the ocean policy are contained in the *Oceans Act* and related policy documents and co-ordinated by a single government agency, the Department of Fisheries and Oceans (DFO). Having a different legal basis and co-ordinating agency than its Canadian counterpart, the IMP may well tilt towards environmental goals rather than those advanced in the Blue Book.

Another difference between the policies is that the Canadian instruments provide only broad strategic level guidance, whereas the IMP and the accompanying Action Plan sets out very specific operational actions for the EU. Canada’s Oceans Strategy is a strategic document whose final part, “Strategic Directions for Implementing Canada’s Oceans Strategy,” moves slightly into operational goals. While Canada’s Oceans Action Plan does contain some operational goals in its final part “Initiatives for Phase I of the Oceans Action Plan,” overall the document is more strategic in nature.¹⁸ As is aptly noted in the Oceans Action Plan, the Oceans Strategy is based on a phased approach towards implementation. Although the IMP and Action Plan both contain strategic level guidance, they also provide details about individual actions to be taken, with the Action Plan even evaluating the benefits of those actions. This has the advantage of providing more specific guidance but, of course, leaves less discretion for the Commission in implementing the IMP.

The differences between the ocean policies of the EU and Canada thus appear to be numerous. The Canadian approach proceeds logically, in a step-by-step fashion, from a clear legal foundation to political goal setting, whereas the EU approach follows two distinct but interlinked tracks. The tracks differ in that the MSFD is legally binding while the IMP is not, and each is led by different directorates; they are linked in that the MSFD is the “environmental

¹⁷ MSFD, Article 26 (1), n. 1 above.

¹⁸ However, the Policy and Operational Framework (n. 13 above) provides more specific guidance on implementing integrated management plans.

dimension” of the IMP. Importantly, the process of drafting both the IMP and the Canadian ocean policy were as inclusive as possible, involving all the relevant stakeholders. The same approach has continued with the implementation of both ocean policies: transparency, public participation and stakeholder involvement have been given a lot of attention. This is very clear in the Canadian approach, which not only aims to involve all levels of government and Aboriginal peoples who have jurisdiction in the relevant maritime areas, but also encourages citizens to participate. The rationale is that broad participation will enhance the legitimacy of ocean management.¹⁹

In the EU, the IMP was the result of extensive stakeholder participation: Over 490 contributions were received and over 230 events held in the year-long stakeholder consultation process, which certainly increased the legitimacy of the exercise.²⁰ The guidance given to Member States in drawing up their national integrated maritime policies also demonstrates that the EU is dedicated to the principle of subsidiarity in the making of the IMP. The guidelines encourage the Member States to draw up their national IMPs together with all relevant levels of government and stakeholders.²¹

¹⁹ See the Policy Framework section of the Oceans Strategy:

Finally, the Strategy responds to the desire of Canadians to be engaged in ocean management activities by promoting stewardship and public awareness. Oceans stewardship means acting responsibly to conserve the oceans and their resources for present and future generations. Through stewardship initiatives, the government can encourage Canadians to volunteer and actively participate in the caring for ocean resources in meaningful and positive ways. Citizens also want to be engaged in decisions that affect them, and look for support for stewardship projects. Canada's Oceans Strategy builds on an existing foundation of stewardship and public awareness activities and will continue to develop and promote national initiatives in these areas. This active participation is encouraged through the Integrated Management planning process, but also through more specific activities. Stewardship initiatives under the Strategy will be co-ordinated with others such as the National Stewardship Initiative and the Natural Legacy Agenda. As well, oceans stewardship initiatives are important for supporting Canada's international commitments under Chapter 36 of Agenda 21. Industry is also interested in public/private sector partnerships that contribute to sustainable ocean use. Government roles in this relationship are to enable and encourage the public and private sectors to participate as completely as possible in helping to support sustainable ocean use. (Oceans Strategy, n. 2 above)

²⁰ See DG Maritime Affairs and Fisheries, European Commission, *Report on Consultations* (2007), available: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0574:FIN:EN:PDF>> (retrieved 20 November 2008).

²¹ DG Maritime Affairs and Fisheries, European Commission, *Towards best practice in integrated maritime governance and stakeholder consultation. Guidelines for an Integrated Approach to Maritime Policy, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions*, COM(2008) 395 final (Brussels, 26 June 2008), available: <<http://ec.europa.eu/>

Both the IMP and the Canada's ocean policy started out in similar ways from the financial point of view. In general, the EU spending is planned for several years under a Financial Framework, which lays down maximum amounts by category of expenditure. The current framework was established in 2006 and covers the period 2007–2013. When the Financial Framework was established, the IMP was not yet in place. As a result, no provisions were made for the IMP. In 2009, the amounts proposed in the budget to finance the IMP are drawn from unutilised amounts originally foreseen for the Common Fisheries Policy (CFP). According to the responsible EU official, "This does not mean that all the needs of the CFP have not been adequately addressed in the 2009 budget. They have been. Had the IMP not required the resources that have been proposed for it, these resources would not have been utilised for another purpose."²² Initially, the Canadian ocean policy lacked its own budget. Fiscal restraints in 1997 meant that no new funds were provided to implement the 1996 *Oceans Act* or Canada's Oceans Strategy. "Until the federal government's approval of the Oceans Action Plan in 2005, funding for implementation of the national ocean management approach had been achieved through reallocation of funds within DFO."²³ Yet, this changed with the Oceans Action Plan and Health of the Oceans commitment, both of which provided new funding for ocean policy.²⁴

When we examine the substantive elements of the two policies, it does seem that the EU has benefited from the Canadian experience.²⁵ First, the institutional powers have been designed in IMP in much the same way as in the *Oceans Act*. In contrast to the United States' integrated ocean policy, which is based on a committee working under the Council of Environmental Quality, the lead agency in Canada is the minister for the Department of Fisheries and Oceans. The EU used the same approach, with the DG Fisheries and Maritime

maritimeaffairs/pdf/com08_395_en.pdf> (retrieved 20 November 2008) [hereinafter Guidelines].

²² Official of the European Commission, DG Maritime Affairs and Fisheries, C1, pers. comm. (19 December 2008).

²³ See Mageau, VanderZwaag & Farlinger chapter in this book (Chapter IV), p. 79.

²⁴ Id.

²⁵ In fact, when the EU provided guidelines for Member States on how to do the national IMPs, it referred to the experience of many countries, including Canada, and stated:

The principles, objectives and modalities of all these maritime policies are largely similar. All these countries recognise the major contribution made by sea-based activities to their economy. They all acknowledge that the intensive development of these activities poses a challenge to sustainable development and use of their sea resources. And they have all decided to develop an overall policy that allows a comprehensive, coordinated approach, ensuring sustainable development of the different sea resources and activities. (Guidelines, n. 21 above, p. 5)

Affairs acting as the lead agency in developing the IMP. The directorate was administratively re-organised on the basis of marine regions and renamed DG Mare (maritime affairs and fisheries),²⁶ and is the directorate that steers the IMP process.

The goals of the two ocean policies are essentially the same: to promote economic development in such a way that possibly conflicting uses of the ocean can co-exist and prosper and that the overall health of ocean ecosystems is maintained in the long term. These overarching goals are guided by similar principles in both policies: decision-making principles (e.g., the precautionary principle) and management principles (e.g., an ecosystem approach, co-management).²⁷

Moreover, specific goals are expressed in remarkably similar terms, e.g., promoting economic prosperity, stimulating better marine science, building maritime heritage, and taking international leadership in the development of the law of the sea.²⁸ The goal of becoming an international leader in ocean governance is a good illustration of the similarities between the two policies. Although both share this goal, the two policies use different approaches to realizing it. An examination of the relevant parts of each policy illustrates the difference in the extent to which they provide guidance for action.

²⁶ This is recent development, see European Commission, “Commission: new organisation will boost implementation of EU integrated maritime policy and Common Fisheries Policy,” *Press Release* (27 March 2008), available: <http://ec.europa.eu/maritimeaffairs/press/press_rel_270308_en.html> (retrieved 20 November 2008).

²⁷ The IMP provides (1. Executive Summary): “These actions will be guided by the principles of subsidiarity and competitiveness, the ecosystem approach, and stakeholder participation.” The preambular paragraphs 27 and 44 of the “environmental dimension” of the IMP, the MSFD, endorse the precautionary principle. The preamble of the *Oceans Act*, n. 10 above, refers to the sustainable development ecosystem approach to the oceans and their resources; the precautionary approach to the conservation, management and exploitation of marine resources; the integrated management of oceans and marine resources; and economic diversification and the generation of wealth for the benefit of all Canadians, and in particular for coastal communities. The Oceans Strategy, n. 2 above, outlines the following principles: sustainable development, integrated management and precautionary approach.

²⁸ Canada’s Oceans Strategy, n. 2 above, outlines three policy objectives: understanding and protecting the marine environment, supporting sustainable economic opportunities, and international leadership. This is complemented in the Oceans Action Plan, n. 12 above, to expressly include ocean science and technology. The IMP, n. 1 above, includes as its action areas (section 4) the following: maximising the sustainable use of the oceans; delivering the highest quality of life in coastal regions and seas, building a knowledge and innovation base for the maritime policy, promoting Europe’s leadership in international maritime affairs and, finally, raising the visibility of maritime Europe.

Both Canada and the EU are committed to similar goals in regard to high seas biodiversity and marine protected areas. Canada's Oceans Action Plan provides:

There are a number of important areas, such as the protection of high-seas biodiversity and the concept of high-seas marine protected areas, where Canada can bring to the global stage practical solutions that can lead international benchmarking and best practice exercises.²⁹

The EU provides much more specific guidance on this issue (as on many others). Section 4.4. of the IMP provides:

The Commission will propose an Implementing Agreement of UNCLOS [footnote omitted - TK] on marine biodiversity in areas beyond national jurisdiction and work towards successful conclusion of international negotiations on Marine Protected Areas on the high seas.

The Action Plan provides background to the action, describes the action and describes the benefits of choosing exactly this action:

Background:

The Green Paper on Maritime Policy highlights the importance of protecting the marine environment and biodiversity in Areas Beyond National Jurisdiction (ABNJ), including through a multilateral implementing agreement protecting marine biodiversity under UNCLOS. These initiatives are necessary to meet the objectives agreed in the World Summit on Sustainable Development Joint Plan of Action to significantly reduce current rates of biodiversity loss by 2010 and to establish representative networks of marine protected areas by 2012.

Action:

International negotiations are focussing on developing an international regulatory framework that will allow co-ordinated action to protect marine biodiversity in the high seas, including through the establishment of marine protected areas in ABNJ. They also include participation by the EU in international discussions on marine genetic resources in ABNJ to better understand the underlying environmental and socio-economic

²⁹ Oceans Action Plan, n. 12 above, Initiatives for Phase I of the Oceans Action Plan, International Leadership, Sovereignty and Security.

issues. Negotiations are ongoing in several global fora, including in particular the United Nations General Assembly context (law of the sea), the Convention on Biological Diversity and sectoral organisations. At regional level, negotiations are ongoing under regional seas conventions (e.g. North Atlantic, Mediterranean, Baltic) and regional fisheries organisations. Delivering on these objectives will depend on the outcome of such international negotiations, which makes it difficult to estimate a timetable. In addition to these negotiations, the Commission will before the end of 2009 put forward a strategy for the protection of high seas biodiversity through the designation of marine protected areas.

Benefits of an integrated approach/relevance for an integrated maritime policy:

Action in this area must be seen in conjunction and coherent with EU internal action on the protection of habitats, and the across-the-board implementation of an eco-system-based approach, including in fisheries. Furthermore, an integrated approach to these issues aims at going beyond the current sectoral fragmentation of measures in the high seas. The joint implementation of international commitments under UN instruments is necessary to ensure coherent action by economic sectors in the high seas, a condition for sustainable development in areas beyond national jurisdiction.³⁰

Clearly, the goals are very close to each other, but the EU's approach identifies the specific steps to be taken, explicitly justifying the planned action and identifying specific policy and legislative actions in the IMP.³¹

The more specific integrated management approach of the EU has similarities but also differences to that of Canada. These differences mainly stem from the constitutional structures of the two policy entities, but also from their management traditions. Both Canada and the EU promote the establishment of marine protected areas. Canada has three schemes for establishing MPAs, with the responsibilities allocated to three agencies for

³⁰ Oceans Action Plan, n. 12 above, pp. 30–31.

³¹ See, e.g., IMP, n. 1 above, “The Commission will: reassess, in close cooperation with social partners, the exclusions affecting maritime sectors in EU labour legislation,” (p. 9) and “The Commission will: propose a new ports policy, taking account of the multiple roles of ports and the wider context of European logistics; make proposals to reduce the levels of air pollution from ships in ports, namely by removing tax disadvantages for shore side electricity; issue guidelines on the application of the relevant Community environmental legislation to port development” (p. 8).

different issue areas. However, DFO has overall authority in co-ordinating the development and implementation of a national system of marine protected areas on the basis of section 35 (2) of the *Oceans Act*.³² In the EU, the responsible directorate is DG Environment, which supervises the NATURA 2000 programme and ensures that the EU complies with its international obligations in respect of MPAs. These areas may be those already designated under the Wild Birds or Habitats directives or under international legal obligations. The MSFD lays down a legal obligation for the Commission to report on the progress made with respect to marine protected areas.³³

However, the management scheme in Canada is more flexible in the sense that DFO minister can establish different kinds of integrated management systems depending on the overall load facing the ecosystem. The Canadian system also develops incrementally: there is no requirement to first map out all the marine regions. Rather, the large ocean management areas (LOMAs), and more specific integrated governance schemes, are created one-by-one over time.³⁴ Even though more specific guidance in implementing these various integrated governance schemes is given in the “Policy and Operational Framework for Integrated Management of Estuarine, Coastal and Marine Environments in Canada,” the management system is built on tailoring the kind of management structure that best suits the specific conditions in an area. The EU system is more rigid in the sense that it first requires all marine regions to be mapped out by Member States with the help of the Commission. Subsequently, management measures are to be laid down to achieve the good environmental status by 2020 at the latest. However, the guidance given to Member States to implement their own national IMPs contains possibilities for creating various sorts of ocean management models, with participation from national coast guards, national maritime agencies and operators of surveillance

³² See Fisheries and Oceans Canada, “Marine Protected Areas Policy. Developing a National System of Protected Areas for the Marine Environment (March 1999),” available: <http://www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/mpapolicy-politiquezpm/page05_e.asp> (retrieved 20 November 2008).

³³ Article 21 of the MSFD, “Progress report on protected areas,” n.1 above, reads: “On the basis of the information provided by the Member States by 2013, the Commission shall report by 2014 on progress in the establishment of marine protected areas, having regard to existing obligations under applicable Community law and international commitments of the Community and the Member States. The report shall be submitted to the European Parliament and to the Council.”

³⁴ Appendix to the 2002 ocean governance document lists the integrated management schemes already in place. Oceans Strategy, n. 2 above, available: <http://www.dfo-mpo.gc.ca/oceans-habitat/oceans/ri-rs/cos-soc/page09_e.asp> (retrieved 20 November 2008), Appendix – Integrated Management Initiatives at Work.

systems, together with all possible stakeholders. This stage of national management and implementation is to be carried out by the Maritime Spatial Planning, which means there are possibilities to come up with various kinds of integrated management structures throughout European seas.

3.4. Evaluation

Even though the constitutional structures of the EU and Canada differ in maritime affairs, it is clear that their ocean policies exhibit similar features. This is perhaps not so surprising given that the international binding and non-binding instruments which have established the basic ideals for integrated ocean governance have also found their way into both Canadian and EU ocean policies. As discussed above, there are interesting similarities between the two policies that may well result from Canada being one of the first states to lay down a comprehensive integrated ocean policy.

In comparison to federal states, the greatest challenge for the EU in implementing its IMP is how the Member States will implement the MSFD and, perhaps most importantly, the national IMPs for which guidance was given recently. As the IMP requires, the Commission will

invite Member States to draw up national integrated maritime policies, working closely with stakeholders, in particular the coastal regions; propose in 2008 a set of guidelines for these national integrated maritime policies and report annually on EU and Member States' actions in this regard from 2009.³⁵

Hence, the first signs of whether the Member States have started to react to this political initiative in their national policy will be seen in 2009. However, it does seem that the EU might find it better that the Member States fulfil their “environmental dimension” obligations of the IMP, given that the MSFD obligations are legally required whereas the other obligations adopted via the Communication are not.³⁶

³⁵ IMP, n. 1 above, p. 5.

³⁶ On the other hand, the recently published Roadmap for Maritime Spatial Planning shows that several integrated management structures have already been developed in the EU Member States. See European Commission, *Roadmap for Maritime Spatial Planning: Achieving Common Principles in the EU, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of Regions*, COM(2008) 791 final (Brussels, 25 November 2008), available: <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0791:FIN:EN:PDF>> (retrieved 10 January 2009).

