

TOWARDS AN OCEAN GOVERNANCE FRAMEWORK
AND
NATIONAL OCEAN POLICY FOR PERU

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TOWARDS AN OCEAN GOVERNANCE FRAMEWORK AND NATIONAL OCEAN POLICY FOR PERU

ABSTRACT

At a world level, the predominant role of the oceans as a source of life and sustainable development is being considered. The States are adopting new approaches based on an integrated and sustainable management of the marine areas upon their jurisdiction. In this sense, the concepts on ocean governance and ocean policy arise as the mechanisms through which this integrated and sustainable approach may be developed. This paper analyzes, through a three part format, the contemporary concepts on ocean governance and ocean policy to show that Peru could be benefited in adopting an ocean governance framework and an integrated national ocean policy. Part I explores the main ocean governance and ocean policy concepts established by academics and specialists. Part II analyzes the Canadian and Australian approaches to implement a national ocean policy in order to establish how the theoretical concepts of ocean governance and ocean policy are applied. Part III examines the current management of ocean affairs in Peru and explores how an integrated national ocean policy might be developed. This paper concludes that Peru need to develop an integrated national ocean policy, establishing for this purpose a National Commission with representatives of the national entities related with the management of the ocean issues and representatives of the private sector. The first task of this Commission should be to prepare a paper to cause a debate and obtain the necessary political consensus to adopt the required national ocean policy.

INTRODUCTION

Currently, there is a global concern about the importance of the oceans as source of life and as a resource that offers possibilities for sustainable development. However, ocean related issues have increased over the past several decades.

ocean governance and ocean policy concepts; and to demonstrate that Peru would benefit from developing an ocean governance framework with an integrated national ocean policy.

This paper is divided into three parts. The first part analyzes the main ocean governance and ocean policy concepts established by academics and specialists. It examines the specific elements of these concepts and explores how they can be implemented. It also reviews the current trends and future prospects in ocean governance and policy as well as the relationship between them. The second part analyzes the Canadian and Australian approaches to implementing a national ocean policy in order to determine how the theoretical concepts of ocean governance and ocean policy are applied. The third part analyzes the current management of ocean affairs in Peru and explores how an integrated national policy might be developed.

I. OCEAN GOVERNANCE AND INTEGRATED NATIONAL OCEAN POLICIES

Among international organizations, public officials, institutions and academics, there is a growing interest and participation in the study and application of ocean governance. This process is not only important globally, but also regionally and nationally.

One of the main reasons for the growing interest in this area, as stated above, is the increased awareness of the predominant role of the ocean, sea, and coastal areas to support human life and the corresponding imperative to develop these in a sustainable manner.³ For these reasons, and according to Chapter 17 of Agenda 21, there is a need for a new approach to development and regulation of the marine environment and coastal zones at an international, regional and national level. The content of the new approach needs to be integrated and oriented towards prevision and precision.⁴ Within this framework, this first part will demonstrate the importance and necessity of the application of ocean governance

³ United Nations Conference on Environment & Development. Río de Janeiro, Brazil, 3 to 14 June 1992. Agenda 21 – Chapter 17. Protection of the Oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources. (Par.17.1), P. 167-168, online: <<http://www.un.org/esa/sustdev/documents/agenda21/english/Agenda21.pdf>> (Accessed 7 October 2005).

⁴ *Ibid*, at 168.

and integrated national ocean policies at an international, regional and national level. To reach the above mentioned objective, the following questions have to be answered:

- 1) What is ocean governance?
- 2) Does it have a legal and institutional framework?
- 3) What are the elements that have been constituted?
- 4) Can levels of application be distinguished?
- 5) What is the connection between ocean governance and the concept of ocean policy?
- 6) What should be understood as integrated national ocean policy?
- 7) How should an ocean policy be developed? What are the current policy trends?
- 8) Why do States require an ocean governance framework and develop integrated national ocean policies?

What is Ocean Governance?

So as to define ocean governance, it is first necessary to define the term “governance”. It has been said that governance is the way by which society has instituted objectives, priorities and systems of cooperation. Also, governance can be carried out at an international, regional, national and local level.⁵

Additionally, it has been said that governance establishes the framework for management:⁶ Governance is constituted by institutions, formal and informal agreements and behaviours, how resources are used, how the problems and chances are assessed, the actions permitted or prohibited; and the regulation and sanctions that are applied.⁷

⁵ See IUCN (The World Conservation Union) and Governance for Sustainable Development, online: <<http://www.iucn.org/themes/law/pdffdocuments/Gov%2016-5-0>

In this same context and to follow with the development of the proposed topic, what ocean governance is should be established. At the beginning, this task would seem straightforward due to the previous definition

a) Law of the Sea Convention (LOSC):

The LOSC is one of the most important sources of ocean governance because it

an important objective is to encourage the states to promote and apply the concept of

considered by the General Assembly; and (3) to identify areas where cooperation and coordination at the intergovernmental and interagency levels should be enhanced.²⁴

c) Oceans and Coastal Areas Network (UN-Oceans): Established as an inter-agency mechanism whose purpose is to enhance cooperation and coordination among Secretariats of the International Organizations and bodies concerned with ocean related activities.²⁵

d) Post -UNCED Developments Guiding the Institutional Framework :

- Extension of the “Constitution for the Ocean” to the land: The United Nations Environment Programme leads the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA) which was adopted in 1995. This Global Programme has the main tasks of establishing guidelines and instructions so that the national and regional authorities can take different actions to prevent, reduce and/or eliminate marine pollution from land-based activities which is the source of approximately 80% of the pollution in the oceans.²⁶
- Integrated Coastal/Ocean Management: Defined as an emerging theory, its objective is to establish the requirements and characteristics of a holistic approach for the sustainable use of ocean space and marine resources.²⁷

²⁴For more information about the Consultative Process see, online: <http://www.un.org/Depts/los/consultative_process/consultative_process_background.htm> (Accessed 23 October 2005). For further detail about the sixth meeting of the Consultative Process carried out in New York from 6-10 June 2005 see Report A/60/99, online:<<http://daccessdds.un.org/doc/UNDOC/GEN/N05/414/01/PDF/N0541401.pdf?OpenElement>> (Accessed 23 October 2005).

²⁵ For more information, see the Report of the First Inter-Agency Meeting of UN-OCEANS (25-26 January 2005) UNESCO-IOC, Paris, France, online: <http://www.un-oceans.org/Documents/UNOceans_Session1Paris.doc> (Accessed 27 October 2005).

²⁶ GPA was adopted by 108 Governments and the European Commission in 1995 by Washington Declaration (1 November 1995) online: <<http://www.gpa.unep.org>> (Accessed 8 October 2005).

²⁷ See Aldo Chircop and Larry Hildebrand. Chapter 2 “Beyond the Buzzwords: A perspective on Integrated Coastal and Ocean Management in Canada in Donald R. Rothwell & David L. VanderZwaag, *“Towards Principled Ocean Governance: Australian and Canadian Approaches and Challenges* (London: Routledge Press, in press) and Elizabeth Foster, Marcus Haward, Scott Coffen- Smout. “Implementing integrated oceans management: Australia’s s1.5(i)gnoearstr(e)8.2gtianalae (pl)3.9ean(Se)ad(C)384(a)8.2(na)8.2da’esearstia

- (Sub-) Regional Approaches: These approaches have constituted an appropriate scale to developed mechanisms of coordination, cooperation and implementation with international oceans-related institutions, on a more durable footing.²⁸ Among these approaches can be mentioned: Large Marine Ecosystems (LMEs),²⁹ UNEP-Regional Seas,³⁰ Joint Development Zones,³¹

b) National:

- Mechanisms of coordination and cooperation should be established between all the governmental agencies, ministries and levels of government (local, national) that have competence in the scope of ocean governance.³⁴
- Incorporation and participation of stakeholders within a system of co-management.³⁵

c) Regional:

- The Regional Seas Programme of UNEP and the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA) should be strengthened.
- The participation and assistance of Regional Development Banks (RDBs) and Regional Governmental Organizations (RGOs) are required.
- An organ of management with a trans-sectoral and inter-disciplinary mandate has to be established for the sub-regional implementation of all the Conventions, Agreements and Programs related.

d) International:

- The General Assembly of the United Nations: This global institution is the competent organ to carry out the implementation the ocean governance at this level. The General Assembly has conducted annual reviews of ocean affairs and the law of the sea, based on reports prepared by the Secretary General and the recommendations proposed by the Consultative Process.³⁶

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From the above framework, it can be observed that there is indeed an emerging ocean governance framework, clearly present at the international, regional and national levels. In the same sense, Donald Rothell and David VanderZwaag affirm that the following can be considered the main trends or characteristics in the further development and application of the concept of ocean governance in the post-modern era.³⁷

- 1) There is growing participation in the process of decision-making, not only from governmental agencies and the public sector, but also from non governmental participants such as private sector, scientists, NGOs, academics, and communities, among others.
- 2) Cooperative approaches such as voluntary programs, community based management, and integrated ocean/coastal planning are being developed and fortified.
- 3) There is a rise in the application of Soft Law instruments (conference, declarations, recommendations, guidelines, resolutions, etc.).
- 4) There is increasing participation of different disciplines such as ethics, sociology, ecology, economics and engineering in the formulation of public policies.
- 5) There is an increasing amount of skepticism about the main role of Science and scientific opinions in the decision making process.
- 6) Conflicts about the use of the ocean and the protection of marine environments exist between diverse social interests and social values. These conflicts are being considered and analyzed by governmental entities.

<http://www.un.org/Depts/los/general_assembly/general_assembly_resolutions.htm> (Accessed 27 October 2005).

³⁷ See Donald R. Rothwell & David L. VanderZwaag, *supra* note 8, at 415.

According to the above, it can be stated that this preliminary concept of ocean governance is defined not only by institutions, but also by diverse actors or stakeholders, rules and processes in ocean management, and mechanism to solve conflicts of interest.³⁸

What is the relationship between ocean governance and ocean policy?

In order to answer this question, it is important and useful to first understand the meaning of the term ‘Policy’. Edward Miles defines policy as:

[A] purposive course of action followed by governmental or nongovernmental actors in response to some set of perceived problems.⁴⁰

But how should this concept be understood in the scope of the oceans? In this sense, it has been pointed out that the relation between the concepts of ocean governance and ocean policy is that ocean policy is an element of the governance of the oceans, and serves as base to develop all of the activities that are carried out within the oceanic realm. Furthermore, the concept of ocean policy permits a clear vision of the direction States should take to achieve management in ocean affairs.⁴¹ This initial clarification is further elaborated in the following sections.

What is an integrated national ocean policy and how should it be developed?

Underdal has stated an integrated policy can be defined in the follow terms:

[A] policy is integrated to the extend that it recognizes its consequences as decision premises, aggregates them into an overall evaluation, and penetrates all policy levels and all government agencies involved in its execution.⁴²

³⁸ For a discussion about the concept of ocean governance, see Robert L Friedheim, “Millennium Essay. Ocean governance at the millennium: where we have been – where we should go”. *Ocean & Coastal Management* 42 (1999) p. 748; Francois N. Baillet, “Ocean Governance and its implementation: Guiding principles for the Artic Region, online: <[http://www.pame.is/sidur/um38tati.7\(n\)-4\(/\)Friedo.0001\(0\(e\)15.5ied ww.p\)mce.pdf](http://www.pame.is/sidur/um38tati.7(n)-4(/)Friedo.0001(0(e)15.5ied ww.p)mce.pdf)> (Acce()-1(m)9slATm-0.00

The next and the most important step is to determine how an integrated national ocean policy should be developed. It has been noted that the main elements of a national ocean policy are: the spatial dimension, the jurisdiction, the actors involved, the interests or issues and the administrative set-up.⁴³

However, how should the elements mentioned above be connected in order to develop an integrated national ocean policy? In the first place, should it determine what the spatial dimension is? It has been said that it should refer to the extension of the geographical area where the policy will be applied.⁴⁴ Likewise, when it includes the whole of the global ocean space, the term of ocean policy should be utilized.⁴⁵

Secondly, should it define what jurisdiction applies? In this sense, it has been established that the jurisdiction is the area on which the States exercise rights and sovereignty. In order to point out the jurisdiction that the coastal States should exercise, the dispositions established at the LOSC Convention must be observed.

Thirdly, should it determine who the actors are that participate in this process of development of an integrated national ocean policy? With regard to this, it has been noted that this process should be integrated horizontally because it requires the participation of governmental institutions, the private sector, academics, scientists, etc., as well as vertically across all of levels of governance within an integrated system with reciprocal collaboration and coordination.

The fourth element of this process of the elaboration of the ocean policy is constituted by the included issues and interests. Regarding these, it is important that the states should establish the national objectives and strategies, which are the issues and interests, that will be part of their ocean policies. In addition, these national objectives and strategies should be integrated into their national development plans.⁴⁸

But how should these national objectives and strategies be formulated? Edward Miles notes that the States (bureaucracy, legislature and the marine user community) need to ask themselves the following questions in order to establish these objectives and strategies:

[W]hat do we want? What should we want, given our biogeophysical conditions? How do we propose to get from here to there? What are we prepared to pay to do so?⁴⁹

Furthermore, he states that as a result of answering the above questions, the States must have a better perspective about what kind of activities need to be dealt with, when and where an adequate regulation should be emitted, or what other alternatives to the regulation can be established.⁵⁰

The last part of the ocean policy formulation process is the administrative system. With respect to this, it has been pointed out that a national ocean policy should be managed and achieved at the highest level of governance. This is in order to mobilize political power and commitment in the ocean affairs and to have the required leadership to manage the national ocean policy priorities as well as to establish effective mechanisms of interagency coordination.⁵¹

In the same sense, Annick de Marffy also notes that the government should form a consultative commission.⁵² This commission should be led by the Prime Minister or a lead

⁴⁸ *Ibid*, at 162.

⁴⁹ See Edward L. Miles, *supra* note 40 at 237; Edward L. Miles, Future Challenges in Ocean Management: Towards integrated national ocean policy in Ocean Management in Global Change (London and New York: Elsevier Applied Science). 1992. 595-620 (p. 598-599).

⁵⁰ *Ibid*, at 598-599.

⁵¹ See Jean -Pierre Levy, *supra* note 43 at 77; See Stella Maris A. Vallejo, *supra* note 47 at 162-163.

⁵² See Annick de Marffy *supra* note 11 at 190-192.

Why States require an ocean governance framework and integrated national ocean policy:

The latest report of the United Nations Secretary-General on “Oceans and the law of the sea” stated that:

[T]he future of the oceans depends on enhanced scientific research into ocean processes, effective implementation of the international instruments that regulate various oceans activities and a comprehensive and integrated approach to ocean management.⁵⁸

According to what has been developed above and taking into consideration the legal and institutional framework (LOSC Convention, UNCED Process, etc), the theoretical concepts and the issues and current trends in the management of ocean affairs, it is clear that States must work towards the development of an ocean governance framework and the adoption of integrated national ocean policies an integrated ocean management structures. This is the unique key to achieve adequate management of the oceans and seas under State jurisdiction⁵⁹ and is one of the most important conditions for the future of the oceans.⁶⁰

Consequently, it has been shown that coastal States have to develop an ocean governance framework and adopt integrated national ocean policies.

The other issue that arises and should be addressed is that of the future in the development of these emerging concepts of ocean governance and integrated national ocean policies.

In this respect, it has been said that there is now more concern at the global level about the necessity to establish an ocean governance framework,⁶¹ as well as integrated national

⁵⁸ See United Nations Secretary-General “Oceans and the law of the sea: Report of the Secretary General” (4 March 2005) UN.Doc. A/60/50, par. 319, online:<<http://daccessdds.un.org/doc/UNDOC/GEN/N05/257/59/PDF/N0525759.pdf?OpenElement>> (Accessed 29 October 2005) For a discussion about the concept of ocean management See Aldo Chircop and Larry Hildebrand. *supra* note 27, Donald R. Rothwell & David L. VanderZwaag, “Towards Principled Ocean Governance: Australian and Canadian Approaches and Challenges (London:Routledge Press, in press) and Elizabeth Foster, Marcus Haward, Scott Coffen-Smout, *supra* note 27.

⁵⁹

ocean policies.⁶² The International Ocean Governance Network (IOGN),⁶³ the CEL'S Specialist Group on Ocean Law & Governance⁶⁴ and the process of implementation, formulation and preparation that are being developed in some States, among others, are some of the main contributors to the diffusion of these emerging concepts of ocean governance and integrated ocean policies.

In conclusion, the prospects for the future look promising, due to the participation of many States, the initiatives and capacity-building that are promoted by international organizations and NGOs,⁶⁵ and the research and promotion that is being carried out by specialists and academics. It is true that there is yet much to be accomplished; however, important initial advancements are being made.

⁶² See Lawrence Juda, "Changing National Approaches to Ocean Governance: The United States, Canada and Australia" in *Ocean Development & International Law*, 34:161-187, 2003. p. 162-163.

⁶³ See *supra* note 55. The Nippon Foundation - International Ocean Governance Network (IOGN) established the Research Task Force on National Ocean Policies under the direction of Dr. Biliana Cicin -Sain, University of Delaware (chair), and Dr. David VanderZwaag, Dalhousie University, Canada (Vice- Chair), online: <<http://www.globaloceans.org/tops2005/index.html>> (Accessed 13 October 2005).

⁶⁴ This association is part of the World Conservation Union, network that brings together 82 States, 111

II. THE CANADIAN AND AUSTRALIAN APPROACHES TO THE DEVELOPMENT OF OCEAN POLICIES

The necessity for States to develop an ocean governance framework and adopt integrated ocean policies as a means to obtain an adequate management of the oceans affairs has been established. In this part, the approaches developed in Canada and Australia, leading countries in these processes, will be analyzed. Through this analysis, it will be possible to gain an understanding of how the previously defined theoretical concepts were developed, as well as establish comparative lessons to be learned in order to elaborate a national ocean policy in Peru.⁶⁶

fragmented, causing over-exploitation of the fisheries and the degrading of the ocean environment.⁷⁰ It has been established that the development of a national policy and adequate legislation is necessary so as to obtain a better management of ocean and coastal spaces and resources. The combination of political willpower and the presence of certain fishing and pollution problems contributed to the establishment and development of the national ocean policy.⁷¹

In November of the same year, the Minister of Fisheries and Oceans elaborated and distributed a paper for public debate on the vision for better ocean management in Canada. This debate was comprised of the government and the community in general and concluded

marine ecosystems. The part further stipulates that the national strategy should be based on the principles of sustainable development, the integrated management of activities and the precautionary approach.⁷⁶

- Part III: Powers, Duties and Functions of the Minister

This part bestows on the Minister of Fisheries and Oceans the lead authority for the implementation of the Act.

After the enactment of the Oceans Act, the Minister of Fisheries and Oceans lead the process of the implementation of the regulations established by the Act and the development of Canada's Oceans Strategy. Pivotal programmes and consultations, not only at a governmental level, but also at the non-governmental level, were carried out. With regards to this, Camille Mageau, David VanderZwaag and S.Farlinger state that:

[T]he policy development process continued its course with two public engagement and consultation processes, one, focused on the Vision for the Oceans Act; the other a structured consultation on Canada's Oceans Strategy and designed to solicit federal, provincial, First Nation and public input. Over a period of five years, the department engaged the views and perspectives of Canadians by supporting a wide range of discussions, workshops and consultation activities across the country.⁷⁷

Thus, the second phase was established with the enactment of Canada's Oceans Strategy on July 12, 2002.

Canada's Oceans Strategy⁷⁸

This document established a policy framework and a new model of governance of the oceans in Canada.⁷⁹ The central commitments of this model of ocean governance are to work not

⁷⁶ See *Oceans Act*, S.C, *supra* note 72. The Oceans Act specifies and defines as (a) Sustainable Development as the development that meets the needs of the present without compromising the ability of future generations to meet their own needs; (b) the integrated management of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and (c) the precautionary approach, that is, erring on the side of caution.

⁷⁷ See C. Mageau, D.VanderZwaag and S.Farlinger, *supra*, note 69. at 8.

⁷⁸ See Department of Fisheries and Oceans 2002. *Canada's Oceans Strategy*, online: <http://www.cos-soc.gc.ca/doc/publications_e.asp> (Accessed 1 November 2005).

only within the federal government but also among levels of government, the distribution of responsibility for reaching common objectives and including Canadians in the decision on oceans management.⁸⁰

Canada's Oceans Strategy is developed on the basis of the principles of sustainable development, integrated management and the precautionary approach and has as main objectives: (1) to increase the understanding and protection of the marine environment, (2) to support sustainable economic opportunities and (3) to demonstrate international leadership in oceans management.

After the release of Canada's Oceans Strategy, the Government of Canada considered it necessary to develop an Oceans Action Plan, in order to guide the implementation of the Strategy. Thus, the October 2004 Speech from the Throne stated that Canada would:

[M]ove forward on its Ocean Action Plan by maximizing the use and development of oceans technology, establishing a network of marine protected areas, implementing integrated management plans, and enhancing the enforcement of rules governing oceans and fisheries, including rules governing straddling stocks.⁸¹

Working groups and interdepartmental committees for deputy ministers and assistant deputy ministers were established and appointed in order to develop the Plan. The Oceans Action Plan was released on May 27, 2005 by the Minister of Fisheries and Oceans, who had lead the process.

Canada's Oceans Action Plan⁸²

Elaborated as the overarching umbrella for the coordination and implementation of ocean activities, the Action Plan is based on four interconnected pillars:

⁷⁹ See Camille Mageau, Director Marine Ecosystem Conservation, Department of Fisheries and Oceans Canada in the Ocean Policy Summit 2005 Bulletin. *supra*, note 56. at. 4: See Department of Fisheries and Oceans, *Canada's Oceans Strategy*, 2002.

⁸⁰ See C. Mageau, D.VanderZwaag and S.Farlinger, *supra*, note 69. at 9.

⁸¹ Speech from the Throne 2004, online: < <http://www.pm.gc.ca/eng/sft-ddt.asp> > (Accessed 1 November 2005) note 16odcs3(brella

- 1) International Leadership, Sovereignty and Security,
- 2) Integrated Oceans Management for Sustainable Development,
- 3) Health of the Oceans; and
- 4) Ocean Science and Technology.

Phase I of the Plan is now being implemented and it has been said that it should be completed within one year. This phase establishes as priority actions the signing of agreements with all the levels of government (federal, provincial, territorial, Aboriginal).⁸³

The Canadian experience has been briefly outlined, but now it is important to understand and specify how these instruments, Oceans Act, Canada's Oceans Strategy and Canada's Oceans Action Plan, are related in the ocean policy's development process. This issue will be developed in the next section.

Canada's Ocean Policy

The Canadian approach to the development of a national ocean policy shows us that its elaboration was undertaken in different phases and at various levels. This process included not only the enactment of the necessary legisl

Finally, another important aspect to note is that the ocean policy doesn't replace or repeal other sectorial policies in existence. The objective of this policy is to establish an adequate framework through which the other policies should be interpreted.⁸⁵

The Australian approach

Australia has the third largest Exclusive Economic Zone in the world which covers 11 million square kilometers of marine waters.⁸⁶ These marine waters lie in the Pacific, Indian and Southern Oceans, and include a diverse range of geographic, geologic and oceanographic features.

How did the development process of the ocean policy begin?

The first step in this process began with the release of the Ocean Policy Consultation Paper by the Primer Minister in April 1997.⁸⁷ This document was released with the objective to promote discussion and generate ideas on national ocean policy development process.⁸⁸

After subsequent discussion documents were released, an ocean forum with the participation of the government, industry and the community was carried out in Canberra on 2 -3 December 1997.⁸⁹

Following this diverse process of consultation and discussion, Australia's Ocean Policy was released on 23 December 1998.

⁸⁵ *Ibid*, at 15.

⁸⁶ See Commonwealth of Australia, Oceans Policy Consultation Paper 1997, online: <http://www.oceans.gov.au/aust_oceans_new_horizons/default.jsp> (Accessed 25 October 2005); World Resources Institute (WRI).2004.Earth Trends. Coastal and Marine Ecosystems. Country Profiles. Australia, online: <http://www.earthtrends.wri.org/pdf_library/country_profiles.

⁸⁷ See Elizabeth Foster, Marcus Haward, Scott Coffen-Smout, *supra* note 27.

⁸⁸ See Commonwealth of Australia, Oceans Policy Consultation Paper, 1997.*supra*, note 86.

⁸⁹ See Commonwealth of Australia, Canberra. *Australia's Oceans Policy: Report of the Forum Held in Canberra on 2-3 December 1997*.

Australia's Ocean Policy⁹⁰

It has been said that Australia was the first country in the world to establish a comprehensive national ocean policy.⁹¹ It is built on the sectorial and jurisdiction mechanisms and includes a vision, goals, principles and policy guidance.

Australia's Ocean Policy established the framework for integrated- and ecosystem- based planning and management for the marine jurisdictions. With regards to this, Robert Hill has stated that:

*[A]ustralia's Oceans Policy is neither solely an environment protection policy nor solely an economic development policy. It is both. It is a Policy for the ecologically sustainable development of our oceans. The Oceans Policy establishes the broad principles and planning and management approaches necessary to achieve that goal.*⁹²

Likewise, one of the most important parts, which is the core of this ocean policy, is the development of Regional Marine Plans based on large marine ecosystems for the purposes of integrated ocean planning and management. Thus, it has been noted:

*[T]he development of Regional Marine Plans will provide a structured and orderly process for the ecosystem-based allocation of resource access and use across and within sectors.*⁹³

In order to implement the ocean policy, the following institutional arrangements were established:

- National Oceans Ministerial Board (NOMB) was established as the decision-making body regarding Regional Marine Plans. This was then dissolved in 2004. The Minister for

⁹⁰ See Commonwealth of Australia, Australia's Ocean Policy (Environmental Australia, 1998), online: <http://www.oceans.gov.au/publications_policy.jsp> (Accessed 1 November 2005).

⁹¹ See Baterman S, Australia's oceans policy and the maritime community in Elizabeth Foster, Marcus Haward, Scott Coffen-Smout, *supra* note 27.

⁹² See Commonwealth of Australia, Australia's Ocean Policy (Environmental Australia, 1998), *supra* note 90.

⁹³ *Ibid*, at 14.

the Environment and Heritage has now taken lead responsibility for Australia's Oceans Policy in consultation with the Ministers colleagues.⁹⁴

- National Ocean Advisory Group (NOAG) is comprised of representatives from the industry, community and government stakeholders. Its main function is to provide advice to the Minister for the Environment and Heritage on the implementation of Australia's Oceans Policy.⁹⁵
- Regional Marine Plan Steering Committees (RMPSC) were established with the purpose of supervising the development of Regional Marine Plans, collaborating with the National Ocean Office and providing reports to the National Oceans Ministerial Board.⁹⁶
- National Oceans Office (NOO) was established in order to support the National Oceans Ministerial Board, the National Advisory Committee and Regional Marine Plan Steering Committees. In 2004, the National Oceans Office was incorporated into the new Marine Division of the Department of the Environment and Heritage. The office continues to have the lead responsibility for the regional marine planning.⁹⁷

In addition to the above institutional arrangements, in 2003 two other bodies were established in order to assist in the process of implementing the ocean policy.

- Oceans Board of Management (OBOM) is comprised of officials from agencies and departments with marine interests and responsibilities. Its main function is to provide high-level and whole government advice on the operational aspects of the ocean policy and regional marine planning. The Chairman of this group is the Secretary of the Department of Environment and Heritage.⁹⁸

⁹⁴ The National Oceans Ministerial Board (NOMB) was dissolved in 2004. See online: <http://www.oceans.gov.au/the_oceans_policy_overview.jsp> (Accessed 1 November 2005).

⁹⁵ The National Advisory Group now provides advice to the Minister for the Environment and Heritage, rather than the board. See online: <http://www.oceans.gov.au/the_oceans_policy_overview.jsp> (Accessed 1 November 2005).

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

⁹⁸ *Ibid.*

- Oceans Policy Science Advisory Group (OPSAG) was established to promote mechanisms of coordination and information and knowledge sharing between Government marine science agencies and the Australian marine science community. This group is comprised of representatives of 18 government agencies, State research institutions and non-governmental marine science interests.⁹⁹

Unlike the Canadian example, the development of Australia's Ocean Policy did not begin with oceans legislation but with the release of the national document. This policy involved diverse processes of consultation among the different levels of government and the community and established necessary institutional arrangements for its implementation.

The Canadian and Australian approaches to the development of the integrated national ocean policies have been outlined. The next issue that will be discussed is what lessons can be learned from these important experiences.

What lessons can be learned from Canadian and Australian approaches in the development of an ocean policy

An observation of the development of the Canadian and Australian ocean policies provides the following lessons and guidelines:

- The policies should be established in a precise way: what are the goals, how will they be reached, what resources will be used and what will be the responsibility of the different actors involved in this process? Also, the mechanism of assessment, monitoring and reporting, must be set out.¹⁰⁰
- Financial support and political willpower are required in order to develop an ocean policy.

⁹⁹ *Ibid*

¹⁰⁰ See Report of the Commissioner of the Environment and Sustainable Development, Appedinx A-Lessons learned from international experiences, *supra*, note 70. See National's Oceans Office, Ocean Policy: Principles and Processes, 2003, online:<http

- An existing Department or agency of the government should be designated, or a new one created, so as to lead the development of an ocean policy. This body should be located at a high level within the government, or structured so that it can exercise effective influence on other government entities as well as across levels of government and throughout relevant civil society sectors.
- Institutional arrangements at the government level are required for an effective implementation of the oceans policies. These can include establishment of ministerial or senior official boards, advisory bodies, offices and committees, among others.¹⁰¹
- The enactment of legal norms and the regulatory reforms of sectorial laws are necessary and have an important role in establishing the framework for the integrated management of the oceans.¹⁰²
- Mechanisms or processes of public consultation should be established in order to involve the communities and stakeholders. In this sense, the Report of the Commissioner of the Environment and Sustainable Development of Canada notes:

[T]he involvement of communities and stakeholders is vital, but it must be meaningful. Those engaged must understand what the process is designed to achieve and what their role should be. Consultations processes should be open, transparent and inclusive. Industry sector-based consultation also has a role in gathering specific information.¹⁰³

- Establishment of special geographic areas based in the marine ecosystem is required in order to develop an integrated management of the oceans.¹⁰⁴

¹⁰¹ *Ibid.*

¹⁰² See C. Mageau, D.VanderZwaag and S.Farlinger,*supra*, note 69. at 40. See Report of the Commissioner of the Environment and Sustainable Development, *supra* note 70.

¹⁰³ See Report of the Commissioner of the Environment and Sustainable Development, Appendix A- Lessons learned from international experiences, *supra* note 70.

¹⁰⁴ *Ibid.*

- The development and strengthening of scientific knowledge constitutes a necessary tool for the process of elaboration and implementation of an ocean policy.¹⁰⁵
- A better understanding of the oceans and sense of ownership and stewardship in the community should be generated. In order to achieve these objectives, citizens should be educated through public information campaigns, websites and other means.¹⁰⁶

III. TOWARDS AN INTEGRATED OCEAN POLICY IN PERU

The main lessons and guidelines of the Canadian and Australian approaches for a development of an ocean policy have been outlined. These examples provide a practical perspective on the application of the emerging concepts of ocean governance and ocean policy.

Based on this approach, the Peruvian context and the current management of Peru's oceans will be analyzed in order to explore how an integrated ocean policy might be developed.

The Peruvian context

Peru is a coastal state that is located in the western and central part of South America and has a coastline of 3080km which borders the Pacific Ocean.¹⁰⁷ Marine areas along the Peruvian coast consist of the cold Humboldt Current, an adjacent warm tropical sea, and a zone of transition between the two.¹⁰⁸

¹⁰⁵ See The Ocean Policy Summit 2005 Bulletin, *supra* note 56.

¹⁰⁶ *Ibid.*, and See Report of the Commissioner of the Environment and Sustainable Development, Appendix A- Lessons learned from international experiences, *supra*, note 70.

¹⁰⁷ See Food and Agriculture Organization of the United Nations (FAO), Fisheries and Global Information System (2002), online: <<http://www.fao.org/fi/fcp/en/PER/profile.htm>> (Accessed 1 November 2005)

¹⁰⁸ See Mundo Azul, The Coast of Peru, online :< http://www.peru.com/mundoazul/ingles/la_costa/index.asp> (Accessed on 1 November).

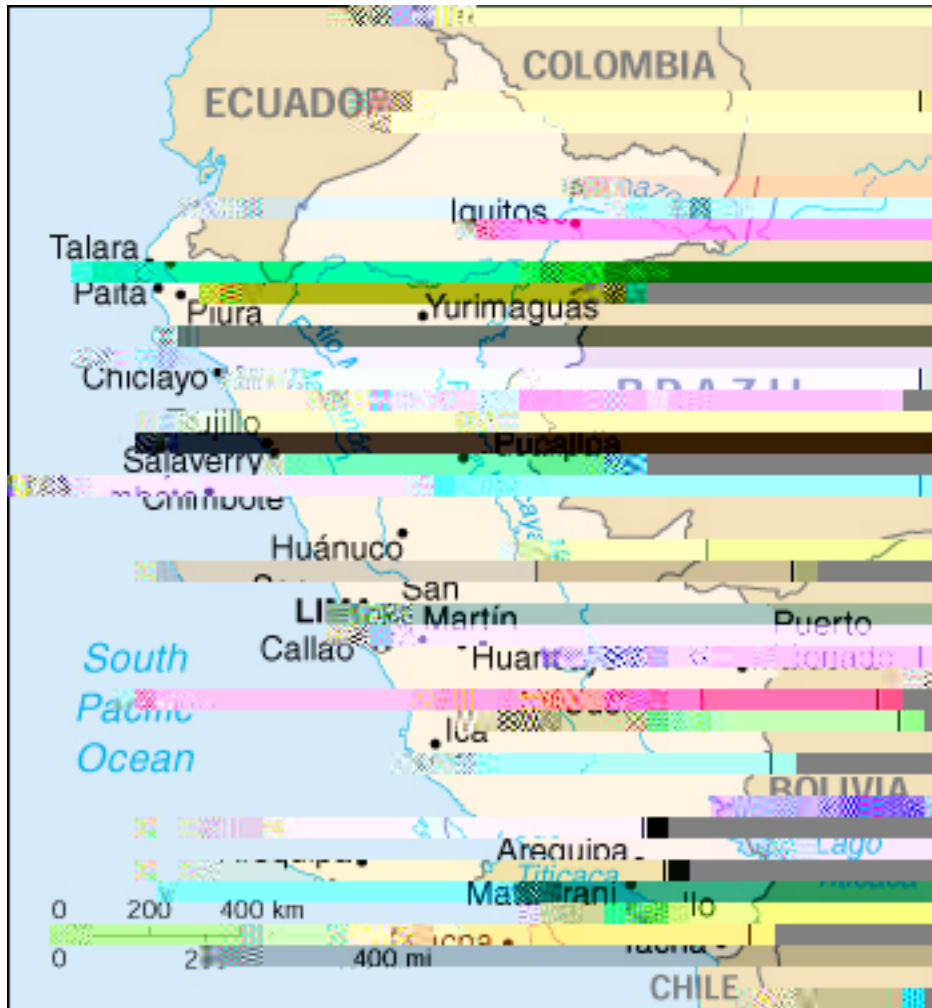


Figure 1. Map of Peru

Source :< [http:// www.fao.org/fi/fcp/en/PER/profile.htm](http://www.fao.org/fi/fcp/en/PER/profile.htm)>

The Peruvian marine ecosystem includes about 736 marine fish species, 870 species of mollusc, 320 species of crustacean and 687 species of marine algae.¹⁰⁹ In this sense, it has been said that Peru is a megadiverse country because its marine areas include some of the most productive and richest ecosystems worldwide.

The Humboldt Current is the most productive marine ecosystem in Peru, as well as one of the major upwelling systems of the world. It extends along the west coast of South America, from the north of Peru to the south of Chile.¹¹² This current originates in deep, nutrient-rich waters and rises to the surface along the coast, thus creating the unique conditions for the high levels of organic production.¹¹³ However, some abnormal variations in this upwelling occasionally occur due to El Niño-Southern Oscillation (ENSO). The ENSO is a large-scale oceanic circulation anomaly which results in a slowing of the upwelling therefore a decrease in the nutrient levels in the upper water column. This lower nutrient level results in a decrease in bio-productivity in the affected waters.¹¹⁴

Many activities are carried out along the Peruvian coast, the most economically important being: mining, fisheries, agriculture, tourism, and diverse manufacturing industries.¹¹⁵ Of these, the fisheries sector occupies a central role in the Peruvian economy, as the FAO has noted:

[P]eru's fishery industry is important economically, not only in terms of the

the Assessment of Land based Sources and Activities Affecting the Marine, Coastal and Associated Freshwater Environment in the South –East Pacific, it was noted:

[T]he coastal area of Peru receives industrial discharges from fisheries, iron and metallurgical and petroleum activities, which greatly degrade the marine environment. The total volume dumped in the sea from these three activities alone is estimated to be 162.2 million m³ a year.¹¹⁷

Furthermore, it has been said that another cause affecting the Peruvian marine ecosystem is the huge influx of migratory Peruvian people from the Andes to the cities and towns on the coast. This has led to increases in discharges of wastewater into the sea, thus increased pollution.¹¹⁸

Ocean management in Peru

In order to understand the management of ocean affairs in Peru, it is first necessary to outline the structure of the Peruvian Government. Firstly, the Peruvian State is a democratic Republic with a unitary and decentralized government.¹¹⁹ The territory of Peru is divided in regions, departments, provinces and districts, where the government is executed in three different levels: national, regional and local.¹²⁰

The Legal framework

An overview of the main laws that regulate ocean affairs in Peru is presented in the following table, including a brief summary of the main purpose of each.¹²¹

¹¹⁷ See UNEP: Assessment of Land-based Sources and Activities Affecting the Marine, Coastal and Associated Freshwater Environment in the South-East Pacific *supra* note 109.

¹¹⁸ *Ibid.*

¹¹⁹ See Constitución Política del Perú, 1993. Título II ‘Del Estado y la Nación’. Capítulo I: Del Estado, la Nación y el Territorio. Art. 43.

¹²⁰ The regional government is executed in the regions and departments. The local government is performed in provinces and districts. Also, it is important to point out that Peru is currently carrying out a process of decentralization. The different national Ministries and agencies are transferring determined competences to the regional and local levels. However this process is still in the first phases of implementation.

¹²¹ It should be noted that there are various types of laws (Decrees, Supreme, Ministerial and Directorate Resolutions, etc) that develop and complement this legal framework.

Table 1.

Legislation	Purpose
Presidential Decree N. 781. ¹²² Concerning Submerged Continental or Insular shelf (08/01/1947)	Establishes Peruvian sovereignty and jurisdiction on the submerged continental shelf. Likewise it has been established that this sovereignty and jurisdiction also includes the area between the coast and an imaginary parallel line to it at a distance of 200 nm.
Politic Constitution of Peru 1993	Defines the ‘maritime domain’ of the Peruvian State to include the adjacent seawaters to its coastline, the seabed and subsoil, up to a

Law N26221. Law on exploitation of Hydrocarbons (08/19/93)	To regulate hydrocarbons activities in the national territory. To establish a national petroleum company 'PETROPERU' to control petroleum resources both on- and off-shore.
Law N. 26821 Organic Law for Sustainable use of Natural Resources (06/10/97)	To promote and regulate sustainable use of natural resources renewable and nonrenewable establishing an adequate framework to promote investment.
Law N. 26839 Law on Conservation and Sustainable Use of the Biological diversity (07/08/97)	To give effect to the provisions of the Convention on Biological Diversity.
Law N.26834 Law on Protected Natural Areas (06/30/97)	To regulate related aspects for management and conservation of protected natural areas.
Law N. 26620 Law to Control and Supervise Activities in Maritime, River and Lake Areas	To establish the General Directorate of Captaincies and Coast Guard as the National Maritime Authority. To mandate the Maritime Authority as responsible for controlling and supervising activities carried out in the maritime, river and lake areas.
Law. N. 27943 Law on the National Port System (03/01/03)	To regulate activities and services in terminals, infrastructures, and facilities located in the maritime, river and lake ports. To promote the development and competitiveness of ports, as well as to facilitate multimodal transportation, modernization of port infrastructures and development of logistic network.
Law N. 28245 Law on the National System of Environmental Management (06/08/04)	To ensure effective fulfillment of environmental objectives of the public entities. To strengthen the mechanisms of transectoriality in environmental

<p>Law N. 28611 General Law of Environment (10/13/05)</p>	<p>To establish principles and basic provisions to ensure:</p> <ul style="list-style-type: none"> - Effective exercise of the right to a healthy and well-balanced environment; and - Fulfillment of the duty of the Peruvian State to contribute to effective environmental management.

Leading Ministries and Agencies for ocean’s management¹²⁵

The legal framework has been established. It is to determine now which are the main entities related with the ocean affairs in Peru and the roles developed by them.

An analysis of the legal and the current management of the ocean affairs in Peru allow us to determine the diversity of entities related to it and these are based on sectorial management policies. The following table shows a clear of this current context.

Table 2.

Ministries

Ministry of Foreign Trade and Tourism	<u>Vice-Ministry of Tourism</u> National Directorate of Tourism	<ul style="list-style-type: none"> • To execute a national sustainable policy for tourism.¹²⁷
Ministry of Defense	<u>Peruvian Navy</u> General Directorate and Captaincies and Coast Guard (DICAPI) Peru's National Maritime Authority.	<ul style="list-style-type: none"> • To regulate, conduct and control the maritime activities. • To ensure the safety of life at sea. • To protect the marine environment. • To suppress unlawful acts at sea. To enforce national laws and international conventions related to maritime activities.
Ministry of Defense	<u>Peruvian Navy</u> Directorate of Hydrography and Navigation	<ul style="list-style-type: none"> • To manage and investigate oceanographic, hydrographic, navigational, meteorological and cartographic activities in maritime sphere.
Ministry of Energy and Mining	<u>Vice-Ministry of Energy</u> General Directorate of Hydrocarbon	General Directorate of Hydrocarbon <ul style="list-style-type: none"> • To propose a policy for sub-sector of hydrocarbons • To control technical aspects of activities

Abril 2005, online: < <http://www.inrena.gob.pe> (Accessed 7 December 2005); See PROMPERU, "Guia Especializada del Viajero. Naturaleza y areas protegidas del Peru", online: <<http://www.peru.org.pe>> (Accessed 7 December 2005).

¹²⁷ The main objective of the Strategic National Plan de Tourism is to achieve the sustainable development of tourism in Peru. For further information about this National Plan, see: Ministerio de Comercio Exterior y Turismo. "PERU : Plan Estrategico Nacional of Turismo 2005-2015", online: < <http://www.mincetur.gob.pe>> (Accessed 18 January 2006). Furthermore, it should be noted that there is a pilot project "Playa Hermosa Tumbes" that is in progress, which is to develop tourism on beaches in northern Peru. For information about it project see: Ley del Proyecto Playa Hermosa- Tumbes. Ley N. 27782 (06/21/02).

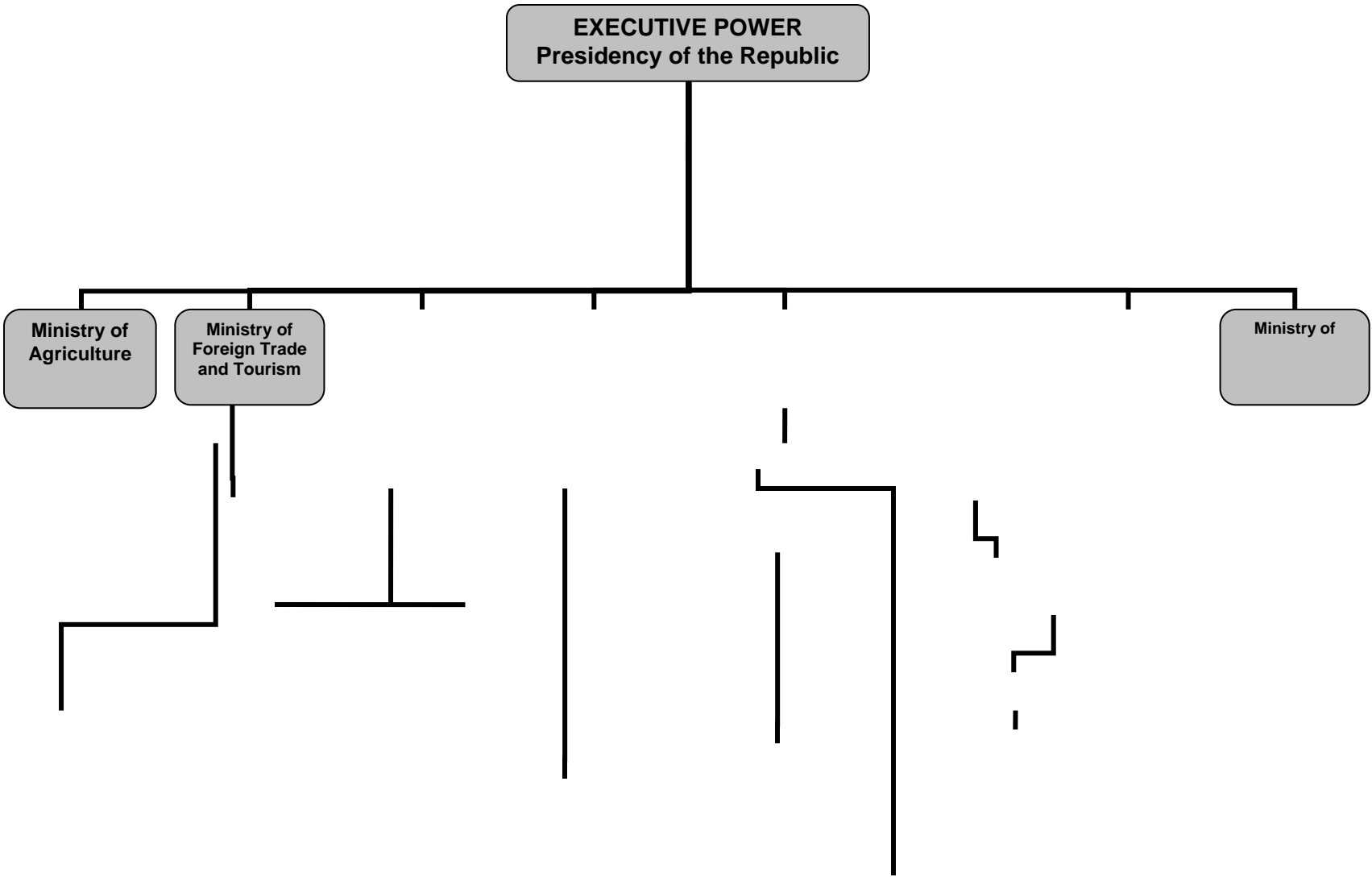
	<p>PETROPERU (State company)</p>	<p>of hydrocarbons in national territory.</p> <ul style="list-style-type: none"> • To promote activities of exploration, exploitation, transport, distribution and commercialization of hydrocarbons. <p>PETROPERU</p> <ul style="list-style-type: none"> • To promote investment in activities of exploration and exploitation of hydrocarbons. • To negotiate and enter into contracts for the commercialization of hydrocarbons.
<p>Ministry of Production</p>	<p><u>Vice -Ministry for Fisheries</u></p> <ul style="list-style-type: none"> • National Directorate of Extraction and Processing • National Directorate of Aquaculture • National Directorate of Environment • National Directorate of Artisanal Fishing • National Directorate of Control and Surveillance <p><u>Decentralized Public Organism</u></p> <ul style="list-style-type: none"> • Peruvian Institute of Research (IMARPE) 	<p>National Directorate of Extraction and processing</p> <ul style="list-style-type: none"> • To propose and implement the sub-sectorial policy related to extractive activities. • To ensure rational exploitation and the preservation of the environment. <p>National Directorate of Aquaculture</p> <ul style="list-style-type: none"> • To propose and implement policy for the sub-sector related to aquaculture activities. <p>National Directorate of Environment</p> <ul style="list-style-type: none"> • To propose policy's guidelines in order to carry out fishing activities according environmental protection. <p>National Directorate of Artisanal Fishing</p> <ul style="list-style-type: none"> • To formulate, execute and propose policies for promoting the integrated development of artisanal fishing activities, in the maritime and continental spheres.

Ministry of Production

		<ul style="list-style-type: none"> • To carry out scientific research on marine resources. • To provide advice for managing resources and the marine environment.
Ministry of Foreign Affairs	Ministry Directorates related to management of ocean affairs	<ul style="list-style-type: none"> • To formulate the foreign policy of Peru. • To negotiate and sign treaties and international conventions. To contribute to their compliance, in coordination with the relevant national sectors. • To coordinate policies regarding the Peruvian Maritime Domain and Antarctic Policy.
Ministry of Health	<u>Vice –Ministry</u> Directorate of Environmental Health (DIGESA)	<ul style="list-style-type: none"> • To propose and implement the national health policy. • To articulate and coordinate plans, programmes and national projects on environmental health.¹²⁸ • To establish laws on environmental health.
Ministry of Transportation and Communications	<u>Vice -Ministry of Transportation</u> General Directorate of Water Transportation (DGTA) General Directorate of Socio-Environmental affairs <u>Decentralized Public Organism</u> National Port Authority (APN)	General Directorate of Water Transportation <ul style="list-style-type: none"> • To propose policies related to maritime transportation routes. • To control maritime transportation and multimodal transportation. • To propose mechanisms to ensure an effective provision of services to maritime transportation. General Directorate of Socio Environmental Affairs <ul style="list-style-type: none"> • To propose policies, strategies and projects on socio-environmental laws for the sub-sector. • To propose plans of socio-environmental management of the transportation sub-

¹²⁸ DIGESA has established a “Programme for Protection of Coastal Zones and Beaches of the Peruvian Coastline”. The main objectives of this programme are to achieve an integrated sanitary system and participate of the sustainable development of these areas. For further information about this programme, see: Ministerio de Salud, Dirección de Salud Ambiental, DIGESA. “Proteccion de Zonas Costeras y Playas del Litoral Peruano”, online: < http://www.digesa.minsa.gob.pe/pw_playas/1.htm > (Accessed 15 January 2006).

		<p>sector.</p> <ul style="list-style-type: none"> • To approve and supervise socio-environmental projects for transportation infrastructure. <p>National Port Authority</p> <ul style="list-style-type: none"> • To formulate the National Plan for Port Development. • To regulate, based on techniques and operative activities, the access to port infrastructure as well as arrival, stays and departure of ships and cargo in ports. • To supervise projects related to the building ports and maritime terminals.
<p>Presidency of Council of Ministries</p>	<p><u>Decentralized Public Organism</u></p>	



From the tables and figure presented above, it may be observed that there are numerous sectorial policies already in place as well as corresponding governmental structures. Furthermore, there are also sectorial sub-divisions and different hierarchical levels in each governmental structure.

In this context, it is obvious that Peru needs to harmonize and rationalize this existing framework before proceeding with its further development into an ocean governance framework to implement an integrated national ocean policy.

How would an integrated ocean policy be developed?

The lessons learned from the Canadian and Australian experiences demonstrate that ocean policy may arise either through legislative action, or an executive initiative. In each case, it is necessary that a policy exists at the highest political level all the while allowing for the participation of not only

- 2) Equity and Social Justice;
- 3) Competitiveness of the Country; and
- 4) Efficient, transparent y decentralized State.

Among these priority policies, it should be highlighted that Peru has established a policy on sustainable development and environmental management. The main objectives of these policies are: to protect biological diversity, to facilitate sustainable use of natural resources, and to secure environmental protection.¹³¹ Therefore, this national policy provides the base on which the ocean policy might be developed.

In addition, this environmental management policy has established that the Peruvian State shall promote the management of the coastal marine zones.¹³² How can Peru promote the management of these areas? The answer has already been provided. The mechanism to achieve better management of the oceans is through the ocean governance framework and the development of an integrated national ocean policy.

Considering this political and legal framework for the development of the ocean policy in Peru, the next section shall analyze the elements which must constitute this ocean policy.¹³³

- **Spatial Dimension and Jurisdiction**

The geographical area and the jurisdiction where this ocean policy shall be applied must be determined. In this respect, the provisions of the Law of the Sea Convention (LOSC) provide the basis upon which Peru has or should base the delimitation of its maritime areas of jurisdiction.¹³⁴

¹³¹ *Ibid*, Décimo Novena Política de Estado- Desarrollo Sostenible y Gestión Ambiental (Nineteenth - State Policy – Sustainable Development and Environmental Management).

¹³² *Ibid*. The Peruvian policy uses the term “coastal marine zones”,-0...0009 T(y)3.9(om1. T(y)3.9(ove(r)4 a3.34.5(Tm-i 23r6)3.9(ov

In this regard, the Peruvian state must face the first challenge since it does not belong the Law of the Sea Convention (LOSC).¹³⁵

The accession to the Law of the Sea Convention continues to be a matter which has not yet achieved consensus in Peru.¹³⁶ In its current Constitution, Peru has defined its 'maritime domain', as the marine areas in which the State has sovereignty and exercises jurisdiction accordingly.

Article 54 of the Peruvian Constitution states that:

[T]he national territory is inalienable and inviolable. It includes the surface, subsurface, maritime domain and air space above. The maritime domain of

they hold that the expression “Maritime Domain” should be understood as ‘territorial sea’ as defined by LOSC.¹³⁸

On other hand, the other position is that “Maritime Domain” should not be recognized as meaning ‘territorial sea’. In this sense, it has been argued that this juridical expression should be understood as the power of the State to execute sovereignty and jurisdiction above the diverse marine zones and according to the nature of each of them. Thus, within the scope of this expression, it can be considered not only the “territorial sea” but also the other zones established in LOSC.¹³⁹

Notwithstanding this lack of national consensus on the interpretation of the constitutional article, Peru has recognized and incorporated in its internal legislation many of the provisions of the LOSC. However, it is necessary to note and clearly determine the maritime areas over which the Peruvian State exerts jurisdiction. In this sense, the ocean policy might begin to clearly recognize the marine zones established by the LOSC.

This would not infringe on the constitutional provision, since, as it has been indicated, an interpretation of it allows it. On the contrary, with this national ocean policy, Peru could begin to unify and integrate its current legislation.

- **Actors**

It has been established that in order to adopt an ocean governance framework and an integrated national ocean policy, traditional governmental entities must work through this process with members of the private sector, academics, scientifics, and non-governmental organizations, among others. This process must be horizontally and vertically integrated.¹⁴⁰

and allow for the required national participation. The governmental entities related with the management of ocean issues at the national, local and regional level would participate,¹⁴¹ in collaborating with the main political entities re

In this context, it is important to note the international organizations to which Peru is member, so as to gain an understanding of the international framework within which Peru actively pursues its national interests.

- International level organizations

- United Nations (UN);
- International Maritime Organization (IMO);
- International Atomic Energy Agency (IAEA);
- Intergovernmental Oceanographic Commission (UNESCO);
- Committee on Fisheries (FAO); and
- International Whaling Commission (IWC).

- Regional level organizations

- Organization of American States (OAS);
- Permanent Commission for the South Pacific (CPPS);¹⁴⁵
- Latin American Organization for Fisheries Development (OLDEPESCA);¹⁴⁶
- Inter-American Tropical Tuna Commission (IATTC);¹⁴⁷
- Inter-American Convention for the Protection and Conservation of Sea Turtles;¹⁴⁸
- Andean Community of Nations;¹⁴⁹

¹⁴⁵ The Permanent Commission for the South Pacific is a maritime regional organization responsible for the coordination of maritime policies of its member States: Colombia, Chile, Ecuador and Peru. For additional information, see the Comisión Permanente del Pacífico Sur [Permanent Commission for the South Pacific] Online: <<http://www.cpps-int.org> (Accessed 31 January 2006)

¹⁴⁶ The Latin American Organization for Fisheries Development has as a mission to promote cooperation in fishing industry among countries in the region in order to use their fishing resources in the interest of their peoples. For additional information, see the Organización Latinoamericana de Desarrollo Pesquero [Latin American Organization for Fisheries Development] online: <<http://www.oldepesca.org>> (Accessed 31 January 2006).

¹⁴⁷ The Inter-American Conventions for the Protection and Conservation of Sea Turtles is the body responsible for the conservation and management of tuna fisheries and other species in the eastern Pacific Ocean. See IATTC, online: <<http://iattc.org>> (Accessed 1 February 2006).

¹⁴⁸ The Inter-American Convention for the Protection and Conservation of Sea Turtles has as a main objective to promote the protection, conservation and recovery of the populations of sea turtles in the region and their habitats. See: online <<http://www.seaturtle.org/iac/>> (Accessed 13 February 2006).

¹⁴⁹ The Andean Community of Nations was created in 1969 and is comp n1.3(les. 3,e4 Te-4.5(1(n)4.4ap)1.3(ele)]9 4 Te-4c6((6

- Asia-Pacific Economic Cooperation (APEC);¹⁵⁰
- Initiative for the Regional Infrastructure Integration in South America (IIRSA);¹⁵¹ and
- South American Community of Nations.¹⁵²

It is through this international framework that Peru pursues its national policies at the international level.¹⁵³ And the following may be some issues to be considered in the elaboration and eventual implementation of the national ocean policy:

- To promote Peruvian regional development and leadership in the South-Eastern Pacific region.
 - To establish and promote effective mechanisms of cooperation and coordination with member Countries to the regional initiatives to which Peru is a party.
 - To promote a more active participation in the above-mentioned international and regional organizations.
 - To strengthen the Regional Sea Program in the South-Eastern Pacific.
 - To promote the protection of the marine environment and the sustainable use of marine resources.
 - To protect Peru's national interests and sovereignty.
 - To develop an active presence in the Antarctic, and to promote a better protection of the Antarctic environment and its resources.¹⁵⁴
-

- To establish maritime boundaries, in conformity with generally accepted principles of international law, and through the relevant established international mechanisms.¹⁵⁵

Some sectorial and cross-sectorial issues

Management.¹⁵⁷ However, it is required that this national strategy should be integrated into the new ocean policy so as to ensure

However, one of the main challenges faced by the Peruvian State is due implementation of these international conventions and environmental standards in its internal legislation as well as to establish an integrated approach and effective management mechanisms. These issues should be address in the national ocean policy.

- Fisheries and Aquaculture

Fishing is one of Peru's most important economic sectors. It is one of the main sources of exports and employment and plays a predominant role in providing protein for the Peruvian people.

Further development of this sector depends largely on the presence of certain factors, including resource availability, catch levels, exportation and presence of the El Niño phenomenon.¹⁵⁹ Working with these factors among others, the Peruvian Government,

Although the Peruvian aquaculture sector is still in initial phases of development,¹⁶² government has established a regulatory framework and some guidelines for its development.¹⁶³ Objectives provided in these instruments are to promote national and foreign investment, modernization of infrastructure and services, a sustainable aquaculture, identification of appropriate areas for developing this activity, as well as measures for promoting consumption of aquacultural products. The Peruvian national ocean policy should include those issues and objectives in its application scope.

- Tourism and other ocean industries

It is said that the tourism industry in Peru has increased considerably in the last years. It is now considered now as one of the main sources for development and source of foreign currencies for the Peruvian State.¹⁶⁴ At the present time, Peru has a National Strategic Plan for Tourism which establishes the sustainable development of the sector, as a main objective.¹⁶⁵

The Plan provides the following strategic objectives: to develop a competitive and sustainable tourism offer, to implement maritime connectivity among tours, as well as to promote public and private investment.¹⁶⁶ As these objectives are linked to the management of ocean affairs, they should therefore be included in the national ocean policy for Peru.

Another economic activity of great importance to Peru is the mining industry. This activity, however, also produces negative effects on the marine environment during the

¹⁶² For a detailed report on situation of aquaculture in Peru, see Ministerio de la Producción [Ministry of Production], “Panorama y Potencial de la Acuicultura Peruana” [Outlook and Potential of Peruvian

various phases of operation and transportation.¹⁶⁷ This issue should also be considered in the national ocean policy in accordance with environmental standards provided in appropriate International Conventions signed by Peru.¹⁶⁸

- Scientific knowledge on oceans

The predominant role which must be occupied by scientific knowledge in development of oceans has been well established.¹⁶⁹ In Peru, there are several scientific research initiatives being carried out through the following institutions: Instituto de Investigación del Peru (Institute for Researching of Peru), Dirección de Hidrografía y Navegación (Directorate of Hydrography and Navigation), and Centro de Entrenamiento Pesquero de Paita (Fishing Training Center in Paita). These institutions are undertaking various specialized studies on issues related to the forecasting of the “El Niño phenomenon”, biological cycles and conservation of resources, quality of water environment, ecologic factors, among the many.¹⁷⁰

Nevertheless, the work carried out by these institutions must be strengthened and complimented by the establishment of higher educational institutions for marine studies in order to develop the required scientific knowledge.¹⁷¹ These are issues which should be developed in the Peruvian national ocean policy, taking into account the guidelines provide in the Twentieth National Policy of “Development of Science and Technology”.¹⁷²

¹⁶⁷ See Albertina Kameya. “Presiones Económicas en Institucionales que afectan la biodiversidad marina en Peru” [“Economic Pressures on Institutions which affect the marine biodiversity in Peru”] *supra* note 156.

¹⁶⁸ Peru has signed, among others, the following International Conventions: International Convention for the Prevention of Pollution from Ships, 1973, (MARPOL 73/78); Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (LDC), 1972.; International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990; Convention for the Protection of Marine Environment

- Surveillance and enforcement

Effective mechanisms of surveillance and enforcement are required for an appropriate management of ocean affairs and to ensure the protection of national interests. In Peru, the General Directorate of Captaincies and Coast Guard -Peruvian Maritime Authority- is the organization responsible for performing the above-mentioned duties. Thus, it exercises the maritime policy at national level in order to suppress illegal activities and ensure compliance with international conventions and national legislation in the maritime area.¹⁷³

In current context, however, there are various problems which the Maritime Authority has to face in order to perform this duty, including lack of economic resources due to budgetary allocations, lack of means and units required, as well as conflict of mandates. These are aspects which must be resolved through the national ocean policy.

- Shipping and Sea Safety

Maritime transport is considered one of the most important industries worldwide, but also one of the most dangerous.¹⁷⁴ Therefore, it is an important element in the effective management of ocean issues, where the co

At present, one of the main challenges that the State must face is the appropriate implementation of national standards established for the safety of life at sea. This aspect must be considered in the relevant national ocean policy.

The first task of the National Commission should be to prepare and approve a document to generate public debate. This document should indicate clearly the need to have a national ocean policy.¹⁷⁶

The document that would serve as a basis for the process of adoption of a national ocean policy should be submitted and launched in the framework of the National Agreement. As previously outlined, the main political entities, governmental sector, private sector and civil society are all represented in the framework. It is thus ideally suited to undertake the public consultation and information processes.

The second phase would be constituted by an approval process of a draft national ocean policy. The draft should be approved by the President of the Republic through the relevant legal instrument. This legal provision may be approved by the President of the Minister Council.

The new national ocean policy will require, and lead to, institutional changes. In response to this; a specialized national office could be established for the management of ocean issues, which would serve as a coordination body and support of the National Commission. This, and other administrative modifications, are to be analyzed and established for the effective implementation of the national ocean policy in Peru. This will be other challenge that the Peruvian State shall face in order to achieve an appropriate management of the marine areas under its jurisdiction.

¹⁷⁶ This approach is based on lessons learned from the Canadian and Australian experiences in the adoption processes of a national ocean policy. As already indicated, their preparatory process began with documents which served as a framework for public discussions and to generate the necessary political and national engagement.

CONCLUSIONS

The importance of the oceans to States as a source of life and a resource for a sustainable development has been established. Nevertheless, the present situation shows that many factors affect the ocean, such as: climatic change, natural disasters, environmental degradation, loss of biodiversity and sectorial management. In this context, it is obvious that States need to adopt new approaches which allow them to develop an integrated and sustainable management of the marine areas within their jurisdiction. The concepts of ocean governance and integrated ocean policy have arisen as framework through which to develop this integrated management.

The Canadian and Australian experiences in this regard allow us to have a better

BIBLIOGRAPHY

Arias-Schreiber Pezet, Alfonso. ‘La Tercera Conferencia sobre el derecho del mar y la participación del Perú’ in Derecho del Mar. Análisis de la Convención de 1982. Pontificia Universidad Católica del Perú. Fondo Editorial 2001.

Baillet, Francois. “Ocean Governance: Towards an Oceanic Circle”. Online: <http://www.un.org/Depts/los/convention_agreements/convention_20years/presentation_ocean_governance> (Accessed 7 October 2005).

Baillet, Francois. “Ocean Governance and Human Security: Ocean and sustainable

Department of Fisheries and Oceans Canada. Canada's Oceans Strategy. 2002.

Department of Fisheries and Oceans Canada. "Canada's Oceans Action Plan. For Present and Future Generations". Ottawa. DFO/2005-348.

Foster Elizabeth, Marcus Haward, Scott Coffen- Smout. "Implementing integrated oceans management: Australia's south east regional marine plan (SERMP) and Canada's eastern Scotian shelf integrated management (ESSIM) initiative" in Marine Policy 29 (2005).

Friedheim, Robert L. "Millennium Essay. Ocean governance at the millennium: where we have been – where we should go". Ocean & Coastal Management 42 (1999).

INRENA. "Anexo Estadístico 2004". Instituto Nacional de Recursos Naturales 3. Lima, Abril 2005. Online: < <http://www.inrena.gob.pe> (Accessed 7 December 2005).

International Institute for Sustainable Development (IISD). "The Ocean Policy Summit 2005 Bulletin. A summary report of The Ocean Policy Summit (TOPS)". Volume 117. N. 1, 16 October 2005. Online: <<http://www.IISD.CA/SD/TOPS2005/>> (Accessed 18 October 2005).

Juda, Lawrence. "Considerations in Developing a Functional approach to the Governance of Large Marine Ecosystems" in Ocean Development and International Law. N.30 (1999).

Kameya Albertina. "Presiones Economicas en Institucionales que afectan la biodiversidad marina en Peru". Instituto del Mar del Peru.

Kimball, Lee A. "International Ocean Governance. Using International Law and Organizations to Manage Marine Resources Sustainably". International Union for Conservation of Nature and Natural Resources (IUCN) World Conservation Union, 2001.

Kriwoken Lorne, Haward Marcus, David VanderZwaag and Bruce Davis, "Oceans Law and Policy in the Post-Unced Era". Australian and Canadian perspectives (International Environmental Law & Policy Series, 1996).

Kulleberg, Gunnar "Marine Resources Management: Ocean Governance and Education' in Ocean Yearbook N. 18. (Chicago) vol.18, 2004:578-599.

Levy, Jean-Pierre. " A national ocean policy. An elusive quest " in Marine Policy March 1993.

Mageau Camille, David VanderZwaag and S. Farlinger in "Ocean Policy: A Canadian Case Study". Paper submitted in the Ocean Policy Summit 2005 carried out in Lisbon from 11-13 October 2005.

Mc Dorman, Ted L. "Global Ocean Governance and International adjudicative resolution". Ocean & Coastal Management 43 (2000).

Miles, Edward L. "Concepts, approaches and applications in sea use. Planning and Management" in *Ocean Development and International Law Journal* 20, 1989.

Miles, Edward L. "The Concept of Ocean Governance: Evolution Toward the 21st Century and the Principle of Sustainable Ocean Use" in *Coastal Management*, 1999.

Miles, Edward L. "Future Challenges in Ocean Management: Towards integrated national ocean policy" in *Ocean Management in Global Change* (London and New York: Elsevier Applied Science) 1992.

Ministerio de Comercio Exterior y Turismo. "PERU: Plan Estrategico Nacional of Turismo 2005-2015". Online: < <http://www.mincetur.gob.pe>> (Accessed 18 January 2006).

Ministerio de Comercio Exterior y Turismo. "¿Qué es la Política Ambiental?". Online: <<http://www.mincetur.gob.pe>> (Accessed 11 January 2006).

Ministerio de la Producción. "Boletin Estadistico Mensual, Noviembre 2005". Online: <<http://www.produce.gob.pe>> (Accessed 18 January, 2006).

Ministerio de la Producción. "Panorama y Potencial de la Acuicultura Peruana". Online: <<http://www.produce.gob.pe>> (Accessed 18 January 2006).

Ministerio de Relaciones Exteriores del Perú. "La Política Nacional Antartica". Online: <[http://www.rree.gob.pe/portal/ p exterior.nsf/](http://www.rree.gob.pe/portal/p exterior.nsf/)> (Accessed 30 December 2005).

Ministerio de Relaciones Exteriores del Peru. "Lineamientos generales de[(<<http://www.rree.gob.pe/portal/p exterior.nsf/>>]

Rothwell, Donald R. 'Building on the Strengths and Addressing the Challenges: The Role of Law of the Sea Institutions' in *Ocean Development & International Law* (London) 35(2) 2004:131-156.

Rothwell, Donald R & David L. VanderZwaag. "The Sea Change Towards Principled Oceans Governance" in

Annex “I”

Supreme Decree N° 781

The President of the Republic

WHEREAS:

The submarine platform or continental base brings up the continent as a sole morphological and geological unit;

In such continental platform exists natural resources and it is to proclaim its belonging to the national cultural heritage;

It is equally necessary that the State protects, preserves and rules the use of the fishing

1945; Decree of the President of Argentina dated 11 October 1946; Decree of the President of Chile dated 23 June 1947);

The article 37° of the State Constitution establishes that the mines, lands, forests, water and all the sources of natural resources in general belong to the State excepts the rights legally acquired;

In the practice of sovereignty and in safeguard of the national economic interests, the State is obliged to establish unmistakably the maritime domain of the Nation, wherein the protection, preservation and surveillance of the above mentioned natural resources must be executed;

The consultative vote of the Council of Ministers:

DECREES:

1. - Declares that the national sovereignty and jurisdiction extend to the submarine platform or continental or insular base adjacent to the continental and insular coasts of the national territory whatever be the depth and extension of such base.
- 2.- The national sovereignty and jurisdiction are also executed upon the sea adjacent to the coast of the national territory, whichever its depth, and in the extension necessary to preserve, protect, maintain and use the natural resources of every kind located in such sea or below it.
- 3.- As a consequence of the above mentioned statements, the State reserves the right to establish the demarcation of the control zones and to protect the national resources in the continental and insular sea managed by the Government of Peru, and to modify said demarcation according to the circumstances based on the new discoveries, studies and national interests foreseen for the future; and, of course, it declares that it will exert such control and protection on the sea adjacent to the coast of the Peruvian territory in a zone extended among said coast and an imaginary line parallel to them and outlined on the sea

at a distance of two hundred marine miles; this measure follows the line of the geographical parallels. With regard to the national islands, this demarcation shall be outlined indicating a zone of sea contiguous to the coast of said islands until a distance of two hundred marine miles measured from each one of the points located in their surroundings.

4. - This declaration does not affect the right of free navigation of vessels of all the nations according International Law.

Given in Lima, Government Palace this 1 day of August 1947.

J.L. Bustamante i R. E. Garcia Sayan

Article 3 Consideration as Inland Waters

In accordance with the International Law, waters within baselines established in Article 1 in this Law, are part of inland waters of the State.

Article 4 Outer Limit

In accordance with the Political Constitution of the State, outer limit of maritime domain of Peru is drawn so that each point of this outer limit is two hundred nautical miles from the closest point of baselines by applying determination criteria provided by the International Law.

Article 5 Cartographic Survey of Outer Limit

The Executive is in charge of surveying respective cartography of outer limit of maritime domain, in accordance with the provisions of Article 4 in this Law.

Article 6 Annexes 1 and 2 integrate this Law*

Annexes 1 and 2 are constituent part of this Law.

Article 7 Force

This Law enters in force on the following day of its publication in the Official Newspaper “El Peruano”, as any prior legal dispositions opposite to regulations contained in this Law become derogated, or without effect, or modified, as applicable.

The President of the Republic shall be informed on this for its promulgation.

In Lima, on November 3rd, 2005

MARCIAL AYAIPOMA ALVARADO
President of the Congress of the Republic
FAUSTO ALVARADO DODERO

* See Annex 1 and 2, online: < <http://www.rree.gob.pe/portal/mre.nsf/Index?OpenForm> >

