

TOWARDS AN OCEAN GOVERNANCE FRAMEWORK

AND

NATIONAL OCEAN POLICY FOR PERU

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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.¹ The latest report of the United Nations Secretary-General noted:

[O]ur oceans and seas are threatened by climate change, natural disasters, environmental degradation, depletion of fisheries, loss of biodiversity and ineffective flag state.²

In this context, the concepts of ocean governance and integrated national ocean policies have emerged. The main objective of this paper is to provide an analysis of contemporary

¹ See United Nations Secretary-General "Oceans and the law of the sea: Report of the Secretary General" (3 March 2003) UN.Doc. A/58/50, par. 247, online: <<http://daccessdds.un.org/doc/UNDOC/GEN/N03/266/68/PDF/N0326668.pdf?OpenElement> > (Accessed 29 October 2005).

² 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).

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%2016-5-02%20for%20Website.pdf>> (Accessed 24 October 2005).

⁶ For a discussion about a definition of Governance, see Ocean Governance Network (OMRN) - 2003 National Conference, Canada's Oceans: Research, Management and the Human Dimension, online: <<http://www.omrn.ca/documents/OMRN%20Retrospective%20-%20Conference%20Overview%20-%20Workshops.pdf>> (Accessed 24 October 2005).

⁷ See Lawrence Juda, “Considerations in Developing a Functional approach to the Governance of Large Marine Ecosystems” in *Ocean Development and International Law* 30. (1999). P. 90-91.

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 of governance but it is not so. The concept of ocean governance has many dimensions, and therefore is not easy to define.⁸

In spite of this, it is important to mention that the presence of determined characteristics and trends in the application of the emerging concept of ocean governance can be observed which permits us to have a first approximation and a better understanding of the concept.

A Framework for Ocean Governance

It has been said that the framework for an integral ocean governance is slowly being formed by emergent and determined elements. In the mid-1990s, Francois Baillet observed these various elements and began to analyze their interactions by classifying them into three categories:⁹

- 1) Legal
- 2) Institutional framework
- 3) Mechanism of implementation

1) Legal: This element is composed by International and Regional Conventions as well as agreements and programmes which establish provisions for the management of affairs. These provisions must be incorporated and implemented by States in their national legislation.

⁸ See Donald R. Rothwell & David L. VanderZwaag, "The Sea Change Towards Principled Oceans Governance" in *Towards Principled Oceans Governance: Australian and Canadian Approaches and Challenges* (London: Routledge Press, in press).

⁹See 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 development - international regimen, current trends and available tools". UNITAR Workshop on Human Security and the Sea. Hiroshima, Japon, online: <<http://www.unitar.org/hiroshima/shs/Presentations%20SHS/5%20July/Baillet.pdf>> (Accessed 27 October 2005)

a) Law of the Sea Convention (LOSC):

The LOSC is one of the most important sources of ocean governance because it establishes a system of rules and practices that operate as a structure of government.¹⁰

Moreover, it establishes a holistic and inclusive approach that the problems of ocean space are closely interrelated and need to be considered as a whole.¹¹

b) Related Developments in International Law:

- Instruments have originated from the United Nations Conference on Trade and Development (UNCTAD),¹² International Maritime Organization (IMO)¹³ Food and Agriculture Organization of the United Nations (FAO),¹⁴ among others.
- 1992 United Nations Conference on Environmental and Development (UNCED) & World Summit on Sustainable Development (WSSD):¹⁵ It has been established that

¹⁰ See Ted L, Mc Dorman, "Global Ocean Governance and International adjudicative resolution". Ocean & Coastal Management 43 (2000) 256.

¹¹ See Annick de Marffy, "Ocean Governance: A process in the right direction for the effective management of the Oceans" in Ocean Yearbook N. 18. The University of Chicago, Press Ltd, London, 2004. 163-180.

¹² UNCTAD was established in 1964 and has the objective to encourage the integration of developing countries into the world economy. The annual Quadrennial Conference is the main decision-making body of UNCTAD during which the States evaluate current concerns about trade and development, consider policy options and formulate responses at a global level. Some of the most important instruments originated from UNCTAD are the Sao Paulo Consensus (adopted at the 269th plenary meeting on 18 June 2004), the Bangkok Plan of Action (adopted at UNCTAD X in February 2000), the Midrand Declaration and A Partnership for growth and development (adopted at UNCTAD IX in May 1996), online: <<http://www.unctad.org/Templates/Page.asp?intItemID=3375&lang=1>> (Accessed 23 October 2005).

¹³ IMO is a specialized agency of the United Nations that was established in 1948 to deal with maritime affairs. IMO has promoted the adoption of some 40 Conventions and Protocols as well more than 800 codes and recommendations about maritime safety, the prevention of pollution, and compensation for damage caused by ships, among others. Some of the most important Conventions developed by IMO are: the International Convention for the Safety of Life at Sea (SOLAS), 1974, the International Convention on Maritime Search and Rescue (SAR) 1979, the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), the International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC), 1990, the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA), 1988, etc, online: <http://www.imo.org/Conventions/mainframe.asp?topic_id=260> (Accessed 23 October 2005).

¹⁴ FAO was constituted in 1945 as a specialized body of the United Nations. It has such main function to direct the international actions to eradicate the hunger. Among the most important instruments which have originated from FAO are the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 FAO Compliance Agreement) and the Code of Conduct for Responsible Fisheries (CCRF)1995.

Online: <http://www.fao.org/figis/servlet/static?xml=fishcode_prog.xml&dom=org> (Accessed 23 October 2005).

an important objective is to encourage the states to promote and apply the concept of sustainable development.¹⁶ In addition, through the Rio Declaration on Environment and Development and Agenda 21, the UNCED also recognizes determined principles which should be observed by the states in their reforms of international and national ocean law and policy. Within these principles it is important to highlight: integration, precaution, pollution prevention, intergenerational equity, polluter pays, public participation, community based management, indigenous rights, and women in development.¹⁷

- Other Regional Conventions, Agreements and Programs.¹⁸

2) Institutional Framework: The institutional framework is composed by the administrative mechanisms that are required to establish systems of coordination and cooperation between all the actors that have a role in the management of the oceans.¹⁹

a) Institutions established by Law of the Sea Convention (LOSC):

- International Seabed Authority (ISBA): Established as a custodian for the Common Heritage of Mankind, it is an autonomous international organization that came into

¹⁵ Also it has been said that the legal framework for ocean governance developed through the 1992 UNCED process is mainly conformed by seven conventions, agreements and programmes: Agenda 21, the United Nations Fish Stocks Agreement, the Convention on Biological Diversity, the United Nations Framework Convention on Climate Change, the FAO Code of Conduct for Responsible Fisheries, the Global Programme of Action of the Marine Environment from Land-based activities and the Programme of the Action for the Sustainable Development of Small Island Developing States. For more details about the 1992 UNCED process, see Gunner Kulleberg, "Marine Resources Management: Ocean Governance and Education" in Ocean Yearbook N. 18. The University of Chicago, Press Ltd, London, 2004.

¹⁶ See Lorne Kriwoken, Marcus Haward, David VanderZwaag, Bruce Davis, "Oceans Law and Policy in the Post-Unced Era". Australian and Canadian perspectives (International Environmental Law & Policy Series, 1996) p.1.

¹⁷ *Ibid*, at 1.

¹⁸ Among them can be included the regional conventions adopted under the regional sea programme of UNEP in 1974. In this sense, it should be highlighted that today, more than 140 countries participate in 13 Regional Seas programmes established under the auspices of UNEP: the Black Sea, Wider Caribbean, East Africa, south East Asia, ROPME Sea Area, Mediterranean, North-East Pacific, North-West Pacific, Red Sea and Gulf of Aden, South Asia, South-East Pacific, South Pacific, and West and Central Africa. For a more precise reference about the different regional conventions, protocols and agreements, see the UNEP Regional Seas, online: <<http://www.unep.org/regionalseas/Programmes/default.asp>>. For further information see also Annick de Marffy, *supra* note 11.

¹⁹ See Annick de Marffy, *supra* note 11 at 162.

existence on 16 November, 1994 with the entry in force of the LOSC Convention. Its principal function is to regulate deep seabed mining.²⁰

- Commission on the Limits of the Continental Shelf (CLCS): This is a specialist body whose main objective is to assist coastal States on matters related to the establishment of the outer limits of their continental shelf.²¹
- Regime for the Peaceful Settlement of Disputes and the International Tribunal for the Law of the Sea (ITLOS): Established by Part XV of the LOSC Convention. This mechanism is constituted by the following alternatives: the International Tribunal for the Law of the Sea,²² the International Court of Justice, an arbitral tribunal (Annex VII to the LOSC Convention) and a special arbitral tribunal (Annex VIII to the LOSC Convention).²³
- The Meeting of the State Parties (SPLOS): is carried out to conform with the article 319, paragraph 2 (e) to the LOSC Convention and is related with administrative matters.

b) United Nations Open-ended Informal Consultative Process on Oceans (the Consultative Process): was established by the General Assembly in 1999. It has as main tasks: (1) to analyze developments in ocean affairs according to the legal framework provided by the LOSC Convention and the objectives of Agenda 21; (2) to propose issues to be

²⁰ For more information about the International Seabed Authority (ISBA) see online: <<http://www.isa.org.jm/>> (Accessed 22 October 2005). For a discussion about the impact of Law of the Sea Institutions see Donald R. Rothwell, 'Building on the Strengths and Addressing the Challenges: The Role of Law of the Sea Institutions' in *Ocean Development & International Law* 35 (2004) 131-156.

²¹ For more information about the Commission on the Limits of the Continental Shelf (CLCS) see online: <http://www.un.org/Depts/los/clcs_new/clcs_home.htm> (Accessed 27 October 2005). For a discussion about the impact of Law of the Sea Institutions see Donald R. Rothwell, 'Building on the Strengths and Addressing the Challenges: The Role of Law of the Sea Institutions' in *Ocean Development & International Law* 35 (2004) 131-156.

²² The International Tribunal for the Law of the Sea is an independent judicial body that is composed of 21 members. For more information see online: <<http://www.itlos.org/>> (Accessed 23 October 2005).

²³ For a discussion about the impact of Law of the Sea Institutions see Donald R. Rothwell 'Building on the Strengths and Addressing the Challenges: The Role of Law of the Sea Institutions' in *Ocean Development & International Law* 35 (2004) 131-156.

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 south east regional marine plan (SERMP) and Canada’s eastern Scotian shelf integrated management (ESSIM) initiative” in *Marine Policy* 29 (2005) 391-405.

- (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 etc.

3) Mechanisms of implementation: In implementing an ocean governance framework, the following levels should not only be taken into consideration, but mechanisms of coordination and cooperation should be made between them in order to avoid the fragmentation of decision-making and exclusion of stakeholders.

a) Local:

- The principle of community-based management established in Principle 22 of the Rio Declaration on Environment and Development needs to be developed. It maintains that the state should recognize and to support the effective participation of indigenous communities and other local communities to obtain sustainable development.³²
- Incorporation and participation of stakeholders within a system of co-management requires that they take on the responsibility, with the governments, for management of resources and ocean stewardship.³³

²⁸ See Lee A. Kimball, "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.

²⁹ For more information see "Large Marine Ecosystems (LMEs), online: <<http://www.oceansatlas.org>> (Accessed 26 October 2005).

³⁰ For further information see online: <<http://www.unep.org/regionalseas/>> (Accessed 26 October 2005).

³¹ For a discussion about Joint Development Zones see Francisco Orrego Vicuna." Regional cooperation in nonliving resources: Joint management zones" in Ocean Governance: Sustainable Development in the Seas. Tokyo: United Nations, University Press, 1994.

³² Report of the United Nations Conference on Environment and Development. Rio de Janeiro, 3-14 June 1992. Annex I "Rio Declaration on Environment and Development", online: <<http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm>> (Accessed 11 October 2005).

³³ See also National Round Table on the Environment and Economy. Sustainable Strategies for Oceans: A Co-Management Guide (Renouf Publishing, Ottawa: 1998) 13.

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

³⁴ See also United Nations Commission on Sustainable Development. Report on the seventh session (1 May and 27 July 1998, and 19-30 April 1999) Economic and Social Council. Official Records, 1999. Supplement N. 9. Decision 7/1. Ocean and Seas, online: <<http://daccessdds.un.org/doc/UNDOC/GEN/N99/173/64/PDF/N9917364.pdf?OpenElement>> (Accessed 11 October 2005).

³⁵ See National Round Table on the Environment and Economy. Sustainable Strategies for Oceans, *supra*, note 33.

³⁶ For revised the resolutions emitted by General Assembly about ocean affairs and law of the See online:

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. Bailet, “Ocean Governance and its implementation: Guiding principles for the Artic Region, online: <<http://www.pame.is/sidur/uploads/OceanGovernance.pdf>> (Accessed 23 October 2005); Edward L. Miles, “The Concept of Ocean Governance: Evolution Toward the 21st Century and the Principle of Sustainable Ocean Use” in *Coastal Management*, 1999, 27:1-30.

⁴⁰ See Edward L. Miles, “Concepts, approaches and applications in sea use. Planning and Management”. *Ocean Development and International Law Journal* 20 (1989) at 214.

⁴¹ See Annick de Marffy *supra*, note 11 at 190-191.

⁴² See Arild Underdal, *Integrated marine policy. What?Why?How?* in *Marine Policy* July 1980. 159-169.

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.⁴⁶

Therefore, it has been said that the actors that participate in this process are not only governmental institutions but also non-governmental entities who should also play an active role in the planning and implementation phases.⁴⁷

⁴³ See Jean -Pierre Levy. 'A national ocean policy. An elusive quest ' in Marine Policy March 1993. 75-80.

⁴⁴ See Arild Underdal, *supra* note 42. at 160.

⁴⁵ See Jean -Pierre Levy, *supra* note 43. at 77.

⁴⁶ See P.B.Payoyo. Ocean Governance:Sustainable Development in the Seas. Tokyo: United Nations, University Press, 1994; See United Nations Commission on Sustainable Development. Report on the seventh session (1 May and 27 July 1998) *supra* note 34.

⁴⁷ See Stella Maris A.Vallejo, Integrated Marine Policies: Goals and Constraints in Ocean Management in Global Change (London and New York: Elsevier Applied Science). 1992. 153-168 (p. 162).

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.

agency and should be composed of the ministries or agencies with competences in ocean affairs as well as authorities at the regional and local level and representatives of private sector. In addition, she, as well as Francois Bailet, recommend that this commission's first objective should be to enact an integrated ocean policy, develop a system of meeting that revises the adequate implementation of the policy, and then verify that coordination between all the participating entities is being accomplished. Finally, she suggests that a secretary or focal point has to be installed to fulfill coordination functions with all the entities participating and also serve as a link to the international level.

It can be concluded for the above, that a technical and theoretical framework has been established. However, it is necessary to know how these concepts are being applied in practice and what the current policy trends are. These issues will be explored in the next section.

The current national ocean policy trends:

Stella Maris Vallejo states that there is a presence of some institutional problems in the area of formulating and implementing ocean policies, as well as integrating them into their national strategies.⁵³ These problems can be classified as structural and functional in nature. She affirms that the problems of a structural nature originate from the following factors: the location of the management of ocean affairs within governmental bureaucratic structures, multiple sectorial divisions, and geographic sub-divisions. On the other hand, the problems of a functional nature are related with the process of formulation, planning, and implementation of policies. The main functional problem is the lack of an integrated national ocean policy and as a result there are fragmented processes of decision-making, overlaps between entities, and duplicated efforts in them.

Likewise, it has been said that among the other main barriers to the formulation and implementation of integrated national policies are the lack of capacity building, financing and public knowledge and participation.⁵⁴

⁵³ See Stella Maris A. Vallejo, *New structures for decision making on integrated ocean policy* in "Ocean Governance: Sustainable Development of the Seas". Tokyo: United Nations, University Press, 1994.

⁵⁴ Conclusions established in the Ocean Policy Summit 2005 was carried out in Lisbon with the participation of 218 participants of 53 countries (including governmental, non governmental, regional, UN agencies, academics

The Nippon Foundation's, International Ocean Governance Network,⁵⁵ affirms that despite the fact that the majority of States have a diversity of sectorial policies to manage the different uses of the oceans it also can be observed, that some of them are developing a sequence of processes with the objective of having an integrated national ocean policy. These processes are in different phases of implementation, formulation and preparation. States that are implementing their national ocean policies include Australia, Canada, China and United Kingdom. The processes developed by Australia and Canada, leaders in this emerging approach, will be analyzed in the second part of this paper.

In this same sense, it is important to point out the approaches established within the scope of the first Ocean Policy Summit 2005, carried out in Lisbon from 11-13 October 2005 on the emerging practices in integrated ocean policies.⁵⁶ Biliiana Cicin-Sain states that according to the case studies of ocean policies in some countries, sustainable development, ecosystem protection, social progress and maritime security are being taken into consideration.⁵⁷

If the theoretical framework of ocean governance and current approaches to national integrated ocean policy have been outlined above, it is necessary to point out why States require an ocean governance framework and need to develop corresponding integrated national ocean policies. These issues will be answered in the next section.

and representatives of other sectors). This Summit was organized by the International Ocean Governance Network with support of the Nippon Foundation, the Global Forum on Oceans, Coasts, and Islands, the Portuguese Intersectoral Ocean Commission, Portugal's Ministry of Foreign Affairs, the Port Authority of Lisbon, the International Coastal and Ocean Organization, the Gerard J. Mangone Center for Marine Policy at the University of Delaware, and the Marine and Environmental Law Institute at Dalhousie University, online: <<http://www.globaloceans.org/tops2005/>> (Accessed 12 October 2005).

⁵⁵ The Nippon Foundation has organized the International Network on Ocean Governance to develop education and built capacity in ocean governance through cross national research, online: <<http://www.globaloceans.org/policies.html>> (Accessed 12 October 2005).

⁵⁶ See The Ocean Policy Summit 2005 Bulletin. A summary report of The Ocean Policy Summit (TOPS). International Institute for Sustainable Development (IISD). Volume 117. N. 1, 16 October 2005. p.3, online: <<http://www.IISD.CA/SD/TOPS2005/>> (Accessed 18 October 2005)

⁵⁷ *Ibid*, at 11.

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 See Annick de Marffy *supra*, note 11 at 192.

⁶⁰ See United Nations Secretary-General, *supra* note 58.

⁶¹ See Donal R. Rothwell & David L. VanderZwaag, *supra* note 8.

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 government agencies, more than 800 non-governmental organizations (NGOs). The Specialist Group (SG) for Ocean Law and Governance was established under the direction of Dr. David VanderZwaag (Chair), has such objective to encourage biodiversity conservation and sustainable uses of the oceans through law and policies, online: <<http://www.iucn.org/themes/law/cel03A.html>> (Accessed 13 October 2005).

⁶⁵ See the United Nations - The Nippon Foundation of Japan Fellowship Programme, a trust fund project agreement sign the 22 April 2004 that has as main objective to provide education and training in oceans affairs, to Governmental officials and professionals from developing coastal Status, online: <<http://www.un.org/Depts/los/nippon/index.htm>> (Accessed 13 October 2005). See, International Ocean Institute-IOI Canada. This international NGO has been developing during the last 25 years annual training programmes on "Ocean Governance". These programmes are designed to benefit developing country mid-career professionals who are responsible for some aspects of marine management and ocean governance. Online: <<http://internationaloceaninstitute.dal.ca/index.html>> (Accessed 13 October 2005).

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

The Canadian approach

Oceans have been important in Canada's history and the State is known as a maritime nation of excellence. Canada has the longest coastline in world at about 244,000km which borders on the North Pacific, the Arctic and the North Atlantic Oceans.⁶⁷ Canada's Oceans Action Plan establishes that:

[T]he oceans provide recreational, environmental, employment, income and cultural staples to over 7 million Canadians who live in coastal communities- more than twenty percent of Canada's total population.⁶⁸

How did the development process of the ocean policy begin?

The first proposal to elaborate a national ocean policy was made in 1987 by Federal Government. Despite this, it was not until 1996 that the first phase of the development of a Canadian Ocean Policy was undertaken with the enactment of the Oceans Act.⁶⁹

But what was the scenario and what were the factors that contributed to the beginning of this process? In 1994, the government recognized that Canada's ocean policies had been

⁶⁶ For a discussion more detailed about the concept "systematic lesson drawing" See Biliiana Cicin Sain, 'Achieving integration in ocean and coastal management' in Ocean Governance: Strategies and approaches for the 21st century. The Law of the Sea Institute. Twenty eight annual conferences (1996).

⁶⁷ See Canada's Oceans Action Plan. For Present and Future Generations. Fisheries and Oceans Canada, Ottawa. DFO/2005-348.

⁶⁸ *Ibid*, at 3.

⁶⁹ See C. Mageau, D.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. at 5-6

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 with the elaboration of the Oceans Act.⁷² This was adopted by the Canadian Parliament on December 18, 1996, and came into force January 31, 1997.⁷³

The Oceans Act

This statute is divided into three parts, which have been said to establish an adequate framework to the development of a modern ocean governance.⁷⁴

- Part I: Canada's Maritime Zones

Recognizing and establishing the maritime zones over which Canada exercises jurisdiction in accordance with the Law of the Sea Convention (LOSC).⁷⁵

- Part II: Oceans Managements Strategy

This part sets forth that the Minister of Fisheries and Oceans, in collaboration with other authorities and entities, is required to lead and promote the development and implementation of a national strategy for the management of estuarine, coastal and

⁷⁰ See Report of the Commissioner on the Environment and Sustainable Development to the House of Commons, Chapter 1: Fisheries and Oceans Canada- Canada's Oceans Management Strategy, online: < <http://www.oag-bvg.gc.ca/>> (Accessed 1 November 2005).

⁷¹ See C. Mageau, D.VanderZwaag and S.Farlinger, *supra*, note 69 at 6.

⁷² See *Oceans Act*, S.C.1996, c.31.

⁷³ See Backgrounder. Information on the Oceans Act, online: < http://www.dfo-mpo.gc.ca/media/backgrou/1997/ocean_e.htm> (Accessed 1 November 2005).

⁷⁴ See C. Mageau, D.VanderZwaag and S.Farlinger, *supra*, note 69 at 6.

⁷⁵ Canada ratified the Law of the Sea Convention on November 7, 2003 and it entered into force on December 7, 2003. See online: <http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm> (Accessed 1 November 2005).

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)

⁸² Fisheries and Oceans Canada 2005. Canada's Oceans Action Plan, online: <http://www.dfo-mpo.gc.ca/canwaters-eauxcan/oap-pao/index_e.asp> (Accessed 1 November 2005).

- 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 legislation, but also the development of policies, pivotal projects and the establishment of relations between the many relevant levels.⁸⁴

Within this context, the existence of an interdependent relationship between the Ocean Act and Canada's Oceans Strategy should be understood as part of the Canada's Oceans Policy framework. And the relation between these instruments and Canada's Oceans Action Plan is part of the development process of the ocean policy which permits the implementation of the initiatives formulated in Canada's Oceans Strategy.

⁸³ See C. Mageau, D.VanderZwaag and S.Farlinger, *supra*, note 69. at 40.

⁸⁴ *Ibid*, at. 11.

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.

⁸⁶See 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://www.oceans.gov.au/pdf/5061_OceansPolicy.pdf > (Accessed 3 November 2005).

- 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.¹¹⁰ This is due to, among other factors, the presence of the cold Humboldt Current.¹¹¹

¹⁰⁹ See UNEP: Assessment of Land-based Sources and Activities Affecting the Marine, Coastal and Associated Freshwater Environment in the South-East Pacific. UNEP/ GPA Coordination Office & CPPS (1999). 73 pp. ISBN: 92-807-1830-4; See Food and Agriculture Organization of the United Nations, *Supra*, note 107; See Mundo Azul, The Coast of Peru, *supra* note 108.

¹¹⁰ 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.

¹¹¹ See Mundo Azul, The Coast of Peru, *supra*, note 108.

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 foreign currency and jobs that it generates, but also in terms of the volume produced, especially fishmeal and fish oil, and other frozen, canned and cured products for direct human consumption.¹¹⁶

However, the Peruvian marine ecosystem has also been affected by the growth of the mining sector and the fisheries industry. They have created higher levels of pollution. Thus, in the Report prepared by UNEP and the Permanent Commission Pacific South (CPPS) on

¹¹² See NOAA Fisheries, Northeast Fisheries Science Center. Narragansett Laboratory. Large Marine Ecosystems in the World. LME Project Information. LM13: Humboldt Current, online :<<http://na.nefsc.noaa.gov/lme/text/lme13.htm>> (Accessed 1 November 2005).

¹¹³ *Ibid*, See *Wild World* Ecoregion Profile. Humboldt Current, online: <<http://www.worldwildlife.org/wildworld/profiles/g200/g210.html>> (Accessed 1 November 2005).

¹¹⁴ See El Niño Theme Page access to distributed information on El Niño, online <<http://www.pmel.noaa.gov/tao/elniño/niño-home.html> > (Accessed 5 November 2005).

¹¹⁵ 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.

¹¹⁶ See Food and Agriculture Organization of the United Nations (FAO), Fisheries and Global Information System (2002), *supra* note 107. See APEC-Peru Country Profile.

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 distance of 200 nm measured from the bases lines established by law. ¹²³
Law N. 28621 ¹²⁴ Law on Baselines of Maritime Domain of Peru (11/03/05)	To establish the baselines from where the breadth of the Maritime Domain is measured up to a distance of 200 nm.
Law Decree 25977 General Law of Fisheries	To regulate the management of fisheries in order to promote the sustainable development of marine living resources as a source of nutrition, employment and income.
Law N. 27460 Law of Promotion and Development of Aquaculture (5/25/01)	To promote the activity of aquaculture in marine and continental waters, in line with the preservation of the environment and conservation of biodiversity.
Supreme Decree N. 017-2003 (06/27/03)	To provide regulations for the prevention of illegal fishing.

¹²² See Annex ‘I’

¹²³ The interpretation of this constitutional article is a matter of several interpretations and discussions in the Peruvian national scope. The development of this issue will be addressed in the section related to how an integrated national ocean policy might be developed in Peru.

¹²⁴ See Annex ‘II’.

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

Law N. 28611 General Law of Environment (10/13/05)	To establish principles and basic provisions to ensure: <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.
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Leading Ministries and Agencies for ocean’s management ¹²⁵

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	Division or Department	Functions
Ministry of Agriculture	<u>Decentralized public organism</u> National Institute of Natural Resources (INRENA)	<ul style="list-style-type: none"> • To promote rational use and conservation of natural resources. • To conduct management of National System of Protected Natural Areas (SINAMPE).¹²⁶

¹²⁵ This analysis will be focused in the Leading Ministries and Agencies at national level.

¹²⁶ Currently, SINAMPE includes 50 natural areas that cover almost 10% of national territory. In this sense, it may be mentioned as a representative example of it the National Reserve of Paracas. It is the unique natural area of SINAMPE that protects the marine ecosystem. For further information about SINAMPE and National Reserve of Paracas, see INRENA, “Anexo Estadístico 2004”. Instituto Nacional de Recursos Naturales 3. Lima,

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).

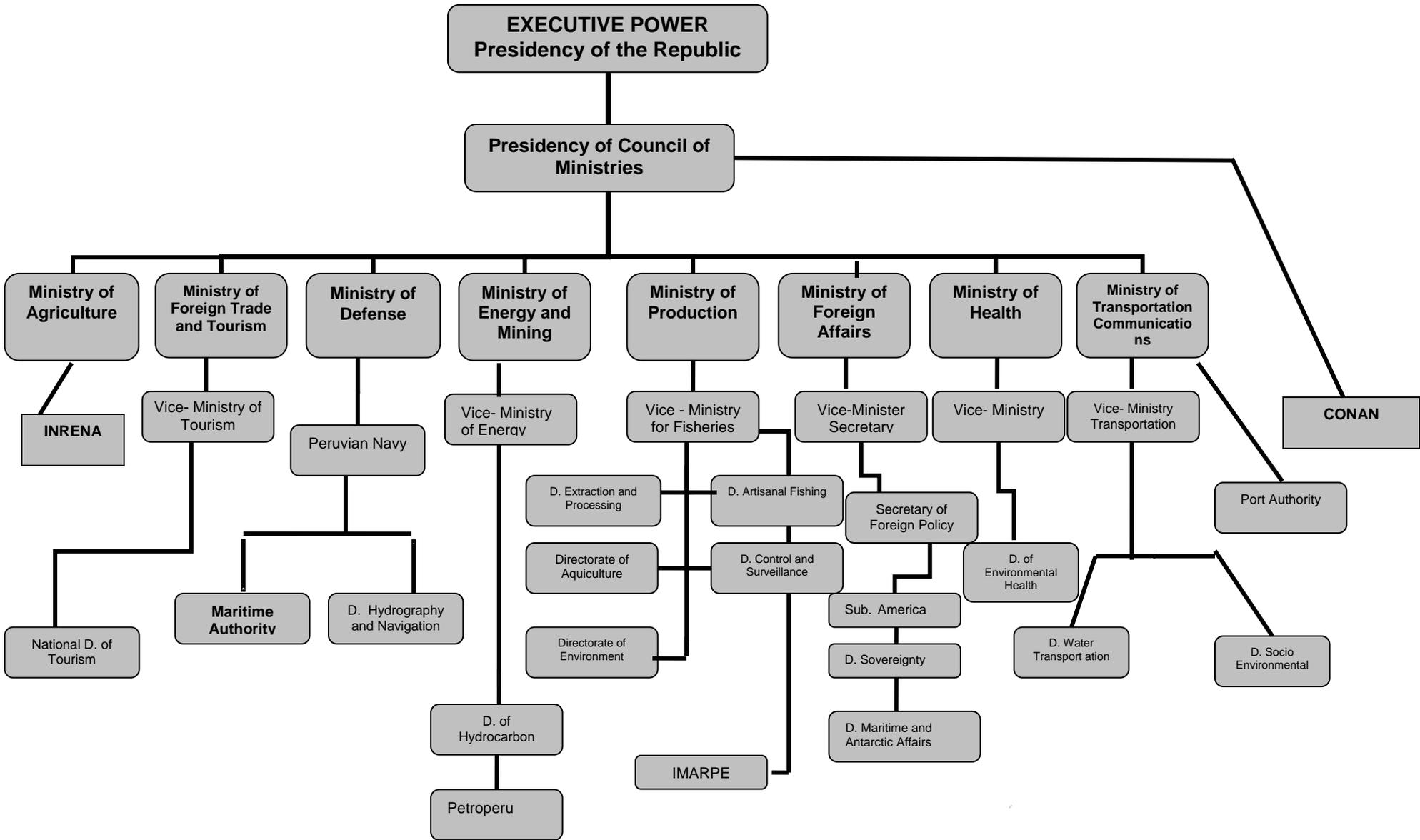
	<p>PETROPERU (State company)</p>	<p>of hydrocarbons in national territory.</p> <ul style="list-style-type: none"> • To promote activities of exploration, exploitation, transport, distribution and commercialization of hydrocarbons. <p>PETROPERU</p> <ul style="list-style-type: none"> • To promote investment 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.
<p>Ministry of Production</p>		<p>National Directorate of Control and Surveillance</p> <ul style="list-style-type: none"> • To propose and implement policy related to the control and surveillance of fishing activities. • To assess and apply the respective sanction regimes. <p>Peruvian Institute of Research</p>

		<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> <p>National Council for Environment (CONAM)</p> <p>National Environmental Authority</p>	<ul style="list-style-type: none"> • To propose the National Environmental Policy and approve the National Plan of Environmental Action. • To coordinate and promote the transectorial character of environmental management (national, regional and local level). • To lead the National Strategy of Biological Biodiversity.

Figure 2: Management of Ocean Affairs in Peru



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 public entities but also the private sector, scientifics, academics, and others.

In Peru, the framework provided by the Forum on the National Agreement may be the appropriate mechanism through which a national ocean policy could be formulated and disseminated. This National Agreement was constituted in July 2002, and has representatives from governmental entities and the major civil society sectors of the country, and from other private organizations.¹²⁹ Within the framework of this National Agreement, 30 long-term State policies have been approved, which guide the State in its pursuit of the following objectives:¹³⁰

1) Democracy and Rule of Law;

¹²⁹ The President of the Republic is the President of the National Agreement. This National Agreement is also constituted by: a Technical Secretaryship, a Coordination Committee, a high level Technical Committee, A Consultative Committee, a Ministerial Committee, and an office for support and communications. See. Secretaria Técnica del Acuerdo Nacional. "Acuerdo Nacional *para trabajar de acuerdo*" (Technical Secretaryship of the National Agreement. "National Agreement to work in agreement") Empresa Peruana de Servicios Editoriales S.A. Segraf-Editora Perú., online: <<http://www.acuerdonacional.gob.pe>> (Accessed 2 November 2005).

¹³⁰ *Ibid*

- 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”, however the most appropriate term should be ‘ocean marine zones’. For a discussion on the differences between ‘coastal area management’ and ‘sea use management’ See Jean-Pierre Levy, *supra* note 43.

¹³³This analysis is based on the approach proposed by Jean-Pierre Levy. He states 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. For more information see Jean-Pierre Levy, *supra* note 43.

¹³⁴ *Ibid*.

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 the State includes the seawaters adjacent to its coastline, the seabed and subsoil, up to a distance of 200nm measured from the bases lines established by law. The State executes sovereignty and jurisdiction in its maritime domain, without hampering the freedom of international communication, in conformity with international law and treaties ratified by the State. Likewise, the State executes sovereignty and jurisdiction over the air space above its territory and adjacent seawaters up to a distance of 200nm, without hampering the freedom of international communication, in conformity with international law and treaties ratified by the State.¹³⁷

This legal provision is a matter of diverse interpretations and discussions in Peruvian political and legal circles. There are two principal interpretations of this Article. The first, identified as the ‘territorialist’, proposes that the concepts of sovereignty and jurisdiction should be considered as prerogatives that the States execute in their territory. For this reason,

¹³⁵ Peru carried out an active role in the negotiations of this Convention, it did not sign in 1982 and has not accessed to it yet. The member States of the Permanent Commission of the States bordering the South-East Pacific Coast (Comisión Permanente del Pacífico Sur-Este [CPPS]) (Peru, Chile, Colombia and Ecuador) contributed in the formulation of the Exclusive Economic Zone concept with ‘the 200 nm thesis’. For more information about the participation of Peru in the Third Conference of the Sea: See, Alfonso Arias-Schreiber Pezet ‘La Tercera Conferencia sobre el derecho del mar y la participación del Perú’ (The Third Conference on law of the sea and the participation of Peru) in *Derecho del Mar. Análisis de la Convención de 1982 (Law of the Sea. Analysis of the 1982 Convention)* Pontificia Universidad Católica del Perú. Fondo Editorial 2001.

¹³⁶ However, it is important to note that the current Peruvian Government has made Peru’s ratification of LOSC a priority, and the Executive has presented a bill to the Peruvian Parliament in order to accede to Law of the Sea Convention. The administration has also indicated that it will deploy public information campaigns in order to inform the general public on the scope and importance of ratifying LOSC for Peru.

¹³⁷ See *Constitución Política del Perú, 1993. (Art.54)*. (Translated by the author)

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

In this sense, and as already stated, the national ocean policy in Peru must be initially formulated within the framework of the National Agreement. This would ensure consensus

¹³⁸ See Patricio Rubio Correa, “Compatibilidad entre la Convención del Mar de 1982 y la Constitución Política del Perú de 1993” in *Derecho del Mar. Análisis de la Convención de 1982*. Pontificia Universidad Católica del Perú. Fondo Editorial 2001.

¹³⁹ *Ibid*

¹⁴⁰ See P.B.Payoyo, *supra* note 46.

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 represented in Parliament and members of the private sector related with maritime activities (representatives of the maritime industries, scientifics, academics, etc).¹⁴²

- **Issues and Interests**

The issues which might be addressed in the ocean policy of Peru will be explored first in relation to the international scope, and then in relation to the main activities carried out in Peruvian waters.

International Issues

What are the purposes of Peru in the international scope? What is the international framework on which the current management of ocean affairs in Peru is based? What are the international and regional initiatives to which Peru is a party? Answers to these questions will establish which issues should be developed in a national ocean policy.

The Peruvian State has established as one of its main objectives the pursuit of a foreign policy which ensures peace, democracy and development.¹⁴³ Through this approach, Peru participates and is actively engaged in processes of political, social, economic and physical integration at different levels, i.e. sub-regional, regional and hemispherical.¹⁴⁴ The national ocean policy would develop regarding the maritime scope.

¹⁴¹ See diagram about the management of ocean affairs in Peru.

¹⁴² Seven political parties are members of the National Agreement which represent the majority in the Peruvian Parliament. Civil society is also represented through the membership of seven of its most representative organizations: Concilio Nacional Evangelico del Peru (Peruvian Evangelical National Council), Confederación General de Trabajadores del Peru (Peruvian General Confederation) , Confederacion Nacional de Instituciones Empresariales Privadas (National Confederation of Private Enterprise Institutions), Conferencia Episcopal Peruana (Peruvian Episcopal Conference), Coordinadora Nacional de Frentes Regionales (National Organizing Committee of Regional Fronts), Mesa de concertación para la lucha contra la pobreza (Coordination Table for Poverty Fighting) and Sociedad Nacional de Industrias (Industrial National Society). For more related information see: Secretaria Técnica del Acuerdo Nacional [Technical Secretariat of the National Agreement]. “Acuerdo Nacional para trabajar de acuerdo”. [*“National Agreement to work in agreement”*] *supra* note, 129.

¹⁴³ See, Secretaria Técnica del Acuerdo Nacional [Technical Secretariat of the National Agreement]. “Acuerdo Nacional para trabajar de acuerdo” [*“National Agreement to work in agreement”*] *supra* note, 129.

¹⁴⁴ *Ibid.*

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 composed of five member States: Bolivia, Colombia, Ecuador, Peru and Venezuela. This process of Andean integration has as purposes to achieve a greater international presence and influence, and to participate actively in the process of Latin American integration. Likewise, it intends to achieve a sustainable development in the sub-region, and for this, it has been establishing mechanisms of cooperation for the protection and preservation of natural resources and biological

- 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

diversity. For additional information, see Comunidad Andina de Naciones [Andean Community of Nations] online: < <http://www.comunidadandina.org>> (Accessed 20 January 2006).

¹⁵⁰ Since 1998, Peru has been party to the Asia-Pacific Economic Cooperation (APEC). Membership in this organization is of great importance for the Peruvian State, and it corresponds to one of the objectives of the Peruvian foreign policy which seeks to reinforce Peru's presence in the Pacific Rim.

¹⁵¹ IIRSA is a multinational initiative which includes the twelve South American States and was established in September 2000. It has as an objective to achieve an integration of the South American sub-continent through "integration and development axes." For additional information, see IIRSA, online: <<http://www.iirsa.org/home.asp?>> (Accessed 31 January 2006).

¹⁵² The South American Community of Nations (CSN) was established on 8 December 2004, and is made up of 12 countries of the region, becoming one of the most important blocks of integration in Latin America.

¹⁵³ See Ministerio de Relaciones Exteriores del Peru [Ministry of Foreign Affairs of Peru]. "Lineamientos generales de la Política Exterior Peruana" ["General Guidelines for the Peruvian Foreign Policy"], online: <<http://www.rree.gob.pe/portal/pexterior.nsf>> (Accessed 18 January 2006).

¹⁵⁴ The Peruvian Government has adopted an Antarctic-related national policy, objectives and strategies of which should be also integrated in this national ocean policy for Peru. For additional information on Antarctic-related National Policy in Peru, see Ministerio de Relaciones Exteriores del Perú [Ministry of Foreign Affairs of Peru] "La Política Nacional Antártica" [Antarctic-related National Policy], online:<<http://www.rree.gob.pe/portal/pexterior.nsf/>> (Accessed 30 December 2005).

- 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

What are the main problems in the current management of ocean affairs in Peru? Answer to this question will allow us to have a better view on issues that would be developed in this national ocean policy.

- Management

The main problem faced by Peru is that it has several sectorial policies and bodies with various hierarchical structures for managing ocean affairs. These policies are not harmonized, and there is no effective mechanism of cooperation among entities involved. This causes a conflict of competences, fragmented decision-making processes, legal voids and deficiencies. This is the first issue that a new policy should address.

- Conservation of Marine Biodiversity

It has been said that Peru is a megadiverse State because its marine areas represent one of the most productive and richest ecosystems of the world. However, there are many factors which contribute to their degradation, including pollution caused by mining activities, industry, urban and tourism development, shipping, and improper aquacultural practices.¹⁵⁶

Peru has adopted a series of legal measures and provisions in order to regulate sustainable use of biological diversity. Thus, the Peruvian Government has adopted a national strategy for biological diversity, establishing a Multi-sectorial National Commission for

¹⁵⁵ In this regards, it is important to point out that to date Peru does not have any maritime boundaries established with its neighboring countries of Chile and Ecuador.

¹⁵⁶ 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. See Albertina Kameya. “Presiones Economicas en Institucionales que afectan la biodiversidad marina en Peru” [“Economic Pressures on Institutions which affect the marine biodiversity in Peru”], online: <<http://www.imarpe.gob.pe>> (Accessed 30 December 2005).

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

• Marine Pollution:

It has been pointed out that Peru's marine environment is affected by various activities carried out on its coasts. These include industrial discharges from fisheries and mining activities which degrade the marine environment. This situation is further amplified by the intense pressures caused by increasing concentration of Peruvians populating those areas.

There are mechanisms established to prevent and combat the marine pollution. In this sense, the prohibition of the discharge of sea pollutants, the issuing of environmental impact studies, the establishment of maximum limits for the emission of industrial effluents has been regulated, and there is a National Contingency Plan to control and mitigate oil spills and other pollutant substances.¹⁵⁸

It is also to consider that Peru has signed different international conventions in order to protect the marine environment. Among these are:

- 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 and Coastal Areas of the South-Eastern Pacific"; and
- Protocol for the Protection of the South-Eastern Pacific against the Pollution by Land Sources.

¹⁵⁷ For additional information on the national strategy for biological diversity in Peru, see online : <<http://www.conam.gob.pe/CHM>> (Accessed 17 January 2006).

¹⁵⁸ See Albertina Kameya, *supra* note 156. For further information about the National Contingency Plan see: online: <<http://www.dicapi.mil.pe>> (Accessed 15 February 2006).

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, through Ministry of Production and other competent entities, has adopted a series of measures for the sustainable and responsible development of this sector.¹⁶⁰

Furthermore, Peruvian fishing policy assigns as its main objectives to strengthen institutional management, introduce new species to global markets, increase catch for direct human consumption, and improve living standards of fishermen.¹⁶¹ These objectives should be considered within the national ocean policy for Peru.

Other issues which should be addressed by the national ocean policy are as follows: problems of overfishing and extraction of smaller resources than those authorized, illegal fishing, non-allowed fishing techniques, and fishing infrastructure.

¹⁵⁹ See, Food and Agriculture Organization of the United Nations (FAO), Fisheries and Global Information System (2002), *supra* note 107. For a report on development of fishing activity in Peru in 2005, see Ministerio de la Producción [Ministry of Production], "Boletín Estadístico Mensual, Noviembre 2005" ["Monthly Statistic Bulletin, November 2005"], online: <<http://www.produce.gob.pe>> (Accessed 18 January, 2006).

¹⁶⁰ There are several legal provisions which have been incorporated into other principles and rules established in FAO Code of Conduct for responsible fishing and its implementation.

¹⁶¹ See, Food and Agriculture Organization of the United Nations (FAO), Fisheries and Global Information System (2002), *supra* note 107.

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 Aquaculture”] online: < <http://www.produce.gob.pe>> (Accessed 18 January 2006).

¹⁶³ The Peruvian State has adopted Law No. 27460 “Law on Promotion and Development of Aquaculture”, providing in this instrument the guidelines to be observed by the Aquaculture Development Plan.

¹⁶⁴ See Ministerio de Comercio Exterior y Turismo [Ministry of Foreign Trade and Tourism], “¿Qué es la Política Ambiental?” [“What is Environmental Policy?”] Online: <<http://www.mincetur.gob.pe>> (Accessed 11 January 2006).

¹⁶⁵ See Ministerio de Comercio Exterior y Turismo [Ministry of Foreign Trade and Tourism], ‘PERU: Plan Estratégico Nacional de Turismo 2005-2015’ [“PERU: 2005-2015 National Strategic Plan of Tourism”] Online : <<http://www.mincetur.gob.pe>> (Accessed 18 January 2006).

¹⁶⁶ *Ibid.*

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), Direccion de Hidrografia 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 and Coastal Areas of the South-Eastern Pacific” and Protocol for the Protection of the South-Eastern Pacific against the Pollution by Land Sources.

¹⁶⁹ See United Nations Secretary-General “Oceans and the Law of the Sea: Report of the Secretary General”, *supra* note 58.

¹⁷⁰ See Johannesburg Summit. “2002 Peru Summary.”

Online: <<http://www.un.org/esa/agenda21/natlinfo/wssd/peru.pdf>> (Accessed 5 October 2005).

¹⁷¹ See, Consejo Nacional de Ciencia y Tecnología [National Council of Science and Technology] (CONCYTEC). “Estudio Sistemico de la Realidad Nacional en Ciencia y Tecnología. Resumen Ejecutivo” [Systemic Study on National Reality in Science and Technology. Executive Summary”] Online: <<http://www.concytec.gob.pe/resumen/analisis3-1-3.hmt>> (Accessed 6 October 2005).

¹⁷² See, Secretaria Técnica del Acuerdo Nacional [Technical Secretariat of the National Agreement]. “Acuerdo Nacional *para trabajar de acuerdo*” [“National Agreement to work in agreement”] *supra* note, 129.

- 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 commercial and technical aspects must be considered.

In Peru, the Maritime Authority is the competent body in charge of ensuring the safety of navigation and the safety of human life at sea. Its functions include: to operate the National Search & Rescue System, grant licenses and supervise the construction of vessels and naval materials, issue certificates of registration, control the aquatic traffic and the professional training of the merchant navy.

¹⁷³ See Law No. 26620, “Ley de Control y Vigilancia de las Actividades Maritimas, Fluviales y Lacustres” [Law on Control and Surveillance of Maritime, River and Lake Activities] online: <<http://www.dicapi.mil.pe>>. Also, it is worth mentioning that this system of control and surveillance of maritime activities is also complemented by the Satellite Tracking System (SISESAT) managed by Ministry of Production.

¹⁷⁴ See, International Maritime Organization, “Marine Safety”, online: <<http://www.imo.org/home.asp>> (Accessed 30 January 2006).

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.

Administrative system

The Canadian and Australian experience in the development process of a national ocean policy has demonstrated that such a process must be guided by a high-level government entity. This is required to ensure the necessary political engagement and to establish effective coordination mechanisms with other competent entities and the community in general.

Presently in Peru, there is a sectorial management approach to the management of the ocean issues. The numerous organizations that have competence in this area are located within a bureaucratic governmental structure, which leads to segmented decision-making processes, conflicts of mandates and duplication of efforts.

Considering this context and the critical importance of integration in the management of oceans, it is clearly necessary to modify the present administrative structure. The first action which should be taken is to establish a National Commission. This Commission should be chaired by CONAM taking into account the nature of its the roles it develops, its hierarchical and its condition of National Environmental Authority.¹⁷⁵ This National Commission should be composed of representatives from the Ministries and agencies with competence in ocean issues. Likewise, a representative of the regional, local and the private sector, and academics and scientifics should participate.

¹⁷⁵ See, Law N.28611 [General Law of Environment] online: <http://www.conam.gob.pe/documentos/N_legislacion_amb/PCM%20-%20CONAM/Ley%20General%20del%20Ambiente.pdf> (Accessed 17 January 2006).

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 understanding of the approaches to ocean affairs and draw on some “lessons learned”. In so doing, it remains critical to understand that there does not exist a unique model for the development of ocean policies. Their formulation must be guided by defined political will and involve representatives of the governmental and private entities as well as academics and scientifics in the processes.

Peru, a State with many natural resources, including high levels of biodiversity, can not continue to rely on segmented decision-making processes and ignore these new approaches. The problems it currently faces in the management of ocean issues require the development and implementation of an integrated ocean policy. The mobilization of the necessary political consensus to develop an integrated national ocean policy is the first challenge that Peru must face.

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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 resources and other natural resources in the epi continental water which cover the submarine platform and the continental sea adjacent to it, in order that such resources, which are essential for the national life, continue being exploited or be exploited in the future without detriment to the economy of the country and the food production;

The fertilizing resources deposited by the guano birds (aves guaneras) in the islands of the coast also require their protection, preservation and ruling of the use of the fishing resources, which are the food for such birds;

The right to proclaim the sovereignty of the State and the national jurisdiction on all the extension of the submarine platform or base, as well as upon the epi continental water that cover them and upon the sea adjacent to them, in all the necessary extension for the preservation and surveillance of the resources therein, has been declared by other States and admitted practically at an international order (Statement of the President of the United States of America dated 28 September 1945; Decree of the President of Mexico dated 29 October

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

Annex 'II'

CONGRESS OF THE REPUBLIC

LAW No. 28621

THE PRESIDENT OF THE REPUBLIC

WHEREAS

The Congress of the Republic has provided the following Law:

LAW ON BASELINES
OF MARITIME DOMAIN OF PERU

Article 1 Purpose of the Law

This Law establishes, in compliance with Article 54 in the Political Constitution of Peru and in accordance with the International Law, the baselines from which the width of the maritime domain of the State is measured up to a distance of two hundred nautical miles where the Peruvian State exercises its sovereignty and jurisdiction.

Article 2 Determination of Baselines

Baselines are determined by geographical coordinates mentioned in Annex 1, which begin in North at astronomical coordinates of latitude 03°23'33.96''S, longitude 80°19'16.31''W (WGS84 Lat. 03°23'31.10''S, Long. 80°18'49.29''W), and finish in South at coordinates WGS 84 Lat. 18°21'08''S, Long. 70°22'39''W, included in the six letters in Annex 2 to this Law.

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> >

First Vice-President of the Congress of the Republic

TO THE CONSTITUTIONAL PRESIDENT OF THE REPUBLIC

IN AS MUCH AS,

I order to be published and complied with.

Signed in the House of Government, in Lima, on November 3rd, 2005.

ALEJANDRO TOLEDO

Constitutional President of the Republic

PEDRO PABLO KUCZYNSKI GODARD

President of the Council of Ministers