

AQUACULTURE & MARINE PLANNING IN NOVA SCOTIA

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1. INTRODUCTION

Nova Scotia is a small province on the East Coast of Canada. Being a long and narrow peninsula, it is very much shaped by its proximity to the ocean in terms of its economy and its culture. Among the many ocean dependent activities of economic, social and cultural importance to Nova Scotia are fishing, angling and aquaculture, shipping and boating, fossil fuel and renewable energy exploration, and a variety of tourism and recreational activities.¹ Many of these endeavors are well established, are closely connected to communities along the coastline, and are of significant economic value to the province. Others are minor contributors today, but offer significant future potential. Some are on the rise, while others are considered to be in decline. Most importantly, perhaps, views on which offer the greatest future potential for integrated solutions to environmental, social and economic challenges, are varied and change over time.²

Traditionally, decisions about conflicting uses and the balancing of economic, social and environmental goals and values has taken place on an ad-hoc basis. As new activities have been proposed, such as oil and gas exploration in the 1980s, or aquaculture in the 1990s, governments have determined where and under what conditions to approve these new activities on the basis of whether they could operate without imposing undue burdens on existing users or on the environment. In many cases, it was left to existing users, aboriginal peoples, community groups and environmental groups to voice concerns about impacts of these proposed new activities outside the formal decision-making process.

Over the past decade, there have been calls for integrated planning and management of the ocean surrounding the province of Nova Scotia as mechanisms to improve decision-making. Early efforts arose out of the enactment of Canada's Oceans Act, reflecting the clear federal jurisdiction over

¹ M. DOELLE, "The Role of Strategic Environmental Assessments (SEAs) in Energy Governance : A Case Study of Tidal Energy in Nova Scotia's Bay of Fundy," (2009) 27 *Journal of Energy and Natural Resources Law* 112.

² Nova Scotia Commission on Building Our New Economy (2014), *Now or Never : An Urgent Call to Action for Nova Scotians* (The One Commission, Report, February).

LES NOUVEAUX CADRES DE L'AMENAGEMENT MARITIME

fisheries, navigation, and marine pollution, and more generally over any ocean space beyond the boundaries of the provinces.³ Among these integrated management efforts was the Eastern Scotian Shelf Integrated Management (ESSIM) process, a lengthy process involving an offshore area close to Nova Scotia. The results of the ESSIM process were ultimately not implemented. More recently, the federal government has embarked on the Maritimes Regional Oceans Plan, but the process is still in its early stages.⁴

Early provincial efforts toward integrated coastal planning and management date back to the late 1990s, but also failed in the transition from design to implementation. Jurisdictional challenges due to the somewhat limited and uncertain jurisdictional basis for provincial involvement in coastal and ocean management contributed to the failure of these early efforts.⁵ Federal jurisdiction is clearer, and is exclusive with respect to fisheries, navigation and marine pollution. The province of Nova Scotia has jurisdiction over local works and undertakings and other matters of a local and private matters, as long as these matters are within the territory of the province and do not unduly interfere with subject matters of federal jurisdiction. An added complexity is that some of the marine boundaries of the province of Nova Scotia are under dispute. The end result is clear provincial jurisdiction over land-based activities in the coastal zone, clear federal jurisdiction over fisheries, navigation and marine pollution, and disputed jurisdiction over other matters in the coastal area.⁶

New momentum for integrated coastal management arose from a controversial quarry development along the coast of Nova Scotia that resulted in the joint federal-provincial environmental assessment review panel calling for an integrated coastal management process to enable better decision-making on coastal activities.⁷ Efforts to respond to this call for integrated coastal planning include a draft provincial Coastal Strategy released in 2011, and a federal provincial memorandum of understanding (MOU). To date, however, Nova Scotia has no coastal legislation in place, no integrated coastal management or planning process in place, and the draft Coastal Strategy has not yet been finalized or implemented.

In the absence of integrated coastal planning and management, ocean zoning has been proposed by some as a way of improving decision making in the face of potentially competing interests and priorities among the many ocean uses in coastal waters surrounding Nova Scotia. Of course, some form of ocean zoning has already been utilized informally for some time. For examples, fishing zones have been used to issue fishing licences for lobster, herring and scallops among

³ Oceans Act (S.C. 1996, c. 31).

⁴ See : <http://www.dfo-mpo.gc.ca/oceans/publications/essim-giepne-eng.asp>.

⁵ For an overview of division of powers over environmental matters, see M. DOELLE and C. TOLLEFSON, *Environmental Law : Cases and Materials 2nd ed.* (Toronto : Thomson/Carswell, 2013), at 165.

⁶ See M. DOELLE et al, "The Regulation Of Tidal Energy Development Off Nova Scotia : Navigating Foggy Waters" (2006) 55 UNB Law Journal 27.

⁷ N. CRAIK, et al, "Governing Information : A Three Dimensional Analysis of Environmental Assessment" (2012) 90 Public Administration 19.

ECLAIRAGES COMPARATISTES

other species.⁸ Exclusion zones have been established for oil and gas exploration, including a moratorium on George's Bank, and a Marine Protected Area with an oil and gas exclusion zone in the Gully near Sable Island.⁹ A coastal protected area has been established in the form of the Kejimikujik Seaside Adjunct Park. So far, the use of ocean zoning, however, has been ad hoc and generally single-issue based rather than integrated.

It is in this context that in 2013, the province of Nova Scotia initiated a review of the existing provincial regulatory approach to aquaculture, one of the emerging coastal industry sectors in Nova Scotia.¹⁰ The sector, and particularly the review of the current regulatory approach, offers valuable insights into the potential for integrated planning and management and ocean zoning to contribute to better decision-making in coastal areas. The following section offers an overview of the regulatory review process and its conclusions.¹¹

2. THE NOVA SCOTIA REGULATORY REVIEW OF AQUACULTURE

The regulatory review of the aquaculture sector in Nova Scotia was initiated in light of growing conflict among sectors of the industry, regulators, other users of coastal areas and coastal communities. At the heart of the conflict were commercial scale marine-based finfish operations. These operations were seen by some as critical to rural development, while others viewed them as a threat to existing industries such as fishing and tourism, the natural environment, and their way of life. The existing regulatory process offered limited transparency, and few legislative requirements to ensure the protection of the local environment from fecal matter, nutrient loading, escapes, anti-fouling agents, medication, and pest control products.¹²

It was in this context that the province of NS set up an independent Panel to carry out a regulatory review of aquaculture. The Panel was asked to design a state of the art provincial regulatory system for the aquaculture industry in NS. The review was mandated to include fin-fish, shell-fish, and plant-based aquaculture. While the focus was clearly on marine-based operations, the review was to include land-based operations as well. The Panel was asked to propose a new state of the art regulatory system that would best serve the long-term best interest of the province. The Panel's mandate included the full range of social, environmental and economic considerations, guided by the priorities and principles of the Environmental Goals and Sustainable Prosperity Act

⁸ Fisheries Act (R.S.C., 1985, c. F-14).

⁹ See, for example, Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (S.C. 1988, c. 28).

¹⁰ Fisheries and Coastal Resources Act. S.N.S. 1996, c. 25, s. 1.

¹¹ Aquaculture Regulatory Review for Nova Scotia [The Doelle-Lahey Panel], www.aquaculturereview.ca.

¹² [ECELAW], *Aquaculture Regulation in Nova Scotia : Overview of the Regulatory Framework and Considerations for Regulatory Reform* (East Coast Environmental Law, 2013). Accessed at <http://www.ecelaw.ca/85-aquaculture-regulation-in-nova-scotia-overview-of-the-regulatory-framework-and-considerations-for-regulatory-reform.html>.