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## The Challenges of Integrating Tourism into Canadian and Australian Coastal Zone Management

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The Challenges of Integrating  
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Management

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*This article discusses the challenges of integrating tourism into Canadian and Australian coastal zone management. Comparisons are drawn between coastal and marine tourism resources in Australia and Canada. The resources considered include the cruise ship industry, recreational boating, fishing, sea kayaking, SCUBA diving and marine wildlife tourism.*

*In the introduction, some of the problems of definition and data are addressed. Tourism is described as an industry, but unlike many traditional industries, the tourism arena consists of a myriad of players and sectors. After the comparison of tourism resources in both countries, the power and politics associated with managing user conflicts in marine areas in British Columbia and Australia are discussed. The third part of the article looks at the challenges of environmental management for coastal and marine tourism; specifically, the article focuses on issues arising from the creation of marine protected areas and the development of sustainable whale watching operations. The authors conclude with two case studies, the cruise industry in Pacific Canada and the recreational fishing industry in Australia.*

*Cet article fait état des défis que représente l'intégration du tourisme à la gestion des zones côtières canadiennes et australiennes. Les auteurs comparent les ressources côtières et marines de l'Australie et du Canada sur le plan du tourisme. Les ressources examinées sont l'industrie des navires de croisière, la navigation de plaisance, la pêche, le kayak de mer, la plongée autonome (scuba) et le tourisme d'observation des animaux marins.*

*Dans l'introduction, les auteurs présentent certains des problèmes ayant trait aux définitions et aux données. Le tourisme est décrit comme étant une industrie, mais contrairement à beaucoup d'industries traditionnelles, ce domaine regroupe de nombreux secteurs et beaucoup de joueurs. Après une comparaison des ressources touristiques des deux pays, les auteurs discutent de l'autorité et de la politique qui entrent en jeu dans la gestion des conflits entre utilisateurs des zones marines en Colombie-Britannique et en Australie. La troisième partie de l'article examine les défis en matière de gestion environnementale pour le tourisme côtier et maritime; plus particulièrement, les auteurs s'intéressent aux enjeux soulevés par la création de zones de protection marine et la mise en place d'activités durables d'observation des baleines. En conclusion, les auteurs présentent deux études de cas: la première sur l'industrie des croisières sur le Pacifique au Canada, la seconde sur l'industrie de la pêche récréative en Australie.*

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### *Introduction*

Tourism is one of the world's largest civil industries. It accounts for 11.7 per cent of the world's Gross Domestic Product and is worth over USD 4.8 trillion.<sup>1</sup> By 2011, tourism is expected to generate USD 9.2 trillion and over 260 million jobs worldwide.<sup>2</sup> Tourism is expected to substantially increase as "people are traveling further, staying longer and going to more exotic places."<sup>3</sup> Increasingly these places include coastal and marine environments of Canada and Australia.

Tourism has most often been viewed from a demand perspective rather than a supply perspective with most attention given to marketing and promotion rather than the resources on which tourism depends. It is only recently, in the face of negative environmental impacts and resource conflicts, that the recognition of tourism as a resource-based industry has emerged. The international growth of ecotourism within the past decade has also heightened awareness of the need to protect and manage tourism resources. A major challenge for the tourism industry is how to "gain a place at the table" in resource management decisions which have been dominated by traditional resource sectors such as forestry or fishing. Consideration of the needs of the tourism industry is often absent from existing legislation.

The situation in coastal environments is particularly difficult because of the often complex legislation associated with the interface of both terrestrial and marine systems. While there are national differences in approaches to coastal management, the problems of integrating tourism into the system are widespread and related to inherent characteristics of the tourism sector. For example, in the United States where an integrated coastal management approach has been in effect for decades, a report prepared for the "International Year of the Ocean" in 1998 noted that:

there is no systematic collection of data and information on the magnitude, nature, and economic and social impacts of tourism and recreation in the nation's [USA] coastal zone. This is in part, responsible for a general

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1. Graeme Worboy, Michael Lockwood & Terry De Lacy *Protected Area Management: Principles and Practice* (Oxford University Press: Melbourne, 2001) 272

2. World Travel and Tourism Council, *World Travel and Tourism Council Year Book 2001: Tourism Satellite Accounting Research* (London: World Travel and Tourism Council, 2001).

3. Roy Ballantyne & David Uzzell, "International Trends in Heritage and Environmental Interpretation: Future Directions for Australian Research and Practice" (1999) 4 (1) *Journal of Interpretation Research* 59-75.

under appreciation of this set of activities and the failure to devote adequate planning and management attention to the relevant issues that are raised for coastal tourism and recreation.<sup>4</sup>

Canadian and Australian coastal and marine tourism is a thriving and expanding industry. Significant natural, cultural, indigenous and heritage places all make up this diverse and little understood sector. The diverse environments of Canada and Australia offer spectacular seascapes and beaches that are easily and regularly accessed by residents and visitors. Recreational fishing is a major activity and charter fishing in nearshore and offshore waters is growing. Both countries are cruise shipping destinations in their own right with significant increases in the market share over the past decade.

In this paper, the focus is on tourism and recreation within the coastal zones of Canada and Australia. The countries differ with respect to the nature of their coastal and marine tourism resources and also with respect to the degree to which coastal zone management is legislated. In this introduction, some of the definitional challenges in identifying coastal and marine tourism are highlighted. In the first part an overview of the scale and scope of coastal and marine tourism in the two countries highlights the main challenges faced by various sub-sectors of the industry. In the second part a discussion of power and politics highlights the challenges associated with managing user conflicts in marine areas. These issues become apparent when examining examples drawn from the two countries of the challenges they face in integrating tourism into coastal management. The third part describes selected examples of marine environmental challenges including the issues facing marine protected areas and sustainable practices in whale watching. Finally, the last part relates to regulatory and jurisdictional challenges and draws upon case studies of the cruise industry in Pacific Canada and the recreational fishing industry in Australia.

Tourism is described as an industry, but this is a difficult concept to grasp because unlike traditional industries, the tourism arena consists of a myriad of players. In the coastal and marine context these players range from large corporations such as cruise operators to independent recreational

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4 NOAA, *1998 Year of the Ocean - Coastal Tourism and Recreation*. Background discussion paper prepared for National Ocean and Atmospheric Administration Year of the Ocean, 1998, online: International Year of the Ocean <[www.yoto98.noaa.gov/yoto/meetng/tour\\_rec\\_316.html](http://www.yoto98.noaa.gov/yoto/meetng/tour_rec_316.html)> (date accessed: 9 May 2002)

boaters.<sup>5</sup> Beyond the tourism activities and attractions themselves, the industry also encompasses the hospitality sector (food and accommodation), transportation, and infrastructure and services. From an economic perspective, accurately attributing appropriate value to the tourism sector is a challenging, but necessary task. At national and regional levels the recent development of tourism satellite accounts in Canada and Australia has brought some degree of standardization to economic accounting.<sup>6</sup> A more specific segmentation identifying the coastal and marine component of tourism is lacking. Data drawn from government and consultant sources, for example, use differing definitions some of which include only water-based activity whilst others include related terrestrial activities and services. Marine tourism has been defined to include "any activities, attractions or facilities/services which take place on the ocean or along the coastline or which involve a marine-based theme."<sup>7</sup> According to this definition, marine tourism includes a range of activities such as sea kayaking, whale watching, SCUBA diving, coastal sightseeing, beach walking, surfing, and touring as well as attractions, parks, accommodation, festivals and special events that have a marine theme or location. Ocean users might specialise and choose to engage in just one activity such as SCUBA diving, or alternatively, combine many activities such as power cruising, sports fishing, and wildlife viewing to create their marine tourism experience. Significant problems lie in fundamental statistical gaps detailing the magnitude of coastal and marine tourism.

The distinction between recreation and tourism is also often a matter of debate. The normal classification of 'tourist' is on the basis of an overnight stay and distance travelled (e.g., a "tourist" is away from home at least 24 hours and travels at least 80 km).<sup>8</sup> While there are implications of this to site planning, it is of lesser importance in this discussion, as both tourists and recreationists are dependent on similar resources. Identifying what is a tourism resource is a major challenge that is discussed in more detail below with respect to developing an inventory of coastal tourism resources. A fundamental attribute of these resources is a high quality natural

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5. Mark Orams, *Marine Tourism: Development, Impacts and Management* (New York: Routledge, 1999) 14-20

6. World Travel and Tourism Council, *2002 Tourism Satellite Accounts*, online: World Travel and Tourism Council <www.wttc.org> (9 May 2002).

7. The Economic Planning Group in association with McQuinn and Company Market and Corporate Research Association, *Nova Scotia Marine Tourism Study: Final Report* (Halifax: Nova Scotia, Tourism Nova Scotia, 1997).

8. Gareth Shaw & Allan Williams, *Critical Issues in Tourism. A Geographical Perspective 2<sup>nd</sup>* (Malden, Massachusetts: Blackwell, 2002) 371.

environment, including a high quality visual environment.

The environmental challenges facing the tourism sector are widely recognized and have prompted many integrated responses and definitions amongst which is the notion of sustainable tourism. Sustainable tourism has gained popularity since the concept of sustainability was introduced by the Brundtland Report<sup>9</sup> and reinforced at the Rio Summit in 1992. The concept of sustainable tourism generally implies a balanced mix of “sustaining local economies, local cultures and local environments.”<sup>10</sup> Ideally, sustainable tourism combines present benefit with the protection of future opportunities. For example, sustainable tourism has been described as: tourism that is economically viable but does not destroy the resources on which the future of tourism will depend, notably the physical environment and social fabric of the host community.<sup>11</sup> A more detailed definition by Eber describes sustainable tourism as:

[t]ourism and associated infrastructure that, both now and in the future operate within natural capacities for the regeneration and future productivity of natural resources, recognize the contribution that people and communities, customs and lifestyles make to the tourism experience, accept that these people must have an equitable share in the economic benefits of tourism, and are guided by the wishes of local people and communities in the local area.<sup>12</sup>

Under the rubric of sustainable tourism lies the notion of ‘ecotourism’, also known as ‘nature-based’, ‘adventure’, ‘alternative’ or ‘green’ tourism. The Ecotourism Society has defined ecotourism as “responsible travel to natural areas that conserves the environment and improves the well-being of local people.”<sup>13</sup> Some authors have hailed ecotourism as the ‘answer’ to tourism development with supporters arguing that this is the only sustainable tourism development in the longer term. In addition, many authors stress that ecotourism is low-impact and (usually) small-scale travel

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9. World Commission on Environment and Development [WCED] Tokyo Declaration; *Our Common Future* (the Brundtland Report) (Oxford, U.K.: Oxford University Press, 1987).

10. Ross Mitchell, “Community Perspectives in Sustainable Tourism: Lessons From Peru” in Stephen F. McCool & Richard N. Moisey, eds., *Tourism, Recreation and Sustainability. Linking Culture and the Environment* (Wallingford, U.K.: CAB International, 2001) 138.

11. John Swarbrooke, *Sustainable Tourism Management* (Wallingford, U.K.: CAB International, 1999) 241.

12. Shirley Eber, ed., *Beyond the Green Horizon. Principles of Sustainable Development: A Discussion Paper* (London, U.K.: World Tourism Concern and the World Wide Fund for Nature, 1992) 3.

13. The Ecotourism Society, *Uniting Conservation and Travel Worldwide* (North Bennington, Vermont: The Ecotourism Society, 1992) 1.

to fragile, pristine, and usually protected areas.<sup>14</sup>

Both sustainable tourism and ecotourism have the potential to contribute to both conservation and development.<sup>15</sup> At minimum, it involves the creation of positive synergistic relationships among tourism, biodiversity and local people through the application of appropriate management strategies.

Horoehowski and Moisey recognize that tourism is not only tied to location, but the culture, ecology and economy of destination sites.<sup>16</sup> The host community and the natural environment not only provide the goods and services for the tourism industry but also the product of tourism. According to Haywood "as a commodity, the community's intensive interaction with visitors is of the utmost importance in the long-term sustainability of the industry, since it is the culture and the hospitality, along with the natural attraction, that create the image and experiences that attract visitors."<sup>17</sup> Nonetheless, development and coastal and marine tourism activity have not always been compatible with the social and economic objectives of a location and can threaten the community's integrity.

### *I. Scale and Scope of Coastal and Marine Tourism*

The coastal regions of Australia and Canada differ in a number of significant ways. Most notably, Australia possesses a much wider range of climatic zones including warm water beaches, whereas in Canada these do not exist. Also, Australian coastal areas are much more accessible to the major population centers than those in Canada, although Canada's main population concentration occurs along internal marine waters around the Great Lakes and Gulf of St. Lawrence. In this section, an overview of the main coastal and marine tourism resources in Australia and Canada is first presented to provide context for examining the specific sub-sectors that constitute the industry.

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14. Katerina Horoehowski & Richard N. Moisey, "Sustainable Tourism: The Effect of Local Participation in Honduran Ecotourism Development" in Stephen F. McCool & Richard N. Moisey, eds., *Tourism: Recreation and Sustainability: Linking Culture and the Environment* (Wallingford, U.K.: CAB International, 2001) 137-162; Martha S. Honey "Treading Lightly?: Ecotourism's Impact on the Environment" 1999 41(5) *Environment* 4-9; Hector Ceballos-Lascur in "The Future of Ecotourism" (17 January 1988) *Mexico Journal* 13-14.

15. Sheryl Ross & Geoffrey Wall, "Ecotourism: A Theoretical Framework and an Indonesian Application" in Stephen F. McCool & Richard Moisey, eds., *Tourism, Recreation and Sustainability: Linking Culture and the Environment* (Wallingford, U.K.: CAB International, 2001) 271-288.

16. Horoehowski & Moisey, *supra* note 14.

17. K. Mitchell Haywood, "Responsible and responsive tourism planning in the community" (1988) 9(2) *Tourism Management* 105-118.



### 1. *Tourism Resources in Australia*

The Australian coastline extends over 60,000 km,<sup>18</sup> with over 7,000 beaches<sup>19</sup> and its physical features are extraordinarily diverse as a result of tropical, subtropical, temperate and sub-Antarctic climates. The Indian Ocean lies to the west, the Southern Ocean to the south, the Pacific Ocean to the east, and the Gulf of Carpentaria and the Arafura Sea to the north. Nine major habitats and ecosystems make up Australia's coastline including estuaries, high-energy sand and rocky beaches, coastal salt marshes, mangroves, seagrass beds, temperate reefs, tropical coral reefs, benthic sea floor communities, and open water pelagic communities. The landward coastal zone areas comprise only 17 per cent of Australia's land area and are home to 86 per cent of Australia's population, including up to half of Australia's indigenous people.<sup>20</sup> Given that Australia's coasts and marine environments provide intrinsic links for the population between the land and the water, they are special places for recreation and tourism.

Australia has experienced significant international growth, increasing by 50 per cent since 1992 to approximately five million visitors in 2003.<sup>21</sup> Tourism also generates substantial wealth to the Australian economy and for 1999 it generated over AUD 60 billion – with AUD 45 billion being spent by Australians domestically and a further AUD 17 billion spent by international visitors.<sup>22</sup> This trend is expected to continue with arrivals growing at a rate of 7 per cent to reach 9.8 million by 2010. The domestic market is also expected to increase at a rate of 2 per cent from 2000 to 2010 from 249 million to 359 million.<sup>23</sup> Coastal and marine tourism has been identified as one of the largest industries in Australia and represents approximately 50 per cent of international visitors and over 42 per cent of

18. Austl., *Australia's Oceans Policy* (Commonwealth of Australia, Canberra: 1998).

19. Australia has over 7,000 beaches and more than any other nation in the world.

20. Austl., Environment Australia, *Coastal Tourism: A Manual for Sustainable Development* (Cth.: Environment Australia, 1997); Colin M. Hall, *Introduction to Tourism in Australia: Impacts, Planning and Development* (Melbourne.: Longman Australia, 1995).

21. Tourism Forecasting Council 2001

22. National Oceans Office, *Resources, Using the Ocean: The South-East Regional Marine Plan* (Hohart: National Oceans Office, 2002).

23. Key characteristics of the domestic coastal market include: holiday purpose trips, younger age group (15-24 years of age), young singles or those with young children, longer stay, those participating in swimming/surfing activities, those going to the beach or participating in natural-based and cultural activities, and those participating in sporting events. South Australian Tourism Commission, *Fishing Tourism and Coastal Tourism: A Background Research Profile* (Adelaide: South Australian Tourism Commission, 1999).

domestic visits.<sup>24</sup>

Most visitors travel to destinations such as Sydney, Brisbane, Melbourne, the Gold Coast and north Queensland.<sup>25</sup> The Queensland Gold Coast recorded a substantial 3,207,138 visits or a 9.29 per cent share of Australia's total marine tourism visits in 1995 and this region has long been established as the preferred destination by both domestic and international visitors.<sup>26</sup> In the same year Victoria's Great Ocean Road had 2,569,591 visits or a 7.44 per cent share of Australia's marine tourism trade. The third highest ranking in 1995 was the Hunter region in New South Wales with 2,393,211 visits or a 6.93 per cent share of the total marine tourism trade. The smallest region in 1995 was the Northern Territory's Top End with a comparative 68,165 visits or a 0.20 per cent share of the market. Other coastal and marine sites attracting substantial numbers of visitors include the Wet Tropics, Lord Howe Island, Fraser Island and Hervey Bay in Queensland; Shark Bay in Western Australia and the Tasman Peninsula in Tasmania. Selected activities participated in by international and domestic visitors in Australia in 1998 are detailed in Table 1.

Table 1: Selected activities of international and domestic visitors in Australia (1998)

Selected activities	% International Visitors	% Domestic Visitors
Go to the Beach (swimming, surfing and diving)	56	24
Visit National Parks/Bushwalking/Rainforest Walks	47	14
Visit Wildlife Parks/Zoos	42	2
Visit Wineries	9	2
Visit Aboriginal Culture/Site/Community	7	1
Go Whale/Dolphin Watching on Ocean	7	1
Golf	5	3
Fishing	4	14

Adapted from South Australian Tourism Commission, 1999

24. Alastair Birtles, Peter Valentine & Matthew Curnock, "Tourism Based on Free-Ranging Marine Wildlife: Opportunities and Responsibilities" *Wildlife Tourism Research Report Series No. 11: Status Assessment of Wildlife Tourism in Australia Series* (Gold Coast: CRC Sustainable Tourism, 2001). Australian Economic Consultants, *Measuring the Economic Input of Coastal and Marine Tourism* (Brisbane: Australian Economic Consultants for the Department of Industry, Science and Tourism, 1998) at i.

25. Austl., *Coastal Zone Inquiry: Draft Report* (Canberra: Resource Assessment Commission, Australian Government Publishing Service, 1993).

26. Australian Economic Consultants, *supra* note 24 at ii.

The Australian coastal and marine environment offers significant natural, cultural, indigenous and heritage tourism places.<sup>27</sup> These places are “associated with human history ... which are of value to our society for cultural reasons”<sup>28</sup> and are passed from one generation to the next. They include coastlines, islands and reefs, seascapes, indigenous clan estates and coastal middens, shipwrecks, lighthouses, museums, early settlements such as custom houses, coastal fortifications and the penal settlements of Port Arthur in Tasmania and Norfolk Island off the New South Wales coast, and recreational icons such as the Sydney Harbour Bridge. In addition, marine-focused festivals are becoming popular and events such as the Tuna Fishing Festival at Port Lincoln, South Australia, and the Australian Wooden Boast Festival in Hobart, Tasmania, bring together communities and visitors to celebrate the sea.

Australia has a rich maritime history which can be traced back 60,000 years or more to the arrival of indigenous people<sup>29</sup> (followed by the Macassans from Sulawesi who came to fish northern waters for trepang<sup>30</sup> and then the Europeans, who arrived in the 17<sup>th</sup> century). These historical events have contributed a wealth of heritage tourism opportunities including diving on shipwrecks and other submerged marine remains, and the collection of artifacts. Australian shipwrecks and maritime museums have great aesthetic and romantic appeal to divers and tourists celebrating marine culture and provide a range of tourist attractions. In addition, of the 25 per cent of Australia’s 6,000 documented shipwreck sites, only 2.5 per cent have been interpreted through shipwreck trails.<sup>31</sup> These trails are popular with tourists as they foster liaison between shipwreck authorities seeking to manage and protect these sites with local communities and visitors. For example, along the Great Ocean Road Historic Shipwrecks Trail that extends from Victoria to the South Australian border, and the

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27. Austl., Great Barrier Reef Marine Park Authority, *Our Sea, Our Future: Major Findings of the State of the Marine Environment Report for Australia* (Townsville: Department of the Environment, Sports and Territories, Great Barrier Reef Marine Park Authority, 1995).

28. Michael Pearson & Sharon Sullivan, *Looking After Heritage Places: The Basics of Heritage Planning for Managers, Landowners and Administrators* (Melbourne: Melbourne University Press, 1995).

29. Austl., *Historic Shipwrecks: Our Maritime Heritage* (Canberra: Environment Australia, Canberra, 2001), online: Environment Australia <[http://www.ea.gov.au/heritage/awh\\_shipwrecks/index.html](http://www.ea.gov.au/heritage/awh_shipwrecks/index.html) Accessed 23 October 2001 > (date accessed: 10 May 2002).

30. Australian Institute of Maritime Archaeology, *Guidelines for the Management of Australia’s Shipwrecks* (Canberra: Australian Institute of Maritime Archaeology and the Australian Cultural Development Office, 1994).

31. S. Strachan, “Interpreting Maritime Heritage: Australian Historic Shipwreck Trails” (1995) 11(4) *Historic Environment* 26-35.

Southern Ocean Shipwreck Trail that extends into South Australia, visitors can learn about the maritime history of the region from interpretive signs along on the route.

Tourist trails also brand tourism awareness where "strong brand leadership is providing national and regional destinations with a focus to drive effective marketing campaigns."<sup>32</sup> Australia has branded its outstanding destinations to set them apart from other areas. The Tasmanian Attractions Study identified that a strong brand, "[i]nnovation, interaction, entertainment and 'real' experiences are what the traveler of today is seeking."<sup>33</sup> Brand Tasmania has since been developed and as part of this initiative, the *By the Sea* tourist route has been established along the east coast of Tasmania which includes adventure tours, charter boat and recreational fishing, penguin viewing, diving, access to marine protected areas, seafood and seascape appreciation.

Compared to Canadian coastal tourism there is a significant difference in the importance of beach and surf sports in Australia. Sun, sea, surf and sand are essential elements of the Australian lifestyle and are prominent components of the image that is sold as a part of the Australian tourism product.<sup>34</sup> Going to the beach is one of the most popular outdoor activities for Australians. Over 18 million or 24 per cent of all domestic visits in Australia include going to the beach. This rises to 52 per cent of domestic visits for holiday trips.<sup>35</sup> Over 2.1 million, or the majority of international visitors, visit a beach at some time during their stay in Australia and they have a strong interest in snorkeling, diving and swimming.

Surfing is popular in all Australian coastal regions and special surfing events can have major economic implications for the surrounding community. For example, at the 1997 Billabong Pro-surfing Event held on Queensland Gold Coast, 32,000 spectators attended the five-day competition with a net economic impact of approximately AUD 2.3 million.<sup>36</sup>

Coastal and marine tourism is a significant proportion of the Australian tourism industry and is expected to increase in both volume

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32. Tourism Tasmania, *Nature: The Leading Edge for Regional Australia* (Tasmania: Tourism Tasmania, Tasmania Parks and Wildlife Service, Tourism Council of Australia (Tasmania) and the Department of Industry, Science and Resources, Hobart, 2000) 5.

33. Tourism Solutions and Inspiring Place, *The Tasmanian Attractions Study*, (Hobart: Report prepared for Tourism Tasmania, Arts Tasmania, Forestry Tasmania, Parks and Wildlife Service and Investment, Trade and Development, 1999) 3.

34. Bruce Weaver, "Ecotourism as Mass Tourism: Contradiction or Reality?" 42(2) *Cornell Hotel & Restaurant Administration Quarterly* 104.

35. South Australian Tourist Commission, *supra* note 23 at 2.

36. T. Kavanagh, "Dollars Roll in as Surf Champs Pull Tourists" *Sunday Mail* (22 June 1997) 44.

and value in the long-term. The impact of coastal and marine tourism on the economy has been found to be significant in terms of income, value adding and employment. However, the coastal and marine environment is a dynamic and sensitive biophysical and ecological system that needs to be carefully managed in order to ensure its value as a tourism resource is maintained.

## 2. *Tourism Resources in Canada*

Canada has three coastlines, the Pacific, Atlantic and Arctic. The Arctic has a very small specialized coastal tourism product that is primarily linked to forms of adventure tourism including wildlife viewing, and cultural tourism related to the Inuit, although even here there has been some recent development in the cruise sector. The Atlantic and Pacific coasts offer similar tourism resources although the Atlantic coast is, with the exception of Newfoundland, more populated and accessible. Prince Edward Island offers the best known beach resource in Canada, although it, like its west coast counterpart, Long Beach, is located in a National Park with only limited resort developments occurring adjacent to the park. Canada's Atlantic coast, with its numerous small coastal communities and longer history of colonial settlement offers numerous cultural and heritage attractions based on its maritime history. On the Pacific coast there are fewer accessible settlements. Coastal heritage tourism associated with the First Nations is emerging as the predominant form of cultural tourism. On both coasts the cruise industry, lodges and resorts, sea kayaking and whale watching companies, marinas, boat rental companies, and diving operators are common elements. Comprehensive data concerning Canadian coastal and marine tourism is lacking, thus, this section draws on information recently collected by the Department of Fisheries and Oceans (DFO), Pacific Region and presents examples from the British Columbia marine experience.<sup>37</sup>

British Columbia has an extensive coastline, 27,725 km in length and composed of a very complex area consisting of many bays, fiords, and inlets with numerous wetlands and estuaries. The Pacific coast offers a vast wealth of natural and cultural resources that provide opportunities for a wide range of marine tourism activities. Numerous coastal communities

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37. One of the authors, Suzanne Dobson, conducted research for DFO on the state of knowledge on coastal and marine tourism on the Canadian Pacific coast. The sections in this article on Canadian Recreational Boating; Canadian Recreational Fishing; Canadian Sea Kayaking; Canadian SCUBA Diving and Canadian Marine Mammal Viewing are derived from this research. Fact Sheets on these activities are available online: Fisheries & Oceans Canada, Pacific Region <[http://www.pac.dfo-mpo.gc.ca/oceans/Policy/tourism\\_e.htm](http://www.pac.dfo-mpo.gc.ca/oceans/Policy/tourism_e.htm)> (date accessed: 15 July 2004).

in British Columbia have been seeking economic development opportunities related to tourism, in large part, due to the decline of traditional employment opportunities in forestry and fishing industries. Despite the lack of a concrete data, one estimate states that in British Columbia "the marine environment contributes up to CAD 4 billion annually to the coast's economy [and that] one in every three dollars spent on tourism in BC goes toward marine or marine and marine-related activities."<sup>38</sup>

Currently the 'British Columbia coastal resource inventory' exists as an on-going multi-year process that is responsible for biophysical inventory along the coast and forms the basis of coastal planning and management. In addition to biophysical inventory, human-use data including tourism activity is also mapped. The tourism data comprises information from various tourism data sets, interviews with tourism experts and existing tourism publications. They include the mapping of sport fishing lodges, sport fishing overnight and day charters, marinas and small craft harbours, cruising, SCUBA diving, kayaking, coastal accommodation, cottage areas, special recreation and tourism activities, whale watching and wilderness tours.<sup>39</sup> While this inventory identifies existing coastal tourism sites along the coast, it does not identify the values associated with tourism environments.

Efforts to achieve this were identified in studies relating to the development of marine parks.<sup>40</sup> The overview of recreation values was divided into two distinct approaches. The first approach to identifying what matters most for marine recreation (broadly defined) was to consider, the difficult-to-measure subjective values that have made British Columbia's marine environment so appealing to visitors. The intent of this list was to stimulate consideration and discussion.

- Life: place of our ancestral beginnings...sense of continuing creation, vitality, sea as the "pulse of the cosmos", rhythm ...
- Time, or timelessness: sense of the ancient, eternal ...
- Space and distance: endlessness, openness, infinity, scope, wilderness,

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38. Government of Canada and Government of British Columbia, *Marine Protected Areas: A Strategy for Canada's Pacific Coast* (Ottawa: Canada Queen's Printer, 1998).

39. Culture, Recreation and Tourism Task Force of the Resources Inventory Committee, *Analysis and Conclusions Regarding Culture, Recreation and Tourism Resource Inventories in British Columbia*, RIC Report 006 Discussion Document (May 1992), online: <[srmwww.gov.bc.ca/dss/coastal/mris/resource.htm](http://srmwww.gov.bc.ca/dss/coastal/mris/resource.htm)> (date accessed: 4 May 2002)

40. N.G. Dale "An Overview and Strategic Assessment of Key Conservation, Recreation and Cultural Heritage Values in British Columbia's Marine Environment" (Prepared by ESSA Technologies Ltd, Vancouver, for British Columbia Decision Support Services, Victoria: 1997) 104.

- frontier, the sense of great distances traveled ...
- Imperviousness to man and man's (sic) actions: impersonality, anonymity, erases and covers man's (sic) intrusions, untamed ...
- Energy, conflict, and contrast: battle and/or contrast between land and water ...
- Mystery and spirituality enchanted, holy, magical.<sup>41</sup>

The second approach uses more tangible data and categories for mapping coastal tourism sectors. "Valued marine environments and features" (VMEFs) were developed on the basis of six principal marine-dependent recreational activities: coastal cruising (power and sail), recreational fishing, sea kayaking, SCUBA diving, marine nature observation (whale watching), and shore-based but marine-dependent recreation. It was recognized that many of the VMEFs identified for conservation purposes were important to one or more of these activities. Additionally, examining the specific marine attributes significant to each marine-dependent activity derived a set of 12 more specific recreation VMEFs including:

- shoreline configuration (i.e. islet clusters, bays, narrow channels);
- shoreline type;
- sea conditions;
- aquatic visibility and transparency;
- water temperature;
- marine life (harvestable);
- marine life (for observation);
- natural coastal features (waterfalls, tidal rapids, hot springs, superior beaches, readily accessible coastal trails);
- native heritage areas, presence of archaeological or historical resources;
- coastal scenery;
- subsea surface topography; and
- anchorages (protection from waves, wind, adequate depth, suitable substrate).

### 3. *The Cruise Ship Industry*

The international cruise ship industry is considered one of the fastest growing sectors in the international tourism industry. The industry is distinctive from other marine tourism activities because of its corporate nature that consequently leads to a high level of visibility and accountability.

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41 *Ibid*

a. *The Canadian Cruise Ship Industry*

A recent overview of the scale and scope of the industry on the Pacific coast of Canada forms the basis of much of the Canadian information presented here.<sup>42</sup> Port Vancouver exists as the largest Canadian cruise ship destination receiving 76 per cent of cruise passengers arrivals into Canada and 90 per cent into British Columbia. The volume of cruise passengers in Vancouver has increased over the last few decades and amounted to a total of 1,053,989 revenue passengers in 2000.<sup>43</sup> The major cruise industry operators are Carnival Holland America Lines, Princess Cruise Lines, Royal Caribbean International Celebrity Cruise lines and Norwegian Cruise Lines.

Small cruise ships, usually called 'pocket cruises' (vessels typically carrying between 50 and 120 passengers), are also navigating the Canadian Pacific coast. Most 'pocket cruises' are home-ported in Alaska and frequent the ports in Victoria and Prince Rupert. Many other small communities, including Campbell River and Port Hardy, are also looking to attract the smaller and subsequently the larger cruise ships to their areas. In Greater Vancouver in 2000, Tourism Vancouver estimated that visitors spent close to CAD 3.5 billion dollars in the region. It was also estimated by Tourism Vancouver that the Alaskan cruise passengers who arrived in Vancouver during the 2000 cruise season spent approximately CAD 124 million, generating a net economic impact of CAD 420 million.<sup>44</sup> Cruise ship passengers therefore represented approximately 2.5 per cent of the tourists entering Vancouver in 2000 and spent 3.5 per cent of the total dollars spent by tourists.

The environmental issues surrounding the cruise industry attract the most attention, create the majority of the controversy, and involve a wide variety of legislation from the international to the provincial level. These issues are elaborated upon later in this paper.

b. *The Australian Cruise Industry*

Australia is included in the greater South Pacific region and fast becoming a cruising destination in its own right. The benefits flowing from this expanding cruise industry are not confined to the cruise as passengers use the safety and comfort of the ship to investigate future land-based travel.

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42. Sue Dobson, Alison Gill & Sam Baird, *A Primer on the Canadian Cruise Ship Industry*, Report to Fisheries and Oceans Canada (2002) online: Simon Fraser University <[http://www.sfu.ca/coastalstudies/cruise\\_ship.pdf](http://www.sfu.ca/coastalstudies/cruise_ship.pdf)>.

43. Cruise Ship Passengers YTD, June 2001, online: Port Vancouver <<http://www.portvancouver.com/frames/index.htm>> (date accessed 2 February 2002).

44. The Greater Vancouver Convention and Visitors Bureau 2000, online: Tourism Vancouver <[http://www.tourismvancouver.com/docs/help/research/research\\_economic\\_impact.html](http://www.tourismvancouver.com/docs/help/research/research_economic_impact.html)>



Cruise Lines International Association estimates that if 70 per cent of cruise passengers use the cruise to investigate land-based vacations, 68 per cent subsequently return to the destination.<sup>45</sup>

Larger cruise ships have been defined as vessels “undertaking scheduled, deep-water cruises of two days or more with a passenger capacity of 100 or more” or are greater than 70 m in length or both.<sup>46</sup> However, there is not one single cruise industry or product and the industry is divided into a number of distinct sectors. Whilst being important to the tourism industry, smaller vessels are not included in the cruise ship definition because their needs are different, particularly in relation to infrastructure. Cruise ship sectors include:

- world cruises;
- sector cruises (or fly cruises) where sea/air packages are sold as part of a longer cruise;
- home based cruising where a cruise ship is based at one or more ports in region;
- adventure cruise and expedition cruise ships that are generally small ships that visit remote destinations;
- boutique cruise ships that are small but very luxurious;
- mid-size cruise ships that are considered to be in the 50,000 tonne range;
- mega cruise ships that are 70,000 tonne and larger;
- mini-cruise ships that are Australian vessels that provide a ‘close-up’ view of the Great Barrier Reef; and
- super yachts associated with major yachting attractions like the America’s Cup and the Sydney to Hobart Yacht Race.<sup>47</sup>

Cruise ships can arrive in Australia from either Western Australia or via Singapore and Indonesia into Darwin or far north Queensland ports. Alternatively, they can access Australia from the east via the South Pacific and New Zealand and many travel south to Sydney, Melbourne and Tasmania to conduct sector cruises.

Queensland has many islands, small ports and settlements that are suitable for cruise ships and these factors, including the State’s tropical climate, makes it an attractive cruise ship destination between March and December. Sydney is the only cruise port in New South Wales and the

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45. *Ibid.* at 6.

46. *Ibid.* at 8

47. *Ibid.* at 48-51.

State has no cruising grounds. The Northern Territory has one cruise port plus anchorages at Port Essington that are suitable for small adventure/ expedition cruise ships. In Western Australia, Fremantle, Broome and Albany are attractive cruise ship destinations. Due to strong seas and temperate weather, Victoria, Tasmania, and South Australia have a short cruise ship season between November and March and Sydney is usually included in their itineraries.

There are no reliable Australian statistics on passenger numbers as these figures have only been collected since 2000, however, international cruise ship numbers visiting Australian ports and anchorages have been collected (Table 2).

**Table 2: Cruise ship visits to Australian ports and anchorages (1990-2001)**

Year	1990	1991	1992	1993	1994	1995 -1997	1998	1999	2000	2001 bookings	AAGR.
Total visits	123	134	387	535	602	N/A	561	663	623	537	26.7%
Number of designations	6	10	15	13	15	N/A	22	35	35	21	29.9%
Number of ships	19	22	27	21	36	N/A	29	34	37	26	27%

AAGR = Average annual growth rate calculated on 2000 figures

Larger cruise ships traveling for two days or more with a passenger capacity of 100 or more and are greater than 70 m in length or both

Source: National Cruise Shipping Strategy and Cruising Down Under, in Tourism Queensland and the Department of State Development, Queensland 2001

Queensland is the only Australian State to have both domestic and international cruise operations. In 2000, Queensland received 74 per cent of total cruise visits to Australia and the total number of cruise ship visitors (including passengers and crew) was in excess of 127,919. The visitors spent over AUD 15 million on hotels and shore excursions.<sup>48</sup> Cruise ship

48. *Ibid.*

visits to Queensland ports and anchorages are detailed below in Table 3.

**Table 3: Cruise ship visits to Queensland ports and anchorages (1990-2001)**

Year	1990	1991	1992	1993	1994	1995-97	1998	1999	2000	2001	AAGR bookings
Total visits	22	23	119	384	463	N/A	429	462	447	414	189%
Number of designations	4	4	9	7	9	N/A	9	14	17	10	32.6%
Number of ships	18	17	31	72		N/A	77	69	72	77	44.6%

AAGR = Average annual growth rate calculated on 2001 figures.

Larger cruise ships traveling for two days or more with a passenger capacity of 100 or more and/or are greater than 70 m in length

Source: Tourism Queensland and the Department of State Development Queensland 2001

The number of cruise visits to Queensland has leveled off for a range of reasons including restrictions in obtaining permits for the Great Barrier Reef destinations and for Queensland's national parks, the success of New Zealand's relaxed policies to encourage cruise ships, the non-availability of dedicated cruise berths in Brisbane, Mackay and Townsville, and the perception by operators and passengers that cyclones disrupt cruise schedules.<sup>49</sup>

#### 4. *Recreational Boating*

Recreational boating encompasses a wide variety of activities. The general activities for the independent user might include cruising, physical exercise, wildlife viewing, sightseeing, and recreational fishing. The commercial marine-based products offered within the marine tourism industry predominately consist of charters (sail or power) that are either crewed or bare-boat (without crew). The main activities offered are sport fishing, cruising, wildlife viewing (whale watching), as well as dinner and harbour tours.

##### a. *Canadian Recreational Boating*<sup>50</sup>

The recreational boating sector includes power boating, sail boating, and human powered boating (kayaks, canoes, rowboats) and as such constitutes the largest group of ocean users on the Canadian Pacific coast. Of the

49. *Ibid*

50. Refer to n. 37.

estimated total of 3.5 million recreational boats in Canada in 2000, about 19 per cent were on the British Columbia coast. Of these, 325,000 were licensed recreational vessels.<sup>51</sup> A large recreational boating industry supports these activities including boat builders and manufacturers and suppliers of marine and mooring equipment, marine and safety clothing, maintenance products, cleaning and marina equipment.<sup>52</sup> In addition, there were approximately 45 BC sailing CYA tidal water clubs in British Columbia with 60,000 members. There are 166 marinas and 86 government docks, 22 pump-out stations and 182 boat rental agencies.<sup>53</sup> These numbers have remained relatively constant, with the doubling of the pump-out stations since 1999 being the notable exception. In 1997, the recreational boating sector generated CAD 2.5 billion, employed 5,500 people and supported 650 Canadian-based repair and manufacturing businesses. The British Columbia coast attracts boaters from outside the province, in particular United States visitors. In 2001 approximately 50,000 visitors arrived by private boat from the United States and of these about 85 per cent spent more than one day on the British Columbia coast.

Although pollution associated with recreational boating in the Canadian Pacific is minor compared with other coastal users, it is often concentrated near sensitive foreshore areas and confined bays. Sewage and pollution from boats does contribute to the overall cumulative impact of coastal activity and is higher than many other coastal areas in Canada as the temperate climate on the Pacific coast permits year round boating. Boater-days in British Columbia are estimated to be around 5 times higher than other Canadian coastal areas. In British Columbia, The Georgia Strait Alliance has developed the Green Boating Guide<sup>54</sup> to address major environmental impacts associated with boating.

The Canadian Coast Guard Office of Boating Safety (under the responsibility of the DFO) regulates recreational boating with respect to pleasure craft, search and rescue, receivers of wrecks, and pollution preparedness and response as well as Non-Pleasure Craft regulations. In addition to regulations, informal boating procedures and voluntary codes of conduct contribute to appropriate boater behavior.

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51. Fisheries and Oceans Canada, *Fact Sheet on Recreational Boating in Pacific Canada* (Vancouver, B.C.: Oceans Directorate, 2003), online: Department of Fisheries and Oceans-Pacific Region <[http://www.pac.dfo-mpo.gc.ca/oceans/policy/tourism\\_e.htm](http://www.pac.dfo-mpo.gc.ca/oceans/policy/tourism_e.htm)> (date accessed: 1 July 2005)

52. Industry Canada Recreational Boats, online: Industry Canada <<http://strategis.ic.gc.ca/SSG/rb03498e.html>> (date accessed: 16 July 2001).

53. "Marina Guide" (July 2001) *Pacific Yachting Magazine*.

54. The Georgia Strait Alliance Clean Boating Program, online: The Georgia Strait <<http://www.georgiastrait.org/cleanboatingprogram.html>> (date accessed: 10 April 2002).

*b. Australian Recreational Boating*

Recreational boating in Australia is widespread with activities including charter boat and recreational fishing, sailing and yacht racing, recreational boating using dinghies, power boats, yachts, catamarans, sea kayaking and jet-skis. Australian tourism data attributing absolute numbers to this sector is at best scant, and generally not collected. However, the Australian Yachting Federation (AYF) has member yachting associations in every state and Territory and it estimates there to be over 360 sailing clubs throughout the country.<sup>55</sup> Australia also hosts a number of internationally recognized yacht races including the Sydney to Hobart and Melbourne to Hobart.

Charter boat fishing, widespread and undergoing rapid growth, is distinguished from commercial and recreational fishing by combining elements from the two sectors.<sup>56</sup> There were estimated to be around 1,290 marine charter fishing boats operating in 1998 (Table 4).<sup>57</sup>

**Table 4. Estimated numbers of marine charter fishing boats in Australia (1998)**

State/Territory	Estimated number of boats
New South Wales	249
Victoria	150
Queensland	262
South Australia	35
Western Australia	135-350
Tasmania	15
Northern Territory	230 (121 active)

Source: Gartside 2001

This industry tends to be seasonal and it provides access to estuarine, coastal and marine waters for fishing inshore and coastal reef species, offshore game fishing, diving and ecotourism charters including whale watching and recreation. It tends to be concentrated in metropolitan areas, major ports and in popular tourist areas such as around Sydney, Port Stephens,

55. Australian Yachting Federation, 2001

56. Charter boat operators as those who are paid for taking other people fishing, regardless of whether a catch is landed or sold, see Donald Gartside, *Fishing Tourism: Charter Boat Fishing Wildlife Tourism Research Report Series No 12, Status Assessment of Wildlife Tourism in Australia Series (Gold Coast: CRC Sustainable Tourism, 2001)*.

57. There are little data on the Australian marine charter boat fishing sector. The National Oceans Office (2002) estimates there were 80 registered boats in Victoria and 28 in Tasmania in 2001-02.

Bermagui, Tweed Heads and Merimbula in New South Wales, and around Brisbane, Cairns and the Gold and Sunshine Coasts in Queensland.<sup>58</sup> In Western Australia, the majority of charter boat operations occur around Perth, Denham to Port Headland and Eighty Mile Beach to the Western Australian Northern Territory border.

However, in some cases conflict can occur between recreational boaters and other marine tourism sectors. For example, personal watercrafts have been identified as a potential threat to tourism, damaging the perception of a tranquil environment by those not participating in their use.<sup>59</sup> In addition, given that inshore and coastal reef fishing is an important component of the charter boat industry and demersal reef fish species are considered vulnerable to over fishing, this sector increases harvesting pressures in popular fishing areas. A number of additional tourism issues have been identified for the marine charter boat sector including:

- the sector operating under a myriad of government regulations at both the national and state government levels;
- the reduction in quality tourism experiences due to overuse in some areas and crowding on charters;
- the values of wilderness and remote locations being compromised by increased visitation;
- varying standards and level of customer service between operators; and
- local depletion of catch particularly target species.<sup>60</sup>

### 5. *Recreational Fishing*

Recreational fishing is defined as "the taking of fish and other living marine resources for non-commercial purposes."<sup>61</sup> Recreational fishing generally occurs in estuaries, on ocean beaches or in demersal and pelagic offshore waters and may encompass any or all of the following activities:

- fishing for finfish with hook and line (including the retention of the fish, or catch and release);

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58. Gartside, *supra* note 56 at 6, 7.

59. Orams, *supra* note 5 at 56-70.

60. Given that inshore and coastal reef fishing is an important component of this industry and demersal reef fish species are considered vulnerable to over fishing, the charter boat fishery increases harvesting pressures in popular fishing areas. Gartside, *supra* note 56 at 9-17.

61. National Oceans Office, *supra* note 22 at 114

- fishing for cephalopods (squid, calamari) with hook and line;
- fishing for finfish using nets or traps;
- fishing for crustaceans with nets, traps or hook and line;
- spearfishing, both diving and wading; and
- gathering invertebrates for food or bait.<sup>62</sup>

a. *Canadian Recreational Fishing*<sup>63</sup>

Due both to its quality fishing and superb scenery, the Pacific coast of Canada is recognised as a world-class fishing destination. The sport fishing industry has contributed to the economy of many coast communities for decades and is one of the largest and highest revenue generators of all marine tourism sectors in Pacific Canada. In 2000, approximately 243,000 participated in recreational fishing activities in British Columbia tidal waters, contributing to an estimated total of 1.1 million use days.<sup>64</sup> Male anglers outnumber female anglers by a ratio of 4:1.

The British Columbia tidal recreational fishery includes harvesting of a wide array of fish and shellfish species although the traditional focus has been on the salmonid population, particularly coho, chinook and steelhead. There is increasing interest in fishing for sockeye, pink and chum salmon as well as groundfish and shellfish. The fastest growing segment of the sport fishing industry shoreline is fly-fishing for halibut.

The economic benefits of recreational fishing for Canada are significant. For example, in 2000, recreational fishers spent CAD 6.7 billion on trip-related expenditures with the per capita average spending amounting to approximately CAD 1,200 per year.<sup>65</sup> On the British Columbia coast, recreational fishing currently provides thousands of jobs for coastal communities and contributes nearly CAD 700 million annually to local and regional economies. In 2000, the estimated average expenditure per angler was CAD 2,600.<sup>66</sup> This resulted in total expenditures wholly attributable to recreational fishing in British Columbia tidal waters of approximately CAD 487 million. Other major purchases and investments associated with recreational fishing account for an additional CAD 228 million of revenue.

The federal *Fisheries Act* regulates marine recreational fishing. The

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62. Pepperell Research & Consulting Pty Ltd, *Recreational Fishing* (Commonwealth Fisheries Policy Review, Noosa: Pepperell Research & Consulting Pty Ltd., 2001).

63. Refer to note 37.

64. Fisheries and Oceans Canada (2002) *Statistics on Recreational Fishing*, online: Fisheries and Oceans Canada, <<http://www.dfo-mpo.gc.ca/communic/statistics/RECFISH/new/2002.htm>>.

65. Fisheries and Oceans Canada, News Release, "Fewer Canadians Gone Fishing" (21 June 2002).

66. Fisheries and Oceans Canada, *supra* note 64.

DFO is responsible for the day-to-day management of tidal recreational fisheries and the protection of fish habitat. Catch and release programs are an integral part of the management of the fisheries and it is reported that, in 2000, recreational fishers released two thirds of their catches.

#### b. *Australian Recreational Fishing*

Fishing is one of the most popular recreational activities for Australians. Over five million people, or between 25-30 per cent of resident Australians aged 14 years and over go fishing at least once per year.<sup>67</sup> Although it is also an important component of the international tourism industry, it is considered as a niche activity because only 4 per cent of this group participates in fishing activities.<sup>68</sup> Overall, there are an estimated 50 million person fishing days per year with the "bulk of recreational fishing occurring near the coast and in bays and estuaries."<sup>69</sup> However, there are no national estimates of recreational fishing catches and although catches are diverse in species, the bulk take comprises of a few target species. The industry is conservatively estimated to be worth over AUD 3 billion and employs over 80 thousand people.<sup>70</sup> Angling is considered a national recreation and an important element in Australia's way of life.<sup>71</sup> Despite its popularity, recreational fishing is difficult to measure in terms of its economic value and the composition and quantity of the catch or overall harvest.

### 6. *Sea Kayaking*

#### a. *Canadian Sea Kayaking*<sup>72</sup>

Both independent kayakers and those who kayak as part of an organized commercial tour or group engage in sea kayaking. The market for sea

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67. Reefish Australia, *We Fish for the Future: A National Code of Practice for Recreational and Sport Fishing* (Reefish Australia, Canberra: 2001) [Reefish Australia (2001)]; A. McIlgorm & J. Pepperell, *A National Review of the Recreational Fishing Sector* (Austl.: Agriculture, Fisheries and Forestry, 1999); The South Australian Tourism Commission (1999) estimates that over 6.8 million people, or 9 per cent of all domestic visits, include fishing as an activity.

68. South Australian Tourism Commission, *supra* note 23 at 13

69. Austl., Agriculture, Fisheries and Forestry, *Marine Matters: Atlas of Marine Activities and Coastal Communities in Australia's South-East Marine Region* (Canberra, Agriculture, Fisheries and Forestry, Bureau of Rural Science, 2002) 72. The key characteristics of domestic fishing tourists include: holiday purpose trips, intrastate visits, male, younger age group (15-24 years of age), those whose lifestyle includes children, longer trips, active outdoor last holiday South Australian Tourism Commission (1999).

70. Australian Economic Consultants, *supra* note 24 at 2.

71. Pepperell Research & Consulting, *supra* note 62.

72. Refer to n. 37.



kayaking has grown in recent years from an activity that attracted a few outdoor adventure seekers to an activity that now attracts a wider range of users including families and retirees.<sup>73</sup> This is reflected in a rapid increase in the number of kayakers. Between 1991 and 1995 the proportion of British Columbia residents participating in kayaking grew from 3 per cent to 7 per cent. In terms of numbers, it is estimated in 1996, about 30,000 kayakers stayed for at least one night on the British Columbia coast, for a total of 140,000 user days. It is estimated that since 1995 participation in sea kayaking has grown at a rate of 20 per cent per year.<sup>74</sup> The majority of these kayakers are British Columbia residents.<sup>75</sup> By far the most popular area for kayaking is the Gulf Islands with 7,340 kayakers in 1996. Johnstone Strait, Broken Islands, Clayoquot Sound, Nootka Sound and the Broughton Archipelago also each attracted between 1,000 and 3,500 kayakers in that year.

There has been a rapid growth in manufacturing and commercial activities to service the increased demand for kayaking. By 2000 there were about 250 kayak service providers in British Columbia — an increase from only 15 in 1989. While many of these were small operations or adjuncts of other tourism operations, 30 to 40 were large operations offering a wide range of services including rental, instruction, touring, and sales of associated equipment.<sup>76</sup>

A recent study has identified the following kayak-related operations in British Columbia:

- 9 ocean kayak and kayak accessory manufacturers
- about 24 retail outlets
- about 150 guided kayak operations
- about 20 mother ship operations
- about 250 other operations that provide kayaks and associated products.<sup>77</sup>

The opportunity for stimulating the economy and creating jobs in small coastal communities by creating rental operations and other spin-off

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73. British Columbia Assets & Land Corporation, online: B.C. Land Assets <[http://www.bc-land-assets.com/for\\_business/commercial\\_recreation/](http://www.bc-land-assets.com/for_business/commercial_recreation/)> (date accessed: July 2002).

74. *Ibid.*

75. Economic Planning Group, *Overview Analysis of the British Columbia Ocean Kayaking Sector*, (Victoria, B.C.: Ministry of Small Business, Tourism and Culture, 1997).

76. Ministry of Small Business, Tourism and Culture, (2001) *Mid Coast Tourism Opportunity Strategy* Marlyn Chisholm & Associates in association with Geoscape Environmental Planners, Catherine Berris Associates and Sunderman and Associates.

77. Economic Planning Group (1997), *supra* note 75.

businesses has been enhanced due to the fact that about 50 per cent of kayakers rent their equipment.

Although kayakers are generally regarded as environmentally responsible ocean users who have a minimal impact on the natural environment, their increasing numbers, especially in popular kayaking areas, has raised concerns. This is especially an issue when the carrying capacity of developed campsites along the coast is exceeded as the result of increasing numbers of overnight kayakers. Problems of human waste and garbage disposal as well as vegetation damage have been identified especially in the Johnstone Strait area. Human waste from kayaking activities is believed by some to contribute to fecal coliform damage in shellfish beds.<sup>78</sup>

Kayaking is regulated under the *Small Vessel Regulations*<sup>79</sup> of the *Canada Shipping Act*<sup>80</sup> (CSA) administered by Canadian Coast Guard (a sector of the DFO). In the 1990s, in response to the rapid growth of guided kayak tour operations, many guiding associations were established. The kayaking guiding sector has developed a range of industry standards, codes of conduct, and certifications that not only comply with CSA regulations but also require them to obtain licenses or permits to operate in certain parks and forested lands.

#### *b. Australian Sea Kayaking*

In contrast to Canada, statistics on Australian sea kayaking are difficult to obtain. There has been no extensive research undertaken on numbers of participants, user days or revenue generation. Anecdotal evidence suggests that sea kayaking is a fast growing sport in Australia with every State having numerous sea kayaking clubs.

### *7. SCUBA Diving*

#### *a. Canadian SCUBA Diving*<sup>81</sup>

Increasing numbers of SCUBA divers are being attracted to the British Columbia coast resulting in an estimated 20 per cent annual growth since the mid 1980s. A recent study estimates that in British Columbia there are about 70,000 recreational diver use days per year.<sup>82</sup> Divers are attracted by the high quality marine environment with an abundance of sea life and

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78. *Ibid*

79. C.R.C., c. 1987.

80. R.S.C. c. s-9, s.1.

81. Refer to n. 37.

82. G. Ladd, V. Stapan & L. Stevens, *The Acabus Project Provincial Report* (Vancouver, B.C., Underwater Council of British Columbia, June 2002).

good visibility, especially from late fall to early spring. There are two types of divers, private and independent, and those who dive with a commercially guided tour. While diving occurs at many sites along the coast, the Nanaimo and Gabriola Island areas are especially popular. Divers are also attracted to the six artificial reefs sunk by the Artificial Reef Society of British Columbia.

A 1989 study under the Tourism Industry Development Subsidiary Agreement estimated that from 1980 to 1986 direct revenue from guided dive tours offered by commercial operators in British Columbia increased from CAD 0.9 million to CAD 2.3 million and that the number of room nights during that period grew from 7,500 to 48,900.<sup>83</sup> A subsequent study in 1991 by the British Columbia Ministry of Tourism and Small Business estimated revenue in 1989 had risen to \$3.5 million and room nights to 58,680.<sup>84</sup> The total direct and associated tourism activity generated in 2001 by commercial operators in Pacific Canada was estimated to be CAD 8 million and 141 jobs.<sup>85</sup> The expenditure data for independent divers making their own arrangements is not included in any of these studies.

Growth in the popularity of SCUBA diving is reflected in the demand for diving courses, the establishment of dive shops and commercially operated dive charters that range from transportation and equipment providers to guided dive trips, and live-aboard operations.

In British Columbia the following businesses are associated with SCUBA diving:

- 6 dive clothing manufacturers;
- 29 dive shops;
- 10 dive resorts;
- 20 retail outlets selling equipment;
- 80 air fill stations;
- 4 live aboard operations; and
- 23 dive charter operations.<sup>86</sup>

Of the three international certifying agencies, the Professional Associa-

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83. Tourism Industry Development Subsidiary Agreement, *Tourism Potential of Wreck Diving* (Pacific North Consulting, 1989).

84. Canada, ARA Consulting Group, *Marine Tourism in British Columbia: Opportunity Analysis Summary Report* Prepared for Industry, Science and Technology Canada (Victoria, B.C.: British Columbia Ministry of Tourism, B.C. Ministry of Regional and Economic Development, March 1991).

85. Canada, Fisheries and Oceans Canada, *Fact Sheet on Recreational Scuba Diving in Pacific Canada*, (Vancouver, B.C.: Oceans Directorate, 2003), online: Fisheries and Oceans Canada <[http://www.pac.dfo-mpo.gc.ca/oceans/Policy/scubafact\\_e.htm](http://www.pac.dfo-mpo.gc.ca/oceans/Policy/scubafact_e.htm)> (5 July 2005).

86. *Ibid.*

tion of Dive Instructors (PADI) has approximately 75 per cent (115,000) of the British Columbian market. Others are certified by either SCUBA Schools International (SSI) or the National Association of Underwater Instructors (NAUI). Between 1996 and 2000, 19,000 British Columbia residents per year became certified SCUBA divers. In basic training courses alone, this amounts to expenditures totalling about CAD 5 million per year.

SCUBA divers are generally regarded as environmentally responsible ocean users. However, the use of traditional anchors has raised concerns about potential damage to reef structures and reef ecology. Diving vessels are regulated under the *Canada Shipping Act*, already administered by Transport Canada and the Canadian Coast Guard, and must comply with a range of waste disposal, general boating, and dive operation regulations.

#### b. *Australian SCUBA Diving*

There is "no concrete answer to the number of active divers" in the world, however: PADI estimates there are currently between five and seven million active divers.<sup>87</sup> Estimating the total number of SCUBA divers in Australia is difficult, although estimates are that around 100,000 people learn to SCUBA dive each year in Australia.<sup>88</sup> Many other 'resort divers' are taken diving under supervision. However, the National Oceans Office have revised these figures and estimate there to be 300,000 regular divers in Australia with some 50,000 divers being accredited each year.<sup>89</sup> Queensland, New South Wales, Western Australia and Tasmania are popular dive destinations. In Australia, dive tourism is worth over AUD 600 million and the annual expenditure on organized participation in SCUBA diving during 1995-96 for equipment was estimated at AUD 23 million.<sup>90</sup>

#### 8. *Marine Wildlife Tourism*

Wildlife tourism is defined as "tourism based on interactions with wild (non-domesticated) animals, whether in their natural environment or in

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87. In 2000, PADI International recorded 526,904 new diver certifications worldwide and since 1967, the organization has issued over 10,151,841 diver certifications. Two out of every three new divers in the US and over one out of two in the world are PADI certified annually. PADI International, "PADI Diver Statistics," online: PADI <[http://www.padi.com/english/common/padi/statistics\\_2.asp](http://www.padi.com/english/common/padi/statistics_2.asp)> (date accessed: 10 May 2001).

88. Derrin Davis & Clem Tisdell, "Recreational Scuba-Diving and Carrying Capacity in Marine Protected Areas" (1995) 26:1 *Ocean and Coastal Management* 19 at 24

89. National Oceans Office, *supra* note 22 at 136.

90. Australian Economic Consultants, "Economic Input," *supra* note 24

captivity”<sup>91</sup> and is referred to as “non-consumptive wildlife-orientated recreation.”<sup>92</sup> It can involve observing or interacting with non-domesticated animals in captive zoos and aquariums and non-captive settings (e.g., whale, dolphin, porpoise, penguin or bird watching). This type of tourism is often a specialized field within the tourism industry falling under the banner of ecotourism or special interest tourism or both.

Visitors have always been interested in animals and their interest in this sector of the tourism market has resulted in more visitors worldwide seeking interactions with wildlife as a tourist or recreational activity.<sup>93</sup> Marine wildlife tourism forms a major sub-sector of the ecotourism market and it is a non-consumptive means of utilizing the coastal and marine tourism resource. Marine wildlife tourism is a growing sector of the global coastal and marine tourism market.

#### a. *Canadian Marine Wildlife Tourism*<sup>94</sup>

There are several species of whales on the Canadian West coast including humpback, killer, fin, sperm, sei, blue, beaked, northern right, minke, gray, and short-finned pilot whales. Killer whales (orcas) and gray whales are the most commonly sighted. The three main areas for whale watching are: Haro Strait near Victoria, Johnstone and Queen Charlotte Straits on North-eastern Vancouver Island, and the West coast of Vancouver Island near Ucluelet and Tofino.

In a 1998 study of whale watching in British Columbia by the International Fund for Animal Welfare (IFAW) it was estimated that over 215,000 people participated in boat-based whale watching and over 70,000 people in land-based whale watching.<sup>95</sup> There are 164 charter and cruise operators that offer wildlife viewing as part of their product and of these, 120 primarily focus on whale watching. There are about 60 tourism operators who depend solely on whale watching. The highest density of whale watching operations is in Victoria where there are about 45 operators with a fleet of about 80 vessels. The nearby Haro Strait is very accessible for tourists

91. Karen Higginbottom, “Introduction” in Karen Higginbottom & Mark Hardy, eds., *Wildlife Tourism Discussion Document* (Gold Coast, Qld.: CRC for Sustainable Tourism, 1999) at 6.

92. David A. Duffus & Philip Dearden, “Non-Consumptive Wildlife-Orientated Recreation: A Conceptual Framework” (1990) 53:3 *Biological Conservation* 213-231.

93. Sue Mulon, “Wildlife Tourism: The Psychological Benefits of Whale Watching” (1998) 2 *Pacific Tourism Review* 199.

94. Refer to n. 37.

95. Erich Hoyt, *Whale Watching 2000 World Tourism Numbers, Expenditures, and Expanding Socioeconomic Benefits* (Crowborough: International Fund for Animal Welfare, 2000) 1-157.

and the 'southern resident' orca whale community that consists of three pods (a total of 77 whales) is a most popular attraction between May and September when the whales feed on migrating salmon.

Northern and western Vancouver Island are also popular destinations for whale watching and it is estimated that 80 per cent of visitors to the region go there primarily for whale watching, with a further 15 per cent for whom whale watching is part of the reason for the visit.<sup>96</sup> The 'northern resident' orca whale community consisting of sixteen pods (216 whales) inhabits the maze of islands and waterways in Johnstone and Queen Charlotte Straits. Prime viewing time in this area is in July when these whales gather to feed on salmon returning to spawn in the freshwater streams of the area.

Transient orcas (at least 219) can be viewed year round and are commonly found all along the British Columbia coast. The most popular time for whale watching on the West coast of Vancouver Island (Tofino and Ucluelet) is from early March to late April during the northward migration of as many as 21,000 grey whales.

In Canada, there has been an increase in the number of whale watchers over the last decade. In 1991 it was estimated that for the whole of Canada there were 185,200 whale watchers on commercial tours who spent CAD 9 million. By 1994, this number increased to 462,000 visitors who spent CAD 22.3 million, and, by 1998, over one million people took whale watching excursions in Canada, generating direct revenues of about CAD 50 million.<sup>97</sup>

Whale watching has been a catalyst for economic development in at least eleven coastal communities in British Columbia stimulating the creation of new jobs and businesses. For example, communities like Tofino, a former fishing community on the West coast of Vancouver Island, and Telegraph Cove, a former sawmill town on the East coast of Vancouver Island, have been transformed by the economic benefits of whale watching.

The Department of Fisheries and Oceans has responsibility for preventing harm to marine mammals through the *Murine Mammal Regulations*<sup>98</sup> of the *Fisheries Act*.<sup>99</sup> They are tasked with ensuring that socio-economic, scientific, and educational benefits of whale watching are

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96. *Ibid.*

97. *Ibid.*

98. S.O.R./93-56.

99. R.S.C. 1985, c. F-14

sustainable and conducted without disturbing the life processes of the animals. Vessels that approach too fast or too close, pursue an animal, or obstruct its path, are all considered to be disturbances. Too many boats, excessive engine noise and exhaust fumes are also considered disruptive to marine mammals. Voluntary codes of conduct amongst operators also strive to minimize disturbance.

Orcas (and humpback whales) are now listed as threatened species by the Committee on the Status of Endangered Wildlife in Canada. There has been a decline in numbers since the mid-1990s when resident orcas reached a peak (around 300). This decline is especially evident in the southern community of resident orcas, which decreased from 98 whales in 1995 to 83 whales in 1999 and to 77 in 2001.

b. *Australian Marine Wildlife Tourism*

Since 1990, there has been a dramatic growth in the whale, dolphin and porpoise watching industry in Australia. In particular Muloin points out that “[w]ith the focus worldwide being directed to environmental concerns and the growth in ecotourism activities, it would seem that the whale has become a symbol of the environmental struggle.”<sup>100</sup> There are many examples of marine wildlife interactions including single species attractions (e.g., whale sharks [*Rhincodon typus*] in Western Australia between March and June, sea lions [*Neophoca cinerea*] in Victoria or marine turtles in the Northern Territory), guided reef and beach walks and tours, aircraft overflights, and snorkeling and SCUBA diving focusing on marine life.<sup>101</sup> Some of the popular locations for wildlife tourism are those where visitors are able to interact with animals that generally centre on breeding sites such as the Mon Repos turtle-breeding beaches on the central Queensland coast, the fairy penguin (*Eudyptula minor*) parade on Phillip Island in southern Victoria, or dolphins at Monkey Mia in Western Australia, along migratory routes like those used for whale watching in southern Queensland, New South Wales and South Australia, or as feeding sites such as those provided by continental-shelf-induced upwelling or coastal beaches.<sup>102</sup> All coastal states and the Northern Territory in Australia support a varied wildlife tourism industry as illustrated below (Table 5).

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100. Muloin, *supra* note 93 at 199.

101. Birtles *et al.*, *supra* note 24 at 40-42.

102. Orams, *supra* note 5 at 31.

**Table 5. Summary of species targeted in the non-consumptive Australian marine wildlife tourism industry.**

State	Region
New South Wales	humpback whales, southern right whales, bottlenose dolphins, Australian fur seals, fairy penguins, tiger sharks, blue sharks, oceanic white tips, Port Jackson sharks, angel sharks, grey nurse sharks, mako sharks
Victoria	southern right whales, bottlenose dolphins, Australian fur seals, fairy penguins, weedy sea dragons, leafy sea dragons
Queensland	humpback whales, bottlenose dolphins, spinner dolphins, dugong, white-tip reef sharks, black-tip reef sharks, grey reef sharks, zebra sharks, silver-tip sharks, scalloped hammerhead sharks, tawny sharks, tiger sharks, potato cod, loggerhead turtles, green turtles, leatherback turtles, Australian endemic flatback turtles
South Australia	southern right whales, bottlenose dolphins, common dolphins, New Zealand fur seals, Australian sea lions, fairy penguins, great white sharks, weedy sea dragons, leafy sea dragons, cephalopods
Western Australia	southern right whales, humpback whales, bottlenose dolphins, dugong, Australian sea lions, fairy penguins, whale sharks, potato cod, loggerhead turtles, green turtles
Tasmania	southern right whales, humpback whales, bottlenose dolphins, New Zealand fur seals, Australian sea lions, fairy penguins, weedy sea dragons, leafy sea dragons, spotted hand fish
Northern Territory	loggerhead turtles, green turtles, leatherback turtles, Australian endemic flatback turtles

Adapted from Birdes et al. 2001

## II. Power and Politics in the Management of Tourism Resource Conflicts

### 1. British Columbia, Canada

Under the *Constitution Act, 1867* (U.K.)<sup>103</sup> the responsibility for land and resource decisions lies with provincial governments. Exceptions include such federal properties as National Parks. The federal government's role in tourism is related to the national balance of payments and hence, it is involved in marketing activities. While marketing involves some interest in product development, the Federal Government's role in coastal tourism development has been limited. The federal agency responsible for tourism is the Canadian Tourism Commission, a public-private sector partnership that provides information, conducts research and facilitates

103. 30-31 Vict., C. 3 (U.K.) reprinted in R.S.C. 1985, App. II, No. 5.



partnerships and tourism development. At the provincial level, the importance of tourism within the provincial governments varies from province to province, although in most provinces it represents a minor portfolio.

In British Columbia, notwithstanding that tourism is considered to be the second most important sector of the economy, the presence of government in tourism has been limited. Often the tourism portfolio shares government ministries with other interests (e.g., Ministry of Small Business, Tourism and Culture). Within the present (2002) Liberal government, there is no longer a Ministry of Tourism although Tourism British Columbia represents the marketing arm of the government. As a result, tourism issues are currently buried in the Ministry of Sustainable Resource Management (Coastal Tourism Resource Inventory, land and resource planning), the Ministry of Land, Air and Water (B.C. Parks, commercial backcountry recreation policy) and the Ministry of Competition, Science and Enterprise (tourism business).

In coastal areas, the tourism sector has, until recently, rarely been consulted regarding resource decisions, except perhaps with respect to sport fishing. There is little legislation that specifically relates to tourism while the allocation of coastal resources has generally ignored tourism needs. As a result, and in the face of growing tourism demand, potential conflicts have emerged. In discussions of economic development along the coast relating to aquaculture or offshore oil and gas development tourism is rarely mentioned. In both instances concerns are largely aesthetic and relate to a deterioration of the quality of the environment in terms of noise, odor, environmental impacts and license or permit non-compliance.<sup>104</sup>

Aquaculture development affects not only the experience of transient tourists and recreationists but also those who have invested in coastal real estate as their primary or secondary residences. Aquaculture has the potential to affect revenues from property taxes as the proximity of a fish farm may decrease property values. Similarly, and perhaps of greater concern to the tourism industry, is the effect of aquaculture development in proximity to high-end coastal lodges that are marketed for their pristine, wilderness settings. Other conflicts exist between sport fishing and commercial fishing. While economic data are available to structure this debate,<sup>105</sup> the reliability of the information has been questioned. In the

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104. British Columbia, Environmental Assessment Office, *Salmon Aquaculture Review: Public Comments*, online: Environmental Assessment Office <[http://eas.gov.bc.ca/epic/output/html/depoly/epic\\_project\\_doc\\_list\\_20\\_r\\_pub.html](http://eas.gov.bc.ca/epic/output/html/depoly/epic_project_doc_list_20_r_pub.html)> (date accessed, 1 July 2005).

105. Fisheries and Oceans Canada, *supra* note 64.

absence of any economic impact studies on the value of these somewhat intangible concerns, they are frequently ignored especially in the face of economic crisis in coastal communities in British Columbia. Unemployment rates are high and residents seek employment and economic opportunities.

Political decisions may ultimately disadvantage the coastal tourism sector in the absence of reliable information about the scale and scope of the industry, arguments in support of coastal tourism sectors are weak. Furthermore, the fragmented nature of the tourism industry causes the industry to speak with more than one voice. For example, commercial recreation operations and individual recreationists may have opposing views, as may motorized and non-motorized boaters, and wilderness advocates versus resort developers.

In British Columbia, recent land and resource management planning (LRMP) processes, that adopt a sub-regional planning approach, are emerging as a forum to formalize voices from the tourism sector. The first undertaking of the LRMP process on the Canadian Pacific coast was the Central coast LRMP, which involved collaboration between the Federal and provincial governments to develop a strategic plan for coastal near shore areas. The process entailed a consideration of all resource values, the public participation process, interagency coordination and consensus-based decision-making.<sup>106</sup> Multi-stakeholder working groups or "planning forums" engaged in producing detailed planning recommendations that were coordinated through an interagency technical committee that produced the plan. Various tourism and recreation interests were represented including representatives of commercial marine and terrestrial tourism, guide outfitters, provincial outdoor recreation agencies, recreational hunters and fishers, wildlife groups, as well as First Nations communities and environmental groups.

On the Central coast, the key to tourism growth was seen as protection of the resources upon which the industry depends. Scenery with mountain vistas, coastline, and wildlife are the primary attractions pursued by visitors to Pacific Canada. Recreation and tourism interests along the coast have sought to secure anchorages, on-shore recreation opportunities near anchorages, high quality visual experiences and saltwater fishing opportu-

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106. Ministry of Sustainable Resource Management, *Central Coast Land and Resource Management Plan* (2002), online: LRMP <<http://srmrpdwww.env.gov.bc.ca/lrmp/cencoast/bkgrnd111501.html>> (date accessed: 28 April 2002).

nities. In addition, important cultural heritage and archaeological sites as well as various conservation areas exist along the Central coast contributing to the range of tourism resources.<sup>107</sup>

The natural, unspoiled, scenic environment of the Pacific coast forms the basis of the attraction for most tourists and recreational users. It thus becomes imperative to manage and plan coastal zones so as to avoid or minimize any environmental degradation if tourist revenue is to be sustained or increased. Marine tourism activities are critically dependent on terrestrial services and facilities such as marinas, launch ramps, gas stations, rental outlets, accommodation, food and beverages. Therefore, it is difficult to separate the water from the land not only in terms of socio-economic and environmental implications but also in terms of management and planning. The main challenges identified above relate to the protection of marine areas, environmental concerns and user conflicts. Resolving these issues necessitates the involvement of the tourism sector in coastal management decision-making.

## 2. *Australia*

Tourism is not explicitly mentioned in the *Commonwealth of Australia Constitution Act* (Cth.). As a result, the states have the greatest responsibility for domestic tourism. However, there is no overarching legislation for the tourism industry in Australia at either the national or state level and the legal responsibility for tourism has developed under areas that infringe on the tourism industry. For example, specific state legislation and the national *Environment Protection and Biodiversity Act 1999* (Cth.), *Australian Heritage Commission Act 1975* (Cth.),<sup>108</sup> and its amendment Acts, and the *Historic Shipwrecks Act 1976* (Cth.) provide measures to protect the environment and heritage sites. Other legislative and regulatory powers include national controls that range from policies on passports and visas to industrial relations policy. In addition, quarantine, aviation, customs and excise, and taxation policy at both the national and state level can also significantly influence tourism growth. Lack of powers to deal with tourism under the Constitution has increased the potential for

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107. British Columbia, Ministry of Sustainable Resource Management, *Central Coast Land and Resource Management Plan: The Central Coast Protected Area (PASA) Report* (Victoria, B.C.: Land Use Coordination Office, May 1997) at 19.

108. As rep. by *Australian Heritage Council (Consequential and Transnational Provisions) Act 2002*, (Cth.).

duplication of responsibilities and possible disagreement between the Australian and state governments.

The division of responsibilities for tourism between the Australian and state governments was established in the Statement of Government Objectives and Responsibilities in Tourism set out in the Tourism Minister's Council Agreement of 1976.<sup>109</sup> Under the Agreement the Australian Government has prime responsibility for the general framework within which the tourism industry operates, the formulation and implementation of policies that operate at the national level and international tourism. The states and territories are generally responsible for promotion and marketing of local attractions and infrastructure and facility development through planning, zoning and licensing. However, many responsibilities are shared not only between the national and state governments, but also by local governments and private industry including planning, environmental management and infrastructure, the collection of research and statistics, and destination marketing.

Nationally, the functions of tourism organization are undertaken by several separate government bodies. The Australian Government, through the Minister for Industry, Tourism and Resources and Minister for Small Business and Tourism, directs responsibilities for tourism through three government organizations: the Department of Industry, Tourism and Resources (ITR), the Australian Tourism Commission (ATC) and the Bureau of Tourism Research (BTR). Each of these bodies is responsible for a particular role. The ITR develops, implements and administers the Australian Government's tourism policy and programs.<sup>110</sup> The ATC is a statutory authority that promotes and markets tourism *to create a sustainable advantage for the Australian tourism industry* and BTR is a non-statutory agency that undertakes research for national, state and territory governments. Regionally, each state and territory has a separate tourism commission, except Tasmania. In this state, tourism is part of the Department of State Development (DSD) and has been given a separate corporate identity — Tourism Tasmania. As a division of the DSD, this statutory

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109. Austl., Commonwealth, Australian Government Committee of Inquiry into Tourism, *Report of the Australian Government Committee of Inquiry into Tourism – Volume One* (Canberra: Australian Government Publishing Service, 1987).

110. Austl., Commonwealth, *Australia Tourism* (Canberra: Department of Industry, Tourism and Resources, 2002) online: DITR <<http://www.industry.gov.au/content/root.cfm?objectId=1C66D24D-C9B8-4439-B3F3BA20F6C65C87>> (date accessed: 28 May 2002).

authority works as an autonomous unit with its own Board, working within the framework of the *Tourism Tasmania Act 1996* (Tas.).<sup>111</sup>

The level of government tourism regulation and possible duplication is a major issue within the tourism industry. Although the industry recognizes that government has a significant role to play, particularly in the provision of infrastructure, marketing and research, there is an argument that the tourism industry must be increasingly deregulated and governments reduce impediments to tourism development. However, governments simultaneously have been urged to call for increased regulation of tourism, particularly from the environmental lobby. In environmentally sensitive areas such as the coastal zone or national parks, an extension of government regulation is required to ensure that tourism remains controlled and is conducted in an ecologically sustainable manner. In environmentally sensitive areas, regulatory conflict is not so much over whether controls should be in place, but what the nature of the controls should be — whether the industry should control itself or whether control should be placed in a government body.

As a result, governments in Australia face a paradox. On one side, they have to meet the demands from concerned environmental and social groups on the negative impacts of tourism, while on the other they have to satisfy industry demands for deregulation and a greater emphasis on marketing and promotion. In 1998, the *National Action Plan, Tourism: a Ticket to the 21<sup>st</sup> Century* was developed as a strategic environmental tourism approach. This plan recognized the need for the tourism industry to realize its full potential and the need for the development of a strategic approach to its future development.

At the same time, coastal and marine tourism is growing significantly, however, fixed resources remain and the supplies of coastal and marine opportunities are becoming a critical issue. As the supply of coastal and marine opportunities are generally in relatively small locations and it is a fixed resource, environmental quality and resource allocation will become major challenges for the future.<sup>112</sup> In addition, as the demand for resources increases, the supply will become scarcer and the cost of activities is likely to increase. This, in turn, will result in equity issues, as only the wealthy will be able to access popular sites and activities.

As demand increases so does the conflict between incompatible uses.

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111. Tourism Tasmania Corporate, "About Tourism Tasmania," online: Tourism Tasmania, <[http://www.tourismtasmania.com.au/org/org\\_units/theorg.html](http://www.tourismtasmania.com.au/org/org_units/theorg.html)> (date accessed: 28 May 2002).

112. Orams, *supra* note 5 at 94-96

This is already common in many Australian coastal and marine tourism sectors. For example, recreational boating competes with divers at popular coastal sites, and recreational and commercial fishers are in conflict with each other regarding access to fishing grounds and over-fishing of target species. In addition, wildlife tourism is potentially at odds with fishers taking the resource. Alternatively, jet and water skiers use the same resource as surfers or those seeking a serene and quiet beach experience, and these higher impact activities compromise other industry sectors. Coastal development and pollution are also impacting the coastal and marine environment and the future of this tourism sector.

The difficulties of coordinating and regulating tourism at the national, state and territory level has led to a blurring of responsibilities. For example, although the negative social and environmental aspects of tourism have been raised at the national level, the prime responsibility for planning and development issues lies with the states and territories. In addition, despite the general commitment to tourism, policy options for governments vary according to strategic goals, organizations and forms of administration. This has led to the Australian Government implementing an ecosystem-based planning and management approach for all Australia's marine jurisdictions that includes support for the coastal and marine tourism sectors at the policy level through *Australia's Ocean Policy* (Oceans Policy).<sup>113</sup> This Oceans Policy identifies a number of issues facing the tourism industry including:

- allocating access to high quality environmental resources for tourism ventures;
- ensuring that environmental values are not degraded;
- integrating the interests of marine tourism operators with other users;
- promoting nature based tourism, education and best practice;
- acknowledging that the planning and management of marine tourism is not currently underpinned by either a good information base or accurate monitoring; and
- facilitating better communication and coordination between industry and government; and investing in rural infrastructure.<sup>114</sup>

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113. *Australia's Ocean Policy* talks about understanding and protecting biodiversity, promoting ecologically sustainable development, encouraging equitable, efficient and economic utilization of resources, and job creation. See, R. Reichelt, "Introduction and Welcome Address" in *Towards a Regional Marine Plan for the South-East: Proceedings of a forum convened by the National Oceans Advisory Group Held 14-15 April 2000, Tasmania* (Hobart: National Oceans Office, 2000); see also, Geoffrey Westcott, "The Development and Initial Implementation of Australia's Integrated and Comprehensive Oceans Policy" (2000) 43 *Ocean and Coastal Management* 853-878.

114. *Australia's Ocean Policy*, *supra* note 18

*Australia's Ocean Policy* also recognizes that Australia's tourism industry relies heavily on the country's extensive and diverse coastline and marine environments for its international competitiveness and has an important role in stewardship. The Oceans Policy promotes Australian tourism to overseas markets, however, considering that approximately 80 per cent of tourism in Australia is generated by the domestic population, there is a risk of concentrating too much importance on the smaller international market. In addition, there is no attempt in the Oceans Policy to indicate the proportion of tourism that is coastal or marine. The Oceans Policy relies heavily on the Regional Marine Planning process to achieve security of access for operators and environmental protection. As part of this planning process, the Resources Assessment for the South-East Regional Marine Plan has recently been completed and it includes the coastal and marine tourism sectors operating off the Tasmanian, Victorian, southern South Australian and southern New South Wales coastlines.<sup>115</sup>

The Australian Government is the logical lead of any coordinated structure for tourism in Australia. However, the ability of the Australian Government to coordinate is restricted by its lack of legal standing in many areas and opposition from industry, the states and territories. Furthermore, given the general lack of understanding of the coastal and marine tourism industry, that tourism research is under-funded and the quality and veracity of the data questioned, that coastal and marine tourism can potentially contribute to all five major concerns identified in the 1995 State of the Marine Environment Report,<sup>116</sup> and that unsubstantiated assumptions continue to be made about environmental impacts — how can we even begin to evaluate the long term future of these fragmented sectors and whether they are environmentally, economically or socially sustainable?<sup>117</sup> In summary, the adoption of an integrated ecosystem-based and community-oriented form of planning in conjunction with more clearly defined roles for the various levels of government and verified industry research would appear to be one possible direction for the development of a sustainable Australian coastal and marine tourism product.

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115. National Oceans Office, *supra* note 22.

116. The five main concerns identified in the 1995 State of the Marine Environment Report include: declining marine and coastal water/sediment quality, loss of marine and coastal habitat, unsustainable use of marine and coastal resources, lack of marine science policy and lack of long-term research and monitoring of the marine environment, and lack of strategic, integrated planning in the marine and coastal environments. Great Barrier Reef Marine Park Authority, *supra* note 27.

117. David Mercer, "Tourism and Coastal Zone Management: The Uncasy Partnership" in K.J. Walker & K. Crowley, eds., *Australia Environmental Policy* (1999) 142, 145.

### III. *Challenges of Environmental Management for Coastal and Marine Tourism*

The issue of environmental quality is of critical importance for coastal and marine tourism. For example, demands for water-borne recreation have resulted in substantial modifications to the coastline in the form of piers, sea walls, breakwaters, and marinas and the drainage of coastal areas for development and recreation is regarded by many as an aesthetic improvement to coastal areas. These developments and associated increasing visitor activity can cause negative environmental effects and substantial coastal and marine management problems including beach and dune erosion, pollution, loss of habitat, declines in fisheries and wildlife, loss of aesthetic qualities and decline in water quality.

Therefore it is imperative to concentrate on developing management regimes that maximize the good and minimize the detrimental. Tourist management strategies can be divided into four main categories: regulatory, physical, economic and educational. The first two strategies control tourist behavior through external manipulation and have dominated coastal and marine tourism management in the past. Economic strategies have been utilized as incentives or disincentives to modify visitor behavior more recently, and educational strategies have been traditionally incorporated into marine protected area management activities.

The purpose of regulatory practices has been threefold: to protect tourist safety, to reduce conflict between tourists, and to protect the marine environment from negative impacts resulting from tourism. As a result, there has been a proliferation of regulations pertaining to coastal and marine activities that have often restricted the freedom of visitors and reduced their experiences.<sup>118</sup>

Physical approaches to coastal and marine management include human-made structures that control human activity and may include the construction of a boardwalk across wetland, underwater observatories,

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118. Orams, *supra* note 5 at 74.



mooring buoys for vessels and grandstands to observe marine environments. They can also be glass-bottomed boats, self guided underwater trails or beach bicycle pathways. Human-made structures are also utilized to provide additional opportunities and services to visitors and may include marinas, boat ramps, wharves and observation platforms. When managing coastal and marine environments, vessel access can be restricted and thus, negative impacts of an activity can be mitigated using a combination of regulatory and physical approaches. Alternatively, higher entry fees and permits can be used to reduce visitor numbers or to spread the visitation. In addition, other economic strategies include fines for littering, taking undersize fish, or other inappropriate visitor behavior.

Economic strategies assist in coastal and marine management. For example, discounted access fees to marine protected areas can be provided to visitors assisting in research or clean-up activities. Economic factors also can encourage tourism developers and operators to make their venture sustainable including:

- increased consumer resistance to degraded environments;
- evidence that sound environmental practices have long-term economic benefits;
- financial rewards and concessions for 'good' environmental practices;
- fines for 'bad' environmental practices;
- the likelihood of media exposure for 'bad' practice developments; and
- the growing demand for sensitive and innovative designs for developments in fragile environments.<sup>119</sup>

Education-based management strategies have aimed to reduce inappropriate visitor behaviour by encouraging voluntary behavioural change, and to increase visitor enjoyment and understanding. Education and interpretation provides a useful technique to manage coastal and marine tourism. However, there is little empirical research that has demonstrated the specific benefits of interpretation programs and this strategy has not been as common as either regulatory or physical approaches. This is because visitors vary in age, size, education, attitudes and motivations. As a result, visitors are unique and their needs should be catered to individually. The lack of knowledge about the coastal and marine environment, as well as its non-captive nature, further complicate this issue. These factors when

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119. Environment Australia, *supra* note 20.

combined with the diverse locations of attractions and the mobility and geographical spread of visitors make the content, timing, and location of educational programs difficult.

Additional challenges associated with environmental management include such fundamental elements as basic identification and inventory of environments that have a high value for tourism and recreational uses. Cohen has characterized environmental management as protecting the environment for the tourist as well as from the tourist.<sup>120</sup> At one end of the spectrum this includes the protection of marine ecosystems in marine protected areas. Much of the recreational and tourist activity along the coast falls within the category of ecotourism and adventure tourism. In both instances the tourists' expectations are of a pristine coastal environment. For example, in British Columbia the province is promoted as "Super. Natural British Columbia." In Tasmania the state is promoted as "The Natural State." Visitors, therefore, anticipate experiencing such an environment. In terms of protecting the environment from the tourist, negative impacts need to be understood and limited. In this section, the issues surrounding marine protected and conservation areas are first discussed followed by an examination of sustainable resource management using the example of whale watching.

## 1. *Protecting Canadian Tourism and Recreation Resources*

### a. *Canadian Marine Protected Areas*

The challenge in Canada in terms of protecting marine resources is related to both the biophysical as well as the jurisdictional complexity of the over five million square km of ocean area. The Federal Government's responsibility for managing activities, including fishing, navigation, dumping, and general law-making, has resulted in extensive legislation from a variety of departments that often have overlapping jurisdictions. Under the 1997 *Oceans Act*,<sup>121</sup> the Department of Fisheries and Oceans Canada is given responsibility as the lead agency for establishment of marine protected areas (MPAs) and for other strategies for marine and coastal conservation, protection and management.<sup>122</sup> Along the coast, provincial governments

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120. Erik Cohen, "The Impacts of Tourism on the Physical Environment" (1978) 5:2 *Annals of Tourism Research* 215-237.

121. S.C. 1996, c. 31.

122. Phillip Dearden, "Marine Parks" in Phillip Dearden & Rick Rollins, eds., *Parks and Protected Areas in Canada, Second Edition* (Don Mills, Ontario: Oxford University Press, 2002) 354.

have jurisdiction over activities in internal waters including the establishment of marine parks. In addition to the DFO, Environment Canada and Parks Canada also have power to establish some form of marine protection. Whereas the DFO and Environment Canada are concerned with conservation issues (in the latter case with respect to wildlife, especially migratory birds), Parks Canada's mandate under the National Parks under the proposed *Marine Conservation Act* is not only to protect and conserve representative areas of the 29 National Marine Areas, but also to promote "public understanding, appreciation and enjoyment." Some marine areas are also protected where they are adjacent to terrestrial national parks, for example the Pacific Rim National Park reserve.

National Marine Conservation Areas (NMCAs) will be managed by Parks Canada as multiple use areas on a partnership basis with local stakeholders and in conjunction with other jurisdictions, however, a zoning system will allow greater protection for specified areas<sup>123</sup> As yet the DFO has not formally approved any MPAs, although four pilot MPAs in British Columbia were announced in 1998: Gabriola Pass, Race Rocks, the Bowie Seamount and the Endeavor Hot Vents. Progress has been slow on the establishment of these areas although the planned designation of new marine protected areas was announced in October 2002.

In addition to the Federal Government's role in protecting marine areas, provincial governments with coastal areas are also active in protecting marine areas. In British Columbia there are four provincial Acts that allow for this: the *Ecological Reserve Act*,<sup>124</sup> *Park Act*,<sup>125</sup> *Wildlife Act*<sup>126</sup> and *Environment and Land Use Act*<sup>127</sup> of which the first two are most important. In 1994 a Marine Protected Areas Working Group was established to try and coordinate federal and provincial planning along the Pacific coast. Through multi-stakeholder input, a strategy was produced.<sup>128</sup> The intent is to embed this strategy within more comprehensive coastal planning. This has been done within the Central Coast Land and Resource Management Planning process which included a protected areas strategy.<sup>129</sup> Similar coastal LRMPs are in progress.

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123. *Ibid.*

124. R.S.B.C. 1996 c. 103.

125. R.S.B.C. 1996 c. 344.

126. R.S.B.C. 1996 c. 488.

127. R.S.B.C. 1996 c. 117.

128. A Joint Initiative of the Governments of Canada and British Columbia, MPA Strategy Steering Committee, *Marine Protected Areas: A Strategy for Canada's Pacific Coast* (Vancouver: Fisheries and Oceans Canada – Pacific Region, 1998).

129. *Ibid.*

Dearden has identified several issues associated with Canadian marine parks.<sup>130</sup> He considers the slow speed with which legislation is being applied to protect marine areas as the most fundamental problem. The initiative for MPAs began about 20 years ago, but as of yet very little has happened. Dearden believes that "strong and constant public pressure" is needed to develop the political will. However, he also notes the problems associated with local stakeholder involvement which although desirable, may prolong the process and in some cases actually prevent adequate protection of marine resources that possess great societal value in terms of conservation. A further problem identified by Dearden is a lack of ecological protection. He notes that of the 106 protected areas along British Columbia's coast, 90 per cent lack ecosystem protection from such activities as dredging, finfish aquaculture, or bottom trawling. Dearden also identifies the absence of a system plan by the DFO to determine what areas should be protected, the problems of boundary permeability and the need for ecosystem-based management, the lack of Canadian management experience in marine parks, and a lack of information and monitoring systems. Finally, and a factor that affects many of the concerns, is the shortage of financial resources to support MPAs an issue that requires public pressure to resolve.

b. *Australian Marine Protected Areas*

Australia's marine biodiversity covers the warm northern tropical waters, the subtropical central coasts, the cool temperate waters of the south, and cold sub-Antarctic and Antarctic waters. The Australian Exclusive Economic Zone (EEZ) includes the richest diversity of fish fauna in the world and includes the famous Great Barrier Reef, covering 350,000 square km of tropical northeastern Australia. Australian flora and fauna are both highly endemic and species-rich with most ecosystems, since European arrival, having been simplified and fragmented.

Recognizing the wealth of marine and terrestrial biodiversity inherent in the country, Australia signed the *Convention on Biodiversity*,<sup>131</sup> on World Environment Day (5 June 1992) and ratified it shortly thereafter on 18 June 1993.<sup>132</sup> The Australian *Draft National Strategy for the Conservation*

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130. Dearden, *supra* note 122

131. *Convention on Biological Diversity, with Annexes (I and II)*, 5 June 1992, B.T.S. 51 (1995) (entered into force 29 September 1993).

132. Lorne K. Kriwoken "Australian Biodiversity and Marine Protected Areas" (1996) 33:1-3 *Ocean & Coastal Management* 113.

of *Australia's Biological Diversity*<sup>133</sup> was released in March 1992 with the broad goal of protecting biological diversity and maintaining ecological processes and systems. The principles of the Strategy recognized the role of *in situ* conservation and supported the specific use of MPAs throughout Australia as a means of supporting marine biodiversity. In the Australian context a marine protected area is defined as an area of sea (which may include the seabed and subsoil under the sea) established by law for the protection and maintenance of biological diversity and of natural and cultural resources. MPAs are considered an important management tool for promoting marine conservation and management, protecting biodiversity and supporting the sustainable use of marine resources. Approximately 58.5 million ha of terrestrial areas are protected (about 7.6% of the Australian mainland). However, the marine environment is very different. Approximately 38.9 million ha is conserved in marine protected areas, or about 3.5% of the Australian EEZ. Nevertheless, Australia is still considered a world leader in declaring MPAs for marine conservation and management with nearly one-quarter of all MPAs declared in the world residing in Australian territory.

Before July 1999, Commonwealth MPAs were established and managed under the *National Parks and Wildlife Conservation Act 1975* (Cth.) (NPWC). On 16 July 2000, the *Environment Protection and Biodiversity Conservation Act 1999* (Cth.) (EPBC) came into force, replacing five Commonwealth Acts, including the NPWC. Management of Commonwealth reserves (including MPAs) under the EPBC is the responsibility of the Director of National Parks, with Environment Australia managing MPAs on the behalf of the Director.<sup>134</sup> New Commonwealth MPAs can now be proclaimed in those waters from three nautical miles to the 200 nautical mile boundary of the Australian EEZ. The designation of MPAs often straddles the boundaries of state and Commonwealth jurisdictions. In these cases MPAs are jointly managed with the Commonwealth Government and the relevant state or territory. States and territories can also declare MPAs within 3 nautical miles from shore. *Australia's Ocean Policy* also supports the increased declaration of management of MPAs in Commonwealth waters.

Since the designation of the first MPA in 1938 significant advances

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133. Austl., Department of Environment, Sports and Territories, *Draft National Strategy for the Conservation of Australia's Biological Diversity* (Canberra: ANZECC, Task Force on Biological Diversity, 1993)

134. *Environment Protection and Biodiversity Conservation Act* (Cth.), s. 514B.

have been made in MPA development. One of the most recent advances has been the promotion of the *National Representative System of Marine Protected Areas* (NRSMPA) with a goal to "establish and manage a comprehensive, adequate and representative system of MPAs to contribute to the long-term ecological viability of marine and estuarine systems, maintain ecological processes and systems, and protect Australia's biological diversity at all levels."<sup>135</sup> Secondary goals of the NRSMPA have also been established: to "promote integrated ecosystem management; to manage human activities; to provide for the needs of species and ecological communities; and to provide for the recreational, aesthetic, cultural and economic needs of indigenous and non-indigenous people, where these are compatible with the primary goal."<sup>136</sup> The NRSMPA is a national system of MPAs that contain representative samples of Australia's marine ecosystems. The system explicitly adopts the following principles: regional framework, comprehensiveness, adequacy, representativeness, highly protected areas, precautionary principle, consultation, indigenous involvement, and integration of decision-making.

The NRSMPA uses the *Interim Marine and Coastal Regionalisation for Australia* (IMCRA)<sup>137</sup> as a framework for the representative designation of MPAs. IMCRA represents a series of maps and descriptions used to identify distinct biological and physical characteristics. Maps are produced at a regional scale (or meso-scale referring to 100s to 1000s of km) and at a provincial scale (greater than 1000s of km). By using these two scales it is possible to plan at a broad ecological level and at a more detailed ecosystems, community and species distribution levels. In this way IMCRA can assist in identifying areas that need further representation and provide for priority setting and delivery of programs to support the NRSMPA.

IMCRA maps have been produced outlining five distinct categories ranging from no protected areas in an IMCRA bioregion to a category representing greater than 50% coverage. The 60 IMCRA bioregions represent only 2.2 million km<sup>2</sup>, which is a small portion of Australia's EEZ. What is also evident is that a vast difference exists in representation

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135. Austl., Commonwealth, Australian and New Zealand Environment Conservation Council (ANZECC), *Strategic Plan of Action for the National Representative System of Marine Protected Areas: A Guide for Action by Australian Governments* (ANZECC Task Force on Marine Protected Areas) (Canberra: Environment Australia, 1999) at 1.

136. *Ibid.*

137. Austl., Environment Australia, *Interim Marine and Coastal Regionalisation for Australia. An Ecosystem-Based Classification for Marine and Coastal Environments, Version 3.3* by IMCRA Technical Group (Canberra: Environment Australia, 1998).

between bioregions. Twenty-one bioregions have no MPAs, 21 bioregions have MPAs with coverage of less than 1% and five bioregions have coverage between 1 and 10%. MPAs are skewed towards 11 bioregions, representing 92% of MPAs. Understandably these bioregions represent the Great Barrier Reef Marine Park (Queensland), the Great Australian Bight Marine Park (South Australia and Western Australia) and Shark Bay Marine Park and Ningaloo Marine Park (Western Australia). The Great Barrier Reef Marine Park is, therefore, not representative of the size of most Australian MPAs. Most MPAs are very small and a few large MPAs contribute disproportionately to the total protected area.

The small size and number of MPAs declared at a state level is illustrated in Tasmania. In Tasmania the 1990 *Joint Policy for the Establishment and Management of Marine Reserves in Tasmania*<sup>138</sup> identified additional sites for MPA designation. Four new MPAs were declared under the *National Parks and Wildlife Act 1970* (Tas.). The fish, however, within these MPAs were protected under the *Living Marine Resources Act 1995* (Tas.). In 2000, over ten years later, the Tasmanian government released the *Tasmanian Marine Protected Area Strategy* to establish and manage new MPAs.<sup>139</sup> In areas previously identified as potential MPAs, such as Port Davey, Bathurst Harbor, no new designations have been made in over a decade.

In contrast, just off the Tasmanian continental shelf and surrounding Macquarie Island (which is under the jurisdiction of the state of Tasmania) the Commonwealth government has recently declared new MPAs. The Tasmanian Seamounts Reserve was declared on 16 May 1999 recognizing the unique habitat and wildlife of the area and to protect the vulnerable benthic communities of the seamounts from human-induced disturbance. Located 170 km south of Hobart, the MPA covers 37,000 ha and includes some 70 seamounts that are remnants of extinct volcanoes between 200-500 m high and several km across at their base. This distinctive geological feature supports unique benthic communities with at least eight new genera. A unique aspect of this MPA is the way in which it has been zoned. 'A Managed Resource Zone' includes the area from the surface to a depth of 500 m. This zone promotes the long term protection and maintenance of biological diversity and also provides access to commercial fishing using

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138. Austl., Tasmania *Joint Policy for the Establishment and Management of Marine Reserves in Tasmania* (Hobart, Tasmania: Tasmanian Government, 1990).

139. Austl., Tasmania, Department of Primary Industries, Water and Environment, Marine and Marine Industries Council *Draft Tasmanian Marine Protected Areas Strategy* (Hobart, Tasmania: Department of Primary Industries, Water and Environment, 2001).

non-trawling methods, such as the tuna longline fishery. The 'Highly Protected Zone' includes the areas from a depth of 500 m to 100 m below the seabed. This zone is managed to protect the integrity of the benthic ecosystem and excludes fishing, petroleum or mineral exploration.

## 2. *Managing the Visitor in the Marine Environment*

In addition to managing the coastal and marine resources upon which tourism depends, the behavior of visitors also needs to be managed. Increasingly, visitors as well as tourism operators are being asked to adopt codes of conduct that, in the absence of legislation, provide voluntary forms of self regulation that help protect the resources upon which tourism depends. The marine mammal-watching sector provides an example of where such management approaches are occurring.

### a. *The Whale Watching Sector in Canada*

The negative environmental impacts of tourism are often a function of exceeding the carrying capacity of a destination.<sup>140</sup> However, in the absence of environmental assessment and monitoring it is often difficult to establish what the limits are. For many elements of coastal tourism that fall within the category of ecotourism, the acceptable number of tourists may be far below what is ecologically sustainable due to the psychological dimensions of the experience. Certainly, on the British Columbia coast many recreationists are seeking a wilderness type experience that can be severely impacted by overcrowding. There have been some studies of whale watching, which has become one of the fastest growing coastal attractions for tourists on Canada's west coast. The majority of these are located on Vancouver Island in three distinct areas:

- Haro Strait near Victoria;
- Johnstone and Queen Charlotte Straits on Northeastern Vancouver Island; and
- West Coast of Vancouver Island near Ucluelet and Tofino.

These areas receive significant numbers of visitors and concern has been expressed about the negative effects on the whale populations. Research into the relationship between whales and whale watchers has been conducted for some years at the Whale Research Laboratory at the University of Victoria.<sup>141</sup>

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140. Shaw & Williams, *supra* note 8.

141. The University of Victoria Whale Research Lab, Department of Geography, online: Whale Research Lab <<http://office.geog.uvic.ca/dept/whale/wrlmp.html>> (date accessed: 6 May 2002).



There have been widespread assumptions of mammal disturbance along the Canadian Pacific coast and in particular in the Haro Strait. In addition to the rapidly growing commercial whale watching industry, there are large numbers of private recreational boats and even aircraft engaged in whale watching.<sup>142</sup> Despite the existence of boating "guidelines" in Canada and both "regulations" and "guidelines" in the United States, both the commercial and recreational boaters are largely uncontrolled and unregulated. There are few potential limits on the growth of the whale watching fleet: the population of the area totals over 5.5 million people, moorage is virtually unlimited, and whales and weather are both fairly predictable. In 1997, researchers noted over 80 commercial whale watching boats operating in the area, and an average of over 25 boats (only one quarter of which were commercial boats) were interacting with whales. Regardless of perceptions, an ongoing study, since 1990, of boat/whale interactions has been unable to document any impact of boats on killer whale behavior. Long-term impacts are not apparent either as whales use of the area has remained stable or increased over the last 20 years.<sup>143</sup>

In a study of the impacts of whale watching on gray whales in the Clayoquot sound area (west Vancouver Island), the results of disturbance studies were inconclusive. Researchers concluded that the whales have a more complex behavioral ecology than the literature indicates and that because a measurable change in response to vessels has proven to be small, translating this research information into a management code of practice is difficult.<sup>144</sup>

Unfortunately, existing government legislation regarding the stewardship of whales and their habitat has been haphazard.<sup>145</sup> While the DFO has legislative powers under the *Fisheries Act* to prevent harassment of whales, a legal description of harassment has yet to be formulated. Furthermore,

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142. Robin Baird, Robert Otis & Richard W. Osborne, "Killer Whales and Boats in the Haro Strait Area: Biology, Politics and Esthetics and Human Attitudes" (Paper presented to the Whale Watching Research Workshop, World Marine Mammal Science Conference, Monaco, 18 January 1999) [unpublished], online: Whale Research Lab <<http://office.geog.ubc.ca/dept/whale/summary.html>> (date accessed: 3 May 2002).

143. *Ibid.*

144. D. Duffus, J. Bass, J. Dunham, & C. Malcolm, "Ecology and Recreational Use of Gray Whales in Clayoquot Sound, Vancouver Island, Canada 1991-1997" (Paper presented to the Whale Watching Research Workshop, World Marine Mammal Science Conference, Monaco, 18 January 1999) [unpublished], online: University of Victoria Geography <<http://office.geog.uvic.ca/dept/whale/summary.html>> (date accessed: 3 May 2002)

145. Greg Gjerdalen & P. Williams, "An Evaluation of the Utility of Whale Watching Code of Conduct" (2000) 25:2 *Tourism Recreation Research* 27-37.

the problem of enforcement of regulations is one of the most serious stumbling blocks in whale watching management.<sup>146</sup> Lack of enforcement threatens to undermine all the work accomplished by researchers and managers. Many countries have developed codes of conduct for commercial whale watching operations. This is true in British Columbia where a code of conduct was first developed in the Johnstone Strait area, and a similar one later adopted in the Haro Strait area. Gjerdalen and Williams<sup>147</sup> conclude that such codes can be useful in: empowering local tourism organizations to support fair and appropriate practices, encouraging operators to promote important stewardship messages, and helping individuals administer their activities with personal integrity and control over key issues affecting their futures. However, others argue that although self-regulation can work up to a point, it is not the answer, especially when private vessels are a concern as well as commercial whale watching vessels.<sup>148</sup>

b. *The Whale Watching Sector in Australia*

Whale watching is a significant sub-sector of the wildlife tourism market that has become increasingly popular around the southern half of Australia from Western Australia to Queensland. It is estimated that whale watching had an annual participation of 600,000 individuals in 1994, generating an estimated AUD 9 million.<sup>149</sup> In 1998 approximately 730,000 participated in whale watching, compared with approximately 330,000 in 1991.<sup>150</sup>

Whale watching (like most marine wildlife tourism) is seasonally dependant with the austral winter providing the best sighting opportunities. Whale encounters vary and can range from shore-based observation, from small and large vessels, swimming with whales, to aircraft overflights. The most consistently observed species include the humpback whale (*Megaptera novaeangliae*), southern right whale (*Eubalaena australis*) and the dwarf minke whale (*Bullaenoptera acutorostrata sensu lato*). Queensland is widely promoted as the 'whale watching capital of the world' and large numbers of humpback whales annually rest in the protected

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146. Monaco whale watching meeting. See Duffus *et al.*, *supra* note 144

147. Gjerdalen & Williams, *supra* note 145.

148. Baird *et al.*, *supra* note 142

149. Birtles *et al.*, *supra* note 24. In Australia: over USD 4.5 million was generated directly from whale watching tours in 1994 and USD 45 million in total revenues (e.g., tours as well as travel, food accommodation and souvenirs; Erich Hoyt, *The Worldwide Value and Extent of Whale Watching 1995* (Bath, U.K.: Whale and Dolphin Conservation Society, 1995) at 32.

150. Hoyt, *supra* note 95.

waters of Hervey Bay on their return journey to Antarctica. Charter boat and shore whale watching in New South Wales provides opportunities to view humpback whales and, increasingly, southern right whales, from good vantage points along the coast including Byron Bay, Coffs Harbour and Green Cape near Eden. In Tasmania, Victoria and South Australia, and Western Australia, southern right whales are commonly sighted from cliff tops between June and October.

Other marine species popular to visitors include dolphins, penguins, dugongs, sea lions, sharks, sea dragons and other fishes. For example, dolphins are found along the entire Australian coastline with, perhaps, the most famous permitted shore-based feeding of wild bottlenose dolphins occurring at Monkey Mia in the Shark Bay World Heritage Area, Western Australia. In addition, Shark Bay and the northern Australian waters south to Hinchinbrook Island and Moreton Bay in Queensland provide habitat for most of the world's remaining population of dugong (*Dugong dugon*). In Victoria, swimming with sea lions and dolphins in Port Phillip Bay is a popular activity for local dive clubs and charter boat operations. Sharks too can be seen almost anywhere in Australian coastal waters and they can be viewed from glass bottom boats, underwater observatories or SCUBA diving. Guided dive and aquarium tours to see weedy (*Phyllopteryx taeniolatus*) and leafy sea dragons (*Phycodurus eques*) are available in Tasmania and South Australia. And cruise boats take visitors to the vicinity of Casuarina in the Northern Territory and Dirk Hartog Island in Western Australia and incorporate loggerhead turtle (*Caretta caretta*) sightings in the tour.

The Australian *Environment Protection and Biodiversity Conservation Act* provides for the protection of the whole of the marine environment and specifically, whales and other cetaceans in Australian waters. The Act prohibits the killing, injuring, taking or interfering with any whale or cetacean. Whale watching guidelines were developed by the Australian Government in the 1980s. The Australian Government is now working with all stakeholders including all state and territory agencies, to develop new *Australian National Guidelines for Cetacean Observation*.<sup>151</sup> These guidelines will set minimum standards for managing human activities associated with whale and dolphin watching. State and territory

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151. Austl., Commonwealth, ANZECC *Australian National Guidelines for Cetacean Observation and Areas of Special Interest for Cetacean Observation* (Canberra, Austl.: Environment Australia, February 2000)

government legislation provides for the protection of marine species in local waters within 3 nautical miles from the coast.

There are large knowledge gaps about marine wildlife and the impacts of tourism. It seems prudent to implement the precautionary principle to the wildlife tourism sector. Therefore, comprehensive guidelines specifying the distance visitors must stay from all wild marine animals may help to reduce the risk of accidental contact and possible behavioral changes to wildlife. In addition, guidelines need to address pollution and the feeding of wild marine species. Banning watercraft that has the potential to impact marine wildlife also needs to be considered. However, the incentive to support research into marine wildlife and the wildlife tourism sector often coincides with the development of a commercial interest. Regardless of the motives, guidelines need to be supported by governments and science if ecologically sustainable outcomes are to be realized for wildlife marine tourism.

#### *IV. Regulatory and Jurisdictional Issues*

Jurisdictional and regulatory complexity, as noted above, are characteristics of coastal zones. Tourist and recreational activity in coastal waters is diverse and compliance with and enforcement of regulations a challenge. The complexity is illustrated in this section with a case study of environmental regulations surrounding the cruise industry on Canada's Pacific coast and secondly, by an examination of regulation of the Australian recreational fishing sector.

##### *1. The Case of the Canadian Cruise Ship Industry*

The major challenge is the ability to understand the current rules and regulations that apply to cruise ships on the Pacific coast. Canada enjoys complete sovereignty over its inland waters including lakes and rivers, its internal waters (marine areas *inter fauces terrae*, that is, "between the jaws of the land"), and the territorial sea that extends for a distance of 12 nautical miles from the coastline. The maritime zone adjacent to the edge of the territorial sea and extending from that point out to a 200 nautical mile limit is also defined in most conventional and customary international law as the Exclusive Economic Zone (EEZ). The rights enjoyed in the EEZ are significantly less than those in the territorial sea. Nonetheless, the coastal state has an obvious interest in the preservation and protection of the marine environment of the EEZ. Accordingly, international law recognizes the state's rights to take appropriate measures to this end, as provided for

in international agreement or by international organizations.<sup>152</sup> The applicable legislation comes from Acts and conventions that exist at international, regional, federal, and provincial levels.

The cruise ship industry in British Columbia is based primarily on the Alaskan cruise market, which began in the 1950s and became increasingly popular during the 1980s. The Port of Vancouver is the homeport for 18 vessels operating in the Alaskan industry and is the main port of call for ships traveling from the United States to Alaska. Vancouver has always been a player in the Alaskan cruise ship industry due, in part, to the *US Passenger Services Act*<sup>153</sup> and the *Jones Act*<sup>154</sup> that regulate passengers and vessel transportation in US waters. The *1886 Passenger Services Act*<sup>155</sup> stipulates that ships cannot transport passengers between two United States ports unless the ship is owned by United States citizens, built in United States shipyards, and crewed by United States citizens. The argument in support of the *1886 Passenger Services Act* remains relevant today as it represents a business protection measure that can also be claimed to ensure safety, environmental protection, efficiency, and national security in the maritime industry.<sup>156</sup> Currently, the majority of cruise ships in operation are crewed by international citizens and sailed under foreign flags. The cruise vessels entering Canada are flagged by states from all around the world with the Netherlands and Liberia being the most popular.

All cruise ships operating in international waters are subject to strict international standards and regulations set out by the International Maritime Organization (IMO), an arm of the United Nations. The *International Convention for the Prevention of Pollution from Ships*<sup>157</sup> (MARPOL, 1973/78) sets regulatory standards to prevent the discharge of waste and cargoes from operational and accidental causes. This convention regulates water discharge, air quality, and on-board solid waste management. The MARPOL convention is applicable worldwide. It consists of the Articles,

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152. I. Townsend-Gault & Allison Gill, (2002) *The Cruise Ship Industry and Marine Environmental Quality in West Coast Marine Areas: Constitutional Dimensions and Industry Standards*, unpublished internal report to Oceans Branch, Pacific Region, Fisheries and Oceans Canada.

153. 46 U.S. C.A. App. § 289b (1886).

154. 46 U.S. C.A. App. § 883 (1920)

155. 46 U.S. C.A. App. § 289b (1886).

156. U.S., The National Council for Science and the Environment, Stephen J. Thompson, *The Passenger Service Act, Domestic Ocean Passenger Service, and the 106<sup>th</sup> Congress* (Washington, D.C.: The National Council for Science and the Environment, 1999).

157. *International Convention for the Prevention of Pollution from Ships, 1973 with Protocols (I and II), and Annexes (I to V)*, 2 November 1973, 1340 U.N.T.S. 184 (as am. by 1978 Protocol).

which contain general regulations and definitions, and six annexes dealing with different types of marine pollution by ships. Annex I, Prevention of Pollution by Oil entered into force on 2 October 1983; Annex II, Control of Pollution by Noxious Liquid Substances entered into force on 6 April 1987, Annex III, Prevention of Pollution by Harmful Substances in Packaged Form entered into force on 1 July 1992, Annex IV, Prevention of Pollution by Sewage from Ships is not yet in force; Annex V, Prevention of Pollution by Garbage from Ships entered into force on 31 December 1988; and Annex VI, Prevention of Air Pollution from Ships is not yet in force.

One of the annexes most relevant to cruise ships and the environment is Annex IV, Regulations for the Prevention of Pollution by Sewage from Ships. Although Annex IV was drafted to regulate sewage discharge from vessels, it has neither entered into force, nor has the United States or Canada completed ratification.

The *International Management Code for the Safe Operation of Ships and for Pollution Prevention (ISM Code)*<sup>158</sup> was developed by the IMO as it recognized that effective company management was paramount to ensuring marine safety guidelines and environmental protection. The ISM Code became a requirement for all transport vessels larger than 500 gross tonnes, except bulk carriers, in July 1998. Therefore, all cruise vessels are required to adhere to the ISM Code. The objective of the ISM Code is to require companies to develop and maintain a safety management system (SMS), which will ensure the safety of the crew, passengers, vessels, cargo and the environment.

The ISM Code requires vessels to adhere to the relevant international, flag state, and domestic laws governing their actions. Thus under the agreements and laws specific to Canada, ISM and MARPOL programs are routinely reviewed by Port States to ensure compliance.<sup>159</sup> Discharging by cruise ships in Canada, for example, is regulated through different Acts almost entirely at the federal level. First, the dumping of garbage is prohibited under the *Canada Shipping Act*.<sup>160</sup> Second, the *Canada Shipping Act*<sup>161</sup> further prohibits the dumping of sewage in certain bays and inlets along the coast of British Columbia. Revisions to the *Canada*

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158. IMO, Annex to Assembly Resolution A 741(18)(1995).

159. International Council of Cruise Lines, ICCL Industry Standard E-01-01 Cruise Industry Waste Management Practices and Procedures [ICCL Industry Standard E-01-01].

160. R.S.C. 1985, c. 5-9, [Canada Shipping Act]; see *Garbage Pollution Prevention Regulations*, S.O.R. 2000-37, s. 1.

161. *Canada Shipping Act. ibid.*

*Shipping Act* (2000)<sup>162</sup> have identified a series of no-dumping zones along the British Columbia coast in its Pleasure and Non-Pleasure Craft Sewage Pollution Prevention Regulations.<sup>163</sup> Third, most other possible waste streams from cruise ship activity that would fall under special or hazardous material categories can be regulated by the *Canadian Environmental Protection Act, 1999*<sup>164</sup> and the *Transportation of Dangerous Goods Act, 1992*<sup>165</sup> although no specific rules currently exist for cruise ship waste streams. Finally, sewage or gray water that contains hazardous material or regulated chemicals will be legislated with regard to those contents. Additional Acts exist within Canada's Federal Government, including the Department of Fisheries and Oceans' *Oceans Act*<sup>166</sup> and *Fisheries Act*,<sup>167</sup> which could be applied to regulate the cruise ship industry but have not been used for that purpose to date.

Regionally, all cruise ships that operate in American waters must comply with United States environmental laws, including the *Clean Water Act*,<sup>168</sup> the *Clean Air Act*<sup>169</sup> and the *Oil Pollution Control Act*.<sup>170</sup> The United States environmental regulations for cruise ships are extremely relevant to Canada as almost all cruise ships entering Canadian waters have stops in the US within the same week. Vessels are therefore required to adhere to United States legislation once within American waters and the mechanisms required for that level of compliance must be ongoing to function.

Port Vancouver, a quasi-governmental body also set out regulations regarding vessels entering and berthing in its harbor. One of the regulations is a bylaw restricting the importation of ballast water.<sup>171</sup> In 2000, the Vancouver Port Authority reported a better than 99% compliance rate with its mandatory mid-ocean ballast water exchange program. This program was initiated in 1997 and became compulsory under the *Canada Marine Act* in 1999.<sup>172</sup>

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162. *Ibid.*

163. See *Non-Pleasure Craft Sewage Pollution Prevention Regulations*, S.O.R. 1991-695, s. 4, *Pleasure Craft Sewage Pollution Prevention Regulations*, S.O.R. 1991-661, s. 4.

164. S.C. 1999, c. 33.

165. S.C. 1992, c. 34.

166. S.C. 1996, c. 31.

167. R.S.C. 1985, c. F-14.

168. 33 U.S.C. § 1251 (1977).

169. 42 U.S.C. § 7401 (1970).

170. 33 U.S.C. § 2702-2761 (1990).

171. Port Vancouver, "The Port & Operations: Environment," online: Port Vancouver <[http://www.portvancouver.com/the\\_port\\_environmental\\_highlights.html](http://www.portvancouver.com/the_port_environmental_highlights.html)> (date accessed: 13 July 2005).

172. S.C. 1998, c. 10.

The ISM Code stipulates that domestic laws be followed so that there must be compliance both with provincial as well as federal legislation. Some of the provincial legislation that can be applied to cruise ship environmental activities includes the British Columbia *Waste Management Act*,<sup>173</sup> *Land Act*,<sup>174</sup> *Special Waste Regulation*,<sup>175</sup> *Environmental Assessment Act*,<sup>176</sup> ozone depletion and other hazardous waste regulation.

Cruise lines have increasingly committed themselves to a voluntary set of environmental standards that has led to instances of competitive advantage in the cruise market. Two industry-operated cruise associations, North West Cruise Ship Association (NWCA) and the International Council of Cruise Lines (ICCL) currently have jurisdiction over cruise vessels along the Canadian Pacific coast, each with their own set of voluntary environmental policies and regulations that in many cases exceed the federal legislative requirements in Canada and the United States.

The NWCA functions as a non-profit association working on behalf of nine member lines to build positive relationships with communities and government agencies and to develop strong partnerships with communities and businesses in Canada, Alaska and the Pacific Northwest. In 2000, the NWCA joined with Alaskan state and federal legislators in an environmental initiative to improve management practices and examine cruise ships waste streams. As part of the initiative, the member lines voluntarily adopted new standards that took their operations well beyond legal compliance. Among the new standards are the following:

- no wastewater discharge in ports;
- no discharge of untreated blackwater anywhere in Alaska;
- no wastewater discharges within 10 miles of ports of call; and
- USD 1.4 million in new oil spill response equipment.<sup>177</sup>

One of the primary concerns with the NWCA voluntary standards for the Canadian Pacific coast arises from the commitment to Alaskan over Canadian waters. However, implementation of new technology (described below), will affect all member cruise ships operating in the Alaskan cruise industry, which includes all vessels navigating through Canadian waters.

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173. R.S.B.C. 1996, c. 482, as rep. by *Environmental Management Act*. S.B.C. 2003, c. 53.

174. R.S.B.C. 1996, c. 245.

175. S.B.C. 2002, c. 43.

176. B.C. Reg. 109/2002.

177. NWCA. Website report on the environment, online: Northwest Cruiseship Association <<http://www.alaskacruises.org/2.cfm>> (date accessed: 22 September 2001).



Furthermore, the ICCL possesses similar regulations and has made environmental performance standards a condition of membership.

The ICCL facilitates cruise companies' participation in the regulatory and policy development process and promotes all measures that foster a safe, secure and healthy cruise ship environment. Under the direction of the chief executives of its member lines, ICCL advocates industry positions to key domestic and international regulatory organizations, policymakers and other industry partners. The ICCL actively monitors international shipping policy and develops recommendations to its members on a wide variety of issues. In July 2001, the ICCL, through the International Maritime Organization (IMO), developed new consistent and uniform international standards which apply to all vessels engaged in international commerce.<sup>178</sup> The outlined practices and procedures covered high volume wastes (garbage, greywater, blackwater, oily residues and bilge water), pollution prevention, and hazardous wastes produced onboard (dry cleaning liquids, film processing chemicals, biomedical wastes).

Classification Societies (e.g., Lloyd's Shipping Register) also exist as governing bodies promoting adequate environmental performance and promoting "beyond compliance" behavior. Classification societies are private, third party organizations with a primary function of inspecting cruise ships at regular intervals to ensure that their seaworthiness, structures, and machinery are maintained according to classification societies rules. Classification societies also inspect cruise ships for compliance with international safety regulations including the *Safety of Life at Sea Convention*<sup>179</sup> (SOLAS), and MARPOL.<sup>180</sup> Ships without proof of a certified plan can be denied insurance coverage or entry into the world's major seaports.

Currently, the perception exists among some non-governmental organizations (NGOs) that enforcement and monitoring have not been conducted to a satisfactory level within Canada due to self-managed environmental auditing and reporting by the cruise ship industries and their associations. NGOs criticize industry self-regulation, as it possesses the potential for the falsification of logs and reports that demonstrate compliance. In most cases, however, it is the individual cruise vessels themselves

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178. ICCL Industry Standard E-01-01, *supra* note 159.

179. *International Convention for the Safety of Life at Sea, 1974, with Annexes (regulations)*, 1 November 1974, 1184 U.N.T.S. 4 (entered into force 25 May 1980).

180. The International Council of Cruise Lines "Cruise Industry FAQs: Useful Terms and Phrases," online: ICCL <<http://www.iccl.org-faq/terms.cfm>> (date accessed: 22 February 2002).

that report environmental accidents.<sup>181</sup>

While one cannot assume that environmental concerns take precedence over economic profits in the cruise industry, nevertheless, good environmental behavior has proven itself to be directly related to revenue and has thus begun a new paradigm of corporate environmentalism. The cruise industry's commitment to corporate environmentalism is evidenced by the companies' and associations' standards encouraging beyond compliance behavior. Increasingly corporations are realizing the direct relationships between environmental performance, their reputation, their customers, their stakeholders, their comparative advantage and their profits. Involving environmental protection in the companies' mandates and mission statements is good business, and adhering to those standards maintains their reputation.

Furthermore, individual cruise companies stand to benefit by moving towards ecological sustainability. The motivators for increased sustainable practices are varied and include: the reduction of costs through ecological efficiencies, capturing emerging green markets, gaining first-move advantage in the industry, ensuring long-term profitability, establishing better community relations, and improving their image. Consequently, the cruise industry has been developing new environmental policies and state of the art technologies. For example, the Zenon system has the ability to purify black and gray water into near drinking water quality, and thus leads the field in entrepreneurial and innovative solutions.<sup>182</sup> Most other cruise lines have adopted aggressive programs of waste minimization, waste reuse and recycling, waste stream management and shore side waste disposal.

The foregoing analysis suggests that federal agencies have sufficient regulatory powers to control or prevent the discharge of a broad range of substances into marine areas subject to Canadian jurisdiction.<sup>183</sup> Some have been highly critical of the cruise ship industry, laying at its door blame for significant amounts of marine pollution. Some of these views are less well founded than others. The issues of both trust and science, or lack thereof, have contributed to the confusion and fueled controversy between the cruise

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181. U.S. General Accounting Office, *Marine Pollution. Progress Made to Reduce Marine Pollution by Cruise Ships, but Important Issues Remain* (GAO RCED-00-48) (Washington, D.C.: General Accounting Office, 2000).

182. Holland America Line, News Release, "Zenon Happens!: Holland America Ships Convert Wastewater to Near-Drinking Water Quality" (26 July 2001).

183. Townsend-Gault & Gill, *supra* note 152

industry and environmental NGOs for the past few years. The problem is that the NGOs feel there is no satisfactory enforcement or scientific evidence to support or challenge the discharging presently occurring. The NGO community has adopted a precautionary approach to oceans governance and cruise ships that assumes that their impacts are negative until proven otherwise.

## 2. *The Case of Australian Recreational Fishing*

Recreational fishing is an important component of the international and interstate ecotourism industry in Australia and domestically millions of people go fishing annually. Given its popularity, the total catch of recreational fishing may be a significant proportion of the overall catch. Consequently, this activity needs to be taken into account and recognized as an integral component of fisheries resource usage and management strategies if fisheries are to remain ecologically sustainable.

In response to many fish stocks being fully exploited or exploited beyond sustainable levels, Chapter 17 Agenda 21 of the 1992 *United Nations Conference on Environment and Development* (UNCED) states "that approaches to fisheries management should be precautionary and anticipatory in scope."<sup>184</sup> This cooperative sustainable development and environmental management framework, along with the United Nations *Agreement for the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks* (the *Fish Stocks Agreement*)<sup>185</sup> and the 1982 *United Nations Convention on the Law of the Sea* (UNCLOS),<sup>186</sup> to which Australia is a party, means that the Australian Government has responsibility under international law for the conservation and management of fisheries and species associated with or dependant upon fished species within the Australian EEZ. Based upon the UNCLOS, these responsibilities flow through to Australian state governments for all fisheries under their jurisdiction.

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184 Austl., Commonwealth, Fisheries Research and Development Corporation, *International Environmental Instruments. Their Effect on the Fishing Industry*, 2nd ed (Project 97/149) by Martin Tsamenyi & Alistair McIlgorm (NSW, Australia: National Library of Australia, Dominion Consulting Pty Ltd., 1999) 27.

185 *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, 4 August 1995, UN Doc.A.CONF.164/38, BPP Misc. 12 (1995) (entered into force 11 December 2001).

186 *United Nations Convention on the Law of the Sea, with Annexes (I to IX)*, 10 December 1982, U.N. Doc.A/CONF.62/122 (entered into force 16 November 1994).

In addition, the United Nations Food and Agriculture Organization (FAO) 1995 *Code of Conduct for Responsible Fisheries*<sup>187</sup> also endorses the precautionary approach to fisheries management and specifies that fishers should ensure that their gear, methods and practices are sufficiently selective so as to minimize waste and discards and threat to endangered species.<sup>188</sup> Whilst non-binding, the Code is directed to the high seas and waters within Australia's EEZ and covers all fishery operations with the objective of establishing principles for responsible fishing and fisheries taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects.<sup>189</sup> It draws on the provisions of the 1994 *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas* (the Compliance Agreement).<sup>190</sup>

Australia's obligations under these conventions and codes such as Australia's 1992 *National Strategy on Ecologically Sustainable Development*<sup>191</sup> and the 1996 *National Strategy for the Conservation of Australia's Biological Diversity*<sup>192</sup> have resulted in the development of a strategic and ecologically sustainable approach to managing recreational fishing.

In the majority of instances, jurisdiction over recreational fishing rests with Australian state governments,<sup>193</sup> but there are many examples of overlap between the recreational and commercial sectors in Australian managed fisheries as well as fisheries under exclusive Australian government jurisdiction.<sup>194</sup> Specifically, the *Fisheries Management Act 1991* (Cth.)

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187. U.N. Food and Agricultural Organization, *Code of Conduct for Responsible Fisheries* (Rome: FAO, 1995).

188. Marcus Haward, Anthony Bergin & H. Robert Hall, "International Legal and Political Bases to the Management of the Incidental Catch of Seabirds" in Graham Robertson & Rosemary Gales, eds., *Albatross Biology and Conservation* (Chipping Norton, NSW: Surrey Beatty & Sons, 1998) at 257.

189. Tsamenyi & McIlgorm, *supra* note 184.

190. *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*, 24 November 1993, US Treaty Doc. 103-24, I.L.M. 968, 969 (entered into force 24 April 2003), online: Food and Agriculture Organization <<http://www.fao.org/legal/treaties/012t-e.htm>> (date accessed: 10 April 2002).

191. Austl., Commonwealth, Council of Australian Governments, *National Strategy for Ecologically Sustainable Development* prepared by the Ecologically Sustainable Development Steering Committee (Canberra, Austl.: Department of the Environment and Heritage, 1992).

192. Austl., Commonwealth, Department of the Environment, Sport and Territories, *National Strategy for the Conservation of Australia's Biological Diversity* (Canberra: Department of the Environment and Heritage, 1996).

193. Management measures include size limits, bag possession limits, gear restrictions and seasonal closures.

194. Species targeted by the Tuna and Billfish Fisheries are important for both commercial and recreational users.

and the *Fisheries Administration Act 1991* (Cth.) are the primary pieces of legislation managing both commercial and recreational fishing at the national level and the Australian government has the option of managing and monitoring important species under national management plans. In addition the *Environment Protection and Biodiversity Conservation Act 1999* (Cth.) requires that fisheries demonstrate ecological sustainability and the 1994 *National Recreational Fishing Policy* provides a framework for the recreational fishing sector and the maintenance of fish stocks.<sup>195</sup> National and state fishing member associations are also committed to sustainable fisheries and they have collaboratively developed a voluntary *National Code of Practice for Recreational and Sport Fishing 2001* to maintain fisheries, protect the environment, treat fish humanely, and respect the rights of others.<sup>196</sup>

The management of recreational fishing is fundamental not only to the sustainability of the resource, but also as a matter of regulating and maximizing fishing opportunities. Paradoxically, it is not necessary to guarantee a catch. As a result, the perception of the recreational fishing experience itself is essential to anglers for aesthetic, social and cultural imperatives. For example, it is important that a high strike (contact) rate is maintained in the recreational marlin fishery to ensure economic viability of the industry. An important principle emerges across Australian jurisdictions. It is that the level of recreational fishing management needs to be linked to competition for usage of the fisheries resource.<sup>197</sup> For highly prized species (e.g. marlin and tuna) or those where fishing mortality and allocation are major issues (eg. snapper and southern bluefin tuna) intensive monitoring and control of catches need to be considered.

If a fishery (i.e., commercial, recreational or charter) is assessed as ecologically unsustainable, remedial actions imposed to redress the issues are likely to impact on all sectors, resulting in implications for both commercial and recreational fishers. In this regard, if strategic fisheries assessments to be conducted by 2005 under the *Environment Protection and*

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195. The five key goals of the 1994 *National Recreational Fishing Policy* include: maintaining fish stocks for present and future generations, developing partnerships between governments and the recreational fishing sector, allocating Australian fish resources equitably between user groups, establishing an information base at national and regional levels, and establishing a funding base to manage recreational fisheries. See, Austl., Commonwealth, Department of Primary Industries and Energy, National Recreational Fishing Working Group, *Recreational Fishing in Australia: A National Policy* (Canberra: Department of Primary Industries and Energy, 1994).

196. Recfish Australia, *supra* note 67.

197. Peppercell Research & Consulting Pty Ltd, *supra* note 62.

*Biodiversity Conservation Act 1999* (Cth.) assess nationally managed fisheries as unsustainable, then all sectors (including recreational fishing) may be impacted by the imposition of conditions.<sup>198</sup> The legislation now provides a framework that will enable the Commonwealth to respond effectively to current and emerging environmental problems, and to ensure that any harvesting of marine species is managed for ecological sustainability. In addition, from 1 December 2003, under Schedule 4, Part I of the *Wild-life Protection (Regulation of Export and Imports) Act 1982* (Cth.), all fisheries providing marine species for export will be assessed for their ecological sustainability. Those found to be unsustainable may be prohibited from export or, have conditions placed on them to improve their ecological performance.

In addition, the Australian Government is concerned about the taking of non-target commercial and recreational fish species. This problem is known as bycatch and it is defined as that part of a fisher's catch which is returned to the sea either because it has no commercial value or regulations preclude it being retained, or that part of the catch that does not reach the deck but is affected by interaction with the fishing gear.<sup>199</sup> A cooperative approach has been taken by the Australian, State and Territory Governments to mitigate this problem and the *National Policy on Fisheries Bycatch*<sup>200</sup> was developed in 2000 to promote sustainable fishing practices. Implementation of the Policy is being achieved through the development of Threat Abatement Plans for the incidental bycatch of marine species and Bycatch Action Plans for specific fisheries.

However, the *Offshore Constitutional Settlement*<sup>201</sup> continues to cause some problems with respect to cooperation between the Australian, State and Territory governments. For example, Western Australia has unilaterally banned the landing of marlin species by commercial fishers.<sup>202</sup> If recreational fishing is to be managed sustainably at the ecosystem level, the Australian Government will need to actively manage the activity under

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198. *Ibid.*

199. Austl., Commonwealth, Australia Fisheries Management Authority, *Commonwealth Policy on Fisheries: Bycatch* (Canberra: Department of Agriculture, Fisheries and Forestry, 2000), online: DAFF <<http://www.affa.gov.au/ffid/bycatch/index.html>> (date accessed: 24 September 2001).

200. Austl., Council of Australian Governments, *National Policy on Fisheries Bycatch* (Canberra, Austl.: Department of Agriculture, Fisheries and Forestry, 2000)

201. Austl., Commonwealth, *Offshore Constitutional Settlement* (Canberra, Austl.: Department of Agriculture, Fisheries and Forestry, 1995) online: Department of Agriculture, Fisheries and Forestry <<http://www.affa.gov.au/content/output.cfm?ObjectID=D2C48F86-Ba1A-11A1-A2200060BOA00874>>.

202. Pepperrell Research & Consulting Pty Ltd, *supra* note 62.

the EPBC in terms of the whole of the environment that includes intangibles such as community, social, cultural and aesthetic values.

### *Conclusion*

The rapid growth of tourism, especially ecotourism or adventure tourism, both of which are important elements of coastal and marine tourism, offer opportunities and constraints in the management of coastal zones. With many coastal communities looking to tourism as a means of economic development, the need to integrate tourism and recreation resources into management plans becomes essential. This article has highlighted the many problems this entails. First and foremost is political will, without which action will not occur. In Canada and Australia, recognizing and respecting that tourism is a 'legitimate' sector of the economy is important. Despite repeated statements announcing that "tourism is the world's fastest growing industry" or that it "contributes x billion dollars to the economy" there continues to be a lack of respect concerning its importance that is reflected through federal, provincial and state government agencies.

Jurisdictional complexities combined with the fragmentation and lack of clear definition of the tourism industry all contribute to coastal management problems. Some initiatives offer promise, for example the coastal LRMP process in British Columbia and the South-East Regional Marine Plan in Australia, which bring together representative stakeholders to develop strategic plans. While not without problems, the process is a first step in bringing differing interests and values (including tourism and recreation) to the table. For the tourism industry, partnerships and collaborations are necessary to bring small businesses together to create a critical mass. In the area of MPAs, Canada has moved extremely slowly in the designation of representative coastal and marine ecosystems. Australia, on the other hand, has an extensive system of MPAs and is considered a world leader in planning and managing for coastal and marine ecosystems.

As emphasized in the introduction to this article, the acknowledgment by various levels of government that tourism is resource dependent and that it requires legislation to support the management of the resources on which it is dependent is critical. This includes protection of resources in the form of marine protected areas and ecosystem based management to ensure that recreational fish stock, whales and other marine animals are protected. A prerequisite for any planning and management is baseline data to ensure that monitoring can take place. The huge gaps in marine ecological knowledge are a barrier to moving ahead with such initiatives as MPAs. Likewise a lack of knowledge of the coastal and marine tourism

sector means economic analyses are weak.

Ensuring environmental quality is critical to sustainable coastal and marine tourism. As Orams observes, "most degradation of marine resources is not the result of tourists nor their activities. The damage caused by the pollution of our coastal environments from human activities on land and from commercial use of our oceans for fishing, the dumping of waste, dredging and so on far outweighs the influence of tourism. Consequently, the future of marine tourism is inextricably linked with all other human activities that affect the sea."<sup>203</sup>

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203. Orams, *supra* note 5 at 95.



