

Legal Standing for the Coast?

Guardianship, Stewardship and the Role of a Trust

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1 Introduction

1.1 Coastal Ecosystems

Coastal habitats are among the most productive yet highly threatened ecosystems in the world – they produce disproportionately more services relating to human well-being than most other systems (UNEP, 2006).

Coastal communities enjoy the coast and sea for the landscape, health (Wheeler *et al.* 2012) and amenity benefits this brings (Appleby *et al.* 2015). The high value of coastal resources and complex institutional arrangements for management, make the pursuit of sustainability challenging. Decision-making can be slow, lacking transparency and good stakeholder engagement. To some extent this is being remedied by marine planning introduced through the UK Marine and Coastal Access Act (2009), but at a time when new development opportunities are emerging (such as tidal energy and other renewables) there is a need to increase accountability to stakeholders and update approaches to resource management to emphasise stewardship (Berkes, 2015).



This paper considers the extent to which current approaches to stewardship are adequate and offers an insight to how current governance frameworks for the coast could be strengthened.

1.2 Specialist Text Review

Two core texts were identified as the basis for this Advanced Specialist Text module:

- i) Gear, Anna (2012) *Should Trees Have Standing? 40 years on. A Special Issue of the Journal of Human Rights and the Environment* (Vol 3 Special Issue, 2012). Edward Elgar Publishing Ltd.
- ii) Sax, Joseph (1970) *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*. Heinonline 68 Mich.L.Rev.471 1969-70.

The foundation for the review was an article by Christopher D Stone 'Should Trees Have Standing? Towards Legal Rights for Natural Objects' published in 1972 by the *Southern California Law Review*. His original article was reviewed in a Special Issue of the *Journal of Human Rights and the Environment*, forty years after Stone's original writing, edited by Anna Gear (2012). The special issue includes contributions from four additional authors, including Christopher Stone himself providing a response to these commentators. Stone's article should not be taken literally regarding trees (Stone, 1972 p.457); it was a law review article about the rights of the environment which has contributed to a change in eco-legal conscience (Sands *in* Gear, 2012 p2-3).

A link between the concepts introduced by Stone (1972) on legal standing and guardianship are made with the public trust doctrine in natural resource law by Joseph Sax (1970). Sax's perspective on public trust provides a valuable link between the concept of stewardship - bridging duties on owners of public and private property - with the regulatory functions of the

state. It provides context for critiquing the current legal and regulatory framework and the role of trusteeship and fiduciary duties provided by third sector collaborative governance initiatives.

Based on the writings around Stone's original article and the public trust doctrine, this review offers a legal perspective on coastal stewardship and its potential evolution through the role of a Coastal Trust towards guardianship. It applies the thinking and subsequent debate on legal standing, to the current framework for managing coastal resources.

1.3 Methodological Approach

The initial focus for this review was to gain a legal perspective on coastal stewardship to contextualise the stakeholder engagement activities of UK Coastal Partnerships. Based on practical experience of coastal policy, planning and management the author wished to gain a legal understanding of the context for the management of coastal resources. From a longer list of legal texts about the countryside and public law, the concepts of legal standing, guardianship and the public trust doctrine arose as relevant to the following research objectives outlined in the RD1 for the authors' PhD:

- Critical review and systematic assessment of collaborative stakeholder engagement mechanisms that maybe comparable to, or inform, better coastal governance.
- Develop an enhanced, flexible, evidence-based governance framework which promotes stewardship of the marine and coastal environment.

As a result of this review, the objectives for the PhD (to be outlined in the RD2) will be focused in on the role of a Coastal Trust/trustees and whether existing stakeholder engagement mechanisms promoting stewardship have the potential to promote guardianship and legal standing to achieve better coastal governance.

1.4 Overview

Following the Introduction (Section 1), the original article by Stone (1972) is reviewed, in particular Stone's views about giving natural objects legal personality and his aspirations surrounding a guardianship approach (Section 2). This is followed by a brief discussion about legal concepts that underpin our current approach towards the stewardship of natural resources including property rights, regulatory responsibilities, collaborative governance and statutory/non-statutory obligations towards coastal stewardship (Section 3). The role of a trust is then considered - based on the public trust doctrine (Sax, 1970), trusteeship and the fiduciary duties of trustees (Section 4). Finally, the notions of stewardship, guardianship and trusteeship are brought together for a discussion (Section 5) about the potential role of a Coastal Trust as the 'guardian of a natural object'.

2 Legal Standing and Guardianship

2.1 Legal Standing for Natural Objects

Forty years ago, Christopher Stone (1972) originated an argument that law evolved to satisfy 'fairness' between human individuals but doesn't go far enough to give legal rights to the environment. He asked if it was 'unthinkable' to give natural objects such as a stream or river greater status in law. He noted that throughout legal history, each successive extension of rights to some new entity (e.g. the church, state, slaves, women & children) was bound to sound odd, frightening or laughable (Stone, 1972 p 453-455).

Two sides to the challenge of legal standing were provided in Stone's original writing; the legal-operational aspects and the socio-psychic aspects. This text will focus primarily on the former.

Stone identified that a *holder of legal rights* requires 3 legal-operational things which common law denies to natural objects:

- i) Legal standing: an object is only recognised by the legal system if a human interest is affected (e.g. if pollution of a river affects people downstream);
- ii) Merits in favour of the human are sometimes of greater public interest (putting the environment at our behest);
- iii) Any injunction/compensation is to the person affected, not to re-invest in the environment (e.g. river).

Stone argues that the only way around this would be to give someone (an authoritative body) the ability to represent the entity (Stone, 1972 p.458). People have evolved animal rights protections in law, so to what extent can we evolve further to provide natural objects equivalent protections in law?

2.2 Guardianship

A legal guardian is able to represent a child in a way which might equate to a legal body or entity giving legal personality¹ to a natural resource such as a river, tree or coastal area. There are cases in law where a corporation, state, estate, infant, incompetent, municipality or university cannot speak for itself and a guardian is appointed. We could have a system in which, if a friend of a natural object perceives it to be endangered, they could apply to a court for the creation of a guardianship.

There is a movement in law giving the environment the benefits of standing through a *liberalised standing* approach (Stone, 1972 p.467) which is based on environmental action groups challenging government action. However, one of the risks of extending this concept, is that any ad hoc group can spring up & invoke some right as universally claimable as the aesthetic and recreational interests of its members and thereby get into court – how could a flood of litigation be prevented? The guardianship approach could avoid the risks associated with an *extended standing* approach by securing an effective voice for the environment itself (Stone, 1972 p.470). The guardian could speak up for the natural object at appropriate times when its status (quality) is under threat, perhaps on behalf of future generations who will rely on these natural resources.

Mary Warnock (*in* Grear, 2012 p.56) provides a current English perspective on Stone's 1972 writings. She suggests that the problem with a guardianship approach is that it requires humans to judge what is 'right or wrong' for the natural object. How can a committee or guardian judge the needs of a natural object (river, forest etc)? Stone argues that they can communicate their needs – for example we know that plants need water (people water their lawns). In human society, people make decisions on behalf of others every day.

We will now reflect on how some aspects of law and society have evolved over the past forty years to help protect the environment and consider if we are moving any closer to a guardianship approach where the natural environment could gain an authoritative body to represent it.

¹ <http://thelawdictionary.org/legal-personality/> accessed 2/12/16

3 Stewardship

3.1 Definition

Stewardship maybe broadly defined as ‘people taking care of the earth’ (Bratspies, 2001). The idea of an obligation to the natural world and its owner is built into the metaphor, or mythology, of stewardship (Warnock *in* Grear, 2012 p.64). The concept encompasses a range of private and public approaches to create, nurture and enable responsibility in users and owners to manage and protect land and natural resources (Brown & Brent, 1998). The nature of stewardship transcends private property rights and public duties towards engaging people in a longer term perspective towards sustainability (Warnock *in* Grear, 2012).

3.2 Coastal Stewardship

Responsibilities for coastal stewardship are often unclear, since different legal, policy and institutional arrangements exist for land and sea. In the UK, there is a complex arrangement of public bodies with duties towards coastal resources at the national, regional and local levels. Obligations towards coastal stewardship include general duties towards good management of the foreshore (Crown Estate Act, 1961), good governance of our seas (Defra, 2009) and sustainable development (UK Marine & Coastal Access Act, 2009). A multitude of regulatory responsibilities are placed on government bodies to carry out these and other functions stemming from different parts of international, European and UK law (Boyes & Elliot, 2014).

Whether land and seabed are in private or public ownership, the coastal zone is often the meeting point or boundary of different regulatory requirements and management by different public bodies for land and sea. Increasingly, with new marine plans in preparation for many countries including the UK through the Marine & Coastal Access Act (2009), planning systems for the terrestrial and marine environment will meet or overlap in the coastal zone. Marine planning may provide an opportunity to improve coastal stewardship, but it may be challenging to have a holistic oversight of the use and management of coastal resources, when divided between two planning systems.

3.3 Property Rights

Our contemporary social order is largely based on private property rights and free market mechanisms. Anything other than a person is seen as ‘property’ and therefore retained as ‘things’ for human use (Naffine *in* Grear, 2012). It is difficult to deny the need for some form of property as people are more likely to invest time and effort [in stewardship] than if anyone is free to help themselves to the product of their work. After the ‘tragedy of the commons’ (Hardin, 1968) when much land was given to private landowners, there was increasing acceptance of private property rights. Property is seen as a wealth generator and private property owners may consider sustainability over a shorter timeframe than that required to secure the longer term **public interest**.

During the twentieth century there has been more recognition of wider societal benefits and impact flowing from landscapes that may or may not be in private ownership. UK planning and human rights laws have responded to the growing need for a more participative and equitable process for respecting the rights and responsibilities of all constituencies and not just landowning interests (e.g. Lohmann, 2016). Perhaps there is a slight shift emerging, from the increasing annexation of land and resources for private benefits, back to increasing recognition of the importance of common resources for public benefit (Everard, 2011).

Whilst a common pool resource may lend itself to over-exploitation, it could be said that it is the failure to establish effective regulatory alternatives to open access that have resulted in degradation. Private and public interests are not always aligned, therefore individuals must have incentives or carefully drawn duties to act in the public interest (Barnes, 2009).

Stewardship may be distinguished from other forms of property rights as constituting a form of individual holding that is subject to overarching public duties (Gray, 2009). We may therefore consider whether public bodies, with statutory duties towards environmental protection, are promoting stewardship and effectively acting in a guardianship role.

3.3 Regulatory Responsibilities

Since the time of Stone's writings on the subject of *standing*, the extent of legislation and role of regulatory bodies to protect the environment has multiplied². Protective legislation such as the Habitats and Species Directives and national parks³ afford some status to the environment. Mary Warnock (*in* Grear, 2012) therefore questions whether further legal standing is necessary.

Responsibility to account for meeting current environmental standards lies with government bodies and agencies. Our systems of governance involve them, in consultation with private interests and stakeholders, deciding how to oversee the management of public resources and private land.

Indirectly, it could be suggested that the environment has gained more legal standing through their role - they are accountable for monitoring environmental quality standards and reporting to central government (or the European Commission). The integrity with which this is achieved may vary: research maybe based on desk-studies, monitoring reports issued for mandatory minimum consultation periods restricting public engagement in decision-making (Aarhus Convention, 1988). Based on the concept of stewardship defined above (Section 3.1) we may ask how adequately government bodies represent the long term public interest towards sustainability. Stone proposes a *court-appointed* guardian as an additional safeguard (Stone, 1972 p.473).

The governance arrangements we have in place don't give the environment legal status *in its own right* as described above in Section 2. However, there maybe other ways of achieving legal standing through the concept of a guardianship approach. Current environmental standards and regulatory activity has improved stewardship over the past forty years, but are unable to prevent significant environmental destruction. Improvements in collaborative governance; co-ordinating the actions of public bodies with strong(er) stakeholder representation may warrant further consideration. This is especially so at the coast, where there could be overlaps and gaps between the terrestrial and (new) marine planning systems⁴.

² Through legislation such as the Water Framework Directive (European Commission, 2000) and the Marine Strategy Framework Directive (European Commission, 2008) Member States are required to achieve Good Ecological/Environmental Status for rivers and seas. Note the potential gap/overlap at the coast between these two Directives.

³ Pembrokeshire Coastal National Park designated in 1952 is the only coastal park designated under the National Parks and Access to the Countryside Act (1949) and none have been designated since. Areas of Outstanding Natural Beauty (AONBs) are the closest equivalent.

⁴ Whether land and seabed are in private or public ownership, the coastal zone is often the meeting point or boundary of different regulatory requirements and management by different public bodies for land and sea. Increasingly, with new marine plans in preparation for many countries including the UK through the Marine & Coastal Access Act (2009), planning systems for the terrestrial and marine environment will meet or overlap in the coastal zone. Marine planning may provide

3.4 Collaborative Governance

The source of many of the problems we face resides in failures of governance – the failure of our political, social, economic and administrative systems (Hay, 2016). The ecosystem is not always seen as a whole, with monitoring and compliance standards typically based on specific indicators (e.g. water quality, habitats & species occurrence) and limited timescales for public consultation. There are now more avenues to challenge Governments' environmental performance through charities/trusts and non-governmental organisations (NGOs), who can virtually represent the environment to give it better 'legal standing'. Yet we are still experiencing significant losses to the environment despite a plethora of NGOs and voluntary initiatives.

We have shown (in Sections 3.2 & 3.3) that there are duties on government bodies towards coastal stewardship and representing the public interest. *'Public interests and duties must be carefully established...[they] may involve design of not just substantive rules on the protection, conservation and use of natural resources, but also the development of complex forms of stakeholder involvement to ensure that the public interest is [actually] legitimately drawn and capable of adapting to changing social and factual contingencies (Barnes, 2009)'*. This point is re-inforced by Long (2012) who suggests that *'the absence of appropriate stakeholder consultation structures may deprive regulatory measures of their legitimacy'* (Long, 2012).

However, Barnes suggests that *'there must be limits upon the extent to which public bodies engage in decisions about the use and management of natural resources, otherwise stewardship will effectively collapse into a form of collective property'*. If that is the case, beyond the role of public bodies and NGOs to encourage stewardship, what is there? Perhaps there are routes for public bodies towards guardianship which help to overcome the three legal-operational constraints and socio-psychic constraints identified by Stone (Section 2.1).

The evolution of environmental legislation and work of the third sector (NGOs etc) has improved people's appreciation of the value of the environment, but in practice there is still huge pressure for development to meet economic growth objectives, which usually dominate decision-making over the value people may place on the environment. Collaborative (and good) governance requires mechanisms which must represent the public interest.

3.5 Statutory and Non-Statutory Obligations Towards the Coastal Environment

Statutory obligations towards sustainable management of coastal resources are improving but maybe limited in the extent to which they encourage stewardship through standard consultation mechanisms. Non-statutory activity tends to be more engaged with society, raising awareness of problems and mobilising voluntary effort towards stewardship. Some third sector organisations which facilitate awareness and engagement, have gained formal legal status (e.g. through charity or company law) whilst others operate on a completely ad-hoc basis, hosted by a wide variety of public or private bodies.

The increasing role of non-statutory and third sector initiatives to promote stewardship (see Table 1 and Annex 1) raises the possibility of a greater role for trustees. In combination with public bodies, their role offers a potential voice for the environment – government bodies supported by stakeholder engagement mechanisms which help to represent the public interest.

an opportunity to improve coastal stewardship, but it is challenging to have a holistic oversight of the use and management of coastal resources, when divided between two planning systems.

Table 1 Representation of the estuarine, coastal and marine environment by statutory & non-statutory bodies.

ORGANISATION and scale of operation	Example of STATUTORY responsibilities of regulatory bodies	Example of NON-STATUTORY objectives of third sector organisations (*with trustees or directors).
Marine Management Organisation (MMO)	Contribution towards sustainable development through marine planning and the designation of Marine Conservation Zones (UK Marine & Coastal Access Act (MaCAA) 2009) includes duties to engage with stakeholders.	-
Non Governmental NGO (e.g. Marine Conservation Society*/WWF*)	National NGOs often collaborate with government to evolve policy and maybe financed for certain projects, but they have no statutory duty towards the public.	Charity status: actively promoting awareness of the marine environment, MCZs & Marine Planning. Involving members in campaigning and direct action (e.g. beach cleaning) from national to local level. Directors operate at strategic level.
Inshore Fisheries & Conservation Authorities (IFCA)	Balance conservation and fisheries management (MaCAA, 2009) through a regional committee made up of local stakeholders and national appointees.	Engaging in stewardship activity beyond statutory duties could risk operating ultra-vires.
Catchment Partnership (e.g. Severn Rivers Trust*)	Support the Environment Agency towards Good Ecological Status (Water Framework Directive, European Commission (EC), 2000)	Charity and/or Company actively promoting community engagement at the scale of an ecosystem unit through catchment co-ordinators and trustees/directors.
Estuary/Coastal Partnership (e.g. Severn Estuary Partnership)	Loosely linked to: <ul style="list-style-type: none"> - ICZM Protocol (EC, 2002) - Land Sea Interactions in MSP Directive (EC, 2009) 	Few have formal (legal) status – goodwill of funding partners and voluntary supporters levered towards ‘whole’ ecosystem approach at the local level, employing estuary/coastal officers hosted by a local authority/university and overseen by a Steering Group.

So we now return to Stone’s question of guardianship outlined in Section 2, on the basis of current practice towards stewardship described in this Section 3, and the potential of the public trust doctrine in Section 4.

4 Role of a Trust

4.1 Public Trust Doctrine

The concept of stewardship brings together duties on owners of private and public property with regulatory functions through the public trust doctrine (Sax, 1970). Stemming from English and US law – it is the principle that certain natural and cultural resources are preserved, and that the government owns and must protect and maintain these resources for the public’s use⁵. Under a public trust doctrine (Sax, 1970), the state serves as a trustee to maintain the trust or common resources for the benefit of current and future generations.

The public trust doctrine enables us to seek a legal and regulatory framework which adequately represents the public interest (as introduced in Section 3 on Stewardship). Many of the legal rights over fishing and natural resources have management systems in place which aim to secure the spirit of public ownership, but far too many of these do not have the right legal tools in practice to match that aspiration (Appleby *et.al.*, 2015, 2016). Increasingly, third sector/voluntary initiatives are taking a leading role in promoting stewardship.

Can a committee (of a Trust) act as a guardian of the natural environment? How could this produce any different results to a government body implementing its legal duties towards the environment? Most of the concerns about guardianship discussed in Grear (2012) relate to how

⁵ An example often given is that the government holds title to all submerged land under navigable waters, thus any use (or sale) must be in the public interest.

it could be implemented. Issues of independent counsel, electoral apportionment and cultivating personal capacity come into the discussion (Stone (1972) p. 472, 478 and 498 respectively).

The remainder of this paper will consider these issues and how the evolution of environmental regulation combined with third sector activity is leading towards a guardianship approach which combines the legal-operational and socio-psychic aspects of Stones' (1972) proposal.

4.2 Trusteeship and Fiduciary Duties

Fostering the spirit of stewardship over coastal resources through volunteers and the third sector, offers an alternative or additional support to existing governance arrangements. It may offer a route towards guardianship. To what extent can trustees represent an ecosystem and give it legal standing? Charity and company law creates trustees and directors who have oversight of a legal entity.

Many informal collaborative governance mechanisms have emerged in the past two decades for river catchments, coastal areas and some regional seas (see Annex 2). Many operate informally with Steering Groups or Management Committees, others have been formalised through charity or company law – giving legal status to a (non-statutory) social institution. There appears to be the potential to further investigate whether the gaining of formal legal status as a charity/trustee leads to more effective governance.

Analogies can be made between the role of the trustees/directors/secretariat and the guardianship approach, where they have a duty to 'act in good faith' through company/charity law. Compared to all other forms of regulation, the geographical scale of their work tends to be more directly relevant to the interests of people living and working there. In this scenario there is a better chance of promoting stewardship and sustainable development – encouraging people to represent and look after the interests of their environment – for their longer term benefit (potentially over-riding the socio-psychic barriers to guardianship). This offers a route towards implementing a guardianship approach if there are mechanisms which could lead to trustees representing the environment legally.

4.3 New Tools to Support Guardianship

Stone identifies that there will be resistance to giving a thing [natural objects or the ocean] rights until it can be seen and valued for itself (Stone, 1972 p.456 & 1999 p.44). In recent years, modern assessment tools such as natural capital and ecosystem services are being used to represent the value of natural resources in decision-making. Perhaps this could lead to more claims (in court). However, even with these tools, it is still likely that people will favour the short term (economic) interests of the human individual or community (Sands, in Grear, 2012 p.3) over the longer term public interest towards sustainability of an ecosystem to help 'make it whole'. A body of common law and/or statute law maybe needed to give direct representation to an ecosystem.

Trustees of a third sector engagement initiative such as a catchment or coastal partnership, can bring together and share understanding of the duties of different regulatory bodies; consult industry and society about their needs/desires; and then have a responsibility to take the longer term view based on the knowledge of the ecosystem they need to represent. The combination of a natural capital/ecosystem services approach with a stakeholder engagement mechanism could give the ecosystem a voice, which is what Stone (1972) was seeking. These new tools can

make governance more co-ordinated, effective and accountable. Together, they may offer a way of giving the environment more legal standing.

There is confusion surrounding what a trustee can and cannot legally perform under current legislation. Could the Crown Estate Act be revitalised to allow a more conscious approach to trust management through its trustees? Perhaps there is a duty on government to re-address and renew current legislation in order to guide and successfully monitor trustees (Barrett, 2015). Measures may be needed to incentivise the right behaviour by trustees to ensure they are operating in the public interest.

5 Discussion: A Coastal Trust?

The conscience that Stone supposed is needed – social/cultural change – has evolved. Not through giving trees/rivers direct standing through statute or common law, but by legislating around environmental quality. His narrative precedes key legal frameworks⁶ which aim to protect the environment but have only given the environment ‘soft rights’. Legislation and governance have not progressed far enough to change society’s culture to a great enough extent to slow exploitation and deterioration. The emphasis is still on industry and government through legislation; plus the pressure of NGOs on people, to represent the environment in decision-making. A more organic approach which makes direct links between people and their surroundings (natural resources) is more likely to encourage society to take accountability for its actions by engaging in stewardship of their local resource at a scale⁷ they can relate to - it could be more beneficial than continuous pressure to change the decision-making process through planning and campaigning.

Third sector initiatives foster stewardship in a ‘bottom-up’ manner. They are providing a good compliment to the ‘top-down’ approach of government bodies. Together, they have the opportunity to improve stewardship, represent the public interest and potentially evolve legislation towards a guardianship approach.

It is possible to give someone (an authoritative body) the ability to represent an entity (Stone, 1972 *in* Grear p.12/458) but it requires humans to judge what is ‘right or wrong’ for the natural object. The formation of catchment and coastal/estuary partnerships could be seen as the starting point for establishing this ‘voice’ based on their (potential) ability to act as a facilitator/neutral broker of the natural objects rights. Should the existing, informal collaborative engagement mechanisms have more formal or legal status? Is it ‘unthinkable’ now, forty years after the writings of Stone (1972) that an **ecosystem unit** (e.g. catchment, coastal cell, marine region) could have legal status? There are now more tools and mechanisms which could be used to implement a guardianship approach where the environmental ‘unit’ or ‘ecosystem service’ could be represented in legislation (to be regulated) or through the courts.

⁶ Such as the European Directive on Environmental Impact Assessment (European Commission, 1987)

⁷ There is little discussion by Stone on the *scale* at which you might define the environments’ rights or implement the voice of nature in giving legal standing. Perhaps this is a barrier that has been a factor in lack of pick-up for his arguments. To what extent does a Natural Capital approach or Ecosystems Approach help us to define ‘units’ or ‘functions’ which we could give legal standing to?

To some extent, it seems that rivers have started to gain their own legal personality (Smith, 1928) through the Catchment Based Approach evolved as a result of the Water Framework Directive (EU, 2000) and work of the Rivers Trusts in the UK (ANNEX 1). The trustees and catchment co-ordinators are providing a voice for the river and its hinterland. The Trust funds are effectively administered by the natural objects guardian, providing a mechanism to pay towards the natural environment for any damages. Trustees and their staff/secretariat could provide an alternative to government licencing by being an 'ecological affairs' rep as described by Stone (1972). The trust could effectively become the rights holder, giving legal standing to the river catchment.

System boundaries for the coast are less easy to define than for a river catchment (Paavola and Hubacek, 2013) – but should this be a barrier to giving the coast some form of legal standing or guardianship status? Coastal partnerships, their officers and management committees are operating in a very similar manner to catchment partnerships. They are working in support of government policy, but lacking any statutory backing and few have established charity/company status. There appears to be potential for them to learn from The Rivers Trusts and evolve into Coastal Trusts. Community based networks/partnerships with some form of statutory backing or legal status (e.g. Advisory Councils for fisheries to implement the Common Fisheries Policy) appear to have stronger foundations and more significant outcomes - though there is little evidence to demonstrate this. The current political culture of austerity is limiting the evolution of similar networks for the marine environment (e.g. North Sea, Celtic Seas). If society continues to recognise the health benefits of visiting the coast; the deep origins of our connectedness to nature and the sea; and the fact that our wellbeing is connected to it (Depledge & Bird, 2009) a more positive outcome could arise, building on our current stewardship approach towards guardianship.

The extent to which stakeholder engagement mechanisms such as Catchment and Coastal Partnerships are demonstrating how to promote stewardship could be validated. The best scenario for their future service provision also warrants further investigation: stronger statutory backing and/or firmer non-statutory backing through trusteeship. The viability of an amendment/addition to the Marine and Coastal Access Act (2009) or The Crown Estate Act (1961) could be explored.^{8 9} Stone (1999) proposed a 'guardian for the oceans' involving a reform of institutional structures to include a legislative advisory function with guardian staff having a counsel capacity. His suggestions are, to some extent, being played out by catchment partnerships at a local scale and there maybe real potential to learn from this and apply it further for the coast and sea. Guardianship offers a route that could build on mechanisms which help to reflect the public interest; at the same time collate evidence between government, scientists, stakeholders and communities in order to give the coast a voice.

This paper has explored how the notion of legal standing and guardianship could be applied to future options for promoting stewardship through stakeholder engagement mechanisms such

⁸ UK government has recently been investing in a wide range of projects through the Coastal Communities Fund – over £118 million on over 200 projects between 2012-2015⁸ with a further £90 million committed up to 2021. This has created over 118 coastal community teams around England. Defra is about to start work on two marine pioneer projects which are exploring new avenues for governance at the land-sea interface, seeking avenues to improve natural capital involving improvements in stakeholder engagement.

⁹ Defra's 25yr plan for the environment includes a place-based approach <http://www.nerc.ac.uk/funding/available/schemes/ao-esip/defra-25/> and 'marine pioneer' projects <http://www.northdevonbiosphere.org.uk/news/biosphere-becomes-a-defra-pioneer-area> (accessed 19/12/2016)

as the UK Rivers Trusts and Coastal Partnerships. The evolution of catchment partnerships into trusts through charity and company law, giving fiduciary responsibilities to trustees and directors is worthy of consideration for the coast. The optimal format for an effective, ecosystem-based governance framework for coastal and marine environments - facilitated by stakeholder engagement mechanisms - requires further research and testing at different scales. Could the role of the convenor/secretariat and trustees equate to the role of a judge (e.g. Bingham, 2010)? Maybe it is time to review whether these collaborative engagement mechanisms require more legal status in their own right, as representatives of an ecosystem unit, thereby giving them legal standing. The question remains about whether co-ordination mechanisms at the coast require stronger backing and whether there are better governance solutions or scope to give the coast 'legal personality' to avoid the gap between our management of land and sea.

6 Conclusion

In the spirit of Stones' *Should Trees Have Standing?* the question was posed about whether - and how - the coast could gain more legal standing. The idea of humans having an obligation to the natural world and its owner is built into the concept of stewardship which brings together duties on private landowners with public ownership and the regulatory functions of the state. Collaborative governance has emerged as a way to achieve better planning and management. Third sector NGOs and stakeholder engagement mechanisms supported by charity/company law are evolving for rivers, coasts and the sea. They offer mechanisms to support and represent the public interest towards sustainable development. With the renewed focus on statutory marine planning and requirement to consider land-sea interactions, there maybe new recommendations towards coastal stewardship which draw on Stones' guardianship approach.

This Advanced Specialist Text (AST) module has been undertaken as part of the first year of a PhD to research whether the coastal environment requires a 'voice' through the provision of better governance. The research seeks to identify, explore and compare collaborative governance mechanism(s) at different scales. The aim is to show whether, and how, empowering stakeholder engagement mechanisms enhances stewardship of the coastal and marine environment. It is anticipated that the outcome will inform future government policy, including recommendations which enable better governance.

ANNEX 1 CATCHMENT AND COASTAL PARTNERSHIPS IN THE UK

Catchment Partnerships

Stakeholder engagement mechanisms have evolved in the form of catchment partnerships for nearly all main river catchments in the UK over the past decade, as illustrated in Figure 1. Integrated management at the scale of the river basin now includes stakeholder engagement mechanisms with catchment coordinators for 100 river catchments in the UK.

Coastal Partnerships have evolved since the 1990s for approximately 40 areas around the UK coast, as illustrated in Figure 2.

There is also an emerging trend towards cross-border collaboration for marine regions including the North Sea Forum and Celtic Seas Partnership¹⁰.

These three forms of stakeholder engagement mechanisms (for the rivers, coast and sea) bring together regulators, industry, scientists and citizens on an informal basis for a geographical area or ecosystem. Collaborating over joint projects with sustainability targets, they often demonstrate stewardship as they mobilise stakeholder and public engagement. There are potentially useful opportunities for exchange of best practice between river, coast and sea (NCI dialogue, 2016). The evolution of governance and participatory approaches in other disciplines may also have useful application to the coastal & marine environment.

The UK *Localism Act 2011 (Section 110)* introduced a *duty to cooperate* which promotes better linkages between stakeholders, but there maybe more scope to apply this principle to bottom-up engagement for the coastal and marine environment.

UK coastal partnerships offer an example of collaborative stakeholder engagement mechanisms which may have the potential to offer the coast more legal standing. Their role is elaborated in ANNEX 1 and is relevant to this discussion. Ongoing research into the assessment of the performance/effectiveness of existing coastal networks & partnerships, is quite limited, but of 9 important factors identified to achieve ICM, participation emerges as the most cited (Stojanovic, Ballinger and Lalwanib, 2004). Collaborative governance may therefore be supported by participatory engagement mechanisms such as the catchment partnerships and coastal partnerships. They provide opportunities for civil society to engage in decision-making.

Figure 1 Catchment Partnerships



Source: <http://www.therivertrust.org/rivertrusts/index.html>

¹⁰ <http://celticseaspartnership.eu/>

Coastal Partnerships

The complexity of multiple institutions with regulatory responsibilities for the coast, combined with evolution of the ICM approach, has led to attempts to improve horizontal integration between different sectors and vertical integration between different tiers of management. Coastal partnership initiatives in the UK have formed since the 1990s (e.g. Stojanovic & Ballinger, 2009) to facilitate stakeholder engagement mechanisms promoting collaborative governance on a voluntary basis (Stojanovic and Barker, 2008; McGlashan and Barker, 2005). UK examples are shown in Figure 2 (p.13).

For a specific coastal area or estuary, they bring together stakeholders with an interest in the coast – fishermen, harbour masters, boat users, government agencies, industry, academics, local councils, action and community groups etc. Their primary aim is to promote the sustainable use of resources – to encourage information sharing, collaborative projects, resolving conflicts and raising awareness of the value and multiple uses of their coastal area. A wide range of partners tend to provide small financial contributions towards core funding which employs one (or two) people to act as co-ordinators - who then seek additional funds for practical delivery projects.

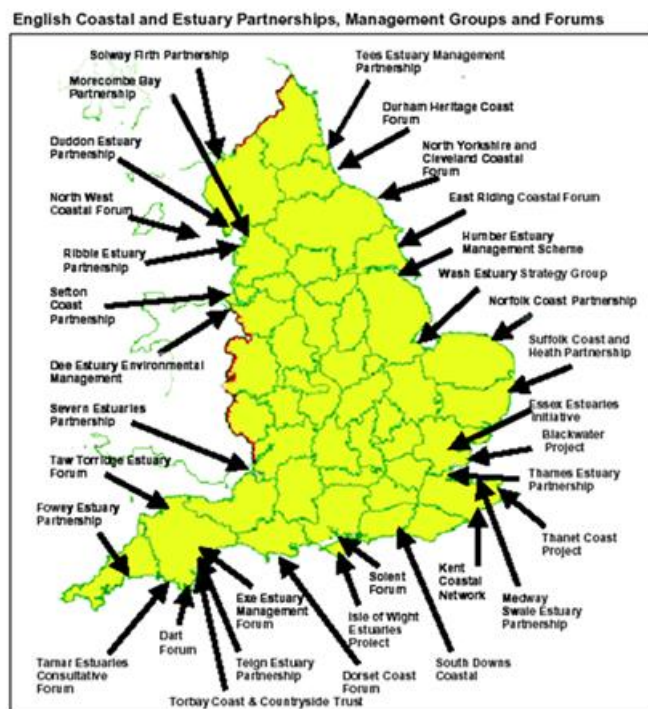
Based on implementing ICM principles, they often have secretariat services which provide a neutral platform for encouraging communication and resolving issues.

The longevity of experience and relations established by these partnership initiatives, can benefit decision-making in coastal communities. However, there remains no statutory basis for their role and an increasing challenge to financially sustain their co-ordination services. There is little academic scrutiny of their effectiveness or legal context for their co-ordination role.

They have been criticised (e.g. McGenna, Cooper and O'Hagan, 2008 and Fletcher, 2003), however they constitute a new form of social arrangement in which the basis of involvement is an ongoing partnership rather than a consenting or planning process. In this sense, they are better constituted to attend to the problems of common pool resources, and to plan and monitor how trade-offs between users will influence the quality of the marine environment (Roberts and Jones, 2009). They appear to be promoting coastal stewardship, but there is a lack of awareness about how current practice links to the principles and legal basis for what these initiatives maybe achieving and whether or not they have further potential.

Figure 2 UK Coastal Partnerships

Source: Defra, 2006



ANNEX 2 CURRENT STATUS OF COASTAL/MARINE PARTNERSHIPS AND SIMILAIR BODIES IN THE UK

Location/Partnership	Framework or driving legislation	Other Status in law	Trustees/Directors?
Pembrokeshire Coastal Forum	National Parks and Access to the Countryside Act 1949 : Pembrokeshire Coast National Park designated 1952	Pembrokeshire Coastal Forum CiC	Board Members
Severn Rivers Trust	Water Framework Directive	Registered Charity & Company	Trustees & Directors
Severn Estuary Partnership	None	None	No, only Steering Group members from local authorities, funding partners & host body.
Thames Estuary Partnership	None	Charity (& Company)	Board of Trustees
Solway Firth Partnership	None	Independent Charitable Body and Scottish Company Limited by guarantee without a share capital	Board of Trustees
Celtic Seas Partnership	Marine Strategy Framework Directive		No – led by an NGO (WWF) with an Observer Board attended by government officials and an Expert Advisory Group of volunteers.
Chichester Harbour Conservancy	Chichester Harbour Conservancy Act (1971)	None	Committee Members
Clyde Marine Planning Partnership	Scottish Marine Act (2010) & EC Maritime Spatial Planning Directive	None	Board (signatories to Constitution emerging)

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