



A New Marine Regulatory Regime on BC's North and Central Coast?

Highlights

- The Great Bear Rainforest Agreement has overshadowed an equally important development in BC: the conclusion of a decade of negotiations for management and protection of the marine environment on the province's north and central coast.
- The resulting plans under the Marine Planning Partnership (MaPP), combined with recent DFO protections for glass sponges raise questions about a future regulatory regime along BC's coast.
- There has been a lack of coordination among policymakers and regulators and too little engagement with industry on the future balance between marine protection and the assurance of transit routes for vessels and the ability to transport goods and commodities.
- A sensible coastal regime should balance environmental and economic sustainability, incorporate long-range planning, and rest on the principles of assured access to commercial transportation routes, coastal marine environmental protection, enhanced marine safety and monitoring, and support for the growth of key export sectors.

On February 1, 2016, the British Columbia government, 26 First Nations groups, the coastal forest industry and environmental groups signed an historic Agreement that brings some certainty to the region of BC's north and central coast often referred to as the Great Bear Rainforest.¹ While the Agreement garnered headlines nationally and beyond, a less heralded development occurred eight months earlier, one that more-or-less mirrors the coastline covered by the Great Bear Rainforest (GBR) Agreement. The [Marine Plan Partnership](#) (MaPP) for the

North Pacific Coast, underpinned by four sub-regional marine plans, was announced in April 2015. The final MaPP action plan is scheduled for completion in spring 2016.

Like the GBR Agreement, the marine planning agreements involved more than a decade of negotiation by all parties.² Both PNCIMA and MaPP rely on an ecosystem-based management (EBM) approach. While the land-based management implications flowing from the GBR Agreement are relatively clear and have been

¹ The new Land Use Objectives Order for the Great Bear Rainforest was established by BC's Ministry of Forests, Lands and Natural Resource Operations (FLNRO) on January 29, 2016: https://www.for.gov.bc.ca/TASB/SLRP/LRMP/Nanaimo/CLUDI/GBR/Orders/GBR_LUO_Signed_29Jan2016.pdf.

² Signatories are the BC government and 17 First Nations. There were also advisory committees made up of technical experts and commercial and industry stakeholders. The federal government was involved in the PNCIMA initiative,

but withdrew in the fall of 2011. Started in the context of the Department of Fisheries and Oceans' (DFO) Pacific North Coast Integrated Area Management Initiative ("PNCIMA") in 2004, BC and First Nations signed a [Memorandum of Understanding](#) in 2011 to pursue more operational and localized planning. As such, MaPP is focused on the nearshore and foreshore areas of the four sub-regions. It has produced site specific guidance for a variety of marine uses and activities.

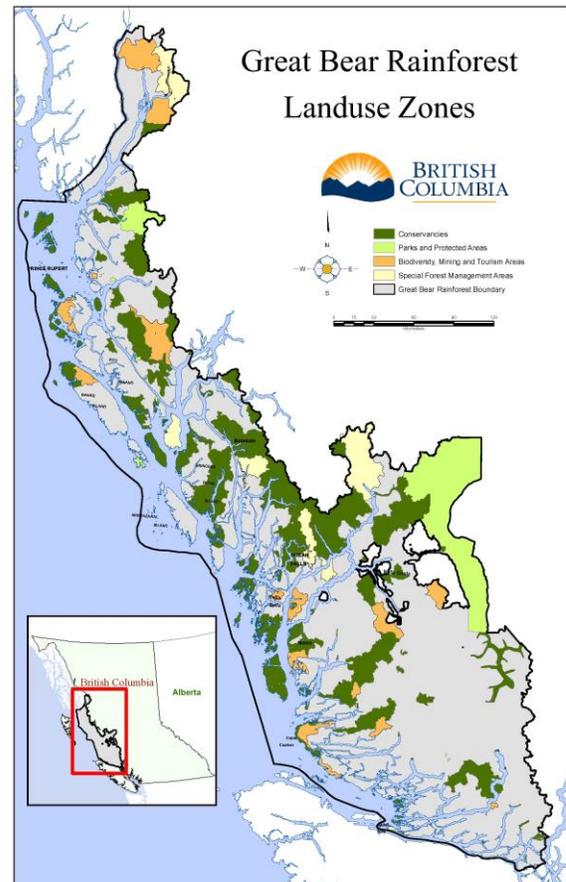
widely publicized, the marine-based implications from the MaPP initiative – and other regulatory developments – are considerably less clear, and eventually could have a substantial bearing on the future economic vitality of the north and central coast. Of interest, environmental groups have labelled the marine region the “Great Bear Sea” and are calling for greater protection, principally against the prospect of oil pipelines and tankers.³

This issue of the Environment and Energy Bulletin reviews recent and prospective developments on the north and central coast, and considers some implications for the flow of goods and resources that underpin the regional and provincial economy. It also sets out a few key principles that we believe should underpin a stable coastal regulatory regime that supports sustainable economic growth.

Recent Developments

Marine Ecosystem-Based Management Planning

The MaPP initiative brought together the BC government (led by Ministry of Forests, Lands and Natural Resource Operations) and First Nations groups to develop marine management plans in four sub regions: the North Coast, Central Coast, Haida Gwaii and North Vancouver Island.⁴



The federal government participated and funded some analysis and study until 2011, at which time it withdrew. The MaPP initiative sets out its methodological approach as follows:

The MaPP planning process uses a marine ecosystem-based management (EBM) approach, which is consistent with First Nations’ resource management approaches

³ Such groups include the Canadian Parks and Wilderness Society (CPAWS), World Wildlife Fund, David Suzuki Foundation and Living Oceans, among others. Living Oceans’ website states: “Living Oceans is working with the provincial and First Nations governments in a co-lead planning process which extends the Great Bear Rainforest’s high standard of conservation into the ocean environment to ensure...our communities benefit for many generations to come.”: <http://www.livingoceans.org/initiatives/ocean-planning>. Other groups such as West Coast Aquatic have developed strategies to apply EBM

approaches to aquatic management areas on the west coast of Vancouver Island: <http://westcoastaquatic.ca/wp-content/uploads/2012/11/WCVI-Coastal-Strategy-print-version-2.pdf>.

⁴ Almost all of the funding for MaPP was provided by grants from the US based Gordon and Betty Moore Foundation who in 2014 provided an [\\$8 million grant](#) to Tides Canada to support the implementation of marine plans and an additional [~\\$500,000 grant](#) for MaPP through the Nature Conservancy.

and with provincial government direction in resource management. EBM is built on principles of ecological integrity, human well-being, and governance and collaborative management. EBM differs from sector-based resource management in that it defines management strategies for entire systems, not individual components of the system, with humans as an explicit part of the marine ecosystem.⁵

The shift to ecosystem-based management for the marine environment from a sectoral approach is viewed as being beneficial by providing stability and sustainability from a planning perspective for the various values and activities on the north and central coast. However, EBM as a tool is not a panacea: there is no universal definition and no standard methodology for completing an EBM analysis. Critically, EBM in marine planning is deliberate about the participation of First Nations groups.

The next steps resulting from the MaPP plans are important to understand from a resource planning and an economic perspective. It is unclear whether the proposed next step (an “action plan”) will result in regulation beyond the anticipated area-based planning tools contemplated in the sub-regional plans. Important strategic issues arise from these marine plans, which so far have received little scrutiny.



Protecting Glass Sponges

In summer 2015, Fisheries and Oceans Canada (DFO) finalised a regulation under the *Oceans Act* creating a Marine Protected Area (MPA) for four glass sponge reefs in Queen Charlotte Sound and Hecate Strait (covering approximately 2,400 km²), which falls within the PNCIMA/MaPP area.⁶ DFO’s consultation included commercial and recreational fishers, industry (including oil and gas), and shippers. The associated Regulatory Impact Analysis Statement (RIAS) stated that the areas closed to halibut, prawn and bottom-trawling would result in negligible changes to the commercial catch for each fishery type. In June 2015, DFO also closed portions of Howe Sound and southern Georgia Strait to bottom trawling and trapping (commercial and recreational), in order to protect nine glass

⁵ North Coast-Skeena First Nations Stewardship Society & Province of British Columbia, *North Coast Marine Plan Overview*, (2015) p.6.: http://mappocean.org/wp-content/uploads/2015/11/nc_mapp_summary_v3.4_web.pdf.

⁶ The glass sponges found in these areas are up to 9,000 years old, and are live, fragile formations whose skeletons are made of silica, making them vulnerable to damage due to physical disturbance.

sponge reefs found there. First Nations fisheries were asked to voluntarily cease bottom fishing for food, social and ceremonial (FSC) purposes in these areas until a full closure takes effect on April 1, 2016.⁷

In general, there is a potential for conflict between conservation and protection goals on the one hand, and freedom of movement in BC's north and central coastal waters – and on the south coast in Georgia Strait – on the other.

What Happens Next? (Expect Federal Re-Engagement)

Against the backdrop of several planning and regulatory developments affecting the marine environment on the north and central coast, the new federal government is expected to re-engage in the region in several ways:

- The Minister of Transport's mandate letter commits him to work with DFO and the Coast Guard to restore "lost protections" from the *Fisheries Act* and *Navigable Waters Protection Act* and "incorporate modern safeguards." As has been widely reported, the Minister of Transport is also mandated to formalize a moratorium on crude oil tanker traffic on BC's North Coast. The international legality of such a move has been questioned in some quarters.
- The Minister of Fisheries and Oceans and the Minister of Environment and Climate Change each have mandates that will affect BC's north and central coast, including:
 - (DFO) Restore funding to freshwater research, ocean science and monitoring, and support aquaculture industries on Canada's coasts.

- (E&CC) Work with the Minister of Fisheries & Oceans to increase the proportion of marine and coastal areas that is protected to 5% by 2017 and 10% by 2020.⁸

The environmental movement has been clear that it views Marine Protected Areas as the minimal acceptable level of protection to satisfy its priorities. Stronger protections will likely be sought for various marine formations and attributes, either within or outside the MaPP planning framework.⁹ And while the MaPP process is now complete at the sub-regional planning level, it is almost certain that the new federal government will re-engage in the implementation of the plans. Not only is it expected to be a more activist government (as demonstrated by the mandate letters above), but Ottawa also holds jurisdiction in several of the important realms of coastal marine activities, including transport, fisheries, environment (shared), navigable waters, and marine safety. It remains to be seen whether the MaPP initiative and other priorities will lead to increased regulation in the marine setting.

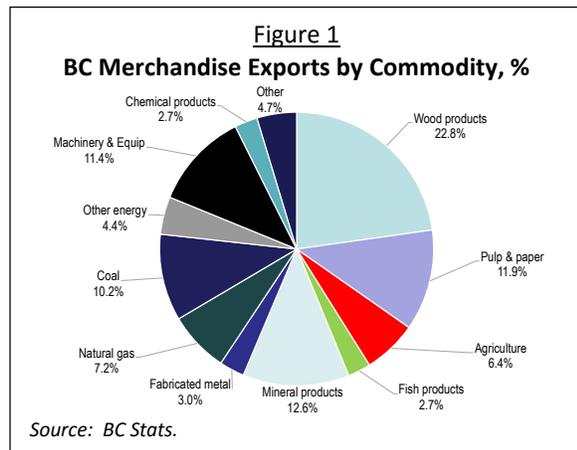
Implications

Many sectors of the BC and western Canadian economy rely on coastal waters as their "marine highway" to safely move goods and commodities to markets; people to and from their destinations (including for tourism); and as a source of economic activity in their own right (commercial and recreational fisheries, aquaculture). Several of these sectors are notable generators of economic activity within BC, and have a substantial share of the province's goods exports (Figure 1).

⁷ The regulation focuses on the protection of the sponge reefs on the sea bottom, but some zones have vertical protections which could in turn affect surface activities.

⁸ This goal aligns with Canadian Parks and Wilderness Society's call for the federal government to protect 10% of Canada's oceans by 2020.

⁹ For example, in the case of glass sponges in Queen Charlotte Sound and Hecate Strait, CPAWS states that once the Marine Protected Area (MPA) designation has been finalized, it will nominate the area for UNESCO World Heritage Status.



For example, between 2012 and 2014, BC's fish and seafood/aquaculture industries exported \$626 million to Trans-Pacific Partnership Agreement countries.¹⁰ Over the longer term, if the TPP is ratified, these industries are well positioned to take advantage of lower tariffs (especially in Japan and Vietnam) and should be able to substantially expand their exports. The sector will only be able to grow if the marine management regime effectively balances environmental protection with economic imperatives.

Questions arise about the implications of future contemplated MPAs, how these are coordinated with broader ecosystem-based management plans, and what new areas (geographically and thematically) might be subject to future regulation. Further – and most important to industries on the coast – is whether *ad hoc* regulation development could impede (inadvertently or by design) the ability to a) transport goods and commodities in a cost-effective way through the region, or b) expand or start new marine-based industries associated with, for example, fisheries or aquaculture. Could shipping routes from the Port of Prince Rupert be constrained? Could trans-shipments

¹⁰ Department of Foreign Affairs, Trade and Development Canada, "Advantages of the new Trans-Pacific Partnership Agreement for British Columbia. October 5, 2015.

from Canada's number one-ranked port – Port Metro Vancouver – also be affected?

Several industries, including the coastal forestry sector, have developed constructive working relationships and processes with federal and provincial regulators and First Nations to assure sustainable practices as well as access to and the ability to transport their products. Other industries, such as oil and gas, have concerns about access to transport for their commodities, not only tankers for petroleum products, but also the sub-sea segments of proposed natural gas pipelines to serve LNG terminals, should these be developed.

The developments outlined above raise concerns about a seeming lack of coordination among policymakers and regulators on the future balance between marine protection and the assurance of transit routes for vessels and to enable the transport of goods and commodities. Without a coordinated approach, marine areas could become "sterilized" against access and use in the industry sectors that will continue to underpin the north and central coastal economy, as well as the provincial economy.

Questions also arise about the "share of effort" that is appropriate in meeting Canada's target of protecting 10% of marine and coastal areas. Through a variety of mechanisms (in addition to MPAs), such as marine parks and conservation zones, BC already enjoys a high degree of marine protection along its coast.

Looking Forward, What Should a Sensible Coastal Regime Look Like?

At this juncture, collaborative planning among the federal and provincial governments, First Nations groups and industry is essential. BC's coastal industries have not been well served by

Accessible via: <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-tp/benefits-avantages/pt/bc-cb.aspx?lang=eng>.

the minimal level of engagement by governments to date. The energetic efforts and substantial funding by environmental organizations focused on protecting BC's coast – both land and sea – have outpaced the planning and consultation obligations of government at both senior levels.

The elements of a successful coastal regime should balance environmental and economic sustainability, incorporate long-range planning, and rest on the principles of assured access to commercial transportation routes, coastal marine environmental protection, and enhanced marine safety and monitoring (including adequate resources for such entities as the Coast Guard). Such a regime should also support the sustainability and growth of export sectors including energy products, wood products, agriculture, and aquaculture. It should also acknowledge BC's position as Canada's Pacific Gateway, embrace the reality that BC is a small, open, trading economy, and recognize that the ability to export and to compete in global markets is foundational to maintaining a vibrant provincial economy.

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