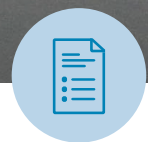


SUSTAINABLE
SEAS

Ko ngā moana
whakauka



Croisilles Harbour, Tasman Bay © Steve Urlich



Summary

'Hooks' and 'Anchors' for ecosystem-based management in the marine environment

June 2021

About

This Summary is Output 3 of the *Policy and legislation for ecosystem-based management (EBM) (4.2)* project.

We aim to identify what opportunities exist for EBM implementation and determine what needs to change to support successful implementation of EBM in Aotearoa New Zealand.

This is a transdisciplinary, collaborative research project, involving Government, Māori and non-government organisations, iwi and hapū, industry, communities, youth, and a Strategic Advisory Board of law and policy experts.

We are contributing to the evidence base for policy-makers, Māori and stakeholders to navigate the legislative, policy and practice constraints holding back EBM, and any changes required to enable it.

Project leaders

Steve Urlich (Lincoln University)

Elizabeth Macpherson (University of Canterbury)

Project team

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Duration

2020 – 2023



Learn more

www.sustainableseaschallenge.co.nz/policy-and-legislation-for-EBM



About the Sustainable Seas National Science Challenge

Our vision is for Aotearoa New Zealand to have healthy marine ecosystems providing value for every New Zealander. We have 60+ research projects that bring together around 250 scientists, social scientists, economists, and experts in mātauranga Māori, policy, and law. Our research is producing knowledge and tools for decision makers to apply an ecosystem-based approach to managing marine resources. Ecosystem-based management (EBM) is a holistic and inclusive way to manage marine environments and the competing uses for, demands on, and ways that New Zealanders value them.

Learn more www.sustainableseaschallenge.co.nz/why-EBM



This is a summary of our comparative research of EBM in the laws and policies of other countries - the first research output from our *Policy and legislation for EBM* project.



Elizabeth Macpherson et al, “Hooks” and “Anchors” for Relational Ecosystem-Based Marine Management’ (2021)
130 Marine Policy 104561



The findings from this research build on research from Phase I and will inform our development of options for enabling EBM.

Our research of attempts to implement EBM in laws and policies of Chile, Australia and Aotearoa New Zealand uncovered four synthesised lessons:

- **Fragmentation is inevitable**
- **Regulators must ‘walk the talk’**
- **Indigenous rights are unfinished business**
- **EBM requires more than spatial planning**

What do the experiences of these countries tell us about the legal, policy and practice changes needed to enable EBM in Aotearoa New Zealand?

1. Our research found that there is no blueprint for EBM in one law, policy or institution.

EBM can instead be understood as an ongoing and relational, human-driven process of iteration, adaptation, reflection and adjustment.

EBM is both a process and an outcome – with the ability to regenerate and transform, as information, relationships and knowledge build over time.

This thinking builds on and supports the Challenge’s seven principles for EBM in Aotearoa New Zealand.

2. Our findings suggest that policymakers should focus on enabling the relational processes of EBM – through institutions and processes that subscribe to a common vision and allow for change over time.

A relational approach to EBM could be enabled by a combination of detailed rule and institution-making (hooks) and high-level norm-setting (anchors).

We will build on these findings in our next research outputs, as we continue to explore the legal and policy arrangements that can support EBM in Aotearoa New Zealand.

Te take

The issue

What is the role of law and policy to enable EBM?

Despite scientific and policy commitment to develop and implement EBM in Aotearoa New Zealand and globally, it is still not clear what legal and policy approaches will support it. Meanwhile, the health and integrity of our marine ecosystems continues to decline.

Will EBM require wholesale reform of our laws, policies and institutions (with the associated cost and delay)? Or can governments and communities 'launch the EBM waka' now, using a combination of existing, amended and new tools, rules and processes?



Queen Charlotte Sound / Tōtaranui © Steve Ulrich

Tā tātou rangahau

Our research

We did a comparative study of EBM in laws and policies of other countries.

What did we do?

We looked at attempts to implement EBM in the laws and policies of three countries: Australia, Chile and Aotearoa New Zealand. These countries have all tried to implement EBM in various ways to better manage marine ecosystems, across various levels of government, and involving multiple government agencies and industry stakeholders. Importantly, these countries all have Indigenous peoples/nations with protected rights in marine and coastal areas.

We looked at the use of EBM language and approaches in law, policy and institutions, to draw out lessons for Aotearoa New Zealand. We wanted to know: what were the challenges, issues, obstacles and successes of implementing EBM in the laws and policies of these countries?

How did we do it?

Our trans-disciplinary, bicultural, and multilingual team of researchers of law, policy, ecology, geography, planning and Indigenous studies undertook a detailed study of EBM in the laws and policies of each country, in its specific cultural, social and political context.

Ngā whakataunga

Findings

We found that all countries shared four concerns that undermined EBM implementation.

Fragmentation is inevitable

In all countries there are multiple laws, policies and institutions concerned with marine regulation, which have multiple perspectives and interests and fail to effectively 'speak to each other'. This fragmentation undermines the potential for shared or common approaches to policy design and implementation, and presents challenges for those seeking integrated or ecosystem-focused outcomes.

Yet fragmentation is characteristic of marine regulation - because it is complex, multifaceted, multisector, and constantly changing, while our knowledge is often incomplete or contradictory.

Attempts to replace marine regulatory fragmentation with 'one-stop shop' approaches in all three countries have, in our assessment, been unsuccessful, unsustainable, or counterproductive. Importantly, they have failed to secure trust and cooperation between competing interests.

We suggest that law and policymakers need to work with the inevitable regulatory fragmentation concerning our oceans.

Regulators must 'walk the talk'

All countries used EBM language in high-level policy commitments, but implementation in detailed rules, processes and institutions, was limited because of:

- inadequate financial resourcing, including of scientific information;
- political and/or institutional capture by vested interests
- institutional fragmentation and regulatory complexity

- stakeholder conflict and mistrust
- path dependency (being 'stuck in a rut')
- lack of non-regulatory incentives and legal obligations
- absent overarching and consistent goals and objectives

We emphasise that governments must commit to EBM, including funding effective and relational institutions, and research and monitoring to support evidence-based decision-making.

Indigenous rights are unfinished business

In all countries, there were legal protections of Indigenous rights in marine areas and increasing incidence of Indigenous involvement in legal and policy arrangements. Yet governments have failed to engage meaningfully with Indigenous marine governance, and often directly ignored or disregarded Indigenous rights and sovereignty. Efforts to engage with Indigenous peoples are often consultation focused rather than true partnerships. The failure to reflect the rights and knowledge of Indigenous peoples has caused uncertainty and conflict, undermining EBM implementation in all countries.

We stress that the rights and knowledge of Indigenous peoples are key to implementing EBM, using an authentic partnership approach.

EBM requires more than spatial planning

The country studies revealed that marine spatial planning (MSP) is often implemented in a way that runs counter to the holistic objectives of EBM, especially in the absence of high-level or strong overarching legal and policy directives that set 'ecological bottom lines'.

This has occurred where MSP initiatives only protect parts of ecosystems while allowing non-protected areas to be degraded, damaged or destroyed. Where EBM is equated with spatial planning, efforts have focused on the establishment of marine protected areas (see the diagram below). This has often been at the expense of environments outside of 'pristine' areas where EBM is most needed, and has disregarded local community or Indigenous rights which could complement environmental objectives.

We point out that enabling EBM will require more than existing marine spatial planning approaches, and should reflect the holism and interconnectedness of ecosystems and communities.

So what does this mean for marine law and policy?

We need to think of EBM as a relational process

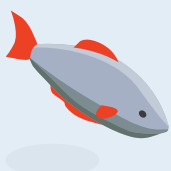
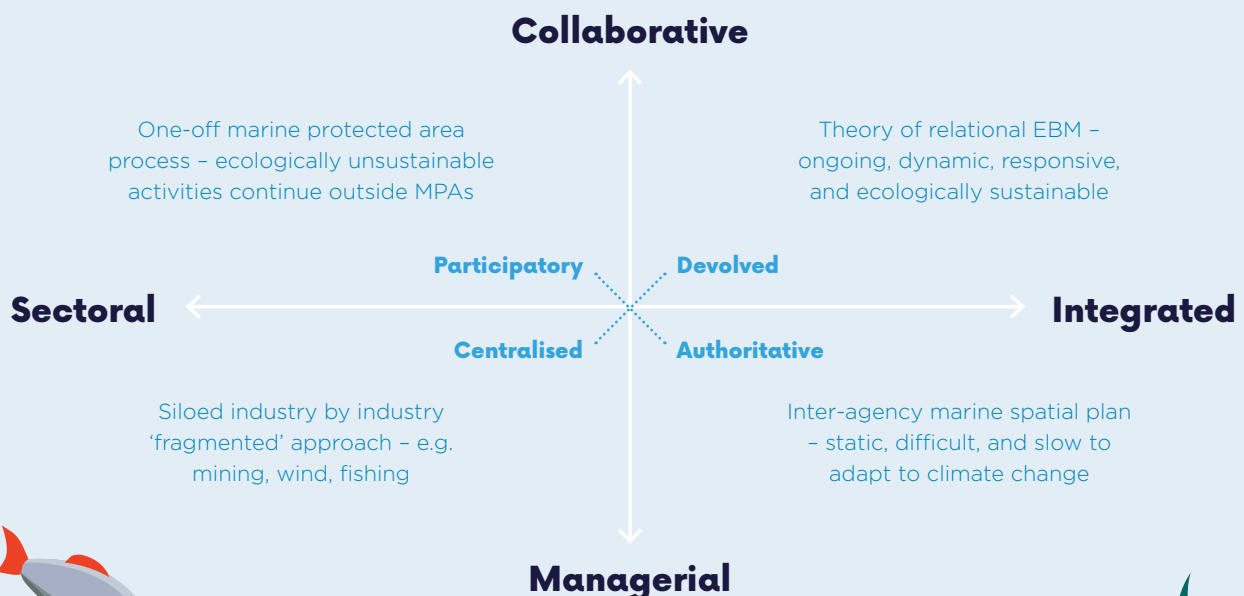
EBM is not an outcome to be 'arrived at' in static legal and policy implementation. It is an ongoing process of relationships within and

between humans and ecosystems, against a network of rights, interests, practices, law, policies and institutional cultures.

EBM as a 'relational' process must be adaptive, flexible, networked, connective and iterative, in order to respond to anthropogenic stressors, social conditions and climate change. A relational approach requires meaningful partnership with Indigenous peoples, and their rights, values and knowledge.

Our research confirmed that there is no 'blueprint' for EBM in one law or policy. Policymakers should focus on enabling the relational processes of EBM - via institutions and processes that subscribe to a common vision and allow for change over time. This is significant, because it means that we can start to 'do EBM' for our precious marine ecosystems now, while building a long-term vision for any wholesale legal and policy reform.

This diagram shows a range of approaches to implementing EBM (including relational approaches) on a two dimensional heuristic model.



We need both 'hooks' and 'anchors' to enable EBM

Our research confirmed that EBM must be backed up by clear legislative requirements ('hooks') if it is to support change. EBM hooks should be aligned across all laws and policies affecting the marine environment, to enable a common vision across agencies and sectors and reduce the likelihood of conflict.

Our research found that EBM works best when it is 'anchored' by overarching legal and policy objectives (including constitutional protections and those that adopt international law standards) to set a shared vision and approach across regulatory frameworks and sectors of society.

EBM approaches will have stronger hooks and anchors where they have community 'buy-in' and embrace meaningful partnerships with and appropriate respect for Māori rights.

We suggest that a relational approach to EBM could be enabled via a combination of detailed rule and institution-making ('hooks') and high-level norm-setting ('anchors'):

- **Hooks** – combinations of new, amended, and (where appropriate) existing rules, tools and processes that reinforce and enable a coordinated approach to EBM across sectoral frameworks, that are properly resourced and mandated by government and supported by effective institutions and community participation; tied together by
- **Anchors** – overarching or constitutional legal and policy objectives that set a shared vision and ecological 'bottom lines'.



I muri mai

Next steps

In our next research outputs, we will continue to explore the tools, mechanisms, institutions and processes that can protect and restore our marine ecosystems, in the context of existing and protected rights and interests, in particular those of Māori.

The diagram below shows the next research outputs to come from our project.

>> Learn more
www.sustainableseaschallenge.co.nz/policy-and-legislation-for-EBM



Cape Campbell, Marlborough © Steve Urlich



Elizabeth Macpherson et al, “Hooks” and “Anchors” for Relational Ecosystem-Based Marine Management’ (2021) 130 Marine Policy 104561



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