

Dalhousie's Marine Affairs Program has initiated this outreach publication, *Marine Affairs Policy Forum*, to stimulate informed discussion, and to strengthen the linkages between research and policy-making in the Atlantic Region.

The genesis of *MAP Forum* arises from a similar initiative for the Caribbean region by the Centre for Resource Management and Environmental Studies, University of the West Indies.

Understanding the 1999 Georges Bank Moratorium Decision

For the purposes of this analysis, the 1999 decision-making process is defined as the steps steering the Governments of Canada and Nova Scotia towards a decision on whether an existing moratorium on oil and gas activities should be extended after January 1, 2000. The legislatively required process began with the appointment of a three-member review panel by the federal and provincial governments. The panel commenced its mandated activities on January 1, 1996. Four years later, on December 22, 1999, the federal and provincial Ministers of Natural Resources announced a thirteen-year extension of the moratorium, to December 31, 2012.

Introduction

Understanding the factors surrounding the decision to extend the Georges Bank moratorium in 1999 is significant from a policy analytical perspective today for a number of reasons:

- Georges Bank (Figure 1), located some 200 kilometres offshore of south-western Nova Scotia is considered to be uniquely productive and one of the world's most prolific fishing grounds, despite being heavily fished for over a hundred years. The area is thus of significant historical, social and economic importance to coastal fishing communities in the Maritimes and the north-eastern United States.
- Given the focus of the policy problem on whether a new ocean user should be allowed access to a defined offshore area, the case study provides an opportunity to use the research findings to inform similar policy debates.
- The 1999 decision-making process centred around a structured public review process. Participation in the public review could therefore be used to identify key actors in the decision-making process in order to assess their influence on the decision-making process.
- Given the jurisdictional sharing of Georges Bank by Canada and the US, and the bilateral implications of an equivalent moratorium on the American side of the Bank, the consequences of the Canadian decision were not only regional in scope, but also international.
- The decision to extend the moratorium until 2012 guaranteed the revisiting of the policy problem by Nova Scotia and Canada, and as well, by the US in addressing the issue for its side of the Bank.

The Existing Policy Context

Over the period 1996 to 1999, the Georges Bank review presented a unique situation for coastal and ocean policy decision-making in the Canadian context. Firstly, although taking place in a policy environment that was considerably different from that of the late 1980s, the scope and structure guiding the 1999 decision-making process was in fact based on

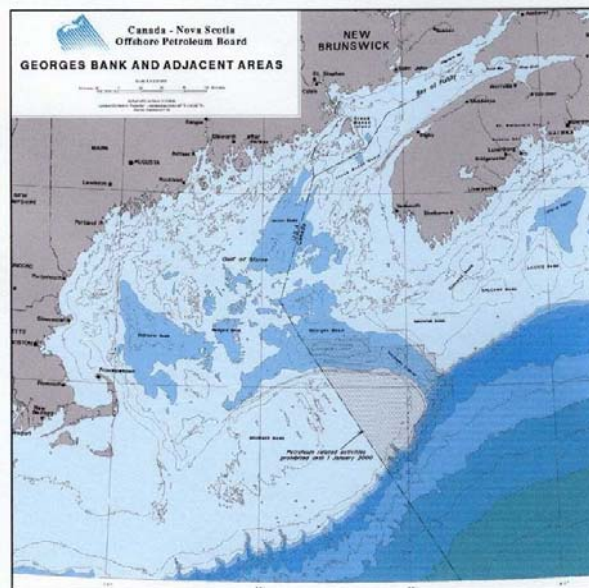


Figure 1

a political decision that was subsequently enshrined in legislation almost a decade earlier. Secondly, the use of the public review process to address a strategic-level policy question affecting ocean use and space was the first of its kind in Canada. As such, precedent was lacking in terms of evaluating the challenges and appropriateness of the process for addressing such questions. Thirdly, the broader policy environment affecting coastal and ocean decision-making had changed substantially since the moratorium was first introduced in 1988. Four identifiable areas of change included:

- The collapse of the groundfish fish stocks throughout the Atlantic Region and the imposition of fishing moratoria off the coast of Newfoundland and Labrador and Nova Scotia in the early 1990s. Although a fishing moratorium was not placed on the Canadian side of Georges Bank, the US did impose management restrictions on the fishery that included a moratorium on their side of the Bank in 1994.
- Although the US had assessed the hydrocarbon resources of their portion of Georges Bank in 1981/82 and found it to be limited, the likelihood of hydrocarbon reserves from seismic and geologic data was considered a good possibility on the Canadian portion of Georges Bank. Thus decision-makers could not easily ignore the opportunities available to the region from petroleum activities.

- Despite the legally-imposed maritime boundary by the International Court of Justice in 1984, decisions affecting ocean use on either side of the boundary required due consideration of their consequences for the entire Bank, forcing the decision-making process to consider bilateral relation implications.
- The governance structure of the 1990s was such that public involvement in decision-making had become not only an expectation but a right, enshrined in both “hard” and “soft” policy instruments. The *Canadian Environmental Assessment Act* (1992) and the *Oceans Act* (1996) both required the federal government to ensure public involvement in decision-making.

Major Areas of Concern

The mandate of the review panel was taken directly from the 1988 Accord Implementation legislation. As specified, the panel was to limit its review to the environmental and socio-economic impacts of exploration and drilling activities on the Bank. Notwithstanding the limited scope, a broad range of concerns was identified by actors who had coalesced around the policy problem. These were categorized into six major issue areas: the fishery; the Georges Bank ecosystem; petroleum exploitation activities; co-existence; the offshore regulatory regime; and, the decision-making process.

Concerns over the fishery - Georges Bank has been commercially harvested by Canadian and American fishers since the mid-1800s. Over that period, the productivity of the various commercially targeted species had varied considerably, due to excessive fishing pressure and natural variation. Nonetheless, the Department of Fisheries and Oceans (DFO) provided the review panel with estimates of the potential biomass production of commercially-targeted species as an indication of what might be realizable if stocks were allowed to rebuild. In total, the Georges Bank fishery was valued at approximately \$100 million annually, for the majority of the period since the 1988 moratorium. Dependence on the Bank is greatest in south-western Nova Scotia where fishing, as an economic activity, provided direct income at the time of some \$38 million to approximately 1000 fishers and \$6 million to an estimated 600 plant workers annually. Thus, both the fishing industry and the adjacent coastal communities raised legitimate concerns over the potential negative effects of all aspects of petroleum exploitations on their livelihood.

Georges Bank ecosystem – Much has been written about the physical, chemical and biological processes occurring on Georges Bank. However, concerns were raised on the gaps in knowledge with respect to the linkages between these processes and the additional stresses which might be placed on them as a result of petroleum activities. Specific areas of concern related to the retentive capacity of the Bank, which has been attributed as a factor in its high productivity. Interactions between petroleum activities and year-round spawning of the various commercially exploited species were also areas of significant concern. Other concerns included the effects of petroleum activities on the use of the area by over two dozen whale and four seal species, impacts on the benthic community and sediment and water quality effects.

Environmental impacts of petroleum-related activities - Concerns were raised over the potential environmental impacts associated with all phases of petroleum exploitation. During

the exploratory phase, the effects of seismic-generated noise on marine mammals and fish behaviour and mortality, at different stages of development, were identified. During exploratory and development drilling, the impacts arising from the release of drilling muds and cuttings, particularly on the lucrative scallop fishery, were cause for concern. At the production phase, the effects of produced water, containing petroleum, heavy metal and/or naturally occurring radioactive elements, on the commercially exploited biological resources were raised. Also associated with the production phase was concern over the effects of petroleum spillage, whether through blowouts, chronic pipeline failure or tanker accidents. While many of these concerns were applicable to any area of the offshore, for some policy actors, the concerns assumed a greater significance when applied to the Georges Bank debate. This was due to the perceived linkages between the physical and biological processes occurring on the Bank and the belief that Georges Bank provided seed stock for other fishing areas in the regions.

Issues arising from co-existence – From the fishing industry’s perspective, the concerns arising over the possible introduction of the petroleum sector onto Georges Bank centered on perceived irreconcilable areas of conflict arising from external allocation issues. Specific areas cited included a decrease in the quantity and quality of fish harvested; loss of access to fishing areas on the already fully-utilized Bank due to exclusion zones; and, scheduling conflicts, given the species availability and weather-related dependence of the fishers. Additionally, some concerns were raised over competition for skilled labour between the fishing and petroleum sectors. Concerns raised by the primary steward for US marine resources and other federal and state actors in the US included the potential for progress in fish stock recovery to be jeopardized by the threat of environmental harm from hydrocarbon development. From the perspective of environmental non-governmental organizations, Georges Bank had been directly and negatively impacted by the fishing and shipping industries and indirectly from land-based and atmospheric sources of pollution. As such, this policy actor was concerned with stressing the area even further by introducing a new, high-risk user on the Bank.

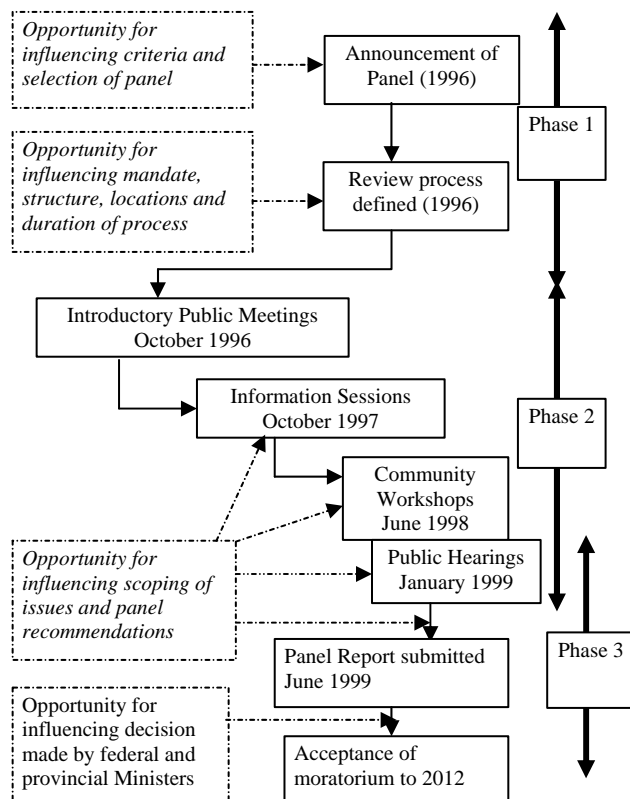
The offshore regulatory regime – Given the powers granted to the Canada-Nova Scotia Offshore Petroleum Board (CNSOPB) under the 1988 Accord Implementation Act, the issue of allowing the regulatory regime to address the environmental concerns associated with petroleum exploitation were raised by both the fishing industry and the petroleum industry. In the former case, the fishing industry was concerned that a lifting of the moratorium would result in the *a priori* approval by the CNSOPB to allow petroleum-related activities on Georges Bank. The fishing industry expressed its concern that, in general, regulated activities were typically allowed and the burden of proof fell on opponents to show why the activity should not take place. The petroleum sector viewed the sweeping regulatory powers of the CNSOPB as providing for a controlled environment under which the sector had to operate. It supported the use of the regulatory regime to oversee and make decisions affecting offshore petroleum activities, despite the established stringent procedures for decision-making which the industry believed were enforced by the Board.

The public review process – The general nature of the question being addressed by the review process was seen as a constraint to the fishing sector, the petroleum sector and to government scientists. In response to the limited scope on exploration and drilling activities in the panel’s mandate, the fishing industry effectively ignored the mandate. For the petroleum sector and the government scientists, both policy actors were constrained in their ability to give any specific information and advice to questions raised, in the absence of knowledge about a specific type of resource (oil or gas), estimated quantities and potential location on the Bank. Concerns were also raised over the lack of verification of the accuracy of statements made by presenters in the public forum and the absence of a transparent process and criteria for decision-making by the review panel. This latter point was specifically addressed by the review panel in its report to the two levels of government. Given the US extension of the moratorium prior to the public hearings in Canada, concerns were raised as to the objectivity of the panel to assess the input being received. Other concerns on the objectivity of the review process were raised by some actors who viewed the process as a venue for collecting opinions from ‘local notables’ within the fishing sector. This was attributed in part to the panel’s emphasis on maximizing participation as a criterion for a successful process and its tolerance for participants to expand the discussion to a review of petroleum exploitation activities, as opposed to exploration and drilling.

Policy Implications

Based on the analysis conducted, the policy implications associated with the Georges Bank decision-making process revolved around three major areas. These are itemized below and are associated with each of the phases in the decision-making process illustrated in Figure 2.

Figure 2. Opportunities to Affect the Georges Bank Decision-Making Process



Phase 1 – Federal-provincial relations and the *status quo* influence of policy actors as factors affecting the selection of panel members and the subsequent decision outcome;
 Phase 2 – Stakeholder participation as a mechanism for advancing the values and objectives of policy actors.
 Phase 3 – Bilateral relations between Canada and the United States and other broader policy factors overriding local-level decision making.

Phase 1 - Two factors were found to affect decision-making at this early stage in the process, namely the relationship between the federal and provincial governments and the influence of key policy actors in the Maritimes region ocean policy domain. As joint decision-makers, the input by the federal and provincial governments provided a significant advantage in setting the stage to favour the continuation of policies promoting their respective objectives. By determining who would serve on the panel and how the review process would occur, policy actors involved at this stage had the opportunity to support or oppose the entrenched *status quo* policies in the Maritime ocean policy domain. From a federal perspective, the political costs associated with the expiration of the moratorium, given the opposition of the fishing constituency, were significantly greater than potential benefits. Furthermore, these benefits would have accrued primarily at the provincial level, in terms of jobs and other spin-off activities associated with exploration activities. Additionally, given the extension of the moratorium by the United States, the wider implications of the decision on Canada-US relations were likely matters of concern to the federal government. From a provincial perspective, the appointment of the Georges Bank review panel occurred at a time when the Liberal government was in the middle of its term, having defeated the Conservative government in 1993. The government inherited a budget deficit that was the highest in the province’s history. Coupled with the severe socio-economic impacts resulting from the decline in the fishery in the region, the government was faced with the challenges associated with encouraging economic development in the offshore sector while responding to demands of a still powerful fishing constituency. Thus, the selection of members for the review panel was a critical factor in providing both levels of government with an opportunity to pass the justification for decision-making onto the review panel’s findings. This effort was further enhanced with the agreement by the fishing sector of the recommended panel members. This agreement was in part based on previously shared interaction with the panel members, as members of the Maritime oceans policy domain and the opportunity this allowed to acquire policy-relevant knowledge relating to these actors’ perceived biases. In contrast, the petroleum sector was a relative new comer in the Maritime ocean policy domain, lacking the appropriate policy-relevant knowledge and holding perceived values that were at odds with those of the dominant policy actors at this stage in the process.

Phase 2 – The policy implications associated with the implementation of the actual review process were substantial. First, the process of the panel holding a series of meeting and being present at events prior to the formal public hearings, provided a level of confusion as to what information was being considered in its formal review of the issues. If information presented at these earlier events were instrumental in

influencing the panel's recommendation, then it would appear to have been an unfair process. Second, the unofficial expansion of the mandate to include information relating to all phases of petroleum exploitation placed some policy actors at a significant advantage over others. This was due to the discussion on the potential for generic worst case scenarios to be considered when in fact it was widely agreed by all technical experts that the potential negative impacts associated with exploration on Georges Bank were linked to site specificity. Third, the debate was perceived by Nova Scotians as being of significance primarily at the local, southwestern Nova Scotia level. This resulted in few Nova Scotians outside of the locally affected area participating in the policy process. The significance of this local focus was the exclusivity granted to a relatively small number of local representatives in the ocean policy domain to direct strategic level decision-making with provincial, national and international implications. Fourth, the almost unanimous position presented by members of the fishing industry to the policy debate was instrumental in influencing the policy outcome. This was a significant achievement given the in-fighting commonly associated with the various groups comprising this sector. Regardless of whether the policy actor represented the inshore or offshore sector, mobile or fixed gear, harvester or processor, the message from the sector was identical and consistent.

Phase 3 – In addition to the issues mentioned above, the Georges Bank moratorium debate was subjected to influences that served to override these direct and more local level issues. Most influential among these was the decision by the United States to extend the moratorium on its portion of Georges Bank. This decision expanded the consequences of decision-making in the Canadian review process from a local/sub-regional issue to one with national and international implications. In terms of precedence on policy issues relating to the marine environment, Canada had earlier demonstrated its intent to differ with the United States over challenges to Canadian sovereignty in the Arctic archipelago. However, on the majority of marine environmental policy issues affecting the two countries, Canada had generally followed the direction set by the United States. Because of this position, Canada has been described as a “policy taker”, relegated to emulating American policies, particularly on environmental issues. Continuing support for this view may be inferred from the termination date for the Canadian moratorium on Georges Bank - six months *after* the US is currently due to make a decision on its moratorium. Given the complicated linkages between the two countries and examples where decisions in one policy domain are made as a result of consequences in another, it is to be expected that the US decision would have, and will continue to have, consequences on the Canadian process.

Conclusions

The analysis of the 1999 Georges Bank moratorium decision can serve, not only to understand the influences at work in that specific process, but to inform the debate which is once more raising its head due to the postponing of the resolution of the problem in both 1988 and 1999.

Key lessons to be drawn from these findings include, firstly, a need to recognize that a requirement for a review this time around has not been specified in legislation. From the

perspective of those who are in favour of extending the moratorium, strategies need to be considered that are independent of the expectation of such a mandated review process occurring, particularly since the *Canadian Environmental Assessment Act* (CEAA) is not triggered by policies. Furthermore, in the absence of an amendment to the Accord Implementation Act, the moratorium status is based on a policy decision which can be re-examined at any time.

Secondly, Georges Bank is still perceived to be a “unique” environment, with interconnected physical, chemical and biological characteristics. However, there is still considerable uncertainty and gaps in knowledge as to how these factors interact with each other to account for the overall resiliency observed on Georges Bank. Equally unclear, as stated in a Department of Fisheries and Oceans report, is whether the uniqueness of the Bank makes it more or less sensitive to petroleum-related impacts. This suggests that, despite the declining political clout of Nova Scotia fishers, any proponent of oil and gas exploration on the Bank would be wise to avoid supporting a call for a policy review of whether the moratorium should be lifted. This would simply disadvantage them, as it did in 1999, in having to respond to worst case scenarios across the entire Bank. Far more effective would be for the lease holders to wait until they can put forward a specific project for environmental assessment and approval, as was done for the Sable Project and the Deep Panuke Project.

Thirdly, it is surely not a coincidence that the Canadian moratorium expiration date was set by decision-makers to expire six months after the US government offshore ban expires in July 2012. In the 1999 policy process, the extension of the US moratorium on petroleum activities before formal hearings were held in Canada was identified as significant in terms of gauging the outcome of the Canadian decision-making process. As commented by the representative of one community organization in south-western Nova Scotia at the time, “If you wanted unbiased deliberation, it [the US decision] didn't help.” While there were clearly strong internal reasons for the US to declare a moratorium on petroleum exploration for new offshore areas, the timing of the decision, four years before the Georges Bank moratorium expired clearly influenced the Canadian decision-making process.

It seems incumbent among policy actors involved in the process today to examine whether or not the areas of concern have changed and to determine the likelihood of success in repeating the strategies adopted in previous decision-making processes. While there is no question that much remains the same for this policy problem, the context for the debate and the surrounding policy environment have certainly changed. Not the least of this is the declining political power of the fishing constituency in terms of numbers involved in the fishery; the increasing corporate nature of fisheries in south-western Nova Scotia; technological advances in petroleum exploitation; the presence of an actual track record of the petroleum industry in Nova Scotia from which the sector will be judged; climate change effects; and, the growing awareness of societal core values in influencing policy level decision-making.

This publication is based on research conducted for a doctoral thesis entitled “Towards an Understanding of the Role of Core Values and Policy Networks to Influence Decision-Making in an Evolving Oceans Governance Era” by Lucia Fanning (Dalhousie University, 2003.)