

Marine Conservation Agreements – NGO roles under varying forms of marine area governance

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Abstract

Over the past several years, non-governmental organizations (NGOs) have realized that formal protected areas may not be sufficient to protect ocean and coastal biodiversity, particularly in areas where rights have already been granted to specific owners and users. To address this, NGOs are increasingly using Marine Conservation Agreements (MCAs) under varying forms of marine area governance. MCAs include formal and informal agreements, between two or more parties, in which the parties obligate themselves, for an exchange of benefits, to take certain actions, refrain from certain actions, or transfer certain rights and responsibilities to achieve agreed-upon ocean or coastal conservation goals. MCAs can be entered into by NGOs, governments, indigenous groups, user groups, communities, private entities, and private individuals.

Introduction

Private entities routinely enter into agreements and acquire rights to marine areas and resources for purposes such as marinas, utility lines, gravel mining, aquaculture, and oil extraction. Also, in many parts of the world, marine tenure systems are such that communities and fishing cooperatives have rights to marine areas. NGOs are now using these private models in collaboration with local communities and governments for purposes that improve and protect the marine environment, while generating concrete benefits for many local communities.

Common examples of MCAs include leases, licenses, easements, management agreements, purchase and sale agreements, concessions, and contracts. NGOs have used MCAs to help manage specific areas, harvesting methods, and access to resources. These efforts have protected important marine biodiversity while positioning NGOs as vested and solution-oriented stakeholders with governments and communities responsible for decision-making.

Marine Area Governance

The *governance* of protected areas can be described as: *those who own, control, or have management and decision-making responsibility for the areas in question* (Dudley, 2008). This description of governance applies to protected areas as well as areas outside of protected areas and to terrestrial, freshwater and marine areas alike. Unbeknownst to many, marine protected areas and marine areas in general can be owned, controlled and managed by entities other than governments. The IUCN describes four primary types of governance as: 1) governance by government; 2) shared governance; 3) private governance; and 4) governance by indigenous people and local communities. As MCAs can be entered into by NGOs, governments, other private entities, indigenous people and local communities, they are powerful tools to implement shared approaches to governance.

Marine Conservation Agreement Field Projects

Numerous field projects throughout the globe provide examples of how MCAs access the various forms of governance recognized by the IUCN (see Table 1).¹ MCAs can establish formal relationships between NGOs and the owners, managers and users of marine areas such that NGOs take lead management responsibility for sites or NGOs simply assist other entities in managing sites (i.e., through planning, funding, or scientific assistance). The exact nature of the relationship and responsibilities for lead site management is based on project-specific circumstances.

MCA Field Project	Governance by government	Shared governance	Private Governance	Governance by indigenous peoples and local communities
Phoenix Island Protected Area: (400,000 km ²) based on a reverse fishing license	Federal govt. of Kiribati is grantor	Federal govt. is lead site manager	CI and New England Aquarium are grantees	
Puget Sound Shellfish Restoration Area: (10 acres) based on a lease	State govt. of Washington is grantor	TNC is lead site manager	TNC is grantee	
Richardson Bay Nature Preserve: (900 acres) based on two leases	Local county governments in California are grantors	California Audubon is lead site manager	California Audubon is grantee	
Great South Bay Preserve, New York: (13,000 acres) based on a purchase and sale agreement			Blue Points Shellfish Company was grantor; TNC was grantee and is lead site manager	
Misool No-take Zone: (200-km ²) based on a lease		Misool Ecoresort is lead site manager	Misool Ecoresort is grantee	Local indigenous community is the grantor
Galeras MPA: (134,000 acres) based in-part on conservation agreement	Federal govt. of Ecuador is grantor	Federal govt. and local fishing community share management responsibilities		Local fishing community is grantee
Locally-Managed Marine Areas in Fiji: supported in-part by contractual agreements		Local communities were lead site managers	Pharmaceutical and live rock companies were grantees	Local communities were grantors

Table 1: Examples of MCA Field Project Governance Types

¹ Details about these and other projects can be found online at: http://www.mcatoolkit.org/Field_Projects/Field_Projects.html

MCA Toolkit

To help conservation organizations understand how to apply MCAs, TNC collaborated with several partners to develop the MCA Toolkit (at www.mcatoolkit.org). The toolkit:

- Explains what MCAs are by answering fundamental questions, dispelling common myths, and defining important terms;
- Provides a field guide that identifies the four phases of developing MCAs (1. feasibility analysis; 2. stakeholder engagement; 3. building the agreement; and 4. implementation);
- Identifies existing field projects, country and U.S. state feasibility analyses, and maps and data for U.S. states; and
- Provides useful resources such as contacts, funding sources, related publications and presentations, sample agreements, and related workshop information.

Feasibility Analyses

MCA feasibility analyses can be conducted at varying scales, including federal, state, local or field project levels. For each field project being contemplated, a site-specific feasibility analysis may be needed even if a higher level analysis has already been completed that includes the smaller project area. TNC is currently aware of 11 country-level and nine U.S. ocean coast state analyses that have been completed. In addition, 14 cursory assessments for additional U.S. ocean coast states have been completed.

Site-specific feasibility analyses investigate and describe local conservation targets, threats and conservation strategies, ownership and use patterns, relevant laws and policies, organizational capacity to implement MCAs, stakeholder issues, and costs and financing options. Country and state-level analyses typically only evaluate conservation strategies, ownership and use patterns, and relevant laws and policies. For example, high level analyses were recently completed for Belize and the U.S. states of Connecticut and Rhode Island (see Table 2). While these analyses focused primarily on the ability of conservation organizations to purchase fee-simple or less-than fee-simple interests in ocean and coastal areas, they provide for interesting comparison and insights.

Issue	Belize	Rhode Island	Connecticut
Term used for lands lying between high tide and the seaward jurisdictional limit	<i>Coastal Zone</i>	<i>Tidal Lands</i>	<i>Submerged Lands or Tidelands</i>
Term used for Intertidal lands	<i>Foreshore or Internal Waters</i>	<i>Submerged Lands</i>	n/a
Term used for Subtidal lands	<i>Territorial Sea</i>	<i>Subtidal Lands or Submerged Lands</i>	n/a
Existing Private Ownership	Includes some intertidal and subtidal areas	Above high tide only	Includes some intertidal and subtidal areas
Existing Public Ownership	All areas below high tide	Virtually all areas below high tide	Includes most intertidal and subtidal areas
Options on existing private lands	Purchases	n/a	Purchases, easements, leasing
Options on existing public lands	Purchases, leases at federal level	Assents, leases, management area designations at state level	Leasing from local governments

Table 2: Summary of Recent Feasibility Analyses

Each analysis revealed that different terms are used to describe the areas lying below the high tide. In both Belize and Connecticut, private entities currently own areas in fee-simple below the high tide. The analyses revealed that conservation organizations can purchase fee-simple rights to areas below the high tide in Belize and Connecticut. However, other forms of acquisition and authorization are also available – leasing from public entities in Belize, Connecticut and Rhode Island and easements/leasing from private entities in Connecticut. Findings such as these from high-level analyses provide insight into site-specific opportunities warranting further exploration and planning.

Lessons Learned

The existing MCA feasibility analyses and field projects have provided insight for the successful application of MCAs, including:

- Fish Protection – While MCAs can be used to protect numerous features of the ocean and coastal environment, most projects directly or indirectly protect finfish, shellfish or their habitats.
- Diversity - MCAs are currently being used by numerous organizations under varying circumstances in several geographies.
- Local Integration - Many existing projects that show significant signs of success involve the direct participation of local communities and provide opportunities for local employment.
- Varying Scales - MCAs can be applied at small scales (less than five hectares) and extremely large scales (up to 400,000 sq kms).
- Project Champions – Many MCA projects came to fruition due to the perseverance, persuasive abilities, and personal relationships of forward-thinking, bold, and charismatic project leaders. Successful project leaders have accounted for the cultural, social, political, and economic issues of the local communities.

Conclusions

Although the potential application of MCAs is broad and significant, the strategy is currently underutilized. This is due in part to the fact that MCA practitioners do not generally communicate among each other for information exchange or collaboration. As a result, MCAs remain insufficiently understood and applied by the marine conservation community. To reverse this, TNC and partners are working to: 1) capture new information from existing projects; 2) harmonize processes to promote a uniformed approach to MCAs; 3) reach out through global forums to create greater inclusion of MCAs in planning and funding processes; and 4) implement collaborative demonstration projects that will be used to catalyze increasing use of MCAs to protect the world's oceans and coasts.

Literature Cited

Dudley, N. (Editor) (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: IUCN. x + 86pp.