

**NORTH AMERICAN
TRANSJURISDICTIONAL
COOPERATION: THE
GULF OF MAINE
COUNCIL ON THE
MARINE
ENVIRONMENT**

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I. INTRODUCTION

The boundary between Canada and the United States has become the focus of interesting and fruitful research. Observers once simply applauded the ability of the two countries to maintain the "world's largest undefended border" and then retreated to fairly traditional discussions of the bilateral relationship, focusing on the formal interaction of the two national governments. Whether driven by a changing technological and commercial reality or simply by a new recognition of forces that have long been at work, there is now substantial interest in understanding better the complex relationships developing along lines once designed primarily to divide these close but separate political communities.

What we are witnessing is hardly unique to North America; around the world, the nature of borders and the values of state sovereignty they were once presumed to protect have become the focus of seri-

*A list of acronyms used in this article is provided on page 35.

ous, critical scrutiny. The confidence of those like Harold and Margaret Sprout¹ and Richard Falk,² who felt that a sort of "ecological imperative" would help erase the "artificial" boundaries they saw inhibiting effective environmental protection,³ has been challenged by the work of Karen Litfin and others.⁴ Sovereignty, more complex and stubborn a reality than many had earlier believed, is argued to be undergoing a process of transformation, "greened" rather than diminished in response to emerging environmental challenges.

In the process, patterns of cooperation have become far more complex and multidimensional, increasingly transnational rather than intergovernmental in nature. New actors, particularly non-governmental organizations committed to environmental causes,⁵ have begun to play critical roles, not just as outside critics of governmental policy, but as active participants in the broader processes of "international governance" that are evolving.⁶ Anne-Marie Slaughter's work on "transgovernmentalism" points to the particular importance of the transnational linkages being forged between govern-

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mental agencies, a development she sees as offering promise of policy that is both more effective and more responsive to popular will.⁷

Despite (and partly because of) these changes, developing effective environmental "institutions" has been a growing area of research.⁸ Why have certain organizational structures been chosen over others? What factors influence their effectiveness? How do institutions and the policies they promote change over time?

Some of the most innovative transboundary institutional development has taken place along the U.S.-Canadian border, where a history of environmental cooperation dates back to the 19th century. The 1909 Boundary Waters Treaty was one of the earliest international agreements with a substantial environmental dimension, and the International Joint Commission (IJC) it established remains among the world's most interesting and progressive environmental institutions. The decision of the two nations to entrust a dispute over the transboundary impact of a refinery in British Columbia to international arbitration in the 1930s produced perhaps the most widely cited case in international environmental law: the Trail Smelter decision. The list of specific environmental accomplishments by the two nations is substantial; equally impressive is the generally positive and pragmatic way in which they have approached the problems that inevitably occur along so long, developed, and ecologically complex a border.

This pattern of transboundary relations is not without critics. Some observers have expressed frustration at the level of ad hocery that continues to characterize the bilateral relationship and argue that a greater degree of institutionalization could help prevent or limit the economic and political costs of the disputes that still do occur.⁹ IJC veteran Maxwell Cohen was among the most outspoken proponents of strengthened and formalized binational dispute avoidance and settlement procedures.¹⁰ John Carroll has proposed a series of measures ranging from common fact-finding to transborder litigation to encourage earlier and more effective confrontation of transboundary environmental problems.¹¹

The question now is not whether institutions are important to Canada-U.S. environmental relations, but at what level they should be created, who should be included, and what form they should take. Oran Young's 1998 analysis of North American resource regimes clearly points to what he terms "institutional capacity" as a key determinant in the success of specific transboundary environmental

protection efforts. This concept goes beyond formal institutional powers, though how organizations make decisions, encourage compliance, etc. remain important questions. Young sees such as factors as the "fit...between regimes and the problems they address" and less tangible characteristics such as "authority" and "legitimacy" as crucial contributors to regime effectiveness.¹²

It is in the context of these concerns that this essay focuses on the Gulf of Maine Council on the Marine Environment. Established in 1989 by the three U.S. states and two Canadian provinces bordering what has been one of the world's most productive marine areas, the Council's creation responded both to the perceived need for increased institutionalization of patterns of cooperation in the North Atlantic region and to the desire by state and provincial actors, both governmental and non-governmental, to play a more central role in that process.¹³ In addition to representing an innovative approach to transboundary cooperation, the Council has served as a model for other regional efforts, including the British Columbia-Washington Environmental Cooperation Council (BCWECC) established in 1992.¹⁴

This article analyzes the creation and development of the Gulf of Maine Council, focusing on the Council's search for a clear institutional identity and on the process of transjurisdictional¹⁵ cooperation it is intended to promote rather than the substantive programs it has supported.¹⁶ It begins with an overview of the problems to which the Council is at least a partial response and the jurisdictional context in which it was placed. After examining the Council's origins and the factors that helped determine the particular form the institution assumed, it looks at the Council's evolution through the development and refinement of its Action Plans. The article then describes three major institutional challenges the Council has faced: its limited role in the area of marine fisheries, the problem of involving non-governmental organizations more centrally in its work, and the constraints posed by tight and unpredictable financial resources. It concludes with a discussion of some of the future institutional choices that may become relevant as the Council evolves.

It is too early to judge conclusively the effectiveness of an organization still in the process of development. However, internal debates over the Council's place in the larger process of regional environmental management can help us understand both its strengths and limitations and provide insight into the ways members are trying to develop the institution needed to respond effectively to the wide range of problems outlined in the Council's broad terms of reference.

If there is a central conclusion, it is that the Council's cautious current direction appears, at least for the time being, both understandable and constructive. It represents a practical attempt by governmental agencies to focus their resources on a common environmental agenda, and it provides the institutional flexibility to permit changes to be made when political conditions make that possible. Whether such an institution can, in the long run, develop the capacity to meet the needs in the Gulf of Maine remains uncertain.

I. INSTITUTIONAL DESIGN: IDENTIFYING THE PROBLEM AND FRAMING A RESPONSE

Traditional analysis of international institutions has commonly been criticized for overemphasizing formal questions of structure, organizational mandate and rule-making authority. While it is important to recognize the role played by less tangible institutional characteristics, the fact is that what an institution can achieve is affected by how it is designed and the formal powers it is given. The terms under which it is established, in this case through an intergovernmental agreement, also provide a reasonably clear sense both of the goals of the parties at the time it is created and areas of consensus and disagreement about the tasks being undertaken. As Young makes clear, the "fit" between the institution and the problem it is expected address is an important factor in determining regime effectiveness.

A. Multidimensional Challenge¹⁷

Among the most striking aspects of the origins of the Gulf of Maine Council is that it emerged not as a panicked response to environmental catastrophe but in a relatively calm and pragmatic atmosphere. Although people were well aware of the serious pressures facing North Atlantic fisheries and the fishing communities threatened by declining yields, the Council was never intended to be a vehicle to respond directly to these concerns. The decision in the late 1980s to undertake this regional initiative was instead based on an awareness that pollution was a growing problem in Gulf of Maine and that it was crucial both to understand it better and to respond before conditions deteriorated to the point seen elsewhere.

The Gulf of Maine is a semi-enclosed sea roughly 33,000 square miles in area which reaches from Cape Sable, Nova Scotia, to Cape Cod, Massachusetts, and extends seaward to the underwater barrier

formed by Georges Bank. Two powerful ocean currents control water circulation in the Gulf. One pulls water from the deep oceans in a clockwise motion over Georges Bank, while a second moves in a counterclockwise direction within the Gulf, circulating the nutrients found in the Gulf's rivers and estuaries. The Gulf supports a wide variety of habitats, many found on the thousands of islands that skirt the coast. It is home to more than 18 species of marine mammals and serves as an important stop on the Atlantic flyway for birds migrating between breeding grounds in the Arctic and wintering sites in the south.

Any assessment of the environmental situation in the Gulf of Maine had to acknowledge the central importance of marine fisheries in a region that has traditionally been one of the world's most productive fishing areas. In the late 1980s, commercial fishing remained a major industry in the states and provinces that border the Gulf of Maine; almost 20,000 people in the region fished for a living, operating off approximately 300 Canadian and 1,350 U.S. fishing ships and 4,000 lobster boats. In 1988 (the year before the Gulf of Maine Agreement was approved), the regional catch was approximately 1.2 billion pounds of seafood worth \$650 million. The sea urchin, seaweed and aquaculture industries continued to grow, but there had been a marked and much publicized decline in the yield of the traditional fisheries that made up by far the greatest share of the seafood industry. There was general agreement, at least among management authorities, that overfishing was the prime culprit, though much disagreement about the most appropriate policy response(s).

The Gulf was also recognized to be a repository for industrial, sewage, agricultural and other waste generated along the coast and along the banks of the twelve major rivers that empty into it. Growing concern about the effect of this pollution on the integrity of regional ecosystems, including fisheries, was among the chief factors leading to the Council's creation. Studies of the mid-1980's revealed the presence in Gulf waters of much higher levels of hazardous substances- including PCBs, heavy metals, and hydrocarbons- than anyone had anticipated. In addition, plastic debris was found to be damaging Gulf fish and birds and excessive levels of inorganic nitrogen were threatening the shellfish and aquaculture industries.¹⁸

Pollution in the Gulf of Maine, though not at levels experienced in places like Chesapeake Bay, was understood to be the product of

a range of different land and marine-based activities.¹⁹ Rapid population growth in the United States has created significant changes in land use patterns; population concentrations along the coast place particular pressure on crucial estuarian habitats. Among the most important point-source polluters have been industries, such as pulp and paper mills and fish processing plants, and sewage treatment plants incapable of processing either the amount of sewage being generated or the complex industrial effluents passing through them. Runoff from farming, urban areas, and roads, discharges from boats and inadequate coastal septic systems were seen as among the chief non-point sources of Gulf of Maine pollution.

B. The Regulatory Context

Only in the last 40 years has much of the Gulf of Maine been the focus of direct national regulation by Canada and the United States. Under traditional doctrines of the law of the sea, coastal states exercised jurisdiction in narrow coastal zones, leaving much of the Gulf an unowned “commons” in which Canadian and American fishers competed with Europeans on an equal legal footing. What fisheries rules were developed in these areas came from the International Commission for North Atlantic Fisheries (ICNAF), a multilateral organization with limited regulatory and enforcement powers. The first extended national claims in the Gulf of Maine were directed at the hydrocarbon resources believed to exist on the continental shelf. In 1964, Canadian authorities began to issue permits for oil and gas exploration on parts of Georges Bank. This action was later challenged by the United States, not because the U.S. opposed such unilateral extensions,²⁰ but because it felt that all of Georges Bank belonged to the United States. The boundary dispute had begun, even though neither country has to this day elected to authorize commercial drilling operations in the region.

In the mid-1970s both nations joined the global movement toward extended coastal state jurisdiction, a move long sought by Canadian and American fishers to stop the overfishing they blamed on highly efficient but predatory European fleets. However, Canadian and American claims overlapped in the Gulf of Maine. Difficult bilateral negotiations eventually led to the 1979 East Coast Fisheries Agreement, but the treaty’s controversial scheme of bilateral management was opposed by U.S. fishers whose Senate allies forced President Reagan to withdraw the agreement. Canada reluctantly

agreed to implement a second agreement which entrusted a chamber of the International Court of Justice (ICJ) with the task of drawing a single, all-purpose boundary in the Gulf.²¹ The Court's 1984 decision awarded Canada approximately one quarter of Georges Bank, an outcome deeply disappointing to Americans who had hoped to control the whole area. Whatever the shortcomings of the ICJ decision,²² it did establish, once and for all, clear zones of national jurisdiction. It also ensured that neither state would be able to manage the Georges Bank fisheries unilaterally, although neither federal government showed much desire to attempt to design a more acceptable approach to joint management.

The divisive history of boundary dispute is one of the major reasons that the states and provinces have enjoyed the freedom they have had to launch the Gulf of Maine program. Yet it would be misleading to imply that the federal governments have played no role either in the program or more broadly in issues affecting the Gulf. They have provided crucial financial and technical support,²³ and their respective Coast Guards have done important work in preparing plans for a joint response to major oil spills.²⁴ There are a number of federal agencies on both sides of the border whose programs and activities bear directly on the Gulf of Maine. On the Canadian side, those most involved are Environment Canada, Fisheries and Oceans Canada, Health and Welfare Canada, Public Works Canada, and Transport Canada. In the United States, the Environmental Protection Agency, primarily through its regional office in Boston, the National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service, Interior's Fish and Wildlife Service, and the Army Corps of Engineers all play key roles.²⁵

The fact that entire Gulf of Maine is now recognized as within either Canadian or American waters has limited the direct involvement of international organizations in its management. Nevertheless, the International Maritime Organization (IMO) based in London remains an important source of rules governing marine pollution, primarily through the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL).²⁶ Even with the extended areas of coastal state jurisdiction recognized in the 1982 Convention on the Law of the Sea, international organizations like the IMO do help develop the standards enforced by coastal states in the areas over which they have jurisdiction.²⁷ In the fisheries area, the Northwest Atlantic Fisheries Organization (NAFO) deserves men-

tion. NAFO was established in 1979 as a successor to ICNAF to manage stocks crossing from Canada's 200-mile exclusive fishing zone on the "nose" and "tail" of the Grand Banks and on the Flemish Cap into the high seas. While NAFO limits thus pertain directly to fisheries beyond the Gulf of Maine, the regions are close enough, both physically and in terms of the resources they support, that changing regulations in either can have a direct impact on the fishing effort in the other.²⁸ Finally, to the extent that airborne threats to the Gulf emanate from North American sources outside the North Atlantic region, the work of broader regional bodies such as the UN Economic Commission for Europe (UNECE) must also be considered part of the Gulf of Maine's larger regulatory environment.²⁹

Still, most international organizations are too distant from the Gulf of Maine to become directly involved with the Council. An exception is the more recently established Global Programme of Action Coalition for the Gulf of Maine (GPAC), formed under the auspices of the North American Free Trade Agreement (NAFTA). NAFTA's Commission for Environmental Cooperation selected the Gulf of Maine as the location for a pilot project designed to reduce pollution and protect coastal habitats, an initiative in which the Council has been both interested and involved.

At the other end of the regulatory spectrum, there are hundreds of towns and cities within the Gulf of Maine watershed whose actions must be considered part of the regulatory environment. All do operate formally within the context of state/provincial and federal law, and admittedly have little direct regulatory control over major point sources of pollution. Still, zoning and land-use policies adopted at the local level have an important cumulative effect on the quality of its waters. The relative proximity of state and provincial governments, both geographically and politically, to these municipalities is among the reasons that the decision by the states and provinces to assume such a central place in the Gulf of Maine process makes sense, as they are often better placed than federal agencies to narrow the gap between the goals articulated nationally and the reality of what is done in and to the Gulf.

C. A Regional Response

The most defining feature of the Gulf of Maine program is the extent to which its creation, direction, and momentum have come from the state/provincial level. To some extent this is the result of a

general devolution of federal power in both nations, particularly in the face of budgetary pressures. On the United States side, this was consistent with a history of Reagan federalism, which had downplayed the role of the federal government on all levels, and the erosion of the once activist spirit of the Environmental Protection Agency. Environment Canada became more directly engaged in the work of the Council, but Canada's constitutional traditions give a substantial lead role to the provinces in resource management issues.³⁰

Yet the Gulf of Maine initiative was not a matter of local governments simply filling a federal void. Had there not been regional forces pressing for action, the still limited nature of the threats to the Gulf would hardly have been a sufficient stimulus. Past regional collaboration created a context in which such efforts could be undertaken. The Conference of New England Governors and Eastern Canadian Atlantic Premiers had been working since 1973 on a range of regional issues, particularly in the energy field.³¹ While some had been the source of intraregional dispute, as the states and provinces remained important economic competitors, there was growing recognition that governments in this part of the North American continent also faced common environmental problems. Acid rain is a good example. Northeastern provinces and states, downwind from the chief polluters, shared a frustration with the slow pace of the U.S. federal response during the Reagan years and worked together to try to promote action.

What launched the Gulf of Maine initiative and has sustained it ever since is a small cadre of middle-level state planners and provincial resource managers with similar concerns about the problems threatening the Gulf. These members of what was later institutionalized as the Gulf of Maine Working Group generally share a common language and intellectual orientation about the most appropriate kind of management response, including a pragmatic understanding of the political factors limiting the scope and extent of their endeavors.³² The first Working Group meeting was held in Portland in June, 1988. With the help of an \$80,000 grant from the U.S. National Oceanic and Atmospheric Administration (NOAA) under a program designed to promote interstate coastal management efforts, the group began meeting on a bimonthly basis at locations throughout the region. Officials from Maine's State Planning Office, led by David Keeley, the Director of the Maine Coastal Program, were particularly important in starting the Gulf of Maine program. That Maine should

take the lead is not surprising. The state's extensive Gulf coastline created obvious incentives to act, and Maine had a long tradition of direct "quasi-diplomatic" dealings with neighboring provinces on which to build.³³

D. The Search for Models

Among the most immediate issues facing the Working Group was what institutional form their efforts should take, given the shared sense that the challenges facing the Gulf of Maine merited more than informal discussion. Within the United States, the work done in the Chesapeake Bay provided a useful model. The Great Lakes also offered almost 80 years of cooperative efforts and added a Canadian dimension. The central governments of Canada and the United States had been far more directly involved in setting up the Great Lakes regime by signing the 1972 Great Lakes Water Quality Agreement³⁴ and by providing the IJC to play important scientific and management roles. Yet bodies with strong regional identities, like the Great Lakes Commission and the Council of Great Lakes Governors, had become increasingly active on pollution questions. Since 1985 there had been a clear shift in management philosophy, even at the IJC level, to bring the regulatory process closer to the people. The goal, in the words of the IJC, was "to involve all user groups in policy-making and management"³⁵ and to clarify the key position of state, provincial and municipal governments.

Perhaps the most interesting and influential model, however, was provided by the United Nations Environment Program (UNEP). In 1974, UNEP established the Regional Seas Program, now known as the Program on Oceans and Coastal Areas (OCA), patterned after regional efforts undertaken in the heavily polluted waters of Northern and Western Europe. The Helsinki Convention on the Protection of the Baltic Sea Area took a far more comprehensive approach than previous regional agreements, addressing a wide range of pollution threats to the Baltic, including sewage discharge from vessels, land-based discharges of PCBs, and airborne pollutants. The process brought together what was at the time a very diverse group of states (Denmark, Finland, East and West Germany, Poland, Sweden, and the Soviet Union), a challenge faced successfully in subsequent efforts to protect the Mediterranean and Caribbean seas, as well as a number of other ocean areas.

The approach that has emerged in these U.N. regional programs begins with the negotiation of a "framework convention" which

generally does little more than commit the parties to cooperate to limit environmental damage and to establish a process for future work. Clearer and more restrictive standards can be written into later protocols. However, the emphasis has normally been on encouraging positive cooperative action rather than developing precise legal standards the parties are expected to meet. Each agreement is accompanied by a detailed "action plan" usually expected to be implemented on a national level with a process of regional monitoring and coordination. Some programs provide for regional bodies to oversee the process. UNEP plays an important catalytic role in beginning the negotiations and generally provides seed money to create a modest regional fund. Eventually, all of the regional programs are expected to become self-sufficient.

The first Gulf of Maine Action Plan made specific reference to the regional seas approach.³⁶ UNEP influence would be apparent in the early emphasis on providing a common base of scientific information and in the nature of the agreement itself.³⁷

E. The Gulf of Maine Agreement

In 1989 the premiers of New Brunswick and Nova Scotia and the governors of New Hampshire, Massachusetts and Maine met in Portland, Maine, to sign the "Agreement on the Conservation of the Marine Environment of the Gulf of Maine."³⁸ Drafted by officials from Maine's State Planning Office and negotiated in Working Group meetings, the Agreement, like the framework conventions developed by UNEP, is essentially a compact for future cooperation. Both Canada and the United States have constitutional restrictions on the rights of their subordinate parts to make international commitments, and a legally binding agreement was simply beyond their capacities without far more direct federal involvement.³⁹ In one sense, this distinguishes the agreement from the more formal regional seas "conventions," although the difference may not be that significant given UNEP's emphasis on voluntary cooperation.

The Portland conference did attract private citizens and representatives of a number of different interest groups.⁴⁰ However, the Agreement itself generated little controversy in part because it required little of the parties and yet offered the prospect of extensive and active transboundary cooperation. The Agreement's ambitious preamble suggests far-reaching areas of cooperation. The Gulf of Maine is declared an "ecosystem that transcends political bound-

aries" and the "sustainable development" of its "interconnected" resources "dependent on the ecological integrity of the Gulf ecosystem." The parties "recognize a shared duty to protect and conserve the renewable and non-renewable resources of the Gulf for the use, benefit, and enjoyment of all their citizens, including generations yet to come." As progressive and multi-dimensional as this definition of the Agreement's coverage undoubtedly is, the parties' recognition that they shared the resources of the Gulf's ecosystem did not prompt them to declare the entire region, including its land masses and land-based ecological systems, part of a larger regional ecology. Such a step was simply beyond any possible political consensus and would have added too many highly controversial questions to the group's agenda.

The operative part of the agreement is less ambitious. It establishes a Council, made up of two (later three) representatives from each of the states and provinces, to implement the agreement. Somewhat ambiguous is the Council's power "to discuss *and act upon* issues of common concern (emphasis added)." Those issues are both general ("the protection and conservation of the ecological balance within the Gulf of Maine ecosystem") and specific ("the problem of marine debris and medical waste"). The only concrete expectation of the Council was that it prepare a report on the environmental condition of the Gulf with a specific Action Plan within 15 months.

Nonetheless, the Gulf of Maine Agreement does commit the parties, not specifically through the Council, to create a "coordinated monitoring program to provide improved information" to decision-makers. It also contains an important general commitment, again on the part of the states and provinces, "to minimize actions that would result in degradation of environmental quality or depletion of resources that, individually or cumulatively, could result in significant adverse impacts on resources leading to loss of sustainable use or economic viability." Though unenforceable and vague in several key threshold phrases,⁴¹ this provision at least makes internal regulatory measures a legitimate matter for regional discussion.

III. INSTITUTIONAL DEVELOPMENT: IMPLEMENTING THE ACTION PLANS

Designing the Council was one thing; making it work has been another. The effectiveness of any institution depends upon bringing together the right people and providing an appropriate working forum. On an international level one can normally operate on the

premise that, whatever the internal reality, each "side" speaks with a single voice. Complicating the work of the Council was the need to bring to the table representatives of five "quasi-sovereign" entities coming from two countries with different constitutional and political traditions. This was one reason why UNEP's Regional Seas model was far from inappropriate.

A. Developing a Plan

It was up to the Working Group to give the Agreement concrete form. Among its first actions was drafting the Council's "Operational Guidelines." The Guidelines formalize the Council's membership by designating the state and provincial officials to fill Council seats. Both provinces included the heads of their respective fisheries agencies, while Massachusetts decided to send two officials from the Executive Office of Environmental Affairs. Maine and New Hampshire selected the heads of their state planning offices, a wise move given the central policy development role each plays in addressing issues that would inevitably cross departmental lines. Despite the fact that both Council members nominally represent their premier or governor, these choices were important to the work of an organization whose authority and effectiveness depends heavily upon the internal status and political power of the agencies represented. It was agreed to rotate annually the position of "host jurisdiction," despite concerns that this could lead to inefficiencies in the operation of the modest secretariat that each jurisdiction would be expected to provide.⁴²

The organization's budget is divided into two sections, one to support the secretariat and another to fund Council projects. Each of the states and provinces initially agreed to contribute \$5,000/year to help cover the \$50,000 annual budget projected for the secretariat.⁴³ That budgetary realities might ultimately intrude on even this modest contribution is reflected in the Council's decision to weaken the Working Group's language from "will" to "may" in describing the nature of the parties' financial commitment.

The Guidelines provide for a consensus-based decision-making process. In an interesting parenthetical note, they do, however, suggest that the Council could take votes on "specific issues," although there is no mention of what sort of majority would be required for measures to pass, or what would be required either in terms of process or substance to shift the process from the collegial

arena of consensus building to the potentially contentious world of formal voting. The quasi-sovereignty of the participants is nonetheless protected; should votes be taken, they would not be binding on members that voted against them or abstained.⁴⁴

Much of the Working Group's initial effort focused on developing the Action Plan. The process had actually begun at the December, 1989, Sustaining Our Common Heritage Conference held in Portland where the Agreement was signed. Over 250 people, representing a variety of groups and interests, heard reports from experts on the six Gulf "issue areas" identified by conference organizers. Participants then met in small working groups to outline a series of "actions" needed to respond to the problems identified. For the next fifteen months, the Action Plan was amended and refined before its formal adoption by the Council in June, 1991.⁴⁵

The Action Plan states emphatically that it "represents the consensus of the states and provinces that the ecological integrity of the Gulf of Maine supersedes other interests."⁴⁶ If this bold assertion may overstate somewhat the consensus actually achieved about the priority of interests in the Gulf region, other language in the Plan reflects a recognition of the practical limits of the collaborative response, including the role the Council would be able to play. What had been accepted was a set of goals and the general priority to be attached to them. An early draft had contained a separate section for "Institutional Arrangements" and had suggested a fairly active Council role in directing regional programs. By the time of the Plan's final formulation, words like "developing" and "implementing" had been changed to "supporting," "encouraging" and "advising." Programmatic responses would be taken primarily by existing state, provincial and federal agencies.

The Plan is intended to serve as the framework for the Council's efforts. Like others on which it was modeled, it is a flexible document whose priorities can respond to changing environmental concerns and funding opportunities. The initial Action Plan established a set of "high priority objectives" to be pursued over a ten-year period. These include environmental monitoring, reducing point and non-point source pollution, public education and participation, control of marine debris, and habitat protection.

B. Implementing the Plan

An early priority was to make an inventory of activities already

underway in the Gulf. Among the Council's first products were *Turning the Tide*, a regional newsletter initially published quarterly, and *Gulflinks*, a directory of all the major public agencies and private organizations working on Gulf of Maine issues. As the Council recognized that only limited resources could be generated from already tight state and provincial budgets, it was crucial to examine what existing Canadian and U.S. federal programs might be of use regionally. A key issue was how to focus the interest of federal agencies on an initiative in which many of them had to that point played only a minimal role. In June, 1990, federal agencies were invited by the Council to name representatives to serve as formal participants in the Working Group and as observers at Council meetings. Within the Working Group, there remained concern that the federal representatives come from the regional, rather than national offices, presumably to ensure sensitivity to the particular dynamics of the situation in the Gulf of Maine.⁴⁷ Under the joint sponsorship of Environment Canada and the State of Maine, a workshop was held in Halifax in April, 1992, for senior officials from relevant state, provincial, and federal agencies "to explore issues and opportunities for cooperative work" in the region.⁴⁸

While the Council has necessarily depended on others for both financial support and programmatic action, it was not content simply to serve as an information clearing house or as a catalyst to encourage others to act. It began to develop substantive programs which represented significant advances on work being done or planned by others. These initiatives were clustered around the Action Plan's central objectives.

1. *Monitoring and Research*

Like many other regional marine management programs, the Gulf of Maine initiative requires good information. Developing a consistent data base from which to work permits resource managers to talk to a commonly perceived set of issues, even though they cannot overcome different interpretations of their overall significance or the most appropriate remedial measures. This initiative took on two primary dimensions: monitoring/risk assessment, and data management. In November, 1990,⁴⁹ the Council established the Gulf of Maine Environmental Quality Monitoring Program (MEQMP). As part of the MEQMP, the Council identified existing monitoring activities to indicate gaps requiring further research efforts. In 1991,

the MEQMP began Gulfwatch, which developed a mussel monitoring project at selected sites throughout the Gulf. Yet the chief priority was not simply to study the threats to the Gulf but to provide timely and useful information to decision-makers. The Data and Information Management Committee began working with Gulf researchers and resource managers to develop consistent and updatable computer-based information, the Environmental and Data Information Management System (EDIMS), that would be accessible via the Internet.

2. *Point Source Pollution*

The initial Action Plan called for an early focus on point sources of coastal and marine pollution and “proper disposal of marine debris and vessel wastes.” With the support of the EPA and NOAA, the Council developed a Gulf of Maine Point Source Inventory incorporating data from Nova Scotia and New Brunswick as well as the three states. This comprehensive document, completed in 1995, provided a basis for the next step in a Point Source Program designed to establish regional priorities for regulatory action. The marine debris problem was initially tackled in an innovative and potentially far-reaching way through a pilot project in Portland Harbor.⁵⁰ Since then, other marine debris efforts have been undertaken, including an annual Gulf-wide beach clean-up project involving thousands of people all along the Gulf coast.

3. *Public Education*

Public education was a third Action Plan priority. The Council’s Public Education and Participation Committee began a number of initiatives to heighten awareness of the Gulf and to develop “a sense of stewardship among the citizens of the Gulf region.”⁵¹ In addition to *Turning the Tide*, the Council produced “Program Highlights,” a monthly bulletin of events and developments related to the Gulf of Maine. They were later replaced by the quarterly *Gulf of Maine Times* (now available on-line). The Council also developed educational materials for use in primary and secondary schools and, with help of Environment Canada, launched a series of “Fact Sheets” on Gulf topics. Through these publications and the design of an Internet website, the Council has created an important connection between the many different groups working on Gulf-related issues and has helped to direct their efforts toward the priorities outlined in the Action Plan.

4. *Habitat Protection*

The initial emphasis of the Council's work on habitat protection was to study the rate of wetland habitat change in the Gulf and to define criteria to identify critical habitats needing special protection. Using a process developed by the U.S. Fish and Wildlife Service, the Council was also able to create a list of 161 "regionally significant coastal species" ranging from the right whale and the Atlantic cod to the great blue heron and the horseshoe crab. Focusing on those species which spend a substantial portion of their life cycles in critical coastal habitats would provide the basis for the next phase of the Council's habitat work.⁵² In addition, the Council took steps to promote the restoration of damaged clamflats and began work on the complex environmental issues raised by growing aquaculture industry.⁵³

C. **Revising the Plan**

The flexibility of the Action Plan approach permits- indeed requires- periodic revision if it is to serve as the "dynamic roadmap"⁵⁴ its authors had intended. The original Action Plan called for a process of formal review and evaluation beginning three years into its implementation. In 1994, a second Sustaining Our Common Heritage Conference was held in Wolfville, Nova Scotia, as part of an extensive process of consultation with groups working on Gulf issues. The Plan was thoroughly reviewed⁵⁵ and the Council decided to issue a new five-year Plan.

The 1996-2001 Action Plan made the protection of coastal habitats the primary emphasis of the Council's work, narrowing its earlier concern for the entire Gulf of Maine watershed to a more manageable focus. It also put new emphasis on the development of "measurable objectives" for each of five general "habitat improvement goals."⁵⁶ The Council's responsibilities under the Plan were stated in rather broad terms, although a list of often far more specific "strategies and actions" did accompany each, thus offering a far better sense of some of the concrete steps envisioned. Annual assessments would be made to review the progress achieved in reaching each of these objectives, something that would permit any changes deemed necessary in the Council's workplan. Acknowledging the key role to be played by organizations not directly under the purview of the Council, the Plan emphasized the importance of "building meaningful and lasting partnerships" and provided examples of agencies and groups with whom cooperative efforts might

be undertaken in each area. An accompanying "Supporting Action Matrix"⁵⁷ attempted to keep track of the range of actions being taken throughout the Gulf to realize Action Plan goals.

As an example of the approach taken in the 1996-2001 Plan, the first "coastal habitat goal" was defined as "coastal habitats are healthy and support an appropriate abundance and range of plant and animal species." The role of the Council was "to encourage and support public and private actions that wisely use, protect and restore regionally significant coastal habitats." "Potential partners" included both a broadly defined group of state/provincial and federal agencies and initiatives such as the National Estuary and Coastal Action Programs. There were four "measurable objectives," among them "to achieve a 10 percent increase in the acreage of regionally significant coastal habitats that are protected by public and private organizations' landowners Gulfwide by 2001." To reach this objective, the Plan listed six different strategies, each followed by a series of actions that could be taken. This approach would lead to such steps as "assess(ing) government and non-government land acquisition programs to determine their alignment with the Gulf of Maine Council's coastal habitat priorities."⁵⁸

For all of its virtues, the second Action Plan required little of the Council. Even the objectives, often expressed in fairly specific, measurable terms, were seldom ones that the Council itself could reasonably be expected to meet without substantial cooperation from agencies and groups it could not control. As a result, the Plan provided a vehicle useful less for holding the Council accountable than for helping assess the progress made in meeting regional objectives. It also offered a clearer framework for policy development than had its predecessor, helping to break down complex environmental problems into more manageable parts. This increased policy relevance was clearly one of its drafters' chief goals, given both the need felt by the Council and the Working Group to establish priorities and their own limited resources.

A third Action Plan was adopted in May, 2001, again the product of serious self-examination by the Working Group and the Council. There was general agreement that the third Plan must be defined as a blueprint for Council action, "not a comprehensive plan for the Gulf."⁵⁹ However, creating an action-oriented plan is not an easy task for an organization which, by its very nature, depends on others to do most of the programmatic work. This realization led to

frank discussions about just what the Gulf of Maine Council actually adds to the work already taking place in the Gulf region, since provincial and state agencies might well have undertaken many of the Gulf of Maine programs with or without Council involvement. To be sure, there are specific Council initiatives, from the *Gulf of Maine Times* and *Gulf links* to the meetings and issue forums the Council sponsors, which are clearly Council creations, but whether the Council can, on some level, "take credit" for other actions remains a legitimate Council concern. In drafting the third Action Plan, more emphasis was placed on improving the clarity of the language used to define each objective and on ensuring that there was enough baseline data for any objective included in the plan to make it possible to assess the progress made.⁶⁰

Substantively, the third Plan builds and expands upon the work of the second with emphasis placed on issues where regional collaboration is not only desirable but also necessary if environmental protection efforts are to succeed. Thus, while coastal and marine habitat protection remain a central focus, the third plan targets habitats significant to migratory and mobile species for particular attention. The new Plan also broadens its focus to embrace two new goals. The first, to "protect human health and ecosystem integrity," focuses on what the Global Programme of Action Coalition (GPAC) identified in 1998 as the seven top contaminants of the Gulf: pathogens, nitrogen, biocides, mercury, dioxins/furans, petroleum hydrocarbons and polycyclic aromatic hydrocarbons. From this list the Working Group has recommended that the Council focus on sewage, nitrogen and mercury, with the goal not simply of making people aware of the threat posed by these substances but also of reducing levels discharged into the Gulf. The Council has thus taken an important step in trying to control land-based sources of marine pollution. The second new goal, "to support environmentally sustainable marine-based economic resources," acknowledges the interrelationship of economic and environmental factors at work in the Gulf and propels the Council into such important and potentially controversial areas as aquaculture, shipping, and marine fisheries.⁶¹

IV. INSTITUTIONAL CHALLENGES

Even as the Council has worked to frame new environmental initiatives and, in some cases, to develop its own programs, it has had to deal with several serious challenges. In the process, it has engaged

in an ongoing discussion of how best to enhance its institutional capacity in at least three important areas if it is to make substantial progress in forging the relationship laid out in the Gulf of Maine Agreement.

A. Institutional Authority: Confronting the “F” Word

Any institution’s effectiveness is influenced by the nature of its mandate, both as originally envisioned and as it evolves over time. One of the most important features of the Gulf of Maine Council is the breadth of its charge. Indeed, the holistic approach to environmental management taken in the first Action Plan was criticized by some as too ambitious, particularly for a fledgling transnational organization. The Council itself has elected more recently to narrow the scope of its work and has focused its attention on issues directly pertaining to the coastal environment. Still, the Council’s role in responding to transboundary environmental problems is constrained both in terms of the issues it is permitted to address and the sources of pollution to which it can attempt to respond.

The Council’s original charge did not include marine fisheries, at least directly. No mention was made of them in the Gulf of Maine Agreement.⁶² Yet, despite the fact that fisheries are clearly the Gulf’s primary economic interest and the pressures on them are tremendous, the Council’s founders could be excused had they chosen to dodge the issue, given the management challenges faced. In reality, this was clearly a political decision over which they had little say. It was also one that was probably unavoidable. Despite their active participation in regional fisheries councils, state agencies simply lack the control over national fisheries policy that would be needed to permit them to cooperate meaningfully with their provincial counterparts.

More fundamentally, it would be hard to imagine an issue on which regional cooperation might be more difficult. Within the U.S., there have long been significant differences between members of the fishing community and federal regulators over both the extent of the regulation needed and the forms it should take. The New England Fishery Management Council (NEFMC), where much of the power for resource management decisions has traditionally resided, has been the scene of significant conflict which often breaks down along state lines among representatives of different segments of the fishing industry. This has complicated an already difficult and decentral-

ized management process. The fact that it took legal action by the pro-environment Conservation Law Foundation (CLF) in 1991 to push the National Marine Fisheries Service (NMFS) to develop a new groundfish management plan, one bitterly opposed by many fishers, is an indication of the regulatory challenge.⁶³ It also explains why an organization hoping to promote consensus and cooperation among Gulf "stakeholders" might not see marine fisheries as a very fruitful area of focus.

Adding a Canadian dimension only makes the issue more complex, in part because of differences in management philosophy. Canada and the United States approached fisheries management in similar ways during the days when Georges Bank was a high seas fishery regulated by ICNAF, but their paths diverged significantly after 200-mile limits were imposed. Canada emphasized centralized government control, while the United States relied on regional fisheries councils where industry influence was far more pronounced. The stock quotas and the limitations on fishing licenses traditionally used in Canada to restrict overfishing received little support from Americans who reacted very negatively to so structured and "bureaucratized" a management strategy.⁶⁴ As a result, there has been little cooperative effort between the United States and Canada even in managing "straddling stocks" that cross the Gulf of Maine boundary. In 1985 there was brief discussion of a new system of "equal access" for fishermen to the two national fishery zones. However, the negotiations were unsuccessful and the prospects for binational cooperation were dimmed considerably when representatives of the New England fishing industry successfully pursued a complaint against their Canadian counterparts before the United States' International Trade Commission. In April, 1986, the ITC ruled that Canada was subsidizing its fleet and imposed a 5.82 percent tariff on imports of fresh groundfish.⁶⁵

There may be some room for optimism about the prospects for future cooperation, based partly on the recognition that the traditional management practices of both nations failed to stop the declining yields, and partly to a certain narrowing of the differences between them in their approaches to fisheries management. Both states have now shown a willingness to take more decisive action, including area closures, to try to rebuild stocks, actions that are far more likely to succeed when coordinated bilaterally.

While there may be hope for increased cooperation at the federal level, there is no evidence that anyone directly involved in marine fisheries on either side of the border has ever envisioned a significant fisheries role for the Gulf of Maine Council. The CLF lawsuit only intensified the perception that the environmental movement too often does not understand or care about the realities of the fishing industry. For years the Council scrupulously avoided direct involvement with marine fisheries (referred to frequently in Working Group meetings as the "F" word). The sensitivity of this issue was obvious in one early Council meeting when a representative argued that the Council had only managed to secure the "tolerance" of other agencies by being as unobtrusive as possible and suggested that a more active role on fisheries could jeopardize its existence.⁶⁶

In reality, the Council has recognized that it cannot ignore fisheries and still presume to maintain an integrated bioregionalist approach. In 1995 the Council passed a "Resolution on Restoration of Groundfish Resources" which simply "requests" that fisheries managers employ "fundamental principles of fisheries management" in their stock rebuilding efforts, and then lists some of those practices. The resolution was carefully drafted to make clear that the Council's role was to "encourage and support," rather than in any way to supplant those efforts, but it still was an interesting move for an organization so obviously cautious on fisheries questions.⁶⁷

The Council's habitat work provides the most important link to the fisheries issue. Even the selection of "priority species" and "critical habitats" suggests standards for ranking animals and plants and coastal areas that have management implications.⁶⁸ As the Council's habitat initiative proceeds, the potential for conflict increases as rhetoric about the importance of a clean environment to healthy fisheries will likely be insufficient to overcome the suspicion that the Council's findings could affect stock management decisions. Hopefully, such conflict can be avoided, particularly if the Council's work can be coordinated with habitat initiatives being undertaken by NEFMC and GPAC. In addition, the third Action Plan's interest in promoting sustainable economic activities does add another angle from which the Council may decide to approach the fisheries issue if it is prepared to accept the political risk that this would likely entail. To the extent that the Council develops an independent role in the debate on how to manage the fisheries of the Gulf of Maine, its ultimate influence will likely depend on how committed Council

members themselves are to the organization's priorities and how effective they are in promoting them within their home jurisdictions.

At least for now, an indirect approach to the fisheries issue seems the only viable option. In Young's terms, the "fit" between the Council and the fisheries issue is just not a good one. An unintended benefit is that it has prevented the Council from becoming bogged down on a divisive problem and has permitted it to move ahead in areas where it can make a more direct contribution. However, it is important that the work on habitat protection continue, whatever the fisheries implications, if the breadth of the Council's mandate is to be preserved.

On a very different level, it has also been understood from the beginning that the Council would have little direct impact on sources of environmental degradation that lie outside the Gulf of Maine region. In a presentation to the Council, Dr. James Young of the International Joint Commission's International Air Quality Advisory Board suggested that, on a global scale, the levels of pollutants attributable to atmospheric sources may equal all direct contributions from local sources.⁶⁹ Should this prove true in the Gulf of Maine, the lack of representation of all jurisdictions responsible for pollutants in the Gulf of Maine airshed could encourage a shift in organizational emphasis from internal policy coordination to external lobbying, as happened less formally on the issue of acid rain. The limitations imposed by a restricted geographical scope obviously face all regional organizations and provide one argument for approaching some dimensions of the pollution issues in the Gulf of Maine from a broader perspective,⁷⁰ even if only to recognize the possible impact of activities in the Midwestern United States, Ontario, and Quebec on the air quality of the region.

B. Institutional Legitimacy: Involving Non-Governmental Actors

While the IJC and other organizations moved somewhat belatedly to involve the public in their work, the Gulf of Maine initiative began with the recognition that its success would depend on not only the support but also the active participation of non-governmental actors. This has been a major challenge in an era of increasing skepticism about both the sensitivity and capability of governmental institutions, particularly among environmentalists whose bioregionalist philosophies make them even less respectful of politi-

cal boundaries than others. The Gulf of Maine Council has sought public involvement in at least three distinct ways.

First, the public was active from the start in defining the Council's mission. At the 1989 Portland conference where the Gulf of Maine Agreement was signed, the terms of the agreement were clearly prearranged and some important constraints placed on the scope of the initiative. Still, the Conference itself was an important step in the development of the Action Plan which remains the focus of the Council's work. The process by which the Plan was reviewed and amended provided further opportunity for public involvement, and non-governmental organizations make up roughly 30 percent of the membership of Council committees. The ongoing challenge has been to engage the wide range of groups and individuals interested in the *Gulf in a Council process that is dominated by middle-level government officials*. The same moderate collegiality that is one of the organization's admitted strengths may also put off more narrowly defined interest groups accustomed, particularly in the United States, to a confrontational style of political participation. Given the number of interested organizations and their range in terms both of size and of the interests they represent, integrating them into Council operations presents a major challenge.

Second, the Council has made effective use of individuals and groups concerned about the Gulf to implement some its most successful initiatives. A good example is the Portland Marine Debris project. There, two interns working for the Council formed a task force of local waterfront users to develop a plan responsive to the specific needs of Portland. Using volunteers and donated equipment and services from local businesses, the program successfully focused on the recovery of used oil and bulk marine debris at a very reasonable cost.⁷¹ More generally, as far back as 1992 the Council approved the development of the Gulf of Maine "Partnership Program" designed to coordinate the work of interested private organizations with the Gulf of Maine program. Approximately 90 organizations were approached in a survey designed to gauge public awareness of the Council's activities and to elicit ideas about ways in which the Council could promote cooperation.⁷² This partnership approach was given greater prominence in the second Action Plan and the Council has worked hard to cement relationships with the principal groups doing work of various sorts on Gulf issues. Among the most prominent is the Regional Association for Research on Gulf of Maine

(RARGOM), a Gulf-wide association of research groups which maintains a formal relationship with the Council.⁷³

Finally, financial pressures have made the private sector a potential source of funding as the organization attempts to create a sustainable financial base. In 1990 the Council commissioned a study of "non-governmental funding options"⁷⁴ and established a Finance Network of individuals with private fund-raising expertise to coordinate the effort. In 1992 membership on the Council was expanded to three persons from each jurisdiction to permit inclusion of private citizens capable of providing a link to sources of funds in private business. The Canadian and American delegations also set up charitable corporations in their respective jurisdictions to which tax-free funds could be given. In a separate initiative, the first in a series of joint workshops was held in 1993 with the Collaboration of Community Foundations to discuss possible regional funding efforts. However, despite some modest contributions from regional businesses and foundations, these and other fund-raising efforts have not generally been successful. At its July, 2000, meeting, the Council formed a task force to try to revive fund-raising efforts.⁷⁵

The basic problem, openly acknowledged, is that even after more than 12 years of work the Council lacks a clear public identity in a context where so many groups claim to speak about and for the Gulf of Maine. "Outreach" remains a topic of recurrent conversation. There have been discussions about changing the Council's structure to bring non-governmental actors into a full participatory role, but the Council has decided to remain essentially an interagency governmental organization. Preparations for the third Action Plan did not include a repetition of the major conferences that led to its predecessors, and the Council relied on its constituent jurisdictions and contact via the Internet to provide public and NGO input. Other organizations like GPAC with established patterns of communication with those interested in the Gulf provide another means to connect to key stakeholders.⁷⁶

The Gulf of Maine *Times* and the Council website continue to play an important role in informing interested groups about the range of activities taking place in the Gulf region. In addition, the Council has awarded nearly \$350,000 in grants as seed money to private organizations working on Gulf issues and has developed a program of Visionary Awards to recognize individuals, organizations and businesses which have demonstrated particular commit-

ment to the Gulf of Maine.⁷⁷ There is also hope that the recent decision to hire a permanent coordinator to help staff the Council will provide the organization with the consistency of leadership and identity that is difficult to establish in an organization whose secretariat responsibilities rotate so frequently.

C. Institutional Resources: The Funding Issue

Funding is a serious and perennial problem. Budgetary matters were of secondary concern when the Council was being established and are not even mentioned in the Gulf of Maine Agreement. Beyond setting up a modest secretariat to coordinate its activities, the Council worked from the reasonable assumption that program funds could be generated only after well-designed plans were in place. Working Group members were certainly aware of potential sources of funds, particularly from NOAA, the U.S. Fish and Wildlife Service, and Environment Canada, and the Council has always taken the priorities of funding sources into account in preparing its Action Plan. NOAA's support has been particularly critical. In addition to financing the negotiations leading to the Council's creation, NOAA funds have supported key Council programs ranging from the point source pollution inventory to the EDIMS data management system.⁷⁸ However, the Council has never had the budgetary protection afforded UNEP's regional seas programs, both directly and through the regional trust funds.

In 1992 the Council failed to obtain a key NOAA grant and faced the next fiscal year with virtually no secure program support. The result was a difficult, at times testy discussion of the organization's future as both the Working Group and the Council attempted to establish core priorities. This also raised difficult questions, until then largely undiscussed, about the extent to which the burden of supporting the Council was being shared fairly. This concern had a number of dimensions. Should Canada's federal agencies, Environment Canada and Fisheries and Oceans Canada, continue to provide \$10,000 each to fund general Council operations when their U.S. counterparts, although very generous in their past support, preferred to tie funding to specific programs, and thus remained a less stable source of financial backing? If the Council wanted to generate state and provincial funds to support more than simply its secretariat operations, how should it apportion these costs among the five local jurisdictions, given their differing levels of involvement in

the Gulf? These early questions suggest a longer-term equity issue with which the Council may eventually have to deal, especially if it decides at some point to take a more active (and expensive) programmatic role.

This early budget crisis was overcome with the support of two New England senators. Maine's George Mitchell backed 1994 legislation which led to a three-year grant from the U.S. Environmental Protection Agency for \$1.9 million. In 1998, with the support of Senator (and former New Hampshire Governor) Judd Gregg, an original signer of the Gulf of Maine Agreement, Congress approved a \$500,000 appropriation for the Council in the NOAA budget.⁷⁹ NOAA support has continued and the Working Group anticipates roughly the same amount for the next fiscal year.⁸⁰

Yet these are not long time horizons, and budgetary uncertainty has made life difficult for Council committees unsure whether to plan for a worst case situation or to continue generating new and potentially costly ideas. The operations of the secretariat seem reasonably secure, given its modest cost and rotating nature, and the contributions from the states, provinces and Canadian federal agencies. Even if all external funding were cut, many Gulf programs would likely "limp along," in the words of one Working Group member, since most are housed within bureaucracies where they have become accepted and supported institutionally. The state and provincial officials who launched the Gulf initiative can clearly keep the Council going, though some momentum would undoubtedly be lost and perhaps more questions raised about what it contributes to the larger process of transboundary environmental management.

On a more positive note, the tight budget has forced member governments and agencies to reexamine Council priorities and to recommit themselves to the work of the organization. One long-time member of the Working Group has suggested that this has kept the Council focused on the catalytic, coordinating role it plays best, leaving programs up to the states, provinces, and federal governments and not becoming bogged down in debates over how to spend money.⁸¹ It has also encouraged greater emphasis on the development of cheap, cost-effective approaches to both environmental monitoring (eg., the placement of ozone monitoring equipment on the Portland to Yarmouth ferry) and management (eg., the Portland marine waste debris project), which may be crucial to the organization's long-term success. In addition, it has reminded the

Council of the need to remain sensitive to the priorities of state and provincial agencies in the way it defines problems to be addressed in the new Action Plan.

V. INSTITUTIONAL FUTURES

There are a number of different directions in which cooperative efforts in the Gulf of Maine could be headed. They can be grouped generally under David VanderZwaag's categories of "fragmented incrementalism" and "regional treaty formalization."⁸² Each has different implications for the work of the Gulf of Maine Council and each raises different issues of institutional capacity.

A. Fragmented Incrementalism

One approach would be to continue to work within essentially the same cooperative framework that has been evolving since the Gulf of Maine Agreement was signed. The Council would remain primarily a catalytic, coordinating body with carefully circumscribed powers, working mainly through state and provincial agencies. This would build upon one of the organization's clear strengths and provide a regional coordination function that is generally recognized as important and needed.

There are obvious limitations. Lacking any formal rule-making authority, there are serious questions about the Council's ability even to "speak" in a collective sense on important matters. At the July, 1992, Council meeting, a hypothetical question was posed about how the Council would respond to an environmental crisis in the Gulf. In the ensuing discussion, a general if uncomfortable consensus emerged that whatever authority the Council currently has flows from the powers of the individual agencies which participate in it. It was unclear whether it would even be appropriate in such a situation for the Council to state a single position. A representative from Nova Scotia held out the hope that this might be more a question of the relative youth of the Council and that it was an "evolutionary" body with the potential over time to acquire a stronger collective identity.⁸³

Yet there are also advantages to this low-key process, most evident in the Working Group, which actually sets the Council's direction and provides the organization its institutional vitality. The Working Group has developed a genuine camaraderie and respect, along with a shared sense of mission, priorities and general management approach, that generally keep people talking on the same level

and permit decisions to be made. This has been made easier by the fact that membership within the Working Group has remained remarkably stable over the years. The Council process, with its biennial meetings, provides an opportunity for middle-level managers to focus senior department heads on Council programs that might not otherwise rise to the top of their respective state and provincial agendas.⁸⁴ Within the Working Group and even at the Council level there is a political pragmatism that discourages competitive behavior that could only undermine the work of a consensus-based organization. If representatives have made a commitment to state and provincial agencies not to discuss marine fisheries directly within the Council framework, others will not push the issue, even though it may be difficult or inadvisable from a management perspective to avoid it.

Externally, the existence of the Council has focused the attention of both the U.S. and Canadian federal governments on the Gulf of Maine, a critical starting point in a world where so many competing priorities vie for limited national resources. Federal agencies were asked to comment on the initial draft Action Plan. While some expressed reservations about the scope of the undertaking, it was impossible for them to ignore it. Indeed, there was an obvious incentive to play a constructive role in establishing the agenda of an organization whose very creation might be perceived as criticism of the federal effort and one that could affect, at least politically, the regulatory environment in which federal agencies operate. Within these agencies, the existence of a well-defined Action Plan with international dimensions has strengthened the hand of those regional officials who want to play a constructive role in the Gulf.

Working within the existing framework does not rule out reform. There are at least three types of measures that might be taken to enhance the Council's capacity for effective action. First, the parties could decide to strengthen the Council's formal authority. The Gulf of Maine Agreement did call upon the parties to "act" as well as to "discuss," and provision was made for the "development of additional agreements or protocols on specific issues or concerns that may be raised from time to time."⁸⁵ This is very much consistent with the Regional Seas approach. However, there is the fundamental problem mentioned above in transferring this model to the state/provincial level: nations possess a formal contractual power that the states and provinces lack. The adoption of more specific agreements would

seem of limited value without a clearer sense of the legal authority of the Council or, more to the point, the right of the constituent states and provinces to "agree" about anything. A joint public "commitment" might help attract federal or private support. It could also represent an undertaking from which leaders would find it awkward politically to pull back. Yet, such a pact would run the risk of raising expectations for action which could undercut the Council's reputation if results were not forthcoming. At this point, the Council lacks any means, even informally, to monitor compliance with such a deal. Even to talk in these terms seems out of place given the Council's approach to date, and there are probably good reasons for the Council to avoid attempting to develop a "regulatory" role within the terms of the current agreement.

Secondly, the Council could take more decisive steps to open up its process to non-governmental groups. NGO representatives have served effectively on a number of Council working groups⁸⁶ and Vanderzwaag suggests that new groups could be formed in areas such as "environmental management and enforcement" to increase the effective involvement of non-governmental actors.⁸⁷ Even bolder would be to give NGOs a formal "seat at the table," perhaps by once again expanding the Council's membership. Thus far, the Council has moved cautiously, in part because the range of different NGOs (in terms of size, scope and issue focus) could make the process of selecting appropriate "representatives" a very difficult process.⁸⁸ There are also understandable concerns about the possibly disruptive effect of NGOs on the existing work of the Council and the Working Group.⁸⁹ However, the Council clearly wants to avoid the image of being a "network of bureaucrats,"⁹⁰ and the issue of improving ties to the NGO community is a recurrent agenda item.⁹¹ Despite the challenges, the payoff in terms of improved public visibility and the Council's sense of legitimacy seems to point in the direction of more a direct and structured NGO role.

Thirdly, building on the "partnership" concept developed in the second Action Plan, the Council could attempt to connect more directly to organizations with assets that would enhance its effectiveness. A natural candidate is GPAC, which offers links to the NAFTA process and, in the words of recent Working Group minutes, seems to have "good ideas...(but is) struggling to determine their identity."⁹² GPAC has sponsored a series of workshops on Gulf of Maine issues, including one in Saint John, New Brunswick in June, 2000,

which examined "Transboundary Arrangements for Management of the Gulf of Maine Ecosystem." Among the proposals emerging from that workshop was the possibility of a joint GPAC-Gulf of Maine Council request to the Canadian and U.S. federal governments that they submit a reference to the IJC to "investigate and report on the adequacy of existing measures and arrangements (nationally and bi-nationally) to ensure the restoration and maintenance of the integrity of the Gulf of Maine ecosystem."⁹³ This idea was endorsed by GPAC in a November, 2001, letter to the Council, and the Working Group has been debating whether to recommend that the Council take up the proposal. There is some sense within the Working Group that an impartial third party could offer a valuable perspective on the problems faced in the Gulf and hope that the IJC could help "lean on federal partners" for financial support.⁹⁴ Yet the enthusiasm of Environment Canada for using the IJC is uncertain, and it is evident that at least some Working Group members fear the IJC report would simply ask the "federal governments to solve our problems," suggesting a loss of control with which many are "not...comfortable."⁹⁵

It is possible, of course, to envision even more ambitious proposals for transforming the Council from within, to move beyond the confines of the Regional Seas framework should the time comes when something more than discussion and policy coordination is desired. Michele Dorsey's 1992 study of the Council's possible futures⁹⁶ indicates a number of directions this could take. Virtually all would involve a substantial degree of federal involvement both in the establishment of the new organization and potentially in its operations, something clearly of concern to state and provincial officials who have thus far enjoyed the relative independence provided by their more informal status. Of Dorsey's potential models,⁹⁷ the "regional compact" looks most inviting organizationally, since all the parties to the Gulf of Maine Agreement seem committed to an organization in which all five jurisdictions can participate fully.

A regional compact would be a formal, contractual agreement among at least the five states and provinces, although, at least in theory, the federal governments could become partners in the organization on some level.⁹⁸ The compact would normally be implemented by writing it in identical language into the law of each jurisdiction, and it would take precedence over inconsistent state or provincial law. The compact would also indicate clearly how the organization would be funded. Dorsey cites the Northeastern Forest

Fire Protection Commission (NFFPC) as the best example of a regional compact in operation. Formed in 1949 as an interstate compact by six northeastern states (later seven), the organization was broadened in 1970 to include Quebec and New Brunswick. Among the most interesting provisions of the agreement, and one of potential relevance to the Gulf of Maine, is the section on funding. One half of the organization's costs is divided equally among the nine jurisdictions; the other half is apportioned according to the total acreage of each state or province within the compact area.⁹⁹ While the NFFPC offers an interesting model, the fact that its budget is very small (\$28,000 in FY 1991) and its mission far from controversial deprives it of some relevance for the Gulf of Maine. Indeed, the few existing regional compacts all operate in rather narrow, technical areas. It would be a significant step for the two federal governments to permit the Gulf of Maine states and provinces to create a compact with anything like the breadth of the current Gulf of Maine Agreement. The torturous negotiations required to secure federal approval of the compact for the Great Lakes Commission suggests some of the political obstacles that would have to be overcome on both sides of the border.¹⁰⁰

B. Regional Treaty Formalization

VanderZwaag's second approach would shift much of the focus to the federal level. One option would be for Canada and the United States to sign a framework agreement based even more directly on the regional seas model than the Gulf of Maine Agreement. Possessing the contracting power the states and provinces lack, they could establish internationally legally binding obligations and agree to provide on a regular basis the resources needed to carry out the operations of whatever organization seemed appropriate to the agreement's mandate. Protocols could be added later to spell out more specific duties, ranging from continued limitations on seabed oil and gas development to controls over land-based sources of pollution. The East Coast Fisheries Agreement could be revived,¹⁰¹ with the signatories presumably chastened by the 20+ years of failed national fisheries management. Authority would not be an issue, though whether federally-mandated cooperation would provide legitimacy to a process left until now largely in the hands of state and provincial actors remains uncertain. The role of non-governmental organizations would need to be defined clearly.

While the "federalization" of the Gulf of Maine seems a distant prospect, it would have a major effect on the Gulf of Maine Council. The Council could, however, continue to play a useful role in some sort of "two-tiered" system.¹⁰² Given the history of past cooperative efforts and the relative closeness of state and provincial officials to the Gulf and to the interest groups most immediately affected, the Council could serve as an important bridge between national initiatives and local constituencies.

VI. CONCLUSION

No major institutional transformation appears imminent. Funding constraints and the pragmatic bent of those currently controlling the Council's direction militate against major changes. There are non-governmental groups within the region looking for more decisive action, and they want to be more directly involved in any new institution that is created.¹⁰³ However, there have as yet been no areas clearly identified where more structured regulation is needed.

In assessing the work of the Gulf of Maine Council, much depends on the yardstick by which the organization is measured. Even in the face of environmental catastrophe, such as the *Torrey Canyon* oil spill, changes in international environmental regimes are generally slow and piecemeal and major institutional developments the exception rather than the rule. In the Gulf of Maine, happily no such disaster has occurred; in comparison to many other marine areas, the Gulf of Maine remains in good shape. In many ways, it is a tribute to the foresight of those involved that regional efforts are so far advanced. The regional seas approach has thus far served the Gulf of Maine Council reasonably well. It has provided a non-threatening process with at least an opportunity for public involvement, and it coordinates the work of data gathering, exchange and analysis that is a key first step to understanding better the problems requiring a policy response.

The Gulf of Maine Council is further evidence that what we are seeing around the globe is not the development of transcendent political organizations designed to erase boundary divisions, but more modest, cooperative institutions which only in the most indirect and subtle ways challenge the freedom nations enjoy within their respective jurisdictions. Whether such organizations have the institutional capacity to meet our environmental needs, and those in the Gulf of Maine, remains an important question.

ACRONYMS

BCWECC	British Columbia-Washington Environmental Cooperation Council
CLF	Conservation Law Foundation
EDIMS	Environmental and Data Information Management System
EPA	U.S. Environmental Protection Agency
GPAC	Global Programme of Action Coalition for the Gulf of Maine
ICJ	International Court of Justice
ICNAF	International Commission for North Atlantic Fisheries
IJC	International Joint Commission
IMO	International Marine Organization
ITC	U.S. International Trade Commission
MARPOL	International Convention for the Prevention of Pollution from Ships
MEQMP	Gulf of Maine Environmental Quality Monitoring Program
NAFO	Northwest Atlantic Fisheries Organization
NAFTA	North American Free Trade Agreement
NEFMC	New England Fishery Management Council
NFFPC	Northeastern Forest Fire Protection Commission
NGOs	non-governmental organizations
NMFS	U.S. National Marine Fisheries Service
NOAA	U.S. National Oceanic and Atmospheric Administration
OCA	Program on Oceans and Coastal Areas
RARGOM	Regional Association for Research on Gulf of Maine
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Program

NOTES

¹ Harold and Margaret Sprout, *Toward a Politics of the Planet Earth* (New York: Van Nostrand, Reinhold, 1971).

² Richard A. Falk, *A Study of Future Worlds* (New York: Free Press, 1975)

³ See generally, Allen L. Springer, *The International Law of Pollution: Protecting the Global Environment in a World of Sovereign States* (Westport, CT: Quorum Books, 1983), pp. 48-52.

⁴ See, for example, Karen T. Litfin, ed., *The Greening of Sovereignty in World Politics* (Cambridge, MA: MIT Press, 1998)

⁵ See generally, Paul Wapner, *Environmental Activism and World Civic Politics* (Albany: State University of New York Press, 1996).

⁶ See generally, Oran Young, *International Governance: Protecting the Environment in a Stateless Society* (Ithaca, NY: Cornell University, 1994).

⁷ Anne-Marie Slaughter, "The Real New World Order," *Foreign Affairs* (September/October 1997), Vol., 76, No. 5, pp. 183-197.

⁸ See generally, Peter Haas, Robert Keohane, and Marc Levy, eds., *Institutions for the Earth: Sources of Effective International Environmental Protection* (Cambridge, MA: MIT Press, 1993).

⁹ See, for example, Kenneth M. Curtis and John E. Carroll, *Canadian-American Relations* (Lexington, MA: D.C. Heath and Co., 1983), pp. 96-99; Lynton K. Caldwell, "Binational Responsibilities for a Shared Environment," in Charles F. Doran and John H. Sigler, eds., *Canada and the United States: Enduring Friendship, Persistent Stress* (Englewood Cliffs, NJ: Prentice-Hall, Inc, 1985), pp. 226-230.

¹⁰ Maxwell Cohen, "Canada and the U.S.: New Approaches to Undeadly Quarrels," *International Perspectives* (March/April 1985):16-22.

¹¹ John E. Carroll, *Environmental Diplomacy: An Examination and a Prospective of Canadian-U.S. Transboundary Environmental Relations* (Ann Arbor: University of Michigan Press, 1983), pp. 280-296.

¹² Oran Young, "North American Resource Regimes: Institutionalized Cooperation in Canadian-American Relations," *Arizona Journal of International and Comparative Law*, Vol. 15 (1998), pp. 60-63.

¹³ On the importance of enhancing the capacity of state/provincial and other, even more "local" actors to deal with transboundary problems, see Roger Frank Swanson, *Intergovernmental Perspectives on the Canada-U.S. Relationship* (New York: New York University Press, 1978).

¹⁴ There are distinct similarities between the two organizations, in terms of both structure and mandate, as well as the challenges faced in the area of marine fisheries, which offer a valuable opportunity for comparative analysis. Unfortunately, such an undertaking is beyond the scope of this paper. For more on the work of this organization, see its webpage at <http://wlapwww.gov.bc.ca/cppl/ecc/>.

¹⁵ The word "transjurisdictional" has been used to describe the nature of the connection the Council has forged to emphasize that, despite the clear desire to integrate non-governmental actors into the process, it is, at its core, an organization linking governmental agencies responsible for making and implementing policy.

¹⁶ The substantive programs, both their content and their results, are obviously important in assessing the Council's ultimate effectiveness but remain a task well beyond the scope of this paper.

¹⁷ The following description is taken from Gulf of Maine Council on the Marine Environment, *Action Plan 1991-2000* (1991), pp. 1-5.

¹⁸ "Pollution Closes in on Gulf of Maine," *N.Y. Times*, 27 September 1987, p. 51, col. 1.

¹⁹ For an overview of Gulf pollution problems, see Victor Konrad, *et al*, eds., *The Gulf of Maine: Sustaining Our Common Heritage*, Proceedings of an International Conference, Portland, ME, 10 December 1989; and *Action Plan 1991-2000*, *supra*, note 17, pp. 3-5.

²⁰ Indeed, in 1945 President Truman had set the stage for such national claims when he issued a proclamation claiming the resources of the continental shelf along the U.S. coast as under the sovereign control of the United States.

²¹ For a more detailed analysis of the dispute, see Erik B. Wang, "Canada-United States Fisheries and Maritime Boundary Negotiations: Diplomacy in Deep Water," *Behind the Headlines* XXXVIII(6)/XXXIX(1)(1981).

²² For a more detailed analysis of the Gulf of Maine boundary decision and its aftermath, see Allen L. Springer, "Do Good Fences Make Good Neighbors? The Gulf of Maine Revisited," *International Environmental Affairs* 6(1994):223-244.

²³ Among the first responses to the problem was legislation sponsored by Maine's Senator George Mitchell to provide federal funds to promote long-term research on the Gulf of Maine and other threatened regional areas. Much of the early work of the Gulf of Maine Council was underwritten by a NOAA grant.

²⁴ Christopher B. Daly, "Drilling for a Coastal Oil Spill," *Washington Post*, October 5, 1990, p. A4.

²⁵ It is beyond the scope of this paper to attempt to provide an analysis of the dozens of pieces of Canadian and American legislation that affect the Gulf. For an overview of the agencies involved in the region see, Gulf of Maine Council, "Gulf of Maine Action Plan Workshop: Final Report," Halifax, Nova Scotia, 21-22 April 1992, prepared by the Oceans Institute of Canada.

²⁶ "International Convention for the Prevention of Pollution from Ships," London, 2 November 1973, *International Legal Materials* Vol. 12 (1973), p. 1319.

²⁷ See, in particular, "United Nations Convention on the Law of the Sea," Montego Bay, Jamaica, 10 December 1982, in *International Legal Materials* 21(1982), Art. 220, p. 1313 and Arts. 223-233, pp. 1314-1315. The initial failure of the United States to sign the Agreement was linked to provisions for regulating the deep seabed and U.S. marine legislation has generally mirrored the provisions of the Convention as they relate to Gulf waters.

²⁸ For example, there was concern in Canada that American fishermen shut out by tighter restrictions in American waters might head to the NAFO-regulated area. See Janice M. Plante, "NAFO Sets Cod Moratorium; US Holds to Non-Membership," *Commercial Fisheries News*, Vol. 20, No. 5 (January 1993), p. 6B. This source of potential bilateral tension may soon be defused, given recent American steps to become a full NAFO member and assuming that some room for American fishermen can be carved out of existing quotas. Interview with Michael Rooney, Vice-Consul, Canadian Consulate, Boston, MA, June 23 1993.

²⁹ While European pollution does not pose a direct threat to the Gulf of Maine given prevailing wind patterns, Canada and the United States are members of the UNECE and participants in the regime created by the 1979 Convention on Long-Range Transboundary Air Pollution (LRTAP). Rules adopted under LRTAP could have an effect on national air pollution policies which would, in turn, affect conditions in the Gulf of Maine. For a more detailed look at some of the other extra-regional initiatives that may have relevant for the Gulf of Maine, see David VanderZwaag, "Transboundary Challenges and Cooperation in the Gulf of Maine Region: Riding a Restless Sea Toward Misty Shores," in Harry N. Scheiber, ed., *Law of the Sea: The Common Heritage and Emerging Challenges* (The Hague: Martinus Nijhoff Publishers, 2000), pp. 273-276.

³⁰ Annette Baker Fox, "Environmental Issues: Canada and the United States," in *Canada and the United States: Dependence and Divergence*, eds., Willis C. Armstrong, Louise S. Armstrong, and Francis O. Wilcox (Cambridge, MA: Harper and Row, Publishers, Inc., 1982), p. 195.

³¹ See Curtis and Carroll, *Canadian-American Relations*, *supra*, note 9, pp. 70-72.

³² In his study of environmental cooperation in the Mediterranean, Peter Haas places particularly emphasis on the role of an "epistemic community" of scientific and other experts sharing a common approach to environmental problems. Peter Haas, *Saving the Mediterranean: The Politics of International Environmental Cooperation* (New York: Columbia University Press, 1990), pp. 216-224.

³³ See Curtis and Carroll, *Canadian-American Relations*, *supra*, note 9, pp. 66-70.

³⁴ United States and Canada, "Great Lakes Water Quality Agreement," Ottawa, 15 April 1972, in *Treaties and Other International Acts*, No. 7312.

³⁵ International Joint Commission, *Fifth Biennial Report on Great Lakes Water Quality* (Ottawa: International Joint Commission, 1990), Part II, p. 40.

³⁶ Gulf of Maine Council, *Action Plan 1991-2000*, *supra*, note 17, p. 7.

³⁷ One of the key architects of the Gulf of Maine initiative was Peter Underwood. In 1984, then a research associate at Dalhousie's Institute for Resource and Environmental Studies, Underwood wrote a study promoting the development of a regional management regime based on UNEP and other European models. See Peter Underwood, "Regional Action Plans for the Protection of the Marine Environment: Model for the Bay of Fundy-Gulf of Maine," Marine Law Institute, *International Risk of Coastal Energy in the Bay of Fundy-Gulf of Maine Region*, Working Paper #12 (May 1984).

³⁸ "Agreement on the Conservation of the Marine Environment of the Gulf of Maine between the Governments of the Bordering States and Provinces" [hereafter cited as "Gulf of Maine Agreement"], Portland, Maine, 12 December 1989, in Gulf of Maine Council, *Action Plan 1991-2000*, *supra*, note 17, pp. 37-38. The Agreement, as well as the 1996-2000 Action Plan and a number of other Council and Working Group documents can be found at the Council's website at <<http://www.gulfofmaine.org>>.

³⁹ See Curtis and Carroll, *Canadian-American Relations*, *supra*, note 9, pp. 73-75.

⁴⁰ See discussion *infra*.

⁴¹ What does "minimize" really entail and what level of risk would be necessary to pass the threshold of significance implied? Indeed, one could argue that rules of customary international law already obligate the federal governments of the two nations, if not their constituent states and provinces, to take even tougher measures.

⁴² See Gulf of Maine Council, Minutes, Halifax, Nova Scotia, 29 June 1990, p. 2; and Working Group, Minutes, Halifax, Nova Scotia, 28 June 1990, p. 5.

⁴³ This annual “contribution” has since been increased to \$15,000/ jurisdiction. Basic secretariat operations amount to approximately \$65,000 annually, with an additional \$25,000 earmarked for special Council projects. In 2001, this money was used to fund the development of the third Action Plan.

⁴⁴ Given questions about the formal authority of the Council, it remains unclear what “non-binding” means in this context.

⁴⁵ The document was subjected to an extensive review process. Federal agencies involved in related programs were asked to name appropriate contact people in May 1990 and, in September and October, discussions were held within relevant state, provincial, and federal agencies. After its approval by the Council in draft form in November 1990, the Action Plan was circulated for formal public review through the winter of 1990-91.

⁴⁶ *Action Plan 1991-2000* *supra*, note 17, p. 8.

⁴⁷ Gulf of Maine Working Group, Minutes, Halifax, Nova Scotia, 28 June 1990, p. 5.

⁴⁸ Gulf of Maine Action Plan Workshop, *supra*, note 25, p. 1.

⁴⁹ Gulf of Maine Monitoring Committee, “Gulf of Maine Environmental Quality Monitoring Program: An Initial Plan” (Gulf of Maine Council, 1991).

⁵⁰ See Kristine Cheetham and Dan Dorsky, “A Strategy to Reduce Marine Debris in Portland, Maine” (Gulf of Maine Council, 1992); and Dennis Frappier, Report to the Gulf of Maine Council, meeting, 4 December 1992.

⁵¹ *Action Plan 1991-2000*, *supra*, note 17, p. 28.

⁵² See Gulf of Maine Council on the Marine Environment, *Action Plan: 1996-2001* (1996), pp. 6-1—6-3.

⁵³ See Jonathan M. Kurland, "Habitat Mitigation Efforts in the Gulf of Maine: Stemming the Tide of Environmental Degradation," a report to the Gulf of Maine Council on the Marine Environment (National Marine Fisheries Service, 1991).

⁵⁴ *Action Plan: 1996-2001*, *supra*, note 52, p. ix.

⁵⁵ For the results of that review, see Gulf of Maine Council, *Work in Progress: Five-Year Report of the Gulf of Maine Council on the Marine Environment* (1996).

⁵⁶ These goals are: "protect and restore regionally significant coastal habitats, restore shellfish habitats, protect human health and ecosystem integrity from toxic contaminants in marine habitats, reduce marine debris, and protect and restore fishery habitats and resources." *Action Plan 1996-2001*, *supra*, note 52, p. vi.

⁵⁷ See the Council's website at <<http://www.gulfofmaine.org>>.

⁵⁸ *Action Plan 1996-2001*, *supra*, note 40, pp. 1-1—1-6.

⁵⁹ Gulf of Maine Council, *Minutes*, Portsmouth, NH, 19-20 July, 2000, p. 15.

⁶⁰ See, for example, the Council's discussion of the problems encountered with the goal increasing by 10 percent the acreage of coastal habitat "protected," a seemingly reasonable and specific objective but which, in practice, proved difficult to define. *Ibid.*, p. 15.

⁶¹ See Gulf of Maine Council on the Marine Environment, "Draft Priorities for the Gulf of Maine Program: 2001-2006, 7 February 2001." The Draft Action Plan can be found on the Council's website at <<http://www.gulfofmaine.org>>.

⁶² One of the areas of Council concern, "the sustainable use of resources within the Gulf of Maine," could certainly be read to include fisheries. See "Gulf of Maine Agreement," *supra*, note 38.

⁶³ For a more detailed account, see Phyllis Austin, "Who Killed Maine's Multi-Million Dollar Fishery?" *Maine Times*, February 14, 1992, pp. 1-5; "Restoring Maine's Fisheries," *Maine Times*, February 21, 1992, pp. 5-8; and "Groundfish Dilemma," *Maine Times*, May 22, 1992, p. 19.

⁶⁴ See generally, Jill Bubier and Alison Rieser, "U.S. and Canadian Groundfish Management in the Gulf of Maine-Georges Bank Region," *Territorial Sea*, Vol. 5, No. 2 (1985).

⁶⁵ Desiree French, "Panel Sides with N.E. on Canada Fish," *Boston Globe*, 30 April 1986, p. 65:1.

⁶⁶ *Gulf of Maine Council, meeting notes, St. Andrews, New Brunswick, 23-24 July 1992.*

⁶⁷ See Patricia Hinch, "The Gulf of Maine Council: A Ten Year Retrospective," unpublished paper (Gulf of Maine Council, March 1999), pp. 15-16.

⁶⁸ See Stewart Fefer, U.S. Fish and Wildlife Service, Report to the Gulf of Maine Council, Boston, MA, 4 December 1992.

⁶⁹ James Young, "The Air Above and the Sea Below: the Gulf of Maine Airshed," reprinted in *Turning the Tide* (October 1992), Vol. 4, No. 4, pp. 3-6.

⁷⁰ On an emerging sense within the international community of the limits of regional approaches, see VanderZwaag, *supra*, note 29, pp. 283-284.

⁷¹ Cheetham and Dorsky, "A Strategy," *supra*, note 50.

⁷² See Craig Freshley, report to the Gulf of Maine Council, Boston, MA, 4 December 1992. See also the planning document for the Partnership Program, Gulf of Maine Council, "Proposal for the Gulf of Maine Partnership Program" (June 1992).

⁷³ For a list and brief description of some of the chief organizations involved in Gulf of Maine issues, see "Organizations with a Gulf-wide Outlook," *Gulf of Maine Times*, Vol. 3 (Winter 1998).

⁷⁴ Craig Freshley, "Funding the Gulf of Maine Program" (Gulf of Maine Council, 1991).

⁷⁵ Gulf of Maine Council, Minutes, Portsmouth, NH, 19-20 July 2000, p. 15.

⁷⁶ Gulf of Maine Council, Minutes, Portsmouth, NH, 9 December 1999, p. 8.

- ⁷⁷ Suzy Fried, "GOM Council Celebrates Decade of Working in Gulf Stewardship," *Gulf of Maine Times*, Vol. 3 (Winter 1999).
- ⁷⁸ Aldo Chircop, David VanderZwaag and Peter Mushkat, "The Gulf of Maine Agreement and Action Plan: A Novel but Nascent Approach to Transboundary Marine Environmental Protection," *Marine Policy*, Vol. 19 (1995), p. 328.
- ⁷⁹ *Gulf of Maine Times*, Vol. 3 (Winter 1999).
- ⁸⁰ Gulf of Maine Working Group, Draft Minutes, meeting of 3-4 December 2001, Saint John, NB, p. 23.
- ⁸¹ Interview with David Keeley, May 7, 1998.
- ⁸² See generally, Chircop, VanderZwaag and Mushkat, *supra*, note 78, pp. 330-333.
- ⁸³ Gulf of Maine Council, meeting notes, St. Andrews, New Brunswick, 23-24 July 1992.
- ⁸⁴ In recent Working Group meetings and reports to the Council, it seemed clear that one principal commitment Working Group members were seeking was authorization to put sufficient time into the Gulf of Maine project at a moment when all face severe budget and personnel constraints.
- ⁸⁵ "Gulf of Maine Agreement," *supra*, note 38, p. 38.
- ⁸⁶ Interview with Laura Marron, October 13, 2000.
- ⁸⁷ VanderZwaaag, *supra*, note 29, p. 281.
- ⁸⁸ Interview with David Keely, *supra*, note 81.
- ⁸⁹ Bob Moore, "Storm Warnings: Will Grassroots Groups Change the Gulf of Maine Council Focus?" *Maine Times*, 19 August 1994, pp. 18-19.
- ⁹⁰ Chircop, VanderZwaag and Mushkat, *supra*, note 78, p. 331.
- ⁹¹ At a recent Working Group meeting, one proposal was to encourage NGOs to make regular presentations to the Council and the

Working Group. Gulf of Maine Working Group, Draft Minutes, *supra*, note 80, p. 11.

⁹² *Ibid.*, p. 12.

⁹³ GPAC, letter from William Borland and Colleen Mercer-Clarke, Canadian Co-chairs, and Pam Peterson, US Co-chair, to Kim Jardine, Chair, Gulf of Maine Council, 19 November 2001.

⁹⁴ Gulf of Maine Working Group, Draft Minutes, *supra*, note 80, p. 12.

⁹⁵ *Ibid.*, p. 13.

⁹⁶ Michele Dorsey, "Formalizing the Gulf of Maine Initiative: Institutional Arrangements for Implementing the Gulf of Maine Initiative," (Portland, ME: Marine Law Institute, 1991).

⁹⁷ Dorsey discusses six: common legislation, the regional council or task force, the interstate compact, the federal interstate compact, the regional compact, and international treaty.

⁹⁸ Some sort of federal participation could make it easier to get the federal governments to agree to the arrangement in the first place, as well as bringing to the table actors whose national regulatory power and financial resources might well be crucial to the organization's effectiveness. *Ibid.*, pp. 8-9 and 28-29.

⁹⁹ One could imagine the use in the Gulf of Maine of similar approach based, for example, to the length of coastline or the annual value of marine resources "landed."

¹⁰⁰ Dorsey, "Formalizing the Gulf of Maine Initiative," *supra*, note 96, p. 15.

¹⁰¹ VanderZwaag, *supra*, note 29, p. 282.

¹⁰² *Ibid.*, p. 283.

¹⁰³ *Ibid.*, pp. 284-285.