

Managing what you don't own: the special challenge of marine protected areas

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The implications of ownership

When you own the land, things are different. In the “bundle of sticks” analogy widely used to describe ownership rights, “fee simple” ownership means you get the whole bundle, the right to decide what happens on that piece of ground. While this control is not absolute, as society places certain restrictions on private landowners in the form of zoning, environmental protection standards, and other community standards that protect public health and safety, landowners are able to decide who can use the land, or not, and whether to sell off or lease some of those rights conveyed by ownership to others.

Lands that become our parks and preserves are generally acquired by governments through purchase or donation. This fee-simple ownership of public parks and other conservation lands provides the clear and unambiguous authority needed to manage lands effectively. If we had to manage parks that were mosaics of privately owned lands, we would have to collect the owners of each parcel every time some management decision had to be made and get the owners to agree to allow that action to occur on their corner of the park. Sounds like a pretty inefficient and cumbersome process, but in some ways, this is what is done when marine protected areas (MPAs) are designated and managed.

Unlike the land, marine waters are already owned by the public, so we need not purchase them in order to protect resources there. While government programs are created to act on behalf of the public in managing these areas, the public retains some important role in guiding management decision-making for these areas. As such, they should, as the owners, be provided opportunities to help guide how these marine areas are managed and protected. Like public lands acquired to create parks and preserves, marine areas are public waters and the interests of the public, the owners, must be integrated into any successful management philosophy for marine protected areas.

Ownership-based management

Most protected areas management decisions are justifiably below the radar of public review. One of the primary jobs of the on-site manager is to manage the day-to-day operations. Most protected areas managers are called to this work as a kind of vocation, and, motivated by this calling, it is almost inevitable that they develop a sense of ownership of the area and its resources. This sense of ownership helps fuel the long hours and dedication to the agency mission that are so critical to getting the job done. One wonders what sort of parks, preserves, and sanctuaries we might have if we didn't hear the managers routinely refer to where they work as “my park” and “my sanctuary.”

Some public lands managers have taken the position that even major management decisions could appropriately be made without aggressively seeking specific input from the public, except to satisfy public review process requirements. The thinking

behind this may be that Congress represents the public when they set up management programs for public lands, and the professional lands manager hired to implement this program brings needed expertise to make these decisions in the interest of the public. Many sound and well-reasoned decisions can be—and have been—made by managers using good judgment and the best available science, the manager acting as a kind of proxy landowner. Often such decisions are made in the face of opposition from a small vocal minority of local users of that area who feel they would be adversely affected by the decision. Having a sense of ownership may make the manager feel more confident in taking a locally unpopular, but in his or her view fully justified, decision. Operating under this management philosophy—what could be termed “ownership-based management”—the public, who in most cases must be coaxed to participate in the process of management of public lands and waters, becomes a silent majority whose interests are represented by the manager. Ownership-based management clearly works best in an atmosphere of trust.

However, the last few decades of U.S. history have made the public less confident that “the government” is representing their interests effectively. Managers sometimes are viewed by the local community as faceless bureaucrats implementing policies made a world away inside the Beltway, and over which they or the on-site managers have little direct influence. These site managers are perceived as being less directly accountable to the public, and because they have been managing protected areas with little direct public involvement, they may not be well known. Nor is it likely that they have had the opportunity to build a relationship of trust with any constituency, or the more valuable commodity of a reputation for being worthy of the public’s trust. The public may see the protected areas manager only when a problem arises, and so they tend to associate the protected area with problems.

In addition, in this age of information, there is a greater perception among citizens that natural areas are threatened (or their interests are threatened) and they need to get more involved. This same technology is facilitating the public’s ability to get more involved, especially through the web and e-mail. Therefore, the management of public lands has been drifting ever more rapidly toward more owner involvement.

There is another perhaps more insidious problem with relying on the minimal application of the public comment process, as it is often currently implemented, to guide management decisions. It doesn’t take long for any manager to know who is likely to comment when a notice is published. It is generally resource users, who are protecting some economic interest, and environmental organizations, who are representing their membership. Depending on the situation involved, there may be others, but certainly without actively seeking out a broader perspective, it is unlikely to come by itself. The limited viewpoints may encompass the opposite ends of the spectrum of potential comment, but is unlikely to include the vast middle ground. This is one of the reasons why we now define “consensus” as when both sides are equally unhappy. Without some sense of where the public is on some issue, the process may simply result in splitting the difference between the extreme views and hoping for the best. However, what we can and are likely to end up with in such a process is less than what is needed to get the job done (Wuerther 1999), but enough to agitate both the users and the environmental organizations. Do this often enough, and credibility erodes.

It’s different in the water...

Public waters have rarely, if ever, been managed under an ownership-based philosophy. Managers of public waters have always known who owned the ocean. There is a long history of public ownership of coastal and ocean waters since the 13th century. While archaic and a bit complex, the public ownership of marine areas and resources is very clear and relatively straightforward (see Scott 1988, Archer and Jarman 1992, Britton 1997, and Burger and Gochfeld 1998 for background regarding the history of ownership of marine and coastal waters). However, there are ele-

ments of the “public” out there asserting some perceived ownership of these areas and the resources they support. This seems particularly true of those from the commercial fishing industry who have been exploiting specific fishing grounds for generations and seem to have taken the position that they have acquired ownership rights as a result of the longevity of this activity—a kind of ownership by adverse possession. While the courts in the USA have consistently reasserted the public’s ownership of marine areas and resources when it has been challenged by the fishing industry (Downs, unpublished memorandum), these “rights” seem to be raised in every controversy, and what could be viewed as political expediency has caused the government to recognize these asserted “rights” and even provide compensation for their loss. If any MPA manager has developed inclinations toward an ownership-based management philosophy, challenges to clear title have made implementation of that philosophy nearly impossible. This is probably why most of the truly bold and innovative management of protected areas has occurred on land ... at least up to this point.

Toward a stewardship-based management philosophy for MPAs

The successful strategies for management of public waters have been more collaborative, transparent, and inclusive than what has generally been used on land, at least in the past. The National Marine Sanctuary System, with almost 30 years of experience in marine protected areas, has learned much about how to effectively manage them. Part of whatever success the sanctuary system has attained can be linked to what could be called a “stewardship” management philosophy. It promotes and maximizes owner involvement in the management of designated sanctuaries and in the evaluation of potential new sites, clearly recognizing that these areas are common property and the more advice that can be solicited from the owners—and as broad a cross-section of them as possible—the more certain sanctuary managers can be about the directions taken in site management and expanding the system.

Strategies for increasing owner involvement

In the management of an MPA there are a multitude of opportunities to maximize owner involvement. While they all take time, money, and staff support, the benefits accrued almost certainly outweigh the costs.

Form and fully use advisory committees. Advisory committees afford tremendous opportunities to interact with others who have some interest in the site and its operation. They can allow site managers and staff to develop relationships with representatives of constituencies, hopefully creating “champions” within those constituencies to advocate for the MPA within those organizations and groups, but at a minimum identifying a person responsible for ensuring that communication happens between the constituency and the MPA manager and staff.

Advisory committees involve considerable challenges, however. For federal programs, there is the issue of the Federal Advisory Committee Act, or FACA. FACA was established, in large part, to be sure that advisory committees are established only when they are truly needed. The clear need for owner involvement has been recognized for MPAs, and Congress went so far as to exempt the National Marine Sanctuary System from the requirements of FACA. However, other federal MPA agencies are still subject (unless they too have a special exemption from Congress) to FACA and this adds a significant administrative burden on the program if they decide to empanel an advisory committee.

Establish volunteer programs. Nothing builds a sense of community around an MPA more than getting owners involved up close and personally. Sometimes even the most ardent critic will become an enthusiastic supporter after he or she has a chance to get wet, get dirty, and get something accomplished. The sites of the Na-

tional Marine Sanctuary System have a number of excellent volunteer programs. Two examples include:

- In the Florida Keys National Marine Sanctuary, the group “Team Ocean” goes out on the water and provides information about the sanctuary to visitors, and keeps watch over sensitive resource areas.
- “Beach Watch” and “SEALS” are two groups of volunteers at the Gulf of the Farallones National Marine Sanctuary that do surveys of beaches and coastal areas, collect valuable information on presence of tar balls and debris, strandings of marine mammals, visitor use, and a host of other useful information. They receive at least eighty hours of training (more over time) and represent a resource of incalculable value to the sanctuary.

Dive teams, volunteer water quality monitoring programs, natural resource interpreters, and visitor center docent programs can all be great focus points for volunteer involvement.

Education, outreach, and “in-reach.” The goal of any MPA should be to develop an informed constituency. The need for effective education and outreach is obvious. Technology is available and continues to emerge that will assist in this effort, including such things as live webcasts of underwater activities at the site, list servers, and web-based forums that provide opportunities to increase the size of the MPA community. These technologies help resolve the problem of reaching out to as much of the public as possible. The web generally provides a great vehicle to share information with a community of support that covers a broad geographic area.

Like outreach, “in-reach,” or keeping the agency leadership well informed, is also critical. The swirl of controversy around MPA discussions related to new designations or major management decisions is almost a certainty. Having good lines of communications open and working can help sustain support of agency leadership if they are aware of the good things going on as well as the problems. Providing agency leadership the opportunity to participate in celebrations of successes, and other positive events are also appreciated, and provide opportunities for personal contact with leadership.

Collaborative management. In these days of limited staff and budgets, no one agency can afford to carry the full burden of management of most MPAs. In addition, more emphasis is being placed on establishing networks of MPAs (Barr, in press). Developing partnerships with other agencies, non-governmental organizations, and user groups can help to bring more resources and cultivate support for site initiatives. Along with the obvious economies of scale, establishing a network of managers can be useful to share good (and bad) ideas to implement (or avoid), as well as to possibly gain access to personnel with expertise in areas that may not be represented on staff.

Good research to support good management. Good research is essential for successful MPA management. Most of what we deal with in the marine realm is fraught with uncertainty, and in order to provide the best chance of implementing management measures that are appropriate and necessary to protect site resources, “best available science” must be developed and used. In the marine environment, the costs involved in acquiring good science may be very expensive, but strategic partnerships with universities and agency scientists can help considerably.

Things managers must learn to accept. If there is a downside to increasing owner involvement, it is that the way business is done may have to change. Everything you do will take longer. The time involved in getting and keeping the public engaged in management discussions is considerable, and reaching consensus once you have everyone engaged is not inconsequential with regard to time. Many deliberations simply cannot be rushed, so it is incumbent on managers to get issues on the table as early as possible and effectively facilitate discussions to ensure they are as efficient as possible. Wasting time in the weeds collectively spinning your wheels is

not an essential part of the consensus-building process. Educating agency leadership about the longer times required for collaborative processes may also present something of a challenge.

The other inescapable reality is that you may not get what you want. You should be involving the public to ensure the owners have the opportunity to guide your stewardship of the site, not looking for them to simply rubber stamp your view. In order to ensure that you get what you need, you want to determine if some minimal set of management actions are necessary to achieve some goal, and make this clear when the issue is shared with constituencies. Provide a number of options that will achieve the goal, rather than expect to develop the answer out of whole cloth as a result of the public review. To quote some rock and roll philosophers, the Rolling Stones, "You can't always get what you want, but if you try, sometimes you get what you need."

Definition of "public" and some observations on getting out of our own way.

Public waters are "common property," or, perhaps more appropriately, "state property" (Burger and Gochfeld 1998). It is important to clearly articulate who we mean by the "public"—those who have common ownership of these resources. Too often, the groups that become the "public" are those who feel they have the greatest stake in the outcome of management decisions, who advocate a special interest and represent some constituency who shares that interest. While there is no doubt these people are "part-owners," they represent only a tiny minority of the true public. For federal protected area programs, the public is made up of the citizens of the USA. That means that managers of public lands and waters should be interested in the views of all the owners, no matter what part of the country they are from or what interests they might have. Local users and interested citizens have enhanced access to managers (and more opportunities to make their position known) and there seems to be a false perception that proximity to a nationally significant resource imbues the locals with some special status regarding that particular piece of public land or water. Sometimes the interests of the local community conflicts with the interests of the larger national community, and care must be taken to address this potential conflict. Managers have a duty to seek out the full spectrum of opinions and interests of the public, and give those perspectives due consideration in deciding which management action is appropriate. National surveys on public attitudes regarding marine conservation and MPAs have been conducted by environmental groups and provide much useful information, offering some insight into where the public is on this issue. It might be more useful and appropriate, however, for MPA agencies to commission their own independent survey or surveys. With the establishment of a National MPA Center and thematic institutes for science and training and technical assistance (under the authority of the MPA Executive Order #13158, issued May 2000), this is a task the National Center might consider undertaking. Getting the bigger picture of owner attitudes and views is not an easy task, but an essential one.

Finally, governments and agencies should review their policies and procedures to ensure that they facilitate rather than impede ownership involvement. One such process already discussed is FACA, which clearly can make soliciting advice from the public more difficult. Another possible impediment is the Paperwork Reduction Act. While the goals of this process are well meaning and perhaps justified in keeping the government from subjecting the public to a multitude of burdensome and intrusive forms requesting information, it may have the effect, by creating a lengthy and complicated approval process for seeking out the advice of the public, of making agencies think twice when they feel they could use some enhanced owner involvement. The public should have every opportunity to provide advice if they are moved to do so. No one should be compelling any citizen to provide input if they are not inclined to do so, at least in the realm of managing protected areas. Governmental processes and policies should make the free exchange of information and ideas as easy as possible. The more open the process is and the more opportunities the public

has to participate, the more confident managers can be that their stewardship of public lands and waters reflects the aspirations and views of the owners.

The views expressed herein are those of the author and are not meant to reflect in any way policies, positions or views of the Department of Commerce, NOAA, or any of its sub-agencies.

References

- Archer, J., and M. Jarman. 1992. Sovereign rights and responsibilities: applying public trust principles to the management of EEZ space and resources. *Ocean and Coastal Management* 17, 253-271.
- Barr, B. W. In press. Establishing effective marine protected areas Networks. To appear in *Terrestrial and Marine Protected Areas: Globalization, Ecological Integrity, and the Human Dimension*. Proceedings of the 4th International Conference on Science and the Management of Protected Areas. S. Bondrup-Nielsen, T. Herman, N. Munro, G. Nelson, and M. Willison, eds. Wolfville, N.S.: Science and Management of Protected Areas Association.
- Britton, D. 1997. The privatization of the American fishery: limitations, recognitions, and the public trust. *Ocean and Coastal Law Journal* 3, 217-257.
- Burger, J., and M. Gochfeld 1998. The tragedy of the commons: thirty years later. *Environment* 40:10, 4-27.
- Downs, G. 1995. Unpublished memorandum to Porter Hoagland, WHOI Marine Policy Center, August.
- Scott, A. 1988. Development of property on the fishery. *Marine Resource Economics* 5, 289-311.
- Wuerther, G. 1999. Selfish genes, local control, and conservation. *Wild Earth* 9:4, 87-91.