

Transforming Ocean Law with Active Marine Restoration

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Article 192 of the United Nations Convention on the Law of the Sea obliges States to “protect and preserve the marine environment.” In response to this obligation, most coastal States have a body of national laws and regulations or at least of framework of national policies to protect the marine environment. In spite of this obligation to “preserve the marine environment”, the oceans face complex environmental threats ranging from warming ocean temperatures, increasing loads of marine plastics, overfishing, and acidification. This paper argues that we have entered a post-preservation era where active and passive restoration efforts to revive marine ecological functions are essential.

Using a comparative law approach, this paper will evaluate a sample of twenty to twenty-five national marine protection frameworks from both developed and developing coastal States across a number of oceans to determine how existing laws do or do not promote restoration of the marine environment. In particular, the analysis will distinguish between laws and policies that facilitate active restoration and laws and policies that facilitate passive restoration. Presently, few States have laws or policies mandating active restoration outside of the context of an oil or chemical spill where ecological restoration may be part of a remediation phase. In contrast, increasing numbers of States are promoting passive restoration through the application of marine protected area legislation. While these passive restoration efforts are significant particularly when they span across a broad seascape, certain threats associated with climate change may require more active restoration efforts to enhance the immediate resilience of marine ecosystems.

Active restoration efforts will be critical for protecting biodiversity from warming ocean temperatures and acidification. Yet, it can be quite challenging to undertake such efforts given a lack of knowledge about how to implement active restoration projects. This paper recommends that to protect both marine species and habitats threatened by disruptive change, States will need to consider the benefits of implementing active restoration programs. As States invest national resources in developing national adaptation plans to meet climate treaty obligations or engage in marine spatial planning, States should also be considering identifying key marine restoration sites and designing restoration plans. This paper will discuss the opportunities and challenges associated with undertaking active restoration in marine environments including setting baselines capable of adapting to climate change impacts and managing restoration objectives over a multi-decade period.

The paper concludes with a suggestion that as States engage in negotiations over a new legal instrument to protect marine biodiversity beyond areas of national jurisdiction, political attention should prioritize the active restoration of threatened marine environments within national jurisdiction. This paper acknowledges that even with political will, there are many gaps in basic marine scientific research that would need to be remedied before large-scale ocean restoration programs will be feasible. This paper will research and discuss current investments in active large-scale marine restoration projects including both species and habitat restoration and offer specific policy recommendations on how to increase ecosystem restoration financing capable of protecting the marine environment for existing and future generations.

List of recent publications on marine environment:

Co-Authored Book

Ecological Restoration in International Environmental Law, co-authored with Afshin Akhtarkhavari and An Cliquet, Routledge Press, (2017) (318 pages)

Edited Book

Marine Pollution Contingency Planning State Practice in Asia-Pacific States co-edited with Warwick Gullett, and Seokwoo Lee, Brill Publishers, (2017) (233 pages)

Peer-Reviewed Chapters in Edited Books

United Nations Convention on the Law of the Sea and Climate Change in CLIMATE CHANGE AND THE OCEANS, Cambridge University Press (Forthcoming 2018) (In proofs)

Weathering the 21st Century: How UNCLOS Contributes to Responding to Climate-Related Disaster Events STRESS-TESTING THE UN CONVENTION ON THE LAW OF THE SEA Brill Publishers (Forthcoming 2018) (In proofs)

The Valuable Role that Private Environmental Governance might play in Managing Global Fisheries Resources in PROTECTING FOREST AND MARINE BIODIVERSITY: THE ROLE OF LAW, Edward Elgar Publishing (2017): 251-272

From Protection to Restoration: A Challenge for Environmental Governance in HANDBOOK ON FUNDAMENTAL CONCEPTS OF ENVIRONMENTAL LAW, Edward Elgar Publishing, (2016) (Co-authored with Afshin Akhtar-Khavari)

Protecting Gifts from the Sea: Ocean Governance for Living Marine Resources after Rio +20 in GLOBAL ENVIRONMENTAL LAW AT A CROSSROADS, Edward Elgar Publishing, (2014): 118-140.

“Good Faith” Obligations to Protect and Preserve the Marine Environment: A Proposal to Create Uniform High Seas Fisheries in THE LAW OF THE SEA: LIMITS OF MARITIME JURISDICTION, Ashgate, (2013): 449-471.

An Emerging Legal Principle to Restore Large Scale Ecoscapes in THE RULE OF LAW FOR NATURE, Cambridge University Press, (2013): 175-190.

United Nations Convention on Law of the Sea and Marine Fisheries in HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW, Routledge, (2012) (Co-authored with Rebecca Bratspies): 259-277.

Law Reviews

Restoration and Large Marine Ecosystems: Strengthening Governance for an Emerging International Regime Based on “Ecoscape” Management 35 University of Hawaii Law Review: 735-767 (2013)

Ecoscapes: The Future of Ecological Restoration Law, 14 Vermont Journal of Environmental Law 4: 493-548 (2013)