

B.C. Coastal Strategy and Law: A Review of Washington State and Nova Scotia's Coastal Management

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British Columbia is one of the few coastal jurisdictions in North America that does not have a coastal law or strategy. With escalating issues threatening its coastal areas such as rising sea levels, declines in wild salmon, and increased marine debris and plastics, the Government of BC has the opportunity to address this long-standing gap in its legal framework and show national leadership in coastal marine management.

In January 2020, we produced a brief titled [Caring for our Coast: Lessons for BC from Coastal Management Laws around the World¹](#) which provided examples of coastal strategies and laws throughout the world that BC could emulate. This report will answer the following questions by focusing on Washington State and Nova Scotia. Both jurisdictions have implemented coastal laws that address the most significant threats to their coastal environments and facilitate cooperation with other levels of government.

1. How did other governments develop and implement coastal strategies and laws?
2. How have other governments reorganized their bureaucracy to do so?
3. What were the outcomes of developing and implementing a coastal strategy and law?

Key Findings

Washington State

- First coastal law enacted in 1971.
- Periodic review of coastal strategy that includes updating and developing new policies when recommended.
- Creation of new governing bodies to coordinate coastal management with local and Federal governments.
- Local governments develop marine spatial plans for their coastal waters to specifically address the unique needs of their communities and marine environments.

Nova Scotia

- In 2007, created an interdepartmental group to conduct province-wide studies and public consultation to understand current and future coastal issues.
- Enacted its *Coastal Protection Act* in 2019.
- Rather than creating a new governing body, coastal development decisions are the responsibility of local governments and must be consistent with the Act.

¹ Georgia Lloyd-Smith, Deborah Carlson and Michael Bissonnette, "Caring for our Coast: Lessons for BC from Coastal Management Laws around the World", West Coast Environmental Law, January 17, 2020, accessed online on June 8, 2020 at: <https://www.wcel.org/sites/default/files/publications/2020-01-caringforourcoast-brief-lessonsfromotherjurisdictions.pdf>

1. How did other governments develop and implement coastal strategies and laws?

As Washington and Nova Scotia demonstrate, different approaches can be taken to develop coastal policies. Each of these jurisdictions has a unique history of how they developed their coastal laws and strategies and each can provide lessons for BC.

Washington

Washington was one of the first states in the U.S. to develop a coastal strategy and law and has some of the most comprehensive coastal management on the continent.

In the late 1960s, development of Washington State's first coastal law began. The environmental organization, Washington Environmental Council (WEC), drafted shoreline legislation and obtained enough signatures to submit the bill to the legislature.² The bill would apply to areas 500 feet landward from ocean and freshwater shorelines and out to three nautical miles offshore and grant the Department of Ecology the primary responsibilities for managing these areas.² Instead of adopting the WEC's bill, the Washington State Legislature enacted its own bill, the *Shoreline Management Act of 1971*, which limited the application of the legislation to 200 feet landward and granted greater responsibilities under the Act to local governments (rather than the Department of Ecology).² In the 1972 state election, voters were given the choice to accept either of the two bills (or reject them both). Ultimately, voters favoured the *Shoreline Management Act of 1971* and it has remained in force ever since.²

The *Washington Shoreline Management Act* forms the foundation of Washington's coastal strategy (or "coastal program" as it is referred to in Washington).³ Washington has since progressively expanded the scope of its coastal laws and strategy. Most prominently, Washington enacted the *Ocean Resources Management Act* in 1989 to provide guidance to and influence federal government decisions in offshore areas where the Shoreline Management Act did not apply.⁴ And in 2010, Washington enacted the *Marine Waters Planning and Management Act* to facilitate marine spatial planning in cooperation with the federal government.⁵ This series of laws shows Washington State's increasing interest and involvement in coastal and ocean management.



² Geoffrey Crooks, *The Washington Shoreline Management Act of 1971*, 49 Wash. L. Rev. 423 (1974), at pp. 423-425.

³ Washington Department of Ecology. *Managing Washington's Coast: Washington State's Coastal Zone Management Program*, p. 96, accessed online on May 20, 2020 at: <https://fortress.wa.gov/ecy/publications/documents/0006029.pdf>

⁴ *Ocean Resources Management Act*, RCW 43.143.

⁵ Bridget Trosin, Tiffany Smythe, Jennifer McCann, Christian Fox and Nicole Andrescavage. "A Case Study of the Washington Coast", *Marine Spatial Planning Process, 2010-2015*", Coastal Resources Center and Rhode Island Sea Grant College Program, University of Rhode Island Graduate School of Oceanography, January 2016, p. 12, accessed online on May 20, 2020 at: https://www.crc.uri.edu/download/WashingtonCoastMSP_FIN.pdf; *Marine Waters Planning and Management Act*, RCW 43.372.

Nova Scotia

A different approach was taken in Nova Scotia, where a coastal strategy was developed prior to a law.

In the mid-1990s, encouraged by environmental NGOs and community organizations who wanted greater community involvement in decisions affecting coastal areas, the Nova Scotia commissioned a committee to prepare a coastal governance framework.⁶ However, a strategy to implement the framework (Coastal2000) was lacking and the suggested governance reforms were never applied.⁶

In 2007, under increasing pressure from environmental and community groups, Nova Scotia renewed its commitment to improving its coastal governance. Nova Scotia established a group of 15 representatives from departments with coastal responsibilities to form the Provincial Ocean Network to facilitate interdepartmental collaboration on coastal issues.⁷ In 2009, the Provincial Ocean Network produced the *State of the Coast* report which compiled extensive information on the province's coast, identified important coastal issues, and identified information gaps where more research was required.⁷

In October 2011, the provincial government released a draft coastal strategy, however several factors prevented the coastal strategy from being finalized. Notably, a devastating flood in Truro, Nova Scotia brought public attention to the risks of coastal flooding, an issue that was essentially ignored in the draft coastal strategy. Moreover, a new government was elected in 2013 that did not prioritize the coastal strategy.⁶

Nonetheless, concerns about sea-level rise and coastal flooding remained in Nova Scotia, especially given warnings that the province would face some of the worst climate change induced sea-level rise in Canada.⁸ In the 2017 election, the government promised to adopt legislation to manage coastal development and limit erosion.⁹ In the summer of 2018, the government carried out public consultations and finally enacted its *Coastal Protection Act* in 2019.¹⁰ Nova Scotia is currently creating regulations to complement the Act.¹¹

Lessons for BC

- Both Washington State and Nova Scotia developed strategies and enacted laws to address gaps in coastal governance and to address alarming threats to their coastal communities and environments. Similarly, in British Columbia, there is growing public concern regarding a wide-range of coastal issues such as sea-level

⁶ Jennifer Graham and Anthony Charles, "Messy Intertidal Zone: Transformation of governance thinking for coastal Nova Scotia", from *Governing the Coastal Commons: Communities Resilience and Transformation*, edited by Derek Armitage, Anthony Charles, Fikret Berkes, 2017, p. 214.

⁷ Government of Nova Scotia, Draft Coastal Strategy, October 2011, p. 4, accessed online on May 20, 2020 at: <http://www.surfn.com/wp-content/uploads/2011/10/NS-draft-coastal-strategy2011oct.pdf>; Jennifer Graham and Anthony Charles, "Messy Intertidal Zone: Transformation of governance thinking for coastal Nova Scotia", from *Governing the Coastal Commons: Communities Resilience and Transformation*, edited by Derek Armitage, Anthony Charles, Fikret Berkes, 2017, p. 215-216.

⁸ Zachary Markan, "Halifax sea levels spiked by 11cm in two years", CBC News, February 27, 2015, accessed online on May 20, 2020 at: <https://www.cbc.ca/news/canada/nova-scotia/halifax-sea-levels-spiked-by-11cm-in-two-years-1.2974329>

⁹ Caitlin Grady, Coastal Protection Act: A Future Scenario Analysis of Coastal Policy in Nova Scotia, unpublished thesis, College of Sustainability, Dalhousie University, p. 16, accessed online on May 20, 2020 at: https://dalspace.library.dal.ca/bitstream/handle/10222/73873/Grady_Final%20Honours%20Thesis.pdf?sequence=1&isAllowed=y

¹⁰ Province of Nova Scotia, Public and Stakeholder Consultations on Coastal Protection Legislation in Nova Scotia, January 2019, p. 3, accessed online on May 20, 2020 at: <https://novascotia.ca/coast/CoastalProtectionLegislationConsultationReport.pdf>

¹¹ Nova Scotia *Coastal Protection Act* website, accessed online on May 20, 2020 at: <https://novascotia.ca/coast/>.

rise and flood management,¹² shoreline hardening,¹³ and the lack of coordination and management to address them.

- Washington demonstrates the approach to enact a law first and strategy second whereas Nova Scotia developed a strategy first, and law second.
- Washington repeatedly reviews the effectiveness of its coastal management and expanded its laws and strategy to meet the changing needs of its coastal communities and environments.
- Nova Scotia ensured that a coastal law addressed its most important coastal concerns through interdepartmental collaboration and public consultation.
- Community organizations were involved in the coastal policy development process for both jurisdictions.
- Public engagement was key to the success of coastal strategies and laws in both jurisdictions. In Washington, the public selected the coastal law to enact. Whereas in Nova Scotia, the public did not support a proposed 2011 coastal strategy because it failed to address a key coastal concern. However, once sea-level rise and flooding were addressed, there was public support and the *Coastal Protection Act* was enacted.



¹² Justine Hunter, "Who's in charge of keeping B.C. dry as sea levels rise? With no singular climate plan, it's every community for itself", The Globe and Mail, February 9, 2020 accessed online on June 8, 2020 at: <https://www.theglobeandmail.com/canada/british-columbia/article-whos-in-charge-of-keeping-bc-dry-as-sea-levels-rise-with-no/>

¹³ Calvin Sandborn, "BC must act to protect spawning beaches from carelessly built Accessed online on June 8, 2020, The Province, February 19, 2020, accessed online on June 8, 2020 at: <https://theprovince.com/opinion/calvin-sandborn-b-c-must-act-to-protect-spawning-beaches-from-carelessly-built-seawalls>

2. How have other governments reorganized their bureaucracy to do so?

The main purpose of adopting a coastal strategy and law is to achieve better governance of coastal and marine areas. A potential concern in doing so is that it will be expensive and require extensive reorganizations of government. However, as examples from other jurisdictions demonstrate, this does not need to be the case.

Washington

Washington's approach to coastal management is referred to as a "networked" approach because it relies upon several different pieces of coastal and marine legislation to carry out its overarching coastal strategy.¹⁴ Washington has delegated much of the responsibility of administering its coastal strategy to local governments. However, Washington has also created new government structures to further its coastal objectives and coordinate decision-making. As mentioned above, Washington's network of coastal laws began with the *Shoreline Management Act of 1971* (SMA) and the state has since enacted several others acts to enhance the state's coastal management.

Under the SMA, the Washington Department of Ecology was tasked with establishing guidelines for local governments to develop their own Shoreline Master Plans (SMP). The plans are then reviewed and approved by the Department of Ecology.¹⁵ A Shoreline Hearings Board was established to resolve disputes between local governments and the Department of Ecology.¹⁶

Washington has also established the Coastal Marine Advisory Council within the executive office of the Governor composed of government directors of ocean related agencies and stakeholder representatives.¹⁷ The committee provides advice to government and serves as the point of contact for the state on coastal issues.¹⁸

Washington's coastal programs are partially funded by the U.S. federal government through its coastal zone management program (and other programs under the federal *Coastal Zone Management Act*), which encourages coastal states to enact coordinated coastal programs.¹⁹

Nova Scotia

Nova Scotia's newly enacted *Coastal Protection Act*²⁰ does not re-organize government or create new agencies. Instead, it requires that when local governments make decisions on new developments within their jurisdictions, they do so in keeping with the Act. The Act and its regulations, which are currently in development, will provide clear province-wide rules to "ensure new construction is built in places safer from sea level rise and coastal flooding."²¹ The Act prohibits a local government from issuing a development permit, subject to certain exceptions, unless the "application for the permit is accompanied by a recommendation from an independent designated professional certifying that the proposed structure or modification and its

¹⁴ Washington Department of Ecology. Managing Washington's Coast: Washington State's Coastal Zone Management Program, p. 97, accessed online on May 20, 2020 at: <https://fortress.wa.gov/ecy/publications/documents/0006029.pdf>

¹⁵ *Shoreline Management Act of 1971*, RCW 90.58.090.

¹⁶ *Shoreline Management Act of 1971*, RCW 90.58.170.

¹⁷ *Ocean Resources Management Act*, RCW 43.143.050.

¹⁸ *Ocean Resources Management Act*, RCW 43.143.060.

¹⁹ Washington Department of Ecology, Washington Coastal Zone Management Program & policies website, accessed online on May 20, 2020 at: <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Coastal-zone-management/Programs-policies>;

²⁰ *Coastal Protection Act*, SNS 2019, c 3.

²¹ Nova Scotia Coastal Protection Act website, accessed online on May 20, 2020 at: <https://novascotia.ca/coast/>.

location are in compliance with this Act and the regulations.”²² Accordingly, much of the costs of complying with the Act are borne by developers and the Act is administered by local governments who already had the role of permitting developments in their jurisdictions.

Lessons for BC

- Both Washington and Nova Scotia grant local governments significant responsibilities for administering their coastal strategy and laws.
- The Washington coastal strategy has benefitted from support from the federal government and has specifically created bodies to ensure smoother cooperation with the federal government. Given that the Canadian federal government continues to create new initiatives and laws to further its objectives on the Pacific coast such as the *Oceans Act*,²³ the Ocean Protection Plan,²⁴ and the expansion of the Port of Vancouver²⁵, BC can create a coastal management framework to efficiently work with the federal government while furthering its own objectives.
- Nova Scotia’s *Coastal Protection Act* did not require any significant government reorganization or increases in spending. The coastal management functions within the existing governance framework, however the Act now requires that local governments all follow the same coastal development regulations.

3. What were the outcomes of developing and implementing a coastal strategy and law?

Washington

Washington’s coastal strategy and laws have led to extensive and coordinated spatial planning along the state’s coastline and in its marine waters. There are more than 260 local government Shoreline Master Programs (SMPs) and most are administered by local governments.²⁶ These SMPs must be periodically reviewed and updated and the Department of Ecology continues to provide oversight.²⁷ For example, in 2003, the Department of Ecology established new guidelines that required that SMPS achieve “no net loss” of ecological functions.²⁸

Moreover, through its coastal strategy, Washington has supported several effective local environmental initiatives. For example, Washington created the Puget Sound Partnership to oversee the restoration of

²² *Coastal Protection Act*, SNS 2019, c 3, s. 12.

²³ *Oceans Act*, SC 1996, c 31

²⁴ Office of the Prime Minister of Canada, Canada’s Ocean Protection Plan, 2016, accessed online on May 22, 2020 at: <https://www.tc.gc.ca/communications-eng/oceans-protection-plan.pdf>

²⁵ Grant Cameron, “Work begins on expansive Vancouver container terminal”, August 23, 2019, accessed online on May 22, 2020 at: <https://canada.constructconnect.com/joc/news/projects/2019/08/work-begins-expansive-vancouver-container-terminal>

²⁶ Washington Department of Ecology, Shoreline Master Program website, accessed online on May 20, 2020 at: <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Shoreline-Master-Programs>

²⁷ *Shoreline Management Act of 1971*, RCW 90.58.195.

²⁸ Washington Department of Ecology, Shoreline Master Plan Handbook, Chapter 4: No Net Loss of Shoreline Ecological Functions, accessed online on May 20, 2020 at: <https://fortress.wa.gov/ecy/publications/parts/110601opart4.pdf>

environmental health in Puget Sound.²⁹ The Partnership has created an action plan and implementation strategies to achieve its objectives.³⁰ One of its ambitious objectives has been to restore 10,080 net acres of shellfish beds in Puget Sound to a harvestable condition by 2020.³¹ While 2020 has not come to an end, the initiative has led to large increases in shellfish beds in the Sound.³² This is especially significant given that just north of the border in BC, shellfish harvesting has been closed in Burrard Inlet since 1972 because of contamination concerns³³ and the shellfish industry has faced significant declines.³⁴

Nova Scotia

The enactment of Nova Scotia's *Coastal Protection Act* was largely motivated by public concern that the province was the highest risk area in Canada for sea-level rise.³⁵ The Act is not in force yet as the government is still developing regulations that will define exactly how the legal framework will work. But the intention is to provide clear province-wide rules to ensure new developments will be safe from sea level rise and coastal flooding.³⁶

A 2016 report estimated that sea-level rise and storm surges will cost Canada \$50 billion³⁷. Given the huge costs associated with sea-level rise and flooding, the coastal strategy and act will not only prepare communities and mitigate threats but are also a cost-saving measure.

Lessons for BC

- The coastal program in Washington has enabled it to create legally-underpinned spatial plans for most of its coastal waters. Also, the coastal program has enabled Washington to address issues like cleaning up shellfish beds for safe harvest that BC has struggled to resolve in some regions.
- Nova Scotia's *Coastal Protection Act* has a clear goal to ensure sensitive coastal ecosystems are not overdeveloped and new developments are safe from sea-level rise and flooding. Given the predictions of significant sea-level rise for BC's coast as well, a coastal strategy and law will also prepare communities before it's too late.

²⁹ *Puget Sound Water Quality Act*, RCW 90.71.210, 2007 c 341 § 3, accessed online on May 20, 2020 at: <https://app.leg.wa.gov/RCW/default.aspx?cite=90.71.210>

³⁰ Puget Sound Partnership, The 2018-2022 Action Agenda for Puget Sound, December 2018, accessed online on May 20, 2020 at: <https://pspwa.app.box.com/s/osxaeqg19fevxu5n3k8xnjytzkwo1512>; Puget Sound Partnership, Implementation Strategies website, accessed online on May 20, 2020 at: <https://www.psp.wa.gov/implementation-strategies.php>

³¹ Christopher Dunagan, "Implementation Strategies will target Puget Sound 'Vital Signs'", Encyclopedia of Puget Sound, accessed online on May 20, 2020 at: <https://www.eopugetsound.org/magazine/is/implementation-strategies>

³² Jean Lotus, "Native oysters make comeback, thrive again in Puget Sound", UPI, January 28, 2020, accessed online on May 20, 2020 at: https://www.upi.com/Top_News/US/2020/01/29/Native-oysters-make-comeback-thrive-again-in-Puget-Sound/2521579927804/; Christopher Dunagan, "Hope is alive for restoration of Puget Sound shellfish beds", Kitsap Sun, March 12, 2017, accessed online on May 20, 2020 at: <https://pugetsoundblogs.com/waterways/2017/03/12/hope-is-alive-for-restoration-of-puget-sound-shellfish-beds/>

³³ Patrick Lilley, Peter deKoning, John Konovsky and Bridget Doyle, Burrard Inlet Action Plan, Tsleil-Waututh Nation, p. 4, accessed online on May 20, 2020 at: https://msbernabei.weebly.com/uploads/8/7/7/6/8776151/twn-burrard-inlet-action-plan-summary_1.pdf

³⁴ Justin McElroy, "Disappearing shellfish on B.C.'s coast confounding experts", CBC News, August 6, 2016, accessed online on May 20, 2020 at: <https://globalnews.ca/news/1802202/disappearing-shellfish-on-b-c-s-coast-confounding-experts/>

³⁵ Michael Tutton, "This is a wake-up call: swift action needed on rising seas, experts say", CBC News, April 7, 2019, accessed online on May 20, 2020 at: <https://www.cbc.ca/news/canada/nova-scotia/climate-change-report-rising-sea-levels-atlantic-canada-1.5088099>

³⁶ Nova Scotia Coastal Protection Act website, accessed online on May 20, 2020 at: <https://novascotia.ca/coast/>.

³⁷ Alison Auld, "The Big Picture: The looming threat of rising sea levels — and what we can do about it", Dal News, December 12, 2019, accessed online on May 20, 2020: <https://www.dal.ca/news/2019/12/12/the-big-picture--the-looming-threat-of-rising-sea-levels---and-w.html>

Conclusion

There is growing awareness that BC needs a coastal strategy and law as the current legal framework is not able to adequately address and manage many of the threats facing its coastal waters. Washington State and Nova Scotia provide good examples for BC of how this can be accomplished. While the process and scope of their coastal strategies and laws are very different, Nova Scotia and Washington State have both enacted legal frameworks to manage their coastlines in a coordinated fashion with other levels of government.

In both cases, the coastal framework has recognized and empowered local governments demonstrating that a state or province-wide coastal framework need not require consolidating power in a central government and can enhance cooperative government with other levels of government.

A British Columbia coastal strategy and law could go beyond Nova Scotia and Washington State, in terms of cooperative governance, by recognizing and empowering Indigenous decision-making in coastal areas. At the end of 2019, BC committed to recognizing and supporting Indigenous governance and rights in a manner that is consistent with the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). By co-developing with First Nations a coastal strategy and law that supports Indigenous governance and rights, BC can meet its commitments under UNDRIP while becoming a leader in collaborative coastal management.

Authors:

Michael Bissonnette, Staff Lawyer, WCEL
mbissonnette@wcel.org

Kate MacMillan, Coastal Campaign Manager, CPAWS-BC
kate@cpawsbc.org



West Coast Environmental Law
200-2006 West 10th Avenue
Vancouver, BC Canada V6J 2B3
604-684-7378 (toll-free in BC: 1-800-330-WCEL)
www.wcel.org • [@WCELaw](https://twitter.com/WCELaw)