

# Rights & Ownership in Marine Spaces

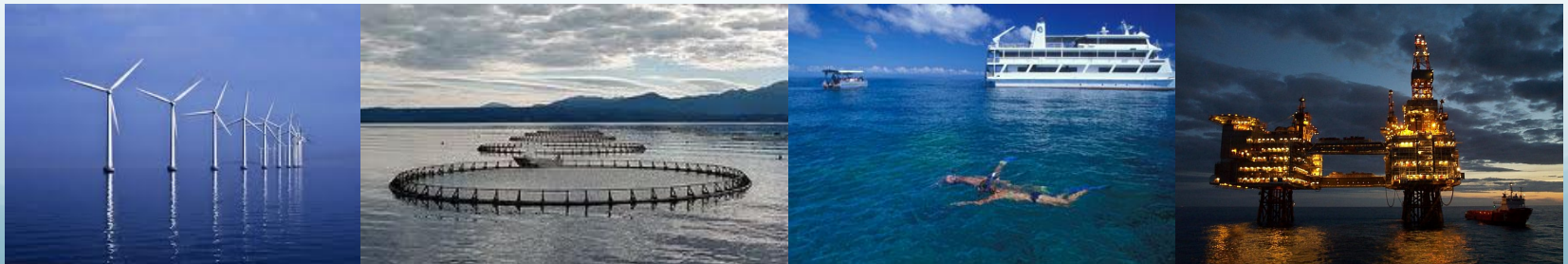
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# Background

- Freedom of the seas & common pool marine resources are longstanding tenets of marine governance
- Private property rights in marine spaces are rare
- UNCLOS provided States with legal basis to determine rights at the national level
- Public rights to fishing and navigation
- Technological development & demand for resources is driving ocean industrialisation ('Blue Growth')

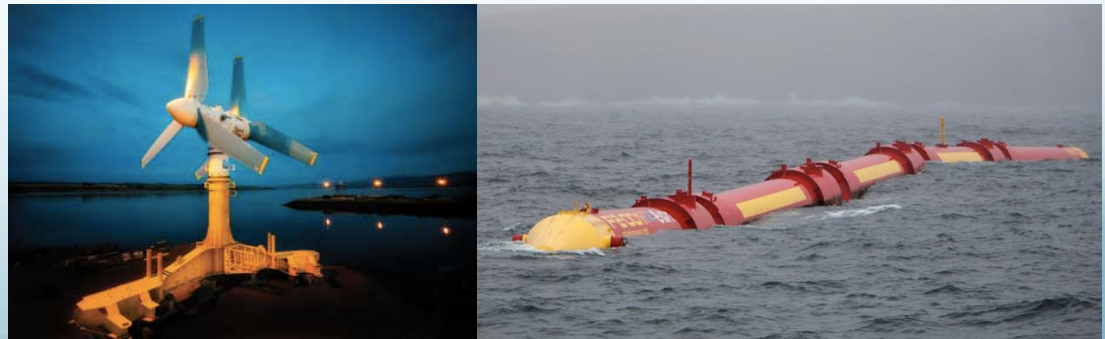


*We are entering a new era of rapidly expanding ocean use... new discourses on ocean ethics and governance... Changes in our perceptions, values, and technology regarding the sea are driving the need for new rules and regulations as well as changes in systems of rights to occupy sea space and use ocean resources... We need to articulate a new discourse on sea tenure..., a new way to allocate ocean space and marine resources... We need a way for private enterprise to pioneer wind, wave, and tidal-energy offshore...*

Osherenko (2006)

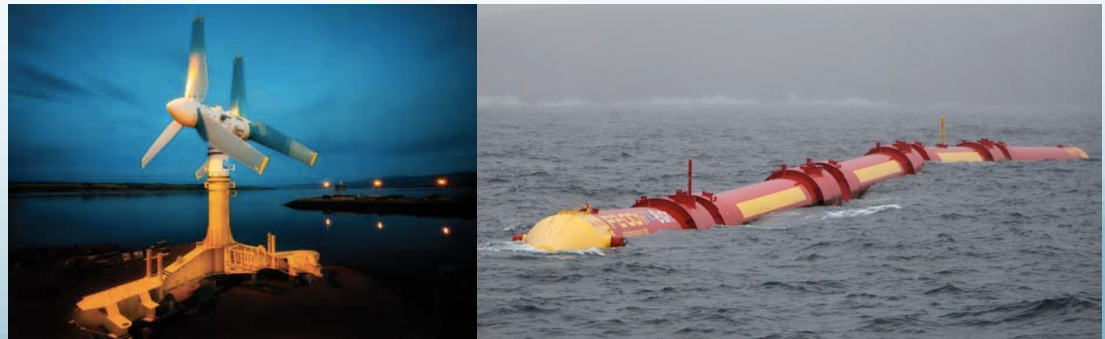
# Marine renewables

- Wave and tidal
  - Large space requirements
  - Permanent/long-term
  - Nearshore
  - Visible (sometimes)
  - Exclusive occupation
- Rights to exclusively occupy and use the resources are the foundation of MRE project development
- But such rights conflict with existing norms of marine governance and with the rights of others



# Marine renewables

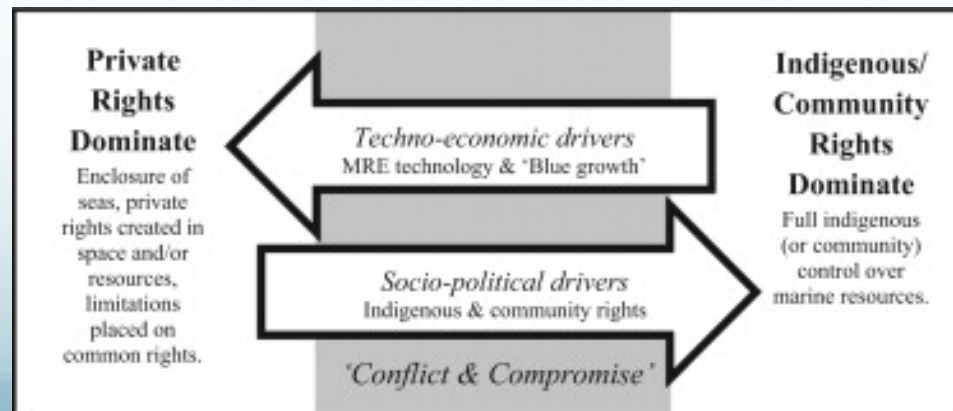
- MRE is effectively privatising a common good and creating potential conflict with:
  - public rights, for example, to fishing and navigation;
  - other private rights in the marine environment; and
  - the (perceived) rights of communities and existing marine users.



# Case Study

## Indigenous & community rights

- Techno-economic drivers creating pressure for exclusivity of access to space/resources
- Socio-cultural drivers seek to redress historic injustices and re-establish the claims of indigenous communities to natural resources, land and sea space.
- Much will depend on the specific context of the local community.
- Strong cultural and historical association with the sea leads to a perception or assumption of the existence of rights that can be more powerful than conventional legal rights.
- Existing governance structures do little, if anything, to facilitate the balancing of various rights and interests in the marine environment.



# Further reading

- Osherenko G., '**New Discourses on Ocean Governance: Understanding Property Rights and the Public Trust**' (2006) 21 *Journal of Environmental Law and Litigation* 317–81  
<http://law.uoregon.edu/org/jell/docs/212/OEL202.pdf>
- Wright, G., '**Marine governance in an industrialised ocean: A case study of the emerging marine renewable energy industry**' (2015) 52 *Marine Policy* 77-84  
<http://www.sciencedirect.com/science/article/pii/S0308597X14002838>
- Kerr, S. et al. '**Rights and ownership in sea country: implications of marine renewable energy for indigenous and local communities**' (2015) 52 *Marine Policy* 108-115  
<http://www.sciencedirect.com/science/article/pii/S0308597X14002942>



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Thank You

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