

THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING OCEAN-BASED ECONOMIC SECTORS IN BARBADOS

I. INTRODUCTION

The United Nations Convention on the Law of the Sea of 10 December 1982 (hereafter called UNCLOS¹) sets out a comprehensive legal framework for all activities in the oceans and seas and has often been referred to as “a constitution for the oceans”. Therefore, other international ocean-related instruments as well as State party national laws, regulations, policies and institutional operations should be compliant with the provisions of UNCLOS and facilitative of its general aims and objectives. In many ways UNCLOS was ahead of its time as, at the time of its adoption, it established legal frameworks for the operation of then burgeoning areas of ocean affairs and law of the sea, namely, environmental conservation and protection of marine resources, development and protection of the resources of the Area and sustainable development of developing and least developed states. Therefore, at the advent of the 2030 Agenda for Sustainable Development,¹ a further agenda continuing and building on the work of the Millennium Development Goals and setting out 17 Sustainable Development Goals (SDGs) with 169 related targets, there was already in place a legal framework for the operation of Sustainable Development Goal (SDG) 14 “to conserve and sustainably use the oceans, seas and marine resources for sustainable development”.² The Evidence-based and Policy-coherent Oceans Economy and Trade Strategy (“OETS”) project aims to support coastal developing countries, including small-island developing states, in deriving economic benefit from the sustainable use of marine resources within the framework of UNCLOS through the sustainable trade of products and services in the following selected ocean-based economic sectors:

- 1) Sustainable marine fisheries,
- 2) Sustainable marine aquaculture,
- 3) Seafood processing, and
- 4) Coastal and marine environmental services.

In this regard, this report aims to provide an overview of the national legal and institutional frameworks applicable to the sectors, as well as a description of the relevant provisions in UNCLOS and other marine-related international instruments. Subsequent sections will also identify cross-cutting areas among the legal, institutional and policy frameworks affecting the sectors.

II. UNCLOS AND OTHER OCEANS-RELATED INSTRUMENTS

¹ A/RES/70/1 Transforming our world: The 2030 Agenda for Sustainable Development

² Ibid at page 14

A. UNCLOS AS A CONSTITUTION FOR THE SEAS

As a framework Convention, UNCLOS covers a vast range of oceans issues. Organised into seventeen parts and nine annexes, it provides for the rights and obligations of states regarding (1) the territorial sea and contiguous zone, (2) straits used for international navigation, (3) archipelagic states, (4) the exclusive economic zone, (5) the continental shelf, (6) the high seas, (7) the regime of islands, (8) enclosed or semi-enclosed seas, (9) the right of access of landlocked states to and from the sea and freedom of transit, (10) the Area or seabed, (11) protection and preservation of the marine environment, (12) marine and scientific research, (13) the development and transfer of marine technology, and (14) the settlement of disputes. UNCLOS has also 9 annexes.

UNCLOS opened for signature on December, 10 1982 and entered in to force on 16 November 1994. The following two implementation agreements were concluded:

1. *The Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea 1982* which entered into force on 28th July 1996; and
2. *The 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Straddling Fish Stocks Agreement)* which was adopted in 1995 and then entered into force on 11th December 2001.

1. The Objectives and Provisions of UNCLOS

a) Maritime Zones and State Sovereignty, Rights and Obligations

UNCLOS provides for the right of each coastal state to establish a territorial sea, contiguous zone, and exclusive economic zone (EEZ) up to prescribed breadths and subject to conditions set out in UNCLOS. All other parts of the sea (excluding internal and archipelagic waters) comprise the high seas.³

Thus, the outer limits of the territorial sea may extend up to 12 nautical miles (M) from the baseline of the coastal state as determined in accordance with UNCLOS;⁴ the contiguous zone up to 24 M from the baselines from which the territorial sea is measured;⁵ and the EEZ up to 200 M from the baselines from which the territorial sea is measured. UNCLOS also provides for delimitation of these zones between States with opposite or adjacent coasts.⁶ UNCLOS further provides that coastal states' sovereignty extends to the territorial sea, the seabed thereunder and the airspace above, while prescribing limited sovereign

³ Article 86 ibid

⁴ Article 3 ibid

⁵ Article 33 ibid

⁶ Articles 15 and 49 ibid

rights and/or jurisdiction exercisable in the contiguous and exclusive economic zones. The rights of foreign ships and states in these zones are also provided for, namely, the right of innocent passage in the territorial sea, rights and duties of other states in the EEZ, and the obligation of coastal and other states to cooperate in respect of conservation and use of, *inter alia*, highly migratory marine species.⁷ By contrast, the high seas are open to all states and freedom of the high seas for all states is the general rule subject to the provisions of UNCLOS as set out in Part VII thereof.⁸

UNCLOS also defines the continental shelf as comprising the seabed and subsoil of the submarine area of a coastal state beyond the territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin or up to 200 M from the baselines from which the territorial sea is measured.⁹ It also provides for the establishment of the outer limit of the continental shelf beyond 200 M from the baselines from which the territorial sea is measured up to 350 M or up to 100M from the 2,500 metre isobath.¹⁰ Provision is also made in relation to the rights of the coastal state over the continental shelf,¹¹ the legal status of superjacent waters and airspace and the rights and freedoms of other states in respect thereof,¹² and, the right of all states to lay cables and pipelines on the continental shelf subject to duties owed to and rights of the coastal state.¹³

Under UNCLOS delimitation of the continental shelf between states with opposite and adjacent coasts must be effected by agreement or Part XV procedures for settlement of disputes as the case may be.¹⁴

b) Conservation and Preservation of Marine Resources and the Marine Environment

Under UNCLOS States are obligated to make provision for the protection and conservation of marine resources and the marine environment in every maritime zone under their control and subject to their regulations as well in the high seas. Therefore, while UNCLOS expressly recognises the right of nationals of States to fish in the high seas¹⁵ it also places states under an obligation to adopt living resource conservation measures based on the

⁷ Article 44 *ibid*

⁸ Article 86(1) *ibid*

⁹ Article 76(1) *ibid*

¹⁰ Article 76(4) and (5) *ibid*

¹¹ Articles 77-82 *ibid*

¹² Article 78 *ibid*

¹³ Article 79 *ibid*

¹⁴ Article 83 *ibid*

¹⁵ Article 116 *ibid*

best scientific research available to states as prescribed by UNCLOS¹⁶ in respect of their nationals engaging in fishing or harvesting activities in the high seas.¹⁷

In the same regard, while states are entitled to exploit their natural marine resources according to their national policies, states are also obligated to take measures to preserve and protect the marine environment.¹⁸ Accordingly UNCLOS mandates that states must take all measures within their capabilities and consistent with the provisions of UNCLOS necessary to prevent, reduce and control pollution of the marine environment from any source; to ensure that activities under their jurisdiction or control are conducted so as not to cause damage by pollution to other states and their environment and that any pollution arising in their jurisdiction and under their control does not spread beyond their control or jurisdiction;¹⁹ and, *inter alia*, take measures to prevent reduce and control pollution resulting from the use of technologies under their jurisdiction and control.²⁰ UNCLOS also imposes a duty upon states to refrain from transferring damage or hazards or transforming one type of pollution to another.²¹

UNCLOS also makes provision for:

- (1) Global and regional cooperation whether directly or through international organisations to formulate standards and measures consistent with UNCLOS to protect and preserve the marine environment;²²
- (2) The provision of technical assistance to developing states to facilitate protection and preservation of their marine environment in accordance with UNCLOS;²³
- (3) States to take measures to monitor and assess by recognised scientific methods²⁴ as well as report²⁵ on the risks or effects of pollution on the marine environment²⁶ and the risks and potential effects of activities reasonably suspected to result in marine pollution;²⁷ and
- (4) States to adopt national legislation, regulations policies and all other measures necessary to prevent, reduce and control pollution from land-based sources,²⁸ from seabed activities under national jurisdiction,²⁹ from activities in the Area

¹⁶ See article 119 *ibid*

¹⁷ Article 117 *ibid*

¹⁸ See articles 192 & 193 *ibid*

¹⁹ Article 194(1) and (2) *ibid*

²⁰ See article 196(1) *ibid*

²¹ Article 195 *ibid*

²² Article 197 *ibid*

²³ Article 202 *ibid*

²⁴ Article 204 *ibid*

²⁵ Article 205 *ibid*

²⁶ Article 204 *ibid*

²⁷ Art. 206 *ibid*

²⁸ Art. 207 *ibid*

²⁹ Art. 208 *ibid*

undertaken by vessels, installations, structures or other devices flying their flags,³⁰ by way of illegal and unauthorised dumping,³¹ from vessels of their registry or flying their flags,³² and from or through the atmosphere applicable to their airspace and to vessels flying their flags, or vessels or aircraft of their registries.³³

The international legal rules applicable to enforcement of marine pollution laws and regulations are contained at sections 6 and 7 of UNCLOS. Section 6 of UNCLOS sets out enforcement provisions in respect of pollution from land-based sources,³⁴ from seabed activities,³⁵ from activities in the Area,³⁶ by way of dumping³⁷ and regarding pollution from or through the atmosphere.³⁸ This section also sets out the respective enforcement obligations of flag,³⁹ port⁴⁰ and coastal⁴¹ states; measures relating to vessel seaworthiness in order to avoid pollution of the marine environment;⁴² and measures to avoid pollution arising from maritime casualties.⁴³ Accordingly, states must enforce national laws and regulations adopted in accordance with articles 207, 208, 210 and Part XI of UNCLOS, as well as adopt laws and regulations, and take other measures necessary to implement applicable international rules and standards established through competent international organisations or diplomatic conference in order to prevent, reduce and control pollution arising from land-based sources, seabed activities, activities in the Area and dumping.⁴⁴ In this regard, coastal states may only enforce laws and regulations in respect of dumping, in the territorial sea, EEZ or continental shelf while flag states must enforce dumping laws and regulations with regard to vessels of their registries or flying their flags.⁴⁵ Any state may enforce dumping laws and regulations in respect of the loading of wastes or other matter occurring within its territory or at its off-shore terminals.⁴⁶

In general, where its pollution laws and regulations adopted in accordance with UNCLOS and international rules and standards have been breached, a coastal state, subject to safeguards at section 7 of UNCLOS, may effect enforcement against an offending vessel in

³⁰ Art. 209 *ibid*

³¹ Art. 210 *ibid*

³² Art. 211(2) *ibid*

³³ Art.212 *ibid*

³⁴ Art. 213 of UNCLOS

³⁵ Art. 214 *ibid*

³⁶ Art. 215 and Part XI *ibid*

³⁷ Art. 216 *ibid*

³⁸ Art.222 *ibid*

³⁹ Art. 217 *ibid*

⁴⁰ Art. 218 *ibid*

⁴¹ Art. 220 *ibid*

⁴² Art. 219 *ibid*

⁴³ Art. 221 *ibid*

⁴⁴ Arts. 213-216 *ibid*

⁴⁵ [Ref. fn 179 supra](#)

⁴⁶ *Ref. ibid*

the territorial sea and/ or the EEZ or within one of the coastal state's ports or at an offshore terminal, as the case may be, if there are clear grounds for suspecting that the vessel committed the breach while navigating the EEZ or territorial sea.⁴⁷ Even then, the coastal state may only take certain action as prescribed by UNCLOS according to the zone in which the vessel is found navigating, the zone in which the breach is believed to have occurred, the level of damage or potential damage, and the cogency of evidence in all the circumstances.⁴⁸ Flag states, on the other hand, must enforce pollution laws and regulations adopted in accordance with UNCLOS and international rules and standards by taking appropriate measures to, *inter alia*, (a) ensure that ships of their registries or flying their flags carry internationally recognised and required certificates, and undergo regular inspection of such certificates, (b) prohibit such vessels from sailing if they fail to meet internationally recognised standards and requirements, (c) provide for immediate investigations into, and where appropriate, institution of proceedings against vessels of their registries or flying their flags alleged to have committed breaches of rules and standards established through competent international organisations or diplomatic conferences, irrespective of where the breach or resulting pollution is alleged to have occurred.⁴⁹

Safeguards at section 7 of UNCLOS, make further provision for, *inter alia*, (a) the limitation of enforcement against foreign vessels to be exercised by officials, by warships or other clearly marked government vessel or craft;⁵⁰ (b) specific measures for facilitating instituted proceedings;⁵¹ (c) the limitation of physical inspections of foreign vessels to the production of documents that the vessel is internationally required to carry,⁵² (d) specified conditions for further physical inspection to be conducted;⁵³ (e) the limitation of the delay of foreign vessels to no longer than is essential for the purposes of investigation;⁵⁴ and (f) the duty of states to avoid causing damage to or endangering vessels or the safety of navigation.⁵⁵

UNCLOS also provides that states shall be liable in accordance with international law with respect to their obligations to protect and preserve the marine environment.⁵⁶ Under UNCLOS, states are also obligated to ensure in accordance with their respective legal systems that recourse is available for prompt and adequate compensation or other relief with respect to damage caused by pollution of the marine environment by natural and

⁴⁷ Art. 220 *ibid*.

⁴⁸ *Ibid*

⁴⁹ Art. 217 *ibid*

⁵⁰ Art. 224 *ibid*

⁵¹ Art. 223 *ibid*

⁵² Art. 226(1)(a)

⁵³ Art. 226 (1)(a)(i)-(iii)

⁵⁴ Art. 226 *ibid*

⁵⁵ Art. 225 *ibid*

⁵⁶ Sec. 9, art. 235(1) *ibid*

juridical persons under their jurisdiction.⁵⁷ To this end, states are obliged to cooperate in the implementation of international law relating to responsibility and liability for the assessment of and compensation for damage, and the settlement of disputes, as well as development of criteria and procedures for payment of compensation, such as compulsory insurance or compensation funds.

All states and competent international organisations (IOs) have the right to conduct MSR subject to the rights and duties of other states as provided by UNCLOS,⁵⁸ and are obligated to promote and facilitate the development and conduct of MSR in accordance with UNCLOS.⁵⁹

Generally, states are obliged to carry out MSR (a) exclusively for peaceful purposes, (b) with appropriate scientific methods and means compatible with UNCLOS, (c) without unjustifiable interference with other legitimate uses of the sea compatible with UNCLOS, and (d) in compliance with all relevant regulations adopted in conformity with UNCLOS including those adopted for the protection and preservation of the environment.⁶⁰ UNCLOS also provides for cooperation among states as well as among states and IOs in promoting MSR.⁶¹

Coastal state rights and duties as they relate to MSR include exclusive rights to regulate, authorise and conduct MSR in the territorial sea⁶² and the right to regulate, authorise and conduct MSR in the exercise of its jurisdiction in relation to the EEZ and continental shelf in accordance with UNCLOS.⁶³ MSR may only be conducted in these maritime zones with the express consent of the coastal state.⁶⁴

In ordinary circumstances, coastal states shall grant consent for MSR projects by other states or by IOs in the EEZ and CS to be conducted in conformity with UNCLOS exclusively for peaceful purposes and in order to increase scientific knowledge of the marine environment for the benefit of mankind.⁶⁵ Thus coastal states are obligated to establish rules and procedures ensuring the prompt provision of consent and prohibiting unreasonable denial thereof.⁶⁶ This rule is, however, subject to exceptions where the coastal state in its discretion may withhold consent if the proposed project (a) except in relation

⁵⁷ Art. 235(2) *ibid*

Art. 235(3) *ibid*

⁵⁸ Art. 238 *ibid*

⁵⁹ Art. 239 *ibid*

⁶⁰ Art. 240 *ibid*

⁶¹ Sec. 2, arts. 242-244 *ibid*

⁶² Art. 245(1) *ibid*

⁶³ Art. 246(1) *ibid*

⁶⁴ Arts 245(2) and 246(2) *ibid*

⁶⁵ Art. 246(3) *ibid*

⁶⁶ *ibid*

to the ECS,⁶⁷ is of direct significance for the exploration and exploitation of living and/ or non-living natural resources; (b) involves drilling or the introduction of explosives or some harmful substance into the continental shelf; (c) involves construction, operation or use of artificial islands, installations or structures referred to at articles 60 and 80 of UNCLOS; or (d) contains inaccurate information or is put forward in the face of prior outstanding obligations to the coastal state.

c) **Fisheries**

The Straddling Fish Stocks Agreement establishes principles for the conservation and management of straddling and highly migratory fish stocks, basing management on the precautionary principle and the best available scientific information. The Agreement harks back to the Convention's principle of state cooperation in ocean resource management and conservation, promoting such by establishing detailed minimum international standards for the conservation and management of straddling fish stocks and highly migratory fish stocks; ensuring that measures taken for the conservation and management of those stocks in areas under national jurisdiction and in the adjacent high seas are compatible and coherent; ensuring that there are effective mechanisms for compliance and enforcement of those measures on the high seas; and recognising the special requirements of developing States in relation to conservation and management as well as the development and participation in fisheries for the straddling and highly migrating stocks.

d) **Institutions and Mechanisms Established by UNCLOS**

These are largely seen in the annexes⁶⁸ to the Convention. The *Commission on the Limits of the Continental Shelf* is established at Annex II pursuant to the provisions of Article 76 of the Convention concerning the continental shelf. Annex II sets out the composition, functions and powers (compulsory and discretionary) of the Commission, including their mandate to function by way of sub-commissions.

The *International Seabed Authority* is established at Article 156 of the Convention and all of section 4 of Part XI (Articles 156-184) deal with (a) the nature and fundamental principles of the Authority, (b) the powers, functions and procedures of its organs, the Assembly, the Council and the Secretariat, (c) their respective composition, procedures and voting rights, (d) the organs of the Council, (e) Authority staff, and (f) the Enterprise, another organ of the Authority the statute of which is established at Annex IV.

2. **Barbados' Participation in UNCLOS**

⁶⁷ Art. 246(6) *ibid*

⁶⁸ See *supra*

Barbados is party to UNCLOS, having signed the convention on December 10, 1982 and ratified it on October 12, 1993. Thus, at the date of its entry into force on November 16, 1994 Barbados was a State Party. Barbados subsequently signed the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (the Part XI Agreement) on 15 November 1994 (the day before UNCLOS's entry into force) and, by the simplified procedure set out in article 5 and in accordance with Article 4.3(c) of the Part XI Agreement, became bound thereby as of 28 July 1995. On September 22, 2000, Barbados acceded to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UNFSA).

B. OTHER MARITIME AND OCEANS GOVERNANCE INSTRUMENTS

1. Other Ocean Governance Institutions and Instruments to which Barbados is Party

There are a number of international and regional organisations with significant maritime and marine-related mandates to which Barbados is party. Specifically within the United Nations system the major agencies in this regard are the International Maritime Organisation (IMO), the Food and Agriculture Organisation (FAO) and regionally, the major organisation is the Caribbean Community (CARICOM).

a) International Maritime Organisation (IMO)

The International Maritime Organisation (IMO) is a specialized agency of the United Nations which sets standards for the safety, security and environmental performance of international shipping. Ultimately, the main objective of the IMO is to create a universally implemented regulatory framework for the global shipping industry that is fair and effective and ensures navigational efficiency, maritime safety and security, as well as preventing pollution from ships.⁶⁹

With regard to ship safety and the prevention of pollution from ships, Barbados is party to (a) the International Convention for the Safety of Life at Sea (SOLAS) 1974 as amended, and (b) the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto and by the Protocol of 1997 (MARPOL).⁷⁰

⁶⁹ See www.imo.org

⁷⁰ <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx>

(i) SOLAS

SOLAS sets out minimum standards for the construction, equipment and operation of ships that promotes and enhances their safety. SOLAS also provides for the issue of various certificates evidencing flag state compliance with its obligations under SOLAS. Pursuant to SOLAS's port state control provisions, governments of state parties may inspect ships of other state parties if there are clear grounds for believing that the ship and its equipment do not substantially comply with the requirements of the Convention.⁷¹

(ii) MARPOL

MARPOL⁷² sets out regulations providing for the prevention and mitigation of pollution from ships whether accidental or as a result of routine activities. MARPOL includes six technical annexes on regulations for the prevention of pollution by oil, noxious liquid substances in bulk, harmful substances carried by sea in packaged form, sewage from ships, garbage from ships and air pollution from ships.⁷³

b) Food and Agriculture Organisation (FAO)

The relevant instruments of the FAO are the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (The Compliance Agreement), the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unregulated and Unreported Fishing, 23 November 2009 (PSMA), and the 1995 FAO Code of Conduct for Responsible Fisheries.

(i) FAO Compliance Agreement

The Compliance Agreement,⁷⁴ in which Barbados has been a participant since by acceptance since October 26, 2000, aims to strengthen flag state control over its vessels to ensure the state's compliance with international conservation and management measures. To this end, the Compliance Agreement includes provision for flag states to regulate their vessels fishing in the high seas and to ensure their compliance with international fisheries conservation and management measures. The Compliance Agreement addresses re-flagging of vessels under flags of deliberately non-compliant states and further requires the maintenance of records of fishing vessels, international cooperation and enforcement of its provisions.

⁷¹ [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\)-1974.aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS)-1974.aspx)

⁷² [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)

⁷³ Annexes I - VI MARPOL respectively

⁷⁴ Approved by the FAO Conference at its 27th session in November 1993 and entered into force on 24 April 2003, after the twenty-fifth instrument of acceptance was deposited with the FAO Director-General. See <http://www.fao.org/iuu-fishing/international-framework/fao-compliance-agreement/en/>

(ii) PSMA

Barbados participated in the PSMA by way of acceptance on February 2, 2016. The PSMA is a binding international agreement specifically addressing Illegal, Unregulated and Unreported (IUU) fishing. It aims to prevent, deter and eliminate IUU fishing through the implementation of effective port state measures to ensure long-term conservation and sustainable use of living marine resources and marine ecosystems.⁷⁵ To this end, port states may take prescribed measures with a view to ascertaining whether a vessel requesting entry to port has engaged in IUU fishing and, if so determined, may deny such vessel's entry into its port.

(iii) FAO Code of Conduct

The 1995 FAO Code of Conduct for Responsible Fisheries⁷⁶ (hereafter called the "Code") is a voluntary instrument adopted in Resolution 4/95 by the FAO Conference on 31 October 1995. Nonetheless, it is intended for it to be implemented holistically by governments and stakeholders at the national, sub-regional and regional levels involved in fisheries and aquaculture. The Code aims to establish international standards for responsible fishing practices leading to long-term and sustainable conservation, management and development of living marine resources, ecosystems and biodiversity.⁷⁷

c) Caribbean Community (CARICOM)

Barbados is also a member of the Caribbean Community (CARICOM) which is governed by the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Single Market and Economy ("The Revised Treaty"),⁷⁸ whereby state parties deepened community cooperation⁷⁹ and widened it to include more States.⁸⁰ CARICOM is not the only regional organisation to which Barbados is party but it is the one that has the most impact on trade and maritime policies due to provisions contained in the Revised Treaty, obligations under agreements made between or among member States of CARICOM, or decisions made by any of the organs⁸¹ of CARICOM. A number of shared institutions and

⁷⁵ Art. 2 of the PSMA

⁷⁷ See <http://www.fao.org/iuu-fishing/international-framework/code-of-conduct-for-responsible-fisheries/en/>

⁷⁸ Its predecessor, *the Treaty of Chaguaramas*, formed CARICOM in 1975 and featured a common market via a common external tariff.

⁷⁹ See Revised Treaty of Chaguaramas, Committees of CARICOM

⁸⁰ The present Community membership includes Antigua and Barbuda, Bahamas, Barbados, Belize, Commonwealth of Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname and Trinidad and Tobago. NB. Bahamas is not a member of the single market and economy; Montserrat remains a British territory.

⁸¹ The Community Organs as established at Article 10 of the Revised Treaty are the principal organs: (1) the Conference of the Heads of Government, and (2) the Community Council of Ministers (recognised as the highest and second highest organs respectively), which are assisted in their functions by: (3) the Council for Finance and

mechanisms also exist under CARICOM such as the Caribbean Regional Fisheries Mechanism (CRFM) through which the Caribbean Community Common Fisheries Policy (CCCFP) was developed, and the Centre for Resource Management and Environmental Studies (CERMES) of the University of the West Indies both of which could impact the economic sectors through fisheries management and by way of scientific studies and research concerning the marine and coastal environment.

III. OCEANS GOVERNANCE IN BARBADOS

A. Sovereignty and Maritime Zones

1. About Barbados

Barbados, an island measuring 430 square kilometres and located in the Atlantic Ocean with its western coast facing the Caribbean Sea, is part of the Island chain known as the Eastern Caribbean. It, therefore, shares maritime boundaries with France (via Martinique) and St. Lucia in the north and north-west respectively, St. Vincent and the Grenadines in the west and Trinidad and Tobago in the south but has direct access to the high seas in the east.. With a population of approximately 280,000,⁸² Barbados is very densely populated and has been ranked the fourth most densely populated country in the Americas.⁸³

2. Barbados' Delimited Maritime Boundaries

As stated above, Barbados shares maritime boundaries with France and St. Lucia, in the North and North-west respectively, St. Vincent and the Grenadines in the west and Trinidad and Tobago in the South. Barbados would also potentially share extended continental shelf boundaries with France in the North and Suriname and Guyana in the South. In this regard, maritime boundary agreements were concluded with France in 2009, with St. Vincent and the Grenadines in August 2015 and with St. Lucia in July 2017.⁸⁴ The boundary with Trinidad and Tobago was decided by an Arbitral Tribunal constituted pursuant to Article 287 and in accordance with Annex VII of UNCLOS in the Matter of an Arbitration between Barbados and the Republic of Trinidad and Tobago (hereafter "the Barbados/ Trinidad Arbitration"), the award of which was delivered on April 11, 2006. The delimitation line drawn by the tribunal terminated at a point of intersection with Trinidad and Tobago's southern maritime boundary.

Whereas Barbados has delimited its northern continental shelf boundary with France since 2009 its potential boundaries with Suriname and Guyana in the south remain to be

Planning (COFAP), (4) the Council for Trade and Economic Development (COTED), (5) the Council for Foreign and Community Relations (COFCOR), and the Council for Social and Human Development (COHSOD).

⁸² https://www.barstats.gov.bb/files/documents/PHC_2010_Census_Volume_1.pdf

⁸³ <http://worldpopulationreview.com/countries/barbados-population/>

⁸⁴ It should be noted that at the time of the interview with officials from the Ministry of Foreign Affairs this agreement had not yet entered into force.

addressed. While Suriname received its recommendations on March 30, 2011, Guyana submitted its claim on September 6, 2011 and its sub-committee has yet to be constituted.⁸⁵

3. Barbados' Maritime Zones

While no legislative provision is made specifically for the establishment of a contiguous zone, Barbados' territorial sea and EEZ have been proclaimed through legislation.⁸⁶ However, the limits of Barbados' continental shelf have not been established through national legislation to date.

a) Territorial Sea

Through the *Barbados Territorial Waters Act Chapter 386* (hereafter called the "BTWA"), Barbados has established the limits of its territorial sea at 12 M from its baselines. The BTWA also provides for the right of innocent passage of foreign ships⁸⁷, subject to the flag states of foreign warships first seeking permission from the competent national authority⁸⁸ before passage may be given to such warships.⁸⁹ The BTWA also sets out activities that are non-innocent or "prejudicial to the peace, good order or security of Barbados" thereby compromising the right of passage through territorial waters.⁹⁰ In this regard, the Act mirrors the provisions of UNCLOS to a substantial extent but there are differences worth noting.⁹¹ Section 7(1)(b) and (e) reference additional types of activity. At section 7(1)(b) "economic or social conditions and circumstances" are added to an otherwise

⁸⁵ http://www.un.org/Depts/los/clcs_new/commission_submissions.htm

⁸⁶ See the *Barbados Territorial Waters Act* Cap. 386 and the *Marine Boundaries and Jurisdiction Act* Cap. 387 of the laws of Barbados.

⁸⁷ See Article 6(1) of the *Barbados Territorial Waters Act* Cap 386 and Articles 19 and 21 of UNCLOS

⁸⁸ The Minister responsible for Foreign Affairs or any competent authority that he or she designates – see s.2 BTWA

⁸⁹ S6(2) bid

⁹⁰ S7(1) provides that the following may not be exercised in territorial waters without the prior consent of the national competent authority⁹⁰ being obtained by the captain of the vessel or person in charge of the ship: (a) Exercises or practices of weaponry of any kind; (b) Any act aimed at collecting data in relation to defence, security, or economic or social conditions and circumstances in Barbados; (c) The boarding or off-loading of any person commodity or currency in breach of any law concerning exchange control, customs, immigration, health or drugs and therapeutic substances; (d) Any act of pollution calculated or likely to cause damage or harm to Barbados, its resources or its marine environment; (e) Fishing or extracting living or non-living resources; (f) Carrying out research of any kind or survey activities; (g) Any act aimed at interfering with any system of communication or telecommunication on land, on the sea or under it; (h) Being a submarine or other underwater ship, underwater navigation; (i) Such other activity as may be prescribed; and (j) Passage of a foreign warship in contravention of section 6(2) of the Act.

⁹¹ Most conspicuous of these is section 7(1)(h) regarding submarine and other underwater vessels.

correspondent iteration of article 19(2)(c) of UNCLOS and likewise at section 7(1)(e) with the addition of the words, “or extracting living or non-living resources”. Section 7(1)(d) also differs from article 19(h) albeit.

Enforcement provisions in respect of section 7(1)(a)–(h) are also included at section 8 of the BTWA⁹² authorising a member of the Police Force or other authorised person⁹³ to (a) stop and board an offending ship for the purpose of carrying out enquiries and investigations; (b) without a warrant, arrest the offending ship and bring it into a port in Barbados; and (c) without a warrant, arrest the captain and any person on board the ship participating in the activity of the ship which is deemed to be prejudicial to the peace, good order and security of Barbados.

Section 8(2) establishes that the captain of a ship or other person in charge of the ship and any person participating in non-innocent activities of the ship is guilty of an offence under the Act while section 12 sets out the penalties for this offence and the offence of assaulting or obstructing an enforcing officer duly authorised by the Act or any regulations thereunder.

These enforcement provisions are within the exceptions to flag state jurisdiction at article 27 of UNCLOS, where a coastal state may exercise criminal jurisdiction on board a foreign ship passing through the territorial sea.⁹⁴

Where the ship or any person on board engaging in prejudicial activity is entitled to State or other immunity, the Act also assigns liability for such prejudicial activity to the flag states of offending ships, and to the states of nationality of offending persons. The BTWA further asserts Barbados’ right to pursue all remedies available under international law⁹⁵ in this regard.

b) Exclusive Economic Zone

Barbados’ EEZ, pursuant to the provisions of UNCLOS,⁹⁶ is established by the *Marine Boundaries and Jurisdiction Act, Chapter 387* of the laws of Barbados (MBJA). This Act

⁹² Subsection 8(1)(a)-(c)

⁹³ A person authorised in writing by the Minister responsible for Foreign Affairs. No evidence of such a designation was found in the course of this study.

⁹⁴ According to art. 27 the coastal state may not exercise criminal jurisdiction on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, except: (a) where the consequences of the crime extend to the coastal state; (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; (c) if the assistance of the local authorities has been requested by the master of the ship or by diplomatic agent or consular officer of the flag state; or (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.

⁹⁵ See section 9 of the BTWA

⁹⁶ Part V, Arts. 55-75 UNCLOS

establishes the breadth of the EEZ up to 200M from the nearest point of the baselines from which the breadth of the territorial sea is measured,⁹⁷ with its inner limit being the seaward limit of the territorial sea⁹⁸. However, where the median line between Barbados and an adjacent or opposite State is less than 200M from the baseline, the outer limit of the EEZ must be fixed by agreement between Barbados and the other State concerned⁹⁹ but is, in the absence of such agreement, considered by Barbados to be the median line between the baselines of the two states.¹⁰⁰ This differs somewhat from the provisions of Article 74¹⁰¹ of UNCLOS which does not expressly establish the median line as a default delimitation line in the absence of agreement.¹⁰² Nonetheless, as stated above¹⁰³ all of Barbados' EEZ boundaries have now been fixed by agreement or by arbitral tribunal decision.

At section 5 of the Act rights and jurisdiction over the EEZ as vested in the Government of Barbados is specified in respect of:

- (a) The exploration, exploitation, conservation, protection or management of the natural living and non-living resources of the seabed, subsoil and superjacent waters;
- (b) The construction, maintenance or use of structures or devices relating to the exploration or exploitation of the resources of the EEZ, the regulation and safety of shipping, or any other economic purpose;
- (c) The authorisation, regulation or control of scientific research;
- (d) The preservation and protection of the marine environment and the prevention and control of marine pollution;
- (e) All other activities relating to the economic exploration and exploitation of the EEZ; and
- (f) All other rights in and jurisdiction over the EEZ recognised by international law.¹⁰⁴

These provisions are generally aligned with the provisions of Article 56 of the Convention. Although the Act does not specify jurisdiction with regard to establishment and use of artificial islands, installations and structures, this is covered by the provision at section 5(b)

⁹⁷ Or such other distance from the nearest point as the Minister of Foreign Affairs may prescribe by order but which in fact the Minister has not so ordered (reference?).

⁹⁸ S3(1) of the Marine Boundaries and Jurisdiction Act Cap. 387

⁹⁹ Such agreement must be laid before Parliament and judicially noticed – s3(5) *ibid.*

¹⁰⁰ S3(3) *ibid.*

¹⁰¹ The Act does not refer to the Art. 38 of the Statute of the ICJ or its provisions. The Act does not expressly implement paras. 2-4 of UNCLOS article 74.]

¹⁰² There is no express indication as to why this provision was added to the Barbados legislation but in the Barbados/Trinidad Arbitral Award at paragraphs 301 to 304 it is inferred and stated by the tribunal that it has to do with Barbados taking the view that the equidistance/ relevant circumstances method of delimitation is the proper method described by international law. However, it is not known what the basis of this inference is.

¹⁰³ See *supra* at page ...

¹⁰⁴ S5(b) of Marine Boundaries and Jurisdiction Act Cap 387

of the Act establishing that all rights and jurisdiction recognised by international law are also vested in the government of Barbados.

At section 6(1), the Act establishes as offences (a) the exploration or exploitation of any resources, (b) the carrying out of any search or excavation, (c) the conduct of any research, (d) drilling in or constructing, maintaining or operating any structure or device, or (e) carrying out any economic activity in the EEZ except as specified in an agreement with the government of Barbados or a permit granted by the Cabinet.¹⁰⁵ These provisions do not apply to fishing carried out by Barbadian citizens in and from Barbadian vessels.¹⁰⁶ Section 6(3) sets out the penalties for contravention of section 6(1).

In accordance with Article 58 of the Convention, the Marine Boundaries and Jurisdiction Act:

- (a) Recognises the rights of freedom of navigation, overflight, the laying of cables and pipelines and other lawful activities related to navigation;¹⁰⁷
- (b) Provides for the drawing and safe custody of maps and charts showing the boundary;
- (c) Provides for the jurisdiction of the Courts and establishes offences under the Act;
- (d) Designates marine conservation officers to enforce the provisions of this Act and prescribes their powers and duties;¹⁰⁸ and
- (e) Provides for the making of regulations under the Act, though there are no regulations under this Act to date.

c) **The Continental Shelf**

Pursuant to Part VI of UNCLOS, Barbados has claimed an extended continental shelf beyond 200 M having made submissions to the Commission on the Limits of the Continental Shelf and received its formal and final recommendations. Barbados lodged its initial continental shelf submission on May 8, 2008 and received recommendations on April 15, 2010. Subsequently, a revised submission was lodged on July 25, 2011 and final recommendations were issued on April 13, 2012. Nonetheless, the limits of the extended continental shelf have not been enshrined to date in any enactment nor have formal maps or charts of its boundary been issued. There is no legislation speaking directly to the continental shelf either within or beyond 200 M.

d) **High Seas**

¹⁰⁵ S6(1)(a)-(e) Ibid

¹⁰⁶ S6(2); also see ante.

¹⁰⁷ S7

¹⁰⁸ Part IV: Ss14-18

No legislation was found speaking specifically to the duties of states in the high seas. However, there are provisions in the Shipping Act which in one instance establishes flag state jurisdiction for Barbados. While the Shipping Act does not use the language of UNCLOS with regard to flag, coastal and port states, section 321 states that notwithstanding the provisions of any other enactment, any person who commits an offence on board a “Barbadian ship” regardless of its position at the time of the offence is guilty of that offence and may be tried by any court having jurisdiction in Barbados.¹⁰⁹ This provision follows section 320 which provides that a court that has jurisdiction in any part of Barbados has unqualified jurisdiction “over any vessel being in or lying or passing off Barbados”¹¹⁰ and over all persons on board that vessel or for the time being belonging thereto.¹¹¹

Furthermore, section 322 on damage occasioned by foreign ships provides that where property of a resident of Barbados has been damaged “in any part of the world” by, or where a personal or fatal injury claim for damages is made by any resident of Barbados against any foreign ship or owners thereof and such ship at any time thereafter is “found in any port or place” in Barbados, the Court may, upon application by an aggrieved party and upon being satisfied that the alleged damage or injury was probably caused by the misconduct or want of skill of the master, issue an order directing the detention of the ship until such time as the owner, master or agent of the ship has satisfied the damage or injury or provided satisfactory security to abide the event of any legal proceedings to be initiated.¹¹² The ship may even be detained prior to the making of the application to the court in order to allow time for the application to be made and the results thereof to be communicated to the officer detaining the ship.¹¹³

Importantly, section 313 of the Act provides that where any conflict between the Shipping Act and any international convention or regulation arises, the convention shall prevail.¹¹⁴

4. Maritime Enforcement

a) Powers and Duties of Marine Enforcement Officers

Under different pieces of legislation various government officers and law enforcement bodies are empowered to enforce laws and regulations applicable to the above-mentioned maritime zones, some carrying a broader mandate than others. Members of the Barbados Coast Guard and of the Police Force are examples of officers with broad powers of policing

¹⁰⁹ This reflects to a certain extent the provision at art. 94(1) of UNCLOS.

¹¹⁰ The Act offers no special definition or meaning of these terms – “being in”, “lying [off]” or “passing off” Barbados.

¹¹¹ However, see articles 24(1)(a), 27, 28, 73, 94, and 97 of UNCLOS.

¹¹² S322(1)-(3) of the Shipping Act

¹¹³ S. 322(4) *ibid.* However, see articles 24, 28, 73, and 94 of UNCLOS.

¹¹⁴ Albeit the provision is qualified by “unless the Minister otherwise provides...”

and law-enforcement across the maritime zones. Other officers have limited powers of enforcement in relation to particular enactments such as (1) marine pollution control inspectors under the Marine Pollution Control Act Chapter 392A of the laws of Barbados (hereafter “MPCA”),¹¹⁵ or (2) coastal zone inspectors under the Coastal Zone Management Act Chapter 394 of the laws of Barbados (hereafter “CZMA”).¹¹⁶ The following is a discussion of the powers of such officers to carry out law enforcement activities within and relevant to Barbados’ maritime zones.

(i) The Coast Guard

Provisions concerning maritime security can be found at Part X of the *Defence Act Chapter 130* of the laws of Barbados regarding the Barbados Coast Guard. The Coast Guard is a division of the Barbados Defence Force and at section 208, the Act specifies that the officers and soldiers of the Defence Force serving as members of the Coast Guard shall, *inter alia*¹¹⁷ enforce the provisions of every law relating to: (i) the regulation of any harbour or port of Barbados, (ii) quarantine, (iii) immigration, (iv) fisheries, (v) territorial seas and exclusive economic zones, and (vi) safety at sea; as well as detect and prevent contravention of laws relating to revenue and customs.

In this regard the Coast Guard has the same powers, authority and privileges¹¹⁸ as conferred upon the Police Force.¹¹⁹ Also, according to the Act, an officer or soldier in command of any ship of the Barbados Defence Force has the power to, *inter alia*, stop, board and search any vessel within the territorial sea, or in any port, harbour, bay river or creek, suspected to be used in any unlawful operation or enterprise; for investigation and enquiry purposes, give directions for the taking of any vessel to specified places; remain on board a vessel for as long as necessary; and deliver to the custody of a constable in accordance with section 39 of the Police Act any contraband and any person believed to be handling contraband.¹²⁰ Furthermore, it is expressly provided that Barbados Coast Guard officers or soldiers in pursuance of their duties may arrest without a warrant any person who commits an offence under the (i) Marine Boundaries and Jurisdiction Act Cap. 387, (ii) Barbados Territorial Waters Act, (iii) Shipping Act, (v) Fishing Industry (Safety) Regulations 1966, and (v) Barbados Harbours Regulations, 1961, among others, as well as applicable fisheries

¹¹⁵ See *ante* ...

¹¹⁶ See *ante* ...

¹¹⁷ See s208(1) of the Defence Act Cap 130

¹¹⁸ See s208(2) *Ibid*

¹¹⁹ See Police Act Cap 167

¹²⁰ See s211(1) of the Defence Act Cap. 130

legislation.¹²¹ Corresponding provision for enforcement also exists in these enactments and regulations.¹²²

In this regard, as it relates to the BTWA, the Defence Act empowers the Coast Guard to enforce section 7(1) of the BTWA which in and of itself does not expressly mention the Coast Guard for these purposes but does authorise at section 8 any member of the Police Force or person duly authorised in writing by the Minister responsible for Foreign Affairs to enforce section 7(1).

In some cases, the Coast Guard is also authorised by other legislation to enforce its particular provisions. The Fisheries Act empowers “authorised persons”¹²³ to enforce its provisions¹²⁴ and defines authorised persons to include members of the Defence Force serving as Coast Guard officers.¹²⁵

(ii) Marine Conservation Officers (MCOs)

Marine Conservation Officers are established by the MBJA to enforce its provisions and refer to (i) members of the Defence Force, (ii) members of the Police Force, (iii) Customs officers, (iv) Coast Guard Officers, (v) and any other person authorised by the Barbados Cabinet.¹²⁶ Under the MBJA, MCOs may in the performance of their duties, exercise the powers conferred upon them by the MBJA in respect of (a) Barbadian vessels or structures at sea or in port; or (b) a foreign vessel or structure reasonably suspected of being used in connection with any activity conducted in contravention of the MBJA.¹²⁷ These powers include powers of stop, search and seizure of vessels and equipment, requiring the production of any document or thing relating to the vessel or structure or persons on board, taking seized vessels to port, detaining suspected persons on board and as soon as practicable, and causing all detained persons within a reasonable time to appear before a Magistrate in Barbados.¹²⁸

(iii) Marine Pollution Control and Coastal Zone Inspectors

Under the MPCA, the objectives of which are to prevent, reduce and control pollution of the marine environment from whatever sources, the Director of the Environmental Protection Department (EPD)¹²⁹ and marine pollution control inspectors within the EPD are given powers of police officers when carrying out their enforcement functions under this Act, while police officers are imbued with, in addition to their ordinary duties and

¹²¹ S213 Ibid

¹²² See supra

¹²³ Section 34 of the Fisheries Act

¹²⁴ See ante at page

¹²⁵ Ibid

¹²⁶ S14 of the MBJA

¹²⁷ S15(1) of the MBJA

¹²⁸ For these and the full gamut of powers see s15(2)-(4)

¹²⁹ See ante at page ...

powers, all the powers of an inspector when requested by the Director to carry out enforcement of any provision of the MPCA.

Under the CZMA, coastal zone inspectors and police officers¹³⁰ have the power of arrest, search and seizure in matters where items have been unlawfully removed from restricted areas.

(iv) Customs Officers

Customs officers have also all the powers, authority and privileges of police officers¹³¹ as well as specific powers of boarding, search and seizure under the Customs Act Chapter 66 of the Laws of Barbados but under the MBJA and the Fisheries Act, customs officers are MCOs and authorised persons for the purposes of those enactments.

b) Enforcement in the Maritime Zones

In relation to the various aspects of marine and maritime enforcement a number of different officers and institutions are authorised to enforce the applicable laws. In this regard, coast guard officers, and the Police Force may enforce laws as discussed above in the territorial sea and the EEZ, and in respect of any Barbadian ship whether in the high seas or in Barbados' territorial sea or EEZ. These powers are conferred to the coast guard by the Defence Act,¹³² the MBJA and the Fisheries Act collectively; and to the police force by the Police Act, the MBJA and the Fisheries Act.

Marine pollution control inspectors are not expressly prohibited from exercising MPCA enforcement powers in the EEZ but the definition of "environment" in the Act implies that these powers may only be exercised in or on the land, internal waters, territorial sea and airspace of Barbados.¹³³ Coastal zone inspectors are also limited to acting within the limits of Barbados' territorial sea.¹³⁴

Customs officers, though limited to ports of entry¹³⁵ in the exercise of their powers under the Customs Act, may exercise powers further afield in the territorial sea and in the EEZ as

¹³⁰ Or police officers. See ante at page ...

¹³¹ Customs Act Cap 66 at s5

¹³² NB: The BTWA does not name the coast guard as an authorised enforcer of its provisions but this power to enforce BTWA provisions is conferred by the Defence Act. See supra at page ...

¹³³ At s2 MPCA: "environment" means "land, water and airspace of Barbados and its territorial waters". And throughout the Act provisions, including enforcement provisions, apply to the "environment" or "marine environment".

¹³⁴ The CZMA is an Act "to provide for the more effective management of the coastal resources of Barbados ... and related matters" – Recital of CZMA; s2 CZMA: "coastal resources" means "the land, water and living resources associated with the shoreline and marine areas of Barbados, including beaches ... together with the flora and fauna found in these areas; s2: "marine areas" means "the submarine areas within the territorial waters of Barbados and includes any adjoining land or swamp area that forms with any such submarine area a single ecological entity.

¹³⁵ See ss 29 and 30 Customs Act

conferred by the MBJA¹³⁶ and the Fisheries Act¹³⁷ for the purposes and subject to the provisions of these enactments.

5. National Institutional Framework

As reflected in the legislation and provisions discussed above, the resources and participation of more than one Ministry comes into play to give full effect to the legislation. With regard to defence and security in the maritime zones, the relevant ministries are the Attorney General's Office, having responsibility for the Police Force, the Defence Force and Coast Guard and legal affairs in general; the Ministries of Maritime Affairs and the Blue Economy (MABE) and Environment and National Beautification (MENB)¹³⁸ with regard to the MCOs, inspectors and authorised persons under the Fisheries Act; and the Ministry of Finance, Economic Affairs and Investment with regard to the Customs Department and its officers.

The executive Ministry with responsibility for maritime boundaries is the Ministry of Foreign Affairs and Foreign Trade.¹³⁹ In this regard, the Minister of Foreign Affairs and Foreign Trade has the power, or is required, as the case may be, to:

- 1) Make orders:¹⁴⁰
 - a) Prescribing baselines for territorial waters other than the low-water line along the coast, using a mixture of straight lines drawn from points on the coast and the low-water line,¹⁴¹ and
 - b) Prescribing distances measured from the territorial water baselines other than 12M and 200M in relation to the territorial sea and the EEZ respectively;¹⁴²
- 2) Cause (where baselines are prescribed by the Minister) the baselines together with the seaward boundary line of the territorial waters to be marked on a scaled map or chart¹⁴³ and make provision for the safe custody of such map or chart, specifying by notice the place where it may be open to inspection by the public and where certified copies may be obtained;¹⁴⁴

¹³⁶ See supra page ...

¹³⁷ S2 defines "authorised person as "any fisheries, customs or police officer or any ... member of the Barbados Coast Guard"

¹³⁸ For more detail on these ministries ee ante at pages ...

¹³⁹ Ministry of Foreign Affairs and Foreign Trade of Barbados: See s2 of the TWA: definition of "Minister"; and sections 3, 4 and 21 of the MBJA.

¹⁴⁰ Such orders are subject to affirmative resolution and must be judicially noticed – s3(3) of the BTWA and s3(2) of the MBJA

¹⁴¹ S4 of the BTWA

¹⁴² See supra; also see s3(1) of BTWA and s3(1) of the MBJA.

¹⁴³ With such map or chart to be judicially noticed for all purposes of the law as indicating the baselines from which the territorial waters shall be measured and the boundaries, breadth and limit of the territorial waters – s4(3) of the BTWA.

¹⁴⁴ S3(4) of the BTWA.

- 3) Cause the boundary lines of the EEZ to be marked on a scaled map or chart,¹⁴⁵ and make provision for the safe custody of the same, specifying by notice, the place where any person may inspect that map or chart or purchase certified copies thereof;¹⁴⁶
- 4) Give directions with respect to the disposal or release of any vessel, structure, equipment, device or thing that is ordered by a court to be forfeited under the MBJA or any regulations thereunder;¹⁴⁷
- 5) Authorise persons, in writing, to stop and board ships and exercise the duties and powers of a police officer pursuant to section 8 of the BTWA¹⁴⁸ in the event that a ship is reasonably suspected to have acted prejudicially in Barbados' territorial waters;
- 6) Pursue redress under international law pursuant to section 9 of the BTWA¹⁴⁹ where a ship deemed to have acted prejudicially while passing through the territorial sea or person on board engaged in such prejudicial activity is entitled to state or other immunity; and
- 7) Make regulations as prescribed by the BTWA.¹⁵⁰

That notwithstanding, the baselines used for measuring the breadth of the territorial sea and EEZ are the low-water mark, no orders have been made for distances other than 12M and 200M respectively, and thus no maps reflecting such orders have been drawn. With regard to agreements with neighbouring States concerning the EEZ and extended continental shelf boundaries, the Ministry of Foreign Affairs and Foreign Trade has coordinated delegations entering into bilateral negotiations with delegations of neighbouring States.

The Ministry of Foreign Affairs and Foreign Trade was also the executive Ministry for Barbados' extended continental shelf submission and coordinated the Continental Shelf Committee which comprised technical representatives from various stakeholder institutions and consultants also with expertise in the technical aspects of the submission. The Ministry of Foreign Affairs and Foreign Trade will also likely be responsible for negotiating further or coordinating further negotiations on continental shelf boundaries with neighbouring States when they have received their recommendations.¹⁵¹

B. Protection and Preservation of the Marine Environment

1. National Institutional Framework

¹⁴⁵ Such map or chart must be judicially noticed – s4(1) of the MBJA

¹⁴⁶ S4(2) of the MBJA

¹⁴⁷ S21 of the MBJA

¹⁴⁸ Supra

¹⁴⁹ Supra

¹⁵⁰ S11 BTWA: such regulations are subject to affirmative resolution and must be judicially noticed.

¹⁵¹ See supra at page ...

The main institutions with responsibility for the application and execution of enactments and regulations relating to the protection and preservation of the marine environment are (1) the Ministry of Environment and National Beautification (MENB), and (2) the Ministry of Maritime Affairs and the Blue Economy (MABE). Within each of these Ministries are agencies and departments which deal with different aspects of environmental governance but policy development has traditionally rested with the Ministry responsible for environment which at present is embodied by the MENB. With the MABE being a new Ministry and in the wake of some ministerial restructuring,¹⁵² it is likely that the MABE will be responsible for policy in respect of marine environmental governance specifically. The main marine environmental agency remaining under the MENB is the EPD, while the CZMU and Shipping are part of the MABE.

The current policy documents were developed from 1998 to 2000 through the Ministry responsible for the environment, which was, during that period, embodied in the Ministry of Health and the Environment and subsequently, the Ministry of Physical Development and Environment. These policy documents are:

- 1) The Environmental and Natural Resources Management Plan – Barbados Ministry of Health and the Environment, November 1998 (ENRM);¹⁵³
- 2) Institutional Strengthening of the Environmental Unit and Other Institutions: Environmental Management and Land Use Planning for Sustainable Development, final Report – Barbados Ministry of Health and the Environment, November 1998 (ISR);¹⁵⁴
- 3) National Biodiversity Strategy and Action Plan for Barbados – Barbados Ministry of Physical Development and Environment, July 2002 (NBSA);

The ENRM was designed to define the goals and objectives for environmental management, and the mechanisms and actions by which such objectives would be achieved.¹⁵⁵ Specific to coastal and marine resources the ENRM describes the existing threats, existing and on-going management, current legislation, and proposed or pending draft legislation, while also recommending new management actions. The CZMA and the MPCA were in draft form at that time and referenced as pending draft legislation. However, it was also anticipated in the ENRM that a new Environmental Management Act and a Waste

¹⁵² The Environmental Protection Department (EPD), formerly the Environmental Engineering Division, formerly the Public Health Engineering Unit originated under the Ministry of Health but has for decades now been under the portfolio of the Ministry responsible for Environment; Prior Ministries of Environment included the CZMU; Fisheries came under the Ministry of Agriculture; shipping was part of the division of International Transport which would have been connected to other ministries in the past including in tandem with Tourism (eg. There formerly existed a Ministry of Tourism and International Transport) but the current structure is that Fisheries, Shipping and the CZMU are all part of the MABE (a newly created Ministry) and the EPD falls under the MENB.

¹⁵³ Prepared by Malcolm Hendry, Linda Hella, John Willms, Ian Hale, John Sedley - Willms & Shier, Berridge Lewinbridge Greenberg Dark Gabor Limited, Bird and Hale Limited, Halcrow Fox.

¹⁵⁴ Ibid.

¹⁵⁵ Page 1: section 1.1 entitled, "Background"

Management Act along with other legislation would be prepared and enacted.¹⁵⁶ According to the ENRM, the (draft) Environmental Management Act would have subsumed the CZMA and the MPCA¹⁵⁷. However, this piece of draft legislation along with the (draft) Waste Management Act and others recommended or anticipated in the ENRM had not been enacted at the time of the preparation of this report, as they remain with the Office of the Chief Parliamentary Counsel (CPC)¹⁵⁸ which prepares draft legislation and bills for approval by the Cabinet to eventually be debated by Parliament.

Notably, section 10.4 of the ISR on implementation of the ENRM, emphasised that the policies of the ENRM could be immediately implemented but that once the Environmental Management Act was passed, and it was not,¹⁵⁹ the ENRM should be processed for full consultation and approval.¹⁶⁰

While the NBSA acknowledges the absence of a comprehensive policy on biodiversity management¹⁶¹ as well as a lack of legislation directly addressing biodiversity protection and management,¹⁶² it also proposes strategies and actions to be taken to fulfil certain objectives toward the development and application of management approaches pursuant to Barbados' obligations under Article 6 of the Convention on Biological Diversity 2002. The named objectives include (1) mobilising adequate financial resources for biodiversity management and conservation by, *inter alia*, implementing financial assistance negotiation mandates, allocating additional government funds for biodiversity conservation and management, and establishing user fee charges for biodiversity resource users such as fisherfolk, hoteliers, and SCUBA operators; (2) developing the human resource base and strengthening institutional capacity for conservation and management by, *inter alia*, defining specific mandates for the relevant government institutions and encouraging cooperation between local government and Non-governmental Organisations (NGOs); and conducting research to inform the development and implementation of management practices for sustainable use by, *inter alia*, developing or supporting monitoring projects assessing impact of overexploitation, proliferation of alien species, pollution and habitat loss.

It is worth noting that all these policy documents were pursuant to projects undertaken with international financial and technical assistance and led locally by steering committees comprising various stakeholder representatives.¹⁶³

¹⁵⁶ Section 3.3 of the Plan at pages 22-23 and see also section 5.5 at pages 82 and 83.

¹⁵⁷ Page 82 *ibid*

¹⁵⁸ Interview with senior officer of the Ministry of the MENB on 5th September 2018.

¹⁵⁹ See paragraph *supra*

¹⁶⁰ Also confirmed at interview mentioned at *ibid*.

¹⁶¹ See NBSA page 14, section 3.1, para. 2

¹⁶² *Ibid*, page 17, section 3.3

¹⁶³ In the case of the NBSA, the United Nations Environment Programme along with the Global Environment Facility (GEF) approved and provided funding for Barbados' project proposal including coordination costs. The Ministry of

a) Ministry of Environment and National Beautification (MENB)

(i) The Environmental Protection Department (EPD)

The EPD has evolved over the years. Its current iteration comes out of the recommendations of the ISR¹⁶⁴ covering a range of environmental and pollution monitoring responsibilities, inclusive of solid waste industrial management and regulation and hazardous material management. Accordingly, the EPD operates pursuant to the Health Services Act Cap 44 and the MPCA. For marine environmental purposes, the EPD, sometimes in tandem with the CZMU or other government agency, will test for, or monitor chemical, waste and other pollutant levels in the sea and initiate remedial action in the circumstances.¹⁶⁵ The EPD is also mandated to carry out enforcement measures under the MPCA.¹⁶⁶

b) Ministry of Maritime Affairs and Blue Economy (MABE)

The MABE is a new Ministry in the sense that there has never been a Ministry with an exclusively maritime portfolio or one with focus on a maritime or oceans-related economy. As such, all of the legislation concerning environmental protection and preservation formerly came under the portfolio of the Ministry responsible for the Environment, in some cases through agencies or bodies that formed part of the Ministry. In this regard, the CZMU has responsibility for coastal zone management and application of the CZMA but was re-assigned from the Ministry responsible for Environment to the MABE.

(i) Coastal Zone Management Unit (CZMU)

The Coastal Zone Management Unit (CZMU)¹⁶⁷ derives a direct mandate from the *Coastal Zone Management Act Cap. 394* with regard to its execution and enforcement of the coastal zone management plan¹⁶⁸ for the preservation of the Barbados coastline. Despite being a stand-alone division and deriving its mandate from coastal zone legislation, the CZMU is,

Physical Development and Environment as it then was through its Environmental Unit, which was the operational focal point for the GEF and the executive ministry in respect of biodiversity, coordinated several Ministries, departments and NGOs to inform the consultative process. This comprised the Ministries of Tourism, Foreign Affairs, Finance and Economic Affairs, the CZMU, Fisheries and Veterinary Divisions in the Ministry of Agriculture and Rural Development, Barbados National Trust and the University of the West Indies.

¹⁶⁴ Section 9.7 of the ISR, pages 143-148.

¹⁶⁵ See Maine Pollution Act *Supra*

¹⁶⁶ See pages... *supra* and ... *ante*

¹⁶⁷ See <http://www.coastal.gov.bb/> for more details on all information provided in this part

¹⁶⁸ See *ante* at page...

nonetheless, in this regard, an extension of the Town and Country Planning Department (hereafter called “Town Planning”) which until January 25, 2019 derived its mandate from the Town and Country Planning Act, Chapter 240 of the laws of Barbados (TCPA) but now operates pursuant to the Development and Planning Act 2019 (PDA) which repealed and replaced the PDA. While Town Planning is responsible for zoning and issuing approval to develop or otherwise use land in accordance with the Physical Development Plan (PDP),¹⁶⁹ the CZMU and the CZMP are the coastal equivalents, respectively. However, the CZMU does not issue approval for coastal development applications. Such applications are made to Town Planning and forwarded to the CZMU for their analysis and recommendations. The recommendations are submitted to Town Planning which will approve an application as submitted or subject to conditions or not at all as the case may be. Town Planning follows the recommendations of the CZMU the vast majority of the time but is not bound to do so and has, in some cases, not followed every recommendation.¹⁷⁰

Coastal Zone Management Plan (CZMP)

The CZMP comprises three documents entitled as follows:

- (a) Integrated Coastal Management: The Barbados Policy Framework
- (b) Integrated Coastal Management Plan for the South-east, East and North-west Coasts of Barbados – The Atlantic Coast, November 1998; and
- (c) Integrated Coastal Management Plan for the West and South Coasts of Barbados – The Caribbean Coast, January 1999.¹⁷¹

The CZMP, although provided for in the CZMA,¹⁷² has not been officially approved to date and remains in draft form. Nonetheless, it is used for the purposes of coastal zoning and serving the functions of the CZMU in this regard.¹⁷³ The fact that regulations were never issued under the legislation is a contributing factor to the delay in readying the plan for approval. That being said the CZMP is currently undergoing substantive revision and updating, based on data collected from geo-technical survey investigations,¹⁷⁴ and consequently so is the CZMA. It will, therefore, take some time before the final plan is approved and the legislation, amended and updated.

¹⁶⁹ Plan for zoning and physical development in Barbados but which is also being updated and revised.

¹⁷⁰ Interview with CZMU officers

¹⁷¹ Ibid

¹⁷² See ante at page...

¹⁷³ Because the CZMP has not been officially approved it has not been made available for public viewing. However, any member of the public may visit the CZMU in order to view it.

¹⁷⁴ Ibid. An example of some of the updates prompted by these investigations is evidence of wave action at the base of cliffs causing erosion and deepening undercuts beneath the cliff. The setback for building is taken from the toe of the cliff and not the edge and, therefore, this data is vitally impactful on the current setbacks for building in certain zones. Also in the current CZMP the official set back varies and in some cases may be 10 metres but in the new plan

(i) National Conservation Commission (NCC)

The NCC is a statutory corporation established as such by section 4(3) of National Conservation Commission Act, Chapter 393 of the laws of Barbados (NCCA). The NCC comprises no less than 7 and no more than 9 members all appointed by the Minister in accordance with paragraph 1 of the Schedule to the NCCA, and is operational and administers the provisions of the NCCA in accordance therewith, including by issuing licences to carry out various activities in public parks and conservations sites. The NCCA establishes the NCC and provides for, as part of its functions, controlling, developing and maintaining beach beauty and cleanliness as well as access to beaches,¹⁷⁵ Although the CZMU manages coastal areas from a zoning and physical development perspective the NCC manages public access to and use of beaches, public parks and designated areas from a preservation and beautification perspective.¹⁷⁶ The NCC operates pursuant to provisions of both the NCCA and the CZMA.¹⁷⁷

The NCC also advises the Minister¹⁷⁸ on matters concerning construction of recreational facilities or other construction in public parks, beaches, public gardens; the removal of coral from the seabed¹⁷⁹ or of any other thing that might lead to greater sea encroachment on the beaches; generally, on sites, buildings and monuments of national interest;¹⁸⁰ and any matters relating to public parks or gardens, beaches including those pertaining to beach control and protection of the coast from erosion and sea encroachment as the Minister may refer to the NCC for advice.¹⁸¹

2. National Legislation and Policy Framework

As environmental protection and conservation is a major pillar throughout every aspect of ocean affairs and the use of ocean resources, marine environmental protection laws and regulations are important to the legislative framework facilitating the sectors. Provisions for marine environmental protection and preservation are also elaborated in UNCLOS at

¹⁷⁵ S5 of the NCCA

¹⁷⁶ The recital of the NCCA describes the Act as “An Act to ... make provision for the conservation of sites and buildings of national interest.” Also, section 5 elaborates the functions of the NCC.

¹⁷⁷ See ante at page ...

¹⁷⁸ Minister of the MENB

¹⁷⁹ The Act does not specify a maritime zone in this context

¹⁸⁰ As designated by the Minister

¹⁸¹ S5(1)(g) and (h)

Part XII,¹⁸² which sets out general rights and obligations of States in protecting and preserving the marine environment. Part XII also makes provision for, *inter alia*:

- 1) global and regional cooperation among states in protecting the marine environment,¹⁸³
- 2) lending of scientific and technical assistance to developing states directly or through competent international organisations,¹⁸⁴
- 3) monitoring and environmental assessment of the risks or effects of pollution,¹⁸⁵
- 4) international rules and national legislation to prevent, reduce and control pollution of the marine environment¹⁸⁶ as well as their enforcement by States,¹⁸⁷ and
- 5) safeguards with regard to the implementation and enforcement of international rules and national legislation to prevent, reduce and control marine pollution.¹⁸⁸

Elements of these various sections of Part XII can be seen in Barbados' *Marine Pollution Control Act* and regulations such as *Coastal Zone Management Act*, *National Conservation Commission Act*, and *Shipping Act*. As they relate to the sectors, they are designed to ensure the integrity and sustainability of the marine habitat and its resources that fuel the sectors and in fact provide the basis and foundation of the coastal and marine environmental services sector.

a) **Marine Pollution Legislation**

The MPCA is described in its citation as an Act to prevent, reduce and control pollution of the marine environment from whatever source. Already in its preamble this Act uses the language of UNCLOS, Part XII, section 5. The MPCA prohibits in section 3 the release of any pollutant into the environment in violation of any applicable standards, conditions or requirements specified under the MPCA or regulations thereunder, and provides that any person who contravenes this provision is guilty of an offence.

The MPCA additionally provides for the investigation and collection of data by the Director of the "Environmental Engineering Division"¹⁸⁹ which is now the EPD as soon as practicable after the entry into force of the MPCA in respect of the extent of pollution and significant sources of pollution from land-based sources, seabed activities, dumping activities, and

¹⁸² See supra

¹⁸³ Section 2 *ibid*

¹⁸⁴ Section 3 *ibid*

¹⁸⁵ Section 4 *ibid*

¹⁸⁶ Section 5 *ibid*

¹⁸⁷ Section 6 *ibid*

¹⁸⁸ Section 7 *ibid*

¹⁸⁹ See section 2 on definitions particularly with respect to definition of "Director".

airborne sources affecting the environment generally as well as such premises as the Director deems necessary.¹⁹⁰

Furthermore, the Act provides for the Director to maintain a Register of Pollutants containing data identifying the quantity, conditions or concentrations relevant to the identification of each pollutant¹⁹¹ and to develop and implement with the approval of the Minister,¹⁹² a programme for prevention, reduction and control of pollutants, inclusive of registration of significant sources of ongoing or intermittent release of pollutants into the environment.¹⁹³

(i) Enforcement and liability for marine pollution

Overall the MPCA is enforcement oriented, providing also for the designation of marine pollution control inspectors to assist the Director and empowering them (as extensions of the Director) with the approval of the Minister and by order to, *inter alia*, require of persons deemed responsible for sources of pollution to take such measures as may be required to reduce the level of concentration of the pollutant to acceptable levels.¹⁹⁴ Where such persons deemed responsible fail to comply the inspectors may enter on the land and carry out any work necessary to accomplish the terms of the order at the expense of the person deemed responsible for the pollutant.¹⁹⁵

The Director is charged with the responsibility of enforcing all the provisions of the MPCA¹⁹⁶ and is given, along with every inspector, the powers, privileges and protection of a member of the Police Force in the performance of their duties related to the said enforcement functions of the Director.¹⁹⁷ Likewise, when acting on a general or particular request of the Director, a member of the Police Force is conferred with, in addition to his

¹⁹⁰ S4(1) of the MPC

¹⁹¹ S4(2) Ibid

¹⁹² The Minister is not specified but since the Environmental Engineering Division which is now the EPD is specified it would be currently the Minister of Environment and National Beautification..

¹⁹³ S4(3) Ibid

¹⁹⁴ S7 Ibid

¹⁹⁵ S8 Ibid

¹⁹⁶ S9(1) Ibid

¹⁹⁷ Also, according to section 9, the generality of these rights and privileges are not prejudiced by the specific powers also conferred on the Director and inspectors by the Act.

ordinary powers as a police officer, all powers of an inspector under and pursuant to the MPCA.

Under this Act pursuant to the provisions of section 10, inspectors acting under the general or particular directions of the Director may without warrant or Court order exercise powers of stop, entry and search¹⁹⁸ in respect of any place (except a dwelling-house)¹⁹⁹ vehicle or vessel reasonably believed by the inspector to infringe, imminently infringe, or contain evidence of infringement of marine protection laws (inclusive of the MPCA), and to require the production of any documents reasonably believed by the inspector to contain information relevant to said infringements or imminent infringements.²⁰⁰

Additional financial penalties and related provisions are set out at section 17 in respect of operators of businesses that commit offences under section 3 and profit from the commission of said offences. The Director, a member of the Police Force or an inspector may, pursuant to section 18 of the MPCA, institute proceedings in a court of law in respect of any offence created by the Act.

The MPCA, therefore, establishes rules and regulations for the prevention, reduction and control of pollution of the marine environment and puts enforcement measures in place.

b) Coastal Zone Management Legislation

The *Coastal Zone Management Act Chapter 394 (CZMA)* of the laws of Barbados provides for the preparation of a coastal zone management plan and an order delimiting a coastal zone management area.²⁰¹ The former TCPA²⁰² also made references to provisions of the CZMA given their connectivity with regard to planning and physical development.²⁰³ The

¹⁹⁸ According to s10(2) “search” for these purposes includes taking samples of substances for the purpose of analysis.

¹⁹⁹ S10(4) whereunder a Court order must be obtained pursuant to s11(1)

²⁰⁰ S10(1)(a)-(e). Also, inspectors may (i) require the production of documents required to be kept under the provisions of the MPCA or other Act affecting the protection of the marine environment - s10(1)(f), (ii) make reasonable enquiries of any person orally or in writing - s10(1)(g), and (iii) exercise any other power related to investigations under the provisions of this Act or any Act which affects the protection of the marine environment, or any regulations made under such Acts - s10(1)(h). A Court order may nonetheless be issued or renewed, as the case may be, by a Magistrate upon satisfactory evidence on oath given by an inspector in respect of the reasonableness of exercising one of the powers under section 10(1) and other prescribed grounds - s11(1)(a) and (b). The offence of assaulting or obstructing the Director, a police officer or an inspector is established at section 15 of the MPCA and penalties for this, other offences committed under section 3 of the Act and any other offences committed under this Act are prescribed at section 16.

²⁰¹ In the Act it is framed as draft management plan and draft order as it speaks directly to the necessity of such being drafted for the approval of the Minister as soon as possible after enactment of the legislation. By now, however, such plan and order have been approved and followed.

²⁰² Repealed by PDA as of January 25, 2019, see supra

²⁰³ See ante at page...

PDA now repealing and replacing the TCPA references the provisions of the CZMA with more frequency and has in addition amended certain provisions in the CZMA itself. In this regard provision in the CZMA for the CZMP to contain policies, strategies and standards in terms of environmental impact assessment for development affecting management and conservation of coastal resources was removed,²⁰⁴ and the provisions concerning an appeals tribunal are revised.²⁰⁵

The content of the plan is specified to contain management and conservation policies, strategies and standards in terms of but not limited to the following:²⁰⁶

- (a) The development and maintenance of structures in the coastal zone management area;
- (b)
- (c) Water quality in coastal and marine areas to effect the maintenance, rehabilitation and enhancement of coastal and marine habitats;
- (d) Provisions for public access through and to the beach and other natural areas of the coastal zone;
- (e) Activities other than those specified in paragraphs (a) to (c) that may affect coastal resources, including beachrock removal, coral rubble removal, removal of seagrasses, offshore sandmining, dredging, use of explosives and chemicals, use of vehicles on beaches and the movement and the anchoring of vessels;
- (f) The management of underwater parks and restricted areas; and
- (g) The designation of any area of the beach as a prohibited area for the purpose of removing vegetation, sand, stone, shingle or gravel.

The CZMA also provided for the establishment of a Coastal Management Appeal Tribunal to consider the duly made application of any person aggrieved by a management plan and who wished to question the validity of the plan or provisions therein on grounds prescribed by the Act.²⁰⁷ However, no such tribunal had been constituted as no regulations were issued under the CZMA and, therefore, constituting provisions were never enacted. Consequently, appeals against coastal zone decisions were made pursuant to the former Town and Country Planning Act, Chapter 240 of the laws of Barbados (TCPA) as appeals against the decision of the Chief Town Planner to whom the applications are submitted.²⁰⁸ The new PDA has repealed the provisions of section 13 of the CZMA and directed appeals to be made to an appeals tribunal established at section 86 of the PDA for all development applications and decisions.

²⁰⁴ Formerly s4(1)(b) of the CZMA repealed by s2(1) of the Fourth Schedule of the PDA

²⁰⁵ S13 of the CZMA repealed and replaced in accordance with s2(2) of the PDA: [see ante at page ...](#)

²⁰⁶ See s4 of the Coastal Zone Management Act Cap 394. NB: The Plan has been developed but not officially approved: See Supra at page ...

²⁰⁷ S13 of the CZMA

²⁰⁸ See page ... ante

The CZMA also provides for the preservation and enhancement of marine areas, empowering the Director of the CZMU to prepare in consultation with the NCC draft orders, subject to ministerial approval, designating restricted areas for the preservation and enhancement of the natural beauty of an area, the rehabilitation of flora and fauna, the protection of wrecks and archaeological and historic items, for public enjoyment, and the purposes of scientific study and research.²⁰⁹

(i) Enforcement and liability for coastal zone management

The Act also establishes the power of arrest, search and seizure possessed by coastal zone inspectors or police officers in matters where items have been unlawfully removed from restricted areas.²¹⁰ Under this Act the Minister may also make regulations concerning restricted areas and the NCC²¹¹ may, subject to Ministerial approval, make regulations in respect of underwater parks and art centres which it may establish in consultation with the Director of the CZMU.²¹²

The CZMA also provides for protection of coral reefs in the territorial sea and EEZ of Barbados and establishes unlawful interference therewith as an offence.²¹³ However, permits may be obtained on application to the Minister for harvesting, import, export, or trade in coral for scientific study and research purposes. Appeals of denied permit applications and penalties for different offences concerning interference with coral reefs are also addressed.²¹⁴

With regard to its additional provisions concerning beach protection, offences are also established and penalties prescribed.

The Act also sets out the powers and functions of the Director and coastal zone inspectors.

(ii) Town planning provisions affecting coastal zone management

The TCPA was repealed and replaced by the Planning and Development Act 2019 (PDA)²¹⁵ as of January 2019. Under the TCPA, references are made to matters of coastal zone management and/ or the CZMP at sections 3, 15, 17 and 8o(A).²¹⁶ The new Act also makes

²⁰⁹ 15(1) *ibid*

²¹⁰ S16 *ibid*

²¹¹ Ante at page ...

²¹² Ss 18 and 19 CZMAA

²¹³ S22 *ibid*

²¹⁴ Ss 25-27 *ibid*

²¹⁵ S106 of the Planning and Development Act 2019

²¹⁶ S3 – established the Ministers duty to secure consistency and continuity in the framing and execution of a comprehensive policy for use and development of all land in Barbados in particular land in the coastal zone are;

reference to coastal matters at sections 2, 5, 15, 23(5), 32(8)(f), 45(2), 86(3), Second Schedule: section 6 of Part IV, Fourth Schedule: section 2.

c) National Conservation Commission (NCC) Legislation

The National Conservation Commission Act Chapter 393 of the laws of Barbados (NCCA) is an Act to revise and consolidate the law relating to public parks, beaches and related matters, and to make provision for the conservation of sites and buildings of national interests.²¹⁷ This Act ultimately fleshes out the composition, functions, powers and administration of the NCC which plays a role in the management and conservation of coastal areas pursuant to the CZMA²¹⁸ but it also repeals and replaces the former Beach Protection Act and the Marine Areas (Preservation and Enhancement) Act and in this regard provides for the conservation of sites and buildings of national interest. In the exercise of its functions²¹⁹ the NCC must have regard to the CZMP (referred to in the CZMA).²²⁰ The Act also elaborates the licensing process and regulations with regard to vending in public parks, public gardens and beaches.²²¹ The NCCA also establishes offences and prescribes penalties for contravention of its provisions.²²²

(i) Regulations

The regulations made pursuant to this Act are the National Conservation Commission (Control of Horses on Beaches) Regulations 1993 which essentially speak to beach beautification and regulating the handling of and cleaning up after horses on the beach, among other things. Falling under the umbrella of the NCCA are also the Marine Areas (Preservation and Enhancement) (Designation of Restricted Areas) Order 1981²²³ and the Marine Areas (Preservation and Enhancement) (Restricted Areas) Regulations 1981 which were originally made under the Marine Areas (Preservation and Enhancement) Act Chapter

s15(1A) – prohibited Minister from granting planning permission in coastal management zone areas that are prohibited under the CZMP; s17(1A) – Regarding applications for planning permission, mandates the Chief Town Planner to request an environmental assessment where part or all of the proposed development is set to take place in the coastal zone management area; s17(1C) provides that the Minister shall consult with the Director of “Coastal Zone Management” before granting or refusing planning permission under s15 on the granting of permission to develop land; and s80A – mandates the Minister and the Chief Town Planner to have regard to the CZMP referred to in the CZMA..

²¹⁷ See citation of NCCA Cap. 393

²¹⁸ See supra at page ...

²¹⁹ See supra at page...

²²⁰ S5A ibid

²²¹ Ss 16-27

²²² S31 NCCA

²²³ This Order describes certain marine areas in the schedule thereof and designates them as restricted areas to be delineated by spherical plastic buoys of size, colour and placement as prescribed by section 4 of the Order.

392 of the Laws of Barbados and preserved when the said Act was repealed and replaced by the NCCA. They, therefore, continue to have the force of law. A number of *Beach Protection Orders*²²⁴ were also preserved upon the repeal of the Beach Protection Act, and continue to have the force of law.

Marine Areas (Preservation and Enhancement) (Restricted Areas) Regulations 1981

These regulations provide for the management of the *Barbados Marine Reserve* also known as Folkstone Marine Park (hereafter referred to as “the Reserve”). Under these regulations the Reserve is carved into zones²²⁵ and some 17 destructive acts and activities²²⁶ conducted within the zones or the Reserve are established as offences punishable by fine and/ or imprisonment upon summary conviction.²²⁷

Activities not being any of these prohibited acts, may be conducted subject to restrictions and conditions that may be imposed by the NCC.²²⁸ In this regard, any person seeking to engage in activities other than sightseeing must apply for and obtain a permit from the NCC, such permit being non-transferrable and subject to whatever conditions the NCC may impose.²²⁹

That notwithstanding, persons or organisations such as the Bellairs Research Institute or Coral Reef Club wishing to engage in scientific research approved by the NCC are entitled to apply for a special permit for access to the beach or a mooring.²³⁰ No permit is required

²²⁴ The (1) (Prohibited Areas) Order 1958, (2) (Clinkett’s Bay Prohibited Area) Order 1963, (3) (Foul Bay Prohibited Area) Order 1964, and (4) (Bathsheba-Lakes Prohibited Area) Order 1965 all describe these areas or beaches in the schedule thereof and declare said areas or beaches to be prohibited areas for the purpose of removing sand, stones, shingles or gravel.

²²⁵ See s3 of the Barbados Marine Reserve Regulations 1981: The Scientific Zone; the Northern Watersports Zone; the Recreational Zone; and the Southern Watersports Zone.

²²⁶ S5 *ibid*

²²⁷ Listed at section 5 some of these include (1) destroying, injuring, disturbing or removing any sand, gravel mineral, coral, sea feather, fans, shell, shellfish, starfish or other marine invertebrate, seaweed, grass or any soil, rock, artefact, stone or other material; (2) having possession within the boundary of the Reserve of any of the abovementioned materials or marine life; (3) attaching any rope, anchor, or other object to any coral, rock or other formation; (4) except in cases of emergency where life and property are endangered, casting or dragging any anchor in a way that damages any coral reef formations; (5) carrying on any dredging, excavating or filling operations within the boundaries of the Reserve; (6) depositing any material in or on the waters; (7) constructing any permanent or temporary structures; (8) discharging or depositing any waste material in the waters of the Reserve; (9) using any speargun, hook, line, net, trap, poison, electric charge, explosive or similar device for the purpose of taking any fish (including crabs, lobsters, shrimp, turtles eggs and any species of marine fauna); and (10) Having possession in the reserve of any explosive.

²²⁸ S6 of the Barbados Marine Reserve Regulations

²²⁹ Ss7 and 8 *ibid*

²³⁰ S11 *ibid*

for the conduct of any activity necessary for the protection of life, property or the environment.²³¹

The regulations also prohibit fishing boats from entering into any of the aforementioned zones, and boats used for sightseeing, sport, pleasure or scientific research may not enter the Reserve unless the owners or persons in charge of such boats apply to the NCC for registration thereof.²³²

Enforcement and Liability

These regulations also permit any member of the Coast Guard to institute proceedings in the Magistrate's Court against any person who contravenes the provisions thereof, and any person who contravenes them or fails to comply with any direction given by a Coast Guard officer or by any person authorised by the NCC is guilty of an offence, punishable on summary conviction to fine and/ or imprisonment unless a penalty is otherwise provided for.²³³

d) Pollution from Ships

Barbados possesses legislation regulating conditions and other factors that affect ship safety and minimise the risk of pollution from ships contaminating the sea. The key international provisions affecting ships and safety of ships at sea are contained in instruments adopted under the auspices of the International Maritime Organisation (IMO). In Barbados, provisions implementing shipping and maritime safety, in relation to ship regulations and environmental safety, can be found in the Shipping Act, Chapter 296 of the laws of Barbados.²³⁴

With regard to preservation of the environment, while this Act provides for certification and other matters concerning seaworthiness, and speaks to certain conventions regarding marine pollution from ships, the provisions of pertinence for the purposes of this study are those regarding small commercial vessels. The reason for this, which is discussed in more detail below²³⁵ is that under the Shipping Act Barbados registers ships over 150 gross tonnes that operate a great deal in the high seas. Therefore, it is small commercial vessels which operate in the EEZ of Barbados that have the greatest impact on Barbados' marine

²³¹ S12 ibid

²³² Ss13 and 14 ibid

²³³ Ss27 and 28

²³⁴ See also the Shipping Oil Pollution Act Chapter 296A.

²³⁵ See ante at page...

environment. It is however, also important to recall that Barbados has flag state duties with respect to its vessels in the high seas.

Part VA of the Shipping Act makes provision for the regulation of diving operations, watersports activities and small commercial vessel operations. In this regard, the Act provides that the Minister may make regulations with respect to (1) the provision of diving operations for hire or reward to be conducted in the EEZ, and (2) the use of small commercial vessels and passenger ferries within the EEZ,²³⁶ including watersports craft. Such regulations may include provision for, *inter alia*, the prevention of marine pollution by small commercial vessels and passenger ferries. That notwithstanding there are no regulations under the Shipping Act addressing pollution from ships directly but the MPCA does permit the stop and search, without a warrant, of vessels reasonably suspected, and further taking of any action related to investigation of infringement of marine pollution laws.²³⁷ In this regard there is prohibition of pollution from ships and provision for enforcing such.

The Shipping Act also provides for marine resource protection at section 300A(2)(a) of the Act by making it an offence for any person involved in diving operations to damage any coral reef as a result of the operations, and expressly invoking the application of section 27 of the Coastal Zone Management Act as if the offence was committed under that Act. Commission of this offence and contravention of any regulations made under section 300A(2)(a) is punishable on summary conviction by fine and/ or imprisonment.

Another way of reducing pollution from ships is by enforcing maritime and ship safety standards which are as aforementioned provided for by the Shipping Act including in relation to small commercial vessels.

With regard to coastal conservation and preservation an integrated approach has been taken with regard to the development aspects, prevention of pollution and managing public use and access. The three main institutional stake holders – the CZMU for coastal development and conservation, the NCC regarding management and preservation of public beaches and national interest sites, and the EPD regarding control of land-based sources of marine pollution – consult and in some instances work together in this regard. A common thread through the legislation discussed above is the CZMP to which the established institutions or Ministers with responsibility for the administration of the respective enactments are required to give consideration. The CZMP itself takes an integrated approach to coastal zone management.

²³⁶ S300B *ibid*

²³⁷ See *supra* at page...

C. Fisheries and Aquaculture

1. National Institutional Framework

The Fisheries Division, formerly of the Ministry of Agriculture, is now part of MABE. That notwithstanding, the roles of the Chief Fisheries Officer (CFO) and of the Fisheries Advisory Council remain intact, as do the processes and procedures elaborated by the legislation.²³⁸

The current policy on fisheries is contained in the Barbados Fisheries Management Plan 2004-2006: Schemes for the Management of Fisheries in the waters of Barbados.²³⁹ The Division has produced also the Barbados Fisheries Sector Management and Development Policy setting out, *inter alia*, the purpose, scope, substantive objectives and policies concerning the fisheries sector touching on matters of legislative reform, infrastructural development, resource sustainability and livelihood sustainability of fisherfolk.²⁴⁰ With regard to international standards and protocols that may not be legislatively implemented, they are followed as guiding principles and as far as practicable pursuant to policy. As such, Barbados, through the Division of Fisheries keeps abreast of, and is guided by instruments identified in the Management and Development Policy, which includes UNCLOS, FAO Compliance Agreement 1993, the UN Fish Stocks Agreement 1995, the FAO Ecosystem Approach to Management, the Caribbean Community Common Fisheries Policy 2014 (CCCFP), and the FAO Code of Conduct for Responsible Fisheries 1995,

a) Regional Policy and Forums – The CRFM and the CCCFP

It is worth noting that national fisheries policy may be affected or influenced by decisions taken at the regional level through the Caribbean Regional Fisheries Mechanism's (CRFM) Ministerial Council or by the CCCFP.²⁴¹ The CRFM is an intergovernmental organisation comprising CARICOM and other Caribbean States,²⁴² and is established by the Agreement Establishing the CRFM signed on 4 February 2002. Its mission is to "To promote and facilitate the responsible utilisation of the region's fisheries and other aquatic resources for the economic and social benefits of the current and future population of the region". In this regard the CRFM provides technical support and advisory services to member States towards capacity building and enhancement of fisheries and aquaculture sectors.

²³⁸ See ante at page ...

²³⁹ <http://extwprlegs1.fao.org/docs/pdf/bar175971.pdf>

²⁴⁰ This policy is currently undergoing revision which is not complete and therefore will likely contain information that was unavailable at the time of the production of this report

²⁴¹ See supra

²⁴² Its members are Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Trinidad and Tobago and the Turks and Caicos Islands.

The CRFM also developed the CCCFP, a binding treaty²⁴³ which is binding on CARICOM member states by virtue of having been confirmed as a final policy document for the Community²⁴⁴ by COTED.²⁴⁵ The policy speaks to (1) biodiversity protection in the regional marine environment; (2) increased regional food and nutrition security; (3) better research supporting fisheries development, and management; (4) greater income for fishers and wealth creation through social and economic development of the sector; (5) more investment opportunities in the fishing industry for CARICOM entrepreneurs; (6) integrated regulation and enforcement to minimise any regional sectoral conflicts; (7) increased regional market and economic competitiveness for the sector; (8) unified standards for quality assurance and food safety; (9) improved regional fisheries monitoring, control and surveillance to reduce illegal fishing; (10) coordinated regional and national data and information systems for better data sharing and open access to all; and (11) recognition of the Caribbean Sea as a special area of sustainable development.²⁴⁶

Where the policy emanating from the CCCFP is not embodied in national legislation. The institutional administrators of the respective aspects thereof²⁴⁷ ensure Barbados' compliance as far as practicable as a matter of policy.

2. National Legislation and Policy Framework

a) Fisheries Legislation

There is a regulatory and management framework within which the existing fisheries industry operates under the Fisheries Act Chapter 391 and related regulations. This legal regime establishes officers and an advisory body to administer and manage the legislated fisheries regime; makes provision for various types of vessel and fisheries licensing, for vessel registration, permits to conduct fisheries-related research or survey operations in Barbados waters,²⁴⁸ and pre-approved local scientific or academic institutions designated to carry out research or survey operations. The Act also gives officers stop, board and search powers in order to enforce licensing, registration, fishing and gear standards and other

²⁴³ This treaty does not appear to have entered into force as yet by way of the attainment of the prescribed signatures and ratifications as no indication of entry into force by this method has been found. Also see https://www.cavehill.uwi.edu/cermes/getdoc/d645a4c5-6bae-4a4a-8c7b-ded733b6d1df/cccfp_fact_sheet.aspx

²⁴⁴ <https://caricom.org/communications/view/caribbean-common-fisheries-policy-authorized-for-implementation>

²⁴⁵ See supra

²⁴⁶ https://www.cavehill.uwi.edu/cermes/getdoc/d645a4c5-6bae-4a4a-8c7b-ded733b6d1df/cccfp_fact_sheet.aspx

²⁴⁷ Eg. Fisheries Division, CZMU, Ministry of Environment etc. as the case may be

²⁴⁸ S2 of Fisheries Act on definitions: "waters of Barbados" means the waters of the Exclusive Economic Zone, the territorial waters and internal waters of Barbados as defined in the Barbados Territorial Waters Act, and any other waters over which Barbados has fisheries jurisdiction.

provisions.²⁴⁹ It also establishes Barbados' ability to enter into fisheries access agreements with other States;²⁵⁰ establishes offences and corresponding penalties; provides for inspection certificates certifying boat worthiness and makes provision for action to be taken in the event of accident or collision at sea, including for a magisterial enquiry to be held where a vessel is reported lost, stranded, abandoned or materially damaged at sea. This Act also provides for the making of regulations. As noted previously, fisheries vessels are dealt with under the Fisheries Act and not the Shipping Act. Therefore, a register is kept for fishing vessels and managed by the Chief Fisheries Officer separate and apart from that kept by the Director of Maritime Affairs.

The Fisheries Act is "an Act to provide for the management and development of fisheries in Barbados".²⁵¹ It provides for the appointment of a Chief Fisheries Officer (CFO),²⁵² responsible primarily for the management and development of fisheries in Barbados and for the administration of the Fisheries Act.²⁵³ The express objective of fisheries management and development under this Act is to ensure optimum utilisation of fisheries resources in Barbados' territorial sea and EEZ for the benefit of the people of Barbados.²⁵⁴ As part of his or her duties the CFO must develop and keep under review, schemes for the management and development of local fisheries in accordance with criteria elaborated by the Act.²⁵⁵ The Act also provides for the formation of a Fisheries Advisory Committee to advise the Minister on (1) the development and management of fisheries; (2) joint venture investment in fisheries, access agreements or other fishery agreements; (3) harmonisation of fisheries legislation including foreign fishing vessel licensing requirements; (4) coordination of fisheries policies with other government departments; and (5) any other matter specified or regulations made under this Act.²⁵⁶ The Committee must comprise (1) the CFO or his nominee, *ex officio*; (2) a biologist who specialises in fisheries; (3) a representative of the Ministry of Environment; (4) four other persons engaged in the fishing industry, recommended by the CFO; (5) a representative of the (fish) Markets Division; and (6) a representative of the registered fishing associations.²⁵⁷

Licensing under this Act mainly comprises licensing for: (1) Local fishing vessels to be used for fishing or related activities;²⁵⁸ (2) vessels to be engaged in sport fishing;²⁵⁹ (3) persons

²⁴⁹ Ss 34-44 *ibid*

²⁵⁰ S7 *ibid*

²⁵¹ See citation of the Fisheries Act Cap 391

²⁵² Along with Fisheries Assistants and other officers as necessary to give effect to the provisions of the Act – s3(1) of Fisheries Act.

²⁵³ S3(2) *ibid*.

²⁵⁴ S3(3) *ibid*

²⁵⁵ S4 *ibid*

²⁵⁶ See s5 of Fisheries Act

²⁵⁷ See the Schedule to the Act

²⁵⁸ S11 Fisheries Act

²⁵⁹ S10 *ibid*

seeking to engage in commercial fishing;²⁶⁰ (4) foreign vessels to be used for fishing or related activities in the territorial sea and EEZ of Barbados.²⁶¹ Each of these types of licences are applied for and granted or refused based on the criteria set out in the respective sections of the Act under which they are established.²⁶² While applications for foreign vessel fishing [?] licences are made to the Minister,²⁶³ applications for all the other types of licences are made to the CFO. It is noteworthy that in respect of sport fishing licences, the CFO must be satisfied that the vessel is properly registered and recorded under the *Shipping Act* and that the vessel's registration or record thereunder has not been suspended.²⁶⁴ In respect of every licence, certificate of registration and certificate of inspection, prescribed fees are payable, and in respect of every foreign vessel fishing licence royalties and other charges as may be set out in any applicable access agreement are payable.²⁶⁵ Registration of local fishing vessels is also mandated.

There is a requirement as well that persons engaged in fish marketing, processing or distribution keep records and supply information in such forms as CFO may require regarding the amount and species of fish received, processed, marketed or distributed. In this regard, there is prescribed a penalty for the offence of failing to do so.²⁶⁶

It is also mandated that persons or institutions other than approved local research institutions may not undertake fisheries-related research or survey operations in Barbados waters²⁶⁷ without the prior written permission of the Minister or conduct such operations in Barbados' EEZ unless they represent an international organisation or agency of which Barbados is a member subject to the terms of a detailed international project to which Barbados has given its formal approval.²⁶⁸ This provision is an expression of the right of a State to regulate marine scientific research in its territorial sea and EEZ in accordance with articles 238, 245 and 246 of the Convention, and a state's duty to promote international cooperation generally and to cooperate with international organisations through bilateral and multilateral agreements in accordance with articles 242 and 243.

(i) Enforcement and liability for fisheries

²⁶⁰ S12 *ibid*

²⁶¹ S8 *ibid*

²⁶² Therefore, for instance, a local vessel seeking to engage in sport fishing or research must apply for a licence under section 10 of the Act on sport fishing licences and not section 11 on local fishing vessel licences. S11(2) also explicitly excludes application of s11(1) from sport fishing and research or survey operations. However, foreign vessels that engage in commercial fishing may be exempted from holding foreign fishing licences by way of access agreement – see s19(2) *ibid*.

²⁶³ Currently the Minister of Maritime Affairs and Blue Economy.

²⁶⁴ Cross ref. to *Shipping Act* *ibid*

²⁶⁵ S15 *ibid*

²⁶⁶ S25 *ibid*

²⁶⁷ See definition *supra* at page ...

²⁶⁸ S26(1)-(2)

Offences under the Act include: (1) selling fish taken in the course of fisheries related research or survey operations without the prior authorisation of the CFO subject to whatever conditions he or she may impose;²⁶⁹ (2) using prohibited fishing methods or being in possession of or control of substances or paraphernalia used for carrying out prohibited fishing methods in any situation indicating intended use thereof, or landing, selling, receiving or being in possession of fish taken by prohibited methods knowing or having reasonable cause for belief that said fish were taken by such prohibited methods;²⁷⁰ (3) fishing in Barbados waters without the requisite licencing and/ or permits and certificate of inspection;²⁷¹ (4) failure to give appropriate notice of change of ownership of a vessel to the CFO;²⁷² and (5) failing to render assistance to another vessel in distress at sea.

These provisions may be enforced by “authorised officers”, that is, any fisheries, customs or police officer or any officer or soldier of the Barbados Defence Force serving as a member of the Barbados Coast Guard.²⁷³ Authorised officers may without a warrant stop, board and search any foreign vessel in Barbados waters²⁷⁴ and any local vessel in and out thereof, and require production of any licence or other document, or production for examination of any net or other fishing gear on board.²⁷⁵ They may also enter and search without a warrant any premises other than premises used exclusively as a dwelling house and stop and search any vehicle in relation to which they reasonably believe that fish or aquatic flora is being stored or transported illegally, in which case authorised officers may arrest suspects involved and exercise powers of seizure in relation to the vessel or any gear, fish, aquatic flora, explosives or poison held in contravention of the Act or reasonably believed to have been used in the commission of the suspected offence.²⁷⁶

There are a number of draft bills being considered for enactment to amend or update the legal regime on fisheries to meet global, in particular European Union, standards for export, including a Fisheries (Amendment) Bill which aims at amending the *Fisheries Act* and is currently undergoing the approval process.²⁷⁷

(ii) Regulations

The current regulations under this Act are the Fisheries (Management) Regulations 1997 which provide for the protection of certain species of fisheries and regulate certain methods

²⁶⁹ S27 ibid

²⁷⁰ S29 ibid – prohibited methods include explosives, poison or other noxious substance for the purpose of killing, stunning, disabling or catching fish or in any way rendering fish more easily caught.

²⁷¹ Ss8(7), 9(3), 10(8), 11(8), 12(5), 18(6), 22(2), 24(4) ibid

²⁷² S21(3)

²⁷³ S2 ibid

²⁷⁴ See definition supra at page...

²⁷⁵ S34(1)

²⁷⁶ S34(2)

²⁷⁷ As the bill has not been approved as yet, the contents were not made available for the purposes of this report.

of fishing.²⁷⁸ The Fisheries (Management) Regulations 1997 provide for the conservation of certain endangered species thereby prohibiting fishing outside of the prescribed season, the taking of their eggs, and the employment of certain fishing methods. These regulations also establish offences for the contravention of these provisions and prescribe penalties therefor.

An initiative has commenced to amend Fisheries Act and introduce additional regulations under fisheries legislation in order to satisfy European Union and other import regulations and gain access to European and other markets. In this regard, an amendment bill, and new draft regulations have been produced. These include the draft: (a) Fishing Vessel Safety Regulations; (b) Fisheries (Fishing Vessel) Regulations; (c) Fisheries (Fishing Vessel) (Fees) Regulations; (d) Fisheries (Fishing Vessel) (Safety Equipment) Regulations; and (e) Fisheries (Fishing Vessel) (Stability and Associated Seaworthiness) Regulations; (f) Fisheries (Fishing Vessel) (Machinery and Electrical Installation) Regulations; (g) Fisheries (Fishing Vessel) (Inspection and Certification) Regulations; (h) Fisheries (Fishing Vessel) (Identification Marks) Regulations; (i) Fisheries (Fishing Vessel) (Fire Protection) Regulations; and (j) Fisheries (Fishing Vessel) (Equipment) Regulations.²⁷⁹

(iii) Provisions concerning tuna and swordfish

The Fisheries Management Regulations provides that

D. Shipping

1. National Institutional Framework

Responsibility for issues of maritime transport was also transferred to the MABE. In contrast to previous institutional practice, maritime transport and aviation are no longer the responsibility of the same department.²⁸⁰

²⁷⁸ See Environmental Protection and preservation Supra. [Please reference regulations completely, e.g. SI number?]

²⁷⁹ As the drafts had not been approved the contents thereof were not made available for the purposes of this report.

²⁸⁰ Originally, maritime transport matters were handled by the Division of International Transport which was previously part of the Ministry of Tourism and International Transport. This Division comprised both aviation and shipping/ maritime transport, which for many years regardless of the Ministry they fell under, were administered through the same institution. For the first time, shipping has been separated from aviation under the umbrella of international transport, and, in its absorption into the MABE, there is currently an administrative adjustment taking place. This adjustment is not anticipated to affect the policies held in relation to maritime transport which may be

Thus, MABE's role with regard to shipping is mainly regulatory in terms of safety, security and maritime pollution. Consequently, MABE works with a number of other Government agencies and institutions, namely, the Coast Guard, the Barbados Port Inc.²⁸¹ and the Police with regard to enforcement and regulations. MABE also works with the Environmental Protection Department (EPD) in the Ministry of Environment in relation to pollution, and with Fisheries and with the CZMU which are both now part of MABE.

The MABE is also the focal point for the IMO and international maritime conventions to which Barbados is party and, therefore, has oversight of matters pertaining to SOLAS, MARPOL, the Load line Convention, Collision Regulations, and their national implementation. The MABE also has oversight of the implementation of certain ILO Conventions, namely, the Maritime Labour Convention (MLC) 2006. As with other legislation discussed above, these international conventions have not been fully incorporated into the national legislative framework although they are followed in practice as far as practicable. In fact, an audit was carried out by the IMO around June 2018 pursuant to the IMO Member State Audit Scheme (IMSAS) which came into effect in January of 2016. This IMSAS audit also included the Fisheries Division and concluded that although Barbados had been following the requirements there was no formal structure in place and very little legislative implementation.²⁸² Therefore, a corrective action plan based on the findings and recommendations of the audit is currently being crafted for approval by Cabinet and subsequent submission to the IMO.²⁸³

Pursuant to the Shipping Act there is a designated Director of Maritime Affairs whose office can register vessels up to 150 tonnes while ships weighing beyond 150 tonnes are registered by the Barbados Maritime Ship Registry in London.²⁸⁴ Notably, the Director of Maritime Affairs does not register fishing vessels which are registered pursuant to the Fisheries Act and, thus, by the Chief Fisheries Officer. In any event, the MABE is now the overarching Ministry under which both are registered even if there is no consolidation of the process or the channels by which registration of these two types of vessels is effected. It is not known at this time if the two will be consolidated but doing so would no doubt require amendments to the relevant existing legislation.

There is also a Maritime Inter-Agency Committee which was established in 2006 to assist the Minister with the cross sectoral aspects of shipping and maritime affairs. This Committee which is headed by the Director, comprises officers and representatives from

absorbed by the MABE and, if anything, will be developed over time as necessary and relevant to national needs for the time being.

²⁸¹ A company incorporated under the Companies Act Cap. 308 of the Laws of Barbados for the purpose of managing the Port of Bridgetown and enabling the said Port to operate as a commercial entity – See Barbados Port Inc. (Transfer of Management and Vesting of Assets) Act Cap. 285B of the laws of Barbados.

²⁸² Interview with Director of Maritime Affairs at MABE

²⁸³ Ibid

²⁸⁴ <https://barbadosmaritime.org/>

the Ministry responsible for matters of Environment,²⁸⁵ the CZMU, EPD, law enforcement namely, the Police and the Coast Guard, the Ministry of Foreign Affairs and Foreign Trade, the Telecommunications Unit²⁸⁶ (due to radio licences), Attorney-General's Chambers, Ministry responsible for Labour, Fisheries and the Ministry responsible for Housing.²⁸⁷ The Committee has not met for more than a year at least but will likely have to resume functionality in order to discuss the IMSAS results.²⁸⁸

At the time of writing the present report, it was not clear if the MABE will require modifications to be made to the aforementioned institutional structures.

2. National Legislation and Policy Framework

IV. GOVERNANCE FRAMEWORKS APPLICABLE TO SELECTED ECONOMIC SECTORS

A. SUSTAINABLE MARINE FISHERIES

1. Applicable Legislative Provisions

The laws applicable to the sustainable marine fisheries sector are the Fisheries Act and Fisheries Management Regulations with regard to direct regulation of vessels, licensing, the use of permissible gear and permissible methods of fishing. The MPCA and the NCCA are also applicable in terms of balancing fishing activities with environmental preservation and conservation obligations. Giving regard to the BTWA and the MBJA, fishers may conduct fishing activities in the territorial sea and the EEZ. With no direct legislation or comprehensive policy regulating fishing activities in the high seas, local fisher folk are not prohibited from fishing in the high seas.

2. Institutional Role and Responsibility

In this regard, MABE is the executive Ministry responsible for issuing fishing and other licenses or permits pursuant to the Fisheries Act, registering vessels and certifying their seaworthiness for the purposes of the Fisheries Act. The MENB also plays a significant role in this sector as executive Ministry for the NCC which is responsible for enforcing conservation regulations concerning Folkstone Reserve and which issues permits for

²⁸⁵ Now the MENB

²⁸⁶ Ministry of Innovation, Science and Smart Technologies (MIST)

²⁸⁷ Currently Ministry of Housing, Lands and Rural Development (MHLR)

²⁸⁸ Interview with Director of Maritime Affairs

activities other than site-seeing and those expressly prohibited by the Marine Areas (Preservation and Enhancement) (Restricted Areas) Regulations.

3. Operation of Policy

4. Applicable CARICOM Legal Provisions and Institutions

B. SUSTAINABLE MARINE AQUACULTURE

1. Applicable Legislative Provisions

No legislation with direct application to aquaculture was found. There is, therefore, a need for legislation to establish parameters and regulate activities concerning this sector. As the Fisheries Act provides that the Minister may make regulations in this regard,²⁸⁹ regulations may be enacted thereunder.

2. Institutional Role and Responsibility

The institutions with responsibility for operations in this sector would in any event be the MABE given its mandate concerning maritime affairs and ocean-related economic matters. Other ministries would likely be involved in the sector but it cannot be said with any certainty which Ministries or to what extent they would be involved without legislative provisions establishing the requirements and the activities.

3. Operation of Policy

As a matter of policy, aquaculture is promoted and encouraged as a means of diet and income diversification. This policy is guided by the 1995 FAO Code of Conduct for Responsible Fisheries.²⁹⁰

4. Applicable CARICOM Legal Provisions and Institutions

The legal provisions of the CRFM and the CCCCPC provide for state parties to implement measures to the best of their capabilities to enhance the development of fisheries and aquaculture sectors.²⁹¹ The CCCCPC also makes provision for recording licences and authorisations in the aquaculture sector but for the time-being these do not apply to Barbados without the legislative mandate to give effect to such activities.

²⁸⁹ S46(p)(iv) Fisheries Act

²⁹⁰ Page 10, sec. 2.2.1 of the Barbados Fisheries Management Plan 2004-2006

²⁹¹ Art. 10 of the CCCCPC; Art. 5(f) of the CRFM

C. SEAFOOD PROCESSING

1. Applicable Legislative Provisions

Section 25 of the Fisheries Act applies to this sector though to a limited extent from the perspective that the definition of “processing” in that section is narrower than the discussed scope of this sector. In any event, food handling requirements under the Health Services Act Chapter 44 of the laws of Barbados and to some extent the Markets and Slaughterhouses Act Chapter 265 of the laws of Barbados neither of which pertain to ocean governance.

2. Institutional Role and Responsibility

The Ministry of Health would play a role in this sector due to the food handling and processing requirements in this sector and the MABE will also have a stake as the Ministry primarily concerned with maritime affairs and ocean-related economic activities.

3. Applicable CARICOM Legal Provisions and Institutions

Article 6 of the CCCCCP includes production, processing marketing and trading of fishery and aquaculture products as within the scope of the CCCCCP and, accordingly, encourages state parties to implement measures in their national systems to facilitate and regulate the same.

D. COASTAL AND MARINE ENVIRONMENTAL SERVICES

1. Applicable Legislative Provisions

Applicable to this sector are the MPCA, the NCCA, the CZMA, the Fisheries Act and their respective regulations, not necessarily in terms of regulating the sector but in terms of the subject matter of the sector. For the purposes of this sector any number of services may be provided in respect of coastal zone management such as beach beautification, coastal zone and environmental technical and legal services, or participating in projects for conducting marine scientific research. Of course, the provision of these services would be subject to the provisions of these enactments and regulations requiring preservation of the marine environment during the provision of any given service. In addition, as a service-oriented sector the Employment Rights Act 2012 and common law rules on contract have a more direct bearing on this sector than the other trade-oriented sectors.

2. Institutional Role and Responsibility

The institutions with administrative responsibility in this sector are mainly the MABE as principal ministry concerned with maritime affairs and ocean-related economic matters, as well as being an agency that may employ or contract persons in this sector. The MENB is also an applicable institution in this regard, as one that may require the services of person’s

in this sector through the NCC and the EPD. These Ministries also have in their employ, persons who are qualified to provide services of this nature. The Ministry responsible for Labour is also of relevance to this sector with regard to rights and obligations arising from employment contracts.

3. Applicable CARICOM Legal Provisions and Institutions

The University of the West Indies (UWI), a CARICOM institution, through CERMES provides a good example of services rendered in this sector. The faculty members at CERMES are qualified to conduct MSR in marine flora and fauna and do, in fact, offer such services.

E. CROSS-CUTTING GOVERNANCE FRAMEWORKS

Cross-cutting legislative and institutional interactions can be seen across the sector and across the ocean governance landscape of Barbados in general. In the case of environmental preservation and conservation, there are intimate connections between the TCPD which is a part of the MHLR and totally unrelated to ocean governance, and the CZMU which a part of the MABE, yet the closely intertwined nature of their work with regard to physical development is recognised and established by legislation.

Although the CZMU focuses on the physical development aspect of coastal management, this is closely linked to the environmental health and integrity of the coast. Accordingly, removal of parts of the coral reef or pollution killing the reefs affect the physical composition of the coastline. In this regard, the CZMU sometime consults with the NCC in the course of carrying out its work.²⁹² In addition, the CZMA makes provision for the synergy between the two²⁹³ which now reside with separate Ministries.²⁹⁴

Synergies also occur between the CZMU and the EPD where investigations are being carried out into land-based sources of pollution that are affecting the coastal marine environment.

²⁹² See s18 of the CZMA

²⁹³ Ibid

²⁹⁴ CZMU resides with the MABE while the NCC remains at the MENB