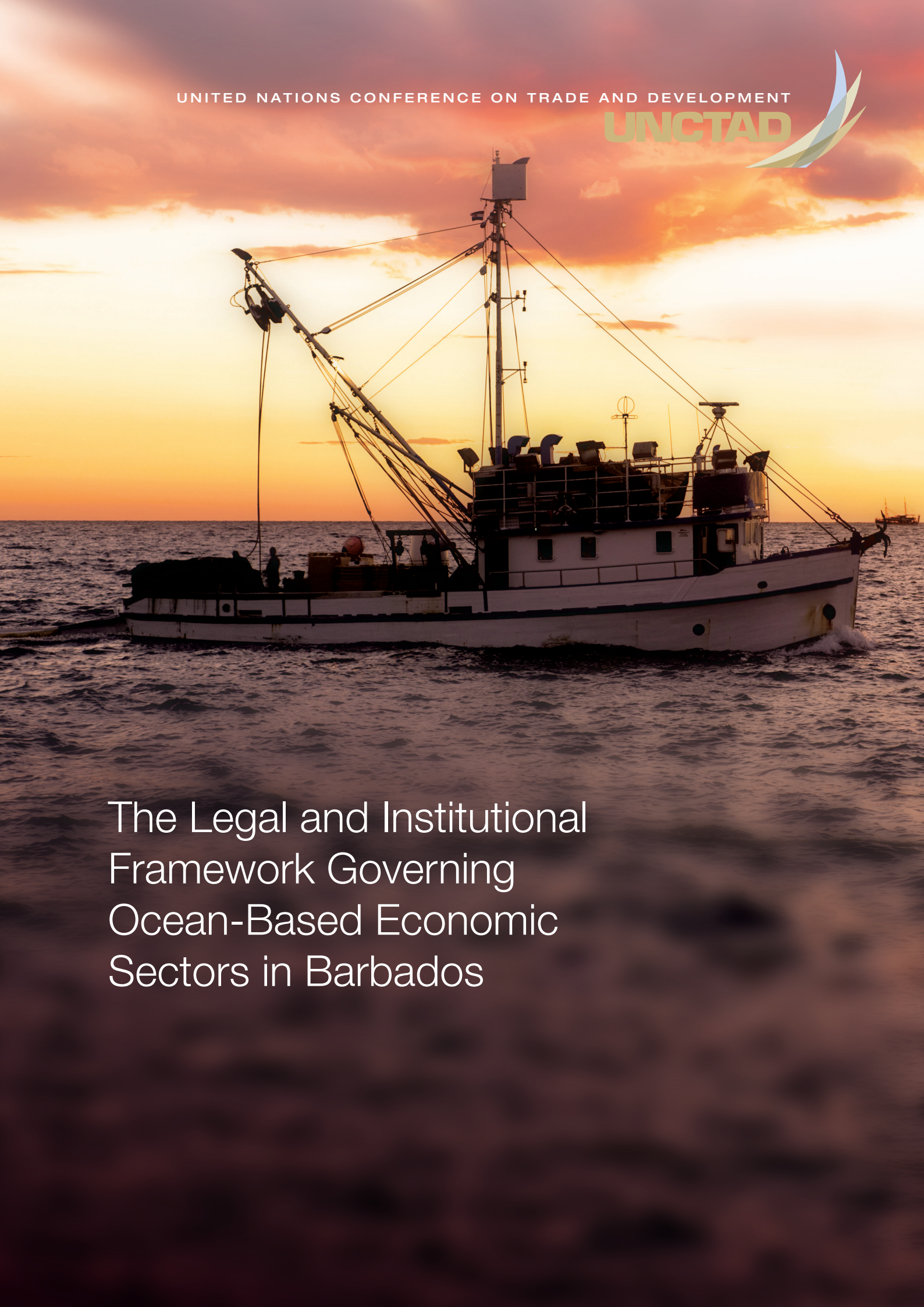


UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

UNCTAD

A large fishing boat is silhouetted against a vibrant sunset sky. The boat has a complex rigging system with multiple masts and ropes. The sun is low on the horizon, creating a warm orange and yellow glow. The sea is dark with some whitecaps. In the distance, another smaller boat is visible on the horizon.

The Legal and Institutional  
Framework Governing  
Ocean-Based Economic  
Sectors in Barbados

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This publication has not been formally edited.

**UNCTAD/DITC/TED/INF/2019/14**

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## Acronyms and abbreviations

BTWA	Barbados Territorial Waters Act
CARICOM	Caribbean Community
CCCFP	Caribbean Community Common Fisheries Policy
CERMES	Centre for Resource Management and Environmental Studies
CLCS	Commission on the Limits of the Continental Shelf
CRFM	Caribbean Regional Fisheries Mechanism
CZI	Coastal Zone Inspector
CZMA	Coastal Zone Management Act
CZMP	Coastal Zone Management Plan
CZMU	Coastal Zone Management Unit
ECS	Extended Continental Shelf
EEZ	Exclusive Economic Zone
EPD	Environmental Protection Department
FAC	Fisheries Advisory Committee
FAO	Food and Agriculture Organization of the United Nations
HSA	Health Services Act
ICCAT	International Commission for the Conservation of Atlantic Tuna
IMO	International Maritime Organisation
IUU fishing	Illegal, unregulated and unreported fishing
MABE	Ministry of Maritime Affairs and the Blue Economy
MARPOL	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
MBJA	Marine Boundaries and Jurisdiction Act
MCO	Marine Conservation Officer
MENB	Ministry of Environment and National Beautification
MPCA	Marine Pollution Control Act
MPCI	Marine Pollution Control Inspector
MSR	Marine Scientific Research
NCC	National Conservation Commission
NCCA	National Conservation Commission Act
OETS	Oceans Economy and Trade Strategy
PDA	Planning and Development Act
PDP	Physical Development Plan
PSMA	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unregulated and Unreported fishing
RFMO	Regional Fisheries Management Organisation
SDG	Sustainable Development Goals
SOLAS	International Convention for the Safety of Life at Sea
SOPA	Shipping Oil Pollution Act
TAC	Total Allowable Catch
TCPA	Town and Country Planning Act
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UWI	University of the West Indies
WECAFC	Western Central Atlantic Fishery Commission
WTO	World Trade Organisation

## INTRODUCTION

The United Nations Convention on the Law of the Sea of 10 December 1982 (hereafter called UNCLOS) 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”.<sup>1</sup>

Other international ocean-related instruments as well as State Parties’ 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, protection and preservation of the marine environment, development of the resources of the Area and sustainable development.

Therefore, at the advent of the 2030 Agenda for Sustainable Development,<sup>2</sup> 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”.<sup>3</sup>

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 selected ocean-based economic sectors. In Barbados the selected ocean-based economic sectors are as follows:

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 in Barbados that are applicable to the sectors, as well as a description of 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.

# 1. UNCLOS AND OTHER OCEANS-RELATED INSTRUMENTS

## 1.1. 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 opened for signature on December 10, 1982 and entered into force on 16 November 1994. The following two implementation agreements were subsequently concluded:

- The *Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea 1982* which was adopted in 1994 and entered into force on 28<sup>th</sup> July 1996; and
- The *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* (United Nations Fish Stocks Agreement) which was adopted in 1995 and entered into force on 11<sup>th</sup> December 2001.

### 1.1.1. The objectives and provisions of UNCLOS

#### 1.1.1.1. Maritime zones and sovereignty, rights and obligations of states

UNCLOS provides for the rights of each coastal State to establish the breadth of its 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 water column (excluding internal and archipelagic waters) comprise the high seas.<sup>4</sup>

Thus, the outer limits of the territorial sea may extend up to 12 nautical miles from the baseline of the coastal State as determined in accordance with UNCLOS;<sup>5</sup> the contiguous zone up to 24 miles from the baselines from which the territorial sea is measured;<sup>6</sup> and the EEZ up to 200 miles 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.<sup>7</sup> UNCLOS further provides that coastal States' sovereignty extends to the territorial sea, the seabed thereunder and the airspace above, while prescribing limited sovereign 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.<sup>8</sup> 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.<sup>9</sup>

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 to 200 miles from the baselines from which the territorial sea is measured.<sup>10</sup> It also provides for the establishment of the outer limit of the continental shelf beyond 200 miles from the baselines from which the territorial sea which shall be determined by a set of formulas but not exceed 350 miles from the baselines or 100 miles from the 2,500 metre isobath.<sup>11</sup> Provision is also made in relation to the rights of the coastal State over the continental shelf,<sup>12</sup> the legal status of superjacent waters and airspace and the rights and freedoms of other States in respect thereof,<sup>13</sup> 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.<sup>14</sup>

Under UNCLOS delimitation of the EEZ and 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.<sup>15</sup> However, pending such agreement States with opposite or adjacent coasts are required to make every effort to enter into provisional arrangements of a practical nature, and during that transitional period, to

refrain from jeopardising or hampering the reaching of a final agreement.<sup>16</sup>

### 1.1.1.2. *Protection and preservation of the marine environment*

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.<sup>17</sup> UNCLOS provides that States shall take, individually or jointly as appropriate, all measures within their capabilities and consistent with the provisions of UNCLOS that are 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.<sup>18</sup> States shall also take measures necessary to prevent, reduce and control pollution resulting from the use of technologies under their jurisdiction or control.<sup>19</sup> UNCLOS also imposes a duty upon states to refrain from transferring damage or hazards from one area to another, or transforming one type of pollution to another.<sup>20</sup>

UNCLOS also makes provision for:

1. Global and regional cooperation either directly or through international organisations to formulate international rules, standards and recommended practices and procedures consistent with UNCLOS to protect and preserve the marine environment;<sup>21</sup>
2. The provision of technical assistance to developing States for the protection and preservation of the marine environment in accordance with UNCLOS;<sup>22</sup>
3. States to take measures to monitor and assess by recognised scientific methods<sup>23</sup> as well as report<sup>24</sup> on the risks or effects of pollution on the marine environment<sup>25</sup> and the risks and potential effects of activities reasonably suspected to result in substantial pollution of or significant and harmful changes to the marine environment;<sup>26</sup> and
4. States to adopt laws, regulations and all other measures necessary to prevent, reduce and control pollution from land-based sources,<sup>27</sup> from seabed activities under national jurisdiction,<sup>28</sup> from activities in the Area undertaken by vessels, installations, structures or other devices under their jurisdiction or control,<sup>29</sup> by way of illegal and unauthorised dumping,<sup>30</sup> from vessels flying their flags or of their registry,<sup>31</sup> and from or through the

atmosphere applicable to their airspace and to vessels flying their flags, or vessels or aircraft of their registry.<sup>32</sup>

### *Enforcement*

Section 6 of UNCLOS sets out enforcement provisions in respect of pollution from land-based sources,<sup>33</sup> from seabed activities,<sup>34</sup> from activities in the Area,<sup>35</sup> by way of dumping<sup>36</sup> and regarding pollution from or through the atmosphere.<sup>37</sup> This section also sets out the respective enforcement obligations of flag,<sup>38</sup> port<sup>39</sup> and coastal<sup>40</sup> States; measures relating to vessel seaworthiness in order to avoid pollution of the marine environment;<sup>41</sup> and measures to avoid pollution arising from maritime casualties.<sup>42</sup> Accordingly, States must enforce national laws and regulations adopted in accordance with articles 207, 208, 210 and Part XII 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.<sup>43</sup>

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 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup>

Safeguards at section 7 of UNCLOS, make further provision for, *inter alia*, (a) the limitation of the exercise of enforcement against foreign vessels;<sup>47</sup> (b) specific measures for facilitating proceedings;<sup>48</sup> (c) the limitation of physical inspections of foreign vessels to documents that the vessel is internationally required to carry,<sup>49</sup> (d) specified conditions for further physical inspection;<sup>50</sup> (e) the limitation of the delay of foreign vessels to no longer than is essential for the purposes of investigation;<sup>51</sup> and (f) the duty of states to avoid causing damage to or endangering vessels or the safety of navigation.<sup>52</sup>

#### *Responsibility and liability*

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.<sup>53</sup> 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 juridical persons under their jurisdiction.<sup>54</sup> To this end, states are obliged to cooperate in the implementation and further development of international law relating to responsibility and liability for the assessment of and compensation for damage, and the settlement of related disputes, as well as development of criteria and procedures for payment of compensation, such as compulsory insurance or compensation funds.

#### *Marine scientific research*

All States and competent international organisations have the right to conduct marine scientific research (MSR) subject to the rights and duties of other States as provided by UNCLOS,<sup>55</sup> and are obligated to promote and facilitate the development and conduct of MSR in accordance with UNCLOS.<sup>56</sup>

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 marine environment.<sup>57</sup> UNCLOS also provides for cooperation among States as well as among States and international organisations in promoting MSR.<sup>58</sup>

Coastal States' rights and duties as they relate to MSR include exclusive rights to regulate, authorise and conduct MSR in the territorial sea<sup>59</sup> 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.<sup>60</sup> MSR may only be conducted in these maritime zones with the consent of the coastal State.<sup>61</sup>

In ordinary circumstances, coastal states shall grant consent for MSR projects of other States or of international organisations in the EEZ and on the continental shelf 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.<sup>62</sup> Thus coastal states are obligated to establish rules and procedures ensuring the prompt provision of consent and prohibiting unreasonable denial thereof.<sup>63</sup> This rule is, however, subject to exceptions where the coastal state in its discretion may withhold consent if the proposed project except in relation to the extended continental shelf (ECS),<sup>64</sup> (a) 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.

#### **1.1.2. Fisheries**

UNCLOS contains detailed provisions on the conservation and management of living resources in areas within<sup>65</sup> and beyond<sup>66</sup> national jurisdiction.

The Straddling Fish Stocks Agreement also 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. Notably, the Straddling Fish Stocks Agreement elaborates on the obligation in UNCLOS to cooperate in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organisations or arrangements.

Barbados is a member of a number of such regional fisheries management organisations including the Western Central Atlantic Fishery Commission (WECAFC) and the International Commission for the Conservation of Atlantic Tunas. Barbados is also a contracting party to the International Convention for the Conservation of Atlantic Tuna, which will be discussed in more detail below.

### **1.1.3. Institutions and mechanisms established by UNCLOS**

Institutions and mechanisms established by UNCLOS are largely seen in the annexes<sup>67</sup> to UNCLOS. The Commission on the Limits of the Continental Shelf (CLCS) 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) deals 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.

### **1.1.4. Barbados' participation in UNCLOS**

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 November 15, 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 July 28, 1995. On September 22, 2000, Barbados acceded to the Straddling Fish Stocks Agreement.

## **1.2. Other ocean governance institutions and instruments**

### **1.2.1. Other ocean governance institutions and instruments to which Barbados is party**

There are a number of international and regional organisations with significant maritime and other marine-related mandates to which Barbados is party.

#### **1.2.1.1. International Maritime Organisation (IMO)**

The 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.<sup>68</sup>

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).<sup>69</sup>

#### **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.<sup>70</sup>

### *MARPOL*

MARPOL<sup>71</sup> 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.<sup>72</sup>

#### *1.2.1.2. Food and Agriculture Organisation (FAO)*

The relevant instruments of the FAO are (1) the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the Compliance Agreement), (2) the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unregulated and Unreported Fishing (PSMA), and (3) the 1995 FAO Code of Conduct for Responsible Fisheries.

#### *The Compliance Agreement*

The Compliance Agreement,<sup>73</sup> of which Barbados has been a party (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.

### *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.<sup>74</sup> 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.

### *FAO Code of Conduct*

The 1995 FAO Code of Conduct for Responsible Fisheries (hereafter called the "Code") is a voluntary instrument adopted in Resolution 4/95 by the FAO Conference on October 31, 1995. Nonetheless, it is intended for it to be implemented holistically by governments and stakeholders involved in fisheries and aquaculture at the national, sub-regional and regional levels. 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.<sup>75</sup>

#### *1.2.1.3. International Commission for the Conservation of Atlantic Tuna (ICCAT)*

ICCAT is an international organisation established by the International Convention for the Conservation of Atlantic Tuna ("ICCAT Convention") for the management of Atlantic tuna stocks. ICCAT comprises up to three delegates from each State Party to the ICCAT Convention accompanied by any experts and advisors brought to lend assistance,<sup>76</sup> and is responsible for, *inter alia*, studying the populations of tuna and tuna-like fishes,<sup>77</sup> as well as making scientific and evidence-based recommendations for the purpose of maintaining tuna and tuna-like stocks in the Convention Area<sup>78</sup> at levels that will maintain the maximum sustainable catch.<sup>79</sup> Recommendations in this regard become binding on non-objecting States subject to certain "opt-out" procedures laid out at article VIII (2)-(5) of the Convention, unless a majority of State Parties object in which case the recommendations will not enter into effect at all.<sup>80</sup> The ICCAT Convention also provides for State Parties to provide biological and other statistical data that the Commission may need for the purposes of the ICCAT Convention whether through official agencies, or directly through or from companies or individual fisherfolk.<sup>81</sup>

State Parties also agree to collaborate with regard to the adoption of suitable measures domestically to ensure enforcement of the Convention and in particular to establish an international enforcement system applicable to the Convention Area with the exception of the territorial seas and other areas where States are entitled to exercise national jurisdiction under international law.<sup>82</sup>

In the case of tuna and related species, most of the landing in Barbados is related to yellowfin tuna while recently there have been some increases of skipjack landings<sup>83</sup>. For managing the resource ICCAT has set a total allowable catch (TAC) of 110,000 per year which was set in 2016 through ICCAT Recommendation 06-01 (2016)<sup>84</sup> and continues through Rec. 18-01 (2018)<sup>85</sup>. ICCAT has not yet set any individual country quotas for yellowfin tuna. If the total catch exceeds the TAC for yellowfin tuna, the Commission shall review the relevant conservation and management measures in place. Barbados has not set so far any catch quotas or fishing capacity limits for tuna species<sup>86</sup>.

A working relationship with the FAO is also provided for and the FAO is entitled to be represented at all Commission meetings, without voting status, pursuant to article 2 of the Agreement between the Food and Agriculture Organisation of the United Nations and the International Commission for the Conservation of Atlantic Tunas (the "FAO/ICCAT Agreement").

The ICCAT Convention also provides for cooperation between the Commission and other fisheries commissions and scientific organisations that contribute to the work of the Commission.<sup>87</sup>

As a member of ICCAT Barbados does not only gain access to the Atlantic tuna resource but also benefits from readily available scientific information and data.

#### 1.2.1.4. Caribbean Community (CARICOM)

Barbados is also a member of CARICOM which is governed by the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the Single Market and Economy ("The Revised Treaty"),<sup>88</sup> whereby state parties deepened community cooperation<sup>89</sup> and widened it to include more States.<sup>90</sup> 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 organs<sup>91</sup> of CARICOM. A number of shared institutions 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 (UWI) 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.

#### 1.2.1.5. 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.<sup>92</sup> The CRFM is an intergovernmental organisation comprising CARICOM and other Caribbean States,<sup>93</sup> 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. The CRFM is not a regional fisheries management organisation (RFMO) but a mechanism within CARICOM for state parties to manage fisheries in their respective jurisdictions.

The CRFM also developed the Caribbean Community Common Fisheries Policy (CCCFP), a treaty<sup>94</sup> which is binding on CARICOM state parties by virtue of having been confirmed as a final policy document for the Community<sup>95</sup> by the Council for Trade and Economic Development (COTED).<sup>96</sup> The policy speaks to:

1. biodiversity protection in the regional marine environment;
2. increased regional food and nutrition security;
3. (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.<sup>97</sup>

Where the policy emanating from the CCCFP is not embodied in national legislation, the institutional administrators of the respective aspects thereof<sup>98</sup> ensure Barbados' compliance as far as practicable as a matter of policy.

## 12. OCEANS GOVERNANCE IN BARBADOS

### 12.1. Sovereignty and maritime zones

#### 12.1.1. 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 EEZ 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 Atlantic on its eastern side. There are also potential continental shelf boundaries to be agreed with Suriname and Guyana. With a population of approximately 280,000,<sup>99</sup> Barbados is very densely populated and has been ranked the fourth most densely populated country in the Americas.<sup>100</sup>

#### 12.1.2. Barbados' Delimited Maritime Boundaries

As stated above, Barbados shares maritime boundaries in the EEZ 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. 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.<sup>101</sup> 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.<sup>102</sup>

Barbados also has extended continental shelf overlaps with France in the north, Suriname in the south and potentially with Guyana in the south.<sup>103</sup> Whereas Barbados has delineated its northern continental shelf boundary with France since 2009 its potential boundaries with Suriname and Guyana in the south remain to be 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.<sup>104</sup>

#### 12.1.3. 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.<sup>105</sup> However, the limits of Barbados' continental shelf have not been established through national legislation to date.

##### 12.1.3.1. Territorial sea

Through the *Barbados Territorial Waters Act Chapter 386 (BTWA)*, Barbados has established the limits of its territorial sea at 12M from its baselines. The BTWA also provides for the right of innocent passage of foreign ships<sup>106</sup> subject to the flag states of foreign warships first seeking permission from the competent national authority<sup>107</sup> before passage may be given to such warships.<sup>108</sup> The BTWA also sets out activities that are non-innocent or "prejudicial to the peace, good order or security of Barbados" and thereby compromising the right of passage through territorial waters.<sup>109</sup> In this regard, the Act mirrors the provisions of UNCLOS to a very substantial extent but there are differences worth noting.<sup>110</sup> 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 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).

Enforcement provisions in respect of section 7(1)(a)–(h) are also included at section 8 of the BTWA<sup>111</sup> authorising a member of the Police Force or other authorised person<sup>112</sup> 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.<sup>113</sup>

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 law<sup>114</sup> in this regard.

### 12.1.3.2. Exclusive Economic Zone

Barbados' EEZ, pursuant to the provisions of UNCLOS,<sup>115</sup> is established by the *Marine Boundaries and Jurisdiction Act, Chapter 387* of the laws of Barbados (MBJA). This Act 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,<sup>116</sup> with its inner limit being the seaward limit of the territorial sea.<sup>117</sup> 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 concerned<sup>118</sup> but is, in the absence of such agreement, considered by Barbados to be the median line between the baselines of the two states.<sup>119</sup> This differs somewhat from the provisions of Article 74<sup>120</sup> of UNCLOS which does not expressly establish the median line as a default delimitation line in the absence of agreement.<sup>121</sup> Nonetheless, as stated above<sup>122</sup> all of Barbados' EEZ boundaries have now been fixed by agreement or by arbitral tribunal decision.

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

1. The exploration, exploitation, conservation, protection or management of the natural living and non-living resources of the seabed, subsoil and superjacent waters;
2. 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;
3. The authorisation, regulation or control of scientific research;
4. The preservation and protection of the marine environment and the prevention and control of marine pollution;
5. All other activities relating to the economic

- exploration and exploitation of the EEZ; and
6. All other rights in and jurisdiction over the EEZ recognised by international law.<sup>123</sup>

These provisions are generally aligned with the provisions of Article 56 of UNCLOS. 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) 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.<sup>124</sup> These provisions do not apply to fishing carried out by Barbadian citizens in and from Barbadian vessels.<sup>125</sup> Section 6(3) sets out the penalties for contravention of section 6(1).

The MBJA:

1. Recognises the rights of freedom of navigation, overflight, the laying of cables and pipelines and other lawful activities related to navigation;<sup>126</sup>
2. Provides for the drawing and safe custody of maps and charts showing the boundary;
3. Provides for the jurisdiction of the Courts and establishes offences under the Act;
4. Designates marine conservation officers to enforce the provisions of this Act and prescribes their powers and duties;<sup>127</sup> and
5. Provides for the making of regulations under the Act, though there are no regulations under this Act to date.

### 12.1.3.3. The continental shelf

Pursuant to Part VI of UNCLOS, Barbados has claimed an extended continental shelf beyond 200 miles having made submissions to the CLCS 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 miles from Barbados' baselines.

#### 12.1.3.4. High seas

No legislation is 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. Section 321 states that notwithstanding the provisions of any other enactment, any person who commits an offence on board a "Barbadian ship"<sup>128</sup> 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.<sup>129</sup> 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"<sup>130</sup> and over all persons on board that vessel or for the time being belonging thereto.<sup>131</sup>

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.<sup>132</sup> 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.<sup>133</sup>

Notably, 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.<sup>134</sup>

### 12.1.4. Maritime enforcement in Barbados' maritime zones

#### 12.1.4.1. 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 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 (MPCIs) under the Marine Pollution Control Act Chapter 392A of the laws of Barbados (MPCA),<sup>135</sup> or (2) coastal zone inspectors (CZIs) under the Coastal Zone Management Act Chapter 394 of the laws of Barbados (CZMA).<sup>136</sup> The following is a discussion of the powers of such officers to carry out law enforcement activities within and relevant to Barbados' maritime zones.

#### 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*<sup>137</sup> 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 privileges<sup>138</sup> as conferred upon the Police Force.<sup>139</sup> 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.<sup>140</sup> 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) MBJA, (ii) BTWA, (iii) Shipping Act, (v) Fishing Industry (Safety) Regulations 1966,



and (v) Barbados Harbours Regulations, 1961, among others, as well as applicable fisheries legislation.<sup>141</sup> Corresponding provision for enforcement also exists in these enactments and regulations.<sup>142</sup>

In this regard, as it relates to the BTWA, the Defence Act empowers the Coast Guard to enforce section 7(1) of the BTWA<sup>143</sup> 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 Chapter 391 of the Laws of Barbados<sup>144</sup> empowers “authorised persons”<sup>145</sup> to enforce its provisions<sup>146</sup> and defines authorised persons to include members of the Defence Force serving as Coast Guard officers.<sup>147</sup>

#### *Marine Conservation Officers (MCOs)*

Marine Conservation Officers (MCOs) 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.<sup>148</sup> 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.<sup>149</sup> 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, causing all detained persons within a reasonable time to appear before a Magistrate in Barbados.<sup>150</sup>

#### *MPCIs and CZIs*

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)<sup>151</sup> and MPCIs within the EPD are given, in addition to their ordinary powers,<sup>152</sup> powers of police officers when carrying out their enforcement functions under

this Act, while police officers have, in addition to their ordinary duties and 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, CZIs and police officers<sup>153</sup> have the power of arrest, search and seizure in matters where items have been unlawfully removed from restricted areas.

In both cases (MPCIs and CZIs), the police powers conferred have not been used as MPCIs and CZIs are not currently trained with regard to police procedure and acting in the capacity of a police officer. Accordingly, while MPCIs and CZIs conduct inspections, make recommendations and, in some cases, give orders to those they inspect, police are ordinarily called in to address criminal or suspected criminal activity or to carry out arrests necessitated in the course of the MPCIs or CZIs duties.

#### *Customs officers*

Customs officers have also all the powers, authority and privileges of police officers 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.

### **12.1.5. Enforcement in the maritime zones**

In relation to the various aspects of law enforcement in the maritime zones a number of 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 on the Coast Guard by the Defence Act,<sup>154</sup> 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.<sup>155</sup> CZIs are also limited to acting within the limits of Barbados’ territorial sea.<sup>156</sup>

Customs officers, though limited to ports of entry<sup>157</sup> in the exercise of their powers under the Customs Act,

may exercise powers further afield in the territorial sea and in the EEZ as conferred by the MBJA<sup>158</sup> and the Fisheries Act<sup>159</sup> for the purposes and subject to the provisions of these enactments.

### 12.1.6. 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 including Coast Guard and legal affairs in general; the Ministries of Maritime Affairs and the Blue Economy (MABE) and Environment and National Beautification (MENB)<sup>160</sup> with regard to the MCOs, MPCIs, CZIs 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.<sup>161</sup> In this regard, the Minister of Foreign Affairs and Foreign Trade has the power, or is required, as the case may be, to:

- a. Make orders:<sup>162</sup>
  - ◇ 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,<sup>163</sup> and
  - ◇ Prescribing distances measured from the baselines other than 12M and 200M in relation to the territorial sea and the EEZ respectively;<sup>164</sup>
- b. 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 chart<sup>165</sup> 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;<sup>166</sup>
- c. Cause the boundary lines of the EEZ to be marked on a scaled map or chart,<sup>167</sup> 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;<sup>168</sup>
- d. 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;<sup>169</sup>
- e. 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 BTWA<sup>170</sup> in the event that a ship is reasonably suspected to have acted prejudicially in Barbados' territorial waters;

- f. Pursue redress under international law pursuant to section 9 of the BTWA<sup>171</sup> 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
- g. Make regulations as prescribed by the BTWA.<sup>172</sup>

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 12 miles and 200 miles 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, which represents and negotiates the interests of Barbados before multilateral trade institutions namely the World Trade Organisation (WTO) and the United Nations Conference on Trade and Development (UNCTAD) 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.<sup>173</sup>

## 12.2. Protection and preservation of the marine environment

### 12.2.1. National institutional and policy framework

The main institutions with responsibility for the application and execution of these enactments and regulations relating to the protection and preservation of the marine environment are (1) the MENB, and (2) the 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,<sup>174</sup> 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 first in the Ministry of Health and the Environment and subsequently, in the Ministry of Physical Development and Environment. These policy documents are:

- The Environmental and Natural Resources Management Plan – Barbados Ministry of Health and the Environment, November 1998 (ENRM);<sup>175</sup>
- 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);<sup>176</sup>
- 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.<sup>177</sup> 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 in the ENRM as pending draft legislation. However, it was also anticipated in the ENRM that a new Environmental Management Act and a Waste Management Act along with other legislation would be prepared and enacted.<sup>178</sup> According to the ENRM, the (draft) Environmental Management Act would have subsumed the CZMA and the MPCA<sup>179</sup>. 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)<sup>180</sup> 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,<sup>181</sup> the ENRM should be processed for full consultation and approval.<sup>182</sup>

While the NBSA acknowledges the absence of a comprehensive policy on biodiversity management<sup>183</sup> as well as a lack of legislation directly addressing biodiversity protection and management,<sup>184</sup> 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.<sup>185</sup>

#### 12.2.1.1. Ministry of Environment and National Beautification (MENB)

##### *The Environmental Protection Department (EPD)*

The EPD has evolved over the years. Its current iteration comes out of the recommendations of the ISR<sup>186</sup> 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 (HSA) 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.<sup>187</sup> The EPD is also mandated to carry out enforcement measures under the MPCA.<sup>188</sup>

### *12.2.1.2. 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.

#### *Coastal Zone Management Unit (CZMU)*

The Coastal Zone Management Unit (CZMU)<sup>189</sup> derives a direct mandate from the *Coastal Zone Management Act Cap. 394* with regard to its execution and enforcement of the draft coastal zone management plan (CZMP)<sup>190</sup> for the preservation of the Barbados coastline. Despite being a stand-alone division and deriving its mandate from coastal zone legislation, the CZMU is, 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 Planning and Development Act 2019 (PDA) which repealed and replaced the TCPA. While Town Planning is responsible for zoning and issuing approval to develop or otherwise use land in accordance with the Physical Development Plan (PDP),<sup>191</sup> 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.<sup>192</sup>

#### *Draft Coastal Zone Management Plan (CZMP)*

The CZMP comprises three documents entitled as follows:

- Integrated Coastal Management: The Barbados Policy Framework
- Integrated Coastal Management Plan for the South-east, East and North-west Coasts of Barbados – The Atlantic Coast, November 1998; and
- Integrated Coastal Management Plan for the West and South Coasts of Barbados – The Caribbean Coast, January 1999.<sup>193</sup>

The CZMP, although provided for in the CZMA,<sup>194</sup> 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.<sup>195</sup> 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,<sup>196</sup> and consequently so is the CZMA. It will, therefore, take some time before the final plan is approved and the legislation amended and updated.

#### *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.<sup>197</sup> 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.<sup>198</sup> The NCC operates pursuant to provisions of both the NCCA and the CZMA.<sup>199</sup>

The NCC also advises the Minister<sup>200</sup> on matters concerning construction of recreational facilities or other construction in public parks, beaches, public gardens; the removal of coral from the seabed<sup>201</sup> or of any other thing that might lead to greater sea encroachment on the beaches; generally, on sites, buildings and monuments of national interest;<sup>202</sup> 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.<sup>203</sup>

### 12.2.2. National legislative 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 Part XII,<sup>204</sup> which sets out general rights and obligations of States in protecting and preserving the marine environment. Part XII also makes provision for, *inter alia*:

- global and regional cooperation among states in protecting the marine environment,<sup>205</sup>
- lending of scientific and technical assistance to developing states directly or through competent international organisations,<sup>206</sup>
- monitoring and environmental assessment of the risks or effects of pollution,<sup>207</sup>
- international rules and national legislation to prevent, reduce and control pollution of the marine environment<sup>208</sup> as well as their enforcement by States,<sup>209</sup> and
- safeguards with regard to the implementation and enforcement of international rules and national legislation to prevent, reduce and control marine pollution.<sup>210</sup>

Elements of these various sections of Part XII can be seen in Barbados' *Marine Pollution Control Act*, *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.

#### 12.2.2.1. 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, and therefore, already in its citation the MPCA uses the language of UNCLOS, Part XII, section 5. In addition, it should be noted when considering the provisions of this Act that the word 'environment' means "the land, water and airspace of Barbados and its territorial waters" while the word 'pollution' means "the release of any pollutant into the environment of Barbados in prohibited concentration levels".<sup>211</sup>

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<sup>212</sup> of the "Environmental Engineering Division"<sup>213</sup> 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 airborne sources affecting the environment generally as well as such premises as the Director deems necessary.<sup>214</sup>

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 pollutant<sup>215</sup> and to develop and implement with the approval of the Minister,<sup>216</sup> 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.<sup>217</sup>

#### *Enforcement and liability for marine pollution*

Overall the MPCA is enforcement oriented, providing also for the designation of MPCIs 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.<sup>218</sup> 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.<sup>219</sup>

The Director is charged with the responsibility of enforcing all the provisions of the MPCA<sup>220</sup> 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.<sup>221</sup> 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 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 search<sup>222</sup> in respect of any place (except a dwelling-house)<sup>223</sup> 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.<sup>224</sup>

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.

#### 12.2.2.2. 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. The former TCPA<sup>225</sup> also made references to provisions of the CZMA given their connectivity with

regard to planning and physical development. In this regard, references are made to matters of coastal zone management and/ or the CZMP at sections 3, 15, 17 and 80(A).<sup>226</sup> The PDA, now repealing and replacing the TCPA,<sup>227</sup> 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,<sup>228</sup> and the provisions concerning an appeals tribunal have been revised.<sup>229</sup>

The content of the CZMP is specified by the CZMA to contain management and conservation policies, strategies and standards in terms of but not limited to the following:<sup>230</sup>

1. The development and maintenance of structures in the coastal zone management area;
2. Water quality in coastal and marine areas to effect the maintenance, rehabilitation and enhancement of coastal and marine habitats;
3. Provisions for public access through and to the beach and other natural areas of the coastal zone;
4. 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;
5. The management of underwater parks and restricted areas; and
6. 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.<sup>231</sup> However, no such tribunal had been constituted as no regulations were issued under the CZMA and, therefore, constituting provisions were never instituted. 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.<sup>232</sup> 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. The new PDA also makes 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.

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.<sup>233</sup>

#### *Enforcement and liability for coastal zone management*

The Act also establishes the power of arrest, search and seizure possessed by CZIs or police officers in matters where items have been unlawfully removed from restricted areas.<sup>234</sup> However, in practice CZIs do not utilise these powers as law enforcement training is not provided for these purposes. Therefore, this aspect of enforcement is ordinarily referred to the police.<sup>235</sup> Under this Act the Minister may also make regulations concerning restricted areas, and the NCC<sup>236</sup> 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.<sup>237</sup>

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.<sup>238</sup> 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.<sup>239</sup>

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.

#### *Regulations*

Falling under the umbrella of the CZMA are also

the Marine Areas (Preservation and Enhancement) (Designation of Restricted Areas) Order 1981<sup>240</sup> and the Marine Areas (Preservation and Enhancement) (Restricted Areas) Regulations 1981 both of which were originally made under the Marine Areas (Preservation and Enhancement) Act Chapter 392 of the Laws of Barbados and preserved when the said Act was repealed and replaced by the CZMA.<sup>241</sup> They, therefore, continue to have the force of law. A number of *Beach Protection Orders*<sup>242</sup> were also preserved under the CZMA upon its repeal of the Beach Protection Act,<sup>243</sup> the former principal Act of the said Beach Protection Orders.

#### *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 zones<sup>244</sup> and some 17 destructive acts and activities<sup>245</sup> conducted within the zones or the Reserve are established as offences punishable by fine and/or imprisonment upon summary conviction.<sup>246</sup>

Activities not being any of these prohibited acts, may be conducted subject to restrictions and conditions that may be imposed by the NCC.<sup>247</sup> 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.<sup>248</sup>

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.<sup>249</sup> No permit is required for the conduct of any activity necessary for the protection of life, property or the environment.<sup>250</sup>

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.<sup>251</sup>

#### *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.<sup>252</sup>

#### 12.2.2.3. 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.<sup>253</sup> 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 CZMA<sup>254</sup> and provides for the conservation of sites and buildings of national interest. In the exercise of its functions<sup>255</sup> the NCC must have regard to the CZMP (referred to in the CZMA).<sup>256</sup> The Act also elaborates the licensing process and regulations with regard to vending in public parks, public gardens and beaches.<sup>257</sup> The NCCA also establishes offences and prescribes penalties for contravention of its provisions.<sup>258</sup>

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. Other than having some minor pertinence to the marine and environmental services sector, NCCA regulations do not significantly impact or relate to the identified sectors.

#### 12.2.2.4. 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 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.<sup>259</sup>

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 below<sup>260</sup> 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 environment. It is however, also important to recall that Barbados has duties as a flag state with respect to vessels that operate 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,<sup>261</sup> 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.<sup>262</sup> 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 to ensure the functioning and integrity of equipment to minimise the risk of leaks and breaches that release pollutants into the marine environment. Such provisions are as aforementioned provided for by the Shipping Act including in relation to small commercial vessels.

The Shipping (Oil Pollution) Act Chapter 296A of the



laws of Barbados (SOPA) according to its long title is “an Act to make provision concerning oil pollution of navigable waters by ships, to provide for civil liability for oil pollution by ships and to give effect to certain international conventions relating to pollution at sea”. Notably, this Act provides for, *inter alia*, the exercise of flag state jurisdiction in the prevention of oil pollution at sea. In this regard, masters and owners of Barbadian ships<sup>263</sup> are prohibited from discharging oil<sup>264</sup> or a mixture<sup>265</sup> into any part of the sea outside the territorial sea.<sup>266</sup> Breach of this provision is punishable on summary conviction by a fine of \$240,000.

An offence is also committed and the same penalty applied where oil is discharged in any part of the sea from a pipeline or (other than from a ship) as a result of any operation for exploration of the seabed and subsoil or the exploitation of natural resources in a designated area,<sup>267</sup> unless the owner of the pipeline or person carrying on operations can prove that the discharge was from a place in his or her occupation and that it was due to the act of a person who was there without express or implied permission.

Ultimately, an integrated approach has been taken in respect of coastal conservation and preservation particularly in relation to the development aspects, prevention of pollution and managing public use and access. The three main institutional stakeholders – 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 and other sources<sup>268</sup> of marine pollution – consult and in some instances work together in this regard. A common thread through the legislation discussed above is the draft CZMP to which the established institutions or Ministers with responsibility for the administration of the respective enactments are required to give consideration. The draft CZMP itself takes an integrated approach to coastal zone management.

## 12.3. Fisheries and aquaculture

### 12.3.1. National institutional and policy 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 established under the Fisheries Act remain intact, as do the processes and procedures elaborated by the Act.<sup>269</sup> In accordance

with the Fisheries Act the CFO<sup>270</sup> is responsible primarily for the management and development of fisheries in Barbados and for the administration of the Fisheries Act.<sup>271</sup> 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.<sup>272</sup> The Act also provides for the formation of a Fisheries Advisory Committee (FAC) 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.<sup>273</sup> The Committee must comprise (1) the CFO or his or her 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.<sup>274</sup>

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.<sup>275</sup> The Division has produced also the Barbados Fisheries Sector Management and Development Policy (FMDP) 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.<sup>276</sup> In this regard, the stated purpose of the FMDP is, essentially, to set standards and guidelines for acceptable conduct in the exploitation, management and handling of fisheries resources, as well as the development of the fishing sector with a view to generating sustainable nutrition and food security, and economic benefits for those involved in fisheries.

The guiding principles for achieving the purpose of the FMDP are:

- Applying the principles of regional and international instruments;<sup>277</sup>
  - ◊ Applying the principles of good governance;<sup>278</sup>
- Taking appropriate action to protect and where necessary rehabilitate habitats to provide fish with healthy places to live, feed and reproduce;
- Making effective management decisions by involving

stakeholders, using best available information and taking into account, *inter alia*, biological, social, economic and environmental considerations; the status of fishery resources and habitats; and the long-term sustainability of resources;

- Applying the precautionary approach to fisheries management;
- Collaborating and cooperating with other individuals, groups, institutions, sectors, international organisations and states;
- Complying with quality assured standards, namely under agreed<sup>279</sup> sanitary and phytosanitary conditions, and minimum fish safety and quality assurance standards;<sup>280</sup>
- Effective data sharing and consulting among stakeholders; and
- Monitoring fishing activities by, *inter alia*, registering and licensing all fishers and local fishing vessels, compiling data, and controlling, surveilling and tracking fishing activities, fishing capacity and compliance with agreed vessel and seafood safety standards and operational procedures.

Strategies and policy with regard to legislative reform, infrastructural development, resource sustainability and livelihood sustainability of fisherfolk include:<sup>281</sup>

- Upgrade of local fisheries legislation and policy to reflect Barbados' obligations under regional and international instruments;
- Provision, upgrade and/ or maintenance of landing and boatyard facilities;
- Adoption of good governance procedures and implementation of charge fees to develop and manage effective and functional operation procedures;
- Development and implementation of an individual fishery management plan (IFMP) providing for sustainable use of the fish resource and healthy ecosystem;
- Adoption of cost-effective data collection procedures to provide data and information required for decision-making in a timely manner;
- Adoption, implementation and enforcement of measures preventing, deterring and eliminating illegal, unregulated and unreported (IUU) fishing in Barbadian waters and on the high seas by local and foreign vessels;
- Development and implementation of strategies providing for, *inter alia*, safe working conditions for fisheries workers and for protection and sustainability of fishery assets and resources;
- Enhancement and development of skills, knowledge

and abilities of fisheries workers through training, education and formal certification/ accreditation in critical areas of the fisheries sector;

- Assistance and support of marketing and distribution initiatives;
- Fostering an environment in which microfinancing opportunities and programmes specifically tailored to the needs and circumstances of fisherfolk is provided; and
- The generation and marketing of value-added fish products.

As a matter of policy, international standards and protocols that may not be legislatively implemented, 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 FMDP, which includes UNCLOS, the Compliance Agreement, the Fish Stocks Agreement, the FAO Ecosystem Approach to Management, the CCCFP, and the FAO Code of Conduct for Responsible Fisheries.

### **12.3.2. National legislative framework**

#### **12.3.2.1. Fisheries legislation**

In Barbados, there is a regulatory and management framework within which the existing fisheries industry operates under the Fisheries Act Chapter 391 and related regulations. 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.<sup>282</sup> More specifically, the Act gives officers stop, board and search powers over foreign vessels in the territorial sea and EEZ and over Barbadian vessels anywhere in the sea in order to enforce licensing, registration, fishing and gear standards and other provisions.<sup>283</sup> The Act also establishes Barbados' ability to enter into fisheries access agreements with other States;<sup>284</sup> 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.<sup>285</sup>

Licensing under this Act mainly comprises licensing for: (1) Local fishing vessels to be used for fishing or related activities;<sup>286</sup> (2) vessels to be engaged in sport fishing;<sup>287</sup> (3) persons seeking to engage in commercial fishing;<sup>288</sup> (4) foreign vessels to be used for fishing or related activities in the territorial sea and EEZ of Barbados.<sup>289</sup> 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.<sup>290</sup> While applications for foreign vessel fishing licences are made to the Minister,<sup>291</sup> 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.<sup>292</sup> 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.<sup>293</sup> 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.<sup>294</sup>

It is also mandated that persons or institutions other than approved local research institutions<sup>295</sup> may not undertake fisheries-related research or survey operations in Barbados waters<sup>296</sup> 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.<sup>297</sup>

#### *Enforcement and liability for fisheries*

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;<sup>298</sup> (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;<sup>299</sup> (3) fishing in Barbados waters without the requisite licencing and/ or permits and certificate of inspection;<sup>300</sup> (4) failure to give appropriate notice of change of ownership of a vessel to the CFO;<sup>301</sup> 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.<sup>302</sup> Authorised officers may without a warrant stop, board and search any foreign vessel in Barbados waters<sup>303</sup> 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.<sup>304</sup> 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.<sup>305</sup>

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.<sup>306</sup>

#### *Regulations*

The current regulations under this Act are the Fisheries (Management) Regulations 1998 which provide for the protection of certain species of fisheries and regulate certain methods of fishing.<sup>307</sup> The Fisheries (Management) Regulations 1998 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 the Fisheries Act and introduce additional regulations under fisheries legislation in order to satisfy European Union and other markets concerning, *inter alia*, vessel, inspections, catch certificates, and sanitary and phytosanitary standards to gain access to these markets and in an effort to tackle IUU fishing. 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.<sup>308</sup>

#### *Provisions concerning tuna and swordfish*

Provisions specifically addressing tuna are contained only in the Fisheries Management Regulations which provides at section 12 that, “no person shall land a yellowfin tuna or a bigeye tuna less than 3.2kg live weight”. Apart from this provision there is no legislation addressing tuna fish specifically and there is no legislation addressing swordfish or swordfish catches.<sup>309</sup> There is mention in the 2004 BFMP of factual information on swordfish and tuna fish catch sizes and so forth but no mention of policy or legislation concerning these fish or management of these fish stocks.

## 12.4. Shipping

### 12.4.1. 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.<sup>310</sup>

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.<sup>311</sup> 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 always 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.<sup>312</sup> 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.<sup>313</sup>

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.<sup>314</sup> 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.

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 the Ministry responsible for matters of Environment,<sup>315</sup> the CZMU, EPD, law enforcement namely, the Police and the Coast Guard, the Ministry of Foreign Affairs and Foreign Trade, the Telecommunications Unit<sup>316</sup>

(which issues radio licences), Office of the Attorney General, Ministry responsible for Labour, Fisheries and the Ministry responsible for Housing.<sup>317</sup> 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.<sup>318</sup>

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.

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## 13. GOVERNANCE FRAMEWORKS APPLICABLE TO SELECTED ECONOMIC SECTORS

### 13.1. Sustainable marine fisheries

#### 13.1.1. *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, nor are their fishing and harvesting activities regulated in this maritime zone. Where Atlantic tuna species are concerned, the absence of regulation of Barbados flagged vessels on the high seas and on the capture of Atlantic tuna in particular can have implications with regard to ICCAT compliance.

#### 13.1.2. *Institutional role and responsibility*

The current Fisheries policy, Fisheries Act and regulations, including the new draft regulations, are under review for the purpose of revising and updating the entire legal framework governing the sector. Therefore, there is an opportunity in this process to introduce legal provisions addressing the management of fish stocks, high seas fisheries and other provisions of import that may not be fully addressed in the current legal framework. At the date of this study, the specific amendments to policy and to the fisheries Act could not be ascertained given the very early stage of the review.<sup>319</sup>

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

The Fisheries Division is also interactive with fisherfolk in the sector through their non-governmental organisation, the Barbados National Union of Fisherfolk Organisations (BARNUFO) the office of which is situated in the Fisheries Division itself. BARNUFO is not a trade union but a federation of fisherfolk organisations, with its major objective being to meet the needs of its members for the improvement of their socio-economic conditions based on the sustainable development of fisheries.<sup>320</sup>

#### 13.1.3. *Operation of policy*

From an institutional perspective, policy is very often set to fill legislative gaps where the national incorporation of international rules and standards are concerned. Until the requirements of bodies and conventions such as ICCAT, CARICOM, FAO Compliance Agreement, the United Nations Fish Stocks Agreement and others are fully implemented in national legislation, some provisions may instead find expression through policy application.

Also, by the interactive relationship between the Fisheries Division and BARNUFO, fisherfolk may be kept abreast of shifts in policy, as well as international requirements, bearing in mind that BARNUFO also attends international meetings on sustainable fisheries and follows shifts in international requirements in their own right. BARNUFO is also part of the CRFM Forum<sup>321</sup> and has representatives in the FAC.<sup>322</sup>

### 13.2. Sustainable marine aquaculture

#### 13.2.1. *Applicable legislative provisions*

No legislation with direct application to aquaculture was found. There may, therefore, be 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,<sup>323</sup> regulations may be enacted thereunder.

#### 13.2.2. *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 which Ministries those would be would depend on the requirements of and activities covered by any future legislation with direct application to aquaculture.

### **13.2.3. 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<sup>324</sup> and reinforced by the CRFM.<sup>325</sup> The CCCFP provides for state parties to implement measures to the best of their capabilities to enhance the development of fisheries and aquaculture sectors.<sup>326</sup> The CCCFP also makes provision for recording licences and authorisations in the aquaculture sector to the best of a state party's capability<sup>327</sup> but for the time-being these and other provisions have not been given effect by legislation. Thus the practice is that these and other provisions of the CCCFP related to aquaculture are administered in so far as possible through policy.<sup>328</sup>

## **13.3. Seafood processing**

### **13.3.1. Applicable legislative provisions**

Section 25 of the Fisheries Act applies to this sector though to a limited extent because the definition of "processing" at section 25(3) refers to "filleting, canning, drying, gutting, salting, smoking, icing, chilling, freezing or otherwise processing fish or aquatic flora for sale outside of Barbados" and on its construction does not seem to extend to value added fish products. Thus the provisions of section 25 are narrower in scope than the 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 would also be relevant although neither pertain specifically to ocean governance.

### **13.3.2. 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. The MABE would also play a role in this sector as fish markets which also engage in food processing fall under the

purview of the MABE.

### **13.3.3. Applicable CARICOM Legal Provisions and Institutions**

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

## **13.4. Coastal and marine environmental services**

### **13.4.1. 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 where they require 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 particularly direct bearing on this sector.

### **13.4.2. Institutional role and responsibility**

The institutions with administrative responsibility in this sector are mainly the MABE, the MENB and the Ministry responsible for Labour. The MABE is the 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 persons 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.

### **13.4.3. 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.

### 13.5. 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 not directly related to ocean governance, and the CZMU which is 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 or destruction of parts of the coral reef affect the physical composition of the coastline. In this regard, the CZMU sometimes consults with the NCC in the course of carrying out its work<sup>329</sup> and with the EPD in terms of investigating, identifying and recording the sources of pollution

affecting the coastline and cutting off such pollution at its source. The legislation itself recognises certain synergies that are necessary to the realisation of its ultimate objectives, as is seen in the CZMA which makes provision for the CZMU and the NCC to consult on specified matters,<sup>330</sup> a provision that remains relevant even though the two bodies now reside with separate Ministries.<sup>331</sup>

For the purposes of scientific research from which all the relevant governmental institutions can benefit, the UWI through CERMES has a significant role to play in capacity building and in gathering and producing coastal marine scientific data. Not only does it train persons who potentially add to the human resource base in coastal and marine scientific fields and who will potentially work in both the public and private sector spheres of ocean-based economic fields, but the UWI also provides trained professionals from within the institution to work with government ministries and agencies to provide statistical data and advice based on gathered scientific research and data.

From the perspective of enforcement the Office of the Attorney General responsible for the Police and the Judiciary and the Office of the Prime Minister responsible for defence and security (and thus the Defence Force and Coast Guard) both play a significant role in the regulation of the sectors discussed in this report.

The recognition of the overlapping nature of maritime affairs is reflected heavily in the creation of the Maritime Affairs Committee and by the variety of stakeholders assigned to the Committee.



## ANNEX

### List of conventions given effect in the sopa

1. Protocol of 1978 relating to the International Convention for the Prevention of Pollution from ships (1973 as amended).
  2. International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.
  3. Protocol of 1973 relating to Intervention on the High Seas in Cases of Pollution by Substances other than Oil.
  4. International Convention on Civil Liability for Oil Pollution Damage, 1969.
  5. Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage.
  6. International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.
  7. Protocol of 1976 to amend the International Convention on the Establishment of an International Fund for Oil Pollution Damage.
  8. International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.
  9. Protocol of 1992 to the International Convention on Civil Liability for Oil Pollution Damage.
  10. Protocol of 1992 to the International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage.
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## Notes

- 1 <http://legal.un.org/avl/ha/uncls/uncls.html>.
  - 2 A/RES/70/1 Transforming our world: The 2030 Agenda for Sustainable Development.
  - 3 Ibid, page 14.
  - 4 UNCLOS, Article 86.
  - 5 Article 3 *ibid*.
  - 6 Article 33 *ibid*.
  - 7 Articles 15 and 49 *ibid*.
  - 8 Article 64 *ibid*.
  - 9 Article 87(1) *ibid*.
  - 10 Article 76(1) *ibid*.
  - 11 Article 76(4) and (5) *ibid*.
  - 12 Articles 77-82 *ibid*.
  - 13 Article 78 *ibid*.
  - 14 Article 79 *ibid*.
  - 15 Article 83 *ibid*.
  - 16 Articles 74(3) and 83(3) *ibid*.
  - 17 See articles 61, 192 & 193 *ibid*.
  - 18 Article 194(1) and (2) *ibid*.
  - 19 See article 196(1) *ibid*.
  - 20 Article 195 *ibid*.
  - 21 Article 197 *ibid*.
  - 22 Article 202 *ibid*.
  - 23 Article 204 *ibid*.
  - 24 Article 205 *ibid*.
  - 25 Article 204 *ibid*.
  - 26 Article 206 *ibid*.
  - 27 Article 207 *ibid*.
  - 28 Art. 208 *ibid* .
  - 29 Art. 209 *ibid* .
  - 30 Art. 210 *ibid*.
  - 31 Art. 211(2) *ibid*.
  - 32 Art.212 *ibid*.
  - 33 Art. 213 of UNCLOS.
  - 34 Art. 214 *ibid*.
  - 35 Art. 215 and Part XI *ibid*.
  - 36 Art. 216 *ibid*.
  - 37 Art.222 *ibid*.
  - 38 Art. 217 *ibid*.
  - 39 Art. 218 *ibid*.
  - 40 Art. 220 *ibid*.
  - 41 Art. 219 *ibid*.
  - 42 Art. 221 *ibid*.
  - 43 Arts. 213-216 *ibid*.
  - 44 Arts. 218 and 220 *ibid*.
  - 45 *Ibid*
  - 46 Art. 217 *ibid*.
  - 47 Art. 224 *ibid*.
  - 48 Art. 223 *ibid*.
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- 49 Art. 226(1)(a).
- 50 Art. 226 (1)(a)(i)-(iii).
- 51 Art. 226 *ibid.*
- 52 Art. 225 *ibid.*
- 53 Sec. 9, art. 235(1) *ibid.*
- 54 Art. 235(2) *ibid.*
- 55 Art. 238 *ibid.*
- 56 Art. 239 *ibid.*
- 57 Art. 240 *ibid.*
- 58 Sec. 2, arts. 242-244 *ibid.*
- 59 Art. 245(1) *ibid.*
- 60 Art. 246(1) *ibid.*
- 61 Arts 245(2) and 246(2) *ibid.*
- 62 Art. 246(3) *ibid.*
- 63 *Ibid.*
- 64 Art. 246(6) *ibid.*
- 65 Art. 61 – 68 *ibid.*
- 66 Arts. 116-120 *ibid.*
- 67 See *supra*, page 2.
- 68 See [www.imo.org](http://www.imo.org).
- 69 <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx>.
- 70 [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).
- 71 [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).
- 72 Annexes I - VI MARPOL respectively.
- 73 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/>.
- 74 Art. 2 of the PSMA.
- 75 See <http://www.fao.org/iuu-fishing/international-framework/code-of-conduct-for-responsible-fisheries/en/>.
- 76 Art. III(2) ICCAT.
- 77 Art. IV(1) *ibid.*
- 78 The area to which the convention applies, namely the Atlantic Ocean and adjacent seas in accordance with Art. II of the convention.
- 79 Art. VIII(1) *ibid.*
- 80 Art. VIII(3)(g) *ibid.*
- 81 Art. IX(2) *ibid.*
- 82 Art. IX(3) *ibid.*
- 83 See UNCTAD DAOLOS (2019). Sustainable Marine Fisheries and Seafood Processing Fact Sheet. See [https://unctad.org/meetings/en/SessionalDocuments/Fisheries\\_Seafood\\_Feb21\\_DRAFT.pdf](https://unctad.org/meetings/en/SessionalDocuments/Fisheries_Seafood_Feb21_DRAFT.pdf).
- 84 See <https://www.iccat.int/Documents/Recs/compendiopdf-e/2016-01-e.pdf>.
- 85 See <https://www.iccat.int/Documents/Recs/compendiopdf-e/2018-01-e.pdf>.
- 86 ICCAT document Doc. No. PA1-501 / 2018. See: [https://www.iccat.int/com2018/ENG/PA1\\_501\\_ENG.pdf](https://www.iccat.int/com2018/ENG/PA1_501_ENG.pdf).
- 87 Art. XI(2) *ibid.*
- 88 Its predecessor, the Treaty of Chaguaramas, formed CARICOM in 1975 and featured a common market via a common external tariff.
- 89 See Revised Treaty of Chaguaramas, Committees of CARICOM.
- 90 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
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- single market and economy; Montserrat remains a British territory.
- 91 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 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).
- 92 See *supra*, fn 91.
- 93 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.
- 94 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](https://www.cavehill.uwi.edu/cermes/getdoc/d645a4c5-6bae-4a4a-8c7b-ded733b6d1df/cccfp_fact_sheet.aspx).
- 95 <https://caricom.org/communications/view/caribbean-common-fisheries-policy-authorised-for-implementation>.
- 96 *Supra* (91), at page 13.
- 97 [https://www.cavehill.uwi.edu/cermes/getdoc/d645a4c5-6bae-4a4a-8c7b-ded733b6d1df/cccfp\\_fact\\_sheet.aspx](https://www.cavehill.uwi.edu/cermes/getdoc/d645a4c5-6bae-4a4a-8c7b-ded733b6d1df/cccfp_fact_sheet.aspx).
- 98 E.g. Fisheries Division, CZMU, Ministry of Environment etc. as the case may be.
- 99 [https://www.barstats.gov.bb/files/documents/PHC\\_2010\\_Census\\_Volume\\_1.pdf](https://www.barstats.gov.bb/files/documents/PHC_2010_Census_Volume_1.pdf).
- 100 <http://worldpopulationreview.com/countries/barbados-population/>.
- 101 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.
- 102 Due to an agreement between Trinidad and Tobago and the Bolivarian Republic of Venezuela whereby the former ceded maritime territory to the latter.
- 103 Guyana has not yet completed the continental shelf submission process and has yet to receive any recommendations from the Commission on the Limits of the Continental Shelf.
- 104 [http://www.un.org/Depts/los/clcs\\_new/commission\\_submissions.htm](http://www.un.org/Depts/los/clcs_new/commission_submissions.htm).
- 105 See the Barbados Territorial Waters Act Cap. 386 and the Marine Boundaries and Jurisdiction Act Cap. 387 of the laws of Barbados.
- 106 See Article 6(1) of the Barbados Territorial Waters Act Cap 386 and Articles 19 and 21 of UNCLOS.
- 107 The Minister responsible for Foreign Affairs or any competent authority that he or she designates – see s.2 BTWA.
- 108 S6(2) *ibid*.
- 109 S7(1) provides that the following may not be exercised in territorial waters without the prior consent of the national competent authority 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.
- 110 Most conspicuous of these is section 7(1)(h) regarding submarine and other underwater vessels.
- 111 Subsection 8(1)(a)-(c).
- 112 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.
- 113 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.
- 114 See section 9 of the BTWA.
- 115 Part V, Arts. 55-75 UNCLOS.
- 116 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 - See *infra*, fn 117.
- 117 S3(1) of the Marine Boundaries and Jurisdiction Act Cap. 387.
- 118 Such agreement must be laid before Parliament and judicially noticed – s3(5) *ibid*.
- 119 S3(3) *ibid*.
- 120 The Act does not refer to Art. 38 of the Statute of the ICJ or its provisions. The Act does not expressly implement paras. 2-4 of Article 74 of UNCLOS.
- 121 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.
- 122 See *supra*, page 15.
- 123 S5(b) of Marine Boundaries and Jurisdiction Act Cap 387.
- 124 S6(1)(a)-(e) *ibid*.
- 125 S6(2); also see *infra*, pages 44 & 45.
- 126 S7.
- 127 Part IV: Ss14-18.
- 128 In the Shipping Act “Barbadian ship” is defined as “a vessel registered under Part I” of the Act – see s. 2 entitled ‘Interpretation’.
- 129 This reflects to a certain extent the provision at art. 94(1) of UNCLOS.
- 130 The Act offers no special definition or meaning of these terms – “being in”, “lying [off]” or “passing off” Barbados.
- 131 However, see articles 24(1)(a), 27, 28, 73, 94, and 97 of UNCLOS.
- 132 S322(1)-(3) of the Shipping Act.
- 133 S. 322(4) *ibid*. However, see articles 24, 28, 73, and 94 of UNCLOS.
- 134 Albeit the provision is qualified by “unless the Minister otherwise provides...”
- 135 See *infra*, page 32.
- 136 See *infra*, page 34.
- 137 See s208(1) of the Defence Act Cap 130.
- 138 See s208(2) *ibid*
- 139 See Police Act Cap 167.
- 140 See s211(1) of the Defence Act Cap. 130.
- 141 S213 *ibid*.
- 142 See *infra*, pages 23 & 45.
- 143 See *supra*, page 16.
- 144 This Act commenced on October 1, 1993 and was last amended in the year 2000.
- 145 Section 34 of the Fisheries Act.
- 146 See *infra*, pages 43-46.
- 147 *ibid*.
- 148 S14 of the MBJA.
- 149 S15(1) of the MBJA.
- 150 For these and the full gamut of powers see s15(2)-(4).
- 151 See *infra*, page 32.
- 152 See *infra*, pages 33 and 36.
- 153 Or police officers. See *infra*, page 35.
- 154 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*, pages 20-21.
- 155 At s2 MPCA: “environment” means “land, water and airspace of Barbados and its territorial waters”. And
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- throughout the Act provisions, including enforcement provisions, apply to the “environment” or “marine environment”.
- 156 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.
- 157 See ss 29 and 30 Customs Act.
- 158 See supra, page 17.
- 159 S2 defines “authorised person as “any fisheries, customs or police officer or any ... member of the Barbados Coast Guard”.
- 160 For more detail on these ministries see ante page 26.
- 161 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.
- 162 Such orders are subject to affirmative resolution and must be judicially noticed – s3(3) of the BTWA and s3(2) of the MBJA.
- 163 S4 of the BTWA.
- 164 See supra at pages 16 & 17; also see s3(1) of BTWA and s3(1) of the MBJA.
- 165 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.
- 166 S3(4) of the BTWA.
- 167 Such map or chart must be judicially noticed – s4(1) of the MBJA.
- 168 S4(2) of the MBJA.
- 169 S21 of the MBJA.
- 170 Supra, page 16.
- 171 Supra, page 16.
- 172 S11 BTWA: such regulations are subject to affirmative resolution and must be judicially noticed.
- 173 See supra, page 19.
- 174 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 since then been under the portfolio of the Ministry responsible for Environment; Prior Ministries of Environment included the CZMU as a department; Fisheries formerly fell 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 (e.g. 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) while the EPD falls under the MENB.
- 175 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.
- 176 Ibid.
- 177 Page 1: section 1.1 entitled, “Background”.
- 178 Section 3.3 of the Plan at pages 22-23 and see also section 5.5 at pages 82 and 83.
- 179 Page 82 Ibid.
- 180 Interview with senior officer of the Ministry of the MENB on 5th September 2018.
- 181 See paragraph supra.
- 182 Also confirmed at interview mentioned at *ibid*.
- 183 See NBSA page 14, section 3.1, para. 2.
- 184 *Ibid*, page 17, section 3.3.
- 185 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 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
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Divisions in the Ministry of Agriculture and Rural Development, Barbados National Trust and the University of the West Indies.

- 186 Section 9.7 of the ISR, pages 143-148.
- 187 See Marine Pollution Control Act; *infra*, page 32.
- 188 See *supra*, pages 22-23 and *infra*, page 32.
- 189 See <http://www.coastal.gov.bb/> for more details on all information provided in this part.
- 190 See paragraph *infra*.
- 191 Plan for zoning and physical development in Barbados but which is also being updated and revised.
- 192 Interview with CZMU officer.
- 193 *Ibid*.
- 194 See *infra*, page 34.
- 195 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.
- 196 *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.
- 197 S5 of the NCCA.
- 198 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.
- 199 See *infra*, page 34.
- 200 Minister of the MENB.
- 201 The NCCA does not specify a maritime zone in this context.
- 202 As designated by the Minister.
- 203 S5(1)(g) and (h) NCCA.
- 204 See *supra*, pages 4-7.
- 205 Section 2 UNCLOS.
- 206 Section 3 *ibid*.
- 207 Section 4 *ibid*.
- 208 Section 5 *ibid*.
- 209 Section 6 *ibid*.
- 210 Section 7 *ibid*.
- 211 See section 2 MPCA on definitions.
- 212 See section 2 *ibid* on definitions particularly with respect to definition of “Director”.
- 213 The Environmental Engineering Division (EED) is now the EPD. See *supra*, page 26 at fn 174.
- 214 S4(1) of the MPC.
- 215 S4(2) *Ibid*. N.B.: this registry is not available online,
- 216 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.
- 217 S4(3) *Ibid*.
- 218 S7 *Ibid*.
- 219 S8 *Ibid*.
- 220 S9(1) *Ibid*.
- 221 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.
- 222 According to s10(2) “search” for these purposes includes taking samples of substances for the purpose of analysis.
- 223 S10(4) whereunder a Court order must be obtained pursuant to s11(1).
- 224 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
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- 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.
- 225 Repealed by PDA as of January 25, 2019.
- 226 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; 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.
- 227 S106 of the Planning and Development Act 2019.
- 228 Formerly s4(1)(b) of the CZMA repealed by s2(1) of the Fourth Schedule of the PDA.
- 229 S13 of the CZMA repealed and replaced in accordance with s2(2) of the PDA.
- 230 See s4 of the CZMA. NB: The Plan has been developed but not officially approved: See supra, page 29.
- 231 S13 of the CZMA.
- 232 See fn 226 and supra, page 34.
- 233 15(1) *ibid*.
- 234 S16 *ibid*.
- 235 Interview with Coastal Zone Management Officer.
- 236 See supra, page 30 and *infra*, page 38.
- 237 Ss 18 and 19 CZMA.
- 238 S22 *ibid*.
- 239 Ss 25-27 *ibid*.
- 240 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.
- 241 S.43 of the CZMA.
- 242 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.
- 243 S.44 of the CZMA.
- 244 See s3 of the Barbados Marine Reserve Regulations 1981: The Scientific Zone; the Northern Watersports Zone; the Recreational Zone; and the Southern Watersports Zone.
- 245 S5 *ibid*.
- 246 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.
- 247 S6 of the Barbados Marine Reserve Regulations.
- 248 Ss7 and 8 *ibid*.
- 249 S11 *ibid*.
- 250 S12 *ibid*.



- 251 Ss13 and 14 *ibid.*
- 252 Ss27 and 28.
- 253 See citation of NCCA Cap. 393
- 254 See *supra*, page 34.
- 255 See *supra*, page 30.
- 256 S5A *ibid.*
- 257 Ss 16-27.
- 258 S31 NCCA.
- 259 See also the Shipping Oil Pollution Act Chapter 296A.
- 260 See *infra*, page 43.
- 261 S300B *ibid.*
- 262 See *supra*, pages 32-33.
- 263 See s. 2 SOPA on definitions: 'Barbadian ship' means a ship registered under the Shipping Act Cap. 296 of the Laws of Barbados.
- 264 Refers to, *inter alia*, crude oil, fuel oil, lubricating oil and heavy diesel.
- 265 See s. 2 *ibid.*: 'Mixture' means a mixture of oil with water or with another substance.
- 266 S. 4 *ibid.*
- 267 'Designated area' means seabed and subsoil in which a person is authorized by the Government to carry on an operation relating to the exploration for or exploitation of natural gas or oil.
- 268 See s4(1)(a) of the MPCA – land-based, seabed activities, dumping activities and airborne sources.
- 269 See s5 Fisheries Act.
- 270 Along with Fisheries Assistants and other officers as necessary to give effect to the provisions of the Act – s3(1) of Fisheries Act.
- 271 S3(2) *ibid.*
- 272 S4 *ibid.*
- 273 See s5 of Fisheries Act.
- 274 See the Schedule to the Act.
- 275 <http://extwprlegs1.fao.org/docs/pdf/bar175971.pdf>.
- 276 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.
- 277 At page 9 the FMDP lists and summarises: (1) UNCLOS, (2) the FAO Compliance Agreement 1993, (3) the UN Fish Stocks Agreement 1995, (4) the Ecosystem Approach to Management (5) the CBD, (6) the Cartagena Convention 1984, (7) SDGs 2016, (8) Aichi Biodiversity Targets 2011, (9) Castries Declaration on IUU Fishing 2010, (10) the CCCFP, (11) FAO Port State Measures Agreement 2016, (12) FAO Code of Conduct for Responsible Fisheries 1995, (13) CITES 1992, (14) the Rio Declaration on Environment and Development, Agenda 21 of UNCED 1992.
- 278 At page 12 *ibid.*: this involves institutions, structures and processes established for the management and development of the fisheries sector serving a vision and being transparent; being accountable, equitable and responsive in relation to stakeholder needs; being efficient and effective in the use of resources; ensuring stakeholder participation in decision-making; guaranteeing the human rights of stakeholders; and practising the non-discriminatory enforcement of laws.
- 279 NB: the FMDP does not state or qualify the source or basis of such agreement.
- 280 The FMDP does not state or qualify the source or basis of such minimum standards.
- 281 See the FMDP.
- 282 S3(3) *ibid.*
- 283 Ss 34-44 *ibid.*
- 284 S7 *ibid.*
- 285 These Registries are currently not accessible online.
- 286 S11 Fisheries Act.
- 287 S10 *ibid.*
- 288 S12 *ibid.*
- 289 S8 *ibid.*
- 290 Therefore, for instance, a local vessel seeking to engage in sport fishing or research must apply for a licence
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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*.

291 Currently the Minister of Maritime Affairs and Blue Economy.

292 Cross ref. to Shipping Act *ibid*.

293 S15 *ibid*.

294 S25 *ibid*.

295 These are designated by the Minister in writing subject to condition, all in accordance with s. 28 of the Act, namely on condition that any designated institution shall (a) at least once a year submit to the CFO the list of research projects undertaken in the preceding year together with results and conclusions thereof, and also a list of research projects to be undertaken in the coming year; (b) give the CFO access to the results of any completed research project and any data generated by or during the course of the project, (c) submit to the CFO such information regarding research projects as the CFO may require, and (d) comply with such other conditions as the CFO may require in relation to proper management of fisheries and the observance of Barbados' international obligations.

296 In this Act "waters of Barbados" means the waters of the EEZ, territorial sea and internal waters as defined in the BTWA and any other waters over which Barbados has fisheries jurisdiction. – S. 2 Fisheries Act.

297 S26(1)-(2).

298 S27 *ibid*.

299 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.

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

301 S21(3).

302 S2 *ibid*.

303 See definition *supra* at fn 296.

304 S34(1).

305 S34(2).

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

307 See *supra*, pages 26-38.

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

309 Notably, Barbados reported to ICCAT in its 2018 country report that a draft Fisheries Plan for the Management of Large Pelagic resources along with the herein before mentioned proposed new fisheries management regulations had not been officially enacted suggesting that some comprehensive legislation or policy on large pelagic resource management is on its way. See [https://www.iccat.int/Documents/BienRep/REP\\_TRILINGUAL\\_16-17\\_II\\_3.pdf](https://www.iccat.int/Documents/BienRep/REP_TRILINGUAL_16-17_II_3.pdf).

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

311 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.

312 Interview with Director of Maritime Affairs at MABE.

313 *Ibid*.

314 <https://barbadosmaritime.org/>.

315 Now the MENB.

316 Ministry of Innovation, Science and Smart Technologies (MIST).

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

318 Interview with Director of Maritime Affairs.

319 Interview with Chief Fisheries Officer, July 2019.

320 See <https://barnufo.org/>.

321 See art. 8(d) of the CRFM Agreement.

322 See *supra*, page 41.

323 S46(p)(iv) Fisheries Act.

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

325 See art. 5(f) CRFM Agreement.

326 Art. 10 of the CCCFP; Art. 5(f) of the CRFM.

327 Arts. 13.1 and 13.2(c) of CCCFP.

328 See *ibid*, art. 4.3(a) on objective to promote sustainable aquaculture in the Caribbean region to increase trade and export earnings, protect food and nutrition security, assure supply to Caribbean markets and improve income and employment opportunities; art. 10 on state parties to the extent of their capabilities endeavouring to promote and adopt measures to enhance the development of aquaculture sectors; art. 11(a) on collecting and compiling fisheries catch, registration and licensing, biological, socio-economic and other data. See also arts. 11(b)(iv), 13.1.

329 See s18 of the CZMA.

330 *Ibid*.

331 CZMU resides with the MABE while the NCC remains at the MENB.

