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# BELIZE NATIONAL FISHERIES ACT SCIENTIFIC ANALYSIS

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# BELIZE NATIONAL FISHERIES ACT SCIENTIFIC ANALYSIS

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The author's views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.



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## **LIST OF ACRONYMS**

BAHA	Belize Agricultural Health Authority
BPA	Belize Port Authority
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum of African, Caribbean and Pacific States
CBD	Convention on Biological Diversity
CCJ	Caribbean Court of Justice
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on Migratory Species
COFI	Committee on Fisheries
CRFM	Caribbean Regional Fisheries Mechanism
CSME	Caribbean Community Single Market and Economy
CZMAI	Coastal Zone Management Authority and Institute
CZMA	Coastal Zone Management Authority
DOE	Department of Environment
EAF	Ecosystem-based Approach to Fisheries
EEZ	Exclusive Economic Zone
EPA	Environmental Protection Act
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
GEF	Global Environment Facility
HACCP	Hazard Analysis and Critical Control Point
HS	High Seas
IAC	Inter-American Convention for the Protection and Conservation of Sea Turtles
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tuna
ICRW	International Convention for the Regulation of Whaling
ILC	Convention on Load Lines
ILO	International Labour Organization
IMMARBE	International Merchant Marine Registry of Belize
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
ITQ	Individual Tradable Quota
IUCN	World Conservation Union
IUU	Illegal, unreported and unregulated
IWC	International Whaling Commission
LBS	Land-based Sources of Pollution
LLMC	Limitation of Liability for Maritime Claims Convention
MAF	Ministry of Agriculture and Fisheries
MARPOL	International Convention for the Prevention of Pollution from Ships
MEY	Maximum Economic Yield
MPA	Marine Protected Area
MSY	Maximum sustainable yield

NEAFC	North East Atlantic Fisheries Commission
OLDEPESCA	Latin American Fisheries Development Organization
OSPESCA	Coordinating Unit of the Central American Organization of the Fisheries and Aquaculture Sector
RAMSAR	Convention on Wetlands of International Importance
RFMO	Regional Fisheries Management Organization
SICA	Central American Integration System
SOLAS	Safety at Sea Convention
SPAW	Protocol on Specially Protected Areas and Wildlife
TURF	Territorial User Right Fisheries
UN	United Nations
UNGA	United Nations General Assembly
UNESCO	United Nations Educational, Scientific and Cultural Organization
WCPF	Western Central Pacific Fisheries Convention
WCS	Wildlife Conservation Society
WECAFC	Western Central Atlantic Fisheries Commission

## **PREFACE**

The Management of Aquatic Resources and Economic Alternatives (MAREA) program, financed by the United States Agency for International Development (USAID) and implemented by Chemonics International, with the Wildlife Conservation Society as a subcontractor, builds on previous projects in Central America to support and promote marine and coastal conservation through rights-based access and market-driven mechanisms in concert with local partners from both the private and public sectors. The MAREA program will achieve these goals with a focus on four key trans-boundary watershed areas and seven key focal species. The four trans-boundary regions are the Gulf of Honduras, the Moskitia Coast, Cahuita-Gandoca-Bocas del Toro, and the Gulf of Fonseca. The focal species for the MAREA program are divided into species with commercial importance: mangrove cockles, queen conch, grouper, snapper, and spiny lobsters; as well as two groups of endangered species: sharks and sea turtles.

The MAREA program will employ multiple strategies to positively affect its target species within its regional points of focus including the promotion of rights-based legislation and programs, establishment of managed protected areas and no-take reserves, promoting specific protections and management regimes for threatened species and by providing economic alternatives to local communities where resource extraction threatens marine and coastal natural resources.

Critical for the implementation of an ecosystem approach to rights based fisheries was a scientific review of the existing Fisheries Act in Belize. It was reviewed by Patrick McConney and Adriel Castañeda in the context of introducing an ecosystem approach to fisheries (EAF).

This review was led by McConney, the international fisheries consultant whose terms of reference are in Annex IV. He was assisted considerably by Castañeda, the national fisheries consultant. However, all opinions expressed, errors and omissions are the sole responsibility of McConney. The preliminary analysis is a working document intended to be used for stakeholder consultation. To facilitate this, the bulk of the review appears in table cells inserted into the original text. A reader of the electronic document can use “search by table” to quickly skip through the fisheries specialists’ comments. Outline-style headings have been added to assist navigation using the “document map” feature. The scope of the fisheries review was technical as guided by the terms of reference:

- specific technical fisheries issues that should be addressed in the revised Fisheries Act;
- alternative approaches for achieving ecosystem-based and rights-based fisheries management that are likely to be most feasible while also being grounded in the precautionary approach;
- modalities for implementation of specific fisheries management measures and ensuring that these are effectively provided for in the framework law;



## EXECUTIVE SUMMARY

This report undertakes a review of the existing regime governing fisheries in Belize. It examines in detail the national legislation directly applying to fisheries, in particular, the now very outdated Fisheries Act, and the High Seas Fishing Act. It also considers the legislation which has an indirect impact on the fisheries sector. In addition to the Constitution itself, it appraises the legislation concerning merchant shipping, coastal zone management, environmental protection, forests, wildlife protection, national parks, port legislation, aquaculture development, coast guard, customs, petroleum, mines and minerals, agricultural health, and cooperative societies.

On the international level, it addresses the binding global treaties, in particular, the 1982 UN Convention on the Law of the Sea, the FAO Compliance Agreement, the 1995 UN Fish Stocks Agreement, the International Convention on the Regulation of Whaling, the FAO Port Measures Agreement, the Convention on Biological Diversity, CITES, the Bonn Convention on the Migratory Species of Wild Animals, the RAMSAR Convention, and the World Heritage Convention. Others considered briefly are the ILO Conventions and the IMO Conventions.

At the regional level, the CARICOM instruments are considered, in particular, the revised Chaguaramas treaty, the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, the Caribbean Regional Fisheries Mechanism, SICA, OSPESCA and OLDEPESCA, as well as the regional fisheries bodies to which Belize is either a party or a cooperating non contracting party.

Non binding instruments are also considered in view of the increasing, though imprecise, impact these are having on the evolution of the modern law of the sea, in particular, the Code of Conduct for Responsible Fisheries, the International Plans of Action adopted by FAO, and UN General Assembly resolutions addressing fisheries issues.

The report also considers institutional issues, in particular, overlap between functions and gaps. While avoiding a radical recommendation to address these institutional issues, such as the creation of an overarching Ministry to deal with oceans Issues, the report considers a number of options to deal with this. It recommends that departments should enter into working agreements to ensure that the necessary degree of coordination exists. The overall recommendation of the report is that there is a need for a modern fisheries law, which embraces marine fisheries and high seas fisheries, as well as addressing inland fisheries.

A specific problem that will need further attention is the interaction between the modern fisheries law recommended and the laws relating to wildlife, habitat and biodiversity. This will include the important issue of overlapping responsibilities in the coastal zone, including rivers and inland waters. The challenge will be to determine how far it is possible to go in dealing with such issues in a fisheries law that on the one hand permits

effective fisheries management, but also respects important conservation objectives, including the precautionary approach and the ecosystem approach and protection of biodiversity.

The report then addresses the main elements to be included in a modern fisheries law. These are: basic definitions, objectives of the law and principles governing conservation and management, (including those of precaution, ecosystem considerations and the protection of biodiversity) fisheries management planning (including species protection), different types of fishing to be covered, the role of cooperatives, the role of a fisheries advisory board (or council), control of high seas fishing, record of fishing vessels, monitoring control and surveillance, jurisdiction and evidence issues, offences and penalties, and a new expansive regulation making power.

The report concludes with a list, in bullet point form, of the provisions most likely to be recommended for inclusion in the new fisheries law. It is hoped that this list of bullet points and the preceding discussion of the main elements will provide a basis for discussion with stakeholders of the report and its main outcome, namely, what should be included in the proposed new law.

## BACKGROUND TO THE PROJECT

In light of the fact that the existing Fisheries Act was enacted in 1948 and last revised in 1989, and that there had since been epochal changes to the international law of the sea, including the evolution of modern fisheries conservation objectives and principles, the Fisheries Department considered that it was important to revise the current legislation to bring it up to date.

In order to achieve this, the current project was negotiated between the Fisheries Department and the Wildlife Conservation Society (WCS), with the support of MAREA, the full terms of which are set out at Annex I, and directly endorsement by the Cabinet. A steering committee was also established to have overall responsibility for the project, which comprises representatives of the following:

- Belize Fisheries Department
- Solicitor General's Office
- Coastal Zone Management Authority and Institute (CZMAI)
- Ministry of Natural Resources and the Environment
- Chair of the Fisheries Advisory Board
- Belize Fishermen Co-operative Association
- Caribbean Regional Fisheries Mechanism Secretariat
- Wildlife Conservation Society (WCS)

Further, the Fisheries Advisory Board was invited to act as a 'stakeholder' committee in order to provide advice and input from their respective constituencies, as well as to provide support for other consultations. The Board is appointed by the Minister of Agriculture and Fisheries and includes representatives of the fishing cooperatives, the tourism industry, the NGO community, relevant government agencies, and the business sector.

The Department accordingly invited WCS to provide technical assistance in this process. Following discussions between the Belize Fisheries Department and WCS as well as consultations with stakeholders, it was agreed that the following approach be adopted:

First, two consultants would be identified, one being an international consultant with a background in international law of the sea and fisheries law, the other being a national consultant with significant experience in the Belize legal system, and of national legislation.

The consultants would be asked to prepare a preliminary report which would set out the foundation for the revision process. It would examine the existing national and international legal regime applicable to Belize as it concerns fisheries.

In the preparation of the preliminary report, a series of meetings were organized to ensure that there was widespread consultation. A list of the meetings held is attached at Annex II.

In addition there was a meeting specifically to consult with NGOs in preparation for the work being undertaken. A list of the participants is attached at Annex III.

A technical seminar was also presented on the subject of principles underlying international standards for conservation and management measures concerning fisheries and their implementation in national legislation. This was open both to NGOs and to officers of the Belize government.

The fisheries TOR contain technical terms such as *ecosystem-based*, *rights-based* and *precautionary approach*. It would be useful to know if or how these concepts were presented and what feedback, if any, was received. The concept of catch shares and limited access has been extensively covered in several communities and with the fisheries department under another project. Understanding and interpretation of these terms, and any others considered key, is critical from governance (policy, planning and management) perspectives in addition to legal definitions. The application of these in EAF may be negotiated amongst stakeholders sharing common understanding but with different interests. If not covered in the seminar, how are these terms understood?

Further technical seminars are planned for later phases of the project.

Upcoming consultations should be used to determine what the priorities are for these. In particular, the main change agents amongst the stakeholders should be identified and given special attention to ensure they are familiar with the changes and capacity needed.

The preliminary report, following a review by WCS, the Belize Fisheries Department and the Solicitor General's Office, were presented by the consultants at a series of meetings in Belize City and the City of Belmopan for this purpose. The present document constitutes this preliminary report.

Complying with the legal consultants' TOR this preliminary analysis is primarily legal and secondarily institutional. It does not provide a technical/managerial analysis of the fisheries situation. Analysis of the existing fisheries-related legislation and management performance is outside the TOR of the fisheries consultants. These factors constrain the informed situation-specific technical advice that can be offered. In particular additional information on initiatives to practically introduce ecosystem approaches, rights-based fisheries and the like would be useful if practical lessons learned provide legal guidance.

In the light of comments received at those presentations, the consultants prepared a Draft Fisheries Bill for consideration, a separate MAREA deliverable. In the light of the comments received at the meetings referred to, the draft will be revised, and a final draft shall be submitted for consideration.

It should be made clear whether the intention is to establish a legal/policy enabling environment for EAF, rights etc. or to go further and legislate for systems already in place. The working assumption is mainly the former, which need not be as specific. This will allow for informal experimentation/adaptive management/learning-by-doing prior to

legally encoding management systems that are still developing, e.g. catch shares. Is this the wish of the beneficiaries? Or do stakeholders prefer more hard-wired systems?

At all critical stages of the project, the views of the steering committee and the Fisheries Advisory Board, acting as the stakeholder committee, will be sought, as will those of sectoral stakeholders and the general public, through a range of activities and platforms set forth in the project's Communications Plan.

There was considerable ground work done on introducing managed access licenses or catch shares (TURF) at two pilot sites: Glovers Reef Marine Reserve and Port Honduras Marine Reserve. Limited access is included within the management plan of marine reserves. Consultations have been done at several communities. However, since EAF is much about communication, the fisheries specialists would appreciate feedback on how the communication plan was received. There is little mention of *ecosystem-based* and *rights-based* management, and the *precautionary approach*, in the plan. Was there dialogue on these concepts with, or among, stakeholders at any time?

## A BRIEF OVERVIEW OF THE FISHERIES SECTOR

### Near shore Wild Capture Fishery

The fishing resources of Belize are distributed along the coast in the Caribbean Sea. The principal areas of fishing are mainly shallow waters and they include the barrier reef lagoons, patch reefs, 3 atolls and the barrier reef of approximately 186 miles in length. The species of greater commercial importance are the Spiny Lobster (*Panulirus argus*) and the Queen Conch (*Strombus gigas*); in addition, other fisheries such as Fin Fish, Sharks, Sea Cucumber, crabs and shrimp are commercially exploited. This activity is carried out by a small-scale fleet of 2759 fishers and 628 fishing vessels (sail boats and skiffs) made of wood and fiberglass that range from 7 to 14 meters in length. The vessels are equipped with outboard motors from 30 to 115 horse power. The capture fisheries sector in 2009 was estimated to have a value of approximately 20 million Belize dollars. The collection of reef fish in Belize for the aquarium fish trade is a very profitable sector producing BZ \$240,000.00 in 2008. There are at least 4 aquarium fish operations in Belize, one of them quite large. This company is allowed to use hookah to collect fish. There appears to be little supervision or control in place other than some conditions for issuance of a license. It is likely that few people are aware of the scale of this fishery.

This flags that the aquarium (presumably including live rock) fishery and trade needs tighter legislation for management (EAF context). This could extend to aquatic species more generally and address importation to monitor and control invasive species (e.g. to avoid or reduce the risk of a lionfish phenomenon). Here and elsewhere there need to have bounded social-ecological systems for management purposes. That is, setting the ecological and stakeholder boundaries of the fisheries systems in management plans.

## Aquaculture

The aquaculture sector in Belize currently deals with two major types of operations, finfish aquaculture and shrimp farming. There are currently eight shrimp farms operating with a production area of 3,333 acres with an estimated production for 2009 of 9.43 million pounds.

There is also a current semi-intensive Tilapia farm of 400 acres with an estimated production of 1,200 MT in 2009. In addition, Belize has small scale tilapia farming with just over 14 acres in production.

A very recent aquaculture venture is the marine based Cobia production which produced 500,000 lbs in 2009.

Close coordination, if not integration, between capture fisheries and aquaculture is needed in EAF, particularly concerning habitat degradation and species introduction. A number of guidelines exist for responsible and sustainable aquaculture for most species.

## High Seas Fishing

Belize registers vessels with owners from Costa Rica, Uruguay, Russia, Taiwan, Korea, all of which fish on the High Seas. The Belizean-flagged vessels are authorized to fish in Belize's non-territorial waters, such as the Pacific Ocean, Atlantic Ocean, Okhotsk Sea, off the coast of Vietnam, the Indian Ocean, Mauritania, Morocco, Fiji, and Kiribati among other areas. Belize licenses predominantly fishing Vessels that use long line fishing gear, mid-water trawlers, and fish carriers (factory ships). These vessels do not land in Belize, but their product and vessels are inspected by the over 40 inspectors authorized worldwide. The catches – and revenue made from the catches – have no impact on the GDP of Belize. The Government of Belize generates just under a million USD from the licensing and registration of these vessels, and of this, ca. USD 150,000 is allocated to the Fisheries Department; at times, these funds have been used to acquire equipment to conduct national research.

Belize has ratified the International Convention for the Conservation of Atlantic Tuna and is a Contracting Party of the Commission with effect from July 19, 2005. It has also ratified the Indian Ocean Tuna Commission Convention and is a Contracting Party of IOTC with effect from May 16, 2007. Although Belize is currently a Cooperating non-Contracting Party of Inter American tropical tuna Convention, on June 12, 2007 it acceded to the "Antigua Convention". Therefore, Belize will also become a Member of the Commission established under this Convention, at the latest by when this Convention comes into force, which is expected in 2010. Belize is a Cooperating non-Contracting Party of the North East Atlantic Fisheries Commission and the Western and Central Pacific Fisheries Commission.

The presumption is that Belize operates this registry primarily as a revenue-generating enterprise. Therefore a reasonable rate of return or profit is required to be viable. Policy

decisions may need to be taken on the extent to which Belize wishes to extend its EAF and precautionary philosophy of fisheries to this non-domestic high seas fleet. Costs will increase as MCS to ensure responsible fisheries is implemented by the flag state. The country should carefully monitor the management costs related to the high seas vessels including active participation in the several RFMOs and agreements mentioned above.

## **APPLICABLE NATIONAL REGIME**

### **Belize Constitution (CAP. 4)**

The Constitution of Belize is the Supreme law of Belize which enshrines such rights, principles and beliefs that its society deems important. In its preamble, the Constitution respects the principles of social justice and believes that there should be adequate means of livelihood for all and that there should be policies of state which protect the environment. The Constitution ensures and affirms for each individual in Belize fundamental rights and freedoms irrespective of race, place of origin, political opinion, color, creed or sex. These rights and freedoms are however subject to respect for the rights and freedoms of others and for the public interest. Therefore, one cannot exert and claim a right or a freedom to the adverse effect and detriment of others or contrary to the public interest.

As supreme law, any law that is inconsistent with the Constitution shall, to the extent of its inconsistency, be void. Any proposed law must therefore use as its primary source the Constitution which acts as a measuring stick against which is measured the ambit of each law ensuring that each is enacted in conformity with the Constitution.

This may or not be relevant to the approach towards rights-based fisheries. Rights can be allocated to individuals, collectives, corporations, communities or other entities. The most appropriate rights-based system is determined by social and cultural factors as well as ecological, legal, political, economic and technical. There are many permutations and fit with the formal constitution and informal societal norms needs to be addressed. The national fisheries consultant confirms that fisheries in Belize are largely open access. The route that Belize has been seeking is to limit access to a fishery by putting a cap on the number of fishermen via a special license: managed access license. This managed access is a first step towards establishing a catch shares program for the lobster industry. For now managed access is intended to function as a TURF. Questions arise as to the scale (e.g. in time, space, fishery type and participation) of this test.

### **Maritime Areas Act (CAP. 11)**

The Maritime Areas Act is of fundamental importance to the entire maritime sector. This Act specifically delimits the maritime boundaries of Belize and claims a territorial sea which extends up to twelve nautical miles from the baseline and an exclusive economic zone which extends up to two hundred nautical miles from the baseline from which the territorial sea is measured. The Act however specifically recognizes the boundary and

territorial dispute between Belize and the Republic of Guatemala in the south by limiting the territorial sea to three nautical miles between Ranguana Caye and the mouth of the Sarstoon River.

The Act empowers Belize to claim sovereignty over the territorial sea; the airspace over, and the seabed under, that sea; and the subsoil of that seabed. In respect of the exclusive economic zone, Belize exercises (a) sovereign rights for the purpose of fishing, navigation with respect to fishing, the exploration for, and exploitation, conservation and management of resources of the waters superjacent to the seabed and of the seabed and subsoil; (b) jurisdiction with regard to the establishment and use of artificial island, installations and structures; maritime scientific research; and the protection and preservation of the marine environment; (c) the right to construct and to authorize and regulate the construction, operation and use of artificial islands, installations and structures for the purposes provided for under paragraph (a) or for any other economic purposes and installations and structures which may interfere with the exercise by Belize of rights in respect of the exclusive economic zone.

While the State may exert rights over the exclusive economic zone, the Act expressly prohibits a person from carrying on activities such as exploring for or exploiting the resources within that zone.

The Act gives the Minister of Foreign Affairs wide regulatory powers to carry into effect the provisions of the Act. Specifically, the Minister is empowered to prescribe measures for the protection and preservation of the marine environment of the territorial sea as well as prescribing measures for the protection and preservation of the marine environment of the exclusive economic zone.

EAF requires attention to matching ecosystem boundaries and natural areas with legal jurisdiction to the extent possible. Where boundary and area mis-matches occur or one has transboundary species (such as in most Caribbean locations) then more attention must be paid to the units of management. If use or access rights are being allocated, the areas of access or exclusion must be delimited and known. Add aquatic uses by other sectors (aquaculture, tourism, mining etc.) and you see the need for a zoning/use plan. It would be appropriate to make legal provision for this to cover all aquatic areas and resources (EEZ and internal waters) assuming land use is addressed. This may not come under the Fisheries Act, but should be borne in mind as consultations proceed.

## **CARICOM-RELATED LEGISLATION**

Of considerable importance in proposing a new fisheries law is the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM) including the Caribbean Community Single Market and Economy (CSME). This regional treaty has been applied domestically by the Caribbean Community Act.

**Caribbean Community (Movement of Factors) Act, 2004, as amended (No. 15 of 2004, No. 22 of 2004, No. 46 of 2005)**

The Caribbean Community (Movement of Factors) Act, 2004 enacted as Act No. 15 of 2004 was enacted to give effect to the provisions of the Treaty Establishing the Caribbean Community, including the Caribbean Community Single Market and Economy (CSME), relating to the exercise by nationals of the Caribbean Community of the right of establishment, the right to provide services and the right to move capital into and within Belize and out of Belize to other Member States. The Act defines a national as a person who (a) is a citizen of a Member State; (b) has a connection with a Member State of a kind which entitles that person to be regarded as belonging to or being a native or resident of such Member State in accordance with that State's immigration laws; (c) is a company or other legal entity, formed for gainful purposes having its registered office and carrying on substantial activity within the CARICOM, constituted in a Member State in accordance with the laws of that Member State and such company is regarded as belonging to that Member State.

The Act was amended later that year by Act No. 22 of 2004 to give effect to the provisions of the Treaty Establishing the Caribbean Community, including the CARICOM Single Market and Economy (CSME), by removing restrictions in certain laws limiting the exercise by nationals of the CARICOM of the right of establishment, the right to provide services, and the right to move capital into and within Belize and out of Belize to other Member States of the CARICOM. In so doing, the Act sought to amend the laws affected by the obligations under the Revised Treaty. The Caribbean Community (Movement of Factors) Act, 2004 (No. 15 of 2004, as amended by Act No. 22 of 2004) was brought into force on the 1st day of July, 2005 by Statutory Instrument No. 89 of 2005.

In 2005, however, the Act saw yet another amendment by Act 46 of 2005 with the same mandate as the principal Act and its amendment, which essentially sought to do two things, (i) to remove restrictions by saying that "Belizean" will be read and interpreted to mean CARICOM nationals and "residency" has a corresponding meaning; and (ii) that this removal of restrictions does not apply to the Banks and Financial Institutions Act, the Post Office Act, the Insurance Act and the Fisheries Act. Notably however, this second amendment was never brought into force and it is this amendment that sought to remove restrictions which operate to limit the exercise by nationals of the CARICOM to the right of establishment, the right to provide services, and the right to move capital into and within Belize and out of Belize to other Member States of the CARICOM, but to exempt its application to the fisheries regime. The effect of the non-entry into force of this Act therefore preserves the status quo of the Fisheries Act. The consultants are of the opinion however, that whether or not Act No. 46 of 2005 came into force, the position would be the same as is today, i.e. that the fisheries sector would be limited to access by Belizean nationals only. The restrictions which, for example, limit the exercise by nationals of the CARICOM to the right of establishment and the right to provide services in Belize would therefore not be removed whether or not this Act came into force. In the end, there is no change in the current position in respect of the fisheries regime and this remains until and unless the Fisheries Act is amended to ensure CSME compliance, viz., the removal of the

restrictions. Nevertheless, we are informed that there is a draft Agreement among the CARICOM Member States to allow for national treatment and right of establishment but the Member States have not yet agreed on the terms of that Agreement and as such are unwilling to allow the provisions of the Revised Treaty of Chaguaramas establishing the CARICOM including the CSME to be applied to the fisheries sector. We are informed further that this state of affairs may eventually change in the context of the Economic Partnership Agreement between CARIFORUM and the European Community which involves the CSME, EU and the Dominican Republic (as part of the CARIFORUM). *Caribbean Community (CARICOM) Act (No. 17 of 2004)*

The CARICOM Act enacted as Act No. 17 of 2004 makes provision for matters arising out of the Revised Treaty of Chaguaramas establishing the CARICOM including the CSME (“the Revised Treaty”). The Act sets out the text of the Revised Treaty and gives it the force of law in Belize by virtue of this Act.

Defining nationals may have implications for rights allocation and criteria for eligibility. Understanding the implications of the Revised Treaty and CSME will become critical.

### **Caribbean Court of Justice Act (No. 5 of 2010)**

This Act was enacted as Act No. 5 of 2010 and seeks to implement the Agreement Establishing the Caribbean Court of Justice (CCJ) thus repealing Act 16 of 2004 and 35 of 2005 as well as the Privy Council Appeals Act.

This Act provides for a comprehensive regime establishing the CCJ in its original and appellate jurisdiction. While the CCJ will sit in its original jurisdiction to adjudicate over disputes arising out of the application of the Revised Treaty of Chaguaramas, appeals arising there from are to be heard by the CCJ sitting in its appellate jurisdiction.

However, this Act has not yet been brought into force.

## **LEGISLATION DIRECTLY CONCERNING FISHERIES**

### **Fisheries Act (1948) (CAP 210)**

This Act is quite old and has not been revised in any major way to bring it into line with the modern international law of the sea, in particular, the extension of the exclusive economic zone which gave the coastal state sovereign rights over the marine living resources within that zone. Indeed, it is quite short for a fisheries law, comprising only 17 sections. For example, it has very little in it that reflect modern conservation and management principles and objectives, such as the importance of the objective of long term sustainable use, the need for precautionary approaches, the need for an ecosystem approach to fisheries management, and protection of marine biodiversity, amongst others. The Act starts with some definitions (boat, commercial fishing, crawfish, fish, net, regulations). These definitions are, however, quite limited in their scope.

Section 3 states that the Act “*shall extend and apply to the whole of Belize*”. This provision predates the development of the EEZ, it would probably be intended to extend only as far out as the limit of the territorial sea, though it would include inland waters such as rivers and mangroves, as well as the areas landward of the baselines from which the territorial sea is measured. In the case of the reefs of Belize, this could mean that significant areas are treated as internal waters. This is made clear by a Statutory Instrument No. 34 of 1987 which specifically mentions watercourses, lakes, lagoons, and other inland waters.

The Act also provides for the appointment and powers of officers by the Minister (sections 4 and 5). Specifically, any “public officer” may be appointed as a fishery officer. The Act also permits a member of a management committee of a fishing cooperative to be appointed as a fishery officer. A number of statutory instruments have appointed additional categories as fisheries officers, including members of the Belize Defence Force Maritime Wing.

The powers of officers provision is reasonably detailed, and includes powers of seizure in certain circumstances. While quite effective as drafted, the powers need to be expanded to take into account the specific powers that have been accorded to States in the EEZ, and in certain circumstances on the high seas.

The licensing provisions (sections 6 and 7) require first that a “license to fish” is required in respect of a “boat”, while a person engaging in fishing is required to hold a valid “fisherman’s license”. In effect, this is a double licensing system. Further, there is no criterion indicated in the Act for issuing a license. Section 8 requires a license in respect of any scientific or research operations which involve the killing or capturing of fish, or interfering with or disturbing fish.

Section 9 provides a prohibition on the export of fish except with a fish exporter’s license, though an exemption is made in respect of fish purchased from a duty free shop.

Section 10 sets out offences and penalties for breaches of sections 7, 8 and 9. The penalties imposed are, on summary conviction, to a fine not less than one hundred dollars, and not exceeding five hundred dollars, or to imprisonment for a term not exceeding six months or to both a fine and imprisonment.

For second or subsequent offences, forfeiture may be imposed in respect of any fish, boat, vehicle, aircraft or gear used in connection with the contravention. A major issue which arose in discussions with officials is that there needs to be greater clarity as to what can be done with forfeited items, especially perishable items, and the proceeds of sale. In particular, it has been suggested that the court should have the power to direct to which institution perishable items should be given. At present, there is an assumption that there is an inherent judicial power for the court to deal with this matter, but it would be better to clarify this in legislation.

An alternative approach is to permit the Fisheries Department to sell perishable items immediately at fair market value upon their seizure and the proceeds to be held pending the outcome of any trial. This would also benefit from being clarified in legislation. Section 11 prohibits the use of explosives, or poisons, and a penalty, upon summary conviction not exceeding five hundred dollars or imprisonment not exceeding six months, or both.

Section 12 provides for inspection, seizure and forfeiture of nets.

Section 13 provides for the making of regulations. Although the scope of the power given was adequate for the period in which they were enacted, they would benefit from being considerably expanded to provide a much wider basis for the government to take action in the fisheries sector. The Act provides for controls on fishing, including through such general approaches as gear restrictions, size limits, closed seasons, and prohibitions and restrictions on take (and possession, import, export, etc), including – but not limited to – in marine reserves. However, no specific provisions are made for activities aimed at adaptive fisheries management and management planning, including research, stock assessment, fisheries monitoring and assessment, or for management actions, such as to stem negative impacts on ecosystems or non-target species that are fundamental to a ecosystem-oriented sustainable fisheries regime. In addition, it should be noted that the body of regulations providing for fishing limits along any of these lines is relatively small, for example, limited to a very small suite of species, both commercially valuable (e.g., spiny lobster, conch) and threatened with extinction (marine turtles, whale shark, Nassau grouper), and generally limited in scope. Several particularly noteworthy exceptions, in addition to those relating to the country’s exemplary MPA network, relate to Belize’s efforts to protect spawning aggregations of Nassau grouper and related species and establish both minimum and maximum size limits for Nassau grouper, measures justified by science and very progressive in nature.

Section 14 provides for the declaration of marine reserves where “*extraordinary measures*” are necessary. These provisions will likewise benefit from considerable revision as well as being carefully drafted to be consistent with specific provisions found in other laws and with other legislative proposals under consideration. This will include the need to ensure that the area of interaction between land and sea, especially mangrove areas, can be effectively managed and necessary prohibitions on certain potentially harmful activities implemented. Section 15 permits penalties to be attached in respect of a breach of regulations. Specifically, it says:

*“(1) There may be annexed to the breach of any regulation made under section 13 a fine not exceeding five hundred dollars or imprisonment for a period not exceeding six months, or both such fine or imprisonment. Such fine may be sued for and recovered under the Summary jurisdiction (Procedure) Act, and any fish in respect of which the offence has been committed shall be forfeited.”*

As with section 10 above, no guidance is given as to how the forfeited fish is to be disposed of.

The section continues:

*“(2) Any person found guilty of a breach of any regulation made under this Act prohibiting the taking or possession of undersized fish or the possession of fish during the closed season shall, in addition to any other penalty that may be imposed under the Act, be liable to a fine in respect of each such fish, which shall be not less than twenty dollars but which may extend to thirty dollars.”*

It is understood that this provision has given rise to problems, in particular, that the amount of fine awarded is unreasonably low, or that persons found guilty are often allowed to repay the fine over a lengthy period of time. Section 15 (3) additionally provides:

*“Where any person is found guilty of contravening any regulation made under this Act, the court for the first such contravention may, and for the second or subsequent such contravention shall, in addition to any penalty that may be imposed under this section, order that any boat, vehicle or aircraft together with any auxiliary engine and any fishing tackle or equipment used or employed in the commission of any such offence shall be forfeited.”*

Again it would be important to state in legislation what can be done with a forfeited vessel, engine or gear.

Overall, the sections on penalties and forfeiture will need to be replaced by more effective provisions which will permit significantly higher penalties to be imposed and for a more comprehensive regime dealing with inspection, seizure and forfeiture. Section 16 provides for protection of officers and agents from personal liability. One suggestion is that there could be a parallel provision permitting action to be brought against an officer who abused her or his powers under the Act.

Section 17 allows for the submission of certificates signed by the fisheries administrator regarding the identification of any species of fish, which are to be receivable in a trial as *prima facie* evidence of the matters contained in them. These provisions could be expanded to cover a wider range of matters that can be the subject of a certificate having *prima facie* evidence in court.

To sum up the Fisheries Act needs to be revised in a number of ways in order to provide a modern, forward-thinking, ecosystem-oriented legislative regime for fisheries. This is addressed in more detail under *Recommendations*.

The legal revisions should be compatible with EAF and other emerging approaches without tying fisheries governance to inadequately developed or tested systems. The available information suggests that certain regulations for the protection of species leave gaps that could be easily exploited by defense counsel in court. For example the prohibition of certain species only calls for persons not to buy and sell but has nothing about possession in general. There is no clarity on the prosecution authority of the

Fisheries Department which must be addressed urgently as the department has been prosecuting cases for a long time. Regarding penalties, during the consultation for the managed access/catch shares program, fishermen felt that the punishment for repeat offenders should be harsh, such as suspension of license to fish or engage in fishing or even license revocation in extreme cases. Nevertheless, it would be necessary to have training programs for young inexperienced fishermen entering the fishery. Training should cover regulations, best fishing practices, etc. Legal revision requires capacity.

## **Fisheries Regulations and Orders**

The following Regulations and Orders made under the Fisheries Act are currently in force. These Regulations and Orders will most probably be saved under the proposed new law until new Regulations and Orders are made repealing them; their application will be to the extent that they are not inconsistent with the provisions of the proposed new law, as passed. The Regulations and Orders currently in force may therefore warrant a review of their own.

*Fisheries Regulations, 1967 as amended (2009)*  
*Fisheries (Export Of Fish) Regulations, 1968*  
*Fisheries (Hol Chan Marine Reserve) Regulations, 1988 as amended (2008)*  
*Fisheries (Hol Chan Marine Reserve) Order, 1987 as amended (2008)*  
*Fisheries (Glovers Reef Marine Reserve) Regulations, 1996*  
*Fisheries (Sapodilla Cayes Marine Reserve) Order, 1996*  
*Fisheries (South Water Caye Marine Reserve) Order, 1996*  
*Fisheries (Caye Caulker Marine Reserve) Order, 1998 as amended (2008)*  
*Fisheries (Port Honduras Marine Reserve) Regulations, 2000*  
*Fisheries (Bacalar Chico Marine Reserve) Regulations, 2001*  
*Fisheries (Port Honduras Marine Reserve) Order, 2000*  
*Fisheries (Gladden Spit And Silk Cayes Marine Reserve) Order, 2000*  
*Fisheries (Bacalar Chico Marine Reserve) Order, 2001*  
*Fisheries (Glovers Reef Marine Reserve) Order, 2001*  
*Fisheries (Spawning Aggregation Site Reserves) Order, 2003*  
*Fisheries (Gladden Spit And Silk Cayes Marine Reserve) Regulations, 2003*  
*South Water Caye Marine Reserve Regulations, 2009*  
*Fisheries (Sea Cucumber) Regulations, 2009*  
*Fisheries (Caye Caulker Marine Reserve) Regulations, 2009*  
*Fisheries (Species Designation and Protection) Regulations, 2009*  
*Fisheries (South Water Caye Marine Reserve) (Amendment) Order, 2009*  
*Fisheries (Marine Reserves) (Prohibition) Regulations, 2009*  
*Fisheries (Sapodilla Cayes Marine Reserve) (Amendment) Order, 2009*  
*Sapodilla Cayes Marine Reserve Regulations, 2009*  
*Fisheries (Nassau Grouper Protection) Regulations, 2009*

We concur that these should be reviewed especially since MPAs are a common way to give expression to EAF if designed and managed appropriately. Without an examination of these provisions it will be unclear how far or near Belize is to EAF.

## **Belize Fisheries Development Authority Act 2003 (No. 19 of 2003<sup>1</sup>)**

<sup>1</sup> Though this Act forms a part of the laws of Belize it requires a Commencement Order to bring it into force.

The Belize Fisheries Development Authority Act was enacted to establish a Belize Fisheries Development Authority to take over and manage the functions currently exercised by the Fisheries Department of the Ministry of Agriculture and Fisheries. The aim was to provide the country and people of Belize with the best possible management of aquatic and fishery resources with an aim to optimize present and future benefits through efficient and sustainable development and management. Additionally, the Act would have repealed the Fisheries Act Chapter 210. However this law has not been brought into force and it is understood that it is unlikely to be.

### **High Seas Fishing Act (Chapter 210:01)**

This Act provides the basis for the control of fishing vessels registered on the Belize Shipping Register. It also sets out the division of responsibilities between IMMARBE (the International Marine Registry of Belize) and the Ministry of Agriculture and Fisheries. However, this needs also to be seen in the light of a bilateral agreement entered into between the two bodies. We will consider the Act first.

The Act has a number of definitions, some of which merit mention. It defines “Agreement” to refer the FAO Compliance Agreement, however, there is no mention made of the 1995 UN Fish Stocks Agreement in this Act.

“Fishing” is defined widely to include the catching or taking of fish, any other activity which can be reasonably expected to result in the catching or taking of fish, and “*any other activity directly related to fishing including the operation of mother ships*”. Interestingly, this definition does not appear to include transshipment, though transshipment is made an offence under section 18 (5).

“Fishing vessel” is defined as “*any vessel used or intended for use on the high seas for the purposes of the commercial exploitation of fish, including mother ships and any other vessels directly engaged in fishing operations*”. As with the definition of fishing, transshipment seems to be excluded from the definition, of a fishing vessel, however transshipment, we will see, is covered by section 18(5). The combination of the definition and section 18(5) at the same time gives effect to the definition in the Compliance Agreement, as well as giving effect to the aspiration in the Preamble to the Agreement to control vessels engaged in transshipment.

The definitions also deal with Belize and foreign fishing vessels in the following way:

*“Belize fishing vessel” means a fishing vessel authorized to fly the Belize flag*”

*“Foreign fishing vessel” means a fishing vessel other than a fishing vessel of Belize*”

International conservation and management measures are defined as:

*“measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law reflected in the 1982 United Nations Convention of the Law of the Sea either by global, regional or sub-regional fisheries organizations subject to the rights and obligations of their members, or by treaties or other international agreements.”*

This closely follows the definition of that term provided in the FAO Compliance Agreement.

The Act also defines “length”, following the definition set out in the Compliance Agreement. However, the definition is not needed here as Belize has not chosen to exempt vessels under 24 meters in length from the Compliance Agreement. Further, apart from being defined, the term is not used anywhere in the Act. Fortuitously, the non-exemption of vessels under 24 meters in length does accord with the 1995 UN Fish Stocks Agreement which, unlike the Compliance Agreement, has no exemption based on length.

One other definition merits comment.

The “Registrar of Ships” is defined to mean the person appointed by the Minister of Finance being the Minister responsible for IMMARBE. This is significant because the Registrar of Ships is given enforcement powers on the high seas, which are not given to fisheries officers,(at least not under the Act itself), whose power only extends under this Act to the EEZ. This seems anomalous.

Part II deals with Administration. It sets out the matters for which the Fisheries Administrator shall be responsible, which, briefly, are: maintaining a record of all fishing vessels licensed under this Act, including the information required under the Act (section 6), maintaining a record of statistics on high seas fishing, issue variation, suspension and revocation of license, collection from IMMARBE of license fees, making reports to the Minister, and *“the taking of all such other measures the Fisheries Administrator may consider appropriate for the implementation of the Agreement under this Act.”*

On the other hand, the Director General of IMMARBE is responsible for submitting reports and statistics concerning high seas fishing to the Fisheries Administrator, monitoring control and surveillance of Belize fishing vessels pursuant to Article V and VII of the Compliance Agreement, payment of fees to the Fisheries Administrator in respect of licenses of fishing vessels, giving information to relevant international organizations, and taking appropriate measures in cooperation with other States for the implementation of Articles VII and VIII of the Compliance Agreement. (Article V deals with international cooperation of the Agreement, Article VII deals with cooperation with developing countries, and Article VIII deals with non parties.)

Section 3 (4) provides for the enforcement of the Act. This is to be done by the Registrar of Ships and the Senior Deputy Registrar of IMMARBE, who have the powers set out in sections 12 and 13 of the Act.

Authorized officers include all those empowered to perform as Deputy Registrars or “representatives” of IMMARBE, all companies and recognized organizations authorized to act on behalf of IMMARBE and any of their surveyors or representatives, and where a Belize fishing vessel is in the EEZ of Belize, officers of the Fisheries Department. It has to be asked whether the persons such as surveyors are suitably qualified to undertake the kind of enforcement set out in sections 12, which are broadly speaking in the nature of police powers.

Part III deals with licensing of fishing vessels on the high seas. A license is required for all fishing on the high seas by a Belize vessel (section 4(1)). Where a vessel has been used in contravention of section 4 (1), the “*master, owner and charterer of the vessel shall each commit an offence and shall be subject to the penalties contained in the Registration of Merchant Ships (Disciplinary) regulations, 1999.*”

Section 4 (2) places responsibility not only on the master, but the owner and charterer of the vessel where a Belize fishing vessel has been used in contravention of subsection (1), and each shall be subject to one or more of the penalties contained in the Registration of Merchant Ships (Disciplinary) Regulations, 1999.

Section (5) (1) is very broad: It states:

*“Subject to subsection (2), any flagged ship fishing vessel shall be eligible for a High Seas Fishing License save where the vessel has been authorized to be used for fishing on the high seas by another state and the state has either –*

*(a) suspended the authorization of the vessel and the suspension has not expired;*  
*or*

*(b) withdrawn the authorization within the three years preceding the application made to the Fisheries Administrator.*

There seems to be a misprint in that paragraph. Presumably, *any flagged ship fishing vessel* is intended to refer only to those which have already acquired Belize registration. Even assuming that it does refer only to a Belize vessel, the right to a high seas license is automatic unless one of the exceptions referred to is established. These exceptions are given further qualification in section 5 (2):

*“(2) The exceptions contained in subsection (1) shall not apply where such fishing vessel has undermined the effectiveness of international conservation and management measures, but –*

*(a) ownership of that vessel has changed since the suspension or withdrawal of authorization and the present owner has provided evidence, to the satisfaction of the Fisheries Administrator that the previous owner, charterer or operator has no further legal, beneficial or financial interest in or control of the vessel; or*

*(b) the Fisheries Administrator has decided, after taking into account all the relevant facts, that the issue of a high seas fishing license in respect of the vessel shall not undermine the object and purpose of the Agreement.”*

Applications are dealt with in section 6, and are issued under section 7 (1). They are “issued” by the Fisheries Administrator, however subsection (2) states that their “issuing” shall be at the discretion of the Minister on the recommendation of the Fisheries Administrator and the Director of IMMARBE. Presumably this means that it is the Minister who makes the decision, and the Administrator who issues the license.

Section 7 (3) provides that

*“The Fisheries Administrator shall not issue a Belize High Seas Fishing License unless he is satisfied that Belize will be able to exercise effectively its responsibilities under the Agreement in respect of that vessel.”*

Section 7 (4) permits certain conditions to be imposed on a license, however, it does not indicate who may impose these conditions. Section 7 (5) specifies certain further conditions to which all licenses will be subject. Overall, these conditions are not very wide, and would not provide an effective basis for setting down conditions, for example, relating to VMS requirements, observers, or port measures, among others.

Section 8 permits licenses to be varied, revoked or suspended “*where, upon the recommendation of IMMARBE, it appears to the Fisheries Administrator that it is necessary or expedient to do so for the conservation or management of living marine resources in the high seas.*”

Section 9 deals with the duration of a high seas fishing license (normally 12 months), though it ceases to be valid immediately if the vessel no longer is entitled to fly the flag of Belize.

Part IV deals with international cooperation. Under Section 10, IMMARBE is obliged to provide to any relevant international organization the information provided for in section 3 and the Annex to the Act.

Under section 11, IMMARBE has authority to provide to the authorities of the flag state of foreign fishing vessel information, including evidentiary material, where it has reason to believe that such a vessel has engaged in activities which undermine international conservation and management measures. It is also to notify the authorities of the flag state when it is voluntarily in a port of Belize.

This latter provision gives effect to the provisions of the Compliance Agreement, however it falls short of what is required under article 23 1995 UN Fish Stocks Agreement (measures taken by a port State). Further, it will be insufficient to give adequate effect to the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing 2009.

Although the Port Measures Agreement has not yet entered into force, many of its provisions have already been incorporated into a binding resolution adopted by the Indian Ocean Tuna Commission and it is likely that other RFMOs will follow suit.

Part V deals with enforcement:

Section 12 (1) gives powers of enforcement with respect to any Belize fishing vessel on the high seas. These powers are extensive and include the power to board, search, “muster” the crew, inspect and seize documents, and require the vessel to be taken to any port in order for it to be inspected, or it may be immobilized. Section 12(2) permits the use of force “*as may be reasonably necessary*”.

Section 13 (1) permits an application to be made for the release of the vessel to the Director General or the Senior Deputy Registrar for the release of the vessel on the provision of security.

Section 13(2) provides

*“(2) On hearing the application in relation to subsection (1), the Director-General and Senior Deputy Registrar of IMMARBE may order the release of the fishing vessel after being satisfied that reasonable security has been given to IMMARBE in respect of the aggregate of the maximum penalty to which the owner, master or charterer may be liable, and taking into account the costs and expenses which IMMARBE may recover.”*

Section 14 permits the Director General or the Senior Deputy Registrar acting in accordance with the provisions of the Registration of Merchant Ships (Disciplinary) Regulations 1999, (in particular regulations 5, 6, 7 and 8) after examining the facts relating to a violation or offence to “*issue a written warning, impose a fine or order the cancellation of registration or documents.*”

Part VI deals with offences:

Section 16 (1) states that it is an offence for a Belize fishing vessel to “undermine” the effectiveness of international conservation and management measures. This terminology is derived from the FAO Compliance Agreement. By itself, it might be difficult from the perspective of the prosecution to pin down exactly what “undermines” amounts to, and a sympathetic judge or magistrate might be tempted to find against the prosecution on the (not necessarily articulated) ground of vagueness. The problem can be avoided to some extent by utilizing section 16 (2) which permit the Minister by regulation to “*prescribe any activities as being activities which undermine the effectiveness of international*

*conservation and management measures.*” In other words, the regulations could give content to an otherwise very vague term.

Section 16 (3) states

*“Where a fishing vessel of Belize contravenes subsection (1) the master, owner or charterer each commits an offence and shall be liable to the penalties referred to in Regulations 7 and 8 of the Registration of Merchant Ships (Disciplinary) Regulations, 1999.”*

Penalties under Regulations 7 and 8 relate to a fine not exceeding fifty thousand dollars (US\$50,000) and the cancellation of registration or documents.

Likewise, obstruction of an authorized officer attracts the penalties set out in the same regulations referred to immediately above (section 17).

Section 18 (1) provides more generally for contravention of the Act where no specific penalty is provided. It states that such a person shall be liable to a fine *“prescribed in the Regulations.”* In other words, if there are no regulations, there will be no fine.

The rest of section 18 provides for a presumption that fish found on board a fishing vessel shall be presumed to be caught (unless the contrary is proved) on the high seas, and within the vicinity of the vessel at the time the fish is so found.

As worded, this presumption would make it difficult for Belize to give effect to one of its responsibilities under 1995 UN Fish Stocks Agreement which is to control vessels flying its flag from fishing in waters under the jurisdiction of another State (Article 18 3 (iv)).

Section 18 (5)

*“Any master or other person who transships, receives on board a fishing vessel, transports, sells, offers for sale, processes or in any other manner deals with any fish caught in contravention of this Act commits an offence.”*

As mentioned earlier, this provision goes further than is strictly required by the Compliance Agreement, but it does give effect to the aspiration in the preamble to that Agreement that States should nonetheless be *“Conscious of the duties of every State to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment of fish”*.

Section 18 (7) provides for a double penalty in respect of repeated offences.

Section 19 provides for a limited regulation making power. It is thought that it is possibly too brief to support the range of measures currently being brought into operation by many RFMOs. For example, the wide ranging provisions concerning port state controls would almost certainly warrant their own section in any new legislation. Further, there is a risk

that some of the measures now being adopted by RFMOs might be found to be *ultra vires* the Act if put into the form of implementing regulations.

There is also a bilateral agreement between the Ministry of Agriculture and Fisheries and IMMARBE on the Control and Enforcement of Belize High Seas Fishing Fleet, which was signed on 2 November 2009. The Agreement provides for the Ministry of Agriculture and Fisheries (MAF) to take over certain functions regarding the Belize Registered High Seas Fishing Fleet.

In particular, it is provided in this agreement that MAF shall undertake the following functions:

- monitoring, control and surveillance of the operations of Belize flagged vessels on the high seas. The VMS is to be managed by MAF in coordination with IMMARBE.
- control and enforcement of the laws, regulations and conservation and management
- attesting to the veracity of information sent to EU in respect of catch certificates, and verifying them to competent authorities of member states under EU Council regulation 1005/2008.
- appointment of authorized officers, inspectors, and observers for fishing related inspections
- imposing sanctions to ensure compliance with national and international instruments and management regimes relating to conservation and management of marine living resources
- validation of all catch reports in coordination with IMMARBE
- issuing verifying, suspending and revoking licenses for fishing on the high seas
- maintaining a record of all fishing vessels in respect of which high seas fishing licences have been issued
- maintaining a record of statistics and reports concerning fish stocks and fishing on the high seas in coordination with IMMARBE
- submitting all reports and notification to RFMOs and other fisheries organizations in coordination with IMMARBE
- attending all relevant and important RFMO meetings together with IMMARBE

IMMARBE is to:

- register all fishing vessels under the Belize flag
- ensure that all fishing vessels comply with all maritime safety regulations
- provide information to MAF as required to ensure compliance with national laws and international maritime regulations relating to fishing vessels.

The Agreement is stated to be non-binding. It is also stated that it shall remain valid until the High Seas Fishing Act has been duly amended. Presumably, therefore, the elements covered in the Agreement will form the basis for amendment of the High Seas Fishing Act.

In addition to the matters covered in that bilateral agreement, consideration might also be given to revising the High Seas Fishing Act provisions more substantially in order to give

domestic legislative effect to the 1995 UN Fish Stocks Agreement, in particular to provide for high seas boarding and inspection in accordance with that Agreement, to strengthen port state measures that can be adopted by Belize in order to give effect to the recently completed FAO Agreement on Port State measures, and to permit effect to be given to the many measures now being given effect to by RFMOs. In addition, as will be seen below, there has been a call by the UN General Assembly for action to be taken with respect to vulnerable marine ecosystems. It would be useful if the legislation enabled the making of regulations on such matters.

If changes to the High Seas Fishing Act are placed within the framework of a modern fisheries law applying to the whole sector, then actions taken under the high seas provisions would become subject to the objectives and principles for fisheries conservation and management found in most modern fisheries laws, and which on the whole reflect international standards derived from the 1995 UN Fish Stocks Agreement and the Code of conduct for Responsible Fisheries. .

See previous comments on the cost and benefits of the scope of responsible fisheries.

### **Registration of Merchant Ships Act (CAP 236)**

This Act establishes IMMARBE, the International Merchant Marine Registry of Belize, the purpose of which is to provide for the registration under the flag of Belize of vessels of any type, class, size or weight engaged in any kind of trade, service or international maritime activity, including pleasure vessels.

By a 2003 amendment to the Act, the Minister with responsibility for IMMARBE (Minister of Finance) is empowered to appoint a fit and proper person as the Registrar of Merchant Shipping for the purposes of the Act.

Where a vessel registered by IMMARBE infringes, violates or engages in an activity in breach of the Act, or any regulations, resolutions or circular notes or letters made or issued under the Act, or any international convention to which Belize is a party, or any United Nations sanctions, the Registrar may revoke the registration of such vessel from IMMARBE or impose a fine not exceeding fifty thousand dollars.

The procedures and activities concerning registration of ships and relevant obligations and requirements applicable to all ships enrolled in The International Merchant Marine Registry of Belize are governed by the following laws and instruments:

- Registration of Merchant Ships Act, 1989, as amended by Act No. 5 of 1996 and Act No. 14 of 2003
- Registration of Merchant Ships (Registration and Miscellaneous Provisions) Regulations, 1991
- Registration of Merchant Ships (Vessels under 500 GRT In Service Outside The Territorial Waters of Belize) Regulations, 1991
- Registration of Merchant Ships (Pleasure Vessels) Regulations, 1991)

- Registration of Merchant Ships (Fishing Vessels of 24 meters in Length and Above) Safety Regulations, 1995
- Registration of Merchant Ships (Cargo Vessels operating in the Caribbean Trading Area) (Safety) Regulations, 1997
- Registration of Merchant Ships (Disciplinary) Regulations, 1999
- Registration of Merchant Ships (Safe Manning, Hours of Work and Watchkeeping) Regulations, 1999
- The High Seas Fishing Act, 2003
- Registration of Merchant Ships (Ship Security) Regulations 2004 (S.I. 90 of 2004)

In 2008 the International Maritime Organization Conventions Act was passed as Act No. 17 of 2008 to give effect to all International Maritime Organization Conventions and Protocols acceded to by Belize. The Act came into force on the 30<sup>th</sup> day of December 2008. The Act covers the following

Limitation of Liability for Maritime Claims Convention (LLMC) 1976

The 1976 Protocol to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (Fund Convention)

International Convention on Maritime Search and Rescue 1979, as amended  
International Convention on the establishment of a Fund for Compensation for Oil Pollution Damage, 1971 (FUND Convention)

International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS)

International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE)

The Convention on the International Regulations for Preventing Collisions at Sea, 1972 as amended (COLREG)

Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, as amended (MARPOL 73/78)

MARPOL 73/78 Annex III: Prevention of Pollution by Harmful Substances Carried by Sea in Packaged Form

MARPOL 73/78 Annex IV: Prevention of Pollution by Sewage from Ships

MARPOL 73/78 Annex V: Prevention of Pollution by Garbage From Ships

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW)

International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC) and CLC Protocol 1992

The Protocol of 1992 to the Fund Convention of 1971 (1992 FUND)

Protocol of 1998 Relating to the International Convention on Load Lines, 1966 (the LOAD LINES Convention) with its Annexes A&B

Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973 (the MARPOL Convention) as modified by the Protocol of 1978

Protocol of 1988 Relating to the International Convention for the Safety of Life at Sea, 1974 (the SOLAS Convention) and its Annex

These instruments are applicable in general to all sea going vessels, with only a few exceptions.

## OTHER LEGISLATION IMPACTING ON THE FISHERIES LEGISLATION

### Coastal Zone Management Act (CAP. 329)

The Coastal Zone Management Act was enacted in 1998 for the purpose of coastal zone management, meaning the conservation of the Barrier Reef and other coastal resources, and the planning, management and sustainable development of resources within the coastal zone. The Act is mainly concerned with monitoring, planning and coordination to ensure that activities within the coastal zone do not occur in conflict and that these activities ensure the sustainability of the ecosystems.

The Act applies to the coastal zone which is defined to include the area bounded by the shoreline up to the mean high water-mark on its landward side and by the outer limit of the territorial sea on its seaward side, including all coastal waters. The Act defines coastal waters to mean the sea and those waters adjacent to the landward line of the adjoining land, or of land connected permanently or intermittently with the sea, which contain a measurable quantity of seawater, including but not limited to sounds, bays, lagoons, ponds and estuaries.

The objects and functions under the Coastal Zone Management Act lie mostly within its two arms, that of the Authority and Institute. Together, these entities work toward the conservation and the sustainable management and utilization of the resources of the coastal zone for the benefit of present and future generations of Belize.

While the Act is primarily seen as a management tool for issues of conservation and sustainable management, it does contain a permitting section for sport fishing licenses (section 28). This provision empowers the Minister responsible for Coastal Zone Management, which is the Minister responsible for Fisheries, to issue sport fishing licenses subject to conditions as he deems necessary. In considering the mandate of this Act, the permitting section within this context seems a little oddly placed. The revision of the fisheries legislation will therefore give thought to this issue with an aim of making recommendations for the placement of sport fishing and matters related to sport fishing within a more appropriate framework in order to ensure that it is subject to important principles governing fisheries conservation, such as the precautionary approach and ecosystem considerations. In many other countries, sport fishing is placed within general fisheries legislation.

This is key legislation to take into account from an EAF perspective. Sport fishing is a catch-all term for non-commercial fishing but, in addition to being brought under the Fisheries Act, it could be disaggregated into subsistence, recreational and tournament fishing for management purposes since the nature of each of these is quite different. A clear definition of what sport fishing licenses allow and what a fisherfolk license allows, must be considered since many would rather obtain a fisherfolk license for a year (\$50) rather than pay \$20/day for a sport fishing license. Sport Fishing could have implications under RFMO's that the Fisheries Department is part of when it comes to

pelagic species such as marlins that are subject to strict conservation measures.

### **Environmental Protection Act (CAP 328)**

The Environmental Protection Act (hereinafter “the EPA”) enacted in 1992 establishes the Department of the Environment (hereinafter “the DOE”) within the Ministry of Natural Resources and the Environment and charges it with the responsibility to monitor the implementation of the EPA and any Regulations made under it and to take necessary action to enforce its provisions.

Consonant with the principles enshrined in the Constitution, the DOE has among its powers, functions and duties, the responsibility to ensure the protection and rational use of natural resources for the benefit of present and future generations. In keeping with its additional mandate to prevent and control pollution, it is also empowered to coordinate all activities relating to the discharge of wastes into the environment. Environment has been defined to include water, coasts, seas, air and land and the interrelationship which exists among and between water, air, and land, and human beings, other living creatures, plants, micro-organisms and property. There needs to be, therefore, a close relationship between the DOE and the Belize Fisheries Department as both have overlapping interests pursued by the mandate of each Department.

Agreed, especially in EAF given concern about the health of ecosystems more generally.

### **Forests Act (CAP 213)**

The Forests Act is concerned with activities within national lands in relation to its mandate under the Act. National lands is defined to mean all lands, including cayes and parts thereof not already located or granted and also includes any lands which have been, or may hereafter become, escheated to, leased by, or otherwise acquired by the Government.

The Act empowers the Minister of Natural Resources and the Environment to declare forest reserves within national lands by Order under his hand. The Minister also has regulatory-making power which may be of general application or confined to particular forest reserves or other areas of national land, or to private land to which it has been decided to apply any of the provisions of the Act. In so doing, the Minister may prohibit any person as regards such reserve or other area from, among other things, hunting, shooting, fishing, trapping, poisoning water or using explosives to destroy fish, clearing, cultivating or breaking up of land for cultivation or other purposes.

The Forest Act has within its mandate the protection of mangroves and thereby restricts the cutting or dealing in mangroves without first obtaining a permit from the Forest Department so to do. Among the concerns buttressing the protection of mangroves are that each species of mangrove provides habitat for a diverse community of plants and animals, including fish and other species; that mangroves play a crucial role in the ecology of coastal areas, coral reefs and estuaries and produce and trap concentrations of organic matter which are used by marine organisms in coastal food webs; many of

Belize's commercial fish species depend upon the nursery functions of mangrove communities. The ideas are no doubt supported and shared within the mandate of the Fisheries Act and hence this serves as a coordinating point within both mandates but which may run into overlaps and perhaps even gaps in respect of the overall authority. The issue may arise particularly in respect of mangrove islands within marine reserves and if there is no proper coordination between the responsible authorities being the Forest Department on the one hand, and the Fisheries Department on the other, it is possible that any decision taken may be found to be *ultra vires*. Another issue which is seen to give rise to some overlap in jurisdiction arises in respect of lands within marine reserves, which lands are sometimes declared national lands and as such should be treated as part and parcel of the marine reserve and under the authority of the Fisheries Department.

Resilience thinking suggests that there is some merit in an extent of redundancy once the agencies normally enjoy cooperation and coordination. The redundancy ensures that all is not lost if one agency encounters problems (e.g. budget or staff constraints) and there is back-up. For example, Fisheries Department took up some of the slack when the CZMAI encountered difficulties. Legalized jurisdictions should allow for this.

### **Wildlife Protection Act (CAP 220)**

The Wildlife Protection Act is primarily concerned with regulating the hunting of any species of wildlife (it also addresses commercialization and – cursorily – export and import). “Wildlife” is defined to mean all undomesticated mammals, birds and reptiles and all parts, eggs and nests of any of these wildlife forms. While the Act does not encompass fish within the meaning of “wildlife,” it does (Section II para 5) prohibit the use “in hunting of fish of any substance locally known as ‘fish poison’”, and, in incorporating a Schedule of protected species, prohibits hunting of a number of aquatic and marine species, including all species of whales and dolphins, the “Central American Otter” (*Lontra longicaudis annectens* listed as “*Lutra annectans*”), Caribbean Monk Seal and Manatee. Further, the Act specifically allows the application of the requirements, as applicable, under the Belize Agricultural Health Authority Act. In other words, where a provision of this Act carries a corresponding requirement or obligation under the Belize Agricultural Health Authority Act, then that requirement or obligation under the latter Act must be observed.

The issue for consideration here is the same as in so many other countries, viz., where to govern conservation and management of aquatic (including marine) “wildlife” (in a broad sense) species, including those that are of commercial importance in fisheries and those that should be absolutely protected because they are threatened with extinction.

There is a draft Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Bill which will seek to cover all CITES listings. The interaction between the CITES Bill and a new fisheries law will need to be carefully considered in order to ensure that there are clear mandates with respect to aquatic species covered by those laws.

The latter point is critical given the large number of international conservation NGOs operating in Belize that may seek to take advantage of lapses in coordination where a conflict between commercial harvest and conservation may arise. In the same way that FAO and CITES have cooperative arrangements and a joint committee to address this, so too at the national level must the balance between competing interests be attended to. Careful attention must be paid to the composition and operation of the CITES body.

### **National Parks System Act (CAP 215)**

The National Parks System Act governs the declaration of national parks, nature reserves, wildlife sanctuaries and natural monuments. The Chief Forest Officer, Forest Department, in the Ministry of Natural Resources and the Environment, is charged with the responsibility for the administration of the Act.

The Act is concerned with regulating activities within national parks, nature reserves, wildlife sanctuaries and natural monuments. It specifically prohibits damage, destruction or removal from its place of any species of flora and fauna and removal of any antiquity, cave formation, coral or other object of cultural or natural value. The Act also specifically prohibits the introduction of any organic or chemical pollutants into any water and of any exotic species of flora or fauna. The catching of fish by any means whatsoever is also specifically prohibited. In this regime it is clear that at least a part of the mandate of the Belize Fisheries Department is shared by this Act.

The Minister possesses discretionary power to issue permits to *bona fide* organizations and scientists and other qualified professionals or specialists for cave exploration, collection of specimens of particular species of flora or fauna, group education activities, archaeological or paleontological exploration, scientific research and related activities within these sites. All such permits shall require that copies of all data and findings from any of these activities, or any papers based on them, shall be provided to the Minister. Additionally, the Minister may at his discretion issue permits for fishing in any national park, wildlife sanctuary or natural monument where such activity will not destroy or seriously detract from those values that were the principal reason for establishment of the national park, nature reserve, wildlife sanctuary or natural monument.

National parks may serve many useful purposes to fishery ecosystem interests, ranging from providing no-take refugia and sanctuaries to opportunities for education and outreach. If not in the legislation itself, the forthcoming fisheries management plans should see how best to incorporate them into their objectives and practices.

### **Belize Port Authority Act (CAP. 233)**

The Belize Port Authority Act establishes the Belize Port Authority (hereinafter “the BPA”) which is a statutory authority charged with the responsibility of foreign and domestic vessels in Belize. In respect of domestic vessels, the BPA is the authority charged with inspection and licensing for seaworthiness by means of the issuance of a seaworthiness certificate. In respect of foreign vessels, the BPA is the authority responsible for ensuring that the vessel is in compliance with the laws of Belize in respect

of navigation and entry. A foreign vessel requires the permission of the BPA before proceeding to enter Belizean waters. The BPA Act also has jurisdiction with respect to the designation of ports in the person of the Minister responsible for Ports who is solely empowered to designate a port.

In respect of a fishing vessel, the BPA will apply the laws under the BPA Act to that vessel as it would to any other except that when such a vessel is approached as engaged in fishing, the coordinating efforts of the BPA take over. In such an instance, the BPA would engage the fisheries officers under the Fisheries Act and those officers would proceed to monitor and ensure compliance with the Fisheries Act and BPA officers would enforce the provisions of the BPA in respect of maritime safety.

The BPA is also empowered to board vessels to ensure compliance with IMO instruments. The BPA, in the person of its officers, is empowered to detain vessels purportedly engaging in illegal activities and to hand that vessel over to the Belize Coast Guard or the fisheries officers for necessary action. This is so since the BPA is not entitled to prosecute for offences unless specifically authorized by the relevant agency with which it coordinates. The BPA is however empowered to prosecute offences committed under its Act.

It is unclear at this point how relevant the Port Authority and its personnel would be to obligations for Belize's port state control, water quality in marinas and areas heavily trafficked by recreational and commercial vessels, coastal traffic separation and shipping lanes where these intersect with fishing activities etc. Requires clarification including demarcation of the areas that are under the jurisdiction of the Ports Authority.

#### **Aquaculture Development Act (No. 4 of 2007<sup>2</sup>)**

The Aquaculture Development Act provides for the sustainable development of the aquaculture industry in Belize and the export of its products. It establishes a Belize Aquaculture Authority under the Ministry of Foreign Trade as the principal entity charged with the duty of the proper and efficient administration of issues relating to aquaculture development in Belize. The Act also establishes a Belize Aquaculture Producers Association which is a corporate entity recognized under the law to carry out its functions and duties in accordance with its Memorandum and Articles of Association as well as those under the Act and Regulations. The Act defines aquaculture as the propagation and rearing of aquatic organisms in controlled or selected aquatic environments for any commercial, recreational, or public purpose, including the capture of brood stock. Notably, the oversight responsibility of the Act lies with the Ministry of Foreign Trade exclusively.

While the Act was assented to on the 5<sup>th</sup> day of June 2007, it requires a Commencement Order under the hand of the Minister of Foreign Trade in order that it comes into effect. Consequently, while the Act sits and forms part of the laws of Belize, it cannot be invoked as it is powerless until its entry into force.

<sup>2</sup> This Act is not in force.

As previously noted, the management of aquaculture and capture fisheries need to be closely integrated and coordinated especially where they share the same water bodies, whether freshwater or marine. Ideally there should be close legislative and practical management linkages. Since the Act is not yet in force, review is strongly suggested.

### **Belize National Coast Guard Service Act (No. 19 of 2004)**

Enacted in January 2005, the Belize National Coast Guard Service Act establishes the Coast Guard Service within the Ministry of Home Affairs and empowers that agency within a certain scope. The Coast Guard operates primarily as a coast-watching force, maintaining a state of readiness to function as a maritime specialized force for enforcement of Belize maritime law, resource protection, and safety and operations at sea. Within that scope, the Coast Guard is empowered to provide coordinating efforts along with, among others, the Belize Fisheries Department, Customs Department as well as to act in the protection of Belize's territorial seas, continental shelf, exclusive economic zone, and fisheries zones in accordance with the Belize Constitution, the Maritime Areas Act, the Law of the Sea Convention, and other international maritime conventions to which Belize is a party. In particular, these concern: pollution and pollution prevention; navigation, including navigation in any inland water way in Belize or at any harbor or port; port security and safety; preservation and exploitation of the maritime environment; merchant vessel inspection and documentation in conformity with the provisions of the Safety of Life At Sea Convention (SOLAS), the International Convention on Load Lines (ILC), and the International Convention on the Tonnage Measurement of Ships and regulating the carriage of bulk cargoes and dangerous goods by merchant ships, and any other bilateral or multilateral treaty or agreement to which Belize is a party providing for proliferation security initiatives at sea. This Act provides for a wide scope of coordination efforts with several agencies and government departments and the Act specifically requires the Coast Guard to act under the instructions of the relevant authority with statutory responsibility over the specific subject matter except in instances of emergencies.

If IUU fishing is a problem, as alleged, then considerable attention needs to be paid to MCS and especially enforcement capacity. This may not be a legal matter. However, if Belize moves towards rights-based fisheries the rights-holders can be expected to demand a high level of state enforcement, especially of foreign fishing, in order to protect their assets. In co-management the strongest role of the state is often in law enforcement, a task that communities may share but are usually ill-equipped to do. If the state is ineffective in discharging this responsibility, co-management usually fails. There would also be a need to strengthen coordination amongst parties involved. The limited access program (managed access-TURF) is contemplating considerable effort in monitoring and enforcement. However, it now only involves the inshore fishery and not the outer limits of the EEZ or the high seas. Enforcement capacity is a consideration.

### **Petroleum Act and Regulations & the Mines and Minerals Act and Regulations**

The powers granted under the Petroleum Act and the Mines and Minerals Act in respect of seismic testing and exploration and dredging have some far-reaching implications

within the coastal area of Belize as well as within the inland areas. Of particular importance to this study is the importance on the coastal area and waters affected by the acts of seismic testing, exploration and dredging.

While protected areas are considered when determining planning areas for exploration, there is no emergency response plan or mechanism contemplated by the Act should a disaster threaten these areas or the marine wildlife these areas harbor. The Act provides scope for the coordination of efforts among the Fisheries Department, the Department of Environment, the Forest Department and the Petroleum and Geology Department in carrying out its mandate under the Act. The Departments operate as a team and make joint recommendations in respect of the matter being addressed. This notwithstanding, it may be wise to consider addressing certain specific issues in the Fisheries Act which are capable of serving as conditions precedent to granting licenses under the Petroleum and the Mines and Minerals Acts. Among the issues of concern are: the requirement for oil spill response plans; blanket prohibition of dredging within marine reserves in the interest of protecting the habitats of various species found in the specific area to be affected; restrictions to dredging based on the perspective and mandate of the Fisheries and perhaps the Forest Departments; the designation of specific zones for habitat protection (e.g., critical fish habitat), the dredging of which will be prohibited; the requirement of specific marine research or testing as deemed fit for the circumstances.

The latter points are critical, especially for the protection of essential habitat. Tourism development and aquaculture are often causes for concern in relation to dredging. The permitting system must be enforced and take into account concerns that go beyond visible interaction with fisheries since all stages in life histories must be considered. Marine reserves are only a small portion of the areas of concern. Although they have specific conservation goals, activities outside the marine reserves may cause them to receive damage. Hence consideration must be given to oceanographic and atmospheric conditions such as currents and wind draft that distribute the impacts of mining, etc.

### **Belize Agricultural Health Authority Act (CAP. 211)**

The Belize Agricultural Health Authority (BAHA) Act establishes the BAHA as a statutory corporation the functions and powers of which were once directly housed under the Ministry responsible for Agriculture. Notwithstanding the severance, the Ministry responsible for Agriculture still retains oversight responsibility in respect of policy directions under the BAHA Act. Upon entry into force, the BAHA Act repealed the Plant Protection Act, the Animals (Diseases and Importation) Act, and the Fertilizers and Feeding Stuffs Act.

In carrying out its duties under the BAHA Act, the BAHA is empowered to enter into technical cooperation agreements with other regional or international organizations with similar objectives. This is seen as a means of allowing for coordinating and supporting efforts for the Belize Fisheries Department.

In dealing with animals, BAHA also deals with fish which is defined to include all or any of the varieties of marine or fresh water animals, by whatever description called.

The BAHA Act has a wide scope of regulatory powers. There seems to be an overlap function within this regulatory-making regime with the mandate of the Fisheries Department which has to do with controlling and regulating standards for the processing of fish and fisheries products since there exist a set of regulations under the BAHA Act for the inspection of fish and fisheries products.

The Minister of Agriculture and Fisheries informs that this Act forms part of a revision process being undertaken by that Ministry with the aim of producing a more comprehensive piece of legislation.

Ecosystem health and public health are both concerns. Agrochemicals and veterinary products are especially worrisome. The revision of the above Act should be coordinated.

The Fisheries Department ensures compliance with fisheries regulations (minimum size or weight, skin condition, export quantities, etc.) while BAHA regulates the sanitary conditions of the receiving and processing plants (via HACCP). When BAHA was formed, the mandate to regulate food quality of marine products was transferred to it by law.

### **Cooperative Societies Act (CAP. 313)**

The Cooperative Societies Act governs societies which have as their object the promotion of the economic interests of its members in accordance with cooperative principles, or societies established with the object of facilitating the operations of such a society and which by virtue of having those objects are qualified to register under the Act as limited liability companies or otherwise as the Registrar may decide.

The Act provides for the disposal of produce to or through a registered society by members of that society. This is allowed by a registered society which has as one of its objects the disposal of any article produced or obtained by the work or industry of its members whether the produce of agriculture, animal husbandry, forestry, fisheries, handicrafts or otherwise. In such a case, the registered society may provide in its by-laws or may otherwise contract with its members that every such member who produces any article shall dispose of the whole or any specified amount, proportion or description of that article, to or through the society and that any member who is proved or adjudged to be guilty of a breach of the by-laws or contract shall pay to the society as liquidated damages an assessed or ascertained sum.

Fisherman cooperatives are in fact registered under this Act and require the disposal of produce to and through such societies.

This Act, along with the BAHA Act, forms part of a revision process being undertaken by the Ministry of Agriculture and Fisheries with the aim of producing a more comprehensive piece of legislation.

Belize is well known for the strength and success of its fisheries cooperatives. In other parts of the Caribbean revision of cooperative legislation has focused on credit unions at the expense of producer cooperatives, resulting in laws heavy on financial accountability and control. Presumably this will not be the case in Belize, but one should be vigilant. The fishermen cooperatives in their inception were very successful and role models for others to follow. Nevertheless, mismanagement of funds and evasion of fishermen from repaying their loans has crippled the cooperatives and has gotten them into debt. Some observers doubt that they will survive the future if the status quo remains. Since they are now key to Belize's system of fisheries governance, scenarios must be examined.

## APPLICABLE INTERNATIONAL LEGAL REGIME

### Global treaties concerning fisheries

Belize is a party to the three principal global treaties concerning fisheries, namely the 1982 UN Convention on the Law of the Sea, the 1995 UN Fish Stocks Agreement, and the FAO Compliance Agreement. Each of these treaties imposes important rights and obligations on Belize.

#### **UN Convention on the Law of the Sea (1982)**

Negotiated between 1974 and 1982, the 1982 UN Convention entered into force in 1994. The treaty accords to the coastal state internal waters and a 12 mile territorial sea, over which area it has sovereignty. Further, it permits the coastal state to claim an exclusive economic zone up to 200 nautical miles from the baselines from which the territorial sea is measured. In this zone, the coastal state has, *inter alia*, sovereign rights over the marine living resources, gives to the coastal state a number of important rights and obligations in the EEZ. However these are accompanied by certain duties.

One of these duties concerns the implementation of conservation measures, for while article 61 gives the coastal state the important authority to determine the allowable catch of the living resources in the EEZ (article 61.1) article 61.2 sets out certain conservation standards. These include the duty to “*ensure, through proper conservation and management measures that the maintenance of the living resources in the EEZ is not endangered by over exploitation.*”

Article 61.3 requires that such measures “*shall be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield as qualified by relevant environmental and economic factors*” There are other conservation objectives set out in article 61. For the most part they set a relatively low standard.

Substantially similar standards are set out in the provisions on high seas fishing (see in particular article 119).

These conservation and management obligations are not currently reflected in existing legislation in Belize. That said, it is likely that Belize would want to adopt the more stringent conservation objectives and principles set out in the 1995 UN Fish Stocks Agreement, and in other recent international instruments. These will be considered later.

Article 62.1 sets out the obligation to “*promote the objective of optimum utilisation without prejudice to article 61.*”

Article 62.2 requires the coastal state to “*determine its capacity to harvest the living resources of the “EEZ. Where it does not have “the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements...give other States access to the surplus of the allowable catch...”*

This granting of access to the surplus is one of the important duties imposed on a coastal state under the Convention.

Two other provisions should be noted: articles 63 and 64. Article 63.1 deals with stocks which occur within the EEZ of two or more coastal states. Coastal states are to seek to agree upon measures necessary to coordinate and ensure the conservation and development of such stocks. These are often referred to as shared stocks. Article 63.2 deals with stocks which occur both within the EEZ and in an area beyond and adjacent to the zone. In respect of these stocks, the states involved are to seek to agree upon the measures necessary for the conservation of those stocks. These are often referred to as straddling stocks.

Article 64 deals with highly migratory species. Both article 63.2 dealing with straddling stocks and article 64 dealing with highly migratory species have been significantly augmented by the 1995 UN Fish Stocks Agreement, which is considered further below.

Thus, while Belize has sovereign rights to the living resources of the EEZ, it also has an important conservation duty with respect to those resources and a duty to allow access to other states in certain circumstances. It does however, have considerable discretion as to whom it will grant access, subject of course to any treaty obligations entered into, such as those arising under CARICOM.

The 1982 UN Convention also gives to the coastal state important enforcement powers in the EEZ in the exercise of its sovereign rights in the zone. These include boarding, inspection, arrest and judicial proceedings to ensure compliance with its laws adopted by it in conformity with the Convention. Two important restraints are imposed on this power, which have an impact on the drafting of legislation. First, article 73.2 states that “*Arrested vessels and their crews shall be promptly released upon the posting of reasonable bond or other security*”. Second, article 73.3 states “*Coastal State penalties for violations of fisheries law and regulations may not include imprisonment, in the*

*absence of agreements to the contrary by the States concerned, or any other form of corporal punishment”.*

With respect to what constitutes a violation of a fisheries law or regulation, it is accepted that, if for example, violence is used towards a fisheries officer carrying out an inspection; this would be a criminal act, and not necessarily just a violation of a fisheries law or regulation.

**The UN 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, 1995**

The UN Fish Stocks Agreement was in part intended to provide for the more effective implementation of the provisions of the 1982 UN Convention, especially those concerning highly migratory fish stocks and straddling fish stocks.

In article 2, it is stated that the objective of the Agreement is *“to ensure the long term conservation and sustainable use of the straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.”* It is important to note that, by its terms, it is limited, with only a few exceptions, to the stocks referred to.

Article 5 sets out general principles for the conservation and management of such stocks. However, although the Agreement is stated to implement the 1982 UN Convention with respect to these stocks, in effect, it has added considerably to the more limited conservation objectives found in article 61 of the 1982 UN Convention. In addition to requiring long term sustainability, it reiterates the objective of maximum sustainable yield (MSY) but more importantly, it is now placed alongside the precautionary approach, the need to protect biodiversity, a nascent ecosystem approach, and many other objectives not set out, at least not explicitly in the 1982 UN Convention. Overall, the provisions of article 5 represent a significant improvement in the conservation standards found in the 1982 UN Convention referred to above. The precautionary approach itself is elaborated on in article 6, while article 7 sets out criteria to ensure that there is compatibility between measures adopted on the high seas and those adopted in the EEZ in respect of straddling fish stocks and highly migratory fish stocks.

The precautionary approach and the general principles are also given application in areas under national jurisdiction, at least with respect to straddling fish stocks and highly migratory fish stocks (article 3).

The retention of MSY in the 1995 UN Fish Stocks Agreement was probably inspired by the need to avoid giving the impression that the Agreement was amending the 1982 UN Convention. Increasingly, MSY has come to be viewed as an unsatisfactory standard. One line of thinking, never fully articulated, has been the trend to treat MSY as a limit rather than a target, and in support of this, Annex II of the 1995 UN Fish Stocks

Agreement has been cited in support. More recently, the view is being increasingly adopted (though, again, not clearly articulated) that the precautionary approach, the ecosystem approach to fisheries management, and the need to protect marine biodiversity, impose higher standards than MSY is capable of meeting (whether as a limit or a target). The matter is complicated by the fact that many of these modern conservation standards are set out in the 1995 UN Fish Stocks Agreement, which by its terms applies only to straddling fish stocks and highly migratory fish stocks, and further complicated by the fact that, unlike the 1982 UN Convention, participation in the 1995 UN Fish Stocks Agreement is still far from universal, especially in Central and South America. Despite these legalistic points, the modern conservation standards are being increasingly relied on in numerous international instruments, both binding and non-binding. It would be open to the government of Belize to take the view that, provided it had adopted the higher standards, the absence of a reference to MSY in its conservation standards would not be in breach of the conservation obligations set out in the 1982 UN Convention and the 1995 UN Fish Stocks Agreement.

The 1995 UN Fish Stocks Agreement also has detailed provisions on mechanisms for international cooperation concerning straddling fish stocks and highly migratory fish stocks (Part III) as well as Part IV on Non members and non participants.

One part is of particular importance to Belize. It is Part V: duties of the flag State. Unlike most other provisions in the 1995 UN Fish Stocks Agreement, this Part is not restricted in its application to straddling fish stocks and highly migratory fish stocks. Furthermore, it applies to “States”. There is an ambiguity here as to whether or not this applies to States Parties to the Agreement, or to all States. As drafted, it suggests the latter, as other provisions of the Agreement apply to “Parties”. However, as Belize is a Party to the Agreement, this ambiguity does not matter in the present context.

Article 18 imposes on the flag State whose vessels fish on the high seas the duty to “*take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures*”. In particular, a state is only to “*authorise the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under*” the 1982 UN Convention and the 1995 UN Fish Stocks Agreement.

This is followed by a number of specific measures that the flag State is required to take, including controlling its vessels fishing in waters under the jurisdiction of another State. At present the High Seas Fishing Act, as already noted, does not give full effect to the obligations set out in this Part.

Part VI deals with compliance and enforcement. It contains very elaborate provisions concerning international cooperation in enforcement (article 21) and subregional and regional cooperation in enforcement, which include the boarding in certain circumstance of vessels on the high seas of states parties to the Agreement.

It is not proposed to go into the considerable detail of the provisions here, except to note that they require careful legislative implementation in Belize law. Indeed, neither the Fisheries Act nor the High Seas Fishing Act provide for this. Thus, any revision of the legislation will need to ensure that this gap is remedied.

### **FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993)**

Belize is also a party to the FAO Compliance Agreement. Several of the provisions overlap with the duties of the flag state set out in 1995 UN Fish Stocks Agreement. However, this Agreement imposes very precise obligations regarding the maintenance of a record of fishing vessels in respect of fishing vessels entitled to fly its flag (article IV), and the information which it must contain (Article VI). This information needs to be made available to FAO. FAO is in turn to circulate this information to parties to the Agreement.

While still important, the value of this system has been overtaken to some extent by records of fishing vessels now being maintained by regional fisheries bodies. The High Seas Fishing Act does give legislative effect to this provision in Belize law. Further, to a large extent, the High Seas Fishing Act gives effect to this Agreement (though not, except incidentally, to the 1995 UN Fish Stocks Agreement). This has been explained in more detail above under “High Seas Fishing Act”.

### **FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated (IUU) Fishing (2009)**

This global treaty is the latest binding instrument to be opened for signature dealing with fishing. Belize has not so far signed this treaty. Its objective is stated to be to “*prevent, deter, and eliminate IUU fishing through the implementation of effective port State measures, and thereby to ensure the long term conservation and sustainable use of the living marine resources and marine ecosystems.*”

Its substantive provisions deal with: integration and coordination at the national level, article 5 (cooperation and exchange of information (article 6), designation of ports (article 7) advanced request for port entry (article 8), port entry, authorization or denial (article 9), force majeure or distress (article 10), use of ports (article 11), levels and priorities for inspection (article 12), conduct of inspections (article 13), result of inspections (article 14), transmittal of inspection results (article 15), electronic exchange of information (article 16), training of inspectors (article 17), Port States actions following inspection (article 18), information on recourse to the flag State (article 19), role of flag States (article 20), requirements of developing States (article 21), peaceful settlement of disputes (article 22).

The treaty is currently open for signature, and will enter into force thirty days after the date of deposit of the twenty-fifth instrument of ratification, acceptance, approval or accession. While a regional economic integration organization may become a party to the

Agreement (basically, this refers to the EU), it is not counted in the number needed to bring the Agreement into force (article 29).

No reservations or exceptions may be made to the Agreement (article 30), though declarations and statements may be made in limited circumstances. There is also the possibility of provisional application (article 32).

There are also some important annexes: information to be provided in advance by vessels requesting port entry (annex A), port inspection procedures (annex B), report of the results of the inspection (annex C), information systems on port State measures (annex D), and guidelines for the training of inspectors (Annex E).

The scheme set out in this Agreement is likely to be regarded as setting the minimum standards that need to be adopted principally by RFMOs. Already one RFMO to which Belize is a party (the Indian Ocean Tuna Commission Agreement) has adopted a port States scheme based on this Agreement.

At present, many RFMOs have adopted port measures of varying degrees of coverage. However, it is likely that most will in time revise their port measures to bring them into line with these minimum standards, there would be nothing to stop them adopting more stringent measures if they wished to, or if an individual country wished to. Any new legislation will need to ensure that effect can be given to a strong port measures regime.

These agreements will be major factors in the legal revision of the Fisheries Act. A topic too large to properly address here is the extent to which Belize's policy, planning and management processes and preferences will shape the contents of the new Act. Since ecosystem approaches, rights-based management, fisheries governance and resilience thinking (including adaptive capacity and the precautionary approach are fast evolving, especially for small-scale fisheries and MPAs, a framework approach is suggested to aid future adaptation to the changing environment of fisheries regionally and globally.

## **Marine mammals**

### **International Convention for the Regulation of Whaling**

Belize adhered to the International Convention for the Regulation of Whaling (ICRW, 1946) in 2003 and is represented by the Fisheries Administrator on the International Whaling Commission (IWC) established under the auspices of the treaty. The IWC is famous for its inability to agree on measures, however, it is potentially important to the management of the fish stocks of Belize, and it could in time have an impact on the activities of vessels fishing on the high seas.

## **Multilateral Environmental Agreements**

### **Convention on Biological Diversity (CBD, 1992)**

Belize is a party to this Convention, and it is certainly an important global environmental agreement for Belize. Its objective is stated to be “*the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.*”

The CBD mandates its Parties to:

- develop national strategies, plans, or programs for the conservation and sustainable use of biodiversity;
- identify and monitor the status of components of biological diversity; and
- develop and manage protected areas and other areas of importance for biodiversity.

The treaty addresses a range of issues, including: sustainable use, incentives, research and training, public education and awareness, impact assessment and mitigation, access to genetic resources, technology transfer, information exchange, technical and scientific co-operation, and biotechnology, and establishes a funding mechanism, the Global Environment Facility (GEF). It may be of interest that Belize’s National Biodiversity Strategy and Action Plan (1999), mandated by the CBD, reviewed legal and policy aspects, including for marine resources and *inter alia* highlighted numerous gaps, including a lack of regulations on deep sea fishing, collection of aquarium fish, and aquaculture, and needs, including for regulations to protect watersheds, estuaries and wetlands outside of protected areas.

Although the CBD is to be applied consistently with the “law of the sea”, that is less important than it appears, as it is likely to provide increasingly the source of international action on protection of biodiversity, the ecosystem and natural habitats. A case in point is the Jakarta Mandate on the Conservation and Sustainable Use of Marine and Coastal Biological Diversity (1995), which *inter alia* encourages the use of integrated marine and coastal areas management as the best means for dealing with human impacts on marine and coastal biodiversity, and for promoting its conservation and sustainable use.

While important, Haughton has pointed out the widely held and much-voiced concern that there are certain “troubling” limitations within this Convention: “*The fundamental problem is that the extent of the contracting parties’ obligations is uncertain and ambiguous owing to the vague and imprecise language used to qualify these obligations.... These broad qualifications diminish and create difficulties in determining the limits of the parties’ obligations and bring the commitments closer to being unenforceable soft law*” (to be published in "Towards Marine Ecosystem-based Management in the Wider Caribbean" ed. Lucy Fanning, Robin Mahon and Patrick McConney, Amsterdam University Press). That said, the Jakarta Mandate and other declarations and deliberations under the CBD are useful, if not essential, guidance for aligning the use and conservation of marine and coastal resources.

Last point above is agreed with, and the forthcoming publication referenced contains a wealth of information on ecosystem-based management from a Caribbean perspective.

## **The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 1972)**

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, better known as CITES, entered into force in 1975. Since then, it has expanded considerably and now has 175 Parties.

The basic objective of CITES is to prevent over-exploitation of animals and plants by regulating or prohibiting their international trade (including of dead specimens, parts and products, and derivatives). This is achieved through the listing of species in either Appendix I or II (or III). If a species is listed in one of these Appendices, it becomes subject to the treaty's trade restrictions.

The CITES regime is unusually complex. Further, a lot of decisions are made at the Conference of the Parties which have the expressed effect of interpreting or applying the Convention, indeed, many are aimed at simplifying implementation or setting a common standard. Full understanding of the treaty requires looking beyond the Convention itself at Conference decisions and recommendations.

At the treaty's biennial meetings of its Conference of Parties, amendments to the Appendices are adopted and decisions and recommendations made regarding interpretation and implementation of the treaty. Numerous marine species (e.g., all cetaceans and marine turtles) are listed on the Appendices, and in recent years, this number has expanded to include commercially exploited marine fishes, including seahorses, the whale shark and basking shark. The queen conch, very important to Belize, has been listed in the Convention's Appendices since 1992. Increasing effort is being made to extend CITES' reach to globally threatened fishes, including sharks and other vulnerable species.

As already alluded to earlier under the rubric *Wildlife Protection Act*, the Forest Department is the focal point for CITES matters, though, the Fisheries Act also provides for import and export controls on "fish" There is under consideration a draft Act which, it is understood, is intended to bring all CITES matters under one umbrella.

See previous points on CITES and the need to integrate national fisheries policy into a process that allows both conservation and resource-based extractive livelihoods. This should be taken into account in fisheries management plans such as obvious for conch

## **Convention on Migratory Species of Wild Animals (CMS, 1979)**

Also known as the Bonn Convention, the CMS aims to conserve terrestrial, marine and avian migratory species throughout their range, with its specific mandate applying to those species listed on the treaty's two annexes. This Convention is essentially a framework convention, which provides the basis for future action. Belize is not a party to the CMS nor to any of the Agreements or Memoranda of Understanding adopted under its auspices. Owing to their treatment of marine species, both the treaty and its subsidiary instruments (e.g., Agreement on the Conservation of Albatrosses and Petrels,

Memorandum of Understanding on the Conservation of Migratory Sharks) are potentially quite relevant to the Belize fisheries sector.

### **The Convention on Wetlands of International Importance (Ramsar, 1971)**

The RAMSAR Convention provides a framework for the conservation and “wise use” of wetlands and their resources. Belize is a party to this treaty. The treaty defines wetlands as: areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters.

The treaty permits Contracting Parties to designate suitable wetlands within its territory for inclusion in a List of Wetlands of International Importance.

The Convention is important from a fisheries perspective as there will inevitably be overlaps between such areas and areas subject to the fisheries legislation. Thus, care will need to be taken to ensure that legislation for fisheries and legislation applicable to wetlands are compatible. As already mentioned, currently there are two RAMSAR sites in Belize. These are: Crooked Tree Lagoon Wildlife Sanctuary and Sarstoon Temash National Park.

### **Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention, 1972)**

The World Heritage Convention, administered by the United Nations Educational, Scientific and Cultural Organization (UNESCO), provides for the conservation of cultural and natural heritage approved for listing (after nomination by individual Parties) on the World Heritage List. Inclusion on the List obligates the country concerned to develop a management plan for the site and to provide regular reports on the site’s status and measures to preserve it. UNESCO also maintains a List of World Heritage in Danger, designed to call attention to sites whose character is threatened by natural or anthropogenic factors.

The Belize Barrier Reef System World Heritage Site was designated by UNESCO in 1996 to encompass seven of the country’s marine protected areas. It was inscribed on the Danger List in 2009.

While the provisions of Article 5 of the Convention are quite general in terms of their obligations, these have been developed further in the *Operational Guidelines for the Implementation of the World Heritage Convention*, published by UNESCO (2008 – <http://whc.unesco.org>)

Although keeping the Belize Barrier Reef System World Heritage Site off the Danger List depends upon more than fisheries matters, it is important to ensure that the new Act facilitates healthy social-ecological systems on the barrier reef and elsewhere. Although there should be few incompatibilities with this and sustainable fisheries, the need for responsible fisheries is reinforced. This designation provides leverage for the latter.

## Regional environmental agreements

### Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena, 1983)

The Convention for the Protection and Development of the Marine Environment of the Wider Caribbean region is a legally binding treaty. It is a wide-ranging treaty which is in part a framework treaty (articles 3 (general provisions) and 4 (general obligations)) Further, parties are to endeavor to conclude bilateral and multilateral agreements. Three protocols have been formulated under its auspices: the Oil Spills (Cooperation in Combating Oil Spills), SPAW (Specially Protected Areas and Wildlife), and LBS (Pollution from Land-based Sources and Activities) Protocols. Belize is currently party to the treaty and the se three Protocols.

The Convention addresses specifically pollution from ships (article 5), pollution caused by dumping (article 6) pollution from land based sources (article 7) pollution from seabed activities (article 8) airborne pollution (article 9).

Article 10 (specially protected areas) is very important for Belize:

*The Contracting Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems, as well as the habitat of depleted, threatened or endangered species, in the Convention area. To this end, the Contracting Parties shall endeavor to establish protected areas. The establishment of such areas shall not affect the rights of other Contracting Parties and third States. In addition, the Contracting Parties shall exchange information concerning the administration and management of such areas.*

Pursuant to this article, the SPAW protocol, adopted in 1990 and entered into effect in 2000, sets out some specific obligations for parties that are important for Belize. Article 3 states:

*1. Each Party to this Protocol shall, in accordance with its laws and regulations and the terms of the Protocol, take the necessary measures to protect, preserve and manage in a sustainable way, within areas of the Wider Caribbean Region in which it exercises sovereignty, or sovereign rights or jurisdiction:*

*(a) areas that require protection to safeguard their special value; and*

*(b) threatened or endangered species of flora and fauna.*

*Each Party shall regulate and, where necessary, prohibit activities having adverse effects on these areas and species. Each Party shall endeavor to co-operate in the enforcement of these measures, without prejudice to the sovereignty, or sovereign rights or jurisdiction of other Parties. Any measures taken by such Party to enforce or to attempt to enforce the measures agreed pursuant to this Protocol shall be limited to those within the competence of such Party and shall be in accordance with international law.*

*Each Party, to the extent possible, consistent with each Party's legal system, shall manage species of fauna and flora with the objective of preventing species from becoming endangered or threatened.*

Like CITES, the SPAW Protocol provides for varying degrees of protection and regulation to wildlife species according to their conservation status and the Annexes on which they are listed. All marine turtles and all cetaceans are afforded total protection and recovery protection through their listing in Annex II. Queen conch (*Strombus gigas*) and spiny lobster (*Panulirus argus*) are listed in Annex III, indicating that their use is to be regulated in order to ensure and maintain their populations at the highest possible levels. Another important part of the Protocol is the protection it affords to protected areas in the marine environment.

Although more of an operational than legislative matter, the Caribbean Environment Programme (CEP) has recently been placing more emphasis on the relationship between the SPAW Protocol and MPAs from an ecosystem perspective. Just in addition to above.

#### **Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC, 1996)**

The IAC (to which Belize is a Party) entered into force in 2001, and aims to: *promote the protection, conservation and recovery of sea turtle populations and of the habitats on which they depend, based on the best available scientific evidence, taking into account the environmental, socioeconomic and cultural characteristics of the Parties.*

Its area of application is stated to be the land area of each of the parties and those parts of the Atlantic and Pacific Oceans, and the Caribbean Sea over which the parties exercise sovereignty, sovereign rights and jurisdiction in accordance with the 1982 UN Convention.

The Convention applies to coastal habitat in the Americas, as well as the maritime areas over which its Parties exercise sovereignty and sovereign rights under the 1982 UN Convention thereby covering a significant portion of the ranges of marine turtles in the Western Hemisphere. It further applies to vessels registered by Parties to fly their flag on the high seas. The treaty requires Parties to:

- protect and conserve marine turtle populations and their habitats;
- require the use of Turtle Excluder Devices (TEDs) by commercial shrimp trawling fleets;
- reduce incidental capture, injury, and mortality of marine turtles associated with commercial fisheries;
- prohibit the intentional take of, and domestic and international trade in, marine turtles, their eggs, parts and products; and
- foster international co-operation in marine turtle research and management.

The measures are important *inter alia* because they impose an obligation for Parties to control their vessels on the high seas to protect turtles. Belize may have embraced its obligation, though in rather indirect and general terms, in its High Seas Fishing Act, section 16(1) of which states: “No Belize fishing vessel shall engage in any activity on the high seas which undermines the effectiveness of international conservation and management measures”, which arguably could cover the provisions of this treaty (of the definition of international conservation and management measures in that Act) and in its Fisheries Regulations. The Fisheries Regulations contain provisions for the protection of turtles, turtle eggs, turtle nests and prohibitions on sale articles made of turtle shell and importation and exportation of any turtle or turtle products. Additionally, Belize has also established a national marine turtles working group which works on research, education outreach and recovery of turtles, and a network that works on data collection for nesting and hatchlings of turtles.

Sea turtle conservation is one of the areas in which guidelines abound for ecosystem-based best practices. However these are expected to be more in regulations and plans.

### **Caribbean Community (CARICOM)**

The Revised Treaty of Chaguaramas (2001) is an important treaty establishing the Caribbean Community, including the CARICOM single market and economy (CSME). Its broad objective is to promote economic and social development through regional cooperation and integration of the economies of states parties. Some of its provisions address fisheries: article 58(1) (on natural resource management) states:

#### ***Natural Resource Management***

- 1. The Community shall adopt effective measures to assist the Member States in the management of their natural resources in support of the transformation and sustainable development of the agricultural sector.*
- 2. without prejudice to the generality of paragraph 1 and to obligations of Member States under existing international agreements, the Community shall adopt measures for*
  - (a) the effective management of the soil, air and all water resources, the exclusive economic zone and all other maritime areas under the national jurisdiction of the Member States; and*
  - (b) the conservation of biological diversity and the sustainable use of biological resources of the Member States, especially those of important medicinal and traditional value.*

Article 60 deals with Fisheries Management and Development

- 1. The Community, in collaboration with competent national, regional and international agencies and organizations, shall promote the development, management and*

*conservation of the fisheries resources in and among the Member States on a sustainable basis.*

*2. The Community shall effect the promotion and facilitation referred to in paragraph 1 by:*

*(a) enhancing the institutional capabilities of the Member States in areas such as policy formulation, registration and management systems, resource monitoring and assessment, and harvesting and post-harvesting technologies;*

*(b) establishing mechanisms to provide assistance in:*

*(i) the development, management and conservation of the fisheries resources;*

*(ii) the discharge of obligations relating to fisheries resources arising under Articles 62, 63 and 64 of the United Nations Convention on the Law of the Sea (1982).*

*(c) effective regional representation at international fora;*

*(d) establishing development programs for aquaculture;*

*(e) encouraging the establishment of protected aquatic habitats and associated terrestrial areas and fish populations for the sustainable development of fisheries resources of the Member States; and*

*(f) establishing, facilitating and strengthening research and human resource development at the professional, technical and vocational levels.*

*3. The Community shall collaborate with the Member States in:*

*(a) the management of straddling and highly migratory fish stocks;*

*(b) ongoing surveillance of their exclusive economic zones;*

*(c) the delimitation of maritime boundaries; and*

*(d) safeguarding their marine environment from pollutants and hazardous wastes.*

*4. Without prejudice to the provisions of Article 56, COFCOR shall promote the establishment of a regime for the effective management, conservation and utilization of the living resources of the exclusive economic zones of the Member States.*

5. For the purpose of this Article, “fisheries resources” includes all the fishable resources, natural and cultured, in the inland and internal waters, territorial seas and the exclusive economic zones of the Member States.

These provisions have been quoted extensively because, if implemented, they could have a profound impact on the fisheries sector. At the time of writing, it is not known whether they will be implemented in the near future.

As indicated earlier, the implications of the Revised Treaty and CSME to fisheries within CARICOM are still not fully articulated or understood. Note, for example, the CARICOM legal interpretation concerning the lack of connection to the Common Fisheries Policy. It is unclear if or how a revised Fisheries Act would take these technically into account.

## **OTHER BINDING INSTRUMENTS**

### **International Labour Organization (ILO) Conventions**

The International Labour Organisation has generated numerous conventions concerning labor standards, etc. Some of these will have been incorporated in to national law, and will apply in general to conditions on board Belizean fishing vessels. These are not normally dealt with directly in a fisheries law; however they will obviously have an impact on the sector.

An important recent ILO convention on employment in the fisheries sector is the *Convention Concerning Work in the Fishing Sector*, 2007 (No.188), adopted 14 June 2007. The objective of this Convention is stated in its preamble to be:

*to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security.*

The Convention proceeds to elaborate in considerable detail the responsibilities of owners and skippers, and minimum requirements for work on board fishing vessels, including the minimum age, medical examinations, a crew list, a fisher’s work agreement, repatriation, recruitment and placement of fishers, the obligations of private employment agencies, payment of fishers, accommodation and food. The Convention also provides for medical care, health protection and social security, occupational health and safety, protection in case of work-related sickness, injury or death, compliance and enforcement. If implemented effectively, the Convention will have a profound impact on the welfare of fishers in the fisheries sector. Belize has not ratified this Convention, and so far it has not attracted much ratification.

## International Maritime Organization

Belize is a member of IMO, and has become a party to the following Conventions: Safety of Life at Sea, 1974 as amended, Loadlines, 1966 and amendments, Prevention of Pollution by Ships, 1973 as modified by the Protocol of 1978, Tonnage Measurements of Ships, 1969, Civil Liability for Oil Pollution Damage, 1969, Establishment of an International Fund for Compensation for Oil Pollution Damage 1971, 1976 and 1992 Protocols, Civil Liability Convention (CLC) 1969, 1976, 1992 Protocols, Regulations for Preventing Collisions at Sea, 1972, Limitation of Liability for Maritime Claims, 1976, Standards of Training, Certification and Watchkeeping, 1978/1995, SOLAS Protocol 1988, MARPOL Protocol 1997, LOADLINES Protocol of 1988.

Belize has given domestic effect to all of these Conventions by an Act No. 17 of 2008. However, it is recognized that these Conventions still need to be given more detailed legislative implementation.

One IMO Convention merits separate mention. This is the International Convention for the Prevention of Pollution from Shipping, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78).

MARPOL's objective is "to preserve the marine environment by achieving complete elimination of international pollution by oil and other harmful substances." The treaty includes five annexes (relating to oil, chemicals in bulk, packaged chemicals, liquid sewage, and garbage). Under Annex V, the Caribbean Sea has been declared "a Special Area" by the International Maritime Organization (IMO), but this designation can only come into effect when requisite facilities are installed to receive garbage on shore. It is understood that the following IMO Conventions are in the process of being considered for ratification

- Safe Containers 1972, 1993 Amendments
- Intervention Convention 1969
- Intervention Protocol 1973
- Fund Protocol 2000
- Athens Conventions relating to the Carriage of Passengers and their Luggage at Sea 1974; 1976 and 1990 Protocols.
- Limitation of Liability for Maritime Claims 1996 Protocol.
- Salvage Convention 1989
- Suppression of Unlawful Acts Convention 1988
- Suppression of Unlawful Acts Protocol 1988

As with the ILO, the IMO Conventions entered into by Belize will have an important impact on the fisheries sector, but they do not affect directly the drafting of fisheries legislation, other than to necessitate avoiding, where possible, unnecessary or conflicting overlap in responsibilities.

**MARPOL 73/78 and the Caribbean Sea Initiative have general relevance to management at EEZ level, especially in terms of ecosystem health and reporting, but nothing specific.**

An exception may concern the potential for ballast water to introduce invasive species.

## REGIONAL FISHERIES BODIES

### CRFM Agreement (Caribbean Regional Fisheries Mechanism)

This is a legally binding treaty which entered into force in 2002. It has 17 members, mostly, though not exclusively, from the English speaking Caribbean.

The Mechanism shall have as its objectives:

- (a) the efficient management and sustainable development of marine and other aquatic resources within the jurisdictions of Member States;*
- (b) the promotion and establishment of co-operative arrangements among interested States for the efficient management of shared, straddling or highly migratory marine and other aquatic resources;*
- (c) the provision of technical advisory and consultative services to fisheries marine and other aquatic resources.*

The treaty sets out in Article 5 important principles to guide its work. These are:

- (a) maintaining bio-diversity in the marine environment using the best available scientific approaches to management;*
- (b) managing fishing capacity and fishing methods so as to facilitate resource sustainability;*
- (c) encouraging the use of precautionary approaches to sustainable use and management of fisheries resources;*
- (d) promoting awareness of responsible fisheries exploitation through education and training;*
- (e) according due recognition to the contribution of small scale and industrial fisheries to employment, income and food security, nationally and regionally, and*
- (f) promoting aquaculture as a means of enhancing employment opportunities and food security, nationally and regionally.*

CRFM looks at fisheries in a comprehensive manner and provides a framework for cooperation. Of particular significance, it has a strong scientific research programme. It holds an annual meeting lasting a fortnight for scientists of the member states to do stock assessments for the region.

CRFM has various projects for the region. Mention may be made of: CFRAMP, which is aimed at promoting sustainable utilization, conservation and management of the fisheries

resources of member countries, the ACP-EU project “Strengthening of fisheries and Biodiversity management in ACP Countries Phase II”, and “the formulation of a Master Plan on Sustainable use of Fisheries Resources for coastal Community development in the Caribbean”.

One important document produced by CFRM is the Declaration on Illegal, Unreported, and Unregulated Fishing, which was accepted at the meeting of the Ministers in 2009, and was adopted at the second meeting of the CRFM Ministerial Council, St Lucia July 2010.

Note in the penultimate paragraph that CRFM is the successor to CFRAMP which ended. The revised Act should take into account the objectives and principles of the CRFM. It should also pay attention to the CARICOM Common Fisheries Policy under negotiation since 2003 and also likely to be a treaty if negotiations conclude successfully. The draft agreement on the policy specifically mentions EAF and the precautionary principle. The Act could allow operationally for this new treaty by signalling readiness to participate in regional fisheries cooperation and to acknowledge the front end vision, mission, goals and principles to the extent possible. There may be additional consequences once the CFP enters into force and the legal consultants are advised to peruse the current draft.

#### **SICA: OSPESCA and OLDEPESCA**

SICA is the “Sistema de la Integración Centroamericana” translated to mean “Central American Integration System”. It was established under the Tegucigalpa Protocol of 1991. The official SICA website ([www.sica.int](http://www.sica.int)) informs that SICA is the institutional framework of Regional Integration in Central America, created by the States of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama. Also involved are the Dominican Republic as an Associated State, the United Mexican States, the Republic of Chile and the Federative Republic of Brazil as Regional Observers; the Republic of China (Taiwan), the Kingdom of Spain, Chile and the Federal Republic of Germany, as Extra-regional Observers. The headquarters of the General Secretariat of SICA is in the Republic of El Salvador.

Under SICA, Belize is party to joint agreements, a satellite tracking system, and will soon be part of the code of ethics for fisheries

A specialized institution created to accomplish the goals of SICA is the Coordinating Unit of the Central American Organization of the Fisheries and Aquaculture Sector (OSPESCA). OSPESCA is an inter-governmental organization comprising the fisheries and aquaculture authorities of the following countries: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

Its purpose is to promote the coordinated and sustainable development of fisheries and aquaculture as part of the integration process, pursuant to the Fisheries and Aquaculture Integration Policy of the Central American Isthmus.

Another regional body to which Belize is a party is OLDEPESCA which is “Organización Latinoamericana de Desarrollo Pesquero” or “Latin American Fisheries Development Organization.”

Belize is party to both agreements under OSPESCA and OLDEPESCA, though neither have management functions comparable to the RFMOs referred to below. Although important in terms of regional cooperation, and the formulation of common regional standards and practices, their activities and outcomes will have only a minor influence on the preparation of the fisheries legislation itself, as any proposals formulated by these bodies would almost certainly be covered by a number of provisions in any well drafted fisheries law, for example, by a regulation making power or the authority to impose conditions on particular fishing activities, or as part of a fisheries plan.

The members of OLEDEPESCA are Belize, Bolivia, Costa Rica, Cuba, Ecuador, El Salvador, Guyana, Honduras, Mexico, Nicaragua, Panama, Peru, and Venezuela.

The main purpose of OLDEPESCA is to meet Latin American food requirements adequately, making use of Latin American fishery resource potential for the benefit of Latin American peoples, by concerted action in promoting the constant development of the countries and the permanent strengthening of regional cooperation in this sector.

OSPESCA is the more relevant of these organizations and active in several areas such as the harmonization of lobster regulations that affect the export trade from Central America to the USA. Compared to CRFM, there is more managed structure in OSPESCA.

OSPESCA’s efforts to manage the spiny lobster fishery include adopting a regional closed season. There are several agreements that were signed together with the closed season but Belize has not yet complied with all. OSPESCA has more inclination towards political, social and economic aspects of that would lead to responsible and proper use of aquatic and marine resources.

## **REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS (RFMOS)**

Belize is a member of a number of regional fisheries management organizations, in particular, the International Commission for the Conservation of Atlantic Tuna (ICCAT), the Indian Ocean Tuna Commission (IOTC) and is about to become a member of the Inter American Tropical Tuna Commission (IATTC).

Belize became a member on 27 September, 2010.

These organizations are established by international treaty. These bodies have adopted numerous binding and non binding resolutions on a wide range of matters concerning fisheries conservation and management. These range from decisions concerning port

measures, fleet capacity issues, catch reduction, establishment of “IUU” lists, records of fishing vessels, control and inspection schemes, observers, reporting requirements, collection of data, catch certification schemes, criteria for attaining the status of cooperating non contracting party, and much more. Where these resolutions (sometimes curiously called recommendations) are adopted under provisions that making them binding on the members, the Parties are obligated to implement them. In many instances, it will be necessary for Belize to be able to give effect to these resolutions in its domestic law. This will usually involve making regulations under the fisheries law, though it might also be achievable through attaching conditions.

Belize is also a cooperating non contracting party to the Western Central Pacific Fisheries Convention (WCPF Convention), and the North East Atlantic Fisheries Commission (NEAFC). In order to obtain the benefits of that status, it will be important to ensure that Belize can give effect in its domestic law to the conservation and management measures adopted by such bodies. Belize will therefore need to have in place in its domestic law a mechanism for giving effect to the conservation and management measures.

This cooperating non contracting party status is often seen as a step towards becoming a full member of the body in question. The status is important because, usually, a state having this status is less likely to have trade measures imposed on it than might be the case with non contracting party which is completely outside the regime in question. Mention should also be made of the Western Central Atlantic Fisheries Commission (WECAFC), which is established under Article VI of the FAO Constitution, which can only make recommendations that are implemented on a voluntary basis by its members.

WECAFC has endured a difficult history including recent decisions by Member States that it be strengthened but not to the point of becoming a management organisation. A similar process may occur with the CRFM. Should Belize make provision in legislation?

## **NON-BINDING FISHERIES INSTRUMENTS**

The modern international fisheries regime incorporates a number of significant ‘soft law’ instruments. It is not easy to assess accurately the precise legal status of such instruments, except to say that they have played a significant role in developing the modern international legal regime of fisheries, and no consideration of the modern legal regime would be complete without them. It is also important to recognize that they vary enormously, in quality and style. Some are highly normative in character, such as the IPOA-IUU, or the UNGA resolutions on driftnets, or the more recent UNGA resolution on deep sea fisheries, while others are little more than declarations of passing importance. For example, the Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem played an important part in shaping thinking on an ecosystem approach to fisheries, while a number of other declarations have done little more than provide a photo opportunity for world leaders or ministers at a particular meeting.

## **FAO Code of Conduct for Responsible Fisheries (1995)**

Although non-binding, the Code of Conduct builds on the norms established in the 1982 UN Convention, 1995 UN Fish Stocks Agreement, and the Compliance Agreement and elaborates standards and principles for the conservation, management, and development of all fisheries with due regard for ecosystems and biodiversity. It sets forth general principles and detailed articles elaborating on those principles. It contains, for example, important statements about the precautionary approach, both drawing upon its first articulation in 1992 in Agenda 21 Chapter 17, and consolidating its formulation in the 1995 UN Fish Stocks Agreement. It also contains strong references to reliance on ecosystem considerations. It has also been helpful in providing a basis for arguing that the important conservation principles set out in the 1995 UN Fish Stocks Agreement could and should be applied more generally than just to straddling fish stocks and highly migratory fish stocks, as the language of that Agreement stated.

Despite its wide scope, and its undoubted importance to the fisheries sector, the style in which it is drafted makes it difficult to extract much more than some general principles concerning fisheries. This is in part because it has in many aspects the character of a wish list, which was drafted without the discipline that the negotiation of a binding treaty provides. (Indeed, this point can be made in varying degrees about many of the IPOAs negotiated within the framework of the Code of Conduct - these are discussed further below.)

Where the Code of Conduct has had an important impact has been in the publication of a number of Technical Guidelines for the Implementation of the Code of Conduct.

The Code is more critical for management than legislation. In order to understand the scope and direction of the legal revision, key stakeholders should be encouraged to peruse the Code and its many supporting technical publications that cover aquaculture, EAF and other topics of interest. In regions as different as Canada and Southeast Asia the Code has been adopted and adapted by fishing industry stakeholders to provide guidelines for best practices. In the Caribbean, the Code has been used as the guiding principles for the Common Fisheries Policy and national fisheries management plans. It would be useful for the proposed technical outreach seminars to focus on the Code.

## **FAO International Plans of Action (IPOAs)**

Other non-binding components of the current International Fisheries Regime are the FAO International Plans of Action, elaborated within the framework of the Code of Conduct for Responsible Fisheries. Each is described as voluntary, meaning that they are legally non-binding. Four IPOAs have been adopted to date, the first three by the 23rd Session of the FAO Committee on Fisheries (COFI) in February 1999, later endorsed by the FAO Council in November 2000 and the fourth at the FAO Council in June 2001.

In general terms, with the exception of the IPOA-IUU, these IPOAs will have a marginal impact on the preparation of a basic fisheries law, requiring merely to ensure that the necessary legal power is there for the fisheries administration to give effect to their

provisions, most typically in subordinate regulations, as part of a fisheries plan, or through license conditions.

### **IPOA-Capacity**

The instrument applies to states whose fisheries engage in capture fisheries. It contains urgent actions and identifies mechanisms to promote the international plan of action. This includes the preparation of national plans of action and assessment and monitoring of fishing capacity.

### **IPOA-Seabirds**

This instrument sets out actions which implementing states are expected to carry out, including an assessment of whether a problem exists with respect to reducing the incidental catch of seabirds. This instrument also calls on States to adopt international plans of action addressing the problem of incidental catch as well as setting up procedures for national reviews and reporting requirements. It also summarizes possible mitigation measures which States might consider for adoption in their national plans of action.

### **IPOA-Sharks**

This instrument applies to all states whose fishers engage in shark fisheries. It provides a set of activities which implementing states are expected to carry out, including an assessment of whether a problem exists with respect to sharks, and adoption of national plans of action, as well as procedures for national review and reporting requirements.

It will be important to ensure that a new law provides adequate authority to address the issues raised in these instruments. This will mostly involve ensuring that there is an effective power to make regulations with respect to the subjects covered by those instruments. In the case of reducing capacity, while a licensing regime can be used to bring this about, it will often additionally require financial incentives to encourage action to reduce capacity. This is likely to fall outside the scope of the fisheries law itself, and might require specific financial measures.

### **IPOA-IUU**

This IPOA was adopted by consensus at the twenty-fourth Session the FAO Committee on Fisheries on 2 March 2001 and endorsed by the Hundred and Twentieth Session of the FAO Council on 23 June 2001.

The IPOA-IUU stands in a different category to the others as it was prepared in a much more “normative” or rigorous style compared to the other IPOAs, and, indeed, the Code of Conduct itself. Some of its provisions, for example, its proposals on port measures, exercising jurisdiction over nationals, strengthening flag state responsibilities, to name only a few, will need to be reflected in a basic fisheries law, quite apart from the need to

make regulations. These national plans of action to support the measures at national levels, as in all instances, call on action.

The IPOA-IUU has almost certainly been the most effective of the non-binding plans of action adopted by FAO. More so than the Code of Conduct itself or the other IPOAs, it is drafted in several parts in a normative style that provides reasonably clear guidance as to what should be done, and in some instances, how to go about it. It is accompanied by excellent and highly practical technical guidelines: “Implementation of the IPOA-IUU to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing” (FAO Technical Guidelines for Responsible Fisheries No 9”). It has provided the basis for much action by regional fisheries bodies, mainly through their adoption of binding conservation and management measures. The IPOA-IUU anticipated the development of a strong port states regime for vessels fishing on the high seas, and provided the basis for the negotiation of a binding Agreement on Port measures which has been opened for signature at FAO (discussed further above). It also promoted what were to become the lists of “IUU” fishing vessels now maintained by many RFMOs.

Likewise the IPOA-IUU recommended that states should take action against their nationals working on foreign vessels, and a few states have adopted this in their national legislation (despite the considerable difficulties of bringing successful prosecutions in such circumstances).

Many aspects of the IPOA-IUU will need to be covered in a new basic fisheries law. Draft Plans of Action are under consideration in Belize for all of these IPOAs.

However, for all of these IPOAs, the legislative challenge in preparing a new fisheries law will be to examine the draft National Plans of Action to ensure that the necessary legislative authority is covered in the basic law, or, that there is an adequate power to enact regulations or impose conditions on a fishing activity in order to meet the objectives of these national plans.

Agreed, and from a technical perspective it is important to know which of the IPOAs are of particular interest to Belize in order to ensure adequate scope for the legislation and to determine the national (not just governmental) capacity for addressing these in EAF. In the case of IUU fishing there are several instruments that must be reconciled and also checked for compatibility with the Belize policy for controlling the high seas fishing fleet.

#### **UN General Assembly Resolution 61/105 – Deep Sea Fisheries December 2008)**

More recently, and of potential importance for Belize in view of the number of vessels entitled to fly the flag of Belize and which fish on the high seas, is the action taken by the UN General Assembly with respect to Deep Sea fisheries.

Paragraph 80 *“Calls upon States to take action immediately, individually and through regional fisheries management organizations and arrangements, and consistent with the*

*precautionary approach and ecosystem approaches, to sustainably manage fish stocks and protect vulnerable marine ecosystems, including seamounts, hydrothermal vents and cold water corals, from destructive fishing practices, recognizing the immense importance and value of deep sea ecosystems and the biodiversity they contain.”*

The resolution also calls upon members of regional fisheries management organizations or arrangements “*to require vessels flying their flag to cease bottom fishing activities in areas where, in the course of fishing operations, vulnerable marine ecosystems are encountered, and to report the encounter so that appropriate measures can be adopted in respect of the relevant site*”.

Although such resolutions are not legally binding, Belize needs to be in a position to ensure that Belize registered vessels can be directed to avoid fishing in such locations or to fish only in accordance with certain conservation measures if necessary.

In addition to the above resolution, it may be noted that FAO has developed *International Guidelines for Deep Sea Fisheries 2008*, which are in part intended to supplement and elaborate upon the recommendations of the UN General Assembly.

See previous comments on need to ensure consistency in fisheries policy, planning and practice between the domestic and internationally applicable legislation as good ethics.

## **INSTITUTIONAL ISSUES**

### **Overlapping mandates and functions**

There is an unusual amount of overlap in departmental responsibility involving fisheries matters. While some overlap is unavoidable in virtually all governmental structures, it does seem to be more pervasive in Belize than in many other countries. However, that does not mean that the system is not working well, as on the whole, there is a reasonable level of cooperation between departments. Some indication of the potential for overlap can be gleaned from the following:

See previous comments on redundancy assisting resilience in fisheries governance once there is good collaboration and integration where necessary, in normal operations. This preliminary analysis does not provide a sufficiently detailed institutional analysis for the purpose of advising on EAF as a process (as distinct from the legal provisions to enable it). Such technical analysis is outside the TOR of both the legal and fisheries consultants, but Annex V lists some references and resources that may be useful to the authorities. In subsequent stages, technical fisheries advice will draw upon these for specific points.

Aquaculture: there does not appear to be a clear mandate with respect to aquaculture. It will probably be placed under the responsibility of fisheries, though it is partly covered by the Department of the Environment. Further, aquaculture is listed in Annex 2 of the

Environmental Protection Act as an activity for which an environmental impact assessment may be required.

It is appropriate that aquaculture be subject to EIA, including SIA, and be placed within the responsibility of the Fisheries Department consistent with EAF. Land and coastal use planning may also designate special areas for aquaculture development or exclude aquaculture (depending on the technical details) from vulnerable ecosystems. A similar intersection is with MPAs of all types and currently under separate jurisdictions (mainly Fisheries and Forests). Rationalization of these fragmented jurisdictions is suggested.

While the Fisheries Department is responsible for all aquatic – freshwater and marine – animals, crocodilians, the neotropical otter, marine mammals, and manatees are protected from hunting and other forms of take under the Wildlife Protection Act (which has a very narrow scope), which is the mandate of the Forest Department.

Legislation needs to take organizational capacity into account. In cases of harvest or use prohibition (as against management), it may be reasonable to leave prohibited aquatic resources under the jurisdiction of another cooperating agency once it has the capacity.

Mangroves are of interest to both the Forest and Fisheries Departments for obvious reasons. However, the restriction in dealing with mangroves is currently under the authority of the Forest Department, which seems to be the primary entity responsible for its regulation. There are some draft mangroves regulations currently under consideration.

The Forest Department is also the focal point for RAMSAR wetlands. The two designated under the treaty are Crooked Tree which is a wildlife sanctuary, while Sarstoon Temash is a national park.

The Forest Department is also the focal point for the Convention on Biological Diversity. While the subject matter clearly overlaps with fisheries, there is no action being taken at the moment which creates any overlaps.

Since the Fisheries Department cannot be expected to have all aspects of all ecosystems under its jurisdiction it will need to prioritize its jurisdiction based on clear criteria of the ‘importance’ of various ecosystems. Importance can be measured in several ways that range from valuation to non-valued but scientific assessment of ecosystem services. The Fisheries Department may wish to leave mangroves to the Forest Department if there is no current jurisdictional problem. But it needs to be clear about the value of mangroves.

In respect of CITES matters, the Forest and Fisheries Departments share authority over their respective mandates (i.e., controlling import and export of wildlife and fish species), although the Forest Department is the designated CITES Management Authority (the Fisheries Department could also be designated as a CITES Management Authority – the government needs only to notify the CITES Secretariat to this effect and make some administrative adjustments.). As mentioned earlier, there is a draft CITES Bill under consideration, which will most probably cover all CITES listings. The Forest Department

is also the focal point for the National Protected System Act, under which several marine protected areas have been designated.

See previous comments on CITES. Matters are simplified if most of the division of legal jurisdiction is between Fisheries and Forests rather than among several other agencies.

The Department of the Environment is the focal point for certain marine pollution matters, and is responsible for the implementation of the MARPOL Annexes and the Civil liability Convention and the Fund. In 2009 there was an amendment to the Act by Act No. 5 of 2009 which dealt with oil spills matters, among other things, and though there was consideration to setting up a broad based marine pollution law, no agreement could be reached on this, so it was decided that it was prudent to legislate for greater environmental control and management of the petroleum industry by addressing oil spills. Obviously, this will have overlaps with a number of sectors, including fisheries.

The Department of the Environment is also responsible for two aspects of the Cartagena Convention: the Oil Spills and LBS Protocols However, SPAW went to CZMA, and subsequently to fisheries.

There is some planning for a new overarching body to deal specially with protected areas. This will include RAMSAR sites, existing protected areas, and archaeological sites. This is still very much at an early stage. It is understood that it will rely on the IUCN classification system for protected areas.

World Heritage sites (under the World Heritage Convention) are dealt with by the Ministry of Natural Resources, while the focal point for UNESCO itself is the Department of Education.

The above are the principal areas of potential overlap with fisheries, and which will need to be considered while legislation is being drafted. However, there are of course other regimes which could have an impact on fisheries, though it is more indirect in character and accordingly is not considered in detail here. Reference can be made to Climate Change, for which the focal point is the Department of Meteorology, desertification, which is dealt with by the Forest Department, the Convention on Biological Diversity, which is under Forestry, and the revised Treaty of Chaguaramas which is under the Ministry of Foreign Affairs.

The Fisheries Department is part of the National Committee for Climate change led by the Met Department. Climate change is a very important concern for fisheries management and must be given more attention in the revision of the law or its application in the contexts of adaptation and mitigation among other things.

NEAC: National Environmental Appraisal Committee, established under the Environmental Protection Act. It is composed of key licensing bodies together with NGOs. Its function is to review environmental impact assessments for a number of sectors, including fisheries and aquaculture. (Fisheries is a member of this committee.)

Sport fishing. This is currently under the control of CZMA, however, there are obvious overlaps with the responsibilities of the Fisheries Department.

BAHA deals with animal health, and has responsibility for quality control of animal products under its Act.

See previous comments on sports fishing. It is surprising that there is no mention of the tourism sector since in most cases this is the key to EAF in many Caribbean locations. The preliminary analysis does not include either civil society or the private sector. These may not be critical for legislation, and are perhaps covered under the membership of the Fisheries Advisory Board, but for EAF, rights-based fisheries and precaution among other aspects of modern fisheries it will be important for the revision process to identify the stakeholders comprehensively on the basis of ecosystems and interests in the fisheries.

### **Possible solutions: approaches to overlaps**

In virtually every governmental system there will always be some overlap and sometimes it can be positive in its effect, as it is likely to promote the consideration of a wider range of perspective on a particular subject. Thus, while there seems to be somewhat more overlap in responsibilities and functions, the system does appear to be working reasonably well for the most part. Further, short of proposing some wider overarching solution such as the establishment of an all embracing Ministry of the Oceans, (and in discussions, there was no indication of political support for such a solution) there will of necessity remain some overlap.

As commented previously, we agree that collaborative and integrated overlaps can be useful in the design of fisheries governance structures and arrangements. Some authors refer to nested polycentric institutions as particularly resilient and adaptive designs.

The consultants have avoided such a radical approach and instead have put forward three possible approaches to address the need for coordination and the need to avoid unnecessary overlap. These proposals are based on the assumption that the proposed fisheries legislation will remain within the current Ministry.

A first approach could be the possibility of restructuring the Fisheries Advisory Board so as to ensure that its membership reflects the range of interests of other governmental departments which need to be taken into account. This approach has been adopted in a number of countries as one means of addressing this problem. However, there is one important drawback to this solution and that is that the extra members could well dilute the Board's role to provide advice that reflects the concerns of the sector as a whole, possibly making it too unwieldy. For this reason, while it is an outwardly attractive solution, it is not recommended here.

As a compromise the FAB could be restructured to encompass the wider membership but not require the full Board to meet on all issues. There could be a core Board and

additional specialist sub-committees that would meet on an “as needs” basis and report to the core. Overlapping memberships between the core and sub-committees would help ensure continuity and synergies without requiring a bloated permanent body. The occasional joint meeting of the FAB with other established statutory bodies such as the CITES committee is another option to take advantage of demand-driven integration.

Another approach could be to include in the proposed fisheries legislation a section on the responsibilities of the Department to consult with other departments and authorities on particular subject matters, and to state the reverse obligation, namely the obligation for other departments to consult with the Fisheries Department. However, this solution could soon be outdated by revisions to the different Acts, indeed, much of the legislation impacting on the fisheries area is under review at present.

A third solution could be to accept that a certain amount of overlap is unavoidable, and might even be positive. However, departments with overlapping functions where a need for harmonized action is needed could enter into Memoranda of Understanding to ensure the necessary level of cooperation; provided there was no attempt to shift the legislative responsibilities as set out in the relevant laws (which might trigger arguments that certain decisions are *ultra vires* the parent Act), such arrangements might work just as well as any more formal mechanism.

The latter two options are more formal and structured variations of the same principles of good governance that guide the first. They are not necessarily mutually exclusive. Yet Belize is a small country where key actors wear many hats. Face-to-face decision-making as in the Board or joint committee option may be preferred and generate the agency-wide collaboration sought in the latter two recommendations. Requires further thought

### **The role of the Fisheries Advisory Board**

Since the Fisheries Advisory Board at present has no statutory basis it is thought that it should be given one in the proposed new legislation. Further, there may be value in giving it a role in the formulation of fisheries management plans.

Both of the above points are critical from a technical perspective. The mandate of the FAB needs to be carefully considered in the context of fisheries policy and devolution.

### **Title of the Fisheries Advisory Board**

Another issue raised in discussion was the title of the Board and a suggestion was that it might be called the Fisheries Management Board. The important consideration, it is suggested, is not the title of the Board but its function. A body described as advisory can nonetheless be given important tasks that might go beyond the strict interpretation of “advisory”.

Agreed not a major point, but while a management board may be limited to advice an advisory board may be less likely to be upgraded to management (executive power). It all depends on the role foreseen for the FAB/FMB and perhaps the policy on devolution.

Some would argue that the FAB needs to have more scientific/technical capacity.

### **Sport Fishing**

The location of the sport fishing regime in the CZMA has also raised concern. This appears anomalous as CZMA is a coordinating authority rather than a management body. It is recommended that sport fishing should be subsumed under the Fisheries Department and that the new legislation should deal with it.

Agreed and refer to previous comments on disaggregation of sports fishing.

### **A specialist judge for maritime matters**

One suggestion made was to recommend that consideration be given to having one judge or magistrate who could focus on cases involving fisheries matters and other maritime related matters. This seems to possess considerable merit.

A more resilient approach, practised in the eastern Caribbean is to hold workshops on marine matters for the judiciary on a regular basis since magistrates change jurisdiction

### **Some areas which need further attention.**

Some areas will need further discussion before a decision can be made on how they are to be dealt with. The most important will be to determine how inland fisheries and small scale fisheries can be dealt with. It has been assumed that such fisheries will be covered under the new law; however, further discussions are needed on this to get more information before any drafting of legislation can be undertaken.

What does “small scale fisheries” mean to the legal consultants? Some classify all of Belize’s fisheries as artisanal / small scale fisheries. Clearer interpretation of terms.

Other areas that have been identified as either missing from or inadequately dealt with in the present legal regime are: critical habitat designation, invasive marine species, how to deal with the aquarium trade.

The place of aquaculture and mariculture also needs to be considered further. Does it warrant separate legislation in view of its different character to inland and marine fisheries, or can it be included within the fisheries law? This will in part depend on whether aquaculture and mariculture is expected to be undertaken on an extensive scale.

There is also a need for greater clarity on the respective responsibilities concerning wildlife and fisheries, including freshwater species. Clearly there are important issues of management that will need to be addressed here. In part the problem stems from the fact that the Wildlife Act has not been revised in recent years.

Finally, it will be important to ascertain the status and progress on the proposed CITES Bill to ensure that its provisions will be in harmony a modern fisheries law.

Agreed, but still surprised that tourism does not warrant attention. There is also very little on postharvest besides aquaculture and export. Are domestic value-added seafood products not envisioned? Haul-out or repair areas/boat yards are also not mentioned. A thorough institutional analysis, or a more scoping slant to the consultations, may be warranted to ensure that all fisheries issues not in current legislation are addressed.

## RECOMMENDATIONS

In the light of the review of the legislation and discussion with all stakeholders including the government and the private sector, the MAREA supported consultants are recommending a comprehensive new Fisheries Act to replace the existing Act.

The principal reasons for this recommendation are:

1. By being a party to the 1982 UN Convention and the 1995 UN Fish Stocks Agreement, Belize has incurred significant rights and obligations under these treaties which require legislative implementation principally through the adoption of a modern fisheries law.
2. The present law, having been drafted in 1948, is very antiquated and has numerous deficiencies. In particular, attention is drawn to the complete absence in the law of any principles or objectives relating to conservation and management of the marine living resources. These principles have been developed in a number of binding and non-binding international instruments, and nowadays include goals of long-term sustainable use of the marine living resources, the reliance on the precautionary approach, taking into account ecosystem considerations, protection of marine biodiversity, and a number of other factors. As explained under the discussion of the 1982 UN Convention and the 1995 UN Fish Stocks Agreement and the Code of Conduct for Responsible Fisheries, the conservation obligations have become much stronger. At the most fundamental level, the new standard is ecosystem-based fisheries management, which necessitates a paradigmatic shift in fisheries governance.
3. In addition to the binding instruments referred to (the 1982 UN Convention, the 1995 UN Fish Stocks Agreement, treaties establishing RFMOs), a number of voluntary instruments discussed above (in particular the IPOA IUU) have called upon states and RFMOs to adopt important measures to combat IUU fishing and this needs to be reflected in the legislation and in such a way as to give Belize the authority to deal with these matters. Many of these have also been adopted by RFMOs to which Belize is a party, thus, while the original obligation is set out in a voluntary non-binding instrument, it has become binding indirectly through being adopted by an RFMO.
4. The Act has no effective mechanism for implementing international conservation and management measures agreed to by RFMOs. This has become important for Belize as it is a party to several RFMOs which produce many such measures each year and which it

is under an obligation to implement, in most instances, by the adoption of measures operating in domestic law.

5. Linked to the third point above, the regulation-making power under the present law is too restrictive and needs considerable expansion in order to ensure flexibility for the future as well as ensuring that future action is not challenged on the basis that the regulations are *ultra vires* the parent act.

6. Other aspects of the Act merit revision, in order to bring the law up to date for example, the licensing provisions, marine scientific research provisions, the monitoring compliance and enforcement provisions, jurisdiction and evidence, sale, release and forfeiture of retained property, including the vessel, gear and catch. Amongst the issues to be covered with respect to the licensing regime would be the power to cancel or suspend licenses by the Fisheries Administrator. Part of this revision will need to take into account the obligations set out in article 73 of the 1982 UN Convention, which imposes certain restrictions on the treatment of arrested vessels and their crews, and the imposition of imprisonment.

The low level of penalties in the old Act were often mentioned a source of considerable concern, and it will be important to ensure that new legislation introduces a penalty regime that is effective.

With regard, to high seas fisheries the 1995 UN Fish Stocks Agreement in article 19.2 states: “*Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities.*” This would require that penalty levels are sufficiently high to meet this requirement. Given that the present penalty levels for high seas fishing would not meet this test, it will be important to revise the penalties in respect of such fishing.

7. The High Seas Fishing Act should be repealed and up-dated provisions dealing with high seas fishing should be incorporated into the new fisheries law.

8. An important policy issue to be decided which will almost certainly need to be reflected in the legislation is the prospect of “managed access”. Such access, sometimes referred to as statutory fishing rights or ITQs raise important legal questions that need to be resolved before legislative texts can be drafted. In particular the status of the rights needs to be considered. Are such rights to be saleable, inheritable, leasable or indivisible? Also, the status of such rights under the Constitution needs to be considered (and how the constitutional provisions might affect the drafting of such a right). Further, such types of limited access may not apply well to small-scale fisheries.

Agreed. See previous comments on rights-based management. Stakeholders need to be aware of the options available. The catch shares experiment may be informative. Managed access is not necessarily an ITQ it can be more of a TURF system. It contemplates a first step towards establishing a catch shares system (quota for lobster).

More than rights it should say privilege since the right is for all Belizeans according to the constitution. Limiting access should be based on rights and privileges but also must take strict consideration to biological, ecological aspects of the resource, carrying capacity, MSY and MEY among other considerations. Discuss more.

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The above constitute the principal reasons for recommending a new fisheries law for Belize. It is now proposed to explain in outline form the probable contents of a new fisheries law. It has to be stressed that the recommendations are not intended to be prescriptive, rather, they are intended to provide the basis for discussion for determining the contents of a new law.

It is also important to appreciate that the new law is intended to be a framework law which will provide the basis for more detailed regulations to be made, or for restrictions to be imposed on the conduct of fishing operations, principally through attaching conditions to licenses, or by the application of special protection measures under particular fisheries plans. Further, some of the provisions might seem unrealistic in the sense that they might never need to be implemented. However, they have been included in part to provide a focus for discussion of what might be included in (or excluded from) the law, but above all to ensure that the law is sufficiently comprehensive to deal with unforeseen issues later.

The framework approach is technically preferable for adaptive management if orders and regulations are used for the purpose intended rather than considered inflexible.

## **OUTLINE OF PROPOSED CONTENT**

### **Definitions/Interpretation provisions**

Among the shortcomings of the Act is the definitions section. It will be important to include some up to date definitions of certain key terms, in particular, the definition of “fishing” and “related activities” can be incorporated to ensure that the Act has a very wide scope. Likewise the definition of “fishing vessel”, “Belizean fishing vessel”, “foreign fishing vessel”, “Belizean nationals” and “non-Belizean nationals” will need to be drafted with some care. These definitions will have an impact on important policy issues, such as whether joint ventures will be permitted and the structure they might take. They could also be affected by decisions eventually taken in a CARCOM context.

The Act will also need to differentiate between commercial fishing artisanal fishing subsistence, recreational and sport fishing. As the drafting of the Bill proceeds, other terms may warrant their own definition.

### **Principles and Objectives**

In order to ensure that the law is governed by modern principles and objectives, the law should provide for the fundamental objective of long term sustainable use, and should

make decisions under the new law subject to certain principles, including the precautionary approach, the ecosystem approach to fisheries, and the protection of marine biodiversity, amongst others. A particular challenge will be to decide the level of obligation that should be reflected in the law. At one extreme, it can be decided that such principles “must” be applied, at the other extreme; the law might merely impose an obligation that such principles are taken “into account”. The choice of language adopted here will also determine whether decisions taken under the new law are or are not subject to judicial review.

Given the number of related pieces of legislation that are also reported to be in draft or being considered it may be wise to establish and map relationships among these laws and some prioritization that is based on a logical sequence. Otherwise the spectre of perpetual drafts and amendments to the Fisheries Act looms large. Whose task is this?

### **Fisheries Management Planning**

The Act should provide for the preparation of detailed fisheries management plans, possibly approved or subject to consultation with the Fisheries Advisory Board, against which licensing decisions will need to be made. The Act could indicate in broad terms the content of such plans, and how they are to be approved, including a consideration whether they should be presented to the Parliament for negative disallowance, or some similar procedure.

In addition to such plans, the Act could provide for the establishment of a “designated fishery” for which special measures are required. Particular consideration must be given to how the artisanal, multi-species fishery could be managed under such a rubric.

In full agreement with the critical importance of this. CRFM has provided guidance. The Act may also want to speak to the commitment of a budget to effect action once a plan is approved. As a technical matter the extent to which EAF is incorporated is also key.

### **Management techniques**

The Act should also provide for a number of different techniques for introducing conservation and management measures. The most basic control will of course be the licensing regime itself. However, it will need to be supplemented by, for example the power to impose conditions on individual licenses, or by more generally applicable regulations dealing with specific subjects (such as species control or protection, restricted or prohibited fishing areas, prohibited gears, to mention only a few). There should also be authority to set out management plans which set standards and practices for fisheries either generally or specifically. The power to make such plans will be by subordinate legislation.

### **Data collection**

Data collection has become a much more important aspect of fisheries management, and it will warrant being included in new legislation.

Caution here. The emphasis should be on information for decision-making rather than on data collection itself. Means to incorporate local ecological and other knowledge must be included and a precautionary approach interpreted for practical purposes.

### **Sport Fishing**

The new law should also cover sport fishing which needs to be managed alongside and in the context of the fisheries sector.

### **The role of cooperatives**

The new law would need to state the role and function of cooperatives in the Belize fisheries sector.

Collective action in the forms of fishery associations and unions should be included.

### **Co-Management**

The Act should provide for co-management in areas suited to such management. However, the precise terms will need to be carefully discussed further with the Fisheries Department in order to ascertain which methods are most likely to work for Belize.

Agreed, and locally managed marine areas with local area management authorities are options to be considered. All arrangements should be permissible in the legislation.

### **Marine Protected Areas**

The new law should make provision for the establishment of marine protected areas for fisheries purposes; however, in view of the overlapping interests involved in the establishment of such areas, the possibility of overarching legislation currently under consideration being adopted, mechanisms for consultation and approval should be built into the legislation.

### **Fisheries Advisory Board**

One item that was brought up regularly in the consultations was the role of the Fisheries Advisory Board as well as its possible title. At present, the Board has no statutory basis. The consultants recommend that the Board should be given such a basis and its composition should be carefully crafted to ensure that there is a wide participation by the relevant stakeholders. In respect of the issue of title, the consultants put forward the consideration of “Fisheries Council” which may better reflect the enhanced status of this body under the proposed legislation.

See previous comments. Fisheries Council is very generic and should only be considered if there is high uncertainty over the level of authority and responsibility to be delegated.

## International Obligations and High Seas Fishing

At present, high seas fishing is covered by the HS Fishing Act. The consultants recommend that the matters covered by the HS Fishing Act should be incorporated into an overarching new law for the fisheries sector. Further, the new law should incorporate the elements of a bilateral agreement on the Control and Enforcement of Belize High Seas Fishing Fleet, which was signed on 2 November 2009 entered into between IMMARBE and Fisheries. Quite apart from that important change, it would be useful to take the opportunity of revising the provisions on HS fishing to incorporate the international obligations that Belize has accepted in the 1982 UN Convention, 1995 UN Fish Stocks Agreement and the FAO Compliance Agreement. At present, the High Seas Fishing Act only gives effect to the FAO Compliance Agreement, and in some minor ways, to the 1995 UN Fish Stocks Agreement. In particular there are very important obligations under that Agreement such as the High seas boarding and inspection regime which need to be incorporated in Belize law. In addition to the binding agreements referred to, there are a number of voluntary international agreements (such as the IPOAs on Capacity, Seabirds, Sharks, and IUU fishing) and deep sea fisheries resolutions which Belize needs to be in a position to implement in its domestic law. The present High Seas Fishing Act is inadequate in this regard. It is therefore proposed to incorporate into it provisions which will give domestic legal effect to the obligations under these conventions and the capacity to implement other measures as would be agreed from time to time. Of particular importance here will be the capacity to incorporate international conservation and management measures agreed to by RFMOs. This will, for example, enable Belize to ensure that vessels on the Belize high seas register comply with obligations Belize has incurred with respect to turtles, seabirds and sharks, among other matters.

The capacity to incorporate such measures will require the preparation of a specific clause to ensure that these measures can be effectively transformed from international law into Belize law.

A new fisheries law will also need to deal with port measures and transshipment, in particular in respect of vessels fishing on the high seas.

Other issues which need to be incorporated include the capacity to control Belizean nationals on vessels registered in other countries which are engaging in IUU fishing, as recommended by the IPOA IUU.

A specific licensing regime along the lines already found in the High Seas Fishing Act will need to be incorporated in the new Act. However the capacity for Belize to impose a much wider range of conditions on high seas fishing will need to be provided for than is possible under the present Act; for example the capacity to make provision for VMS and observers. In addition to the capacity to impose conditions, the regulation making power for high seas fishing will need to be expanded.

Agreed for the HS Act to be included if there is certainty about both the high seas regime and what should apply in Belize's EEZ. If the former is problematic, then the two should remain separate for the time being. Consider a schedule of progressive revision.

### **Record of Fishing Vessels**

Consideration will need to be given to establishing two records of fishing vessels, one for Belizean fishing vessels fishing in waters under national jurisdiction (basically the internal waters, the territorial sea, and the EEZ); the other for Belizean registered fishing vessels which have been given a license to fish on the high seas.

### **Monitoring Control and Surveillance**

It is recommended that the new Act will provide a considerably expanded power to deal with monitoring, control and surveillance. This will range from the appointment of authorized officers, powers of entry and search, power to require production of documents, powers of arrest, powers of seizure, requirements for seized property, removal of parts from seized vessels, duties to authorized officers and possible reliance on vessel monitoring systems.

Many of the provisions here will require careful preparation, for example, in our discussions it has become apparent that there is a need to state more clearly who are the authorized officers (such as special constables, and the Coast Guard) and their powers in respect to fisheries matters, including whether they are to be given the authority to prosecute.

It would be important to ensure that the type of electronic evidence that may be received in respect of fishing operations can be used in the courts of law under the Electronic Evidence Act of 2003 (CAP 95.01) and if not, to provide for its specific use in the Fisheries Act.

### **Jurisdiction and Evidence**

The Act will also need to provide in a much more comprehensive manner than the present Act a number of issues relating to jurisdiction and evidence. Briefly, these will include Jurisdiction of Courts, Liability for non-payment of penalties, Liability for loss, damage or costs incurred, Certificate evidence, Certificate as to location of vessel, Validity and procedures for certificates, Photograph evidence, General Presumptions, Presumption as to authority, Strict liability, Liability of Directors and Managers, Liability of principal for actions of agent in relation to records and returns, Liability of companies and persons for actions of officers and employees, Destruction of Evidence, Liability of Master, Forfeiture and suspension of fishing rights, licenses etc.

Questions regarding the use of certificates and presumptions will need to be drafted with care to ensure that there is no conflict with the constitutional provision regarding the burden of proof (section 6).

The new Act will also have to deal with sale, release and forfeiture of retained property. Considerable concern was expressed that the current legislation was unclear on how seized and confiscated property would be dealt with. It was unclear how, for example perishable items such as fish would be dealt with by the courts. The new legislation will aim to provide both clarity and certainty on these important matters.

### **Offences and Penalties**

The consultants recommend that offences and penalties be provided for with considerably increased levels to be imposed than is possible under the present Act. The question of imprisonment as a suitable punishment will need to be considered further as in the EEZ it is not permitted under international law to imprison foreign fishers for violations of “*fisheries laws and regulations*” (Art. 73 of the 1982 UN Convention).

Also suspend and revoke licenses as penalties

### **Regulations**

The new Act will need to contain a substantially expanded regulation-making power to ensure flexibility for the future.

Excellent. This flexibility is required for adaptive management but must be matched by adaptive capacity amongst the fisheries authorities and other stakeholders in Belize

## **BASIC ELEMENTS OF A NEW FISHERIES LAW FOR BELIZE**

The list set out below is intended to provide a basis for discussion. It is in no way intended to be prescriptive. However, preliminary observations on it will help the consultants to refine it further before presenting the first draft.

### **PART I – PRELIMINARY**

- Long title
- Short title
- Interpretation

### **PART II – FISHERIES CONSERVATION, MANAGEMENT AND DEVELOPMENT**

- Objective of long term sustainable use
- Principles and measures (for example, precautionary approach, sustainability and ecosystem considerations, protection of biodiversity, ecosystem considerations)
- Designated fishery or fisheries management plan
- Fisheries/species necessitating special protection
- Co management
- Contents of Plans
- Exploratory fishing or test fishing

- Fisheries Monitoring and Collection of data
- Managed Access regime
- Allocations
- Marine scientific research operations related to fisheries
- Record of fishing vessels fishing within Belize waters
- Sport Fishing, including spear fishing
- Inland fisheries
- Prohibited fishing methods (in particular, dynamiting and poisoning)

### **PART III PROTECTED AREAS**

#### **PART IV ADMINISTRATION**

- Fisheries Council (constitution, terms of reference and functions, funding)
- Role of Fisheries Administrator
- Role of Fisheries Cooperatives
- Fisheries Fund

#### **PART V – LICENCES AND AUTHORISATIONS**

- Issuance of license or authorization for Belize nationals
- Conditions of license or authorization
- Fees and other forms of compensation
- Period of validity of licenses
- Cancellation or suspension of licenses
- Appeals
- Observation of laws

#### **PART VI INTERNATIONAL OBLIGATIONS AND HIGH SEAS FISHING**

- Record of Fishing Vessels
- International obligations of Belize pursuant to treaties and decisions of RFMOs, especially conservation and management measures.
- License or authorization required for Belize fishing vessels fishing beyond the EEZ
- Conditions which may be attached to a license
- Use of vessels of other flags by Belize nationals on the high seas
- License or authorization required for foreign fishing vessels fishing in Belize waters
- Port measures
- Transshipment
- Serious Violation

#### **PART VII – MONITORING, CONTROL AND SURVEILLANCE**

- Appointment of authorized officers
- Appointment of authorized officers from other States
- Powers of entry and search
- Power to question persons and require production of documents
- Power of arrest
- Power to give directions to master

- Power to use reasonable force and take copies of documents
- Powers of seizure
- General powers
- Powers with respect to measures of a regional fisheries management organization
- Persons to assist authorized officer
- Protection of authorized officer from liability
- Action against authorized officer for abuse of authority
- Requirements for seized property, etc.
- Removal of parts from seized vessels, etc.
- Observers
- Duties towards authorized officers and observers
- Identification of authorized officers and observers
- Vessel Monitoring System

#### **PART VIII JURISDICTION AND EVIDENCE**

- Jurisdiction of Courts
- Liability for non-payment of penalties
- Liability for loss, damage or costs incurred
- Certificate evidence
- Certificate as to location of vessel
- Validity and procedures for certificates
- Photograph evidence
- Electronic evidence, including from VMS
- General Presumptions
- Presumption as to authority
- Strict liability
- Liability of Directors and Managers
- Liability of principal for actions of agent in relation to records and returns
- Liability of companies and persons for actions of officers and employees
- Destruction of Evidence
- Liability of Master, or other person in charge of the vessel
- Forfeiture and suspension of fishing rights, licenses etc.
- Power of fisheries officers to undertake prosecutions

#### **PART IX SALE, RELEASE AND FORFEITURE OF RETAINED PROPERTY**

- Forfeiture of property on conviction
- Application of bond etc.
- Removal of seized goods
- Disposal of forfeited goods
- Sale of perishable goods
- Liability for loss, damage or deterioration of items in custody
- Removal of item in custody

#### **PART X – REGULATIONS**

- Regulations
- Negative resolution

#### **PART XI – GENERAL**

- General offences and penalties
- Delegation of powers
- Repeal and savings
- Commencement

The proposed contents are quite comprehensive. We await the first draft details.

## **ANNEX I REVISION OF THE BELIZE FISHERIES ACT, TERMS OF REFERENCE, INTERNATIONAL LEGAL CONSULTANT AND NATIONAL LEGAL CONSULTANT**

The National Legal Consultant (the “Consultant”) will work as part of a Core Drafting Group team, comprising an international legal consultant, a staff person of the Solicitor General’s Office, and a representative of the Department of Fisheries (“FD”). The Core Drafting Group will report to the Project Steering Committee reporting to the Minister of Agriculture and Fisheries and Solicitor General.

The Consultant will report to WCS Belize Country Director and the Fisheries Administrator.

As part of this team, the National Legal Consultant will be responsible for the following:

1. Working with the Core Drafting Group, Steering Committee, and other governmental agencies and organizations working on the Project to implement the Project Work Plan in accordance with the agreed Timeline;
2. In concert with the Fisheries Department and International Legal Consultant, assisting in the preparation of a Preliminary Analysis report (detailed in Annex I:A) of Belize’s legal and institutional framework for ecosystem-based fisheries management and the application of the precautionary approach that includes a set of detailed recommendations and options for legislative strengthening through a revised national Fisheries Act.
3. Based on the findings of the Preliminary Analysis and guidance from the Project Steering Committee working together with competent Belizean Authorities in order to draft legislation providing for ecosystem-based fisheries management in compliance with applicable standards of International Law and Belizean Public Law;
4. Participating, from the perspective of Belizean Public Law, in the analysis of comments on drafts of the revised Fisheries Act generated through technical reviews and stakeholder consultations as part of the legal review process;
5. Providing legal advice to WCS, Belize Government, and other stakeholders on legal questions relating to the national Fisheries Act, particularly in the context of Belize laws and related institutions;
6. As requested by the Steering Committee or provided for in the Project Work Plan and/or Communications Plan, participating in, and, in some instances, presenting at, national stakeholder workshops, technical seminars and other internal and external stakeholder consultations aimed at explaining aspects of revision of the national Fisheries Act.

## **ANNEX IA: Wildlife Conservation Society**

### **Revision of the Belize Fisheries Act Project Background**

The Belize Department of Fisheries has invited WCS, a MAREA subcontractor, to assist in providing technical assistance and designing and implementing a process to revise the national Fisheries Act. The current Fisheries Act has not been revised for many years, and the latest addition was made in 1989. There is a pressing need to modernize it in order to resolve conflicts with the more rapidly evolving Fisheries Regulations, in particular in relation to enforcement issues, such as fines and penalties, and bring the Act and the country's overall fisheries management – more fully in line with international standards, such as the principles agreed in the UN FAO Code of Conduct for Responsible Fisheries and practices recommended for its implementation; emerging lessons in precautionary fisheries management, including the application of an ecosystem-based approach (EBFM); and evolving guidelines for the role of Marine Protected Areas (“MPAs”) in sustainable fisheries.

The Project to revise the Fisheries Act will incorporate the technical work associated with assessing needs, articulating the components, and actually revising the Act, but also the political/logistical work of engaging stakeholders in the process. The Project aims for the revision process to be as open and thorough, and participatory, as is manageable, involving all national regulatory, implementing and enforcement agencies (Fisheries, Customs, Coast Guard, etc.), competent international organizations, such as the FAO, and other relevant stakeholders. In light of the fact that principal legislation normally has a shelf-life of 20 years; hence, the legislation will need to be relevant to today but also forward-looking in anticipating problems and needs down the road. The final draft submitted to government should incorporate modern conservation and management principles, comply with International Law, be feasibly implemented and able to withstand local court challenges, and be a symbol of pride for the people of Belize.

It is envisaged that the Fisheries Act revision process will elucidate further changes required in the supporting Regulations, such that a follow-on project to revise the Fisheries Regulations is expected to commence once the final Draft Fisheries Bill has been submitted to Parliament.

#### **A Fundamental Component of the Revision Process – Preliminary Analysis**

The Preliminary Analysis will lay the foundation for the revision process. This report, prepared by the two Legal Consultants in concert with the Fisheries Department and in consultation with other agencies, including the Solicitor General's office, will analyze the existing national and international legal framework in relation to the country's fisheries management needs and obligations.

This report should:

- assess current Public International Law and Policy on fisheries as applied to Belize, particularly any International Treaties and other instruments (including, *inter alia*,

United Nations Convention on the Law of the Sea (UNCLOS); FAO Agreements and other instruments adopted in its framework, such as the Code of Conduct for Responsible Fisheries and the International Plans of Action (IPOAs); International Maritime Organization (IMO) Convention; Convention on Migratory Species (CMS); Convention on Wetlands of International Importance (RAMSAR); regional fisheries agreements, such as the Cartagena Convention, OSPESCA, WECAFC, and other applicable instruments.

- cover related legislation that may affect or be affected by fisheries issues, including shipping, ports, seafarers labor laws, Customs, military/coast guard, cooperatives, community and local government authority for resource management (either in the constitution or administrative declarations), protected areas, pollution control, mining, coastal development control, land- use planning, special protection zones -- e.g., mangroves, tidal areas, estuaries, dunes, etc.); and
- assess institutional capacity, institutional overlap, and legal conflicts that need to be harmonized and legal gaps that need to be fixed.

The report should have a clear and detailed section on recommendations and options for legislative strengthening as a significant part and basis for moving forward with drafting the first revision of the Act.

**ANNEX II FISHERIES ACT REVISION PROJECT, LIST OF PREPARATORY MEETINGS HELD WITH MR. BILL EDESON, INTERNATIONAL LEGAL CONSULTANT AND MS. ELISA MONTALVO, NATIONAL LEGAL NATIONAL**

Tuesday, June 29	8:30 a.m.	Janet Gibson, Julio Maaz, WCS
	10 a.m.	Steering Committee (Minutes attached)
	12 noon	Lindsay Garbutt, Alan Bevans, Ovel Leonardo and Nadine Nembhard, Belize Fishermen Co-operative Association
Thursday, July 1	2:00 p.m.	Fisheries Advisory Board meeting (Stakeholder Committee) (List of members present attached)
Friday, July 2	9:00 a.m.	Milton Haughton, Caribbean Regional Fisheries Mechanism (CRFM)
	11:00 a.m.	Vincent Gillett, Coastal Zone Management Authority & Institute
	2 – 5 p.m.	Beverly Wade, Fisheries Administrator, and her senior staff (George Myvette, Isaias Majil, Mauro Gongora, Glenfield Dennison, Miguel Sosa, Rigoberto Quintana, Hampton Gamboa)
Monday, July 5	1:30 p.m.	Julio Maaz, WCS and Lyndon Rodney, Hampton Gamboa, and Glenfield Dennison, Fisheries Inspectors, Fisheries Dept.
	3:30 p.m.	Sandra Grant, Fisheries EU Project
Tuesday, July 6 (Belmopan)	10:00 a.m.	Oscar Ramjeet, Solicitor General and Nelda Tulcey and Kawu Bala, draft persons
	1:30 p.m.	Richard Reid, Andy Sutherland, and Ishmael Perez, Foreign Trade
	3:30 p.m.	Hon. Rene Montero, Minister of Agriculture & Fisheries, and Mr. Canto, CEO, Ministry of Agriculture & Fisheries
Wednesday, July 7	9:00 a.m.	Meeting with conservation NGOs (list of organizations represented attached)
	2:00 p.m.	Technical Seminar on “Evolution of International Conservation Standards for Fisheries and their use in Fisheries Legislation” by Bill Edeson
Thursday, July 8	9:00 a.m.	Ian Haylock and Mr. Griffith, Customs Dept.
	10:30 a.m.	Major Flowers and Mr. Swazo, Port Authority
	1:30 p.m.	Mr. Bennett and Gregory Soberanis, Belize National Coast Guard Service
	3:30 p.m.	Margaret McKenzie, Chief Magistrate
Friday, July 9	10:30 a.m.	Encarnacion Samaniego, Abilio Dominquez, Valerie Lanza, IMMARB
Monday, July 12	2:30 pm	Wrap up meeting with Fisheries Administrator
Tuesday, July 13	6:30 a.m.	Interview on Open your Eyes on Channel 5 Television (Legal Consultants and Fisheries Administrator)

(Belmopan)	1:00 p.m.	Wilber Sabido, Chief Forest Officer and Hannah St. Luce, Forest Dept.
	4:00 p.m.	Laura Frampton, Belize Tourism Board
Wednesday, July 14 (Belmopan)	8:30 a.m.	Martin Alegria, Chief Environmental Officer, and Jevon Hulse, Dept. of Environment
	9:45 a.m.	Diane Wade, UNDP
	11:00 a.m.	Andre Cho, Geology & Petroleum Dept.
(Belize City)	3:30 p.m.	Diana. Hall, Police Prosecution Branch
Thursday, July 15	1:00 p.m.	Advisory Council, BFCA
	2:30 p.m.	Wrap up meeting with Janet Gibson and Julio Maaz, WCS
Friday, July 16	8:30 a.m.	Larry Epstein, Environmental Defense Fund
	10:00 a.m.	Milton Haughton, CRFM

**ANNEX III LIST OF PERSONS ATTENDING PREPARATORY NGO MEETING, 7<sup>TH</sup> JULY, 2010**

<b>NAME</b>	<b>ORGANIZATION</b>
Seleem Chan	Toledo Institute of Development & Environment (TIDE)
Natalie Rosado	Protected Area Conservation Trust (PACT)
Yvette Alonzo	Association of Protected Area Management Organizations (APAMO)
Philip Balderamos	Global Environment Facility/GEF Small Grants Programme
Jeffery Joseph	ECOMAR
Valentine Rosado	CORAL
Virginia Fuhs	Ya'axche
Zoe Walker	Wildtracks
Nicola Foster	TIDE
Julie Stockbridge	Oceana
Craig Hayes	Turneffe Atoll Trust
Losita Lee	Belize Audubon Society
Doyle Forman	SATIIM
Mito Paz	Green Reef
K. Mustafa Toure	Turneffe Atoll Trust
Nellie Catzim	Southern Environmental Association (SEA)
Annelise Hagan	SEA
Arthur Westby	SEA
Dwight Neal	Independent Consultant
Leandra Cho-Ricketts	Environmental Research Institute, University of Belize (ERI/UB)
Celso Cawich	ERI/UB
Nadia Bood	WWF
Nicanor Requena	Environmental Defense Fund
Virginia Burns	WCS

## **ANNEX IV TERMS OF REFERENCE, INTERNATIONAL FISHERIES CONSULTANT**

The International Fisheries Consultant will support the revision of the Belize Fisheries Act to ensure that the final Act effectively incorporates ecosystem-based fisheries management and is in line with international standards to this effect. H/She will work closely with the National Fisheries Consultant to ensure that these technical aspects of the Act are also in keeping with national fisheries policy.

The International Fisheries Consultant should have a strong background in fisheries science, the principles and practice of ecosystem-based fisheries management and the application of the precautionary approach.

The Fisheries Consultant will report to the Belize Fisheries Administrator and the WCS Belize Country Director and will be responsible for:

1. Advising the Core Drafting Group\* on specific technical fisheries issues that should be addressed in the revised Fisheries Act;
2. Advising the Group on alternative approaches for achieving ecosystem-based and rights-based fisheries management that are likely to be most feasible while also being grounded in the precautionary approach;
3. Advising from a technical standpoint on the modalities for implementation of specific fisheries management measures and ensuring that these are effectively provided for in the framework law;
4. Reviewing and providing written comments to the Core Drafting Group on the preliminary analysis (see Annex A) and first and main draft of the revised Fisheries Act;
5. Participating in, presenting at, and assisting in organizing technical seminars for government, non-government and private sector stakeholder groups on ecosystem-based fisheries management, both in general and on specific issues of interest to Belize, and how it is and can be implemented in Belize; and
6. Providing technical fisheries support to WCS, Government of Belize, and the Core Drafting Group, in moving forward the process of revising the Fisheries Act.

## ANNEX V REFERENCES AND RESOURCES

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Garcia, S.M.; Allison, E.H., Andrew, N., Bené C., Bianchi, G., De GRaff, G., Kalikoski, D., Mahon, R., and Orensanz, L. 2008. Towards integrated assessment and advice in small-scale fisheries. FAO Fisheries Technical paper, 515: 84 p.  
[Within Garcia et al (2008) and de Young et al (2008) are very useful schemes for the introduction of EAF, rights-based fishing, precautions and several other matters]