



# Sustainable Fisheries & Coastal Zoning in Barbuda

Legal & Institutional Assessment of Authorities &  
Approaches

ENVIRONMENTAL LAW INSTITUTE

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Cover image: Aerial view of Barbuda (2013 Read Porter)

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## Abbreviations

BHI	Blue Halo Initiative
BLA	Barbuda Land Act, 2007
BLGA	Barbuda Local Government Act, 1976
BPA	Beach Protection Act, 1957
BPC	Barbuda Planning Commission
CCJ	Caribbean Court of Justice
CLNP	Codrington Lagoon National Park
CFO	Chief Fisheries Officer
DA	Defence Act, 2006
DAS	Dumping at Sea Act, 1975
DCA	Development Control Authority
ECSC	Eastern Caribbean Supreme Court
EIA	Environmental Impact Assessment
EIS	Environmental Impact Statement
EEZ	Exclusive Economic Zone
EPA	Environmental Protection Area
FA	Fisheries Act, 2006
IOC	Intergovernmental Oceanographic Commission
LFM	Local fishery management
MAA	Maritime Areas Act, 1982
MAPEA	Marine Areas (Preservation and Enhancement) Act, 1972
MARPOL	International Convention for the Prevention of Pollution from Ships
MOU	Memorandum of Understanding
MPA	Marine Protected Area
MSA	Merchant Shipping Act, 2006
MSP	Marine Spatial Planning
MVA	Minerals (Vesting) Act, 1949
NPA	National Parks Act, 1984
NSWMAA	National Solid Waste Management Authority Amendment Act, 2005
OPMAA	Oil Pollution of Maritime Areas Act, 1995
PAA	Port Authority Act, 1973
PPA	Physical Planning Act, 2003
RAMA	Radio-Active Minerals Act, 1948
RLA	Registered Land Act, 1975
SOLAS	International Convention for the Safety of Life at Sea
SWMA	National Solid Waste Management Authority
TCP	Town and Country Planner
UNCLOS	United Nations Convention on the Laws of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organization



## Executive Summary

Antigua and Barbuda have a variety of laws and policies relevant to the marine environment, ranging from sector-specific authorities such as the Fisheries Act to planning authorities to general jurisdictional authorities such as the Maritime Areas Act. This Report focuses on the subset of laws and regulations that are particularly relevant for sustainable fisheries management and protection in the waters surrounding Barbuda, and particularly those legal authorities that enable ocean zoning (see Table 1).

The Report explores how the existing laws of Antigua and Barbuda can be used to implement the Barbuda Blue Halo Initiative. It characterizes each legal authority for ocean zoning based on the following factors: (1) process for establishment and implementation of zoning; (2) enforcement authority (including potential penalties under the law); (3) potential (or existing) prohibitions established by the law; and (4) the extent to which the local Barbuda government (including the Barbuda Council) is authorized to implement the laws.

## Recommended Approach

Based on their analysis and characterization of the relevant Antigua and Barbuda laws and regulations, the authors identify legal options for achieving sustainable fisheries management through the use of ocean zoning, marine protected areas, and other management tools. These legal options, combined with the socioeconomic and scientific assessments previously undertaken by other members of the Barbuda Blue Halo Initiative team,<sup>1</sup> provide a basis for determining a sound approach to development and implementation of sustainable fisheries and zoning mechanisms in Barbuda's coastal waters. Based on the analysis in this Report, the following steps provide a strong platform for an effective and durable ocean zoning and management scheme for Barbuda:

1. In accordance with the Maritime Act and past interpretations of Barbuda's ocean jurisdiction authority, Barbuda's fisheries and zoning measures should extend to three nautical miles from shore.
2. Using legal authority under the Barbuda Local Government Act, and in harmony with the Fisheries Act of 2006 and accompanying regulations, the Barbuda Council should develop regulations for fisheries management measures. Fisheries management measures should include provisions for protected areas, protecting key species through take prohibitions, gear restrictions, fisheries licencing, fisheries enforcement, and mooring and anchoring restrictions.
3. Recognizing that the Barbuda Council is limited to fines no more than \$500, the Council should work with the national government to amend the Barbuda Local Government Act in order to enable additional fines and penalties for illegal activity.
4. Understanding the importance of harmonising fisheries management across national and local government, the Barbuda Council should work with the Ministry of Agriculture, Lands Agriculture, and the Environment to have Barbuda coastal waters designated as a local fisheries

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<sup>1</sup> The socioeconomic assessment and scientific assessment were completed by other parties. Working with the Waitt Institute team, ELI's research and recommendations built upon the outcomes of assessments.



management area and the Council designated as a local fisheries management authority in accordance with the Fisheries Act of 2006.

5. In further effort to harmonise national and local fisheries management, and recognizing the importance of local management and the need for sufficient fines and penalties, the Barbuda Council should work with the Ministry of Agriculture, Land, Housing and the Environment to designate new marine reserves that align with protected areas created by Barbuda Council regulations and to authorize the Barbuda Council to manage the marine reserves.
6. Understanding that proper fisheries management requires adequate local enforcement, the Barbuda Council should work with the Ministry of Agriculture, Land, Housing and the Environment to authorize enforcement officers to enforce the requirements of the Fisheries Act of 2006 and accompanying regulations in Barbuda coastal waters, including authority to enforce in marine reserves and other protected areas established in Barbuda by the Ministry.
7. To legalize local institutions currently managing the Codrington Lagoon National Park, the Barbuda Council should work with the Ministry with responsibility for National Parks to develop regulations establishing a National Parks Authority for Barbuda, as authorized under the National Parks Act.
8. To ensure that the Barbuda National Parks Authority has adequate authority to properly protect and manage the Codrington Lagoon National Park, the Authority should work with its sister Authority on Barbuda and the Ministry with authority for National Parks to update current national park regulations to improve protection, management and enforcement and to ensure that the regulations accommodate the particular needs of the Codrington Lagoon National Park.
9. Recognizing that implementation of coastal fisheries and zoning rules requires long-term investment, the Barbuda Local Government Act should be amended to allow the Barbuda Council to create special funds. Special funds should be created for coastal zoning and fisheries management and Barbuda national parks, and regulations should require relevant fees and fines be targeted to these funds, as well as allowing funds to accept government appropriations and grants and donations from outside sources.



Table 1. Key authorities and management status for Barbuda Blue Halo Initiative implementation.<sup>2</sup>

AUTHORITIES	INSTITUTION							
	Financing		Planning		Fisheries		Protected Areas	
	National	Barbuda	National	Barbuda	National	Barbuda	National	Barbuda
Local Government Act		X				X		X
Barbuda Land Act				X		X		X
Shooting & Fishing Bylaw						X		X
Physical Planning Act			X	X			X	O <sup>a</sup>
Fisheries Act					X	O <sup>b</sup>	X	O <sup>c</sup>
National Parks Act							X	O <sup>d</sup>
Marine (Protection & Enhancement) Act							X	
Finance Administration Act	X							

- a. Barbuda Planning Commission, while authorized, is not yet officially established.
- b. Local Fisheries Management Area authority.
- c. Marine Reserves, if included in a Local Fisheries Management Area could be managed by the local authority.
- d. Official creation of the National Parks Authority for Barbuda appears to require approval of the draft regulations for the Codrington Lagoon National Park.

<sup>2</sup> “X” indicates that some or all of the authority rests in national or local (i.e. Barbuda) institutions. “O” indicates that an institution could be authorized to implement all or part of the Act but has not been so authorized to date.



## I. Introduction

### A. Purpose of report

This Report is an evaluation of Antigua and Barbuda’s laws and institutions to support the design and implementation of a comprehensive ocean zoning and management system in Barbuda as part of the Barbuda Blue Halo Initiative.<sup>3</sup>

The Report identifies existing authorities to achieve a comprehensive ocean zoning system in the waters surrounding Barbuda, evaluates potential options for ocean planning and management implementation, and provides recommendations for ways to develop a pragmatic ocean management system for Barbuda. The Report recognizes that comprehensive marine management should build from the existing legal system, take pragmatic steps given anticipated capacity and funding, and provide effective incentives and requirements to ensure compliance and long-term sustainability of ocean resources.

### B. Overview of Barbuda Blue Halo Initiative

The Barbuda Blue Halo Initiative (Barbuda BHI) is an effort to develop comprehensive management of Barbuda’s marine environment, including fish sanctuaries, with a special focus on fisheries management.

The Barbuda BHI planning process is organized around seven principles:

1. Plan with the goal of sustainable, profitable, and enjoyable use of ocean resources over the long-term – for next year and for future generations.
2. Plan with a focus on increasing fisheries’ catches, and preserving traditional uses of ocean areas.
3. Plan with the premise that a zoning plan well supported by the community will result in higher voluntary compliance.
4. Plan with consideration of maximizing ease of enforcement, including gear-based management and design of zone boundaries based on known landmarks, where possible.
5. Plan with an understanding of the necessity for strong legal support for enforcement, including prosecuting and penalizing infractions.
6. Plan with an aim of long-term financial independence and viability of implementation.
7. Plan with an understanding that revisions and adjustments may be needed over time to maximize effectiveness.

Development of the Blue Halo Initiative concept in Barbuda is ongoing, in collaboration with the local and national governments, primarily the Barbuda Council. The Barbuda BHI is focused on developing a

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<sup>3</sup> This Report is provided for informational and educational purposes only and does not constitute legal advice. It is intended, but not promised or guaranteed, to be current, complete, or up-to-date. Transmission of this report is not intended to create, and the receipt does not constitute, an attorney-client relationship between the Environmental Law Institute and any other entity.



new system for ocean zoning and fisheries management in the ocean waters and internal waters of Barbuda.

### C. Description of ocean zoning

Comprehensive ocean management can be achieved with the development and implementation of ocean zoning. Marine spatial planning is a public process that organizes human activity in marine areas in time and space in order to meet environmental, economic, and social objectives.<sup>4</sup> One way to achieve marine spatial planning is through ocean zoning—a regulatory and enforceable approach to achieve and implement a marine spatial plan. Effective ocean zoning requires users to understand the legal context and authorities governing both planning and implementation. Key considerations in Barbuda include:

- the national and local governments (e.g., the Barbuda Council) that have the legal authority to develop, implement, and enforce an ocean zoning plan, including relevant sector-specific activities (e.g., fisheries, shipping, recreation, aquaculture), and how those authorities interact;
- opportunities and constraints associated with different ocean zoning authorities, and where new authorities may be needed;
- the processes required to carry out ocean zoning in Barbuda (e.g., public approval requirements); and
- the utility of existing marine designations (e.g., national parks, Marine Reserves, etc.) as elements of a comprehensive zoning plan.

The legal framework is also important for understanding financial aspects of ocean zoning. In Barbuda, key legal questions in this area include:

- the authorities governing collection of revenues from ocean users through existing and new sources, such as park entry fees, lease payments, fines for violations of the law, environmental injury funds, and other fees and penalties;
- the institutions that have the legal authority to receive public and private funds in order to develop and implement an ocean zoning plan; and
- Barbuda’s local authority and Antigua and Barbuda’s national authority to use these funds for development and implementation of a comprehensive plan.

This Report addresses each of these issues and is a legal resource that the Barbuda Council, national government, and other stakeholders can use as a guide when developing and approving ocean zoning plans and processes. It may also serve as important guidance for those in the Caribbean beyond Antigua and Barbuda when evaluating if and how to evaluate legal authority for marine spatial planning, ocean zoning, and fisheries management.

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<sup>4</sup> Ehler, Charles, and Fanny Douvère. *Marine Spatial Planning: a step-by-step approach toward ecosystem-based management*. Intergovernmental Oceanographic Commission and Man and the Biosphere Programme. IOC Manual and Guides No. 53, ICAM Dossier No. 6. Paris: UNESCO. 2009 (English).



#### D. Summary of report contents

This Report provides an overview of the Antigua and Barbuda legal system and discusses how that authority applies in Barbuda. It then introduces the substantive laws governing the marine environment in Barbuda, including planning authority, fishery authority, protected areas authorities, financing authorities, and other substantive legal authorities. With this background, this study evaluates policy options for advancing ocean zoning and management in Barbuda.



*Credit: Read Porter*



## II. Overview of Antigua and Barbuda Legal System and Barbuda Authority

This section summarizes the history and structure of the government of Antigua and Barbuda and local authority on Barbuda. In addition, it describes the relationship between the islands of Antigua and Barbuda and provides an overview of ocean jurisdiction.

### A. Geography

Antigua and Barbuda is a twin island nation in the Eastern Caribbean with shores facing the Caribbean Sea and the Atlantic Ocean. Its nearest neighbors include Anguilla to the northwest, Saint Kitts and Nevis to the west, and Montserrat to the south. The seat of government resides on the Island of Antigua, where the majority of the nation's population also resides. In all, approximately 88,000 people live on Antigua.<sup>5</sup> Approximately twenty kilometers away, Barbuda is the smaller island of the two with a population of a little over 1,800 people.<sup>6</sup>

### B. Overview of Antigua and Barbuda government framework

Antigua and Barbuda is a parliamentary democracy in the Commonwealth of Nations. It was operated as a colony of Great Britain until 1967, when it became an Associated State under the West Indies Act. Antigua and Barbuda achieved independence from Great Britain in 1981 with adoption of its Constitution.

The Antigua and Barbuda Constitution defines individual rights and freedoms for citizens<sup>7</sup> and sets out the structure of government in Antigua and Barbuda,<sup>8</sup> including executive powers,<sup>9</sup> commissions,<sup>10</sup> and judicial review.<sup>11</sup> The Constitution is the supreme law of land<sup>12</sup> but incorporates or refers to several laws and orders that applied prior to independence. Its language, and that of other laws, is interpreted according to the Interpretation Act of 1978.<sup>13</sup>

The Constitution provides that the head of state is the Queen of England, who is represented by the Governor-General. Legislative authority is lodged in a bicameral parliament comprised of a House and Senate. The Prime Minister is the head of the majority party, and the opposition leader is the head of the party with the greatest support from the opposition. The Governor-General Senate appoints Senate members from the majority and opposition; both the House and Senate must include one representative of Barbuda. The executive functions of government are carried out by ministries. The Prime Minister appoints members of Parliament to be cabinet ministers.

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<sup>5</sup> Antigua and Barbuda Ministry of Finance, *Census 2011 Preliminary Data Release (2012)*, available at [http://www.ab.gov.ag/article\\_details.php?id=2560&category=114](http://www.ab.gov.ag/article_details.php?id=2560&category=114).

<sup>6</sup> *Id.*

<sup>7</sup> Antigua and Barbuda Constitution Order at Ch. II.

<sup>8</sup> *Id.* at Ch. III.

<sup>9</sup> *Id.* at Ch. V.

<sup>10</sup> *Id.* at Ch. VII.

<sup>11</sup> *Id.* at Ch. IX.

<sup>12</sup> *Id.* at § 2.

<sup>13</sup> *Id.* at § 127(16).



The role of the House is to introduce legislation, while the Senate reviews and assents to legislation before it can be placed before the Governor-General for assent, subject to the requirements and limitations in the constitution. The Interpretation Act, as amended, provides rules of construction for these laws. Acts of Parliament may empower ministries, boards, councils, commissions, and other government entities to create a variety of legally binding rules and pronouncements, with or without the approval of Parliament. Collectively, these regulations, orders, notices, by-laws, and other documents are defined as “regulations;”<sup>14</sup> they have the force and effect of law except where preempted, such as by parliamentary action. Unless required to obtain positive approval by vote of Parliament or by the Government (i.e., the Cabinet), such “subsidiary legislation” (i.e., regulations, by-laws, orders, etc.) is typically laid before Parliament to allow for negative action if desired before it is published in the *Gazette*.<sup>15</sup>

### C. Antigua and Barbuda Law Enforcement System

The Antigua and Barbuda law enforcement system is similar to other countries based on British common law. The courts apply British common law, except where otherwise provided by parliamentary law or its own decisions.<sup>16</sup> Acts that predate statehood, such as those of the former colony of the Leeward Islands, also remain in force unless precluded by later authority.<sup>17</sup>

The law enforcement process includes the following steps:

- Apprehension of a person who is violating or has violated the law;
- Filing of a criminal complaint with a magistrate or indictment with the trial court;
- Trial, conviction, and sentencing by the relevant judicial officer;
- Appeals, if any; and
- Enforcement of sentence (a fine and/or imprisonment).

The Criminal Procedure Act sets out the requirements for apprehension of persons accused of crime and the procedures for use at trial. It provides that any peace officer or constable can apprehend, without a warrant, any person committing an offence punishable under either summary conviction or indictment. Private individuals generally cannot apprehend such persons,<sup>18</sup> unless they are deputized by the Police Commission to serve as special constables; once deputized, special constables have certain limited powers as set out in the Police Act.<sup>19</sup> The Minister of Agriculture, Lands, Housing, and the Environment can, by notice in the *Gazette*, designate such persons as he sees fit as authorized officers for the purposes of the Fisheries Act, and these authorized officers have the police powers set out in that Act.<sup>20</sup> In addition, members of the Coast Guard have the special duty to enforce laws of Antigua and

<sup>14</sup> Interpretation Act § 55 (defining “regulation” as “any rule, by-law, order, form or notice”).

<sup>15</sup> Personal Communication (Sept. 24, 2013).

<sup>16</sup> Common Law (Declaration of Application) Act.

<sup>17</sup> Enactment (Leeward Islands Act) Act.

<sup>18</sup> Private persons can apprehend *only* at night for violations that can be enforced on indictment. Few of the statutes discussed here may be enforced on indictment.

<sup>19</sup> Police Act, CAP. 330 § 72 *et seq.* (1952), as amended.

<sup>20</sup> Fisheries Act, No. 22 of 2006 § 61.



Barbuda that are related to, among other topics, harbours and ports; fisheries; territorial waters and economic zones; and safety at sea.<sup>21</sup> In carrying out this duty, members of the Coast Guard have the same powers and authorities as the police force—including the power to apprehend violators.<sup>22</sup>

Once apprehended, the violator is brought before a magistrate, who determines how the case will proceed.<sup>23</sup> Alternatively, in some cases violators may admit to violations and pay a prescribed fine without judicial process through a process known as compounding, which is specifically authorized by certain statutes, including the Fisheries Act.<sup>24</sup> Compounded offences, however, must be submitted to and accepted by a magistrate, and thus are within the judicial system.

The Magistrate's Code of Procedure Act, as amended, sets out the system of Magistrates and provides their jurisdiction and procedures.<sup>25</sup> Magistrates can receive a complaint or an information (a complaint under oath) of an offence. To demonstrate an offence has occurred, the prosecution must prove that the defendant both committed an action that violated the law, and had the required mental state (e.g., acted knowingly, willfully, negligently, etc.). The statute that was violated indicates the required burden of proof, and in addition will provide that a violation may be penalized upon summary conviction and/or indictment. In most cases, laws of Antigua and Barbuda do not provide an explicit mental state requirement, such that any violation of their provisions may constitute an offence, regardless of intent (see Appendix).

Where a case calls for summary conviction (for less serious offences), the case will be tried by a magistrate.<sup>26</sup> Magistrates have jurisdiction to try, convict, and sentence the defendant;<sup>27</sup> defendants may thereafter appeal to the trial court system. If a case is to be tried on indictment filed by the Director of Public Prosecutions (more serious offences),<sup>28</sup> the magistrate will commit the defendant for trial by the high court. Magistrates also issue search warrants; order condemnation and sale of vessels and other items subject to forfeiture; and enforce payment of fines, among other powers.<sup>29</sup>

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<sup>21</sup> Defence Act, No. 10 of 2006 § 213(1).

<sup>22</sup> *Id.* § 213(2).

<sup>23</sup> Criminal Procedure Act § 7.

<sup>24</sup> Fisheries Act, No. 22 of 2006 § 74.

<sup>25</sup> CAP. 255; The Magistrate's Code of Procedure (Amendment) Act, No. 3 of 1993; The Magistrate's Code of Procedure (Amendment) Act, No. 8 of 1994; The Magistrate's Code of Procedure (Amendment) Act, No. 13 of 2004; The Magistrate's Code of Procedure Amendment Act, No. 7 of 2005.

<sup>26</sup> Interpretation Act § 54.

<sup>27</sup> The Magistrate's Code of Procedure Act § 7.

<sup>28</sup> Criminal Procedure Act § 15.

<sup>29</sup> The Magistrate's Code of Procedure Act, CAP. 255, § 22. Magistrates also can try civil actions when the value or tort is less than \$1500, with some exceptions. Magistrate's Code of Procedure Act 1892. Magistrates are appointed by the Attorney General.



The remainder of Antigua and Barbuda’s trial court system was created by the Supreme Court Order of 1967.<sup>30</sup> The Order created a High Court and Court of Appeal, which are now part of the Eastern Caribbean Supreme Court (ECSC) pursuant to the Eastern Caribbean Supreme Court Act.<sup>31</sup> The High Court, also referred to as the “supreme court” in older laws,<sup>32</sup> has original jurisdiction for constitutional questions, including violation of individual rights or liberties or contravention of other constitutional provisions.<sup>33</sup> It is a combined court of law and equity<sup>34</sup> with jurisdiction to try civil and criminal cases (Major offences).<sup>35</sup>

The Court of Appeal, in practice, is the Eastern Caribbean States Supreme Court of Appeal<sup>36</sup> and hears appeals from High Court decisions. Plaintiffs may appeal by right on cases involving constitutional interpretation and enforcement of personal rights and freedoms, as well as on such other cases “as may be prescribed by parliament”<sup>37</sup> In addition, the Attorney General can, with Cabinet approval, refer to the Court of Appeal important questions of law or fact concerning interpretation of the Constitution, constitutionality of enacted legislation by Parliament, or otherwise as a matter of public interest and importance.<sup>38</sup> In deciding cases, the Court follows procedures set out in the Interpretation Act.

The ultimate level of appeal is to Her Majesty in Council, decided by the Judicial Committee of the Privy Council. Appeal to the Privy Council is by right in cases involving constitutional interpretation as well as certain civil and other cases, including those prescribed by statute. The Privy Council also has limited discretionary jurisdiction, including where the Court of Appeal believes the question is one that ought to be submitted (has great importance).<sup>39</sup> In the future, appeals to the Privy Council may be replaced with appeals to the Caribbean Court of Justice; however, while Antigua and Barbuda has acceded to the agreement creating the Privy Council, it has not accepted appellate jurisdiction in lieu of the Privy Council to date.<sup>40</sup>

Upon conviction, the Magistrate or Court can impose sentence, which may include imprisonment or financial penalties. All fines or other pecuniary penalties are payable into the general revenue of Antigua and Barbuda.<sup>41</sup>

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<sup>30</sup> The constitution endorsed the order. Antigua and Barbuda Const. § 127 (3). Additional specialized courts also have jurisdiction in Antigua and Barbuda but are not relevant to marine management or zoning—most notably, the Industrial Court Act, 1976, created an Industrial Court, which deals with labor issues.

<sup>31</sup> Eastern Caribbean Supreme Court Act 1970.

<sup>32</sup> ECSC Act § 3.

<sup>33</sup> Antigua and Barbuda Const.

<sup>34</sup> ECSC Act § 13.

<sup>35</sup> ECSC Act §§ 6 *et seq.*

<sup>36</sup> Members of the Court of appeal are appointed by OECS members, with prime minister approval. Its decisions apply in each member state.

<sup>37</sup> Antigua and Barbuda Const. § 121, ECSC Act § 28 *et seq.* The Court of Appeals can also hear appeals from the Magistrates Court and Industrial Court.

<sup>38</sup> The Attorney General’s Reference (Constitutional Questions) Act 2009 § 3.

<sup>39</sup> Antigua and Barbuda Const. § 122.

<sup>40</sup> Caribbean Court of Justice Act, Antigua and Barbuda Act No. 10 of 2004.

<sup>41</sup> Interpretation Act § 53.



#### D. Barbuda and its relationship to Antigua

Barbuda, like Antigua, was populated by native populations before Christopher Columbus discovered the island in 1493. Following Spanish and French colonization attempts, the British established a lasting settlement on the island starting in 1632. The crown subsequently leased the island in its entirety to the Codrington family, who ran the island as a plantation using slave labor until emancipation in 1834. The Codrington family lease ended in 1870, at which time the island reverted to the control of the crown. Many current residents of Barbuda are the descendants of the slaves imported to work on the plantation.

In 2001, the ECSC Court of Appeal described the historical relationship between Antigua and Barbuda in deciding a dispute between the Attorney General and Barbuda Council stating the following:

In terms of its governance the evidence is clear that Barbuda was a colonial possession administered by the British Colonial Office as a dependency of its Government in Antigua. In 1858, the Barbuda [Extension of Laws of Antigua] Act was enacted allowing the British Monarch to declare that the island of Barbuda would be annexed to and made a dependency of Antigua and provided that thereafter Barbuda would be subject to the laws in force in Antigua “in the same manner as if Barbuda had originally formed part of the Colony of Antigua.” In the following year, the British Parliament adopted a statute confirming this legislation and, by Order in Council dated 1<sup>st</sup> August 1860, Barbuda was made a dependency of the island of Antigua.<sup>42</sup>

Not only was Barbuda placed under the governance of and subject to the laws of the colony of Antigua during this time, but it was also kept in tenancy. It was leased in whole to a succession of leaseholders until 1898, when the British Crown recovered possession of the Island. Subsequently, the Crown established a management system that placed Barbuda under the control of the Colonial Office for Antigua and placed the residents in a tenant relationship with the Crown.<sup>43</sup> In this system, the “Manager” or, later, “Warden” of Barbuda, who was employed by the British Crown, governed where residents could live, provision grounds, rents, and other issues.<sup>44</sup>

This system of “peasant tenantry” was set into law by the Barbuda Act of 1904, which clarified the legal status and dominion of the British Crown over Barbuda. The Barbuda Act remained the key authority governing Barbuda until the Islands of Antigua and Barbuda achieved limited self-government as an Associated State in 1967.<sup>45</sup> In 1976, the government of Antigua and Barbuda enacted the Barbuda Local

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<sup>42</sup> Attorney General v. Barbuda Council, Civil Case 7 of 2001 (setting out history of islands).

<sup>43</sup> Barbuda Management and Control Ordinance 1901; Barbuda Ordinance 1904.

<sup>44</sup> Attorney General v. Barbuda Council, *supra* note 26.

<sup>45</sup> *See id.* (“The modern context is heralded in 1951 with universal suffrage when the Antigua Constitution and Elections Ordinance was enacted and Barbuda was constituted a constituency of Antigua. In 1967, the advent of Associated Statehood introduced the concept of a written constitution declaring and providing for the human and civic rights of the inhabitants of the islands. This also marked the end of direct colonial administration of Antigua and Barbuda, as the constitutional status of Associated Statehood carried with it the rights of internal self-



Government Act (BLGA), which established the Barbuda Council and endowed it with limited powers of self-government for the island of Barbuda. As described by the ECSC:

The Local Government act 1976 as amended in 1979 and 1981 marked important step towards self-determination and introduced a completely new constitutional arrangement. Instead of the administration of Barbuda coming through the Administrator in Antigua and then through the Warden, the arrangements changed. The Barbuda Council was established, on democratic principles, by the Local Government Act which laid out a scheme for the sharing of power and responsibility over the Administration of Barbuda with the Executive of the Central Government of the State of Antigua and Barbuda, the Cabinet. . . . The Act established and prescribed for the composition of the Council; regulated the membership of the council and made provision for elections to the council.<sup>46</sup>

Barbuda gained limited autonomy through the BLGA, and the Island continued to seek more autonomy in subsequent years, including by seeking independence from Antigua during constitutional deliberations in 1981.<sup>47</sup> While efforts to achieve independence were not successful, the constitution endorsed and protected the BLGA. Specifically, the Constitution recognizes the Council to “be the principal organ of local government in that island” and provides that Parliament may alter BLGA only with approval from the Barbuda Council.<sup>48</sup>

In a further move toward a more independent Barbuda, in 2007, the national parliament enacted the Barbuda Land Act (BLA) which: (i) revoked the land tenure provisions of the Barbuda Act, 1904, and clarified that legal ownership of land in Barbuda remains in the Crown (i.e. under the control of the national government); (ii) expanded the Council’s authority to govern the disposition of lands in Barbuda without oversight from Antigua; and (iii) provided a system for local decisions on land development in Barbuda.

Questions remain as to the relationship between the Council and the national government, as well as regarding the nature and limitations of the authorities provided by the BLGA and other laws.

### **E. Barbuda Council structure and authority**

The Barbuda Council was established by the BLGA to “administer the system of local government for the Island.”<sup>49</sup> Its jurisdiction includes the “Island of Barbuda,” and it is composed of the Barbuda representative from the national House of Representatives; a qualified national senator from Barbuda; and 9 elected members.

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government. It also marked the end of the constitutional status of Barbuda as a dependency of Antigua and made it a part of the unitary State of Antigua and Barbuda.”).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 50.

<sup>48</sup> Antigua and Barbuda Const. § 123.

<sup>49</sup> BLGA § 3.



Section 18 of the BLGA sets out the specific areas over which the Council has authority. The law provides that the Cabinet can give general or special directions to the Council as to its policies except in specified areas. As described by the ECSC, “section 18 is limited to regulating the policy which the Barbuda Council is required to follow in the exercise of its powers and functions. It draws a distinction between those issues on which it must follow directives given by the Cabinet and those on which it need not.”<sup>50</sup> Issues where the Council need not follow Cabinet directives include forestry (mangroves) and land administration.<sup>51</sup> While it is the “duty of the Council” to administer other areas, including fishing, the BLGA states that Council action in these areas must be conducted in conformity with Cabinet directives. Furthermore, the Council can cooperate with other authorities (such as ministries) to discharge its powers, functions, and duties, and those authorities *must* “render all possible assistance” to the Council in the discharge of its duties.<sup>52</sup>

The BLGA lists the subject matter in which the Council is authorized to make, amend, and revoke by-laws and regulations.<sup>53</sup> This list is extensive and includes a variety of categories relevant to marine planning, including but not limited to:

- Management and control of public cultural institutions, public parks and other places of public recreation;
- Wood cutting;
- Boat licences;
- Coasting trade;
- Fishing; and
- Land administration.<sup>54</sup>

By-laws apply “within Barbuda” only and can be explicitly or implicitly preempted by national laws.<sup>55</sup> The law does not indicate whether the preemptive effect of national laws differs with respect to Council action in areas independent of cabinet policy oversight (i.e., those addressed in section 18). In addition, it does not explicitly state whether regulations will be preempted in case of conflict with national laws; however, it is likely that regulations will be subject to the same preemptive effects as by-laws.

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<sup>50</sup> Attorney General v. Barbuda Council, *supra* note 26.

<sup>51</sup> BLGA § 18. The areas reserved to Council authority include agriculture and forestry; public health, medical, sanitary facilities; electric and water services and utilities; roads; revenue raising and collecting; and land administration. Land administration was added to the list of reserved powers by the Barbuda Land Act following a holding that land tenure could not be read into the BLGA. Attorney General v Barbuda Council, *supra* note 26 (“[T]he Local Government Act does not deal with issues relating to land tenure and land usage. Certainly there is nothing in Section 18 which regulates land usage or tenure or the disposition of Crown land in Barbuda. There is no provision in the Local Government Act which regulates that issue. The Legislation which regulates land usage is the Barbuda Act.”)

<sup>52</sup> BLGA §§ 18 (6)-(7).

<sup>53</sup> BLGA § 19.

<sup>54</sup> § 19(xii), (xxv), (xxvii), (xxx), (xxxii), (xxxx).

<sup>55</sup> BLGA § 3 (By-laws “shall have full force and effect within Barbuda, but except where specifically or by necessary implication provided under this Act or any other law from time to time in force”).



Barbuda by-laws are enforceable and can include penalties of up to \$250 or 3 months imprisonment.<sup>56</sup> In contrast to by-laws, the Local Government Act does not explicitly limit regulations in terms of maximum penalty amounts,<sup>57</sup> and in practice the Barbuda Land Regulations provide for penalties of up to \$2,500 – substantially in excess of the maximum for by-laws.<sup>58</sup> On the other hand, the BLGA provides that “[a]ny person who commits any offence against this Act for which no penalty has been specifically provided” is liable for a fine of up to \$500 or imprisonment for up to three months, plus \$10 per day for continuing violations.<sup>59</sup> In addition, the Ministry of Legal Affairs has indicated that “by-laws” includes regulations issued by the council (or that regulations would at a minimum be subject to the \$500 limit), such that larger fines may require amendment of the BLGA despite the precedent for larger penalties.<sup>60</sup>

Several by-laws have been created for Barbuda, both prior to and after the Barbuda Council was created. The BLGA restated by-laws in force when it was enacted, and these provisions remain in force unless otherwise repealed. One such by-law, the Barbuda (Shooting and Fishing) By-law 1959, is relevant to the Barbuda BHI and is further discussed in Sections II.G and III.A. In 2010, the Barbuda Council also issued regulations to implement the BLA.

In addition to providing the authority for Council regulation, the BLGA addresses treatment of funds generated in Barbuda. The law allows the Council to collect certain local taxes, to collect “the various charges, duties, dues, licence fees, taxes, levies, or imports” established under specific laws of Antigua and Barbuda.<sup>61</sup> In practice, the Council collects monies under laws not included in this list, including the licence fees under the Fisheries Act.

While the BLGA and the BLA are the primary laws providing local authority in Barbuda, a number of other substantive laws provide for local authority related to coastal zoning and fisheries management—either specifically for Barbuda or for any local area. These laws notably include the Fisheries Act, National Parks Act, and Physical Planning Act, 2004. The relevant provisions and associated authorities are discussed in the context of their particular substantive authority.

## F. Public Participation in Barbuda

The Barbuda Council must follow procedures set out in the laws of Antigua and Barbuda when carrying out its statutory duties. The BLGA sets out general procedures that the Council must follow when

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<sup>56</sup> BLGA § 19(4). By-laws are also limited to “summary conviction” as distinguished from “on indictment.” Summary convictions are a less serious form of prosecution with lower penalties.

<sup>57</sup> The Barbuda Land Act authorized issuance of regulations but the amendment did not alter other provisions, including those relevant to preemption or enforcement.

<sup>58</sup> Barbuda Land Regulations § 6. The Barbuda Land Act does not establish alternative enforcement provisions or fine amounts.

<sup>59</sup> BLGA § 47(1).

<sup>60</sup> Personal communication (December 2013).

<sup>61</sup> BLGA § 24. These laws are the Export Duty Act, Excise Act, Trade Licences Act, Tonnage Duties Act, Tobacco Control Act, Weights and Measures Act, Licensing (Intoxication Liquor) Act, Hotels Tax Act, Embarkation Tax Act, and Vehicles and Road Traffic Act. The section also authorizes the Council to derive revenue from rental, lease, or mortgage of lands in Barbuda and contributions by the national government. *Id.*



deciding any question—such as whether to approve a by-law or regulation. The LGA’s procedures are minimal. The Council must:

- conduct its business in open meetings;<sup>62</sup>
- make decisions by majority vote;<sup>63</sup> and
- publish approved by-laws or regulations in three successive issues of the *Gazette*.<sup>64</sup>

Some Council actions require additional public engagement. For actions related to land under the BLA, the Council must adhere to the following four-step process:

- Council obtains consent to the principle of the proposal by majority in a public meeting or vote;<sup>65</sup>
- Council considers and approves the proposal “in detail”;
- Cabinet considers and agrees to the proposal; and
- People of Barbuda approve proposal.<sup>66</sup>

This four-step process only applies to leases of land for “major developments” (e.g., hotels) and to establishment or expansion of national parks.<sup>67</sup> Therefore, the heightened public engagement requirements are not required for the actions recommended in this report. The Barbuda Land Regulations establish the process for obtaining public approval.<sup>68</sup> The Council must give notice and hold a public meeting for all registered voters; matters are decided by majority vote of at least 50 attendees. While other actions do not require public meetings or approvals, this process remains good practice and may be beneficial even when not required by law—such as for controversial projects.

These procedures cover only the Barbuda Council’s public participation requirements under the BLGA and BLA; substantive laws may require additional national requirements, as described in more detail below. For example, Council approval of a proposal for a national park must be followed by an Order by the Minister of Agriculture, Lands, Housing and the Environment to create the park, as well as an affirmative resolution of the House of Representatives. As a result, when identifying steps to create policy, these public participation steps must be considered along with the specific requirements of the substantive law.

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<sup>62</sup> BLGA § 34.

<sup>63</sup> BLGA § 35.

<sup>64</sup> BLGA § 19(3).

<sup>65</sup> BLA § 18(1). The Act directs the Council to make more specific regulations for how it will obtain the consent, including for notice, quorum, how the proposal is decided in meetings, and other considerations. The Council does not appear to have issued these regulations to date.

<sup>66</sup> BLA § 17.

<sup>67</sup> BLA 2d Sched. § 6(c).

<sup>68</sup> Barbuda Land Regulations, 2010 No. 17, § 10.



### G. Public Financing

The Constitution indicates that “[a]ll revenues and other monies raised or received by” Antigua and Barbuda must be placed into a Consolidated Fund, unless they are payable into a fund created for a specific purpose by or under another law.<sup>69</sup> This provision creates a default where funds received from taxes, fees, enforcement actions, donations, or other sources are deposited into a Consolidated Fund unless a Special Fund has been created for those funds.

The Finance Administration Act (FAA) elaborates on the Constitution’s funding provision, creates the Consolidated Fund and directs monies into that Fund; however, certain public monies are reserved, including amounts to be paid into Special Funds or other funds created by or under an Act.<sup>70</sup> Special Funds are defined as funds established “for a specific purpose” by or under the FAA (by the Finance Minister) or another Act, as well as trust funds held or administered by the Government.<sup>71</sup> Special funds are administered and expended as provided in the Act unless otherwise provided by the law creating the special fund, and the Act contains specific accounting and reporting requirements for special funds.<sup>72</sup> The Finance Minister has issued regulations providing for creation, management, and administration of special funds.<sup>73</sup>

The Council has specific fiscal governance powers and responsibilities. The Council can collect taxes and dues on a series of listed statutes, which generally do not include those most relevant to ocean zoning,<sup>74</sup> and allows the Council to receive “other monies” payable.<sup>75</sup> “All monies due to the Council” must be placed in a Deposit Account, except for amounts in excess of that required to meet approved annual expenditures.<sup>76</sup> Excess amounts must be placed in a Special Account at the Treasury and can only be used to defray deficits on annual accounts or capital projects proposed by the Council.<sup>77</sup>

The Ministry of Legal Affairs has indicated that the BLGA’s fiscal provisions effectively bar the Council from setting up special funds or diverting monies from enforcement, licencing, or other sources into such funds.<sup>78</sup> However, alternative special fund arrangements based in Barbuda could be legal if their funds are not “due to the Council” and they are held by other entities. For example, fines for violations of laws in Barbuda (whether of national laws or regulations or of Barbuda by-laws or regulations) are paid to the Courts, and thus could be placed into a Special Fund created by the Finance Minister or by the terms of another law or regulation authorizing creation of such a fund. Another

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<sup>69</sup> Antigua and Barbuda Const. § 90 (“All revenues or other monies raised or received by Antigua and Barbuda (not being revenues or other monies that are payable, by or under any law for the time being in force in Antigua and Barbuda, into *some other fund established for a specific purpose*) shall be paid into and form a Consolidated Fund.”) (emphasis added).

<sup>70</sup> Finance Administration Act, No. 23 of 2006 §§ 13-14.

<sup>71</sup> Id. § 42.

<sup>72</sup> Id. § 43.

<sup>73</sup> Finance Regulations, 2010.

<sup>74</sup> BLGA § 24.

<sup>75</sup> BLGA § 29.

<sup>76</sup> BLGA § 22.

<sup>77</sup> BLGA §§ 22(2), 23.

<sup>78</sup> Personal Communication.



option is to amend the Barbuda Local Government Act, giving the Barbuda Council the authority to develop special funds. In addition, this amendment process could be used to establish specific special funds related to the implantation of Barbuda fisheries management and coastal zoning requirements.

## H. Ocean jurisdiction

In accordance with international law, all nations, including Antigua and Barbuda, have authority to manage and exploit resources in the waters of its territorial seas and Exclusive Economic Zone (EEZ), as well as the seabed of the continental shelf region. In the absence of neighboring boundaries, a nation's EEZ may extend from the 12-mile territorial sea boundary out to 200 nautical miles from shore. Similarly a nation's continental shelf may extend to 200-miles from shore with the possibility of extending to 350 nautical miles in some circumstances.

Antigua and Barbuda's ocean jurisdiction is further delineated by the Maritime Areas Act of 1982, which is implemented by Minister responsible for external affairs.<sup>79</sup> This Act allows the Minister to make regulations for, among other topics, navigation and marine traffic; conservation of the living resources of the sea; preservation of the marine environment of Antigua and Barbuda; and the general use of internal and archipelagic waters and territorial seas.<sup>80</sup> The Maritime Areas Act sets out several categories of waters in Antigua and Barbuda, including:

1. **Internal waters:** waters that are landward of the low-water line, or as prescribed by a "closing line" defined by the Minister in accordance with international law.<sup>81</sup> Codrington Lagoon is considered internal waters.<sup>82</sup>
2. **Archipelagic waters:** areas of the sea other than internal waters, landward of "baselines" defined in accordance with international law, including the waters between the islands of Antigua and Barbuda.<sup>83</sup>
3. **Territorial sea:** the seas extending from the baselines (i.e., from shore or the edge of the archipelagic waters) to 12 nautical miles seaward.<sup>84</sup>
4. **Contiguous zone:** the seas beyond and adjacent to the territorial sea, extending seaward 24 nautical miles but not into the territorial sea of a foreign state.<sup>85</sup>

<sup>79</sup> MAA § 2.

<sup>80</sup> MAA § 28.

<sup>81</sup> MAA § 3. The low water line is defined as low water at the coast at the lowest astronomical tide MAA § 2. These waters are sovereign to Antigua and Barbuda. MAA § 12.

<sup>82</sup> United Nations, *The Law of the Sea: Baselines: National Legislation with Illustrative Maps 15 (1989)*, at <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/publications/E.89.V.10.pdf>.

<sup>83</sup> MAA § 4. Baselines are "straight archipelagic baselines drawn in relation to Antigua and Barbuda." MAA § 6. Under international law, baselines include outlying islands and dry reefs (e.g., Redondo). UNCLOS § 47 ("An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands"). These waters are sovereign to Antigua and Barbuda, MAA § 12, but are subject to transit passage, among other protections. See MAA §§ 20, 21.

<sup>84</sup> MAA § 5. These waters are sovereign to Antigua and Barbuda. MAA § 12.

<sup>85</sup> MAA § 7. Antigua and Barbuda reserves the sovereign rights in these waters necessary to prevent and punish infringement of customs, excise, immigration, and sanitation laws.



5. **Continental shelf:** areas of seabed and subsoil of submarine areas beyond the territorial sea to the outer edge of the continental margin or to 200 nautical miles from the baseline, whichever is greater, but not including the deep ocean floor.<sup>86</sup>
6. **Exclusive Economic Zone (EEZ):** the sea and submarine area (including the seabed and subsoil) beyond the territorial sea out to 200 nautical miles.<sup>87</sup>
7. **Fishery Zone:** areas of the sea from the territorial sea out to the edge of the EEZ.<sup>88</sup>

In practice, these designations give rise to the national borders of Antigua and Barbuda, which are recorded by the United Nations and some of which are mapped in Figure 1.

Laws in effect prior to Maritime Areas Act did not use designations established in that Act, instead using more vague terms and limiting jurisdiction to 3 nautical miles from shore in accordance with previous international law principles. The Maritime Areas Act recast references such as “coastal waters” to correspond to internal or archipelagic waters or the territorial sea, as appropriate, and any reference to a 3-mile limit of jurisdiction or “a longer or shorter distance” (e.g., one league) in a prior act has been extended to 12 nautical miles—the full width of the territorial sea.<sup>89</sup>

Both the national government and the Barbuda Council (may hold jurisdiction in the seas around Barbuda. However, the Acts governing the Council’s jurisdiction do not explicitly define the seaward boundary of Barbuda. As noted previously, the BLGA gives the Council jurisdiction over the “Island of Barbuda” and provides that Council actions have effect “within Barbuda.” The Barbuda Land Act similarly refers to the Council’s authority “in Barbuda.” Without a statutory definition of the seaward boundary of Barbuda,<sup>90</sup> the Council’s authority in marine waters depends on other factors, such as by-laws, common law, historical boundaries, and historical practice. The best evidence of the Council’s marine jurisdiction derives from the Shooting and Fishing By-Law 1959, which has long regulated fishing within one league (3.45 nautical miles) of Barbuda.<sup>91</sup> Based on this precedent, the Council has

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<sup>86</sup> MAA §§ 8, 9. Antigua and Barbuda reserves the sovereign rights to exploration and management of natural resources, installations and structures on the continental shelf, among other rights.

<sup>87</sup> MAA § 10. Antigua and Barbuda reserves sovereign rights to, *inter alia*, conservation and management for natural resources and energy, as well as protection and preservation of the marine environment. MAA § 13.

<sup>88</sup> MAA § 11. Antigua and Barbuda retains the sovereign right and exclusive authority to explore and exploit, conserve and manage the fishery resources of fishery zone and submarine areas. MAA § 14.

<sup>89</sup> MAA § 34. The extent of sovereign jurisdiction over the ocean has shifted over time, as has the language and units used to describe the applicable distance from shore. Most commonly, the applicable distances were 3 nautical miles or one league (3.45 miles). The language of the Maritime Areas Act is clearly intended to capture all variations on language used to describe jurisdiction rather than to name all potential distances from shore and certainly includes references to one league, such as used in the Shooting and Fishing By-law.

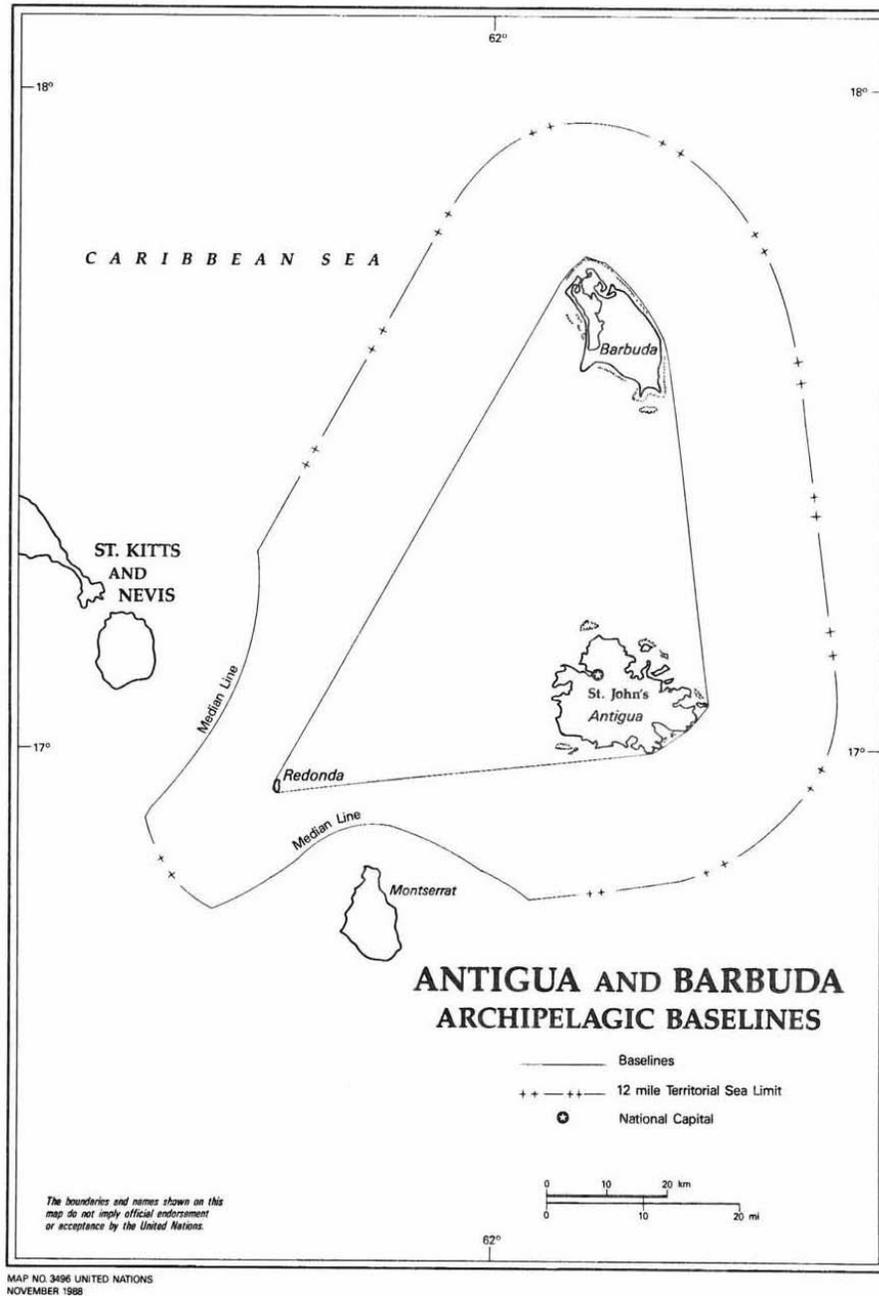
<sup>90</sup> Other laws and definitions may be relevant to Council jurisdiction. For example, the BLA provides the Council authority to “designate areas of land” for fisheries. However, such authorities do not speak directly to offshore jurisdiction (e.g., does not distinguish between internal fisheries, such as the lagoon, and offshore fisheries). As a result, these authorities do not provide clarity in determining offshore jurisdiction.

<sup>91</sup> There is an argument that section 34 of the Marine Areas Act extended the reach of the Shooting and Fishing By-Law to 12 nautical miles. Interpretation Act §§ 2, 55 (defining “law” and “instrument” to include by-laws). However, there appears to be broad consensus among Antigua and Barbuda ministry staff that the Council’s jurisdiction is limited to one league from shore. Personal Communications (Sept. 24, 2013).



jurisdiction within one league from the baseline and is authorized to issue regulations and by-laws that apply in this zone. Personal communications with the Ministry of Legal Affairs, Environment Division, and Fisheries Division indicate a broad consensus on this interpretation.<sup>92</sup> The Blue Halo Initiative is focused exclusively on these waters.

Figure 1. Waters of Antigua and Barbuda<sup>93</sup>



<sup>92</sup> Personal Communication (Sept. 24, 2013).

<sup>93</sup> United Nations, THE LAW OF THE SEA, BASELINES: NATIONAL LEGISLATION WITH ILLUSTRATIVE MAPS 25 (1989).



## I. Overview of substantive legal framework

A variety of laws contribute to the substantive authority for ocean zoning in Barbuda by national and local governmental entities. In addition to the basic framework establishing the relationship and authorities of the national government to Barbuda considered above, the applicable laws address the following seven substantive issues, each of which is discussed in the sections that follow:

- Fisheries;
- Marine protection;
- Planning and land use;
- Maritime trade and shipping;
- Forestry;
- Pollution, Dumping, and Accidents; and
- Mining.



*Credit: Read Porter*



### III. Fisheries Authorities

The Barbuda Council and Ministry of Agriculture, Lands, Housing, and the Environment both have independent legal authority to govern fisheries and have issued regulations and by-laws to implement that authority (Table 2). The laws do not specify how these entities should relate to each other in implementing these authorities, but do provide that the Council’s fisheries management actions are subject to policy direction from the Cabinet. As a result, the specific requirements that apply to fishing activity in Barbuda depend upon whether national and local authorities conflict, and if that conflict can be resolved in a particular instance. Understanding whether national, local, or both authorities apply requires case-by-case consideration.

National requirements may override or preclude Council action where local and national approaches conflict. However, where both can be accommodated, the courts may require compliance with both local and national authorities.<sup>94</sup>

Table 2. Overview of laws affecting fishing in Barbuda.

AUTHORITIES	INSTITUTION		OVERVIEW
	National	Barbuda	
<b>Barbuda Local Government Act</b>		X	<ul style="list-style-type: none"> <li>“the duty of the Council ... to administer fisheries” subject to “general or special directions” from the Cabinet</li> <li>“The Council shall have power to make regulations and by-laws...with respect to...fishing”</li> </ul>
<b>Barbuda (Shooting &amp; Fishing) Bylaw</b>		X	<ul style="list-style-type: none"> <li>“Council may issue permits to persons to take fish (during such period and in such area as may be set in said permits)” out to 1 maritime league</li> </ul>
<b>Barbuda Land Act</b>		X	<ul style="list-style-type: none"> <li>“The Council shall designate areas of land in Barbuda for ... fisheries”</li> </ul>
<b>Fisheries Act</b>	X	O	<ul style="list-style-type: none"> <li>Applies to all “Antigua and Barbuda waters”</li> <li>No exceptions expressed for Barbuda, but Minister can appoint a local fisheries management authority to manage a local fisheries management area</li> </ul>

Ocean zoning in Barbuda will need to negotiate this complex relationship between the Barbuda Council and national fisheries authorities. Potential disputes could be forestalled through new legislation to clarify the Council’s relationship to the national government, by establishing a Local Fishery Management Area for Barbuda and placing it under Council jurisdiction; by harmonizing Council and national regulations, or through other means. While such clarification may be desirable, the Barbuda Council currently enjoys and can exercise its independent fisheries management authority, which sits

<sup>94</sup> In the United States, courts attempt to avoid preemption. *Bates v. Dow Agrosciences*, 544 U. S. 431, 449 (2005) (“When the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily ‘accept the reading that disfavors pre-emption.’”). This analysis presumes that the Eastern Caribbean Supreme Court would adopt a similar rule of construction.



alongside and is independent of the authority wielded by the Ministry, so long as its regulations do not conflict with national law.

### A. Barbuda-specific authority

The BLGA provides the Council with authority to regulate fishing subject to direction from the national government.<sup>95</sup> It has used this authority (which was originally granted by the Barbuda Act 1904) to promulgate the Barbuda (Shooting and Fishing) By-law 1959. This by-law prohibits fishing in inland waters (e.g., the lagoon) and waters surrounding island from ordinary low spring tide out to one league without a permit issued by the Council.<sup>96</sup> The Council may condition permits based on time and area.<sup>97</sup> The penalty for violation of a permit is \$250.<sup>98</sup>

The Barbuda Land Act gives the Barbuda Council additional authority to designate areas of land for fisheries.

### B. Fisheries Act of 2006

The Fisheries Act of 2006 is the primary fishery law for Antigua and Barbuda and repealed the Fisheries Act of 1983. It applies to all waters under national jurisdiction, including the fisheries zone, territorial seas, and internal waters.<sup>99</sup> The Minister of Agriculture, Lands, Housing, and the Environment is responsible for implementing the Act and must “promote the sustainable development and responsible management of fisheries and aquaculture activities.”<sup>100</sup> The Minister can make regulations, including for limiting entry and effort; the regulations can make different provisions for different cases or classes of persons (e.g., net versus line fishermen).<sup>101</sup> The Ministry issued regulations to implement the Act in 2013. The Act provides for a Chief Fisheries Officer (CFO), deputy, senior fisheries officers, and others to carry out the Act.<sup>102</sup> The Minister is authorized to appoint a Fisheries Advisory Committee,<sup>103</sup> as further developed by regulation.<sup>104</sup> The Committee is to include a person nominated by the Barbuda Council.<sup>105</sup>

The Act requires the CFO to prepare a fisheries management plan for Antigua and Barbuda waters, and the plan must follow a precautionary approach.<sup>106</sup> The plan must identify active fisheries, present their state, set objectives for management, management measures, licensing, and limitations for local fishing operations and foreign operations. In preparing and reviewing the fisheries plan, the CFO must “consult

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<sup>95</sup> BLGA §§ 18, 19.

<sup>96</sup> Barbuda (Shooting & Fishing) By-law § 4.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at § 6.

<sup>99</sup> Fisheries Act, 2006 § 2.

<sup>100</sup> FA § 4.

<sup>101</sup> FA § 76.

<sup>102</sup> FA § 4.

<sup>103</sup> FA § 7.

<sup>104</sup> Fisheries Regulations § 3-4.

<sup>105</sup> *Id.*

<sup>106</sup> FA § 5.



with the local fisheries, local authorities” and other affected persons, including the Barbuda Council.<sup>107</sup> No fisheries management plan was identified during the course of this research.

In addition to consultation on fisheries plans, the Fisheries Act also provides for direct management by local authorities. The Minister is authorized to create Local Fisheries Management Areas (LFMAs) by placing a notice in the *Gazette* and designating a local authority – such as the Barbuda Council – to manage fishing in the area.<sup>108</sup> The local authority may make by-laws not inconsistent with the Act or regulations to govern fishing in the area. Such by-laws must be approved by the Minister and published in the *Gazette* before they come into effect.<sup>109</sup> These by-laws may provide for penalties of up to \$500 for violations, in addition to penalties provided by the statute.

Fisheries regulations contain a variety of conservation measures.<sup>110</sup> Regulations include restrictions on key target species and habitats, gear, location, bycatch,<sup>111</sup> and landing sites. Species-specific restrictions include special permits,<sup>112</sup> closed seasons (e.g., parrotfish<sup>113</sup>), and/or minimum sizes (e.g., lobster and queen conch<sup>114</sup>). Gear restrictions include special permits for spear gun and beach seine,<sup>115</sup> establishment of minimum mesh size for seine and gill nets, prohibitions on certain gear (e.g. trawl nets, electro-fishing), and restrictions on traps and pots.<sup>116</sup> Location restrictions notably include a prohibition on fishing in inland waters with gear other than rod and reel or line without written permission from the CFO.<sup>117</sup> “Inland waters” is defined in the regulation to include estuaries,<sup>118</sup> which appears to include Codrington Lagoon.<sup>119</sup> As a result, fishing in the Lagoon would be unlawful if using gear other than rod and reel or line, except with a permit from the Chief Fisheries Officer.

Fishing vessels must be registered,<sup>120</sup> and a license in respect of each foreign and local sport or commercial fishing vessel is required<sup>121</sup> and must be renewed annually.<sup>122</sup> A vessel licence cannot be

<sup>107</sup> *Id.*

<sup>108</sup> Fisheries Act § 9.

<sup>109</sup> *Id.* § 1.

<sup>110</sup> Fisheries Regulations §§ 42-60.

<sup>111</sup> Fisheries Regulations § 57 (incidental catch of lobster, conch or marine turtle must be immediately returned to sea).

<sup>112</sup> Fisheries Regulations § 48 (marine flora); § 49 (coral); § 5 (cockle, whelk, sea egg).

<sup>113</sup> *Id.* at § 47.

<sup>114</sup> *Id.* at § 45.

<sup>115</sup> *Id.* at § 54.

<sup>116</sup> *Id.* at § 56.

<sup>117</sup> *Id.* at § 55.

<sup>118</sup> *Id.*

<sup>119</sup> See Environment Division, Antigua and Barbuda and Barbuda Council, CODRINGTON NATIONAL PARK MANAGEMENT PLAN 2009-2019 21 (2009), available at <http://gefantigua.org/wp-content/uploads/2010/11/Final-CLNP-Mgt-Plan1.pdf> (discussing seasonal salinity gradient changes in lagoon). The Lagoon is also listed as a wetland of international importance under the Ramsar Convention on Wetlands. *Id.* at 25.

<sup>120</sup> FA § 11. The Act spells out conditions for registration and requirements for issuance and recording of registration numbers and for maintaining the certificate on board the vessel. *Id.* §§ 12-15.

<sup>121</sup> FA §§ 27, 30. Unless based locally, foreign commercial vessels cannot obtain a licence without an access agreement between the Minister and other countries, regional entities, or fishery associations, and foreign fishing cannot exceed the total resources or amount of fishing under the management plan. FA § 26. The Minister also can



refused except where necessary to give effect to effort limitations; based on a history of applicant noncompliance; operation of an unregistered vessel; or vessel history of noncompliance.<sup>123</sup> Licences may have general conditions imposed by the Minister by and special conditions imposed by the CFO.<sup>124</sup> General conditions notably include maintenance of a logbook if required by the CFO, reporting the contents of that logbook to the CFO, and a prohibition on transshipment (transfer of fish from one vessel to another at sea) except with permission.<sup>125</sup> Foreign vessels are subject to general conditions mirroring but stronger than those for local vessels, including but not limited to mandatory logbooking, periodic reporting at sea, and observer access.<sup>126</sup> Local commercial fishing vessels, local and foreign sports fishing vessels, and local recreational vessels are subject to additional conditions limiting species targeted, gear used, effort, and catch per day.<sup>127</sup> Licences can be cancelled where necessary, including for noncompliance or for effort limitation.<sup>128</sup> Processing vessels and establishments also require a licence from the Minister to operate.<sup>129</sup>

The Fisheries Act authorizes the Minister to issue regulations to address licencing and permitting of vessels and the fishers, crew, or others engaging in fishing onboard.<sup>130</sup> The Fisheries Regulations provide vessel registration and licencing requirements pertaining to the following five vessel categories:

- Local commercial fishing vessels;<sup>131</sup>
- Local sports fishing vessels;<sup>132</sup>
- Local recreational fishing vessels;<sup>133</sup>
- Foreign fishing vessels;<sup>134</sup> and
- Foreign sports fishing vessels.<sup>135</sup>

To obtain a vessel licence, an application is required that identifies the names of individuals as well as other required information.<sup>136</sup> The specific categories that must be identified are listed in Table 3 and may include the owner, charterer, master, and crew. Any changes to information on any application for

enter into arrangements with other states and regional organizations, with Cabinet approval, to harmonise surveys and statistics, licencing of foreign vessels, enforcement, fisheries management bodies, or to take other cooperative measures. FA § 8.

<sup>122</sup> FA § 32 (“a fishing licence shall be valid for a period of not more than twelve months”).

<sup>123</sup> FA § 30.

<sup>124</sup> FA § 33.

<sup>125</sup> Fisheries Regulations § 31.

<sup>126</sup> Fisheries Regulations §§ 24-27.

<sup>127</sup> Fisheries Regulations §§ 32-34.

<sup>128</sup> FA § 35.

<sup>129</sup> FA § 39.

<sup>130</sup> FA § 76(2) (authorizing regulations “providing for the registration and licencing of fishers, fishing gear and other fishing appliances”).

<sup>131</sup> Fisheries Regulations §§ 31, 32.

<sup>132</sup> Fisheries Regulations §§ 31, 33.

<sup>133</sup> Fisheries Regulations §§ 31, 34.

<sup>134</sup> Fisheries Regulations § 24.

<sup>135</sup> Fisheries Regulations § 25.

<sup>136</sup> Fisheries Regulations at Sched. IV, Sched. VI.



any type of licence must be reported to the Ministry within 7 days; however, the regulations do not explicitly provide for reconsideration of a licence upon any changes.

**Table 3. Vessel Licence Application Requirements**

Vessel Type	Does licence application require identification of the vessel...				
	Owner?	Charterer?	Master?	Crew?	Client?
Local commercial	Yes	Yes	Yes	No	--
Local sports	Yes	Yes	No	No	No
Local recreational	Yes	Yes	No	No	--
Foreign	Yes	Yes	Yes	Yes	--
Foreign sports	Yes	Yes	Yes	Yes	No

The regulations contain licencing provisions for individual fishers and prohibit most fishing without a licence. Specifically, “a person shall not undertake harvesting, taking, processing, culturing or trading of fish or fishery products . . . without being entered in the record as a licensed local fisher.”<sup>137</sup> The only exceptions from this requirement are for minors less than 16 years of age and persons not fishing commercially in inland waters or from land.<sup>138</sup> To qualify for a licence, fishers must be citizens, legal residents, or have a work permit; must be over 16; must have at least two years of fishing experience, must be registered under the Social Security Act, and must meet other conditions specified by the CFO.<sup>139</sup> This prohibition is very broadly written such that it could be interpreted to require all crewmembers on foreign vessels to be local and to prohibit charter or for-hire fishing by clients who are not locals with commercial fishing experience. This strict interpretation would effectively prohibit sports fishing, as few clients can be expected to have a licence or meet the requirements, and fishing from a personal vessel without a licence would also be illegal.

In practice, the Barbuda Council collects and keeps fees collected pursuant to the Fisheries Act and regulations, including registration, licence, and permit fees.<sup>140</sup> The involvement of the Fisheries Division in the licencing process for vessels based in Barbuda is now limited to providing registration numbers.

A precautionary aquaculture management plan also is required in accordance with the Fisheries Act, and it must identify areas for aquaculture development and areas where it is prohibited, as well as setting out management objectives and measures. As with fisheries plans, the Ministry must consult when developing the aquaculture plan, and no plan was identified during the course of this research.<sup>141</sup>

A licence from the CFO is required to construct, adapt, acquire, or operate an aquaculture facility.<sup>142</sup> These licences are also subject to general and special conditions.<sup>143</sup> The CFO “shall” issue these licences

<sup>137</sup> Fisheries Regulations § 35(9).

<sup>138</sup> Id. §§ 35(10)-(11).

<sup>139</sup> Id. § 35(3).

<sup>140</sup> Personal Communication (Sept. 24, 2013).

<sup>141</sup> FA § 6.

<sup>142</sup> FA § 40.

<sup>143</sup> FA § 41.



when satisfied that, among other factors, the site is suited to aquaculture—including consideration of traffic and conflicts with other activities.<sup>144</sup> Licences can allow for intentional release and recapture of escaped fish,<sup>145</sup> and facilities are surrounded by a restricted area.<sup>146</sup> The Governor-General, on the advice of the Minister, may lease land for aquaculture, including the foreshore and sea-bed, if the “lease will not substantially prejudice the rights of” the public. For leases in the waters around Barbuda, the Minister must consult with the Council before advising the Governor-General.<sup>147</sup>



Credit: Read Porter

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<sup>144</sup> *Id.*

<sup>145</sup> FA §§ 44-45.

<sup>146</sup> FA § 46.

<sup>147</sup> FA § 42. This section requires the Minister with Fisheries Authority to also consult with the Minister responsible for crown property. Currently, these authorities are both housed within the Ministry of Agriculture, Lands, Housing and the Environment; as a result, this consultation process will be internal to the ministry.



## IV. Marine Protection Authority

Several laws include provisions that relate to marine protection (Table 4).

Table 4. Overview of marine protection authority.

AUTHORITIES	INSTITUTION		OVERVIEW
	National	Barbuda	
<b>Barbuda Local Government Act</b>		X	<ul style="list-style-type: none"> <li>“It shall be the responsibility and duty of the Council to...administer land in Barbuda”</li> <li>The Council can make regulations and by-laws for the management and control of public parks and other places of public recreation and fishing</li> </ul>
<b>Barbuda Land Act</b>		X	<ul style="list-style-type: none"> <li>“The Council shall have the responsibility and duty for...the administration of land in Barbuda”</li> <li>The Council shall designate areas of land in Barbuda for...public purposes; ... tourism development; ... [and] national parks”</li> </ul>
<b>National Parks Act, as amended by Barbuda Land Act</b>	X	X	<ul style="list-style-type: none"> <li>National Parks Authority for Barbuda must preserve, protect and manage parks in Barbuda</li> <li>Barbuda Parks Commissioner responsible for implementation and developing management plan, which must be approved by Barbuda Authority, Minister, and Cabinet</li> <li>Council authorized to create management plans with approval from Minister and Cabinet</li> </ul>
<b>Marine (Protection &amp; Enhancement) Act</b>	X	O	<ul style="list-style-type: none"> <li>Minister may “designate any portion of the marine areas of Antigua and Barbuda as a restricted area”</li> <li>Minister may assign “to any person, Board, committee or body which he considers competent for the purpose, responsibility for the control and management” of restricted areas</li> </ul>
<b>Fisheries Act</b>	X	O	<ul style="list-style-type: none"> <li>Minister may declare Marine Reserves, fishing priority areas, and local fisheries management areas</li> <li>In local fisheries management areas, local managers can regulate fishing with by-laws “not inconsistent with this Act or regulations made under this Act,” subject to approval by Minister</li> </ul>
<b>Physical Planning Act</b>		X	<ul style="list-style-type: none"> <li>Authorizes Barbuda bodies (Council and Planning Commission) to establish “environmental protection areas” with accompanying management plans</li> </ul>
<b>Public Parks Act</b>	X		<ul style="list-style-type: none"> <li>Allows establishment of public parks, including submerged lands</li> </ul>



## A. National Parks Act

### 1. Overview

The National Parks Act, as amended, provides for the creation and management of national parks in Antigua and Barbuda. The Minister of Tourism, Civil Aviation, and Culture is responsible for national parks.<sup>148</sup> The NPA is primarily implemented by the National Parks Authority (Authority);<sup>149</sup> once established, the National Parks Authority for Barbuda (Barbuda Authority) will manage parks in Barbuda.<sup>150</sup> Each Authority appoints a Parks Commissioner, with approval of the Minister, to lead its affairs and undertakings.<sup>151</sup>

In 2012, the Minister used his authority to issue national parks regulations to implement the Act. These regulations apply in all National Parks in Antigua and Barbuda, and apply to both the National Parks Authority and the Barbuda Authority.<sup>152</sup> Among other provisions, these regulations require permits to use public land or property or conduct certain activities in a park,<sup>153</sup> allow the National Parks Authority to designate restricted or prohibited areas,<sup>154</sup> and prohibit or regulate specific activities in a park (e.g., boating, dogs, fires).<sup>155</sup> Violations of the regulations will result in a fine of up to \$5,000 and/or six months' imprisonment.<sup>156</sup> Some provisions of these regulations are problematic for park management in both Antigua and Barbuda. In particular, since Codrington Village is within the limits of the Codrington Lagoon National Park, the national regulations are overly restrictive for Codrington Village given the existing uses and activities in the Village.

The Barbuda Authority has all the same powers, duties, and structure, as the National Parks Authority within the limits of Barbuda. The membership and procedures of the Barbuda Authority are set out in the First Schedule to the Act<sup>157</sup> but the Barbuda Council can modify these provisions by regulations

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<sup>148</sup> NPA § 2, as amended.

<sup>149</sup> NPA § 3.

<sup>150</sup> The Barbuda Authority was established by amendment in the Barbuda Land Act. Barbuda Land Act at §§ 27, 2d. Sched. at § 6.

<sup>151</sup> NPA § 7.

<sup>152</sup> NPA § 26; National Parks (General) Regulations, 2012, No. 48 [hereinafter *National Parks Regulations*]. The regulations define "Authority" as the Authority defined in the National Parks Act. As properly interpreted, this provision refers to the current, "as amended" definition of "authority." Interpretation Act § 11(1) (references to an enactment include amendments). As a result, the Barbuda Authority is included as an "Authority" under National Parks Regulations, and those regulations apply to and are binding on its operations.

<sup>153</sup> National Parks Regulations, *id.* at §§ 3,5.

<sup>154</sup> *Id.* at § 4.

<sup>155</sup> *Id.* at §§ 7-13.

<sup>156</sup> *Id.* at § 14.

<sup>157</sup> Members include the Chairman to be appointed by the Minister, the Permanent Secretary of the Ministry, the Town and Country Planner, and four other members to be appointed in equal numbers by the Minister and Council. NPA §§ 3, 1st Sched. § 1 (as amended by the Barbuda Land Act, 2d Sched. § 6(b)). The Barbuda Land Act (apparently inadvertently) did not amend the definition of Town and Country Planner in the NPA to refer to the chairman of the Barbuda Planning Commission. The Council will likely wish to address this issue when it creates regulations for the Barbuda Authority.



made with the agreement of the national government.<sup>158</sup> In any case, the Barbuda Authority must contain an equal number of members appointed by the national government and the Barbuda Council.<sup>159</sup> With the exception of authority to modify the Barbuda Authority schedule, neither the NPA nor the BLA explicitly authorizes the Barbuda Council to issue regulations for national parks in Barbuda. Rather, regulatory power for national parks in Barbuda remains vested in the Minister.<sup>160</sup> However, the Council is authorized to issue regulations for the administration of land, and it is possible that such regulations may apply in national parks.<sup>161</sup>

The NPA includes specific provisions for funding of parks and the Authority (and by extension, the Barbuda Authority). Funding may come from Parliament, loans or grants from international organizations, fees, donated property, or other sources;<sup>162</sup> the Authority can also borrow.<sup>163</sup> Funds can be applied to meeting the Authority's obligations and discharging its functions under the Act, or used for a reserve (or invested).<sup>164</sup>

The Minister declares new national parks in Barbuda by Order published in the *Gazette*. Orders require a joint request from the Barbuda Council and Barbuda Authority, requires prior consent of the people of Barbuda (to be obtained as provided in the Barbuda Land Regulations), and are subject to the affirmative resolution of Legislature.<sup>165</sup> National parks can include any area of land or water, which remain crown lands.<sup>166</sup> Once a park is established, the Development Control Authority and Port Authority cannot grant any approval, authorisation, or permission for land or property in a national park without Barbuda Authority approval.<sup>167</sup>

The Parks Commissioner is required to prepare a Park Management and Development Plan (Park Plan) within nine months after the establishment of a national park.<sup>168</sup> A Park Plan must identify the park, state its objectives and policies regarding development and use of land, and specify the management and development measures to meet those objectives.<sup>169</sup> In developing the Park Plan, the Park Commissioner must consult with members of community, the Barbuda Council and other local authorities (such as the Barbuda Planning Commission, once established), and hold a public meeting to

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<sup>158</sup> This regulatory power is limited to changing the provisions of the first schedule—not the requirements for operation of the authority established elsewhere in the Act.

<sup>159</sup> BLA 2007, 2d. Sched. § 6.

<sup>160</sup> The Barbuda Land Act amended the National Parks Act, but this amendment did not authorize the Council to issue regulations other than those related to the makeup of the Barbuda Authority.

<sup>161</sup> Barbuda Land Act § 14.

<sup>162</sup> NPA § 11.

<sup>163</sup> NPA § 12.

<sup>164</sup> NPA § 14.

<sup>165</sup> NPA § 20, as amended BLA 2007, 2d sched. § 6.

<sup>166</sup> NPA § 21. The Barbuda Authority may request a lease of crown land or acquire private land within a park after consultation with minister (e.g., for vendor facilities) NPA §§ 21, 23.

<sup>167</sup> NPA § 22.

<sup>168</sup> NPA § 10.

<sup>169</sup> *Id.*



obtain comments. Cabinet approval is required for all Park Plans.<sup>170</sup> Park Plans will be crucial to determining where and how activities occur in parks and can include designation of restricted and prohibited areas, permit requirements, and other requirements tailored to the needs of the park.

## 2. National Parks in Barbuda

One national park has been created in Barbuda, and it predates both the recent National Park Regulations and Barbuda Land Act. Codrington Lagoon National Park (CLNP) was established by ministerial decree published in the *Gazette* on March 31, 2005. The CLNP encompasses 3,600 hectares of wetlands, including Codrington Lagoon itself and the pre-existing Magnificent Frigate Bird Sanctuary,<sup>171</sup> as well as other areas of land and water (Figure 2).<sup>172</sup>

Once established, the Barbuda Authority will be responsible for administering this park and any other national parks that are established in Barbuda. In the interim, the National Parks Authority remains charged with administering the CLNP. However, the National Parks Authority has delegated management and development planning by letter to the Council.<sup>173</sup> In addition, the Environment Division of the Ministry of Lands, Housing, and the Environment has played a leading role in CLNP management, including payment for CLNP staff and organizing a stakeholders' committee that created a management plan for the park will be in effect from 2009 to 2019.<sup>174</sup>

In addition to the management plan, the stakeholder committee established by the Environment Division created draft regulations to govern the CLNP in 2009 and formally establish the Barbuda Authority.<sup>175</sup> However, these regulations were not finalized. In some respects the need for regulations to govern specific actions in the CLNP was addressed by issuance of the 2012 National Parks Regulations. For example, the regulations give the Authority power to create restricted and prohibited areas of parks<sup>176</sup>—an issue also included in the draft CLNP regulations. In other areas, the 2012 National Parks Regulations are problematic for park management in both Antigua and Barbuda, including the CLNP. For example, the Regulations prohibit the use of any boat or diving equipment without prior written permission from the Parks Commissioner.<sup>177</sup> As written, this requirement could be read to require approval to operate any of the fishing vessels based at the fisheries complex in Barbuda, which is located within the park boundaries, as is much of Codrington Village. New regulations by the Ministry with National Parks Authority may be required to address conflicts between the 2012 regulations and the needs of the CLNP and Barbuda community.

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<sup>170</sup> *Id.*

<sup>171</sup> See The Barbuda (Codrington Lagoon Magnificent Frigate Bird Sanctuary) By-Law, 1997 No. 25 (establishing entrance fees for sanctuary).

<sup>172</sup> Environment Division, Antigua and Barbuda and Barbuda Council, Codrington Lagoon National Park Barbuda: Management Plan 209-2019 (2009), available at <http://gefantigua.org/wp-content/uploads/2010/11/Final-CLNP-Mgt-Plan1.pdf> [hereinafter *CLNP Management Plan*].

<sup>173</sup> Personal Communication (Sept. 24, 2013).

<sup>174</sup> *Id.* at 14.

<sup>175</sup> CLNP Draft Regulations (on file with author).

<sup>176</sup> *National Parks Regulations*, *supra* note 152, at § 4.

<sup>177</sup> *Id.* at § 12(1).



Figure 2. Codrington Lagoon National Park (area in yellow).<sup>178</sup>



<sup>178</sup> Antigua and Barbuda Environment Division, FINANCIAL SUSTAINABILITY PLAN: CODRINGTON LAGOON NATIONAL PARK, BARBUDA 19 (2009)



## B. Marine Areas (Preservation and Enhancement) Act

The Marine Areas (Preservation and Enhancement) Act, 1972 (MAPEA) provides for the creation of “restricted areas” to preserve and enhance natural beauty; protect flora and fauna and wrecks; promote enjoyment by the public; or promote scientific study and research.<sup>179</sup> The Minister of Agriculture, Lands, Housing and the Environment may, by order, designate any portion of the “marine areas” of Antigua and Barbuda out to the edge of the territorial sea as a restricted area.<sup>180</sup> The Minister has designated Palaster Reef as a restricted area under the Act.<sup>181</sup>

Once declared, no person can go in or alight upon a restricted area. Violations are punishable with fines of \$1,500 and an additional \$300 per day for continuing violations. The Minister can assign control and management of restricted areas to any person, board, committee, or body competent for the purpose,<sup>182</sup> which presumably would include the Barbuda Council. The Minister has issued regulations necessary for managing these areas.<sup>183</sup> These regulations vest control of all restricted areas in the “fisheries officer,” who under current law is synonymous with the CFO under the Fisheries Act, 2006.<sup>184</sup> The regulations require written permission from the CFO to enter, operate a boat in, or remove any bird or marine flora or fauna from a restricted area.<sup>185</sup> Disposal of waste, poisoning or killing fish and birds, and disturbance of wrecks are all absolutely prohibited in restricted areas.<sup>186</sup> The regulations give the CFO the power to board ships, make arrests, and seize fish and other materials that he has a reasonable suspicion to believe were taken from a restricted area.<sup>187</sup> By statute, violation of any of these regulations may result in fines up to \$3,000 and/or six months imprisonment.<sup>188</sup>

## C. Fisheries Act

The Fisheries Act provides several forms of area planning. In addition to the Local Fishery Management Areas and area and seasonal fishery closure authorities discussed previously, the Minister can create Fishing Priority Areas and Marine Reserves.

The Minister can declare a Fishing Priority Area by notice published in the *Gazette* “where he considers that special measures are necessary to ensure that authorised fishing within the area, is not impeded or otherwise interfered with.”<sup>189</sup> The statute provides no additional information on the goals of this type of area or whether the Minister has authority to limit non-fishing activities in these areas. The regulations

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<sup>179</sup> MAPEA § 3.

<sup>180</sup> Marine areas are defined as “submarine areas within the territorial waters and includes any adjoining land or swamp areas which form within certain submarine areas a single ecological entity.” MAPEA § 2.

<sup>181</sup> The Marine (Restricted Areas) Order Made Under Section 3 Of The Marine Areas (Preservation and Enhancement) Act, S.B.O. 47/1973.

<sup>182</sup> MAPEA § 5.

<sup>183</sup> Mapea § 6; The Marine Areas (Preservation and Enhancement) Regulations, S.B.O. 25/1973.

<sup>184</sup> The Marine Areas (Preservation and Enhancement) Regulations at §§ 2-3.

<sup>185</sup> *Id.* at §§ 4-6.

<sup>186</sup> *Id.* at §§ 7-9.

<sup>187</sup> *Id.* at § 10.

<sup>188</sup> MAPEA § 6.

<sup>189</sup> FA § 52 (*sic*).



are similarly silent. As such, the Fishing Priority Area authority appears to be a potentially useful tool for designating key fisheries areas for exploitation.

The Act's Marine Reserves authority is broader. The Minister may, by notice published in the *Gazette*, declare a Marine Reserve where special measures are needed to protect flora and fauna, protect breeding grounds and habitats, promote natural regeneration, promote study and research, or preserve and enhance natural beauty.<sup>190</sup> In these areas it is an offence to fish, take fauna or flora, dredge for sand or gravel or discharge wastes, or construct buildings except with the Minister's written permission.<sup>191</sup> The Minister can issue regulations for Marine Reserves but has not done so to date. Nonetheless, the strong default protections in Marine Reserves makes them a relatively efficient method for protection of the marine environment. In addition, the Fisheries Act authorises substantial penalties for non-compliance—offences in Marine Reserves are punishable with fines up to \$100,000.

#### D. Physical Planning Act

Under the Physical Planning Act, the Chairman of the Barbuda Planning Commission may conduct surveys to determine if any areas should be declared an Environmental Protection Area (EPA).<sup>192</sup> Before recommending the creation of an EPA, the Chairman must publicize the proposal, provide an opportunity for public comment, and consult with the Environment Minister.<sup>193</sup> In considering whether EPA designation is desirable, the Chairman must consider the survey, comments, the features of the area, and the characteristics and interests of people living and working in the area.<sup>194</sup> If an EPA is desirable, the Chairman submits to the Barbuda Planning Commission the recommendation, draft environmental protection order, a report of the survey, and the representations and comments received on the proposal.

The Barbuda Planning Commission can declare an EPA by issuing an Environmental Protection Order.<sup>195</sup> An Environmental Protection Order can, among other actions:

- designate areas where only certain development can occur;
- prohibit development entirely in the area;
- authorise work to protect the area;<sup>196</sup>
- require an environmental impact statement (EIS) for any proposed activity there; and/or
- restrict or prohibit entry into the area or movement or activity in the area.<sup>197</sup>

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<sup>190</sup> FA § 53.

<sup>191</sup> FA § 53.

<sup>192</sup> PPA § 53.

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> PPA § 54.

<sup>196</sup> The Minister with planning authority has issued at least one such Environmental Protection Order. The Environmental Protection (Runaway Bay) Order, No. 6 of 2003, directed the Town and Country Planner (TCP) for Antigua to take general and specific actions to remediate the pollution and excess water threatening the environment in Runaway Bay, Antigua.

<sup>197</sup> PPA § 54.



Once created, the Chairman can prepare an Environmental Protection Area Management Plan to set out operational policies and measures for preservation, enhancement, and management of the special features of the EPA, including but not limited to preservation of marine flora and fauna by regulation of fishing.<sup>198</sup>

### E. Public Parks Act

In addition to the National Parks Act, Antigua and Barbuda has a Public Parks Act that could apply to the marine environment as its definition of “land” includes land covered by water.<sup>199</sup> Under the Act, the Minister of Agriculture can by Order designate areas of “outstanding natural beauty” as public parks.<sup>200</sup> The “natural beauty” to be protected includes preservation of characteristic natural features, flora, and fauna.<sup>201</sup> The Minister can issue regulations to preserve order in the parks and prevent “damage to the land or anything thereon or therein.”<sup>202</sup> This authority includes prohibiting or restricting the use of all or part of the protected area and regulating conditions of use of the public park.

The Public Parks Act created a Public Parks Commission to implement the Act.<sup>203</sup> The Commission is subject to the Minister’s oversight and has the duty to consider action needed to preserve and enhance the natural beauty of the public parks and to recommend actions to the Minister and local authorities.<sup>204</sup> The Commission appears to have no direct action authority.

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<sup>198</sup> PPA § 56.

<sup>199</sup> Public Parks Act § 2.

<sup>200</sup> Public Parks Act § 9.

<sup>201</sup> Public Parks Act § 2.

<sup>202</sup> Public Parks Act § 12.

<sup>203</sup> Public Parks Act § 3.

<sup>204</sup> Public Parks Act § 6.



## V. Planning and Land Use Authority

Two primary laws govern planning and land use in Barbuda—the Physical Planning Act, 2003 (PPA) and the BLA. These authorities largely replaced the suite of laws and practices that previously governed property ownership and disposition, including the property provisions of the Barbuda Act, 1904.

Planning and land use laws are relevant to ocean zoning because their definitions of ‘land’ include submerged lands, including those offshore, and these laws provide for the development of comprehensive plans for the islands. As a result, the relevant planning authority is empowered to develop plans for the use, development, and protection of the ocean environment. Under current law, the Barbuda Planning Commission (BPC) has primary authority and responsibility for planning in Barbuda.

Table 5. Overview of laws affecting planning and land use.

AUTHORITIES	INSTITUTION		OVERVIEW
	A&B	Barbuda	
<b>Physical Planning Act</b>	X	X	Establishes planning framework. Specifically, <ul style="list-style-type: none"> <li>• Composition, procedures and finances of the Barbuda Planning Commission will be determined by Barbuda Council and Antigua and Barbuda government by regulation (§5)</li> <li>• Barbuda Planning Commission and Barbuda Council given authority to create development plan for Barbuda with Barbuda Land Act Schedule (Part III, §9 et seq)</li> </ul>
<b>Barbuda Land Act</b>		X	<ul style="list-style-type: none"> <li>• Calls for Council to prepare a development plan</li> <li>• Authorizes action for planning by:                             <ul style="list-style-type: none"> <li>• Barbuda Planning Commission</li> <li>• Chairman of the Barbuda Planning Commission</li> <li>• Barbuda Council</li> <li>• Creates Barbuda Land Registry to record leases, easements, and other land rights in Barbuda</li> </ul> </li> </ul>

While planning laws provide a potential framework for development of comprehensive ocean zoning, these authorities are limited in some respects. In particular, ocean zones developed through planning authorities may not be enforceable in the marine context, as other ministries and entities are responsible for permitting and other authorisation of activity in the marine environment. As a result, zones created through these authorities would require substantial attention to implementation on an ongoing basis or legislation to require other ministries and authorities to comply with a valid comprehensive zoning plan when executing other laws.



## A. Physical Planning Act

The PPA is intended to provide “for the orderly and progressive development of land and to preserve and improve the amenities thereof.”<sup>205</sup> It replaced several earlier Acts, including the Land Development and Control Act and Town and Country Planning Act.<sup>206</sup>

The PPA originally vested control over planning in Barbuda in the Development Control Authority (DCA), the chairman of which is the Town and Country Planner (TCP) for Antigua and Barbuda.<sup>207</sup> In 2007, the BLA amended the PPA to allocate planning control to a new local body, the Barbuda Planning Commission (BPC). Under the amended Act, the Chairman of the BPC takes over the role of the TCP in Barbuda.<sup>208</sup>

The BPC is authorized to secure the objects and purposes set out in the PPA.<sup>209</sup> Among other duties and responsibilities, it must use land with regard to present and future interests; ensure the sustainable use of land; and frame and implement comprehensive policies for the use and development of land in Barbuda under a development plan.<sup>210</sup> It has the power to make regulations governing the form and scope of the development plan; procedures for public participation and permitting; enforcement; environmental impact assessments (EIAs) and statements; and management and protection of Environmental Protection Areas; and other topics.<sup>211</sup>

The BPC’s financial provisions will initially follow those for the Development Control Authority, which provide that the Authority maintain a general fund and use that fund for deposits and expenses incurred in carrying out its functions under the Act.<sup>212</sup> The PPA does not explicitly discuss creation of subaccounts or special funds; as a result, legislative action could be required to create a special fund for ocean zoning.

### 1. Development Plans

The BPC may prepare a development plan for all or part of the “land in Barbuda”—including submerged lands and marine waters.<sup>213</sup> An area that must be planned as a whole—such as the offshore zone—can be designated as a comprehensive planning area. Development plans can include provisions for a range of matters, including but not limited to zoning, protected areas, protection of the coastal zone, and

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<sup>205</sup> PPA § 83.

<sup>206</sup> PPA § 83. The Land Development and Control Regulations 1996 continue in force and apply to Barbuda with such variations as agreed by the Council and prescribed by the Minister by regulations. PPA § 81, as amended by BLA 2d Sched. § 5(e).

<sup>207</sup> PPA §§ 2,5.

<sup>208</sup> BLA § 11.

<sup>209</sup> PPA § 4.

<sup>210</sup> PP § 3.

<sup>211</sup> PPA § 81

<sup>212</sup> PPA 1st Sched. § 7.

<sup>213</sup> PPA § 10; BLA § 6(1) (amendment to give TCP functions to BPC “in relation to lands in Barbuda”). PPA § 2 (defining land to include “land covered by water, the foreshore and the sea bed” and defining “sea bed” to include “the floor and subsoil underlying the sea between low water mark out as far as “within the territorial sovereignty of Antigua and Barbuda”).



marine transport, and are intended to cover a wide range of land uses, from aquaculture to hotel development.<sup>214</sup> In their final form, development plans must include a variety of information related to scoping, existing conditions, programmes for future development (including principles for regulating use), and a schedule for implementation.<sup>215</sup>

The BPC must hold public meetings and consult with the Council when drafting a development plan.<sup>216</sup> This consultation *requires* the BPC to follow the advice or recommendations of the Council. The Chairman of the BPC has authority to accept, reject, or require additional consideration of a final plan;<sup>217</sup> once accepted, the plan must be submitted for the approval of Parliament.<sup>218</sup> Thus, the national government has delegated authority for plan development to Barbuda but has retained the final authority as to the acceptability of any plan.

Once created, a development plan serves as the basis for compulsory acquisition of land, and public officers have a duty to take due regard of and be guided by the plan in formulating public investment and development projects. The BPC also must give principal consideration to the plan when evaluating applications for development permission in Barbuda. While useful, these responsibilities fall short of requiring officials to follow the plan, and they only apply to public investment and development.<sup>219</sup> As a result, while ministries and the Council must consider a development plan, they may not be required to follow it. Furthermore, they are not subject to any legal obligation to follow the plan when making decisions about uses of or activities in the marine environment that do not involve development, such as fisheries.

## 2. Development permits

Except in certain cases,<sup>220</sup> a development permit from the Barbuda Planning Commission is required before development of land in Barbuda is approved.<sup>221</sup> Before a permit can be issued, the BPC must consider any applicable development plans and the EIS (if required by the Act), and it may consider an array of other factors.<sup>222</sup> In addition, the BPC must consult with the Council, Port Authority, and National Parks Authority before issuing a development permit in their respective jurisdictions.<sup>223</sup> The BPC can issue conditional permits regulating development in a variety of ways, including but not limited to vessel routing, preservation of wrecks, and reservation for public purposes.<sup>224</sup>

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<sup>214</sup> See generally PPA 2d sched.

<sup>215</sup> PPA § 10

<sup>216</sup> PPA § 11.

<sup>217</sup> PPA § 11-12.

<sup>218</sup> PPA § 12.

<sup>219</sup> However, in Barbuda, all leases for major developments would be subject to plans.

<sup>220</sup> PPA § 18 (BPC can issue development orders exempting a class of development from applying for a permit).

<sup>221</sup> PPA § 17. “Development” is not defined, but is likely to be broadly interpreted to include many, but not all, uses of marine environment; for example, fishing is unlikely to be considered development.

<sup>222</sup> PPA § 25.

<sup>223</sup> PPA § 24.

<sup>224</sup> PPA § 27



In some cases, an EIA and EIS may be required before a permit can issue. An EIA is required for 10 types of development identified in Third Schedule to the PPA; where required, the applicant is responsible for carrying out the assessment according to terms of reference set out by the BPC.<sup>225</sup> The Chairman of the BPC, after consulting with the Chief Environment Officer of Antigua and Barbuda, can also require an EIA/EIS for any permit application that “would be likely to have significant effects on the environment.”<sup>226</sup>

### B. Barbuda Land Act, 2007

The BLA is the primary land use law for Barbuda and, along with the associated Barbuda Land Regulations, substantially remade and clarified development and planning process for the Island. The Act appears to have been created in reaction to the 2001 ECSC Court of Appeals decision holding that the Council is not authorized to administer land in Barbuda.<sup>227</sup> The Act explicitly charged the Council with the responsibility and duty to administer land in Barbuda, without the requirement to follow policy direction from the Cabinet,<sup>228</sup> and the Council may issue regulations and by-laws for that purpose.<sup>229</sup> In addition, the BLA repealed the provisions of the Barbuda Act dealing with land tenure.

The Act also restates and clarifies that all land on Barbuda is owned in common by the people of Barbuda and vests in the Crown.<sup>230</sup> In addition, “[n]o land in Barbuda shall be sold”, and no person in Barbuda can acquire “ownership” of land;<sup>231</sup> instead the Act provides Barbudans<sup>232</sup> with exclusive rights to occupy lands for dwellings, cultivation, and other purposes.<sup>233</sup> These provisions solidify the historic system of peasant tenantry, in contrast to the land ownership system on Antigua. By delegating substantial control over land administration to Barbuda’s local government, the BLA attempts to maintain this system while addressing longstanding concerns about colonial control.

The BLA contains zoning provisions, directing the Council to create a development plan for the island<sup>234</sup> and authorizing the Council to designate areas of land in Barbuda for a variety of uses, many of which

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<sup>225</sup> PPA § 23.

<sup>226</sup> PPA §§ 20, 23(2).

<sup>227</sup> *Attorney General v Barbuda Council*, *supra* note 26 (the Council “does not own, and had no right to grant or exercise control over the grant by the Crown of land in Barbuda.”), *citing* *Barbuda Council v. Attorney General, Antigua Aggregates Ltd and Sandco Ltd* HC 456 of 1994 (“to administer agriculture and forestry’ does not give the Council control over the land in Barbuda.”); *Unicorn Ltd. v. BC* HC No 68 of 1998 (“the Council cannot grant a lease or concur in the grant of a lease of lands which it does not itself own. That power vests in the Crown alone and is unfettered. And the power of the Council to set lands apart for public purposes [e.g. to establish conservation areas and national parks] can only be exercised lawfully with the sanction and approval of the Cabinet and with its concurrence.”)

<sup>228</sup> BLA § 11.

<sup>229</sup> BLA § 14.

<sup>230</sup> BLA § 3. Exceptions include land held for public purposes, §4, and existing leases, § 20.

<sup>231</sup> BLA § 5.

<sup>232</sup> A Barbudan is a person born in Barbuda with 1 or more grandparents born in Barbuda; or a child of such a person; or someone married to a Barbudan for more than five years. BLA § 2.

<sup>233</sup> BLA § 7. The Barbuda Land Regulations expand on how this right is granted. Barbuda Land Regulations, 2010, No. 17, at § 3.

<sup>234</sup> BLA § 16.



are relevant to marine planning.<sup>235</sup> These areas include, but are not limited to, forestry, national parks, fisheries, and all other purposes with the consent of the Cabinet.<sup>236</sup> Designated lands must be maintained on a plan to be held at the Council office.<sup>237</sup> Inclusion of fishing in this zoning authority suggests that the BLA authorizes the Council to create area designations in the ocean surrounding Barbuda.

The BLA also has several other major provisions:

- “Major developments” with a “significant impact on the economy, environment, or infrastructure”<sup>238</sup> require a lease issued by the Council, with the approval and advice of the Cabinet and consent by a majority of Barbudans.<sup>239</sup> Extant leases were confirmed if listed on the Schedule to the BLA.<sup>240</sup>
- Land already set aside under the Barbuda Act for public purposes continues to be set aside for the public.<sup>241</sup>
- A land registry is created for Barbuda under Registered Lands Act under the responsibility of the registrar of lands.<sup>242</sup>

Finally, the BLA amended some laws and altered the application of others to Barbuda:

- The Beach Control Act, Rent Restriction Act, and Prescription Act do not apply in Barbuda.<sup>243</sup>
- The BLGA, Registered Lands Act, PPA, and National Parks Act were amended, as discussed elsewhere in this report.
- The Constitution was proposed to be amended to protect the BLA against future revision in the same manner as the BLGA. Until that time, the BLA only can be amended by Parliament with approval of the Council and consent of the people of Barbuda.

### C. Registered Land Act 1975, as amended by the Registered Land (Amendment) Act, 2007

The Registered Land Act provides for a system of land registration to ensure clear title to land in Antigua and Barbuda. The “land” covered by the Act includes “land covered with water” and structures and things growing thereon; however, extension to the marine environment is uncertain.<sup>244</sup> The Act creates a Land Register and identifies a Registrar of Lands who is authorized to implement the law.<sup>245</sup> The Land

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<sup>235</sup> BLA § 12.

<sup>236</sup> *Id.* The Act does not provide how consent of the cabinet must be obtained; however, in practice it will likely require affirmative approval by both houses of Parliament.

<sup>237</sup> BLA § 13.

<sup>238</sup> BLA § 2.

<sup>239</sup> BLA § 6. Consent is obtained through vote or meeting, following the procedure established in BLA § 17 and § 10 of the Barbuda Land Regulations.

<sup>240</sup> BLA § 20. Leases not on the Schedule are to be determined by a commission of inquiry. BLA § 24.

<sup>241</sup> BLA § 4

<sup>242</sup> BLA § 25

<sup>243</sup> BLA § 26.

<sup>244</sup> RLA §§ 2, 3.

<sup>245</sup> RLA § 4-8.



Register contains every parcel that has been adjudicated in accordance with the Land Adjudication Act – it thus identifies private land (which doesn’t exist on Barbuda), crown land, and who has title to each parcel. It includes leases that must be registered.<sup>246</sup> Registration vests owners with title subject to encumbrances; registration of a lease vests the leasehold. Registration of crown land by the Governor-General enables disposition of crown land.<sup>247</sup> The remainder of the Act provides the framework for the general real estate requirements, such as leaseholds, transfers, and disposition.

The BLA modified the Registered Land Act to state that the provisions of the Registered Lands Act do not apply in Barbuda except to the extent set out in the BLA.<sup>248</sup> In addition, the BLA created a Barbuda Land Register. The Council elaborated on the Barbuda registry in the Barbuda Land Regulations, requiring registration of leaseholds associated with exclusive rights of occupation.<sup>249</sup> Except for these modifications to the land registry system needed to accommodate Barbuda’s unique land tenure system, the Registered Land Act continues to apply in Barbuda.



*Credit: Read Porter*

<sup>246</sup> RLA § 9.

<sup>247</sup> RLA §§ 23-26.

<sup>248</sup> BLA, 2d. Sched. § 4.

<sup>249</sup> Barbuda Land Regulations § 3(3).



## VI. Maritime and Shipping

Several Antigua and Barbuda laws relate to maritime and shipping (Table 6). These laws address coastal trade and shipping between Antigua and Barbuda, port operations, and enforcement of laws in the marine environment.

Table 6. Overview of laws affecting maritime activity and shipping in Barbuda.

AUTHORITIES	INSTITUTION		OVERVIEW
	National	Barbuda	
<b>Port Authority Act</b>	X		<ul style="list-style-type: none"> <li>Developing harbours, operating port services, and controlling foreshores, harbours, and entrances</li> </ul>
<b>Merchant Shipping Act</b>	X		<ul style="list-style-type: none"> <li>Provides regulatory framework for merchant shipping</li> <li>Implements international maritime agreements</li> <li>Requires coasting trade vessels be registered to Antigua and Barbuda</li> </ul>
<b>Defence Act</b>	X		<ul style="list-style-type: none"> <li>Directs Coast Guard to enforce harbour and port regulations; fisheries; territorial waters and economic zones; and safety at sea</li> </ul>
<b>Barbuda Act</b>		X	<ul style="list-style-type: none"> <li>Requires all vessels engaged in coasting trade with Barbuda to have a licence from the Barbuda Council and allows enforcement by boarding officers on Barbuda</li> </ul>
<b>Barbuda Local Government Act</b>		X	<ul style="list-style-type: none"> <li>Authorizes the Barbuda Council to develop regulations and by-laws related to coasting trade</li> </ul>

### A. Port Authority Act, as amended by the Port Authority (Validation of Regulations) Act

The Port Authority Act (PAA), as amended, establishes the Port Authority,<sup>250</sup> which has the function of developing harbours, operating port services, and otherwise carrying out the Act.<sup>251</sup> In addition to issues related to trade at the ports (e.g., goods, warehousing, accidents), the Act contains provisions related to harbours, pilotage, buoys, and other issues.<sup>252</sup> It also authorizes issuance of regulations to control ports

<sup>250</sup> PAA § 3.

<sup>251</sup> PAA § 5.

<sup>252</sup> PAA §§ 31, 32, 3d Sched.



and harbours<sup>253</sup> and directs the Authority to levy fees and charges for use of port facilities.<sup>254</sup> The Minister and Port Authority have issued regulations and created a tariff book as directed.<sup>255</sup>

The PAA establishes several harbours, including the River Dock in Barbuda and the “remainder of the waters encircling Antigua and Barbuda.”<sup>256</sup> This provision appears to give the Port Authority jurisdiction over all of Barbuda’s marine waters, with the possible exception of Codrington Lagoon.

The PAA and regulations govern use and deployment of buoys and moorings in harbour areas. Small craft can be secured to any wharf, mooring, or similar facility only with the permission of the Port Manager.<sup>257</sup> More specifically, no ship can use any Government buoy without written permission from the Port Authority,<sup>258</sup> and damage to or interference with buoys, marks, and other property of the Port Authority is unlawful.<sup>259</sup> Private entities cannot lay down any buoys in a harbour without the prior permission of port management, and such private moorings are subject to fees as set forth in the tariff book.<sup>260</sup>

Other provisions include prohibitions on debarking passengers or goods other than at a harbour<sup>261</sup> or “engag[ing] in maritime activities” (including commercial fishing, diving, and pleasure cruising) “in the territorial sea without first obtaining the appropriate licence, cruising permit, or written permission from the management.”<sup>262</sup> The latter provision appears to refer to licences required for these activities pursuant to other laws and regulations, such as the Fisheries Act.

## B. Antigua and Barbuda Merchant Shipping Act, 2006

Merchant Shipping in Antigua and Barbuda is governed by the Merchant Shipping Act, 2006 (MSA), which repealed prior merchant shipping requirements.<sup>263</sup> Under the Act, the Minister responsible for Merchant Shipping and Ship Registration has general powers of administration and implementation,<sup>264</sup>

<sup>253</sup> PAA § 53 (authorizing the Port Authority to issue regulations, subject to the negative resolution of Parliament, for “proper control and management of foreshores, harbours, and entrances.”).

<sup>254</sup> PAA § 35 (“There shall be levied upon every ship entering a harbour such harbour rates and charges as the Minister after consultation with the Authority may by regulations prescribe, and different rates and charges may be prescribed for different ships or classes of ships, and any such regulations may provide for the exemption of any ship, or class of ship, from all or any harbour rates and charges or for the remission thereof or any part thereof.”).

<sup>255</sup> Port Authority Regulations, Cap. 333 (1977), as amended.

<sup>256</sup> PAA § 31, Third Sched. The Port Authority Regulations define the boundaries of only one harbour, St. John’s. Port Authority Regulations § 2, 1<sup>st</sup> Sched. The regulations do not state that harbours defined in the regulations are the only harbours subject to the PAA. As a result, because the Act is superior to the Regulations, certain provisions of the regulations may only apply in St. John’s, and not in other harbours as defined in the Act.

<sup>257</sup> Port Authority Regulations § 74.

<sup>258</sup> Port Authority Regulations § 33.

<sup>259</sup> PAA § 43.

<sup>260</sup> Port Authority Regulations § 33.

<sup>261</sup> PAA § 33.

<sup>262</sup> Port Authority Regulations § 220.

<sup>263</sup> MSA § 292.

<sup>264</sup> MSA § 5.



and may make regulations as needed to carry out these responsibilities.<sup>265</sup> The MSA provides that the coastal trade (between Antiguan and Barbudan ports) shall be carried only by Antigua and Barbuda ships.<sup>266</sup>

The MSA implements maritime conventions and agreements, including but not limited to the International Convention for the Safety of Life at Sea (SOLAS), which governs ship routing among other topics,<sup>267</sup> and the MARPOL convention.<sup>268</sup>

### C. Barbuda Act

The Barbuda Act, 1904 contains provisions on the maritime trade that remain in force. The Act addresses the coasting trade between Barbuda and Antigua<sup>269</sup> and requires that all boats obtain a licence from the Barbuda Council to engage in the coasting trade.<sup>270</sup> To enforce the Act, any boarding officer can board any boat arriving, being at, or departing from any place in the Island of Barbuda and can remain on board until all goods are duly delivered and search the boat.<sup>271</sup> Penalties for resisting boarding are up to \$3,000.<sup>272</sup>

It is unclear how the Barbuda Act relates to similar authority granted in the BLGA and the Minister's authority under the Merchant Shipping Act.

### D. Defence Act, 2006

The Defence Act, 2006, repeals the prior Defence Act<sup>273</sup> and (among other provisions) establishes the Antigua and Barbuda Coast Guard as part of the national Defence Force.<sup>274</sup> The Coast Guard is directed to enforce harbour and port regulation; fisheries; territorial waters and economic zones; and safety at sea.<sup>275</sup> It enjoys the same powers as the police force,<sup>276</sup> including the power to board and search any vessel.<sup>277</sup>

The Coast Guard is currently limited to bases in Antigua; however, work has been carried out to plan for a new base at River Dock in Barbuda. While land tenure issues have prevented its construction to date,

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<sup>265</sup> MSA § 7.

<sup>266</sup> MSA § 3.

<sup>267</sup> Under the Convention, states maintain authority to propose mandatory or recommendatory routing. See <http://www.imo.org/OurWork/Safety/Navigation/Documents/1060.pdf>. In addition, the United Nations Convention on the Law of the Sea (UNCLOS) authorizes archipelagic shipping lanes. While Antigua and Barbuda is a party to both conventions, the MSA does not appear to directly address or provide authority to propose routing or sea lanes.

<sup>268</sup> MSA § 173 *et seq.* Note that Antigua and Barbuda has been cited as a flag of convenience.

<sup>269</sup> MSA § 3.

<sup>270</sup> MSA § 42.

<sup>271</sup> MSA § 51; § 3 (defining Boarding Officer).

<sup>272</sup> MSA § 52.

<sup>273</sup> Cap. 132.

<sup>274</sup> Defence Act §§ 4,5.

<sup>275</sup> Defence Act § 213.

<sup>276</sup> Defence Act § 214.

<sup>277</sup> Defence Act § 215.



the Defence Force continues to support the idea and it remains on the agenda.<sup>278</sup> Construction of this facility would enhance the Coast Guard's ability to enforce fisheries and other violations in marine waters in and near Barbuda; currently, the Coast Guard has no vessels large enough to stay at sea for long periods, so that vessels must travel from and return to Antigua during each day at sea. As a result, the Coast Guard currently lacks capacity to effectively detect and enforce illegal fishing activity and incursions by foreign vessels in Barbuda.

#### **E. Barbuda Local Government Act**

The BLGA gives the Barbuda Council the authority to make, amend, and revoke by-laws and regulations related to coasting trade.<sup>279</sup> It is unclear how this authority relates to the authority provided in the Barbuda Act and the Antigua and Barbuda Merchant Shipping Act.

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<sup>278</sup> Personal Communication (Sept. 24, 25, 2013).

<sup>279</sup> BLGA § 19 (xxxi).



## VII. Forestry and Plant Protection Authorities

Forestry laws include the management of mangroves, which make up a critical component of the Codrington Lagoon ecosystem. More broadly, forestry and other land use practices can affect marine water quality, sedimentation, and other aspects of the marine environment.

Forestry management and plant protection authority on Barbuda is split among several laws and among national ministries and local Barbuda institutions, including the Barbuda Council and the Barbuda Planning Council.

Table 7. Overview of laws affecting forestry and plant protection in Barbuda.

AUTHORITIES	INSTITUTION		OVERVIEW
	National	Barbuda	
<b>Barbuda Local Government Act</b>		X	<ul style="list-style-type: none"> <li>Authorizes Council management of forestry, including mangroves, independent of Cabinet policy oversight</li> </ul>
<b>Barbuda Land Act</b>		X	<ul style="list-style-type: none"> <li>Prohibits cutting mangroves without a permit from the Council issued pursuant to Barbuda Land Regulations</li> </ul>
<b>Forestry Act</b>	X		<ul style="list-style-type: none"> <li>Governs harvest of mangroves and other trees in Antigua and Barbuda, designation of lands for reforestation, permitting forestry management and timber harvest</li> <li>Barbuda Council action takes precedence in Barbuda where conflict</li> </ul>
<b>Physical Planning Act</b>	X	X	<ul style="list-style-type: none"> <li>Allows Barbuda Planning Commission to issue plant preservation orders that prohibit destruction of a type of plant, after consultation with the Minister of Agriculture</li> </ul>

### A. Barbuda authorities

The Council has broad authority in the area of forestry, as the BLGA includes it as one of the areas in which the Council is not constrained by policy direction from the Cabinet.<sup>280</sup> More recently, the BLA included a provision specifically prohibiting cutting timber without a permit from the Council and imposing a fine of \$3,000 for violations.<sup>281</sup> The Barbuda Land Regulations provide the procedures for obtaining approval to cut timber.<sup>282</sup> These regulations provide that a person desiring to cut timber must apply to the Council for a licence and pay the prescribed fee; licences will have restrictions on where and when timber can be cut, and the timber must be for local use and cannot be sold or exported.<sup>283</sup> The

<sup>280</sup> BLGA § 18.

<sup>281</sup> BLA § 9.

<sup>282</sup> Barbuda Land Regulations, 2010 No. 17, at § 6.

<sup>283</sup> *Id.*



Council must also determine the kind of timber that is excluded from being cut under a licence but does not appear to have made such a determination to date.<sup>284</sup> This authority is relevant for protection of coastal mangroves, and the Council could develop regulations to prohibit mangrove removal in order to protect these resources.

## B. Forestry Act

The Forestry Act is the primary law governing harvest of mangroves and other trees in Antigua and Barbuda. The Ministry of Agriculture is responsible for implementing the law and the Director of Agriculture is the Chief Forest Officer.<sup>285</sup> The Forestry Unit – and the Act itself – are primarily focused on uplands protection (and the Forestry Unit’s responsibilities also include terrestrial wildlife preservation). However, the law is not limited to these areas: timber is defined to include any kind of growing tree, which should include mangroves.<sup>286</sup> As a result, the law authorizes mangrove protection and governs its harvest.

The law’s substantive protections include declaring as a forest reserve any land in forest in 1941 or thereafter<sup>287</sup> and prohibiting any person from clearing land or felling timber within a reserve without a permit.<sup>288</sup> The Minister can also by Order designate land for reforestation<sup>289</sup> and reforest that land with public funds.<sup>290</sup> The Minister can make regulations for permitting, surveys, cutting timber, management of forest reserves, and other topics.<sup>291</sup>

Application of the Forestry Act in Barbuda overlaps substantially with that provided by the Barbuda Land Act. In particular, both bar cutting timber, including mangroves, without a permit. As a result, determination of which law takes precedence will be incidental to mangrove protection efforts, as both will likely apply. In a particular situation where the two laws conflict, the Barbuda Land Act would take precedence both because it is more recent than the Forestry Act and because the BLGA explicitly authorizes the Council to regulate forestry in Barbuda without oversight from the Cabinet. As a result, the Council’s authority is at its zenith in this context. As a result, a Council permit is the key requirement to legally cut mangroves in Barbuda.

## C. Physical Planning Act - Plant preservation

The PPA, as amended by the Barbuda Land Act, authorizes the Barbuda Planning Council to issue Plant Preservation Orders for a plant, group or species when the BPC finds it desirable for amenity, environmental, scientific, or other reasons.<sup>292</sup> “Plant” includes marine flora.<sup>293</sup> The BPC must consult

<sup>284</sup> *Id.* However, the Barbuda (Cutting of Wood) (Prohibition) By-law (1913), made under the Barbuda Act, prohibits cutting, taking, or collection of wattle, sedge or broom-straw, and provides for penalties of up to \$50.

<sup>285</sup> FA § 4.

<sup>286</sup> FA §2

<sup>287</sup> FA § 5.

<sup>288</sup> FA § 6.

<sup>289</sup> FA § 9.

<sup>290</sup> FA §§ 11-12.

<sup>291</sup> FA § 13.

<sup>292</sup> PPA §46.



with the Minister of Agriculture, Lands, Housing, and the Environment before issuing an Order, and Orders must be published in the *Gazette* and notice provided to affected landowners and occupiers.<sup>294</sup> It is unlawful to cut down, top, lop, or destroy a plant under a Preservation Order.<sup>295</sup>

## VIII. Pollution, Dumping, and Accidents

Antigua and Barbuda laws provide some guidance for and authority over marine dumping and water pollution, which may be relevant to ocean zoning. These authorities are discussed here, along with specific legal authorities that allow ministries or local authorities to act in the face of accidents and emergencies.

### A. Dumping at Sea Act

Under the Dumping at Sea Act, a licence from the Minister of Environment<sup>296</sup> is needed for any person to dump substances or articles in the Antigua and Barbuda territorial seas.<sup>297</sup> In addition, it is generally<sup>298</sup> unlawful for any Antigua and Barbuda ship to dump substances or articles in the sea outside the territorial sea or for substances to be loaded in Antigua and Barbuda for dumping elsewhere.<sup>299</sup> In issuing licences, the Minister decision must have regard to the need to protect the marine environment and living resources, and he must include conditions in a licence necessary or expedient for protection of the environment.<sup>300</sup> Violations may result on summary conviction in a fine of up to \$6,000 and imprisonment for up to one year; or after indictment a fine of up to \$75,000 and five years' imprisonment.

### B. National Solid Waste Management Authority Act 1995, as amended by the National Solid Waste Management Authority (Amendment) Act, 2005

The National Solid Waste Management Authority Act (NSWMAA), as amended, establishes the National Solid Waste Management Authority (SWMA), which has “general responsibility” for solid waste management, including “ship generated solid waste.”<sup>301</sup> The Act authorizes the SWMA to manage solid waste and calls on it to provide facilities for waste at ports but does not appear to place actual restrictions on dumping. These are provided by other laws, including the Dumping at Sea Act and the

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<sup>293</sup> PPA § 2.

<sup>294</sup> PPA § 46.

<sup>295</sup> *Id.*

<sup>296</sup> The Act does not specify the ministry but the environment ministry appears to be the relevant authority.

<sup>297</sup> Dumping at Sea Act §3, §2 (defining “waters of Antigua and Barbuda”). Dumping means a permanent deposit, and does not include discharge incidental to or derived from normal operation or dumping by or with the written consent of the Port Authority for moorings, aid to navigation, or harbour maintenance. Dumping at Sea Act § 3.

<sup>298</sup> The statute enumerates defenses to violations, including if the dumping was for safety and the minister was notified; that the person dumped under instruction from his employer or acted in reliance on information from others; or that, outside Antigua and Barbuda waters, that the material was loaded in a Convention state and authorized for dumping. Dumping at Sea Act § 3.

<sup>299</sup> *Id.*

<sup>300</sup> Dumping at Sea Act § 4.

<sup>301</sup> NSWMAA 1995 § 3, *amended by* NSWAA2005 § 3. Solid waste is defined as “all kinds of victual, domestic, and operational waste.” NSWMAA 1995 § 2.



Litter Act, as amended.<sup>302</sup> The PPA also allows conditional development permits to make accommodations for waste disposal.<sup>303</sup> The Minister of Health may, on recommendation of the SWMA, make regulations for implementing the authority. The World Bank has reviewed the SWMA and provides this summary:

In Antigua and Barbuda, an Act of Parliament of November 16, 1995 created the fully functioning, semi-autonomous National Solid Waste Management Authority [SWMA] under the oversight authority of the Ministry of Health. The [SWMA] is currently adequately staffed, with 16 employees and has contracts with several private collection operators. The [SWMA] Board is functioning very well, with an excellent mix of technical and politically-influential individuals who have ensured sound technical practice whilst raising the profile of the [SWMA] at the highest levels of government. In response to Board requests, its core staff has demonstrated a high capacity for planning, maintained tight supervision of activities and submitted monthly financial statements, activity reports and annual budgets. The [SWMA] has developed a good cooperative working relationship with the Central Board of Health, the only Health Ministry agency to retain solid waste management responsibility through enforcement of the Litter Act. Areas for further development include the passage of new legislation, the Solid Waste Management Act, and improved support for the Barbuda Local Council which has taken over day-to-day solid waste management operations in Barbuda.

The [SWMA] has a positive cash flow, with 40% of its revenue derived from the environmental levy, in place since 1998. The [SWMA] has requested the Cabinet to consider either a household levy (tied to the electricity bill) or a 1% charge on specific imported goods at point of entry to generate additional revenue. Now that landfill construction is complete, tipping fees may be instituted by the fourth quarter of 2003 to cover depreciation costs which have not been budgeted. These efforts would help to reduce reliance on Government subventions through the Ministry of Health. These provide 60% of revenues and pay nearly 75% of all staff salaries and those of private contractors.<sup>304</sup>

### C. Oil Pollution of Maritime Areas Act 1995

The Oil Pollution Act applies to maritime areas of Antigua and Barbuda, including the territorial sea and internal waters.<sup>305</sup> It makes it unlawful for oil to be discharged or allowed to escape in these waters. Port

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<sup>302</sup> The Litter Act prohibits deposit of litter other than at an approved site. Litter Act § 3. “Litter” includes “waste,” which is broadly defined.

<sup>303</sup> PPA § 27.

<sup>304</sup> [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/12/05/000012009\\_20031205130005/Rendered/PDF/272700OECS.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2003/12/05/000012009_20031205130005/Rendered/PDF/272700OECS.pdf)

<sup>305</sup> Oil Pollution of Maritime Areas Act §§ 2, 3.



Managers, however, can appoint a place within Antigua and Barbuda where ballast water may be discharged.<sup>306</sup>

The Act further establishes liability for discharges, recovery of the cost of damage, and provides for holding vessels and masters.<sup>307</sup> The Port Manager, police officers, and any person with the fiat of the Director of Public Prosecutions can institute legal proceedings under the Act.

#### D. Physical Planning Act

When in public interest to prevent or mitigate a specified environmental threat, the Barbuda Planning Commission is authorized to issue a Ministerial Order directing its Chairman to take such steps as are necessary to remove, mitigate or prevent any condition that poses or is likely to pose a threat to the environment.<sup>308</sup> These Orders are subject to the negative resolution of Parliament.<sup>309</sup>



*Credit: Read Porter*

<sup>306</sup> Oil Pollution of Maritime Areas Act § 5.

<sup>307</sup> Oil Pollution of Maritime Areas Act § 4.

<sup>308</sup> PPA § 57.

<sup>309</sup> *Id.*



## IX. Mining Authorities

The Barbuda Council has limited authority to regulate mining, whether for sand and gravel, metalliferous minerals, or radioactive minerals. It does have the responsibility to improve and maintain buildings, harbours, and roads,<sup>310</sup> which may entail some control over mining. However, most control is retained within the national government.

Table 8. Overview of laws affecting mining in Barbuda.

AUTHORITIES	INSTITUTION		OVERVIEW
	National	Barbuda	
Beach Protection Act	X		<ul style="list-style-type: none"> <li>Requires a permit to remove materials from beaches or seashores</li> <li>An amendment to the Act applies the requirements to Barbuda</li> </ul>
Minerals (Vesting) Act	X		<ul style="list-style-type: none"> <li>Requires a licence issued by the Cabinet in order to mine or prospect for minerals on any land</li> </ul>
Radio-Active Minerals Act	X		<ul style="list-style-type: none"> <li>Mining for uranium-bearing minerals requires a licence from the Governor-General</li> </ul>

### A. Beach Protection Act and Beach Protection (Amendment) Act

The Beach Protection Act provides that a permit is needed to dig, take or carry away any sand, stone, shingle, gravel from any beach or seashore in Antigua and Barbuda for building or construction purposes or for ballast. The Director of Public works issues permits at his discretion.<sup>311</sup>

The Act initially did not apply “to the Island of Barbuda.”<sup>312</sup> However, the Beach Protection (Amendment) Act reversed this posture, and the law now indicates explicitly that the Beach Protection Act *does* apply: “this Act applies to Barbuda.”<sup>313</sup> [Note that the Beach Protection Act is distinct from the Beach Control Act, which does not apply.]

### B. Minerals (Vesting) Act

The Minerals (Vesting) Act governs the disposition of metalliferous, carboniferous and other minerals in Antigua and Barbuda.<sup>314</sup> The Act provides that all minerals in, on, or under any land are vested in the

<sup>310</sup> BLGA § 18.

<sup>311</sup> BPA § 4.

<sup>312</sup> BPA § 7.

<sup>313</sup> Beach Protection (Amendment) Act § 5.

<sup>314</sup> “Mineral” does not include pottery clay, rock salt, any material commonly used for road making or building (clay, sand, stone), and includes metalliferous minerals; combustible carboniferous minerals (coal, bitumen), other minerals, precious minerals, and precious metals. Minerals (Vesting) Act § 2.



crown (including radio-active minerals).<sup>315</sup> No person can mine or prospect for minerals without a licence granted by the Cabinet, which can also make regulations.<sup>316</sup>

### C. Radio-Active Minerals Act

The Radio-Active Minerals Act governs mining for uranium bearing minerals, such as pitchblende.<sup>317</sup> The law provides that no person shall prospect for or mine any radio-active mineral within Antigua and Barbuda without a licence from the Governor-General.<sup>318</sup> The Governor-General has absolute discretion in issuing licences.<sup>319</sup>

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<sup>315</sup> Minerals (Vesting) Act § 3.

<sup>316</sup> Minerals (Vesting) Act § 4.

<sup>317</sup> Radio-Active Minerals Act 1st Sched.

<sup>318</sup> Radio-Active Minerals Act § 3.

<sup>319</sup> Radio-Active Minerals Act § 6.



## **X. Evaluation of Options for BHI Area Planning**

The laws of Antigua and Barbuda provide a variety of methods for protecting areas of the marine environment in and around Barbuda. This discussion highlights the types of marine protected areas (MPAs) identified in the laws of Antigua and Barbuda, the institutions that manage them, and how they can be established.

### **A. Barbuda Fishing Licences**

The Council could limit the areas where fishing can occur by conditioning issuance of Barbuda fishing licences. It could establish these conditions under its existing Shooting and Fishing By-Law or by creating a new licencing scheme pursuant to the BLGA. The Shooting and Fishing Bylaw currently authorizes the Barbuda Council to establish licences for fisheries that can be conditioned on time and area and apply out to one league from shore. Alternatively, the Council could use its BLGA authority to create a new licencing system not inconsistent with the national Fisheries Act and Regulations; such a system would similarly condition licences on compliance with area restrictions. Under this authority, only fishery fishing activity could be regulated. Fines could be \$250 under the Shooting and Fishing By-law, and \$250 or \$500 under the BLGA (depending on interpretation of the BLGA and the structure of Council action).

### **B. Marine Reserves**

The Fisheries Act of 2006 authorizes the Minister of Agriculture, Lands, Housing and the Environment to establish Marine Reserves—without any input or role for local authorities. Fishing, mining, pollution discharge, and other actions are unlawful in Marine Reserves and may be enforced with substantial penalties of \$100,000 or more—significantly greater than penalties under other laws and regulations considered here.

Marine reserves are managed by the Ministry, unless seconded to public officers or delegated to a local authority as part of a local fisheries management area. As the local fisheries management authority provisions largely echo the Barbuda Council's existing authority under the Barbuda Local Government Act and Barbuda Land Act, delegating the Barbuda Council as the local authority is unlikely to expand the Council's ability to control fishing in Barbuda other than through control of marine reserves. However, it could help harmonize management between the Ministry and the Council.



Table 9. Creation and management of Marine Reserves.

Manager	Steps to establish	Restrictions	Penalties
Minister of Agriculture  Barbuda Council (delegated as local manager)	<ol style="list-style-type: none"> <li>1. Minister drafts Notice and Order to declare Marine Reserve in Barbuda waters, designate local fisheries management area that includes Marine Reserve, and delegate management to the Barbuda Council</li> <li>2. Notice and Order gazetted</li> <li>3. Minister amends regulations to address Marine Reserves, if necessary</li> <li>4. Council drafts by-laws for management of Area, if necessary</li> <li>5. Minister approves by-laws</li> <li>6. By-laws gazetted</li> </ol>	<p><b>Statute:</b> Offence to fish, take fauna/flora, mine sand/gravel, discharge wastes, construct buildings</p> <p><b>By-laws:</b> must be consistent with Act and regulations but do not otherwise limit authority to regulate the conduct of fishing operations</p>	<p><b>Statute:</b> Up to \$100,000, plus additional penalties for violation of other Fisheries Act provisions, regulations, or by-laws.</p> <p><b>Bylaws:</b> Up to \$500.</p>

### C. Restricted Areas

The Marine Areas (Preservation and Enhancement) Act provides for the creation of restricted areas (Table 10). One Restricted Area – the Palaster Reef – already exists in Barbuda’s marine waters. By default, the statute restricts a wide array of activities in restricted areas; however, these restrictions are not always implemented in existing areas. The statute allows the Minister of Agriculture, Lands, Housing and the Environment to tailor the default restrictions to achieve a desired level of protection (e.g., prohibiting all activities except transit of restricted areas). By default, it is unlawful for any person to “go in or alight upon” any restricted area, except as provided by regulation. The Minister can delegate authority for management of Restricted Areas to local authorities, including the Barbuda Council or other local authorities; however, under current regulations, the CFO is the management authority for all restricted areas, including Palaster Reef. Penalties for violations of the statute are limited to \$1,500, plus \$300 per day that a violation continues, while violation of the regulations may result in additional penalties up to \$3,000, incarceration, and seizures of vessels and fish or other material taken from a restricted area.

Table 10. Creation and management of restricted areas

Manager	Steps to establish	Restrictions	Penalties
Minister of Agriculture, or Barbuda Council if delegated	<ol style="list-style-type: none"> <li>1. Minister of Agriculture drafts Order designating Restricted Areas and assigning Barbuda Council the responsibility for control and management.</li> <li>2. Order gazetted.</li> <li>3. Minister reviews regulations and amends if necessary.</li> <li>4. Regulations gazetted.</li> </ol>	<p><b>Statute:</b> no person may “go in or alight upon” restricted area (submarine area in TS and adjoining land) except as provided in regulations.</p> <p><b>Regulations:</b> Minister may make regulations to provide for protection of restricted areas, establish offences, regulate use, etc.</p>	<p><b>Statute:</b> \$1,500 + \$300/day for continuing violations.</p> <p><b>Regulations:</b> Up to \$3,000 or 6 months, seizure of vessel.</p>



### D. National Parks

National Parks in Barbuda will be managed by the National Parks Authority for Barbuda under regulations issued by the Ministry of Tourism. The Parks Commissioner for the Barbuda Authority develops management and development plans to provide for development, protection of natural resources and heritage resources, and infrastructure in each Park.

The process to establish and manage National Parks is complex and lengthy and divides authority between the Barbuda government and the national government. Parks are managed locally and cannot be established without local support, but the national government retains ultimate authority over Park Plans and over regulations. As a result, while National Parks may be highly protective of the marine environment, other options may provide for faster implementation and offer more local control. In addition, the National Parks Authority for Barbuda is not currently in operation, pending enactment of the proposed Codrington Lagoon National Park Regulations.

Completion of the Codrington Lagoon National Park regulations could improve protection in the lagoon and would enable operation of the Barbuda Authority. Thus, completion of these regulations in the near future is one potentially effective strategy for protecting Codrington Lagoon, arguably Barbuda’s most important marine resource—particularly if pursued in conjunction with other types of protected areas and with necessary measures to achieve compliance with regulations.

Table 11. Steps to utilize National Parks provisions to enhance marine protection

Potential Local Manager	Steps to establish marine protection	Restrictions	Penalties
National Parks Authority for Barbuda	<ol style="list-style-type: none"> <li>1. Barbuda Council drafts proposed National Park</li> <li>2. Council holds public meeting or vote on whether to request creation of National Park</li> <li>3. Council establishment of Park</li> <li>4. Minister of Tourism declares Park by Order published in <i>Gazette</i></li> <li>5. Legislature passes affirmative resolution to endorse creation of the Park</li> <li>6. Minister creates a map of the Park and places notice of availability in the <i>Gazette</i></li> <li>7. Parks Commissioner drafts management plan after consultation</li> <li>8. Barbuda Authority holds public meeting on Park Plan</li> <li>9. National Parks Authority submits Park Plan and results of meeting to Minister</li> <li>10. Minister submits Park Plan, public meeting results to Cabinet</li> <li>11. Cabinet approves Park Plan</li> <li>12. Minister drafts regulations to govern the Park, if no current regulations apply</li> <li>13. Minister publishes regulations in <i>Gazette</i></li> </ol>	As per regulations	Up to \$5,000 and 1 year imprisonment



### E. Environmental Protection Areas

The Physical Planning Act authorizes the creation of environmental protection areas by the Barbuda Planning Commission. EPAs limit the amount and type of development and can restrict other actions, including fishing, that can occur in the area. As a result, they can protect the marine environment through a process distinct from those under the authority of the Minister of Agriculture.

While the authority under the PPA is local to Barbuda, the process to create EPAs is substantial and includes a survey, public comment, and consultations with local and national entities before the Commission can create an EPA. The Chairman of the Commission may also need to create a management plan to set out the policies and measures that will apply in the area.

In addition, enforcement of EPA restrictions may be a concern. The statute does not explicitly state that violation of an EPA Order or management plan is an offence that may result in penalties. However, violation of any EPA regulations made by the Commission is an offence punishable by fines of up to \$500, or \$10,000 upon indictment. As a result, the Commission may need to issue regulations for EPA management and protection to ensure that management plans can be enforced.

**Table 12. Creation and Management of Environmental Protection Areas.**

<b>Manager</b>	<b>Steps to establish</b>	<b>Restrictions</b>	<b>Penalties</b>
Barbuda Planning Commission	<ol style="list-style-type: none"> <li>1. BPC Chairman conducts survey to determine if an area should be declared EPA</li> <li>2. Chairman publicizes proposed EPA in the nearby area</li> <li>3. Chairman provides for and considers public comments</li> <li>4. Chairman consults with Minister and other appropriate bodies, including Barbuda Council and National Parks Authority</li> <li>5. Chairman submits recommendations, draft order, survey report, and public comments to BPC</li> <li>6. BPC considers Chairman’s report</li> <li>7. BPC issues Order declaring EPA</li> <li>8. Order gazetted</li> </ol>	As provided by regulations, order, and management plan. Orders may restrict or prohibit entry and activity in the area, including fishing.	<p><b>Summary conviction:</b> \$500 plus \$100 day for continuing offence against regulations</p> <p><b>Indictment:</b> \$10,000 and/or six months imprisonment for violation of regulations</p>



## F. Public Parks

The Public Parks Act authorizes the Minister of Agriculture to establish and manage public parks (Table 13). While public parks may traditionally be established on land for recreational purposes, nothing in the statute limits their use in marine waters. The Act does not allow the Minister to delegate control of public parks to a local authority; as a result, there is no avenue whereby the Barbuda Council could legally control management of these parks.

The Act does not restrict the activities that can be carried out in public parks, but it does authorize the Minister to issue regulations that prohibit or restrict the activities that can occur in parks. Similarly, the Act provides no default penalties, but parks regulations can provide for penalties of up to \$1,000 for repeated offenders, or up to six months’ imprisonment in lieu of a fine.

Table 13. Creation and Management of Public Parks

<b>Manager</b>	<b>Steps to establish</b>	<b>Restrictions</b>	<b>Penalties</b>
Minister of Agriculture	<ol style="list-style-type: none"> <li>1. Minister drafts Order designating Public Parks</li> <li>2. Order gazetted</li> <li>3. Minister reviews regulations, amends if necessary</li> <li>4. Regulations gazetted</li> </ol>	<p><b>Statute:</b> No self-executing restrictions</p> <p><b>Regulations:</b> Minister can issue regulations to prohibit or restrict use of land, incl. land covered by water</p>	<p><b>Statute:</b> None</p> <p><b>Regulations:</b> Up to \$500 (1<sup>st</sup> offence) or \$1,000 (2<sup>nd</sup>, subsequent offences); or 6 months imprisonment in lieu of fine</p>

## G. Forest Reserves

Mangrove areas are substantially protected by both Barbuda Council by-law and by the Barbuda Land Act, which ensures that no mangroves can be cut without a permit from the Council. The Forestry Act provides an additional layer of protection. Under the Act, any land that is “in forest” (including mangroves) is automatically considered a Forest Reserve where it is unlawful to clear land or fell timber without a written permit from the Chief Forest Officer. Violations of the Act may result in penalties of up to \$1,000 and violations of the regulations of up to \$500. While these penalties are small, no process is required for establishment of a forest reserve, and they may be added to penalties under the Barbuda Land Act and other by-laws and regulations. As a result, national and Barbuda-specific legislation together create strong protections for mangroves. However, focus on implementation is needed to ensure that these protections are not undermined by issuance of permits that would allow mangroves to be destroyed.



Table 14. Creation and Management of Forest Reserves.

<b>Manager</b>	<b>Steps to establish</b>	<b>Restrictions</b>	<b>Penalties</b>
Chief Forest Officer; Barbuda Council	No action required – automatically applies to any land “in forest”	Cannot clear land or fell timber without a permit from Chief Forest Officer.  Barbuda Land Act and Council by-law prohibit cutting mangroves in Barbuda without permit.	<b>Forestry Act:</b> Up to \$1,000 (Regulations up to \$500)  <b>Barbuda Land Act:</b> \$3000  <b>By-law:</b> \$250

### H. Conclusions

Based on the in-depth review and analysis of the authorities for fisheries management and ocean and coastal zoning in Barbuda, ELI concludes that Antigua and Barbuda law offers a suite of legal authorities for the creation of ocean zones in Barbuda. These authorities differ in important respects, including:

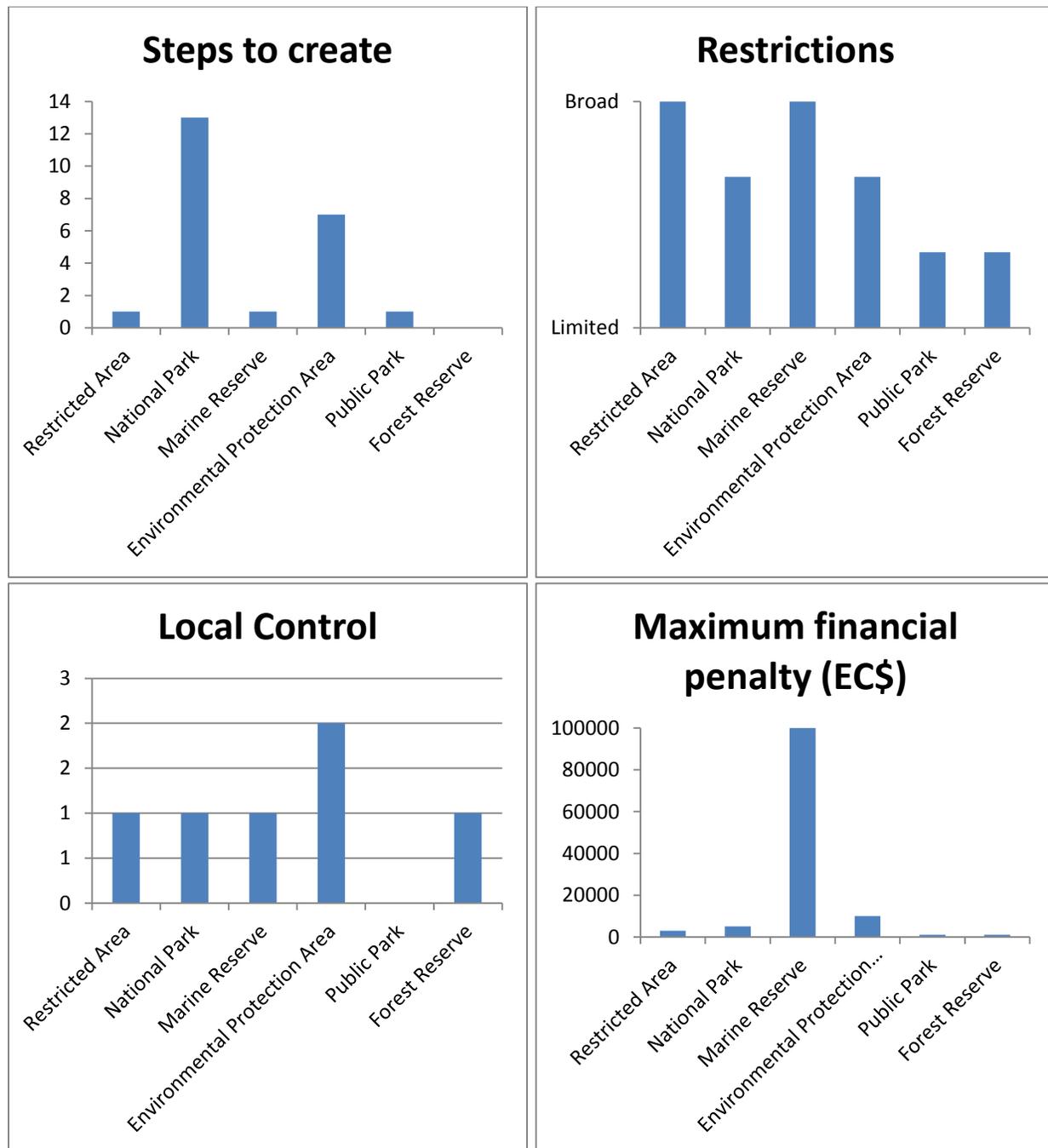
- The process to create the various types of area designations
- What entity manages the area once it is created, and the degree of local control
- The possible restrictions on activity within the protected area
- Enforceability of the restrictions, including amount of monetary penalties and ability to imprison violators

As the national government, Barbuda Council, and other entities move toward selecting protected area types for implementation in Barbuda, they will need to balance these variables and select one or more authorities through which to achieve the desired mix of protection, local control, and enforceability.

Consideration of the MPA characteristics (see **Error! Reference source not found.**) suggests substantial differences in some areas. While the restrictions differ in their strength and breadth, most protected area types can adequately restrict the key activities that may cause environmental impacts if the responsible Minister or other authority includes robust protections in the order or regulations enabling the protected area. On the other hand, enforcement differs substantially, with Marine Reserves offering penalties 100 times greater than those that apply in other areas. Substantial differences also arise with respect to local control, with Environmental Protection Areas wholly under the control of entities located in Barbuda, while public parks and Marine Reserves are wholly under the control of the national government (in the latter case, unless a local fisheries management area is created). Finally, the processes to create MPAs differs substantially, with forest reserves requiring no action at all, and three other types (including Marine Reserves and Restricted Areas) requiring solely a ministerial order; conversely, creation of a new national park requires 13 separate steps. Together, this consideration suggests that no single type of MPA can meet all the criteria that may be desired to protect the marine environment in Barbuda; rather, a combination of MPA types may be required to meet the criteria desired by the Barbuda Council and national government.



Figure 3. MPA Characteristics by process, enforcement, restrictions, and local control.



### I. Recommended Approach

Based on this assessment and the socioeconomic and scientific assessment completed by other parties, ELI recommends the following nine law and policy actions to achieve sustainable fisheries and coastal zoning:



1. In accordance with the Maritime Act and past interpretations of Barbuda's ocean jurisdiction authority, Barbuda's fisheries and zoning measures should extend to three nautical miles from shore.
2. Using legal authority under the Barbuda Local Government Act, and in harmony with the Fisheries Act of 2006 and accompanying regulations, the Barbuda Council should develop regulations for fisheries management measures. Fisheries management measures should include provisions for protected areas, protecting key species through take prohibitions, gear restrictions, fisheries licencing, fisheries enforcement, and mooring and anchoring restrictions.
3. Recognizing that the Barbuda Council is limited to fines no more than \$500, the Council should work with the national government to amend the Barbuda Local Government Act in order to enable additional fines and penalties for illegal activity.
4. Understanding the importance of harmonising fisheries management across national and local government, the Barbuda Council should work with the Ministry of Agriculture, Lands Agriculture, and the Environment to have Barbuda coastal waters designated as a local fisheries management area and the Council designated as a local fisheries management authority in accordance with the Fisheries Act of 2006.
5. In further effort to harmonise national and local fisheries management, and recognizing the importance of local management and the need for sufficient fines and penalties, the Barbuda Council should work with the Ministry of Agriculture, Land, Housing and the Environment to designate new marine reserves that align with protected areas created by Barbuda Council regulations and to authorize the Barbuda Council to manage the marine reserves.
6. Understanding that proper fisheries management requires adequate local enforcement, the Barbuda Council should work with the Ministry of Agriculture, Land, Housing and the Environment to authorize enforcement officers to enforce the requirements of the Fisheries Act of 2006 and accompanying regulations in Barbuda coastal waters, including authority to enforce in marine reserves and other protected areas established in Barbuda by the Ministry.
7. To legalize local institutions currently managing the Codrington Lagoon National Park, the Barbuda Council should work with the Ministry with responsibility for National Parks to develop regulations establishing a National Parks Authority for Barbuda, as authorized under the National Parks Act.
8. To ensure that the Barbuda National Parks Authority has adequate authority to properly protect and manage the Codrington Lagoon National Park, the Authority should work with its sister Authority on Barbuda and the Ministry with authority for National Parks to update current national park regulations to improve protection, management and enforcement and to ensure that the regulations accommodate the particular needs of the Codrington Lagoon National Park.
9. Recognizing that implementation of coastal fisheries and zoning rules requires long-term investment, the Barbuda Local Government Act should be amended to allow the Barbuda Council to create special funds. Special funds should be created for coastal zoning and fisheries management and Barbuda national parks, and regulations should require relevant fees and fines be targeted to these funds, as well as allowing funds to accept government appropriations and grants and donations from outside sources.

**Appendix: Penalties for violations of Antigua and Barbuda authorities**

<b>Law</b>	<b>Offence type</b>	<b>State of mind</b>	<b>Maximum fine</b>	<b>Maximum incarceration</b>	<b>Other</b>
<b>Barbuda Land Act</b>	Cut/Fell any growing timber; burn charcoal; destroy any mangrove; win and mine of sand without a permit in writing from the Council.	Strict liability	\$3,000		
<b>Barbuda Local Government Act,</b>	Obstruct/molest/hinder any member of the Council or any authorized servant/agent of the Council from executing duties of the Council under this Act	Willful	\$500	3 months (in lieu of fine)	
	Prevent the owner from complying with Council’s lawful requirements through one’s occupation of the premises.	Willful	<i>Id.</i>	<i>Id.</i>	
	Refuse to give or misstate the name or address of the owner/agent of owner when one is occupier of the premise and is aware of such information.	Willful	<i>Id.</i>	<i>Id.</i>	
	Violate an act (where no penalty has been specified)	Willful	<i>Id.</i>	<i>Id.</i>	\$10/day (continuing offence)
	Violate Council by-law (where no penalty has been specified)	Willful	\$250	1 month (in lieu of fine)	
<b>Beach Protection Act</b>	Dig/Take or Carry Away/Aid or Assist in Digging/Provide sand, stone, shingle or gravel from any beach or seashore in A&B without a permit.	Willful	\$5,000	2 years (in lieu of fine)	Magistrate may order equipment seized and forfeited
	Move sand/stone/shingle or gravel for building or construction purposes on any public road between 6pm-5am.	Willful	\$1,000	1 year (in lieu of fine).	Forfeiture of vehicle, if driver was without permit.
<b>Dumping at Sea Act</b>	Fail to comply with any requirement or answer any question asked by an Antiguan or foreign enforcement officer without reasonable excuse.	Strict liability	Summary conviction, 1st offence: \$3,000; 2nd or later: \$6,000		The body corporate and the person acting on behalf of the body corporate are both liable.

Law	Offence type	State of mind	Maximum fine	Maximum incarceration	Other
	Prevent/attempt to prevent another person from complying with requirements/answering questions	Strict liability	<i>Id.</i>		
	Assault/obstruct an officer acting under the authority of this Act.	Strict liability	<i>Id.</i>		
<b>Fisheries Act, 2006</b>	Falsify control of body corporate by foreigners	Knowing	\$50,000	12 months	
	Violate by-laws of local fisheries management area authority	Depends on bylaw	\$500		
	Unregistered vessel	Strict liability	\$100,000	2 years	Applies to owner and each user
	Display false registration	Strict liability	\$50,000		Applies to owner and master
	Operate without registration certificate on board	Strict liability	\$25,000		
	Violations related to change in ownership, death of owner, loss or destruction of vessel	Strict liability	\$25,000		
	Fish without or in violation of licence, foreign fishing vessel	Strict liability	\$3,000,000 Sports F/V: \$300,000	Sports F/V: 12 months	Forfeiture of vessel, vehicle, gear, fish, proceeds from illegal activity. Applies to master, owner, charterer.
	Fish without or in violation of licence, local fishing vessel	Strict liability	\$300,000	12 months	Plus forfeiture; applies to master, owner, charterer
	Hold sport fishing tournament without permission	Strict liability	\$25,000		
	Operate unlicensed fish processing, ice plant, or laboratory	Strict liability	\$150,000		
	Capture escaped cultured fish by non-owner, fishing near aquaculture facility	Strict liability	\$10,000		
	Violate conditions on use of feed, drugs, disinfectants in aquaculture; failure to follow instructions on diseased or infected cultured fish	Strict liability	\$100,000		

Law	Offence type	State of mind	Maximum fine	Maximum incarceration	Other
	Operate unlicensed aquaculture facility or violate conditions; release, import, sell diseased/infected organisms; use adulterants	Strict liability	\$150,000		
	Violate prohibitions in a Marine Reserve	Strict liability	\$100,000		
	Conduct fisheries research without permission or in violation of conditions	Strict liability	\$300,000		
	Introduce exotic fish; import live aquatic organisms	Strict liability	\$200,000		
	Use large driftnets, explosives, other prohibited methods	Strict liability	\$200,000		Possess large driftnets w/o use: \$100,000. Apply to owner, master, or charterer. Knowingly (or with reasonable cause to suspect) land fish taken with prohibited methods: \$200,000
	Use prohibited gear	Intent to use	\$100,000		
	Violate fisheries regulations	Strict liability	\$50,000		Regulations contain penalty schedule and additional violations
	Other prohibited conduct	Strict liability	\$50,000		
	Obstruct, assault, threaten officer	Strict liability	\$50,000	5 years	
Forestry Act	Clear land within any forest reserve without a permit in writing from CFO	Strict liability	\$1,000		
	Clear/cultivate or pasture land within existing forest areas without a permit	Strict liability	\$1,000		Magistrate may authorize destruction of cultivated land / prohibit cultivation of cleared land.
	Assault/obstruct or hinder any forest officer, police officer or any appointed person executing duties imposed under the Forestry Act.	Strict liability	<i>Id.</i>		

Law	Offence type	State of mind	Maximum fine	Maximum incarceration	Other
<b>Maritime Areas Act</b>	Assault/obstruct a person acting under the authority of the Act	Strict liability	Conviction on indictment: \$100,000  Summary conviction: \$20,000	Conviction on indictment: 5 years  Summary Conviction: 2 years	Court may order forfeiture of ships and equipment.
	Be the captain/participate in the activities of the a foreign ship whose passage is deemed prejudicial to the peace, good order or security of A&B.	Strict liability	<i>Id.</i>	<i>Id.</i>	<i>Id.</i>
<b>Marine Areas (Preservation &amp; Enhancement) Act</b>	Go in or alight on restricted area	Strict liability	\$1,500		\$300/day (continuing violations)
	Violate regulations	Strict liability	\$3,000	6 months	
<b>Minerals (Vesting) Act.</b>	Mine without licence	Strict liability	\$10,000		\$500/day (continuing violations)
<b>National Parks Act</b>	Violate Regulation	Strict liability	\$5,000	1 year	
<b>National Solid Waste Management Authority Act</b>	Violate regulations or acts (where no penalty has been specified)	Strict liability	Company: 50,000  Individual: \$10,000	Individual : 2 years (in lieu of fine)	Second offence for an individual: \$5,000-\$20,000+ \$200/day(continuing offence)  Second Offence for group of persons, corporate or not: \$20,000-\$100,000
<b>Oil Pollution of Maritime Areas Act</b>	Discharge oil into marine areas	Strict liability	\$20,000	2 years	Liability for damage to resources, cleanup, damage from cleanup. Strict liability for vessel owner/master
<b>Physical Planning Act</b>	Fail to comply with enforcement notices, notice to discontinue use/alter or remove buildings, building preservation order, amenity order, plant preservation order	Strict liability	Summary conviction: \$500  Conviction on Indictment: \$10,000	Conviction on Indictment: 6 months	\$100/day (continuing violations)

Law	Offence type	State of mind	Maximum fine	Maximum incarceration	Other
	Give false information	Willful	<i>Id.</i>	<i>Id.</i>	
	Obstruct any person in the exercise of powers under this Act.	Strict liability	<i>Id.</i>	<i>Id.</i>	
	Fail to comply with regulations	Strict liability	<i>Id.</i>		
<b>Port Authority Act</b>	Damage property of the Port Authority in a manner likely to endanger the life of a person.	Strict liability		10 years	
	Make false statements regarding documents required or authorized under the PAA.	Knowing or reckless	\$8,000	2 years	
	Endanger safety of operations while on duty or lawfully employed on any premises of the Port Authority	Knowing or reckless	\$3,000	6 months	
	Miscellaneous summary offences	Various	\$750	3 months	
	Navigate ship without pilot when pilot is required	Strict liability	\$3,000	6 months (in lieu of fine)	
	Master of ship fails to supply information, gives/produces false information or embarks/disembarks passengers and goods at places other than the harbour.	Strict liability	\$1500	3 months (in lieu of fine)	
<b>Public Parks Act</b>	Violation of regulations	Strict liability	\$500 (first offence); at least \$200 and up to \$1,000 (second and subsequent offence)	6 months (second and subsequent offence) (in lieu of fine)	
<b>Radio-active Minerals Act</b>	Mine radio-active mineral without a licence	Strict liability	\$25,000	12 months with hard labor	
	Violate terms/conditions of a licence	Strict liability	<i>Id.</i>	<i>Id.</i>	
	Export/Attempt to export radio-active mineral without a permit	Strict liability	<i>Id.</i>	<i>Id.</i>	



<b>Law</b>	<b>Offence type</b>	<b>State of mind</b>	<b>Maximum fine</b>	<b>Maximum incarceration</b>	<b>Other</b>
	Export/ Attempt to export in violation of terms/conditions of permit	Strict liability	<i>Id.</i>	<i>Id.</i>	
	Use false statement/false representation to obtain/attempt to obtain a licence/permit	Strict liability	<i>Id.</i>	<i>Id.</i>	
	Fail to report discovery of radio-active material to the Governor-General	Strict liability	<i>Id.</i>	<i>Id.</i>	
<b>Registered Land Act</b>	Mislead/deceive any person authorized by the RLA to require information in respect to land/interest in the land.	Knowing	\$15,000	1 year (in lieu of fine)	
	Fraudulently issue/make/cause to be made any certificate, registration, or other document in the register	Knowing & intent	<i>Id.</i>	<i>Id.</i>	
	Cause defacement, mutilation, or unauthorized entry/alteration to be made on or in any register or filed instrument	Knowing & intent	<i>Id.</i>	<i>Id.</i>	