

Protection of Maritime Areas in Belize

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Introduction

The conservation of maritime areas¹ under Belizean jurisdiction is undertaken in the context of a relatively uncoordinated assortment of legislative acts. The most important pieces of legislation impacting property rights and conservation in maritime areas are the National Lands Act, Fisheries Act, Forest Act, National Parks System Act, Environmental Protection Act, Coastal Zone Management Act, and Belize Port Authority Act. These acts give authority to several key government agencies, including the Fisheries Department, Forest Department, Lands and Survey Department, Port Authority, and Coastal Zone Management Authority.

The legislation above provides several key conservation tools for private entities in Belize. A number of NGOs have entered into co-management agreements with the Fisheries Department to manage a series of marine reserves established under the Fisheries Act. There is also some limited precedent for private ownership of property rights in maritime areas through leases or ownership in fee. In addition, there is precedent for private ownership of certain property rights in maritime areas through the Belize Port Authority and Petroleum Acts. Private rights of action to protect environmental values are protected through the Environmental Protection Act and Nuisances Act.

This discussion will proceed in Part I by identifying key geographic terms that apply to maritime areas; summarizing useful definitions and provisions in legislation affecting maritime areas; and identifying key agencies responsible for implementing the legislation. Part II discusses currently accessible legal tools for conservation, with an emphasis on property ownership interests and co-management agreements. Part III suggests several key legislative actions that could be taken to strengthen the ability of private organizations to conserve maritime areas, and Part IV brings together our final conclusions.

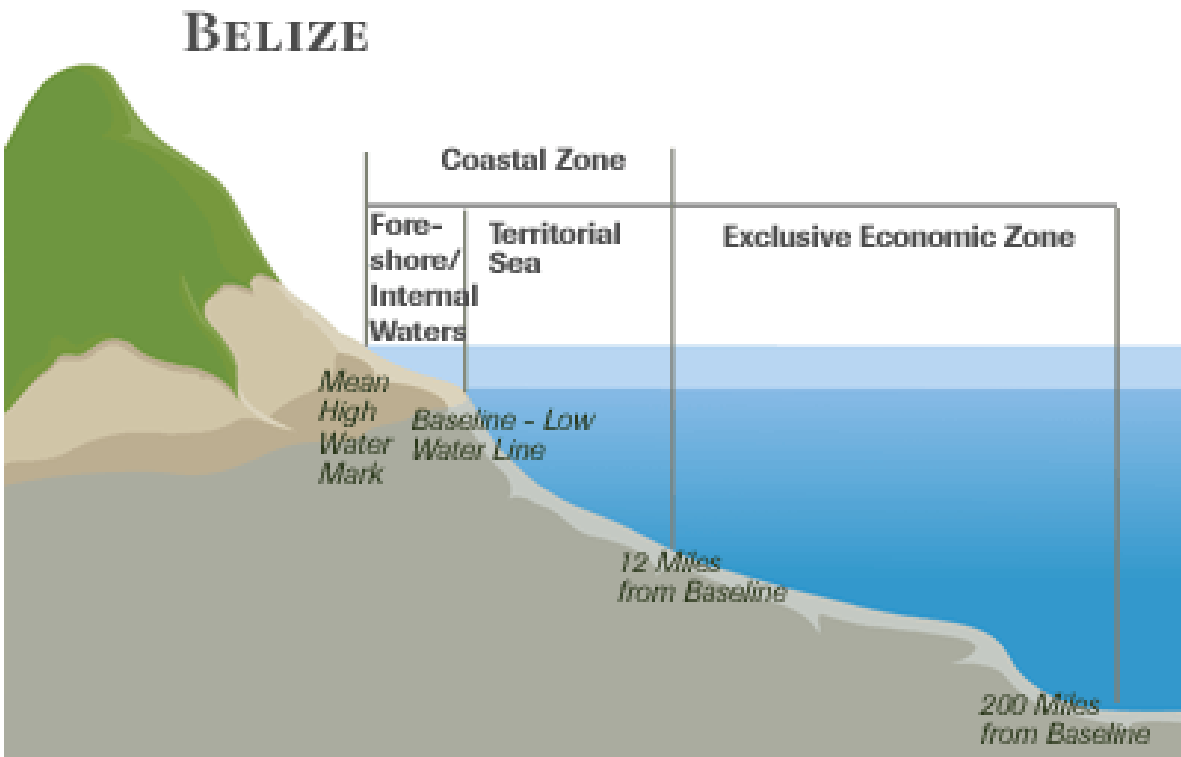
¹ In the absence of a coordinated system of geographic terminology used within Belizean legislation, this discussion will use the term “maritime areas” to describe the geographic region of focus. We use the term “maritime areas” in a manner identical to that used in the Maritime Areas Act to include Internal Waters, the Territorial Sea, and the Exclusive Economic Zone. See the summary of the Maritime Areas Act below for further discussion of these terms.

Analysis

I. Landscape of Regulation

A. *Geographic Boundaries of Regulation*

The system of regulation developed in Belize does not strictly segregate the operation of laws or the jurisdiction of government agencies between dry lands and maritime areas. The following graph presents in visual form a collection of the geographical terms most relevant to maritime areas. However, it should be noted that terms defined in one piece of legislation are not used as defined terms within other pieces of legislation, and thus each piece of legislation must be understood within the framework of its own defined geography.



B. *Key Legislation*

Maritime Areas Act

“Baseline” means the baseline from which the breadth of the Territorial Sea is measured. The Baseline is the low water line along the coast of the mainland of Belize as well as the coasts of all Islands and cayes that form part of Belize. A Low-tide Elevation which lies wholly or partly within the breadth of sea which would be Territorial Sea if all Low-tide Elevations were disregarded for the purpose of the measurement of the breadth thereof shall be treated as an Island. In the case of the sea adjacent to a coast off which there are Fringing Reefs, the baseline from which the breadth of the Territorial Sea is measured shall be the seaward limit of the low water line of the Fringing Reef;

“Exclusive Economic Zone” means those areas that are beyond and adjacent to the Territorial Sea having, as their outer limits, a line measured seaward from the Baseline of the Territorial Sea, every point of which is 200 nautical miles from the nearest point of that Baseline, unless the equidistance line between another state is less than 200 miles;

“Fringing Reefs” means reefs attached directly to or located in the immediate vicinity of the coast or any coastal lagoon;

“Internal Waters” means any areas of water that are on the landward side of the Baseline of the Territorial Sea;

“Low-tide Elevation” means a naturally formed area of drying land surrounded by water which is below water at mean high-water spring tides;

“Maritime Areas of Belize” means the Internal Waters, the Territorial Sea, and the Exclusive Economic Zone;

“Resources” includes living and non-living resources;

“Territorial Sea” means those areas of sea having the Baseline as their inner limits and as their outer limits a line 12 miles from the nearest point of the Baseline, with the exception of certain areas near Guatamala.

Under the Maritime Areas Act, Belize claims full *sovereign rights* over the Territorial Sea, the airspace over and seabed under that sea, and the subsoil of the seabed.² “Seabed” is not a defined term under the Act. With respect to the Exclusive Economic Zone, Belize claims *sovereign rights* (i) for the purpose of fishing, navigation with respect to fishing, and the exploitation, conservation, and management of Resources of the waters above the seabed and the subsoil, and (ii) for the production of energy from the water and wind. Belize claims *jurisdiction* over the Exclusive Economic Zone with regard to (i) the establishment and use of artificial islands, installations, and structures, (ii) maritime scientific research, and (iii) the protection and preservation of the marine environment. Belize also claims the right to construct artificial

² Maritime Areas Act §8.

islands and other structures within the Exclusive Economic Zone.³ Persons are prohibited from exploiting resources, producing energy, conducting research, or constructing installations in the Exclusive Economic Zone without authorization.⁴ The Minister responsible for foreign affairs may make regulations with respect to the Exclusive Economic Zone for these purposes.⁵ The Maritime Areas Act also extends the jurisdiction and powers of the courts to the Maritime Areas of Belize for the purpose of this Act and any enactment which is applied to Maritime Areas pursuant to regulations promulgated by the Minister responsible for foreign affairs.⁶

National Lands Act

“Frontage line” means the boundary of a road, river, public reserve, or any sea coast, permanent stream or lake;

“National Lands” means all lands and seabed other than reserved forest within the meaning of the Forest Act, including cayes and parts thereof not already located or granted, and includes any land which has been, or may hereafter become, escheated to or otherwise acquired by the Government of Belize.⁷

The National Lands Act provides procedures for the disposition of National Lands. National Lands may be sold at such prices and on such terms and conditions as to improvements and otherwise as the Minister may prescribe on the advice of the Advisory Committee.⁸ The Act states that National Lands shall not, save as is excepted by Section 6, be dealt with or disposed of except in the manner provided within the statute. Section 6 states that nothing shall prevent the government from “excepting from sale in the ordinary manner and reserving to the Government of Belize the right of disposing of in a manner as for the public interest may seem best, such lands as may be required as reserves, public roads or internal communications, or commons, or as the sites of public buildings, or as places for the internment of the dead, or places for education, recreation and amusement of the inhabitants of any town or village, or as the sites of public quays, wharves, or landing places on the seacoast or shores of streams, or for the construction of tram or railways or railway stations, or canals, or for the purpose of sinking shafts or digging for minerals, or for any purposes of public defense, safety, utility, convenience or enjoyment, or for otherwise facilitating the improvement or settlement of Belize or for special purposes.”⁹

Following the exceptions of Section 6, the Act provides that the Minister responsible for lands may grant leases of National Lands on such terms and conditions as he thinks fit. Every person who applies to lease 500 acres or more of National Land shall be required to carry out an environmental impact assessment and provide the same to the Minister before the determination of his application for lease and if the lease is approved the lessee shall cause such assessment to be revised and provided to the Minister in like manner after every 5 years until the expiry of the

³ Maritime Areas Act §9.

⁴ Maritime Areas Act §10.

⁵ Maritime Areas Act §23.

⁶ Maritime Areas Act §17.

⁷ The term “seabed” is not defined.

⁸ National Lands Act §13.

⁹ National Lands Act §6.

lease.¹⁰ Where the lease is for less than 500 acres, the Minister may require an environmental impact assessment in his discretion.

Where National Lands are sold or leased, not more than 1/4 of the external boundaries of any land may be allowed on any frontage line unless in special cases approved by the Minister.¹¹ In any grant, lease or other document where the sea, or any sound, bay, or creek or any part thereof, affected by the ebb and flow of the tide, is described as forming the whole or part of the boundary of the land to be disposed of, such boundary or other part thereof shall be deemed and taken to be the line of high water mark at ordinary tides.¹²

Where National Lands are leased outside a city, town, or village and adjoin any running stream, river, or open water, a 66 foot wide strip of land along such running stream, river, or open water must be left in its natural state unless otherwise approved by the Minister to be used in a specified manner.¹³ In addition, in selling National Lands in rural areas, reservations not exceeding 66 feet measured from high water mark along all water frontages must be reserved for Government or public purposes.¹⁴

Registered Land Act

“Easement” means a right attached to land which allows the proprietor of the land either to use the land of another in a particular manner or to restrict its use to a particular extent, but does not include a profit;

“Foreshore” means the part of a shore between high-water and low-water marks;

“Land” includes land covered with water, all things growing on land and buildings and other things permanently affixed to land;

“Lease” means the grant by the proprietor of land of the right to exclusive possession;

“Profit” means the right to go on the land of another and take a particular substance from that land, whether the soil or products of the soil;

“Proprietor” means the person registered under this Act as the owner of land or a lease or a charge.

The Registered Land Act establishes a Land Register, administered by the Registrar of Lands under the Commissioner of Lands and Surveys. Land may be registered in the Register voluntarily, or the Minister may declare areas to be compulsory registration areas.¹⁵ The Register must indicate whether the Land is private or National Land, whether title is absolute or

¹⁰ National Lands Act §§7, 9.

¹¹ National Lands Act §24.

¹² National Lands Act §28.

¹³ National Lands Act §12.

¹⁴ National Lands Rules §33.

¹⁵ Registered Land Act §4.

provisional, a description of the Land or Lease, information on the proprietor and any restrictions affecting rights of disposition, and information on encumbrances.¹⁶ Upon declaration of a compulsory registration area by the Minister, the Commissioner shall notify the Registrar of the particulars of all parcels of National Land within such area, whether or not such Land is available for disposition.¹⁷ The registration of Land as National Land shall enable the Minister by a disposition registered under this Act to dispose of such Land in accordance with the National Lands Act.¹⁸ Any person may, on making an application in the prescribed form and on paying the prescribed fee, inspect the Register or any filed instrument.¹⁹ The Registered Land Act also establishes provisions for leases, charges, easements, restrictive agreements, profits, licenses, co-proprietorship, and other property rights dealing with Land.

Law of Property Act

“Land” means land of any tenure, mines and minerals, whether or not held apart from the surface, buildings or parts of buildings and other corporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land.

The Law of Property Act is an older statute addressing many issues similar to the Registered Land Act. The Law of Property Act sets out the types of estates and interests in Land that may be held, and covers topics such as joint tenancy, deeds and dispositions, charges and encumbrances, mortgages, equitable interests, and other fundamental property law concepts. However, because the definition of “land” does not include the concept of “land covered by water” as in the Registered Land Act, it is unlikely that this law can be interpreted to apply to maritime areas.

Aliens Landholding Act

“Alien” means a person or company other than (i) a Belizean citizen or a citizen of a Commonwealth country, (ii) a person domiciled in Belize for an uninterrupted period of over three years, and (iii) a company incorporated in Belize and deemed not to be under alien control. A company will be deemed under alien control if (i) 1/2 or more of its directors or shareholders are aliens; (ii) 1/2 or more of the votes exercisable at any meeting of the company are held by or for and on behalf of an alien; or (iii) 1/2 or more of the issued share capital is held by or for and on behalf of an alien.

The Aliens Landholding Act provides that no legal or equitable estate in land shall vest in an Alien after the commencement of the Act, provided that land may be acquired by an Alien if licensed or if the land is situated in the boundaries of a city or town and the total area held by an Alien does not in the aggregate exceed 1/2 acre or if the land is outside a city or town and the land does not in the aggregate exceed 10 acres, and further provided that the Act shall not affect

¹⁶ Registered Land Act §10.

¹⁷ Registered Land Act §14.

¹⁸ Registered Land Act §29.

¹⁹ Registered Land Act §38.

the title to an estate vested in the Alien at the commencement of the Act or the right of an Alien devisee to receive the proceeds of sale from land the subject of a devise.²⁰

The Minister responsible for lands may grant an Alien a license to acquire and hold land at his discretion, subject to such terms and conditions as he sees fit, and may alter or amend such license from time to time. Where the conditions of a license have been fulfilled to the satisfaction of the Minister, the Minister shall grant the licensee a certificate declaring that the license shall no longer be voidable and the same shall be recorded in the Registry as a deed.²¹ Where a license has been granted to an Alien that is a company, the shares or stock in the same may not be issued or transferred to another Alien without the permission of the Minister. Also, a person or corporation may not hold title to the legal estate in land to which the equitable estate or any portion thereof is vested in an Alien contrary to the provisions of the Act.²²

Forests Act

“National Lands” means all lands, including cayes and parts thereof not already located or granted and also includes any lands which have been, or may hereafter become, escheated to, leased by, or otherwise acquired by the Government.²³

“Private Lands” means all lands including cayes or parts thereof owned by or leased to any company or private individual: provided that the terms of the lease do not reserve to the Government any rights in respect of forest produce in the lands so leased.

“River” includes streams, canals, creeks, reservoirs, lakes, ponds, and other channels natural and artificial.

Under the Forests Act the Forests Department may declare any part of the National Lands to be a forest reserve.²⁴ The Minister may make regulations prohibiting certain actions within forest reserves, including “hunting, shooting, fishing, trapping, poisoning water or using explosives to destroy fish, clearing, cultivating or breaking up land for cultivation or other purposes,” and may make regulations regarding the transport by land or water of any forest produce.²⁵ In addition, the Minister may “by Order apply any of the provisions of this Act or any regulations made thereunder to any area or tract of Private Land and may from time to time vary, alter, or revoke such Order.”²⁶

Regulations have been promulgated under the Forests Act for the protection of mangroves. No person may alter any mangrove in the jurisdictional waters of Belize without first obtaining a permit from the Forests Department, with the exception of limited “selective trimming.”²⁷ This prohibition applies both to private and public lands. An application for

²⁰ Aliens Landholding Act §4.

²¹ Aliens Landholding Act §6.

²² Aliens Landholding Act §§8, 9.

²³ This definition is identical to that contained within the National Lands Act.

²⁴ Forests Act §3.

²⁵ Forests Act §§5, 8.

²⁶ Forests Act §9.

²⁷ Forests (Protection of Mangroves) Regulations §3.

permit is subject to specified fees and procedures, including public notice if the area is greater than acre. In granting such permits, the Department is directed to consider factors of water quality and “the larger and long-term interest of the people of Belize.”²⁸ In determining whether a project is contrary to the public interest, the Department must balance the following factors:

- Public health, safety, welfare, or property of others;
- Conservation of fish and other wildlife species and endangered or threatened species or their habitats;
- Navigation or the flow of water or harmful erosion, silt deposition or shoaling;
- Fishing or recreational values or marine productivity in the vicinity or more generally;
- Temporary or permanent nature;
- Historical or archeological resources;
- Current condition and relative value of the functions being performed by or in the areas affected by the proposed activity;
- Proximity to a designated park or other type of protected area, wildlife area, wildlife sanctuary or natural monument;
- Proximity to coastal and reef areas known to be of outstandingly high ecological value;
- Measures proposed by applicant to mitigate adverse effects such as restoration in other areas;
- Economic impacts;
- Impact of projects which already exist;
- National, regional, and local land-use plans.

No permits may be issued within national parks, nature reserves, wildlife sanctuaries, or natural monuments.²⁹

Fisheries Act

“Fish” means all or any of the varieties of marine or fresh water animal or plant life.

The Fisheries Act establishes a requirement of licensure for persons using a boat in commercial fishing and for persons conducting research involving killing or capturing of fish or disturbance of the seabed.³⁰ In addition, the Minister of the Department of Fisheries may “where he considers that extraordinary measures are necessary ... declare any area within the fishing limits of Belize, and as appropriate any adjacent surrounding land, to be a marine reserve: to afford special protection to the aquatic flora and fauna ... and to protect and preserve the natural breeding grounds and habitats of aquatic life; to allow for the natural regeneration of aquatic life in areas where such life has been depleted; to promote scientific study and research in respect of such area; or to preserve and enhance the natural beauty of such areas.”³¹ In a marine reserve, no person may engage in fishing, damage any flora or fauna, engage in any scientific study or research, or damage the natural beauty of the area without a license issued by the fisheries

²⁸ Forests (Protection of Mangroves) Regulations §5.

²⁹ Forests (Protection of Mangroves) Regulations §6.

³⁰ Fisheries Act §§6-8.

³¹ Fisheries Act §14.

administrator. In addition, the Minister prescribes regulations regarding permitted activities and operation that are specific to the each marine reserve.

Eight marine reserves have been established through Fisheries Regulations promulgated under the Fisheries Act: Hol Chan, Glovers Reef, Port Honduras, Bacalar Chico, Gladden Spit and Silk Cayes, Sapodilla Cayes, South Water Caye, and Caye Caulker. The Fisheries Orders establishing the marine reserves generally reserve “all that portion of the Caribbean Sea” which encompass or comprise an area more fully described in geographical coordinates. The orders specifically include reefs within the area but do not specifically include cayes.

National Parks System Act

“Administrator” means the person appointed under Section 10.

“Minister” means the minister for the time being responsible for the National Parks System.³²

“National Parks System” includes all national parks, nature reserves, wildlife sanctuaries, and natural monuments.

“National Park” means an area established ... for the protection and preservation of natural and scenic values of national significance for the benefit and enjoyment of the general public.

“Nature Reserve” means an area reserved ... for the protection of nature be it biological communities or species and to maintain natural processes in an undisturbed state in order to have ecologically representative examples of the natural environment available for scientific study, monitoring, education and the maintenance of genetic resources.

“Natural Monument” means an area reserved for the protection and preservation of nationally significant natural features of special interest or unique characteristics to provide opportunities for interpretation, education, research and public appreciation.

“Wildlife Sanctuary” means any area reserved as a nature conservation reserve ... for the protection of nationally significant species, groups of species, biotic communities or physical features of the environment requiring specific human manipulation for their perpetuation.

“Wildlife” means all undomesticated mammals, birds and reptiles and all parts, eggs and nests of any of these wildlife forms.

The Minister may declare any “specified area of land” to be a National Park, Nature Reserve, Wildlife Sanctuary, or Natural Monument or alter the limits thereof.³³ “Land” is not a defined term under the Act. Persons may not destroy flora or fauna or natural features within the protected areas and permits are required for admission, study and other activities. The Public

³² This is currently the Minister for Natural Resources and Environment, who oversees the Forest Department.

³³ National Parks System Act §3.

Services Commission appoints an administrator for each protected area and such other officers as necessary. The Chief Forest Officer is responsible for administration of the Act.³⁴

Belize Port Authority Act

“Local Authority” means the Belize City Council, Belmopan City Council, or any town, village, or district council constituted pursuant to the Town Councils Act or Village Councils Act;

“Ports” means the Belize City Port, Corozal Port, Dangriga Port, Commerce Bight Port, Riversdale Port, and Punta Gorda Port, or any place which may be designated as a port.

The Act establishes the Port Authority with the power to appoint a Ports Commissioner and port managers, and charged with providing a coordinated and integrated system of Ports, lighthouses, and port services. The Authority may operate the ports to best serve the public interest, regulating and controlling navigation within the Ports and their approaches and maintaining the port services and facilities. The Minister may designate any place a Port for purposes of this act.³⁵ The Authority may make regulations generally with respect to the maintenance, control and management of the Port and the approaches thereto, including with respect to the proper control and maintenance of the foreshore and the regulation and control of the depositing of any substance that causes pollution of the Port or any Port.³⁶

The Act further provides that “any wharf, dock, and other public work constructed by the Government along, across, or extending out from the foreshore, within the limits of any Port, and the land on which it is constructed, any land reclaimed from the sea, and any part of the foreshore situate within the limits of the aforesaid, may be vested in the Authority upon such terms and conditions as the Minister may determine.”³⁷ In addition, the Act provides, “Notwithstanding anything contained in this Act, the Minister may, after consultation with the authority, grant in writing a license to any person, corporation, or other body to construct and operate a private port subject to such terms, conditions and restrictions and on the payment of such fees as the Minister may consider appropriate.” Such a license may be for a period not exceeding 30 years and must define the limits of the port and make provision for collection of tariffs and fees.³⁸ However, all lands vested in the Authority are exempted from any rate or imposition with any local authority shall have power to levy or impose, but the Act provides that local authorities are not precluded from levying or collecting rates, taxes, or other lawful charges in respect of land, houses, or buildings of the Authority leased or occupied for private purposes.³⁹

Coastal Zone Management Act

³⁴ National Parks System Act §10.

³⁵ Belize Port Authority Act §20.

³⁶ Belize Port Authority Act §74.

³⁷ Belize Port Authority Act §21.

³⁸ Belize Port Authority Act §23.

³⁹ Belize Port Authority Act §93.

“Coastal Waters” means the Sea and those waters adjacent of the landward line of the adjoining land, or of land connected permanently or intermittently with the sea, which contain a measurable quantity of seawater, including but not limited to sounds, bays, lagoons, ponds, and estuaries;

“Coastal Zone” means an area bounded by the shoreline up to the mean high-water mark on its landward side and by the outer limit of the territorial sea on its seaward side, including all coastal waters;

“Sea” means the Carribean Sea, the Atlantic Ocean, and all areas subject to tidal action through any connection thereto, including but not limited to harbours, bays, channels, estuaries, salt ponds and marshes, but excluding streams, tributaries, creeks, and flood control and drainage channels.

The Coastal Zone Management Act establishes the Coastal Zone Management Authority, an Advisory Council, and the Coastal Zone Management Institute. The Authority is a corporate body whose functions are to advise the Minister for Agriculture and Fisheries on the formation of policies in regard to the Coastal Zone, to assist the development and implementation of programs contributing to sustainable development of coastal resources, and to administer the Institute.⁴⁰ The Advisory Council is comprised of 14 members from various government agencies and is tasked with advising both the Authority and Institute in relation to coastal zone management.⁴¹ The Institute has primarily a research and public education function.⁴²

The Authority was also tasked with the creation of a Coastal Zone Management Plan. The first element in the Plan was published in 2001 as The National Integrated Coastal Zone Management Strategy for Belize⁴³ with the second element to be reports developed by nine coastal planning regions. Unfortunately, the Strategy does not describe methods by which private organizations can effectively become involved in conservation of the Coastal Zone. Instead, the Strategy essentially describes the environmental challenges in the Coastal Zone and calls for integration of marine research and education efforts, better management of the existing network of marine protected areas designated under the Fisheries Act, and coordinated efforts to address fisheries, aquaculture, coastal development, and coastal pollution. The Strategy does list two private protected reserves in the Coastal Zone, Shipstern and the Golden Stream, but the legal nature of any property interests that may be owned in the Coastal Zone is not discussed.⁴⁴

Petroleum Act

“Land” includes land beneath water.

⁴⁰ Coastal Zone Management Act §5.

⁴¹ Coastal Zone Management Act §7.

⁴² Coastal Zone Management Act §10.

⁴³ Available at http://www.coastalzonebelize.org/publications/czmai_strategy.pdf.

⁴⁴ National Integrated Coastal Zone Management Strategy, Appendix 3, Status of Coastal and Marine Protected Areas.

The Petroleum Act first establishes that the all property rights in and control over petroleum and accompanying substances, in whatever physical state located on or under the territory of Belize or in areas of the Continental Shelf in which rights of exploration and exploitation are exercisable by Belize, are vested exclusively in the government. Notwithstanding this provision, a contract with the government may provide for a contractor to acquire title to or control over petroleum.⁴⁵ Petroleum operations may not be carried out without a contract with the Minister. The Petroleum Act describes the content of such contracts and the procedures required to obtain such a contract. As of April 2008, the website of the Geology and Petroleum Department indicated that five oil companies are exploring under Production Sharing Agreements pursuant to the Petroleum Act. Three of these licenses include exclusive contract areas encompassing significant portions of the waters off the central and southern coast.

Protected Areas Conservation Trust Act

The Protected Areas Conservation Trust Act was enacted in 1996 to create the Protected Areas Conservation Trust (“PACT”). PACT is governed by a board of directors appointed from government agencies, local communities, and non-governmental organizations.⁴⁶ PACT is authorized to establish and deploy a trust fund in its discretion for the protection and enhancement of natural and cultural resources, including by acquiring interests in property.⁴⁷ The revenues of the trust fund consist primarily of an conservation fee imposed upon all foreign citizens leaving Belize and 20% of all fees collected in conjunction with use of public protected areas, in addition to several smaller sources.⁴⁸ Money is to be awarded from the trust fund through a competitive proposal process to achieve the primary goals of PACT, including: Protected Areas Management and Conservation, Protected Areas Promotion and Development, Environmental Education and Awareness, and Community Development around Protected Areas.⁴⁹

Environmental Protection Act; Nuisances Act

The Environmental Protection Act created the Department of the Environment to ensure the protection of the natural resources of Belize, including those in maritime areas. Persons exploiting the land, water resources, seas or other natural resources are required to ensure the protection of the environment against unnecessary damage or from pollution by harmful substances. Persons suffering damage as a result of conduct contrary to the Act are allowed a civil cause of action for redress. Similarly, the Nuisances Act provides a civil cause of action in the event that buildings or things or anything done on any public way, whether by land or water, is a nuisance. These causes of action may be powerful tools to enforce environmental standards in Belize because the government often does not have the resources to effectively police its environmental laws and existing protected areas. However, further discussion of these litigation tools is beyond the scope of the present work.

⁴⁵ Petroleum Act §3.

⁴⁶ Protected Areas Conservation Trust Act §5.

⁴⁷ Protected Areas Conservation Trust Act §17.

⁴⁸ Protected Areas Conservation Trust Act §21.

⁴⁹ PACT, Priority Areas for Funding, available at <http://www.pactbelize.org/page.asp?page=Grant+Program>.

C. *Key Agencies*

The key government agencies for existing conservation efforts in maritime areas are the Fisheries and Forestry Department. The Fisheries Department is charged with managing the existing network of marine reserves in addition to its duties policing fishing generally under the direction of the Fisheries Act. The Fisheries Department is overseen by the Ministry of Agriculture and Fisheries. The Coastal Zone Management Authority was created to advise the Minister of Agriculture and Fisheries on coastal zone policies. The Fisheries Department confirms that the Coastal Zone Management Authority is not currently active but indicates that it will be active “in the near future.”

The Forestry Department resides under the supervision of the Ministry of Natural Resources and Environment, which also oversees the Department of the Environment, the Geology and Petroleum Department, and the Lands and Survey Department. The Forestry Department enforces the Forest Act and is charged with management of the protected areas established under the National Parks System Act. The Department of the Environment oversees the Environmental Protection Act, the Geology and Petroleum Department oversees the Petroleum Act, and the Lands and Survey Department oversees the Registered Land Act and National Lands Act.

The Ministry of Foreign Affairs and Foreign Trade ostensibly has the authority to make regulations for the protection of the environment within the territorial sea. However, this authority does not appear to have been used.

The Protected Areas Conservation Trust oversees dispersal of the funds collected under the Protected Areas Conservation Trust Act. PACT has indicated that one of its priorities will be to fund protected areas conservation and management, making this organization a key opportunity for funding of maritime conservation areas in Belize.

The Port Authority oversees the Belize Port Authority Act and is established under the Ministry of Works, Transport, and Communications.

A new commission called the National Protected Areas Commission was recently formed in November of 2007 and membership selected by the Minister for Natural Resources and Environment. The membership of the Commission includes representatives from the Forest Department, Fisheries Department, Belize Tourism Board, Agriculture Department, Institute of Archaeology, University of Belize, co-management NGOs, private protected areas, the private sector, and indigenous groups. Among the purposes of the Commission are to (i) advise the Ministers responsible for protected areas in connection with the National Protected Areas System Plan (“NPASP”); (ii) coordinate the implementation of the NPASP; (iii) promote efforts to incorporate the National Protected Areas Policy (“NPAP”) in the plans, strategies and operations of relevant government, quasi-government bodies and national and international NGOs; and (iv) promote and oversee the revision of the National Parks System Act and other protected area legislation, and oversee the preparation of a consolidated protected area legislation, titled as the National Protected Area System Act (“NPASA”); and (v) serve as a body for national coordination and consultation between government agencies, NGOs, and others.

II. Private Conservation Tools

A. *Ownership of Property Interests in Maritime Areas*

The legislative authority for private ownership of property interests in maritime areas is not explicit. However, there are legislative “hooks” that provide legitimate grounds for the protection of such property rights and there are a number of instances of ownership of such property rights that can be used as precedent. The primary hook is through National Lands Act provisions for the disposition by sale or lease of National Lands, which term is defined to include “all lands and seabed...including cayes.” While “seabed” is not defined in the National Lands Act, the usage of “seabed” in other acts such as the Maritime Areas Act is quite broad and includes the seabed out to the limits of the Territorial Sea. The breadth of the Registered Lands Act similarly supports a broad reading of the National Lands Act in providing for registration of Land, which is defined to “include[] land covered by water...”

Beyond these legislative hooks, there are several instances of precedent for private ownership of property rights in maritime areas. The National Integrated Coastal Zone Management Strategy lists two privately owned nature reserves located in the Coastal Zone, Shipstern Nature Reserve and the Golden Stream Corridor Preserve. Shipstern is a particularly good precedent, with large portions of the preserve including saline wetlands and lagoons influenced by the tides and opening into the sea. In addition, the Fisheries Department indicates that it is aware of “a couple of leases that have been made on the seabed. One is for a marina and the other is for fish mariculture.” The Belize Port Authority Act permits the licensing of certain areas to private entities for the operation of private ports. Finally, under the Petroleum Act several private companies have contracted with the government to exclusively license large expanses of maritime areas for purposes of petroleum exploration. While such licenses do not include the same bundle of rights that a lease would encompass, they do provide a useful example of property rights granted in maritime areas.

The ownership of fee and lease interests in maritime areas does appear possible in Belize, but there is not direct precedent for purchase or lease of a substantial area of seabed for conservation purposes beyond certain saline wetlands and lagoons in Shipstern and Golden Stream. In addition, organizations that fall under the definition of an “alien” under the Aliens Landholding Act must take care to comply with the ownership requirements under that act. With those qualifications in mind, there may be a significant opportunity for private conservation organizations to use the existing precedent and the legislative hooks described above to negotiate for the purchase or lease of such an area from the Government of Belize.

It should be noted that at least one non-governmental conservation organization in Belize is opposed to private ownership of property interests. The Toledo Institute for Development and Environment (“TIDE”) takes the position that further establishment of private ownership holds greater potential for damage rather than protection of maritime areas, as private owners may then attempt to build structures on or reclaim such areas.

B. *Co-Management of Marine Reserves*

An extensive network of marine reserves has been established under the authority of the Fisheries Act and under the protection of the Fisheries Department, as described above. However, a significant flaw in the protection afforded by such marine reserves is that the boundaries of the marine reserves are defined in the Fisheries Regulations in a manner that appears to exclude cayes from the area protected in the marine reserve. This leads to the unfortunate result of the marine areas within the reserve receiving protection while the interconnected ecosystems on the cayes within the reserve may be exposed to degradation.

Because the Fisheries Department often cannot deploy sufficient resources to adequately police this extensive network of marine reserves, a system of co-management with private organizations has developed. Regarding co-management agreements, the Fisheries Department indicates that the Department “currently uses a standard MOU for co-management but for the time being it is for internal use with the co-managers. APAMO (Association of Protected Areas Management Organizations) is currently looking at the standardization of co-management agreements in Belize and this will be made public whenever the exercise is completed. The Fisheries Department is not currently seeking co-management partners for the time being.”

Entrance into co-management agreements for protection of existing or future marine reserves established under the Fisheries Act holds great potential for private organizations seeking to become active in marine conservation in Belize. A potential strategy for organizations seeking to protect areas not currently designated as marine reserves would be to petition the Fisheries Department to designate a certain area as a marine reserve. The Department indicates that a petition is followed by public consultations, the formulation of a management plan, and finally official designation through legislation. The Fisheries Act provides extensive guidelines for the values sought to be preserved in marine reserves; these guidelines may provide a useful roadmap for an effective petition, which could include a draft management plan incorporating the private organization as a co-manager.⁵⁰

The experience of TIDE in the Port Honduras Marine Reserve may prove instructive. TIDE has entered into a co-management agreement with the Fisheries Department for management of the reserve. TIDE indicates that the co-management agreement is standard and establishes an Advisory Committee with representation from the government, fishermen, business, and development corporations, among others. TIDE collects user fees, retaining 60% as a management fee and passing the remaining funds through to the Fisheries Department. TIDE performs all fundraising for management of the marine reserve. Approximately 50 joint

⁵⁰ The Department has apparently been somewhat frustrated by interests of non-governmental organizations that diverge from its own. In response to a question regarding the most effective means for private organizations to support marine conservation, the Department responded, “For the NGOs to better assist in marine conservation in Belize the best thing is to invest in ongoing activities that are of priority. The idea is to build capacity for the government and national co-management partners. Many times international NGOs want to come into Belize to conduct on the ground work (monitoring etc.) and with individual agendas. This cannot work and is no longer tolerated.”

patrols are performed annually with the Fisheries Department, and TIDE individually performs 10 patrols per week.

PACT reports that it has provided funds to support three organizations engaging in co-management arrangements: Friends of Nature (“FON”) for the Gladden Spit and Silk Cayes Marine Reserve (BZ\$216,000), TIDE for the Port Honduras Marine Reserve (BZ\$362,340) and Toledo Association for Sustainable Tourism and Empowerment (“TASTE”) (BZ\$35,000).⁵¹ The TASTE and FON projects have been completed and have been closed. All projects focused on implementing core protected areas management activities related to research, monitoring, enforcement, and education.

C. *Litigation Tools*

As discussed above, the Nuisances Act and Environmental Protection Act provide for certain private causes of action that may be used to prevent environmentally harmful acts undertaken in public spaces such as maritime areas. Further research, and assistance by local counsel, would be necessary to understand the development of such causes of action by the courts of Belize, which are granted jurisdiction over Maritime Areas through the Maritime Areas Act. However, while potentially powerful, these litigation tools are outside the scope of the present discussion.

III. Potential Legislative Expansion of Conservation Tools

A. *Codification of Property Rights in Maritime Areas*

The existing precedent for ownership of property rights in maritime areas is thin and the legislative hooks for such ownership are scattered through several different acts. An amendment to the National Lands Act that clearly establishes those property rights that may be privately owned in maritime areas and the considerations that government must weigh in granting such rights would be immensely helpful. The National Protected Areas Commission or a revitalized Coastal Zone Management Authority would be an excellent vehicle for the consideration and ultimate proposal of such legislation.

An amendment to the National Lands Act could be inserted into the Act as Section 5(4) as follows: “The Minister may deal with and dispose of National Lands consisting of Maritime Areas in the same manner as all other National Lands, including by sale, lease, or transfer of other property rights, provided that in dealing with or disposing of Maritime Areas, the Minister must consider certain factors impacting the public interest of the people of Belize. Such factors include the following: [factors derived from Mangrove Regulations §5 under the Forests Act and other important environmental considerations].” The term Maritime Areas should be defined in Section 2 of the National Lands Act in the same broad manner as it is defined in the Maritime Areas Act.

⁵¹ US\$1 is equivalent to approximately BZ\$2.

B. *Protection of Cayes within Marine Reserves*

Recognizing that the environmental values of cayes are inextricably intertwined with the environmental values of the surrounding maritime areas, and further recognizing its statutory power to protect “adjacent surrounding lands” proximate to the maritime areas within a marine reserve, the Fisheries Department could revise the regulations establishing each marine reserve to expressly include the cayes contained within the boundaries of the marine reserve. As with other regulations governing the affairs within marine reserves, certain ongoing activities on such cayes could be permitted, or “grandfathered in,” while uses that degraded the environmental values of the cayes could be prohibited. The Forestry Department has experience protecting certain cayes under its authority through the National Parks System Act, and could assist the Fisheries Department with training and resources for the protection of such areas. In addition, private NGOs could also be enlisted to provide management resources through co-management agreements.

C. *Expansion of Reserved Buffers Adjacent to Water*

As discussed above, the National Lands Regulations provide that a 66 foot strip of land measured from the high water mark must be reserved for Government or public purposes when National Lands in rural areas are sold. The National Lands Act provides that the same 66 foot strip of land must be left in its natural state unless otherwise approved by the Minister to be used in a specified manner when National Lands are leased outside a city, town, or village and adjoin any running stream, river, or open water. These provisions could be strengthened by an amendment to the National Lands Act and Regulations that removes Sections 12(8) and 33, respectively. In their place could be inserted into the Act as Section 5(5), in conjunction with the changes noted above in Section III.A, language as follows: “The Minister must reserve for Government or public purposes a 66 foot strip of land, measured landward from the high water mark, adjacent to any of the Maritime Areas of Belize, and may deal with or dispose of such land only after consideration of the factors cited in Section 5(4).”

D. *Revitalization of the Coastal Zone Management Authority*

The Fisheries Department confirms that the Authority is not currently active, but indicates that it “will be in the near future.” Revitalization of the Authority is an important step for the protection of maritime areas as the function of the Authority is to bring information and expertise from various disciplines and departments together to create coherent policy focused exclusively on conservation in the Coastal Zone. The initial product released in 2001 under the mandate of the Coastal Zone Management Act, the National Integrated Coastal Zone Management Strategy for Belize, was quite useful in identifying challenges faced in the Coastal Zone. However, the Authority appears to have faltered before seeing through any of its policy suggestions. Revitalization of this organization with independent leadership and a specific mandate through amendment of the Coastal Zone Management Act could provide beneficial focus on conservation of maritime areas.

IV. Conclusions

The Nature Conservancy and other private organizations can conserve maritime areas in Belize through several vehicles. The availability of private ownership of property interests in maritime areas is suggested by the language in several statutes and by some recent precedent. While it is not yet well-established, such ownership appears feasible and the establishment of further private ownership through codification of property interests available in maritime areas could foster the beginning of an important conservation trend in Belize. A more established vehicle for maritime conservation is the entry into a co-management agreement with the Fisheries Department for the maintenance of marine reserves established under the authority of the Fisheries Act. The protection of cayes within marine reserves by the Fisheries Department or perhaps by the Forest Department or private organizations could be an important complement to the protections afforded under the marine reserve system. Finally, the strengthening of institutions such as the Coastal Zone Management Authority and National Protected Areas Commission will foster conservation in maritime areas by bringing together stakeholders from several governmental agencies and other stakeholders to form a more comprehensive maritime conservation policy.

Appendix A : Contacts

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