

## Protection of Maritime Areas in Brazil

### GLOSSARY

*Glossary of all the technical and legal terms mentioned throughout the report.*

**Union:** The Federal Republic of Brazil is a Union of 26 states, the Federal District and the Municipalities. The Union represents the Federal Government.

**States:** Brazil is divided in 27 Federative Unites – 26 States and the Federal District. States are independent units with proper government that form the Federal Republic.

**The Federal District:** compared to a State, the Federal District is an atypical unit of the Federation and holds Brasilia, the Capital of the Federative Republic of Brazil.

**Municipality:** The Municipalities are the smallest politician-administrative units in Brazil. It is a set of urban, suburban and agricultural areas belonging to a city.

**Territorial Sea:** it is a coastal water band that reaches twelve nautical miles from the coast. Its width is counted from the baseline, that is, the line of ebb tide throughout the coast. The Brazilian sovereignty extends to the territorial sea, to the air space over the territorial sea as well as to its bed and subsoil.

**Contiguous Zone:** it is a zone contiguous to its territorial sea, which extends from twelve to twenty-four nautical miles, counted from the baselines from which the breadth of the territorial sea is measured

**Continental Shelf:** it is the stream bed and the subsoil of the maritime areas that extend beyond the territorial sea, to the extension of the natural prolongation of its terrestrial territory, until the exterior border of the continental edge, or until a distance of two hundred maritime miles from the baselines, from which the width of the territorial sea is measured, in the cases where the exterior border of the continental edge does not reach such distance.

**Exclusive Economic Zone:** it is the water band that begins in the exterior limit of the Brazilian territorial sea and finishes in a distance of two hundred nautical miles from the coast. In the exclusive economic zone, Brazil has sovereignty rights for exploitation, conservation and management of the natural resources found therein.

**Legal Coastal Area:** it is the land situated in the maritime coast located in a depth of thirty-three meters from the average of the high tides of the year of 1831. The Brazilian Legal Coastal Area belongs to the Union.

**Conservation Areas:** the territorial space and its environmental resources, including jurisdictional waters, with relevant natural characteristics, legally created by Governmental Agencies, aiming at its conservation, with defined limits, under special rules of administration.

**Indirect Use of Natural Resources:** the one that does not involve consumption, collection, damage or destruction of the natural resources.

**Direct Use of Natural Resources:** the one that involves collection and use, commercially or not, of the natural resources.

**Sustainable Use of Natural Resources:** exploration of the environment in a way to guarantee the permanence of the renewable environmental resources and the ecological processes.

**Integral Protection:** maintenance of ecosystems free from alterations caused by human interference. Only the indirect use of natural resources is permitted.

**Fishery:** every act tending to capture or extract animal or vegetal elements that have in water their normal or most frequent habitat.

**Maritime ecosystem:** denomination given to ecosystems that occur in regions under the influence of the sea, like oceans and its coastal zone.

**Public Interest Non-Governmental Organization (OSCIPs):** OSCIPs are non governmental organizations that act in specific areas of public interest and that may be financed by the government or the private entities to support non-profitable initiatives and projects.

**Environmental Licensing:** is a procedure, in which the environmental agencies (federal, state or municipal) allow the localization, installation, enlargement and operation of enterprises and activities users of environmental resources, and can be considered effectively or potentially polluting or ambient degrading.

## **I. Landscape of Existing Governmental Regulation**

### **1.1 Authority to Legislate on Environmental Matters**

The legal protection to the environment, and consequently to the maritime areas, is performed through statutes inspired in the Brazilian Federal Constitution, which distributes the authority to legislate on environmental matters between the Union, the States and the Federal District and the Municipalities.

Therefore, the authority of the Union consists in establishing general rules, while the States and the Federal District are allowed to complement the federal statutes, either by filling the

gaps or by creating rules that were not yet established by the Union. The Municipalities have the authority to legislate only in matter of local interest, supplementing the federal and estate statutes pursuant to the occasion.

## **1.2 Legal Aspects Concerning Ownership of Maritime Areas**

In accordance with the Brazilian legislation, the maritime areas are exclusive properties of the Union (item 1.2.1), as the particular person, either individuals or legal entities, are only entitled to make use of them for the development of certain activities. (1.2.2).

### **1.2.1 Properties Owned by the Union**

Private property is subject to legal restrictions in the Brazilian legal system, especially in what concerns to the coastal lands and maritime areas, classified as public goods of common use, meaning those goods whose use is guaranteed to the entire society, without the need of any specific governmental consent for so such.

In this sense, pursuant to the Brazilian Federal Constitution, the properties exclusively owned by the Union comprise, among others, (i) the maritime beaches and the oceanic and coastal islands; (ii) the natural resources of the continental shelf and the exclusive economic zone; (iii) the territorial sea; (iv) the Legal Coastal Areas; and (v) the mineral resources, including the ones located in the subsoil.

### **1.2.2 Exploitation in Maritime Areas**

#### **1.2.2.1 Environmental Licence**

The Brazilian legislation establishes the environmental licensing as an obligation to be complied prior to the implementation of any enterprise or activity potentially pollutant or harmful to the environment. The procedure is based in technical, social and environmental aspects from the analysis of the enterprise and its interaction with the area. The final decision is reached by the social participation through the accomplishment of Public Audiences specially summoned to discuss the projects and their impacts and benefits for the area in which they shall be installed.

The environmental licensing is accomplished by the IBAMA or other state environmental agencies, in accordance with the class and location of the enterprise. Pursuant to the applicable legislation, IBAMA acts directly in the licensing of enterprises and activities located or developed in the territorial sea, in the continental shelf and in the exclusive economic zone, including the environmental licensing of the maritime activities of the petroleum industry (seismic data raising, exploration, perforation, production for research and production of petroleum and natural gas).

#### **1.2.2.2 Petroleum**

As mentioned in the item 1.2.1 above, the deposits of petroleum, natural gas and other existent flowing hydrocarbons in the national territory exclusively belong to the Union,

comprising the land, the territorial sea, the continental shelf and the exclusive economic zone.

Therefore, all the exploitation rights of such resources also belong to the Union and are regulated by the National Agency of Petroleum (see item 1.3.9 below), a federal agency entitled to regulate, contract and supervise the economic activities related to the petroleum industry.

The exploitation, development and production of petroleum and natural gas are performed by for Brazilian companies, with headquarters and administration in the country, by means of concession contracts preceded by the proper procedures of invitation to bid.

### **1.2.2.3 Fishery**

Fishery in Brazil is regulated by federal laws that establish, among other provisions, the Brazilian fishing areas, the necessary requirements for the development of the activity, as well as the restrictions and prohibition periods in view of the regional peculiarities and for the protection of the fauna and flora. Moreover, there are Brazilian states with specific legislation on restrictions to fishery and protection policies for the aquatic fauna.

The control of fishery activity regarding the access and sustainable use of the maritime resources in the fishing areas is performed by IBAMA, comprising the territorial sea, the continental shelf and the exclusive economic zone. The control may also be performed by state and municipal agencies through special agreements to entrust such authority.

### **1.2.2.4 Aquaculture**

Aquaculture is defined by the Brazilian legislation as the production in captivity of organisms in any stage of development and whose habitat is predominantly aquatic, as well as the cultivation or creation of organisms whose life cycle is totally or partially in aquatic environment.

In view of item 1.2.1 above, the particular person, either individuals or legal entities, who wishes to develop aquaculture in maritime areas must request the public authorities the authorization to use public waters for the activity and observe the applicable environmental legislation and any legal restrictions to the area which the activity shall be installed.

## **1.3 Key Agencies**

### **1.3.1 Ministry of Environment**

The Ministry of Environment was created in 1992 and it is the main environmental agency in the country, being directly responsible for the national environmental and hydric resources policies, for the preservation, conservation and sustainable use of ecosystems policies and for the protection of biodiversity and forests. The Ministry of Environment is entitled to propose strategies, mechanisms and economic and social instruments for the improvement of the environmental quality and the sustainable use of the natural resources in the country.

### **1.3.2 Brazilian Institute for the Environment and Natural Renewable Resources – IBAMA**

The Brazilian Institute for the Environment and Natural Renewable Resources (IBAMA) is connected to the Ministry of Environment and has as main attributions the execution of federal actions related to the national environmental policy, the environmental licensing, as well as the authorization of use of the natural resources and the environmental control.

### **1.3.3 Chico Mendes Institute for the Biodiversity Conservancy**

The Chico Mendes Institute for the Biodiversity Conservancy was created in 2007 and is connected to the Ministry of Environment. Its main institutional mission is to manage the federal conservation areas (see item 1.4.11 below). Thus, the Institute is entitled to execute the actions of the national conservation areas policy and is allowed to propose the creation of new conservation areas, as well as to protect, manage and supervise the ones created by the Union.

### **1.3.4 Department of Marine**

The Navy Command is responsible for the regulation and control of the waterway traffic in what concerns to the safety of navigation and the protection of the maritime environment.

### **1.3.5 Interministerial Commission for Marine Resources (CIRM)**

The Interministerial Commission for Marine Resources (“CIRM”) was created in 1974 to coordinate the National Maritime Resources Policy. The CIRM has representatives from the Ministry of the Navy, the Ministry of Environment, the Ministry of External Relations, the Ministry of Transport, the Ministry of Education and Sports, the Ministry of Industry, Commerce and Tourism, the Ministry of Planning and Budget, the Ministry of Mines and Energy, the Ministry of Science and Technology, the Chief of Staff's Office of the Presidency and the Strategic Affairs Secretariat.

### **1.3.6 Coastal Zone Management Integration Group (GI-GERCO)**

The Coastal Zone Management Integration Group (GI-GERCO) is a forum created to provide technical support for CIRM decisions on coastal zone management. The GI-GERCO is coordinated by the Ministry of Environment and has representatives from the federal sectors most active in the coastal zone, as well as from the Brazilian Association of Environmental Entities (ABEMA) - which congregates the state environment agencies; from the National Association of Municipalities and Environment (ANAMMA) - which congregates local government environment bodies; and also representatives of NGOs.

### **1.3.7 Special Secretariat of Fisheries and Aquaculture**

The Special Secretariat of Fisheries and Aquaculture (“SEAP”) advises the President in the formulation of policies and guidelines for the development and fomentation of the fishing and aquaculture productions by promoting the execution and evaluation of measures, programs and projects to support the development of craft and industrial fishery, as well as actions

connected to the implantation of the necessary infrastructure to support the production and commercialization of fish, besides regulating and establishing measures to allow the sustainable use of migratory fishing resources.

SEAP is responsible for the concession of licenses, permissions and authorizations for the performance of commercial and craft fishery and aquaculture in the fishing zones, comprising the territorial sea, the continental shelf and the exclusive economic zone.

### **1.3.8 National Agency of Water Transports**

The National Agency of Water Transports (“ANTAQ”) is connected to the Ministry of Transports and has as its main attributions the regulation, supervision and control of the water transport activities and related to the exploitation of the waterway and port infrastructure by third parties.

### **1.3.9 National Agency of Petroleum**

The National Agency of Petroleum (“ANP”) is connected to the Ministry of Mines and Energy and is the agency responsible for the regulation of the activities of the industry of the petroleum, natural gas and biofuel in Brazil. The ANP is also responsible for the invitations to bid related to the exploitation, development and production of oil and gas and for the control of contracts entered with the concessionaries.

## **1.4 Key Legislation**

The Brazilian environmental legislation began its consolidation process in the beginning of the decade of 1980 with the edition of the National Environmental Policy and the promulgation of the Brazilian Federal Constitution in 1988, which dedicated an exclusive chapter to the protection of the environment and the conservation of the resources and natural spaces.

From that moment on, the environmental variable was inserted in several legislative acts and today the Brazilian legal system is constituted of various laws that directly or indirectly protect the maritime environment and its resources.

### **1.4.1 National Environmental Policy Act**

The National Environmental Policy, established in 1981 by Brazilian Law n. 6.938/81, has as its main objective the preservation, improvement and recovery of the favorable environmental quality to life in order to assure the necessary conditions for the social-economic development, for the national security interests and for the protection of the dignity of the human life.

Its guidelines are created through rules and plans that consider and comply with a series of principles, such as the protection of the environment through the government action, the rationalization of the use of the soil, the underground, the water and the air, the planning and control of the use of the environmental resources, the protection of the ecosystems, the control of activities potentially pollutant, among others.

In order to accomplish its objectives and guidelines, the National Environmental Policy uses specific mechanisms to reach an effective environmental protection. Such mechanisms, which may be of informative, economic or normative purposes, involve, among others, the establishment of patterns of environmental quality, the implementation of the evaluation of environmental impacts and the licensing of activities, as well as the creation of territorial spaces especially protected and the punishment for the non execution of the necessary measures for the preservation or recovery of environmental degradation.

#### **1.4.2 Brazilian Federal Constitution**

Once the outlines of the political and legal sceneries of the environment were established, the Brazilian Federal Constitution dedicated a whole chapter to the protection to the environment.<sup>1</sup>

Its articles provide that both the public authorities and the collectivity have the duty to defend and preserve the environment for the future generations<sup>2</sup>, establishing a series of obligations such as the preservation and recovery of the species and ecosystems and the definition of the territorial areas the shall have especial protection.

#### **1.4.3 Maritime Areas Act**

Pursuant to Brazilian Law n. 8.617/93, which provides on the territorial sea, the contiguous zone, the economic exclusive zone and the continental shelf, the Brazilian jurisdiction extends to the territorial sea, the overlying air space, as well as the seabed and subsoil. Thus, the law defines the different prerogatives guaranteed to Brazil due to its sovereignty in accordance with the different spaces that compose its territory.

In this manner, the law establishes that foreign vessels in the Brazilian territorial sea are subject to the regulations established by the Brazilian Government. In the contiguous zone, Brazil can take the necessary control of measures to avoid and to repress the infractions to its laws and internal rules.

In the exclusive economic zone, Brazil is entitled sovereignty rights for the exploration and use, conservation and administration of the natural resources of the waters over the seabed, of the seabed itself and of its subsoil, and other activities for economic purposes.

Brazil also exercises sovereignty rights on the continental shelf for the exploitation of its natural resources and it holds the exclusive right of regulating the scientific sea investigation, the protection and preservation of the maritime environment, as well as the construction, operation and the use of artificial islands, facilities and structures.

#### **1.4.4 Waterway Traffic Safety in Waters under National Jurisdiction Act**

The Waterway Traffic Safety in Waters under National Jurisdiction Act provides that the Marine Command is entitled to ensure the security of human life and the safety of navigation

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<sup>1</sup> Chapter VI: The Environment.

<sup>2</sup> Article 225 of the Brazilian Federal Constitution.

in the open sea and interior waterway and to prevent the environmental pollution by vessels, platforms or their support facilities.

Amongst the instruments of control at the Marine Command's disposal, it should be emphasized the possibility of not accepting in Brazilian waters a foreign vessel that represents a threat to the environment, its crew or any third party or to the safety of the waterway traffic.

#### **1.4.5 Petroleum Act**

The Petroleum Act came into force through the Brazilian Law n. 9.478/1997, which put to an end the monopoly of the Union in the activities related to the exploitation, production, refine and transport of petroleum in Brazil, allowing private companies, either national and foreign, the possibility to act in all the links of the productive chain, from well to wheel.

The law provides that the national policies for the rational use of the sources of energy shall, among others, protect the environment and promote the conservation of energy, being ANP (see item 1.3.9 above) entitled to promote the regulation, the recruiting and the control of the economic activities of the industry of the petroleum, natural gas and biofuel and to ensure the accomplishment of conservation practices, the rational use of raw material and the preservation of the environment.

As mentioned in the item 1.2.2.2 above, the exploitation, development and production activities of petroleum and natural gas are exercised by concession contracts and the concessionaire is obliged to repair or indemnify the damages cause by its activities and to practice all the necessary measures for the environmental recovery that may determined by the competent agencies.

#### **1.4.6 Submerged Items Act**

The Submerged Items Act provides on the research, exploration, removal and demolition of sunk, submerged, stagnated and lost items in waters under national jurisdiction. The authorization for the intervention in such items by the naval authorities imply the adoption of direct and preliminary measures to prevent, reduce or control the risks or damages to the navigation security, to third parties and the environment.

Once the authorization is granted, the naval authorities may have it canceled should they verify, during the operations, the outbreak of unacceptable risks for the safety of navigation, of damages to third parties or to the environment. In the hypothesis of a vessel, its responsible shall have joint liability with the owner of the cargo for the damages that it may cause to navigation, third parties or the environment.

#### **1.4.7 Fisheries Code and other related acts**

The Fisheries Code is in force since 1967 with the publication of the Brazilian Law-Decree n. 221/1967, which defines fishery as every action to capture or to extract animal or vegetate elements that have their life cycle in the water. The provisions of the Fisheries Code are to be applied in the interior waters, the Brazilian territorial sea, the areas of high sea, in

accordance with the dispositions of the international treaties and conventions ratified by Brazil, in the contiguous area and in the continental shelf.

Fishery may be transitory or permanently forbidden by the competent authorities in public or private waters. The Code establishes the express prohibition of fishery in places that can cause embarrassment to the navigation and of the use of toxic substances, dynamite and other explosives or substances that in contact with the water can act in an explosive way.

The Brazilian legal system has other laws that provide on fishing activities, such as the Brazilian Law n. 7.643/1987 that forbids fishing, or any form of intentional molestation, of all cetacean species in the Brazilian jurisdictional waters, establishing confinement and fine in case of noncompliance, besides the loss of the vessel in favor of the Union, in case of regression.

Aquiculture is also object of specific rules by means of the Brazilian Decree n. 4.895/ 2003, as mentioned in the item 1.2.2.4 above.

#### **1.4.8 Environmental Crimes Act**

The Environmental Crimes Act sets forth the penal and administrative crimes resulting from conduct or activities harmful to the environment and its fauna providing civil, administrative and criminal penalties not only for individuals, but also for legal entities.

Specifically to the maritime environment, the Environmental Crimes Act establishes as crime the death of specimens of the aquatic fauna due to the emission of effluent, the degradation in public domain aquaculture stations, the exploration of natural fields of invertebrate aquatic animals and algae without authorization of the competent authority, as well as the release of debris of any nature on banks of mollusks or coral properly demarcated in nautical chart.

Likewise, it is crime to fish in forbidden periods or in places interdicted by the competent authorities, as well as to fish preserved species or specimens with inferior sizes or in superior amounts to those allowed, or by use of forbidden apparel and methods. The law also establishes that incurs in the same penalties whoever transports, commercializes or industrializes specimens from forbidden fishing.

Finally, in what it concerns to fishery, it is also a crime to fish using explosives or any substance that in contact with the water may produce similar effect, besides toxic substances or any other way forbidden by the competent authorities.

The Environmental Crimes Act also provides penalties to whoever causes direct or indirect damage to Conservation Areas, regardless of their location, which naturally includes those located in maritime areas.

It is also crime to cause pollution of any nature in such levels that result or that may result in damages to the human health, or that provoke the death of animals or the significant destruction of the flora. Such penalties have aggravating circumstances should such pollution hinders or impede the public use of the beaches, or if it comes as a result of the release of residues or oils in disagreement with the established standards in the applicable regulation.

## 1.4.9 Oil Pollution Act

The Oil Pollution Act came into force through the Brazilian Law n. 9.966/2000 and it provides on the prevention, control and inspection of pollution caused by oil release and other noxious or dangerous substances in waters under national jurisdiction that may cause risks or damages to the human health, the aquatic ecosystem or that may impair the use of water.

It provides the necessity of a continuous follow-up by the environmental agencies of the prevention and control phases of activities that generate oil and other noxious substances. According to the Oil Pollution Act, the discharge in waters under national jurisdiction of oil and other noxious substances noxious, ballast water and other pollutant residues must be duly authorized by the competent authorities.

Moreover, even if the discharge is duly authorized, the responsible is hold liable for the damages caused to the environment and indemnify the economic activities and the public and private patrimony for the damages suffered due to that discharge. The noncompliance to the established rules of the Oil Pollution Act may result in fines that can reach up to R\$ 50.000.000,00 (fifty million Brazilian Reais)<sup>3</sup>, regardless of other administrative and penal sanctions and the civil liability for the damages caused to the environment and the public and private patrimony.

## 1.4.11 National System of Nature Conservation Areas Act

*Analysis of the National System of Nature Conservation Areas (known by its Portuguese acronym SNUC), summarizing (i) the public and private forms of conservancy in maritime areas; (ii) the conservation units created in maritime areas and legal restrictions to exploitation therein; and (iii) the possibilities of private conservation in coastal areas.*

### 1.4.11.1 Conservation Areas

Conservations Areas are a territorial space and its environmental resources, including jurisdictional waters, with relevant natural characteristics, legally created by Governmental Agencies, with objectives of conservation, with defined limits, under special rules of administration.

The conservation areas that are part of the National System of Nature Conservation Areas (hereinafter referred to as its Portuguese acronym "SNUC") are divided in two groups with specific characteristics (i) the Integral Protection Areas, whose main objective is the nature conservancy and only the indirect use of its natural resources is allowed; and (ii) the Sustainable Use Areas, whose objective is to match the nature conservancy with the sustainable use of part of its natural resources.

These two groups are divided in twelve sub-categories that range from areas where economic activity is not allowed in any way to less restrictive sub-categories, where economic activities are restricted only in different degrees.

### 1.4.11.2 Maritime Conservation Areas and legal restrictions

<sup>3</sup> Approximately US\$ 80,000,000.00 (eighty million US Dollars).

Although different from the classic conception of protected areas, the maritime areas also took benefit from the conservation strategies that were once dedicated only to land spaces and now they represent, even as minority, a portion of great importance of the Brazilian Conservation Areas.

The SNUC Act establishes that the oceanic and coastal islands are priorly destined to the nature conservancy and their destination for other purposes shall be preceded of authorization by the competent environmental agency. Such authorization is necessary in deserted islands or those inhabited where Conservation Areas have already been created or those that possess relevant ecosystems that should be protected. The authorization is not necessary in densely urbanized areas.

There are approximately 156,870.42 ha of maritime biome preserved in Conservation Areas in the Brazilian coast today. From this total, 37,384.34 ha are in Integral Protection Areas, including the Biological Reserve of the *Atol das Rocas*, the Maritime National Park of Fernando de Noronha, the Maritime National Park of *Abrolhos* and the Biological Reserve of the *Arvoredo*. Another 119,486.08 ha are in maritime Sustainable Use Areas.

#### **1.4.11.3 Private Natural Heritage Reserves in coastal areas**

The Private Natural Heritage Reserves is a sub-category of Sustainable Use Areas that have to be created by the owners of areas of relevant importance for the protection of biological diversity. The owners, whether individuals or legal entities, are the only ones allowed to take the initiative of creating such conservation areas, since they can only be created in areas where the owner has its full title.

Therefore, the creation of Private Natural Heritage Reserve in maritime areas or in Legal Coastal Areas is not possible since they are exclusively owned by the Union (as seen in item 1.2.1 above). There is, however, a possibility of claiming in court the full title over coastal areas by claiming that such areas do not meet the characteristics of Legal Coastal Areas, as provided in Brazilian Law-Decree n. 9.760/1946.

### **1.5 National Ocean and Coastal Programs**

#### **1.5.1 National Maritime Resources Policy Act**

Sanctioned by the Brazilian Decree n. 5.377/2005, the National Maritime Resources Policy has the purpose of establishing the essential measures for the promotion of the integration between the territorial sea and the continental shelf with the Brazilian territory and the rational exploration of the oceans, understood as the living resources, minerals, energy, soil and subsoil, which may represent economical and social development to the country and the national security.

In this manner, the National Maritime Resources Policy aims at the establishment of principles and objectives for the creation of governmental plans, programs and actions for the development of researches and the marine technology and the exploitation and sustainable use of the maritime resources<sup>4</sup>.

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<sup>4</sup> The National Maritime Resources Policy does not cover the maritime cargo transportation.

There are several international principles amongst those therein established, such as precaution and the sustainable use of the marine resources, besides a specific provision for the participation of the civil society through the incentive to partnerships between the Union, the States, the Municipalities, the private sector and the society.

The strategy for the implementation of the National Maritime Resources Policy is formed by a group of actions to be undertaken in order to reach its intended objectives. Such actions shall be executed under the orientation and the coordination of the CIRM.

### **1.5.2 National Plan of Coastal Management**

The National Plan of Coastal Management has as purpose the establishment of general rules for the environmental management of the Brazilian coastal zone, providing the basis for the formulation of state and municipal policies, plans and programs.

### **1.5.3 Program to Assess the Sustainable Potential of the Living Resources of the Exclusive Economic Zone – Revizee**

Revizee follows the ratification of the United Nations Convention on the Law of the Sea that establishes to coastal countries rights and responsibilities towards the exploitation, conservation and administration of the living resources of their exclusive economic zones.

In this sense, Revizee conducts a research on the living resources of the Brazilian exclusive economic zone aiming at the obtainment of an inventory of its living resources, the determination of their biomass and the assessment of potential patterns of sustainable capture.

## **II. Landscape of Existing Private Conservation Tools**

### **2.1 Co-Management of Maritime Reserves**

The National System of Nature Conservation Areas Act allows Conservation Areas to be managed by Public Interest Non-Governmental Organizations (hereinafter referred to as its Portuguese acronym “OSCIPs”) that have as objective the protection of the environment.

The OSCIPs participation does not exclude the Public Power’s presence in the management of Conservation Areas, except in case of a Private Natural Heritage Reserve which, as seen in item 1.4.11.3 above, cannot be created in maritime areas.

The co-management of Conservation Areas implies the rendering of information and annual reports to the competent authorities. The OSCIPs are entitled to receive resources or donations from public or private organizations and also from individuals to be used in the Conservation Area under their responsibility.

### **2.2 Litigation Tools**

The Brazilian Federal Constitution provides the popular action (item 2.2.1) and the civil class action (item 2.2.2) to be used by individuals or associations specially created to protect the environment to seek remedy due to environmentally harmful acts undertaken in public spaces such as maritime areas.

### **2.2.1 Popular Action**

Popular action is a lawsuit that can be used by any Brazilian citizen, either by birth or naturalized, to defend diffuse interests endangered by illegal or immoral acts that are harmful to the public patrimony, to the administrative morality, to the environment or the historic and cultural patrimony.

The class action can be used in preventive character in order to avoid the effects of the illegal or immoral acts or in repressive character, aiming at the indemnification of the damage.

### **2.2.2 Civil Class Action**

The civil class action is a lawsuit at the reach of associations that have been constituted for at least one year and that have as their institutional purposes the protection of the environment or other diffuse interests. The civil class action aims to prevent or to collect the proper indemnification for damages caused to diffuse interests, including the environment. Such lawsuit can be filed against any person, individuals or legal entities, either public or private.

## **2.3 Tax and Economic Tools**

### **2.3.1 Environmental National Fund**

The Environmental National Fund (“FNMA”) is part of the Ministry of Environment and is entitled to support initiatives from the civil society and governmental agencies that promote the recovery, conservation and preservation of the environment and the improvement of the life quality of the Brazilian population. In order to obtain financial resources from the FNMA, the applicant must present a proposal of actions for the use of the natural potential of an area or that contributes to solve or to minimize relevant environmental problems therein.

FNMA is today a reference due to the transparent and democratic process in the selection of projects since it was one of the first public funds to incorporate members of the organized civil society in its structure, allowing egalitarian access to its resources. In this sense, both public institutions and private non-profit associations which aims at the protection of the environment, such as NGOs and OSCIPs, are amongst the legal entities that can apply for FNMA’s resources.

### **2.3.2 Brazilian Network of Social-Environmental Funds**

The Brazilian Network of Social-Environmental Funds was created in 2006 and is composed by private funds and federal, state and municipal public funds created by law for the financing of social-environmental actions, acting as the connection between the government

and the civil society in the implementation of conservation and sustainable development strategies.

### **III. Expansion of Conservation Tools**

Brazil has an extensive legislation on environment and management of the maritime areas, including the existence of several plans that provide the participation of the civil society in the implementation of their guidelines. Before this solid legal scenery, it is necessary to analyze the forms of achieving this participation in order to accomplish the objectives established therein.