



# Sustainable Fisheries & Coastal Zoning in Curaçao

Legal & Institutional Assessment of Authorities &  
Approaches

ENVIRONMENTAL LAW INSTITUTE

JULY 2016

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## Abbreviations

AVB	Department of Agriculture and Fisheries Management (formerly LVV)
BES Islands	Bonaire, Sint Eustatius, and Saba
BHC	Blue Halo Curaçao
CARMABI	Caribbean Research and Management of Biodiversity (Foundation)
CBD	Convention on Biological Diversity
Cft	Board of Financial Supervision
CITES	Convention on International Trade in Endangered Species
CMBF	Dutch Caribbean Committee on Marine Biodiversity and Fisheries
CTF	Conservation Trust Fund (of the Dutch Caribbean Nature Alliance)
DCNA	Dutch Caribbean Nature Alliance
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EOP	Island Development Plan
EROC	Island Ordinance on Planning and Zoning
FOC	Fisheries Ordinance Curaçao
GMN	Ministry of Health, Environment, and Nature
LGRO	National Ordinance on Planning and Zoning
LVV	Department of Agriculture, Animal Husbandry and Fisheries (former; now AVB)
MEO	Ministry of Economic Development
MvF	Ministry of Finance
nm	nautical miles
NFO	National Fisheries Ordinance
ROP	Department of Land Development, Use and Planning
SPAW Protocol	Protocol Concerning Specially Protected Areas and Wildlife (under Cartagena Convention)
UNCLOS	United Nations Convention on the Law of the Sea
VVRP	Ministry of Traffic, Transportation, and Spatial Planning

## Key Legal Terms (Dutch / English)

Dutch	English
<i>Algemene maatregel van Rijksbestuur</i>	Order in Council
<i>Beheerder</i>	Administrator
<i>Bestuurscollege</i>	Executive Council
<i>(Lands)besluit</i>	(National) Decree
<i>(Lands)verordening</i>	(National) Ordinance
<i>Ministeriële regelingen</i>	Ministerial Regulation
<i>Raad van Ministers</i>	Council of Ministers
<i>Rijkswet</i>	Kingdom Act
<i>Staten van Curaçao</i>	Parliament of Curaçao
<i>Vorbereidingsbesluit</i>	Provisional Decree



## Executive Summary

In February 2015, the Government of Curaçao and the Waitt Institute signed a memorandum of understanding to launch Blue Halo Curaçao (BHC), a comprehensive ocean and coastal management initiative with a goal of achieving the sustainable management of Curaçao’s ocean and coastal waters. BHC seeks to develop a Curaçao Sustainable Ocean Policy that will ensure long-term health of Curaçao’s waters through ocean zoning, protected areas, and fisheries reforms. This Report is intended to provide a strong legal and institutional foundation for Blue Halo Curaçao by exploring how existing legal authorities contribute to ocean management in Curaçao and how they can be used to support the Curaçao Sustainable Ocean Policy.

A wide range of laws and policies govern or could affect the use of the ocean in Curaçao. While some laws have been updated to reflect changes occurring after Curaçao became a country in 2010, many key laws are much older and yet others exist only in draft. After providing an introduction to Curaçao’s legal system, this Report surveys the applicable laws, regulations, and policies that are most relevant to ocean policy, with a particular focus on fisheries and laws relevant to coastal zoning. The Report divides the laws into the following broad categories:

- Fisheries;
- Protected Areas Authority;
- Planning and Land Use;
- Maritime and Shipping;
- Protection of Fauna and Flora;
- Pollution and Dumping; and
- Offshore Industry: Oil, Gas, Energy, and Mining.

Within each of these areas, the report identifies key laws and institutions and discusses how these institutions operate as expressed by the law and, where known, in practice. Many of these authorities and institutions are listed in Table 1. The Report characterizes each relevant legal authority for its content and implementation.

**Table 1. Selected authorities and institutions for Curaçao ocean management.**

Topic	Key Law(s)	Primary Implementing Entity
<b>Fisheries</b>	— National Fisheries Ordinance (NFO)	MEO
	— Fisheries Ordinance Curaçao (FOC)	GMN/AVB
	— Reef Management Ordinance (RMO)	GMN/AVB
<b>Protected Areas Authority</b>	— National Ordinance on Nature Conservation and Protection 1998	GMN
	— Maritime Ordinance 2007	Government
	— Island Development Plan 1995 (EOP)	VVRP



Topic	Key Law(s)	Primary Implementing Entity
<b>Planning and Land Use</b>	— National Ordinance on Planning and Zoning 1976 (LGRO)	VVRP
	— Island Ordinance on Planning and Zoning (EROC)	VVRP
	— Island Development Plan 1995 (EOP)	VVRP
<b>Maritime and Shipping</b>	— Maritime Ordinance 2007	VVRP, GMN
<b>Protection of Fauna and Flora</b>	— Reef Management Ordinance (RMO)	GMN
	— National Ordinance on Nature Conservation and Protection 1998	GMN
	— Maritime Ordinance 2007	VVRP
<b>Pollution and Dumping</b>	— Nuisance Ordinance Curaçao 1994	GMN
	— Public Order Ordinance 2015	VVRP, GMN
<b>Offshore Industry: Oil, Gas, Energy, and Mining</b>	— Maritime Ordinance 2007	VVRP

## Recommended Approach

Based on the analysis and characterization of the relevant Curaçao legal and institutional framework, the authors in Chapter 10 identify policy pathways that could be used to achieve a Curaçao Sustainable Ocean Policy by way of existing and new laws, decrees, and management tools. These pathways are intended to be combined with socioeconomic and scientific assessments undertaken by other partners in the BHC Initiative to provide a basis for determining an environmentally, economically, and socially sound approach to development and implementation of the Curaçao Sustainable Ocean Policy.



# 1 Introduction

## 1.1 Purpose of report

This Report presents an overview and assessment of Curaçao's existing laws and institutions that inform and could support the design and implementation of a comprehensive ocean zoning and management system in the country as part of the Blue Halo Initiative.<sup>1</sup>

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

## 1.2 Overview of Blue Halo Curaçao

Blue Halo Curaçao (BHC) is an initiative to develop comprehensive management of Curaçao's marine environment, including sanctuary zones, with an emphasis on fisheries management and water pollution.

The BHC planning process is organized around seven principles:

1. Plan with the goal of sustainable, profitable, and enjoyable use of ocean resources, for next year and for future generations;
2. Plan with a focus on increasing fisheries' catches and preserving traditional uses of coastal areas;
3. Plan with the premise that a zoning plan that is 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 for prosecuting and penalizing infractions;
6. Plan with an aim of long-term financial independence and viability of implementation; and
7. Plan with the awareness that revisions and adjustments may be needed over time to maximize effectiveness.

Blue Halo Curaçao is an ongoing collaboration among the Government of Curaçao, Waitt Institute, local stakeholders, and other project partners, in accordance with a Memorandum of

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<sup>1</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 and complete as of the date of publication. 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 person or entity.



Understanding detailing the process.<sup>2</sup> BHC is focused on developing a new system for management of Curaçao's ocean waters.

### 1.3 Description of ocean zoning

Comprehensive ocean management can be achieved with the development and implementation of marine spatial planning and ocean zoning. Marine spatial planning is a public process that organizes human activity in marine areas in time and space to meet environmental, economic, and social objectives.<sup>3</sup> This planning process can result in 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 Curaçao include:

- the governmental bodies with legal authority to develop, implement, and enforce an ocean zoning plan, including relevant sector-specific activities (e.g., fisheries, shipping, recreation, water pollution control), 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 Curaçao (e.g., public approval requirements); and
- the utility of existing marine designations (e.g., national parks) as elements of a comprehensive zoning plan.

The legal framework also is important for understanding financial aspects of ocean zoning. This Report addresses each of these issues and is intended to be a legal resource that the Curaçao 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 other nations in the Caribbean beyond Curaçao when evaluating their own legal authority for marine spatial planning, ocean zoning, and fisheries management—especially for the islands of the Dutch Caribbean.

### 1.4 Summary of report contents

This Report provides an overview of the Curaçao legal system. It then introduces the substantive and procedural laws governing or otherwise relevant to the marine environment in Curaçao, including those covering fisheries, protected areas, pollution and dumping, planning, and other topics. With this background, the Report concludes with a discussion—from a legal and institutional perspective—of various policy pathways for advancing ocean zoning and management in Curaçao.

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<sup>2</sup> Memorandum of Understanding Among the Government of Curaçao and the Waitt Institute to Undertake the Blue Halo Initiative Process, at <http://curacao.waittinstitute.org/wp-content/uploads/2013/10/Blue-Halo-Cura%C3%A7ao-MOU-final-23Feb2015-Unicode-Encoding-Conflict.pdf>.

<sup>3</sup> Ehler, Charles, and Fanny Douvere. *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).



## 2 Overview

This section summarizes the history and structure of the government of Curaçao. In addition, it describes the relationship between Curaçao and the Kingdom of the Netherlands and provides an overview of ocean jurisdiction.

### 2.1 Geography and history

Curaçao is comprised of two islands—Curaçao and the largely uninhabited Klein Curaçao (“little Curaçao”)—located on the South American continental shelf approximately 30 nautical miles (nm) off the coast of Venezuela (Figure 1). Curaçao is located between Bonaire to the east and Aruba to the west—both of which are parts of the Kingdom of the Netherlands. Curaçao has a substantial population, with 156,971 inhabiting its 444 km<sup>2</sup> area—the vast majority living in and around the capital of Willemstad.<sup>4</sup> Curaçao recognizes four official languages—Dutch, Papiamentu, English, and Spanish. Legal dealings are conducted in Dutch.

European contact with Curaçao dates to 1499, when the island was inhabited by Arawak Indians. European colonization of Curaçao dates to 1634, after the Netherlands achieved independence from Spain. While control over Curaçao shifted over time, it has been under Dutch control since 1815.

Private plantation lands, an “inheritance of the slavery era,” are located throughout Curaçao, and many of them line the island’s coasts. Many of these lands have remained in the same families and have been referred to as “islands within an island.”<sup>5</sup> As a result of these landholdings, only a very limited amount of coastline is readily accessible to the public. All sea-dependent activities tend to be compressed in the very limited remaining space along the island’s coast—a reality that can increase conflict and concentrate pollution loads and other environmental impacts.

Nevertheless, some of these private lands are publicly accessible—for example, certain 18th and 19th century plantation houses (*landhuizen*) are popular tourist destinations.<sup>6</sup> Local NGO Uniek Curaçao has entered into agreements to handle daily management and maintenance of certain properties to protect them and to provide for free local access.<sup>7</sup> And plantations in West Curaçao are potential candidates for UNESCO World Heritage recognition.<sup>8</sup> Yet another legacy of the plantation system in Curaçao is its influence on local place names; indeed, Curaçao’s Central Bureau of Statistics has divided the island into geozones (see Figure 2), some of which draw on the island’s plantation history.

Curaçao has historically been prized for its natural deep-water harbor, which has supported an international shipping industry—now including a substantial vessel registry. Other economic

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<sup>4</sup> Central Bureau of Statistics Curaçao, *Statistical Orientation Curaçao 2015* 5, 10 (2015).

<sup>5</sup> Personal communications (on file with ELI).

<sup>6</sup> See <http://www.curaçao.com/en/directory/do/landhuizen/>.

<sup>7</sup> Personal communication (on file with ELI).

<sup>8</sup> See U.N. Educational, Scientific and Cultural Organization (UNESCO), “Plantations in West Curaçao,” Tentative Lists, at <http://whc.unesco.org/en/tentativelists/5632/>; “Old Plantations In Curaçao May Become World Heritage,” *Curaçao Chronicle*, May 25, 2015.



activities, such as salt mining, were eclipsed in the twentieth century after development of an oil refinery to process crude from nearby Venezuela. While the profitability of the petroleum services sector has declined more recently, the industry remains important. Other economic drivers include financial services and, notably, tourism. Curaçao is an incredibly popular tourist destination, with over 200 cruise ship visits per year, as well as substantial arrivals by air.<sup>9</sup> Curaçao's ocean environment is critical to tourism, with beach recreation and dive tourism forming a substantial portion of the tourism sector.<sup>10</sup> Fisheries employs a small number of full-time fishermen with many others who fish part time.<sup>11</sup> While it accounts for less than 1% of the gross domestic product, it is important culturally as the result of a strong fishing tradition and also serves as a local food source.<sup>12</sup>



Figure 1. Map of Curaçao.<sup>13</sup>

<sup>9</sup> Central Bureau of Statistics Curaçao, *Statistical Orientation Curaçao 2015* (2015).

<sup>10</sup> Caribbean Export Development Agency, *Doing Business with Curaçao* (2007), at [http://www.carib-export.com/obic/documents/Doing\\_Business\\_With\\_Curacao.pdf](http://www.carib-export.com/obic/documents/Doing_Business_With_Curacao.pdf).

<sup>11</sup> Personal communication with Faisal Dilrosun, Feb. 2, 2016 (on file with ELI).

<sup>12</sup> *Id.*

<sup>13</sup> Central Bureau of Statistics Curaçao, *Statistical Orientation Curaçao 2015* (2015).



Figure 2. Curaçao Geozones.<sup>14</sup>

## 2.2 Ocean jurisdiction and boundary delimitation

Curaçao's claims of ocean jurisdiction are consistent with international norms and the United Nations Convention on the Law of the Sea. The claims are primarily established by Kingdom Acts applicable to the former Netherlands Antilles, as modified to reflect Curaçao's constituent country status. Together, these authorities create:

- a territorial sea that extends 12 nautical miles (nm) from shore;<sup>15</sup>
- a contiguous zone from 12 nm to 24 nm from shore;<sup>16</sup> and
- an exclusive economic zone (EEZ) from 12 nm to 200 nm from shore (and as limited by the boundaries of adjacent nations).<sup>17</sup>

<sup>14</sup> Map of Curaçao Geozones, Public Works (2016).

<sup>15</sup> Territorial Sea of the Kingdom in the Netherlands Antilles (Extension) Act 1985 [*Rijkswet uitbreiding territoriale zee van het Koninkrijk*], Stbmomont. 1985, 130, at [http://wetten.overheid.nl/BWBR0003749/geldigheidsdatum\\_20-10-2015](http://wetten.overheid.nl/BWBR0003749/geldigheidsdatum_20-10-2015); Decree of 23 October 1985 governing implementation of section 1 of the Territorial Sea of the Kingdom in the Netherlands Antilles (Extension) Act (establishing closing lines).

<sup>16</sup> Contiguous Zone (Establishment) Act 2005 [*Rijkswet instelling aansluitende zone*], Stb. 2005, 387, at [http://wetten.overheid.nl/BWBR0018265/geldigheidsdatum\\_20-10-2015](http://wetten.overheid.nl/BWBR0018265/geldigheidsdatum_20-10-2015); Contiguous Zone (Demarcation) Decree, 2006 [*Besluit grenzen aansluitende zone*], Stb. 2006, 339, at [http://wetten.overheid.nl/BWBR0019966/geldigheidsdatum\\_20-10-2015](http://wetten.overheid.nl/BWBR0019966/geldigheidsdatum_20-10-2015).



The Kingdom has sovereign rights in the EEZ for the purpose of exploring and exploiting, conserving, and managing the living and non-living natural resources of the waters superjacent to the seabed and of the seabed and its subsoil; including energy produced from water, currents, and wind. The Kingdom also has jurisdiction over the establishment and use of artificial islands, installations and structures, marine scientific research, and the protection and preservation of the marine environment. The EEZ declaration took effect as to Curaçao as a constituent country pursuant to the Royal Decree of 10 June 2010 that implemented Articles 2 and 4 of the 1999 Kingdom Act by setting the outer limits of the EEZ for the part of the Kingdom situated in the Caribbean.<sup>18</sup>

This EEZ declaration for Curaçao was concurrent with issuance of a joint management plan for the Dutch Caribbean EEZ based on a consensus that, “despite a fragmented Dutch Caribbean, the Dutch Caribbean EEZ should always be integrally managed.”<sup>19</sup> The management plan:

outlines the purposes and manner in which the Caribbean Exclusive Economic Zone and Saba Bank in particular may be used in a sustainable manner, based on a shared vision and common set of goals. It outlines the management objectives, as well as key policies, and strategies with which to achieve sustainable management. It also addresses the administrative structure, resource use, financial support, key information needs, and action points most urgently required to set sustainable management in place.<sup>20</sup>

Within the agreement, the parties resolved to, among other things, create an EEZ marine resources committee—the Dutch Caribbean Committee on Marine Biodiversity and Fisheries (CMBF)—to guide the process of management implementation.<sup>21</sup> Curaçao participates in this Committee—notably, the Minister of GMN used a meeting to announce the signing of the Memorandum of Agreement for joint, coordinated management of the biodiversity and fisheries in the Dutch Caribbean EEZ.<sup>22</sup> The Committee meets twice annually.<sup>23</sup>

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<sup>17</sup> Exclusive Economic Zone (Establishment) Act 1999 [*Rijkswet instelling exclusieve economische zone*], Stb. 1999, 281; Decree establishing the limits of the exclusive economic zone of the Caribbean part of the Kingdom of the Netherlands, June 10, 2010; P.B. 2014, No. 14 (amending 1999 act as applied to Curaçao).

<sup>18</sup> Decree of 10 June 2010 determining the outer limit of the exclusive economic zone of the part of the Kingdom of the Netherlands situated in the Caribbean (Exclusive Economic Zone of the Part of the Kingdom situated in the Caribbean (Outer Limits) Decree) [*Besluit van 10 juni 2010, houdende vaststelling van de grenzen van de exclusieve economische zone van het Caribische deel van het Koninkrijk der Nederlanden (Besluit grenzen Caribische exclusieve economische zone)*], Stb. 2010, 277.

<sup>19</sup> H.W.G. Meesters, D.M.E. Slijkerman, M. de Graaf, and A.O. Debrot, “Management plan for the natural resources of the EEZ of the Dutch Caribbean,” Report no. C100/10, *IMARES*, 10-10-2010.

<sup>20</sup> *Id.* at 5. According to the agreement, “the EEZ starts at the outside boundary of the Territorial Waters, 12 nautical miles out from the coastal baseline, and extends to 200 nautical miles (370.4 km) from the coastal baseline of the Territorial waters. In the case of adjoining states, the location of maritime boundaries of the EEZ also depend[s] on boundary agreements reached with the bordering states (or islands).” *Id.* at 14.

<sup>21</sup> *Id.* at 5.

<sup>22</sup> Paul Hoetjes, “EEZ management on Curaçao,” *BioNews* 4, March 2013, at <http://www.dcnanature.org/wp-content/uploads/2013/04/BioNews-March-2013.pdf>.



Curaçao also continues to claim a 200 nm “fisheries zone” under a 1977 law applicable to the Netherlands Antilles.<sup>24</sup>

Delimitation of Curaçao’s ocean boundaries is largely, but not entirely, complete. The boundaries within the Kingdom of the Netherlands—that is, with Aruba and Bonaire—have been demarcated by Kingdom Acts of 1985 and 2010, respectively.<sup>25</sup> Curaçao has international boundaries with Venezuela and the Dominican Republic, demarcation of which is the responsibility of the Kingdom of the Netherlands. The boundary between Curaçao and Venezuela was established by treaty between the Kingdom and the Republic of Venezuela in 1978.<sup>26</sup> Curaçao’s northern boundary is with the Dominican Republic but is not set out by treaty. Curaçao law designates this boundary at the equidistance line between Curaçao and the Dominican Republic.<sup>27</sup> See Figure 3.

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<sup>23</sup> Paul Hoetjes, “8th meeting of the Dutch Caribbean Committee for Marine Biodiversity and Fisheries,” *BioNews* 6, March 2016, at <http://www.dcnanature.org/wp-content/uploads/2016/05/BioNews-23-lo-res.pdf>.

<sup>24</sup> This despite a 2014 Kingdom Act revoking the zone for all countries in the Kingdom. See Kingdom of the Netherlands, Enabling Act Setting Fisheries Zone, June 8, 1977; P.B. 2014, No. 14 (repealing fisheries zone as applied to Curaçao). Curaçao has not yet consented to having the Act be implemented on its behalf. Personal communication (on file with ELI). The fisheries zone is otherwise no longer effective from the perspective of international or domestic law, except that some laws continue to cite it to define the geographic scope of their authority, including the National Fisheries Ordinance and the Ordinance for Conservation and Protection of Nature. National Fisheries Ordinance art. 1 (defining “fisheries zone” with reference to 1977 Kingdom Act).

<sup>25</sup> Act on the Demarcation of the Sea Boundaries between Curaçao and Bonaire, and between Sint Maarten and Saba, July 7, 2010; Maritime Boundary between the Netherlands Antilles and Aruba (Establishment) Act, December 12, 1985.

<sup>26</sup> Boundary Delimitation Treaty between the Republic of Venezuela and the Kingdom of the Netherlands, 31 March 1978. This treaty further addresses cooperation between Venezuela and the Kingdom on matters such as marine environment conservation, pollution, and oil spills—and calls for coordination of legislative and regulatory efforts on conservation, insofar as possible. *Id.* arts. 9-10. Such cooperation may be particularly important in that currents can bring marine debris north from Venezuela to Curaçao. Personal communication.

<sup>27</sup> See Decree establishing the limits of the exclusive economic zone of the Caribbean part of the Kingdom of the Netherlands, June 10, 2010, art. 2.2.

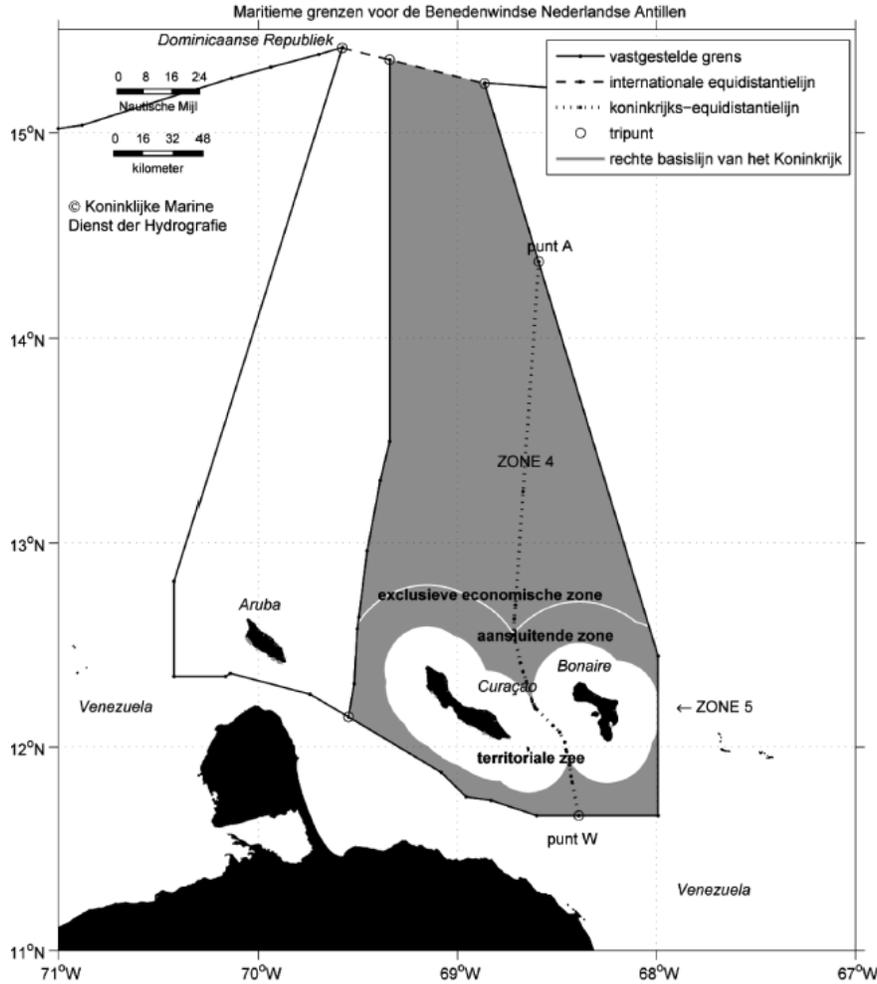


Figure 3. Curaçao ocean jurisdictional claims and boundaries.

### 2.3 Government

From 1815 until 1948, Curaçao was held by the Kingdom of the Netherlands as a colony. Following World War II, the Netherlands took steps to increase the autonomy of its Caribbean and South American territories. In 1948, it created the Netherlands Antilles, which included all of the islands of the Dutch Caribbean.<sup>28</sup> The 1954 Charter for the Kingdom of the Netherlands (Kingdom Charter, *Statuut voor het Koninkrijk der Nederlanden*)<sup>29</sup> established the Netherlands Antilles as a constituent country within the realm, with independent authority and autonomy as set out in subsidiary authorities.<sup>30</sup>

<sup>28</sup> Aruba, Bonaire, Curaçao, Sint Maarten, Saba, and Sint Eustatius. Suriname was not included in the Netherlands Antilles.

<sup>29</sup> *Statuut voor het Koninkrijk der Nederlanden* (hereinafter *Kingdom Charter*), at [http://wetten.overheid.nl/BWBR0002154/geldigheidsdatum\\_08-01-2016](http://wetten.overheid.nl/BWBR0002154/geldigheidsdatum_08-01-2016); <http://www.arubaforeignaffairs.com/afa/readBlob.do?id=704> (2002 version).

<sup>30</sup> Key subsidiary authorities included the Kingdom-level Island Regulation for the Netherlands Antilles, *Koninklijk Besluit van 3 Maart 1951, houdende de eilandenregeling Nederlandse Antillen*, at



Curaçao remained a part of the Netherlands Antilles until 2010. Between 1954 and 2010, the Netherlands Antilles experienced substantial changes and debates about the future governance of the Antilles as a whole and each of the constituent islands. In 1986, Aruba was elevated to constituent country status, but agreement on Curaçao's future was not reached until after a 2005 referendum in favor of country status. Following this referendum and others held on other islands of the Netherlands Antilles, the parties agreed that Curaçao and Sint Maarten would take on constituent country status within the sovereign state of the Kingdom of the Netherlands, while Bonaire, Saba, and Sint Eustatius would become special municipalities of the country of the Netherlands.<sup>31</sup> Curaçao was elevated to a constituent country within the realm upon adoption of the amended Kingdom Charter on October 10, 2010 (often referred to as "10/10/10").<sup>32</sup>

Curaçao's change in status to become a constituent country has important ramifications for its legal and institutional framework and has created a pressing need to harmonize legal authorities. As the 10/10/10 transition is less than six years in the making, there remains considerable work to be done to create a cohesive, integrated, and efficient legal and institutional system. Despite the challenges, this reality provides an opportune time to design and propose new and improved systems of management for ocean resources while at the same time addressing harmonization.

### 2.3.1 Kingdom governance

The Kingdom Charter is the ultimate source of authority for the government of Curaçao and establishes institutions to govern the Kingdom, which are extensions of institutions governing the country of the Netherlands. The structure and function of these institutions are regulated by the Constitution of the Netherlands were not spelled out in the Kingdom Charter.<sup>33</sup>

#### 2.3.1.1 Institutions

The executive authority of the Kingdom is lodged in the King, as head of state, and the Council of Ministers of the Kingdom (*Ministerraad van het Koninkrijk*), which together constitute the Government. The Council of Ministers of the Kingdom is composed of the Ministers of the country of the Netherlands as well as one Minister Plenipotentiary appointed by each of Aruba, Curaçao, and Sint Maarten.<sup>34</sup> Ministers Plenipotentiary participate in the Council with regard to any matter affecting the country in question. Curaçao may also be represented by a Minister with an advisory

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[http://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Historie/Nederlandse%20Antillen/7402/7402\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Historie/Nederlandse%20Antillen/7402/7402_1.html), and the Constitution of the Netherlands Antilles, as amended. *Besluit van 29 Maart 1955, houdende het in overeenstemming brengen van de Landsregeling Nederlandse Antillen met de nieuwe rechtsorde*, at [http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Curaçao/144215/144215\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/xhtmloutput/historie/Curaçao/144215/144215_1.html).

<sup>31</sup> See Library of Congress, <http://www.loc.gov/law/foreign-news/article/netherlands-netherlands-antilles-constitutional-reform-for-netherlands-antilles-takes-effect/>. Bonaire, Saba, and Sint Eustatius, as public bodies of the Netherlands, are now known as the BES islands.

<sup>32</sup> Decree of January 12, 2011 for promulgation of the decision of November 1, 2010, on the publication of the text of the Charter for the Kingdom of the Netherlands. P.B. 2011, 4, at <http://archivo.parlamento.cw/downloads/11315.pdf> (publishing revised Kingdom Charter in Curaçao).

<sup>33</sup> For more on the Charter, see generally W.W. Timmers, *Lexplicatie Statuut voor het Koninkrijk der Nederlande*, Wolter Kluwers (2012).

<sup>34</sup> Kingdom Charter art. 7. Curaçao has appointed a Minister Plenipotentiary. See Curaçao's New Government, *Curaçao Chronicle*, June 7, 2013, at <http://curacaochronicle.com/main/curacaos-new-government/>.



vote to participate in particular deliberations of the Council of Ministers and its permanent bodies and special committees.<sup>35</sup>

The States-General of the Netherlands (*Staten-Generaal*) is the legislative authority for the Kingdom. The States-General of the Kingdom is the same as the States-General of the country of the Netherlands, with advisory roles (but not direct voting authority) for Ministers Plenipotentiary and other special delegates from the constituent countries, including Curaçao. The Council of State of the Kingdom (*Raad van State*) advises the States-General on proposed legislation. The Council is composed of the Council of State for the country of the Netherlands, supplemented by members appointed by the King on request to represent the other constituent countries, including Curaçao.<sup>36</sup>

The judicial function of the Kingdom is carried out by the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*).<sup>37</sup> The Supreme Court is the same as that for the country of the Netherlands, except that members may be added to the Court by Kingdom Act upon request by a constituent country.<sup>38</sup> The Supreme Court serves as the highest court for penal cases and civil law cases originating in Curaçao.<sup>39</sup>

### 2.3.1.2 Scope of Authority

The Kingdom of the Netherlands exercises limited power over its constituent countries. That is, Curaçao is internally self-governing with respect to all issues other than specific topics reserved to the Kingdom in its sovereign capacity. These “kingdom affairs” notably include, among other subjects:

- defense;
- Netherlands nationality;
- foreign relations;
- “the nationality of ships and the imposition of requirements regarding safety and navigation of seagoing vessels flying the flag of the Kingdom, with the exception of sailing ships;” and
- legal certainty and good governance.<sup>40</sup>

The Charter contains some specifics on the implementation of Kingdom affairs, including defense<sup>41</sup> and foreign affairs.<sup>42</sup> Provisions regarding these and other Kingdom affairs may be set out in a Kingdom Act (*rijkswet*) or an order in council (*algemene maatregel van rijksbestuur*).<sup>43</sup> Kingdom Acts are enacted by the States-General for the Kingdom. Bills for Kingdom Acts must be transmitted

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<sup>35</sup> Kingdom Charter art. 10.

<sup>36</sup> *Id.* art. 13. Research indicates no record that Curaçao has requested a member of the Council of State.

<sup>37</sup> *Id.* art. 23. For additional information about the Curaçao judiciary, see also *infra* notes 74-78 and accompanying text.

<sup>38</sup> Kingdom Charter art. 23.

<sup>39</sup> Cassation Regulations of the Netherlands Antilles and Aruba [*Cassatieregeling Nederlandse Antillen en Aruba*], 20 July 1961, Stb. 1961, 212. Administrative law cases are resolved in first instance and on appeal in Curaçao. Personal communication (on file with ELI).

<sup>40</sup> Kingdom Charter arts. 3, 43(2).

<sup>41</sup> *Id.* arts. 30-35 (contributions to and role of armed forces of the Kingdom).

<sup>42</sup> *Id.* arts. 24-28.

<sup>43</sup> *Id.* art. 14. An order in council may also be referred to as a Kingdom Decree in English.



to the Curaçao legislature for review prior to consideration, and the Minister Plenipotentiary (or another special delegate) may request that bills be introduced for consideration; attend debates; propose amendments; and request postponement of voting.<sup>44</sup> Orders in council are established by Royal Decree to regulate matters not to be effected solely by Kingdom Act.<sup>45</sup>

With regard to foreign relations, Curaçao must be involved at the earliest stages of preparation of international agreements that will affect it, as well as in the implementation of such agreements by regulation or other measures.<sup>46</sup> Curaçao may also accede to membership in international organizations.<sup>47</sup> However, Curaçao is not authorized to enter into treaties on its own. Instead, the Kingdom of the Netherlands enters into treaties on its behalf. In addition, the Kingdom can exclude application of a treaty to Curaçao when relevant to do so. Treaties and conventions that formerly applied to the Netherlands Antilles remain applicable to Curaçao.<sup>48</sup>

Key conventions and protocols applicable to marine management that have been ratified by or acceded to by the Kingdom on behalf of Curaçao are detailed in Table 2. These instruments—which cover topics such as nature and environmental protection, species conservation, oil spill and pollution prevention, and maritime matters—are discussed later in this Report.

Table 2. Key international instruments applicable to marine environmental management in Curaçao.

Brief Title	Full Title	Implemented in Curaçao by
<b>Cartagena Convention</b>	Convention for the Protection and Development of the Marine Environment in the Wider Caribbean Region	Maritime Ordinance 2007; Ordinance on Nature Conservation and Protection 1998
<b>SPAW Protocol</b>	Specially Protected Areas and Wildlife Protocol (to Cartagena Convention)	Maritime Ordinance 2007; Ordinance on Nature Conservation and Protection 1998
<b>CBD</b>	Convention on Biological Diversity	Ordinance on Nature Conservation and Protection 1998
<b>Ramsar Convention</b>	Convention on Wetlands of International Importance	Ordinance on Nature Conservation and Protection 1998
<b>Sea Turtle Convention</b>	Inter-American Convention for the Protection and Conservation of Sea Turtles	Ordinance on Nature Conservation and Protection 1998
<b>Bonn Convention</b>	Convention on Migratory Species of Wild Animals	Ordinance on Nature Conservation and Protection 1998
<b>CITES</b>	Convention on International Trade in Endangered Species of Wild Flora and Fauna	Ordinance on Nature Conservation and Protection 1998

<sup>44</sup> Kingdom Charter arts. 15-18.

<sup>45</sup> Kingdom Constitution art. 89(1); Kingdom Charter art. 14.

<sup>46</sup> Kingdom Charter art. 27(1).

<sup>47</sup> *Id.* arts. 27-28.

<sup>48</sup> See The Directorate of Shipping and Maritime Affairs on behalf of the Government of Curaçao, “Notice to Shipping,” Oct. 5, 2010, Willemstad, Curaçao, at [http://www1.veristar.com/veristar/dps\\_info.nsf/0/ebc4c58f47f6ada2c12577c0003233d1/\\$FILE/Notice%20to%20Shipping.pdf](http://www1.veristar.com/veristar/dps_info.nsf/0/ebc4c58f47f6ada2c12577c0003233d1/$FILE/Notice%20to%20Shipping.pdf).



Brief Title	Full Title	Implemented in Curaçao by
<b>Oil Spill Protocol</b>	Protocol (to Cartagena Convention) Concerning Co-operation in Combating Oil Spills in the Wider Caribbean Region	No law identified
<b>OPRC</b>	International Convention on Oil Pollution Preparedness, Response and Co-operation	Maritime Ordinance 2007
<b>MARPOL</b>	International Convention for the Prevention of Pollution from Ships	Maritime Ordinance 2007
<b>London Convention</b>	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (and 1996 Protocol)	Ordinance on Prevention of Pollution from Ships 1993; Maritime Ordinance 2007
<b>UNCLOS</b>	UN Convention on the Law of the Sea	Maritime Ordinance 2007

The Kingdom Charter also allows the constituent countries to consult on matters that interest two or more of them and to make arrangements between and among themselves.<sup>49</sup> Common matters include, for example, matters linked to the countries' judiciary, coast guard, and shipping, each of which is discussed below.<sup>50</sup>

### 2.3.2 Curaçao affairs

The 2010 Constitution of Curaçao (*Staatsregeling van Curaçao*), as authorized by the Kingdom Charter, establishes Curaçao as an autonomous, democratic state.<sup>51</sup> The Constitution provides for the structure and operation of Curaçao's executive, legislative, and judicial institutions and ensures the rights and freedoms of its citizens.<sup>52</sup> The Constitution is supplemented by a package of reforms that took effect with the Constitution and transitioned Curaçao from membership in the Netherlands Antilles to constituent country status.

Under both the Kingdom Charter and Constitution, the Government of Curaçao is composed of the King, who is represented in Curaçao by a Governor, and by the Council of Ministers (discussed further below).<sup>53</sup>

Curaçao's unicameral Parliament (*Staten van Curaçao*) is the country's legislative body and consists of 21 members.<sup>54</sup> It is led by a Chairman elected from among their number, each of whom is directly elected to a four-year term.<sup>55</sup> Members of Parliament cannot also serve as ministers.<sup>56</sup> Decisions are usually made by a majority vote.<sup>57</sup>

<sup>49</sup> Kingdom Constitution art. 38(1).

<sup>50</sup> *Id.* art. 37.

<sup>51</sup> Kingdom Charter art. 42; *Eilandsverordening ter vaststelling van het ontwerp voor de Staatsregeling van Curaçao*, A.B. 2010 no. 86.

<sup>52</sup> Curaçao Constitution Order of 2010.

<sup>53</sup> Kingdom Charter, P.B. 2011 No. 4, art. 2, Curaçao Constitution Art. 28; Personal communication with Gisetete Seferina, Feb. 2, 2016 (on file with ELI).

<sup>54</sup> Curaçao Constitution arts. 39-40. In Papiamentu, *Parlamentu di Kòrsou*. Members of Parliament are still sometimes referred to as senators. The Second Parliament of Curaçao is now in place; elections for the Third Parliament are scheduled for September 2016.

<sup>55</sup> Curaçao Constitution arts. 41, 50.



The Curaçao Council of Ministers (*Raad van Ministers*) includes each of the up to nine ministers, led by the Prime Minister.<sup>58</sup> Importantly, ministers are individually accountable to Parliament.<sup>59</sup> The Ministries are established by the Administrative Organization Ordinance 2010.<sup>60</sup> Figure 4 provides an overview of Curaçao's nine Ministries, the key sectors contained within each one, and a snapshot of each Ministry's major departments and areas of responsibility.

Figure 4. Curaçao Ministry organization & sectors.

### **Ministry of Health, Environment, and Nature**

*Ministerie van Gezondheid, Milieu en Natuur (GMN)*

*Ministerio di Salubridat Públiko, Medio Ambiente i Naturalesa*

- Health Sector
- Agriculture, Environment, & Nature Sector

Housed within this Ministry: the Division of Medicine and Health Affairs, the Division of Veterinary Affairs, the Division of Agriculture and Fisheries Management, the Division of Environment and Nature Management, and the Public Health Institute of Curaçao. Inspectors are also housed within this Ministry.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/A331ADB0E4ACAD8A0425785A00648B72?opendocument>.

### **Ministry of Justice**

*Ministerie van Justitie*

*Ministerio di Hustisia*

- Sector for the Protection of Youth & Rehabilitation
- Sector for Law Enforcement, Public Order, & Security

Housed within this Ministry: the Curaçao Police Force, the Curaçao Fire Department, Inspection and Security, the New Immigration Organization of Curaçao, the Council for Child Custody, the Detention Center, Judicial Youth Facilities of Curaçao, the Curaçao Institute for Rehabilitation, the Institute for Family Guardianship, the Training Institute for Law Enforcement and Security, the Coast Guard, the National Bureau of Investigation, the General Prosecutors' Office, the Office of the Attorney General, and the Court of Justice.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/5848C700E3240BDF0425785B0051378B?opendocument>.

### **Ministry of Finance**

*Ministerie van Financiën*

*Ministerio di Finansa*

- Sector for Financial Policy and Budget Management
- Sector for Tax Affairs
- Policy Organization

Housed within this Ministry: Budget Affairs, AO/IC, Treasury, Indirect Taxes, and Direct Taxes.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/7579084CB3CBC9FF0425785E006AD013?opendocument>.

<sup>56</sup> *Id.* art. 45.

<sup>57</sup> *Id.* art. 56(2). Certain votes, however, require a two-thirds majority.

<sup>58</sup> *Id.* art. 33.

<sup>59</sup> *See id.* art. 28(3).

<sup>60</sup> Administrative Organization Ordinance 2010 [*Landsverordening houdende vaststelling van de ambtelijke organisatie van het Land Curaçao op hoofdlijnen en de bijbehorende formatieplaatsen (Landsverordening ambtelijk bestuurlijke organisatie)*], A.B. 2010, no. 87, at <http://archivo.parlamento.cw/downloads/10298.pdf>.



### **Ministry of Economic Development**

*Ministerie van Economische Ontwikkeling (MEO)*

*Ministerio di Desaroyo Ekonómiko*

- Sector for Economic Development and Innovation (EO&I)
- Policy Sector (BO)
- Sector for International Economic Collaboration (BES)
- Sector for Entrepreneurial Support

Housed within this Ministry: the Division of Economic Inspections, and within that the Department of Standardization, as well as responsibility for tourism policy development.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/9352A70A534E27B20425785D006837DC?opendocument>.

### **Ministry of Administration, Planning, and Services**

*Ministerie van Bestuur, Planning & Dienstverlening*

*Ministerio di Maneho di Gobernashon, Planifikashon i Servisio Públiko*

- Sector for Planning and Information Technology
- Sector of Public Services

Housed within this Ministry: Division of Policy, Division of Human Resources and Organizational Development, and Division of Shared Services, as well as these organizations that provide direct services—Public Services, the Department of Permits, the National Archives, and the Central Bureau for Statistics.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/7A7862B53D5AC9A70425785D0069026C?opendocument>.

### **Ministry of Traffic, Transportation, and Spatial Planning**

*Ministerie van Verkeer, Vervoer & Ruimtelijke Planning (VVRP)*

*Ministerio di Tráfiko, Transporte i Planifikashon Urbano*

- Sector for Infrastructure and Spatial (Urban) Planning
- Sector for Traffic and Transport

Housed within this Ministry: the Department of Public Land Administration and Management, the Department of Urban Planning, the Department of Public Works, the Meteorological Department of Curaçao, the Department of Traffic and Transport, the Maritime Authority of Curaçao, and the Curaçao Civil Aviation Authority.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/C9216D00A82DB5300425785B004D0B0D?opendocument>.

### **Ministry of Education, Science, Culture, and Sport**

*Ministerie van Onderwijs, Wetenschap, Cultuur en Sport*

*Ministerio di Enseñansa, Siensia, Kultura i Deporte*

- Culture and Sport Sector
- Education and Science Sector

Housed within this Ministry: the Directorate for Education and Science, the Center for Expertise, Examination, and Accreditation, the Directorate for Culture and Sports, the Public School Boards, Secretariat for the National Commission of UNESCO, Social Education Curaçao, and the Inspector General for Education.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/A352B659097684CC0425785D00688FF7?opendocument>.



### Ministry of Social Development, Labour, and Welfare

*Ministerie van Sociale Ontwikkeling, Arbeid en Welzijn*

*Ministerio di Desaroyo Sosial, Labor i Bienestar*

- Sector for Family, Youth, and Social Development
- Labor Sector

Housed within this Ministry: the State Mediator, Labor Inspections and Safety, and Neighborhood Houses.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/8AC670A23E76D9700425785D006A6503?opendocument>.

### Ministry of General Affairs

*Ministerie van Algemene Zaken*

*Ministerio di Asuntunan General*

- Sector for International Affairs and Collaboration
- Sector for General Affairs

Housed within this Ministry: the Directorate of International Relations, Directorate for Constitutional Affairs, Directorate of Communications and Information, Division of Judicial and Legal Affairs, Curaçao Security Services, the Directorate of Risk Assessment and Emergency Management, and the Minister Plenipotentiary.

Details (in Papiamentu) at

<http://gobiernu.cw/web/site.nsf/web/D894ABC275D8FF000425785D0066EF09?opendocument>.

The Constitution of Curaçao also establishes an Advisory Council,<sup>61</sup> which is analogous to the Council of State for the Kingdom and consists of the Governor (who is the formal head of the Council) and at most seven members appointed by national decree.<sup>62</sup> The Advisory Council must be consulted before laws are enacted (national ordinances and most national decrees) and provides its opinion on Kingdom Acts.

National ordinances (*landsverordeningen*) in Curaçao are enacted jointly by Parliament and the Government (i.e., the Ministers and the Governor) and may be initially proposed by either.<sup>63</sup> Ordinances must be published in the Official Journal before they take effect.<sup>64</sup> National decrees (*landsbesluiten*), which may, among other things, be used to implement ordinances, originate with Ministers and are signed by the Governor.<sup>65</sup> In addition, where authorized, individual ministers may issue ministerial regulations (*ministeriële regelingen*), which are typically of shorter duration.<sup>66</sup>

Because Curaçao became a constituent country only very recently, in 2010, Curaçao's present legal framework consists of a patchwork of pre- and post-2010 authorities. Sources of non-Kingdom

<sup>61</sup> Curaçao Constitution art. 64.

<sup>62</sup> *Id.* art. 65; Personal Communication (on file with ELI).

<sup>63</sup> See Curaçao Constitution arts. 74-80. As a practical matter, ordinances are usually proposed by Ministers. In some instances, ordinances are proposed by factions within Parliament.

<sup>64</sup> Curaçao Constitution art. 81.

<sup>65</sup> See *id.* art. 34. There are two kinds of national decree: a general affairs decree (which has general effect for the entire population), and a national decree that is not general in application—used, for example, to make an appointment. Only the first of these types of decrees is reviewed by the Advisory Council.

<sup>66</sup> Transparency International recently described the Curaçao legislative framework as “fairly strong,” noting that it was “further strengthened in the run-up to the constitutional changes in 2010.” Transparency International, *National Integrity System Assessment: Curaçao 2013* at 14 (2013). Transparency International has performed such assessments in over 100 countries.



Curaçao law prior to 2010 include ordinances and decrees of the Netherlands Antilles.<sup>67</sup> Additionally, Curaçao itself had authority to create law through Island Ordinances (*eilandsverordeningen*) and Curaçao Island Decrees (*eilandsbesluiten*), which were made by the Curaçao Island Council (*Eilandsraad Van Het Eilandgebied Curaçao*) and Executive Council (*Bestuurscollege Van Het Eilandgebied Curaçao*), respectively.<sup>68</sup>

As a legal matter, the applicability of pre-2010 law is determined by Island Ordinances that took effect along with the new Constitution.<sup>69</sup> These ordinances specify that, unless specifically excluded, all existing sources of law and all administrative entities remain in effect, subject to necessary amendments to reflect Curaçao's new status.<sup>70</sup> Also, pre-2010 legal references to “offices, agencies, institutions, [and] departments” of the Netherlands Antilles and the Island Territory of Curaçao are to be replaced with the corresponding, constitutionally established “offices, agencies, institutions, [and] departments” of the country Curaçao.<sup>71</sup> This means that the authority of the former Executive Council (*Bestuurscollege*)—which was assigned numerous and substantial implementing responsibilities under pre-2010 law, and is thus mentioned throughout this Report—has transferred to the Government of Curaçao through the Curaçao Council of Ministers and, more specifically, the Ministry with responsibility for the particular subject matter area.<sup>72</sup> Overall, there has been substantial confusion associated with determining precisely how a wide range of pre-2010 legal mandates and institutional competencies translate to post-2010 Curaçao. In particular, difficulties may arise where a pre-2010 law authorizes the issuance of further rules by new ordinance, decree, etc., and this authority is being invoked post-2010.<sup>73</sup>

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<sup>67</sup> The law of the Netherlands Antilles typically acquired the status of Kingdom Act or order in council for the Kingdom. See Kingdom Charter art. 57.

<sup>68</sup> See Royal Decree of 3 March 1951, laying down the Island Regulation of the Netherlands Antilles [*Eilandenregeling Nederlandse Antillen*], at [http://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Historie/Nederlandse%20Antillen/7402/7402\\_1.html](http://decentrale.regelgeving.overheid.nl/cvdr/XHTMLoutput/Historie/Nederlandse%20Antillen/7402/7402_1.html).

<sup>69</sup> Island Ordinance adopting various draft national ordinances country Curaçao [*Eilandsverordening vaststelling diverse ontwerp-landsverordeningen land Curaçao*], A.B. 2010 No. 87. This ordinance included a substantial number of appendices addressing a range of governance issues, including one governing the continuing applicability of Netherlands Antilles law. National Ordinance on general transitional arrangement legislation and administration [*Landsverordening algemene overgangsregeling wetgeving en bestuur*], A.B. 2010 No. 87, Bijlage A, at <http://archivo.parlamento.cw/downloads/10285.pdf>.

<sup>70</sup> National Ordinance on general transitional arrangement legislation and administration [*Landsverordening algemene overgangsregeling wetgeving en bestuur*], A.B. 2010 No. 87, Bijlage A. This appendix was subsequently amended by ordinance prior to constitutional reorganization as it did not include the “negative list” of ordinances and decrees not to be continued. Island Ordinance adopting the draft ordinance amending the General Transitional Arrangement Legislation and Administration Curaçao [*Eilandsverordening tot vaststelling van de ontwerp-landsverordening tot wijziging van de Algemene overgangsregeling wetgeving en bestuur Land Curaçao*], A.B. 2010, No. 102, at <http://archivo.parlamento.cw/downloads/11022.pdf>.

<sup>71</sup> *Id.* at app. art. 6(5).

<sup>72</sup> See *id.*; personal communication (on file with ELI). Similarly, references to the former Island Council now mean Parliament. However, the authors of this Report understand that these references are best interpreted on a case-by-case basis for their actual effect, post-2010.

<sup>73</sup> See, e.g., discussion at *infra* note 195 (discussing use of ordinance versus decree, post-2010, pursuant to the pre-2010 Fisheries Ordinance Curaçao).



The judicial system in Curaçao includes courts of first instance, appeal, and cassation.<sup>74</sup> The Curaçao Court of First Instance (*Gerecht in eerste aanleg van Curaçao*) is the first court to hear a case.<sup>75</sup> The Court of Justice of Aruba, Curaçao, Sint Maarten, and of Bonaire, Sint Eustatius and Saba (*Gemeenschappelijk Hof van Justitie van Aruba, Curaçao, Sint Maarten en van Bonaire, Sint Eustatius en Saba*) hears cases on appeal and some cases in the first instance.<sup>76</sup> Both of these courts are shared among all the Dutch Caribbean islands<sup>77</sup> and have jurisdiction over civil matters, criminal offenses, and administrative cases not otherwise entrusted to a specialty court.<sup>78</sup> Most cases may be appealed in cassation (i.e., reviewed on the law, not the facts) to the Supreme Court of the Netherlands.

Law enforcement in Curaçao is principally provided by the Curaçao Police Force and the Dutch Caribbean Coast Guard.<sup>79</sup> The Constitution provides that the Police Force is under the supervision of the Attorney General as head of the prosecution service.<sup>80</sup> The police force was established by Kingdom Act, which also establishes the powers of the police.<sup>81</sup> Criminal prosecutions are governed by the Code of Criminal Procedure (*Wetboek van Strafvordering*).<sup>82</sup> Curaçao adopted a new penal code, post-2010.<sup>83</sup>

The Coast Guard is organized by the Coast Guard Kingdom Act and jointly serves all of the islands of the Dutch Caribbean.<sup>84</sup> The management of the Coast Guard falls to the Minister of Defense of the

<sup>74</sup> Curaçao Constitution art. 98 & ch. 7. Transparency International's recent assessment characterized Curaçao's judiciary as being among the strongest institutions in the country. See supra note 66 at 15.

<sup>75</sup> Kingdom Act Common Court of Justice art. 4 [*Rijkswet Gemeenschappelijk Hof van Justitie*], 7 July 2010, at [http://wetten.overheid.nl/BWBR0028070/geldigheidsdatum\\_28-11-2012](http://wetten.overheid.nl/BWBR0028070/geldigheidsdatum_28-11-2012); Curaçao Constitution art. 98.

<sup>76</sup> *Id.*

<sup>77</sup> Kingdom Act Common Court of Justice, preamble (citing Article 38 of the Kingdom Charter); Curaçao Constitution art. 98 (directing Curaçao to adopt mutual arrangements for the judiciary).

<sup>78</sup> Curaçao Constitution art. 99. The Kingdom has also established special courts for particular types of cases, the details of which are beyond the scope of this Report. The courts cannot assess the compatibility of national ordinances with the Constitution except where fundamental rights are implicated; however, ordinances that are incompatible with the Constitution are invalid. *Id.* art. 101.

<sup>79</sup> Additionally, the Minister of Justice is authorized to appoint officials with "extraordinary" or "special" enforcement authority to supplement existing enforcement capacity. Personal communications (on file with ELI).

<sup>80</sup> *Id.* art. 107.

<sup>81</sup> Police Act of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba ch. 3 [*Rijkswet politie van Curaçao, van Sint Maarten en van Bonaire, Sint Eustatius en Saba*], Jaargange 2010 Nr. 337, at <https://zoek.officielebekendmakingen.nl/stb-2010-337.html>.

<sup>82</sup> Curaçao Constitution art. 108.

<sup>83</sup> National Ordinance containing provisions relating to the introduction of the new Penal Code (Ordinance Introduction of the Criminal Code) [*Invoeringslandsverordening Wetboek van Strafrecht*], P.B. 2011, Nos. 48, 49, 50. The authors note that many of the penalty provisions cited in this Report predated the new penal code; some may now require updating in light of its passage.

<sup>84</sup> Kingdom Act regulating the tasks and powers, as well as the management and policies of the Coast Guard for the Netherlands Antilles and Aruba (Coast Guard Kingdom Act for Aruba, Curaçao and Sint Maarten as well as for the public entities Bonaire, St. Eustatius and Saba 2008) [*Rijkswet houdende regeling van de taken en bevoegdheden, alsmede het beheer en beleid van de Kustwacht voor de Nederlandse Antillen en Aruba (Rijkswet Kustwacht voor Aruba, Curaçao en Sint Maarten, alsmede voor de openbare lichamen Bonaire, Sint Eustatius en Saba)*], Stb. 2008, 98, at [http://wetten.overheid.nl/BWBR0023731/geldigheidsdatum\\_11-10-2015](http://wetten.overheid.nl/BWBR0023731/geldigheidsdatum_11-10-2015) (describing Coast Guard duties and responsibilities).



Kingdom and is assigned to the Navy Command (*Commando Zeestrijdkrachten, CZSK*). The Commander of the Navy in the Caribbean (*Commandant der Zeemacht in het Caribisch Gebied, CZMCARIB*) holds the position of Director of Coast Guard (*Directeur Kustwacht*) and exercises operational command over the Coast Guard units.<sup>85</sup>

The Coast Guard operates throughout the waterways (*binnenwateren*), territorial seas, contiguous zones, and “other sea areas” of the Caribbean Sea when authorized by international law.<sup>86</sup> Within this area, the Coast Guard is responsible for environmental monitoring and fisheries and supervision of shipping, in addition to general policing and other topics.<sup>87</sup> The Coast Guard’s operations are planned by the Coast Guard Commission through an Operational Plan (*Activiteitenplan Kustwacht, APK*), which provides for both preventative and targeted enforcement actions across the Coast Guard’s geographic scope.<sup>88</sup> Under the Judiciary Policy Plan 2014-2017, 80% of available capacity is dedicated to top priority issues (drug trafficking, firearms, human trafficking, and illegal immigration), such that marine and fisheries enforcement, shipping, and other tasks (e.g., search and rescue) share the remaining 20% of resources.<sup>89</sup>

As a practical matter, the Coast Guard cooperates closely and effectively in Curaçao with the Police (who have authority to pick up people on shore) and also with GMN permit inspectors.<sup>90</sup> Nevertheless, the Coast Guard enjoys “extraordinary police” status and can work at the land-sea interface.<sup>91</sup>

Park rangers in Curaçao are not sworn enforcement officers, though they tend to have substantial technical knowledge. This knowledge, paired with the training, equipment, and resources of institutions such as the Coast Guard, has led to effective cooperation and coordination.<sup>92</sup>

## 2.4 Public Finance

The management of public finances in Curaçao was an important issue during the negotiations preceding Curaçao’s ascendance to constituent country status. The Netherlands agreed to absorb Curaçao’s debt under the condition that Curaçao would commit to balance budgets to avoid future accumulation of debts. Current financial management in Curaçao is governed by both Kingdom and Curaçao institutions and laws (Table 3).

Table 3. Key Public Finance Laws in Curaçao.

Title	Made By	Description
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<sup>85</sup> Coast Guard Kingdom Act 2008 art. 3 and following. For more information, see <http://www.kustwacht.org>.

<sup>86</sup> *Id.* arts. 3, 11.

<sup>87</sup> *Id.* art. 2.

<sup>88</sup> *Id.* art. 12.

<sup>89</sup> *Justitieel Beleidsplan voor de Kustwacht voor Aruba, Curaçao, Sint Maarten en de BES-eilanden 2013-2017*, in “Coast Guard Annual Plan 2015,” at <http://www.kustwacht.org/images/Jaarplan/Jaarplan-2015.pdf>.

However, interviews with Coast Guard staff indicate that effectiveness in addressing the 80% priorities has led to greater resource availability for the 20% priorities.

<sup>90</sup> Personal communication (on file with ELI).

<sup>91</sup> Personal communication (on file with ELI).

<sup>92</sup> Personal communication (on file with ELI).



<u>Administrative Organization Ordinance 2010</u>	Netherlands Antilles	Makes Curaçao Ministry of Finance responsible for finance and taxation
<u>Government Accounting Ordinance 2010 (GAO)</u>	Netherlands Antilles	Sets out rules concerning budget and annual accounts of the Government
<u>Financial Supervision Act Curaçao and Sint Maarten 2010 (English)</u>	Kingdom	Creates Board for Financial Supervision and organizes financial supervision of Curaçao
<u>Subsidies Ordinance 2007</u>	Curaçao Island Council	Governs delivery of subsidies to nongovernmental organizations
<u>Ordinance on Financial Management 2015</u>	Parliament	Providing rules governing daily financial management of the Government

The fiscal governance of Curaçao is overseen at the Kingdom level by the Board for Financial Supervision (*College financieel toezicht*, Cft)<sup>93</sup> of Curaçao and Sint Maarten, which was established by the Financial Supervision Act Curaçao and Sint Maarten (*Rijkswet*).<sup>94</sup> Under the Act, the Cft is charged with supervision of and advising Curaçao and Sint Maarten on the elaboration and execution of budgets following standards set out in the Act, as well as more general assessments and reports on financial matters and progress towards improved financial management.<sup>95</sup> Specific Cft responsibilities include review of budgets and financial obligations to be taken on by the Government. The Act provides that it (and the Cft) will expire when the islands have reached a sufficient level of budget management (Council of Ministers tasked with considering issue five years after the entry into force of the Act).<sup>96</sup> Although financial supervision continues,<sup>97</sup> Curaçao continues to make progress: the Cft recently noted that Curaçao has taken significant steps in the area of public finance, the country ended 2015 with a surplus for the third year running, and 2016 is similarly on track.<sup>98</sup>

<sup>93</sup> See <http://www.cft.cw/>

<sup>94</sup> Kingdom Act of July 7, 2010, Financial Supervision Act Curaçao and Sint Maarten [*Rijkswet van 7 juli 2010, houdende regels voor het financieel toezicht op de landen Curaçao en Sint Maarten (Rijkswet financieel toezicht Curaçao en Sint Maarten)*], Staatsblad van het Koninkrijk der Nederlanden, 2010, no. 334, at [http://wetten.overheid.nl/BWBR0028132/geldigheidsdatum\\_19-01-2016](http://wetten.overheid.nl/BWBR0028132/geldigheidsdatum_19-01-2016);  
[http://www.arsxm.org/EN/Government-Finance/Documents/Rijkswet financieel toezicht Curacao en Sint Maarten EN%20version%202.1.pdf](http://www.arsxm.org/EN/Government-Finance/Documents/Rijkswet%20financieel%20toezicht%20Curacao%20en%20Sint%20Maarten%20EN%20version%202.1.pdf)).

The Act is based on Article 38 of the Kingdom Charter, which allows the Council of Ministers of the Kingdom to make arrangements among themselves as recorded in an Act or an Order. Kingdom Charter [*Statuut voor het Koninkrijk der Nederlanden*], P.B. 2011, no. 4 art. 38.

<sup>95</sup> Kingdom Financial Supervision Act Curaçao and Sint Maarten, art. 4, Explanatory Memorandum, at [http://www.arsxm.org/EN/Government-Finance/Documents/Memorie van Toelichting Rijkswet financieel toezicht CURSXM EN%20version%202.1.pdf](http://www.arsxm.org/EN/Government-Finance/Documents/Memorie%20van%20Toelichting%20Rijkswet%20financieel%20toezicht%20CURSXM%20EN%20version%202.1.pdf). In Dutch:

<http://www.arsxm.org/NL/Landsfinancien/Documents/Memorie%20van%20Toelichting%20Rijkswet%20financieel%20toezicht%20CURSXM.pdf>.

<sup>96</sup> *Id.* arts. 33,35.

<sup>97</sup> In October 2015, the Kingdom Government decided to prolong financial supervision for Curaçao and St. Maarten. Curaçao appealed this decision, and the appeal was rejected by the Kingdom Council of Ministers in May 2016. See “Financial Supervision Law Appeal Curaçao Rejected,” *Curaçao Chronicle*, May 27, 2016.

<sup>98</sup> “Cft Chairman Age Bakker: ‘Round Off Current Financial Matters With Caution,’” *Curaçao Chronicle*, June 22, 2016. Detailed reporting on public finance in Curaçao is available through the website of the Centrale Bank van Curaçao en Sint Maarten, at <http://www.centralbank.cw/index.php?eid=1235> (public finance key figures).



Responsibility within the Curaçao government is lodged in the Ministry of Finance (MvF), which oversees public finance, monetary affairs, taxation, credit, and banking.<sup>99</sup> The MvF implements the Government Accounting Ordinance 2010,<sup>100</sup> which in turn implements constitutional provisions related to the Curaçao budget and includes a framework of cooperation with the Netherlands (governing, e.g., budget standards, monitoring of budget implementation, interim reports, and entering into loans). Technical rules for day-to-day financial management of the Government, in addition to the GAO,<sup>101</sup> are provided by the Ordinance on Financial Management 2015 (*Landsverordening financieel beheer*).<sup>102</sup> Subsidies from the Government are subject to the Subsidies Ordinance 2007, which sets out rules on procedures for the application and reception of subsidies and rules on the obligations of organizations receiving subsidies.<sup>103</sup>

Current laws provide some guidance for the development of special funds for particular purposes (such as coastal management). Under Article 9 of the Government Accounting Ordinance, separate budgets and accounts may be set up by national ordinance for a specific part of a ministry or a special government task. These special accounts (created by the Minister of Finance in consultation with the other relevant Ministry) can have different rules than the national budget.<sup>104</sup> Such special accounts must comply with the control and disclosure requirements set out in the Ordinance,<sup>105</sup> including the obligation of the Minister of Finance to regularly report to the Parliament as to how the allocated budget has been and will be used for its activities.<sup>106</sup> While the Kingdom Financial

<sup>99</sup> Administrative Organization Ordinance [*Landsverordening ambtelijk bestuurlijke Organisatie*], A.B. 2010 no. 87, app. K, art. 7.

<sup>100</sup> Government Accounting Ordinance [*Landsverordening comptabiliteits voorschriften Curaçao*], A.B. 2010, no. 87, app. B.

<sup>101</sup> Government Accounting Ordinance 2010, Explanatory Memorandum, I.2.

<sup>102</sup> National Ordinance laying down rules on the financial management of the country (Ordinance on financial management) [*Landsverordening van de houdende regels betreffende het financieel beheer van het Land (Landsverordening financieel beheer), Ontwerp*], 2015, at <http://archivo.parlamento.cw/downloads/15566.pdf>. This ordinance contains specific provisions, such as conclusion of agreements, refund of expenses, and cash management. See “Members of Parliament Adopt Three New Laws,” *Curaçao Chronicle*, Dec. 9, 2015 (noting that the draft Ordinance Financial Management received approval from all the MPs). It takes the place of a financial policy ordinance for Curaçao that existed from 1953 until 2010, which was placed on the negative list and therefore was not accepted upon constitutional change. Island Financial Policy Ordinance [*Eilandsverordening Financieel Beheer*], A.B. 1953, no. 6, as amended; National Ordinance on general transitional arrangement legislation and administration, A.B. 2010, no. 87, as amended by A.B. 2010, no. 102, annex.

<sup>103</sup> Ordinance laying down new rules on the awarding of grants (Subsidies Ordinance 2007) [*Eilandsverordening houdende nieuwe regels inzake de verlening van subsidie (Subsidieverordening Curaçao 2007)*], A.B. 2007, no. 104. The draft Finance Policy Ordinance 2015 would repeal Subsidies Ordinance.

<sup>104</sup> Government Accounting Ordinance, A.B. 2010 no. 87 App. B, art. 9 (“When a separate and different management, accompanied by a separate administration, budget and annual accounts is set up in a National Ordinance for a particular section of a ministry or for a specific government task, the Minister of Finance, in consultation with the Minister concerned, can draw up different or supplementary rules for the individual budgets and annual accounts organized under that arrangement, as long as the obligatory provisions for transparency of administration and verification prescribed in this National Ordinance are observed.”).

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

<sup>106</sup> *Id.* art. 42; Expl. Memo. at I.7 (“Third parties in the public sector are often privatized entities. That independence is partly reflected in the ability of different management. . . . A part of a ministry, although it remains among the central organization to be independent or devolved some extent, and that it may pursue



Supervision Act does not specifically address treatment of such special accounts, special accounts do appear to be covered by that Act insofar as they are part of Curaçao budget management. As a result, consultation of the Cft may be a desirable part of the special fund development process.

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its own management and its own budget and accounts. Also for a specific, dedicated to a government ministry task can this separation of management, budget and accounts appear desirable.”).



### 3 Fisheries

Curaçao's commercial fisheries are largely coastal and small-scale fisheries with most fishers engaging in fishing part time.<sup>107</sup> In addition, some sport fishing occurs, and Curaçao has a small distant water fishing fleet that engages in high seas fisheries. Curaçao fisheries laws that govern these activities include national and island ordinances and subsidiary legislation, which predate 2010 but continue to apply. These authorities create a system of management shared between the Ministry of Economic Development (MEO, formerly the Ministry of Economic and Labor Affairs) and the Ministry of Health, Environment, and Nature (GMN). MEO manages high seas fishing and would manage large-scale domestic fishing in Curaçao waters if such fisheries were to exist,<sup>108</sup> with the advice and consultation with the Fisheries Commission, International Fisheries Commission, and Minister of Traffic, Transportation, and Spatial Planning (VVRP). GMN's Department of Agriculture and Fisheries Management (AVB),<sup>109</sup> formerly the Department of Agriculture, Animal Husbandry, and Fisheries (LVV), separately manages small-scale fishing in the Curaçao territorial sea (Table 4).

MEO has drafted new fisheries legislation that would reform current fisheries management, in part by consolidating fisheries management authority within MEO; this draft legislation is briefly considered, below.

Fishing is also separately restricted in certain ways by the Reef Management Ordinance Curaçao, as elaborated by the Island Decree for Protection of Sea Turtles.

Table 4. Fishery Management Institutions of Curaçao.

Institution	Role
Ministry of Economic Development (MEO)	Manages high seas and large-scale domestic fishing
Ministry of Traffic, Transportation, and Spatial Planning (VVRP)	Consults with MEO on issuance of high seas licenses
Ministry of Health, Environment, and Nature (GMN/AVB)	Manages small-scale fishing in the territorial sea
Fisheries Commission	Consultation with MEO, fisheries monitoring
International Fisheries Commission	Consultation with MEO, fisheries monitoring

#### 3.1 National and Curaçao fisheries ordinances

As shown in Table 5, the National Fisheries Ordinance 1991 (NFO),<sup>110</sup> as elaborated through the National Fisheries Decree, is the foundational fisheries authority in Curaçao. The NFO has been amended repeatedly, most recently and notably by the Maritime Ordinance 2007, which added a new high seas fishing section. The Fisheries Ordinance Curaçao (FOC) further elaborates on the NFO and establishes an additional licensing and management scheme within island waters. The FOC

<sup>107</sup> Waitt Institute, Community Consultation (2016).

<sup>108</sup> Personal communication with GMN staff indicate that no large-scale domestic fisheries exist in Curaçao's EEZ at this time (2/2/16) (on file with ELI).

<sup>109</sup> *Afdeling Agrarisch en Visserij Beheer*.

<sup>110</sup> P.B. 1991, No. 74.



has itself been elaborated through the Fisheries Decree Curaçao. As written, the NFO and National Fisheries Decree applied to all of the Netherlands Antilles. However, like other laws, these authorities were amended to apply particularly to Curaçao as part of the transition to independence in 2010.<sup>111</sup>

Table 5. Curaçao Fisheries Laws.

- National Fisheries Ordinance (NFO): 1991 No. 74, *amended by* 1993 No. 110 (entry into force), PB 2001 No. 80, 2004 No. 16, 2007 No. 18 (high seas fishing), inter. 2010, 34; 2011 No. 49
  - Subsidiary legislation:
    - National Fisheries Decree (Arts. 3 and 12): 1992 No. 108
    - Fisheries Ordinance Curaçao 2004 (FOC) (Arts. 2.c and 4): 2007 No. 117
      - Subsidiary legislation:
        - Fisheries Decree Curaçao (Arts. 13, 14, 20): 2009 No. 48
- Reef Management Ordinance Curaçao: 1976 No. 48, *amended by* 1989 No. 21 (corporate responsibility); 1996 No. 8 (turtle protection); 1996 No. 13 (nest and egg protection)
  - Subsidiary Legislation:
    - Island Decree for Protection of Sea Turtles (Art. 3): 1996 No. 8

### 3.1.1 Licensing

In reality, most vessels and fishers on Curaçao operate at such a small scale that they are exempt from existing licensing requirements. While fishing in Curaçao generally requires a license, this requirement is subject to many exceptions. As discussed below, two pieces of legislation are key when considering licensing requirements: (1) the National Fisheries Ordinance and (2) the Fisheries Ordinance Curaçao. These two requirements are implemented by the MEO and GMN respectively.

<sup>111</sup> See A.B. 2010 no. 87, appendix A. The Fisheries Ordinance Curaçao elaborates on Articles 2.3 and 4 of the National Fisheries Ordinance, which explicitly authorized the issuance of island ordinances. P.B. 1991, No. 74, art. 2.3 (“By island ordinance may provide that for fishing in the territorial waters of a vessel referred to in subsection requires a permit from the Executive Council of the respective island territory”), art. 4 (“By island ordinance to the fishing vessels referred to in the second paragraph of Article 2, in the territorial sea surrounding the island territory concerned, rules are made.”). These Articles, however, are listed as “cancelled” in an “as amended” version of the National Fisheries Ordinance due to “General Transitional Arrangements for Legislation and Administration of Curaçao as a country.” These provisions appear to have been cancelled implicitly as part of the process of removing distinctions between island and Netherlands Antilles rulemaking. A.B. 2010 no. 87, appendix A art. 6 (providing for cancellation and modification of references to Netherlands Antilles institutions and authorities). This Report presumes that the Fisheries Ordinance Curaçao and Fisheries Decree Curaçao are now authorized by provisions granting general authority for elaboration via National Decree.



First, the NFO prohibits fishing<sup>112</sup> in the territorial sea<sup>113</sup> (0-12 nm) or Fisheries Zone<sup>114</sup> (12-200 nm) of the Netherlands Antilles without or in contravention of a license issued by the Minister of Economic Affairs (now MEO) after consultation with the Fisheries Commission.<sup>115</sup> Some vessels, activities, and locations are exempt from the NFO licensing requirement, however (Table 6). Most notably, vessels less than twelve meters long or under six gross registered tons are not required to obtain a license from MEO to fish within the territorial sea.<sup>116</sup> This NFO exemption covers most of Curaçao's artisanal fleet.

The FOC establishes a separate licensing authority under which the Executive Council may require a license to fish in in the Curaçao territorial sea.<sup>117</sup> The law assigns to GMN/AVB (successor to the former LVV) responsibility, on behalf of the Council, for the survival and natural development of fish stocks in Curaçao and is authorized to administer the licensing program, including issuance of exemptions.<sup>118</sup>

There is no indication in either the NFO or the FOC that these licensing programs are mutually exclusive, and as designed they exhibit little overlap. Only one type of license is required to fish in Curaçao waters from any vessel except those over 6 gross register tons or 12 meters in length (see Table 6).

Table 6. Licensing and permitting requirements for fishing in Curaçao.

Vessel type	Location	License(s) required ( <i>authority</i> ):	Issued by:
<b>&gt;6 gross register tons or &gt;12 m length</b>	Territorial sea	<i>FOC</i>	GMN
	EEZ	Domestic - <i>NFO</i>	MEO
<b>&gt; 4 troll or hand lines</b>	Territorial sea	<i>FOC</i>	GMN

<sup>112</sup> P.B. 1991, No. 74 art. 1.1(b) (defining “fishing” as “to place and keep in the water, to lift, to haul or to otherwise have fishing gear ready to be used, as well as applying any other means to catch fish”).

<sup>113</sup> While not defined in the NFO, the FOC defines “territorial sea” as the area “established for the Netherlands Antilles by the Resolution of October 23, 1985 . . . for the execution of Article I of The Kingdom Law Expansion of Territorial Sea in the Netherlands Antilles (P.B 1985, nr 73)”. *Visserijverordening Curaçao 2004* (Fishing Ordinance Curaçao), art. 1.1(d), December 3, 2007, (I.G.G. 2007 117). This area extends out to 12 nm from shore, or to the midpoint with Bonaire where the two islands are separated by less than 24 nm. *Id.* art. 2.2.

<sup>114</sup> The NFO defines “fisheries zone” by reference to the Establishment of Fisheries Zone Act 1977, but does not define “territorial sea”. P.B. 1991 No. 74, Art. 1. However, the 1977 Act was repealed in 2014 by Kingdom Act, which also amended Netherlands law regarding Curaçao's EEZ. Decision of January 24, 2014 until promulgation of the Act of December 4 2013 repealing the Enabling institution fisheries zone and amending certain other laws relating to the determination of the maritime borders of the Kingdom, P.B. 2014 No. 14. The NFO language now requires amendment to clarify that it applies in the EEZ rather than in the fisheries zone.

<sup>115</sup> National Fisheries Ordinance art. 2

<sup>116</sup> *Id.* art. 2.4.

<sup>117</sup> FOC art. 2.1, 1 (defining “our waters”). Generally speaking, post-10/10/10, the Council of Ministers (standing in place of the former Executive Council) can delegate issuance of permits to the Minister under which a subject falls, and that Minister, in turn, can assign this function to a department within the Ministry. Personal communication (on file with ELI).

<sup>118</sup> Fishing Ordinance Curaçao 2004 arts. 8-10.



Vessel type	Location	License(s) required ( <i>authority</i> ):	Issued by:
	EEZ	No specific license requirements	
<b>Engaging in marine scientific research w/ exemption</b>	Territorial sea	Exemption document (scientific and educational use) - <i>FOC</i>	GMN
	EEZ	None	
<b>Participating in fishing competition w/ exemption</b>	Territorial sea or EEZ	None	
<b>Other vessel</b>	Territorial sea	Domestic – <i>NFO</i> <i>FOC</i>	MEO GMN/AVB
	EEZ	Domestic – <i>NFO</i>	MEO
<b>Any Curaçao vessel</b>	High seas and foreign waters	International - <i>NFO</i>	MEO

Finally, the NFO, as amended, establishes a separate high seas license program under which it is illegal to fish on the high seas or in foreign waters on a “Curaçao fishing vessel” without or in violation of a license from the Minister.<sup>119</sup> The Minister can issue a high seas license after consultation with the Minister of Traffic, Transportation and Spatial Planning.<sup>120</sup>

### 3.1.2 MEO domestic permits

The Minister of Economic Development may grant a license to fish in Curaçao to a Curaçao resident or to a company, foundation, or association owned and/or controlled by Curaçao residents when “not incompatible with the continued existence and the natural development of the fish stocks.”<sup>121</sup> As required by international law, non-Curaçaoans may also be granted licenses, but only if compatible with fisheries management and if such licenses do not obstruct the granting of a license to any Curaçaoan.<sup>122</sup> The Minister must provide reasons for denial of a license.<sup>123</sup>

Domestic fishing licenses from MEO can be issued only upon written request and after payment of the required duty (set out in the National Fisheries Decree) and will be valid for up to one year (but may be renewed).<sup>124</sup> A license applies to a single vessel and must be onboard when fishing; permits are non-transferable,<sup>125</sup> but the Minister or his or her designee may authorize temporary use of a vessel as a replacement for the one designated in the license.<sup>126</sup> Licenses can be withdrawn due to incomplete or inaccurate information or noncompliance with the law or license conditions. The Minister, after consulting the Fisheries Commission, can prohibit fishing for specific species for

<sup>119</sup> *Id.* art. 13a.1 (defining Curaçao fishing vessel as “a ship that is registered in the Netherlands Antilles and that, for the exercise of an occupation or business, is or can be used for fishing at sea.”).

<sup>120</sup> *Id.* art 13b.

<sup>121</sup> *Id.* art. 6.1 (further defining eligibility as public and private limited companies registered in Curaçao owned and/or controlled by Curaçao residents, and foundations and associations registered in Curaçao and with a complete board comprised of Curaçao residents).

<sup>122</sup> *Id.* art. 6.2.

<sup>123</sup> *Id.* art. 7.

<sup>124</sup> *Id.* arts. 7, 8, 12.

<sup>125</sup> *Id.* art. 11.

<sup>126</sup> *Id.* art. 9.3.



specific periods.<sup>127</sup> In addition, the Minister may attach conditions to domestic fishing licenses and can change or withdraw such conditions.<sup>128</sup> The full suite of responsibilities of the Fisheries Commissions is set out in Box 1.

The National Fisheries Decree<sup>129</sup> was enacted simultaneously with the National Fisheries Ordinance to implement Articles 3 and 12 of the Ordinance and applies in the Curaçao Fisheries Zone.<sup>130</sup> As relevant to Curaçao, it includes additional provisions governing fishing gear permitted,<sup>131</sup> fish allowed to be caught,<sup>132</sup> recording of data,<sup>133</sup> and duties to be paid by licensees, which differ by vessel size and fishing gear used.<sup>134</sup> The Decree does not include time or area closures. Violation of the Decree constitutes a violation of the NFO.<sup>135</sup>

#### Box 1. Duties of Fisheries Commissions.

The Fisheries Commission and International Fisheries Commission play consultative roles in fisheries management; specifically, the duties of these commissions are to—

- consult with the Minister of Economic Development on:
  - fisheries licensing issuance, application requirements, and withdrawal;
  - issuance of scientific permits; and
  - time and species closures;
- monitor fishery stocks and fishing activities in the territorial sea and fisheries zone;
- advise the Minister on any matter, at the Minister's request or Commission's own initiative; and
- consult on amendments to the National Fisheries Ordinance and drafting of Decrees to implement the Ordinance.

<sup>127</sup> *Id.* art. 5

<sup>128</sup> *Id.* art. 7.4. The Ordinance does not specify when conditions may be changed, but context suggests that changes may be made at any time.

<sup>129</sup> National Fisheries Decree art. 7, Nov. 5, 1992 (G.G. 1992 108).

<sup>130</sup> *Id.* art. 2; Law establishing fisheries zone, *Machtigingswet instelling visserijzone (Rijkswet 8-6-'77, Stb.345)*, PB 1977 No. 230.

<sup>131</sup> *Id.* art. 2 (prohibiting the use of trawl nets, certain fish traps, chemical means (excepting Quinaldine for catching “fish tank species”), explosive materials, marine mammal meat bait, and gillnets with a length exceeding 2.5 km).

<sup>132</sup> *Id.* art. 3 (prohibiting the catch of all species of sea turtles and marine mammals; certain species and sizes of sea snails;<sup>132</sup> and spiny lobster (*Panulirus argus*) below a minimum size or that are molting or egg-bearing).

<sup>133</sup> *Id.* art. 4 (requiring licensees to submit reports to the Fisheries Commission within 45 days the end of a fishing voyage and specifying the data that must be included in each report). Required data include “information about the fishing areas, the fishing efforts, the species that have been caught and the methods that have been used.” *Id.*

<sup>134</sup> *Id.* art. 5.

<sup>135</sup> *Id.* art. 3.



### 3.1.3 GMN/AVB permits

The FOC provisions for the management of territorial sea fishing permits generally follow those set out in the NFO. AVB may attach conditions to licenses, which are valid for 12 months and are non-transferable.<sup>136</sup> Conditions can be changed upon renewal, and AVB can decline to grant or renew a license to protect fish stocks, when the applicant does not accept new conditions, or the license has not been used; licenses can be revoked for noncompliance, among other reasons.<sup>137</sup> In addition to license conditions, AVB may ban fishing by time and species, and may establish rules for bycatch.<sup>138</sup> Possession of prohibited species is unlawful except for “unintentional” possession resulting from bycatch when followed by immediate release.<sup>139</sup> AVB may grant exemptions from stipulations in the FOC for scientific and educational purposes, with payment of a fee, by issuing documentation of the activities, species, areas, and other constraints on the exemption.<sup>140</sup>

The FOC also provides that sanctuaries can be established by island ordinance (presumably now a national ordinance) for the protection of fish stocks in which any fishing is prohibited (without an exemption) except for fishing with a line, rod, cast net, trap, or hand.<sup>141</sup> Further, island decrees (and presumably now national decrees) may set out the rules for use of and access to “fishery zones” (*visserijzones*), which are areas that *may* be fished—these areas include the territorial sea around Curaçao and around Klein Curaçao, the inland waters, and the area out to 200 nm miles.<sup>142</sup>

The Fisheries Decree Curaçao implements Articles 13, 14 and 20 of the FOC.<sup>143</sup> It establishes rules for the protection of fish stocks from over-exploitation and to prevent the deterioration of the biodiversity in Curaçao waters. Articles 2 through 5 restrict and prohibit certain fishing gear and fishing for certain species (notably, sea turtles and lobster), in most respects precisely following analogous provisions of the earlier National Fisheries Decree of the Netherlands Antilles.<sup>144</sup> The Fisheries Decree Curaçao also creates additional restrictions specific to Curaçao, including prohibitions on the use of: gill or trammel nets within the 60 m depth line; long gillnets (>500 m); any trammel nets in deeper waters; bottom longlines along the south coast; and any dragnets (bottom trawls). It also prohibits fishing for sea mammals without an exemption from AVB for scientific or educational grounds. Interviews with government personnel indicate that gillnetting

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<sup>136</sup> FOC art. 4. The authors understand that conditions *may* include designated fishing areas and that, to some extent, a common enforcement problem arises with people fishing in one another’s assigned areas. Personal communication (on file with ELI).

<sup>137</sup> *Id.* arts. 4, 5.

<sup>138</sup> *Id.* art. 12.

<sup>139</sup> *Id.* art. 13.

<sup>140</sup> *Id.* arts. 15-16, 21.

<sup>141</sup> *Id.* arts. 17-18.

<sup>142</sup> *Id.* art. 20. A fishery zone in this context is to be distinguished from fishery protected areas (*visserijgebieden*). Compare *id.* art. 18. See also *id.* art. 1(f).

<sup>143</sup> Fisheries Decree Curaçao (*Visserijeilandsbesluit*) arts. 13, 14 & 20, I.G.G. 2009 No. 48.

<sup>144</sup> National Fisheries Decree art. 7, Nov. 5, 1992 (G.G. 1992 108). Differences between the two include a new gillnet mesh restriction and missing provisions regarding fishing for sea snails. Sea snail fishing restrictions were included in the earlier Netherlands Antilles decree primarily to address activity on the Saba Bank and likely were deemed unnecessary in Curaçao. See Explanatory Memorandum to the National Fisheries Decree, G.G. 1992 No. 108.



continues to be a problem; their import is not banned, and the Coast Guard frequently confiscates illegal gillnets.<sup>145</sup>

### 3.1.4 High seas permits

As for domestic licenses, the National Fisheries Ordinance authorizes the Minister of Economic Development to include conditions in high seas licenses to regulate areas, species targeted, recordkeeping and reporting, and observers.<sup>146</sup> In addition, the Maritime Ordinance 2007 states that in granting a permit to a high seas vessels, the MEO must consult with the Minister of Traffic and Transport.<sup>147</sup> The Maritime Ordinance further provides that the permit can include a suite of regulations and restrictions including area-based and species-based restrictions as well as reporting requirements.<sup>148</sup> National decrees may provide further regulation of high seas fishing, including for gear, types of fish that may be caught, and vessel operations and crewing.<sup>149</sup> National decrees may also establish further rules regarding the implementation of international and regional agreements relating to fishing on the high seas.<sup>150</sup> No such decrees or other rulemakings have been issued to date. The license conditions, timing, withdrawal, recordkeeping, and transferability provisions governing domestic fisheries also apply to high seas fishing.<sup>151</sup>

### 3.1.5 Enforcement

Curaçao fisheries law provides an array of enforcement and penalty provisions in the NFO and FOC. The NFO tasks designated officers under the Code of Criminal Procedure (officers with general law enforcement duties) and other persons designated by the Ministers of Economic Development and Justice with supervising compliance with the Ordinance and investigating violations. These officers are authorized to demand information from license holders and persons suspected of fishing without a license, demand inspection of records, enter locations, and inspect, investigate, and seize goods.<sup>152</sup> These powers extend to ordering captains to stop vessels for inspection.<sup>153</sup>

The NFO provides penalties for certain offences, as noted in Table 7. License holders must comply with all rules and regulations set forth in the permit as well as the restrictions and prohibitions set out in subsidiary legislation.<sup>154</sup> The NFO does not provide explicit plea bargain authority or otherwise spell out the process by which offences are prosecuted. However, it provides that the criminal law applies to violations, which offers additional authority governing prosecution and penalization of offences.<sup>155</sup>

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<sup>145</sup> Personal communications (on file with ELI).

<sup>146</sup> NFO art. 13b.

<sup>147</sup> Maritime Ordinance 2007 (2007 no. 18), art. 13b (2).

<sup>148</sup> *Id.* art. 13b (3).

<sup>149</sup> NFO art. 13c.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.* art. 13d.

<sup>152</sup> *Id.* art. 17.

<sup>153</sup> *Id.* art. 18.

<sup>154</sup> *Id.* arts. 15-20(a).

<sup>155</sup> *Id.* art. 20a.



The FOC includes additional enforcement provisions. The enforcement agents include sworn “supervising officials” identified by the Executive Council (now presumably the Minister of Justice) and by officers identified in the Criminal Procedure Code.<sup>156</sup> These officials are authorized to demand inspection and to copy records; board vessels and access other places (with “the strong arm of the law,” if necessary); stop and search vessels and cargo; and seize evidence of an offence.<sup>157</sup> Cooperation with an official is mandatory.<sup>158</sup>

The FOC provides for a range of administrative sanctions for violations. GMN can order a stop to activities contrary to prohibitions, licenses or exemptions, or other rules or regulations, including the Fisheries Decree Curaçao.<sup>159</sup> This injunctive relief can be appealed and lifted by cure of the offence; however, if the termination remains effective for six months, the underlying license expires.<sup>160</sup> The FOC also provides for remedial damages to repair harm caused by noncompliance: GMN may order, at the offender’s expense, removal of unlawful articles or restoration of associated damage.<sup>161</sup> As an alternative to these administrative enforcement provisions, the Council may require a financial penalty of up to 5000 florin per day of violation, but proportionate to the gravity of the violation and intended effect of the penalty.<sup>162</sup> Such penalties also require prior notice and can be collected by writ of execution.

Certain types of offences are subject to additional financial penalties and imprisonment. These include violations of restrictions on possession of prohibited species, activities in prohibited areas, and any restrictions set out in the Fisheries Decree Curaçao, all of which are considered criminal offences and may be punished by detention for up to two months or a fine up to 5000 florin.<sup>163</sup> All other offences may result in lesser detention and penalties.<sup>164</sup>

Table 7. Penalties for violations of fisheries laws in Curaçao.

Law	Type of Violation	Maximum Fine	Maximum Incarceration
National Fisheries Ordinance	Fishing without or contrary to a license in Curaçao (Art. 2)	500,000 NAf (US\$280,000)	3 months
	Unlawful fishing gear, species, or recordkeeping (Art. 3)	500,000 NAf	3 months
	Violation of fishing ban (Art. 5)	500,000 NAf	3 months

<sup>156</sup> FOC arts. 40, 41. Officers covered by the Criminal Procedure Code of the Netherlands Antilles (art. 183) include the Coast Guard. The Harbor Master demands inspection of the local vessels, and for seagoing vessels this role is filled by the Maritime Authority of Curaçao. The Coast Guard, as previously discussed in this Report, performs the inspection of documents, safety gear, and the like, and has the authority to board, inspect, and search a vessel and its cargo—and also to seize evidence. Personal communication with Coast Guard staff (on file with ELI).

<sup>157</sup> *Id.* arts. 43-44

<sup>158</sup> *Id.* art. 45.

<sup>159</sup> *Id.* art. 25.

<sup>160</sup> *Id.* arts. 26-34.

<sup>161</sup> *Id.* art. 35.

<sup>162</sup> *Id.* art. 37.

<sup>163</sup> *Id.* arts. 50, 52.

<sup>164</sup> *Id.* art. 51.



Law	Type of Violation	Maximum Fine	Maximum Incarceration
	Failure to collect or maintain required data (Art. 10)	300 Naf (US\$170)	2 weeks
	Fishing with a Curaçao fishing vessel outside Curaçao without or contrary to a license (Art. 13b)	500,000 Naf	3 months
	Violation outside Curaçao of fishing vessel requirements, navigation systems, fishing gear markings, crewing, or other provisions of international or regional agreements (Art. 13c)	500,000 Naf	3 months
	Noncompliance with request for information or investigation (Art. 17.1)	1,000 Naf (US\$560)	1 month
Fisheries Ordinance Curaçao	Unlawful fishing gear, species, or recordkeeping (Art. 11, 14)	500,000 Naf	2 months
	Willfully possessing, killing, selling, disposing, delivering, purchasing, transporting, treating, or processing designated prohibited fish species (Art. 13)	500,000 Naf	2 months
	Fishing in protected fishing areas (Art. 18)	500,000 Naf	2 months
	Violation of prohibitions or provisions not otherwise specified (Art. 51)	2,500 Naf (US\$1,400)	1 month
Reef Management Ordinance	Break, saw, or loosen corals	5,000 Naf (US \$2,800)	2 months
	Violation of the other prohibitions of Ordinance or of island decrees	2,500 Naf	1 month

Note: penalties listed in Netherlands Antillean florin (NAf), also known as Netherlands Antillean guilders (ANG). Conversions to US dollars based on a rate of 1.79 ANG to US \$1.

### 3.2 Potential effects of draft 2015 fisheries ordinance

The Curaçao fisheries regulatory framework described above is outdated and complex, as it has developed over time through a combination of actions taken by the Netherlands Antilles and the Curaçao island government. In addition, the European Union issued a “yellow card” to Curaçao indicating that reforms will be required to address illegal fishing by Curaçao-flagged vessels if exports to the EU are to continue.

To address the “yellow card” that arose in the context of Curaçao’s distant water fishing fleet, MEO drafted the 2015 fisheries ordinance. The draft 2015 fisheries ordinance would make substantial changes to the structure of Curaçao fisheries management—notably by integrating domestic and high seas fisheries management under a single framework within MEO and excluding the LVV (now GMN/AVB) from management. The current role of GMN would be limited in the future to consultation (along with the Minister of Traffic, Transport, and Spatial Planning) during the development of a national fisheries plan every five years. To the extent that GMN manages in accordance with the Reef Management Ordinance (discussed in Section 3.3, below), however, its role would be unchanged, as the draft ordinance would not affect the RMO.

Fisheries management and implementation of the new draft 2015 fisheries ordinance would be carried out by a new Fisheries Authority, which would be an independent, public legal entity



(*openbare rechtspersoon*) led by a Director appointed on the recommendation of the Minister of Economic Development.<sup>165</sup> The Authority would be responsible to the Minister for its budget, audited balance sheet, and policy plan.<sup>166</sup>

Funds for the Authority would include fees for services rendered by the Authority; administrative fines; proceeds from the sale of seized property; contributions from general resources; and gifts and donations, including from international development funds.<sup>167</sup> The Authority would be able to use these resources exclusively to “finance the costs relating to its infrastructure and the performance of its duties,” which could include a reserve fund for losses or “for the benefit of the development of fishing and fishing related activities in Curaçao,” with specific rules regarding the use of funds to be set by decree.<sup>168</sup> Any surplus would be returned to the Government, which would guarantee the solvency of the Authority as a public legal entity.<sup>169</sup>

Fishing activity would be governed by rules set out by ministerial decree issued by MEO, and a fisheries register would be maintained, also by ministerial decree, to keep records of licensed fishing vessels. The draft 2015 fisheries ordinance also would provide substantial detail regarding obligations of commercial fishers, for licensing and permitting, and for enforcement, among other topics.

The draft ordinance thus is a substantially more comprehensive ordinance than provided in current law. It also would modernize fisheries management and assign it to a single Ministry. However, it would make substantial changes to the existing management structure. Concerns that have been raised about this draft law include the following:

- GMN/AVB has been managing the nearshore fisheries and has the expertise to do so, while this would be a new management function for MEO and one that the Ministry does not have experience performing;
- MEO is focused on economic development rather than natural resources management, meaning that management priorities, including conservation priorities, may change and become more short-term and economic in focus;
- The oversight of fisheries management by a non-governmental body, the Fisheries Authority, puts responsibility for a public resource in the wrong hands;
- The new system of management is overly complex for the domestic fleet, and requirements are too onerous for domestic fishers.

To effectuate these changes, in addition to enacting the law, policy development would also be required, and substantial resources may be required to effectively implement this legislation.

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<sup>165</sup> Fisheries Ordinance 2015, draft, art. 6.

<sup>166</sup> *Id.* art. 11.

<sup>167</sup> *Id.* art. 13.

<sup>168</sup> *Id.* art. 14.

<sup>169</sup> *Id.* art. 15.



### 3.3 Reef management ordinance

Curaçao enacted the Reef Management Ordinance (RMO) in 1976 to protect corals and other marine plants and animals.<sup>170</sup> The RMO prohibits breaking, sawing, or loosening corals in any way, or to process, sell commercially, offer, purchase or transport corals from Curaçao.<sup>171</sup> The RMO also prohibits killing, possessing, purchasing or selling, transporting, or processing any marine fauna, marine animal groups,<sup>172</sup> or plants designated by island decree.<sup>173</sup> To date, six of the existing seven species of sea turtles have been designated for protection by island decree.<sup>174</sup> The RMO was amended in 1996 and now also prohibits disturbing the nests of designated marine species or destroying, possessing, selling, transporting, delivering, or exporting their eggs.<sup>175</sup>

The Executive Council (now presumably GMN/AVB) may grant exemptions to these prohibitions for scientific and educational purposes,<sup>176</sup> “on grounds derived from the public interest,”<sup>177</sup> or to Curaçao residents for the purpose of collecting.<sup>178</sup> Collections exemptions are available for a time period not exceeding three months; certificates of exemption may be issued only after consulting “relevant stakeholders and Departments” and must include specific information, including what may be collected and in what amounts; the locations where the exemption applies; and the means of collections.<sup>179</sup> AVB may place additional conditions on the exemption and may revoke it at any time.<sup>180</sup> Scientific and educational exemptions are not subject to the three-month maximum but also require a certificate of exemption, which must include the purpose of the exemption, as well as the

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<sup>170</sup> Island Ordinance for the Management of the Marine Environment in the Waters of the Island Territory of Curaçao [*Rifbeheersverordening Curaçao*], A.B. 1976, No. 48, Aug. 19, 1976.

<sup>171</sup> RMO art. 2.

<sup>172</sup> RMO art. 1 (defining “marine fauna” as “aquatic turtles, living in the sea and inland waters, fish, shellfish, cuttlefish, crustaceans, worms, sponges and other sea creatures, or parts thereof living in the sea and in the inland waters”). Other animals, such as seabirds, are not included in this definition but may be protected by other laws. Explanatory Memorandum (noting birds “are not included in this Island Ordinance, but belong to the animals species that are protected by the Federal Ordinance of July 20th, 1926 for the Protection of Animal Species useful for Agriculture or Fruit Cultivation, or those animals that are gradually becoming extinct and whose continued existence is appreciated (F.G.G. 1926, nr. 60 as amended”).

<sup>173</sup> RMO art. 3.

<sup>174</sup> *Eilandsbesluit bescherming zeeschildpadden* (Island Decree for Protection of Sea Turtles), art. 1.1, June 20, 1996 (I.G.G. 1996 8).

<sup>175</sup> Island Ordinance for amending the Reef Management Ordinance Curaçao, Art. 1, June 28, 1996, (I.G.G. 1996 13).

<sup>176</sup> RMO art. 5.

<sup>177</sup> This basis for an exemption was expressly added by a 1989 amendment. Island Ordinance amending the Reef Management Ordinance Curaçao, A.B. 1989 No. 21 art. 1 (II). It is possible, however, that this amendment was meant to further refine the educational/scientific basis for an exemption, rather than adding a broad *new* exemption. It is the understanding of the authors that these exemptions have not been much used to date, and then only for very minor activities. However, it may be that ongoing efforts to obtain approval for construction of a new mega-pier, with mitigation to be undertaken at another site, could seek to invoke this “public interest” exemption. Personal communication (on file with ELI).

<sup>178</sup> RMO art. 4.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*



information required in a collections exemption certificate.<sup>181</sup> While collections exemptions are available only for marine fauna (“*zeedieren*”) and plants, scientific and research exemptions are available for these categories and for marine animal groups (“*zeediergroepen*”). Currently sea turtles are the only designated *zeedieren* and no *zeediergroepen* are designated.

The RMO contains additional prohibitions. Spearfishing and the use of other “underwater hunting gear” (excluding fish traps, lines, and nets) is prohibited, as is the purchase, sale, transportation, and other activities involving fauna killed, hunted, or caught in violation of this prohibition.<sup>182</sup> Similarly, the use of means that “can damage the marine environment” (e.g., bleach) is prohibited; however, such means must be designated by decree after consultation with professional fisher organizations and other stakeholders and departments.<sup>183</sup> No relevant decrees have been issued to date.

Violation of the RMO may result in limited financial penalties or imprisonment, as indicated in Table 7.<sup>184</sup> These penalties can be doubled for a second violation of the same or a similar provision within one calendar year of conviction on a prior offence.<sup>185</sup> Enforcement officers (specifically those identified in Article 8 of the Penal Code of the Netherlands Antilles<sup>186</sup>) can seize underwater hunting gear and other articles used or intended to be used in the commission of an offence as well as corals and marine fauna and plants taken unlawfully.<sup>187</sup> The latter must be returned to the water as soon as possible if alive.<sup>188</sup> Unlawfully taken organisms and articles used in the commission of an offense can be confiscated by a judge.<sup>189</sup> All violations other than taking of corals (pursuant to RMO Art. 2, paragraph 1) are civil offences; taking of coral is a criminal offence.<sup>190</sup>

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<sup>181</sup> *Id.* art. 5.

<sup>182</sup> *Id.* art. 6.

<sup>183</sup> *Id.* art. 7. The authors are aware of no such relevant decrees having been issued to date.

<sup>184</sup> *Id.* art. 10.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.* art. 14. These officers could include the Police, the Coast Guard, and any persons with “extraordinary” or “special” enforcement authority. Personal communication (on filed with ELI).

<sup>187</sup> *Id.* art. 11.

<sup>188</sup> *Id.* art. 11.

<sup>189</sup> *Id.* art. 12.

<sup>190</sup> *Id.* art. 13.



## 4 Protected Areas Authority

Many nations face the problem of so-called “paper parks”—that is, parks that are legally designated, and thus exist on “paper,” but that have little or no real administration, management, or enforcement. Curaçao, however, finds itself in the opposite situation: several well-known parks exist and are managed, to varying degrees, and yet they lack formal legal status.

Curaçao law currently has no comprehensive mechanism for the establishment and management of protected areas on land or at sea. However, Curaçao does have various legal authorities that could be used to afford legal status to and provide new protections for certain types of areas. The possibilities include:

- no take/no fishing zones designated under the National Fisheries Ordinance (NFO);
- protected fishing areas designated under the Fisheries Ordinance Curaçao (FOC);
- conservation areas and water areas designated under the island development plan (EOP);
- public lands owned or controlled by or on behalf of the government; and
- sites protected through implementation of international obligations.<sup>191</sup>

Each type of protected area, together with the legal authority supporting its use, is described below in Table 8. Also, as noted above, Curaçao has established a “marine parks” that is not designated under any particular law, which is also described here.

Table 8. Legal authorities for area protection in Curaçao.

Area Type	Authorizing Law	Responsible Entity
No take/no fishing zone	National Fisheries Ordinance 1991 (1991 no. 74)	MEO
Protected fishing area	Fishing Ordinance Curaçao (2007 no. 117)	GMN
Conservation areas, water areas	1995 Island Development Plan (1995 no. 36)	VVRP
Public lands	Public Lands Ordinance 2010 (2010 no. 87 app. U)	Governor
SPAW Protocol protected area	Maritime Ordinance 2007 (2007 no. 18)	Government
Protected areas under: <ul style="list-style-type: none"> <li>• SPAW Protocol</li> <li>• Ramsar Convention</li> <li>• Convention on Biological Diversity</li> </ul>	National Ordinance on Nature Conservation and Protection 1998 (1998 no. 49)	GMN

### 4.1 Fisheries protected areas

Curaçao fisheries laws can be used to create protected areas in two ways. First, Article 5 of the National Fisheries Ordinance authorizes the Minister of Economic Development to introduce a fishing ban for a specific period and species.<sup>192</sup> This provision has been interpreted to include more specific elements restricting fishing by gear type and area and has been proposed (but not

<sup>191</sup> International obligations and perception are very important in many countries, including Curaçao. International influence has long been a driving force behind marine and nature protection. The SPAW Protocol, in particular, holds great sway in the Dutch Caribbean. Personal communication (on file with ELI).

<sup>192</sup> NFO art. 5.



deployed) for the creation of “no take” or “no fishing” zones for reef fish.<sup>193</sup> Second, the Fisheries Ordinance Curaçao 2004 allows for the designation of areas in Curaçao as “protected fishing areas” (*beschermde visserijgebieden*) created and managed by GMN (successor to the former LVV).<sup>194</sup> These geographically bounded areas can be designated by ministerial decree<sup>195</sup> to protect the survival and the natural development of fish stocks.<sup>196</sup> As of this writing, no protected fishing areas have been established in Curaçao. Figure 5 notes the locations of proposed no-fishing zones—not yet enacted—as well as designated Ramsar sites and Curaçao parks, discussed later in this Report.

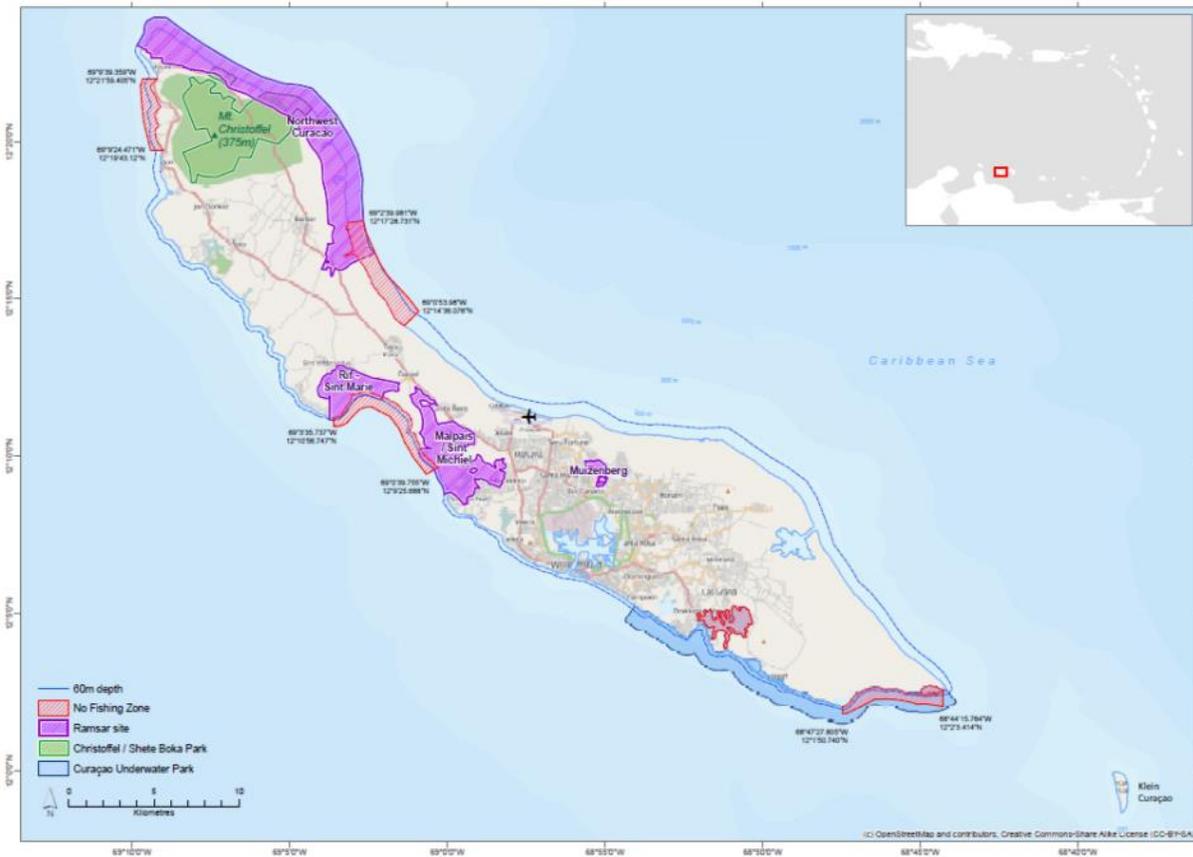


Figure 5. Map of protected areas in Curaçao.

<sup>193</sup> Memorandum from Vanessa Tore, Acting Secretary General, Ministry of Economic Development to the Minister of Economic Development, Apr. 9, 2014 (on file with ELI).

<sup>194</sup> FOC art. 8.

<sup>195</sup> While the FOC indicates that an ordinance can be used to create protected fishing areas, legal analysis by GMN suggests that this be interpreted as ministerial decree due to the 2010 constitutional change.

Memorandum from Mr. N.V. Ribeiro to the Minister of GMN, Apr. 17, 2013 (on file with ELI) (“What instrument in Article 17 of the Fisheries Regulation Curaçao in 2004 to be put in the place of the Island Ordinance depends on several factors. Having regard to the hierarchy of legislation and the General transitional arrangement legislation and administration Country Curaçao would the Island Ordinance referred to in Article 17 should be replaced by a ministerial decree with general operation.”).

<sup>196</sup> FOC art. 17. Boundaries must be indicated by way of a scaled map and physically demarcated by buoys or other internationally accepted standard signs placed at the area’s boundaries. *Id.* art. 17.



If the no-fishing zones are designated, it will be prohibited in any protected fishing area to:

- fish other than with a line (*liña*), rod, cast net (*trai*), trap (*kanaster* or fish pot), or by hand;
- place a fixed object or facility; or
- possess or use an object, material, or substance that may endanger or damage the survival or natural development of fish stocks.<sup>197</sup>

The FOC provides that the Executive Council (now presumably GMN) may grant exemptions from these prohibitions for scientific and educational purposes.<sup>198</sup> In addition, more specific rules can be created by island decree (*besluit*) to specify the use of and access to protected fishing areas;<sup>199</sup> however, no such rules have been issued to date specifically for protected areas.

## 4.2 “Conservation areas” and “water areas”

Land development authorities allow for the establishment of “conservation areas” in Curaçao where development is limited. As discussed in more detail in Chapter 5 of this Report, land development in Curaçao is governed by the Island Development Plan 1995 (*Eilandelijk Ontwikkelingsplan Curaçao*, EOP).<sup>200</sup> The EOP includes several area designations relevant to area protection in the ocean, including conservation areas and water areas. Designation of areas as one of these area types does not establish a management framework for the area, but rather limits the type of development that may occur there in the future, including through requirements to obtain planning permission prior to development.

First, the EOP designates conservation areas (*Conserveringsgebied*) to preserve and restore natural scientific, historical, cultural, and landscape values.<sup>201</sup> Some buildings and facilities are allowed in conservation areas—including those for extensive day recreation in the outdoors that does not disproportionately affect the values for which the area is designated. However, most development activities are restricted and the EOP requires a construction permit for activities including, but not limited to:

- mining, excavation, or landfill;
- surface or underground construction;
- fitting quays and berths for ships;
- uprooting trees or vegetation; and

<sup>197</sup> *Id.* art. 18. These prohibitions are in addition to any other restrictions on fishing as described above.

<sup>198</sup> *Id.* art. 15. The exemption must identify the purpose for which the exemption is granted, the duration of the exemption, and the fish species covered by the exemption. *Id.* art. 16.

<sup>199</sup> *Id.* art. 20.

<sup>200</sup> Island Regulation on Spatial Development (Island Development Plan (EOP 1995)), [*Eilandsverordening inhoudende een ontwikkelingsplan met bestemmingsvoorschriften (Eilandelijk Ontwikkelingsplan Curaçao)*], A.B. 1995, no. 36 (on file with ELI). The EOP was issued pursuant to the National Ordinance on Planning and Zoning 1976 and the Island Planning and Zoning Ordinance 1980, as amended. National Ordinance on Planning and Zoning 1976 [*Landsverordening grondslagen ruimtelijke ontwikkelingsplanning (LGRO)*], P.B. 1976, no. 195; Planning and Zoning Ordinance 1980, implementing the National Ordinance on Planning and Zoning 1976 and amending the Building and Housing Ordinance 1935 [*Eilandsverordening Ruimtelijke Ontwikkelingsplanning Curaçao (ERO)*], A.B. 1980, no. 6, as amended.

<sup>201</sup> EOP art. 9.



- creation of refuse or waste dumps.<sup>202</sup>

Construction permits can include conditions and must be denied if the work will directly or indirectly cause irreparable damage to the area disproportionate to the value of the work.<sup>203</sup>

Second, “water areas” designated by the EOP are intended for servicing shipping, water resources, recreation, and conservation and restoration of landscape and natural values.<sup>204</sup> Buildings and facilities consistent with these purposes are permitted in water areas, including for shipping and recreation, but a permit is required to build in a place where water is not adjacent to land intended for industrial use. The permitting determination must balance the interest served by such construction against any possible damage to the local underwater flora and fauna and riparian vegetation that may arise from development. In addition, no permits can be issued for developments that may cause a demonstrable nuisance, including by disposal of sewage and excessive anchoring demand in waterways.<sup>205</sup>

Discussions with government officials indicate several implementation challenges that arise in the context of the EOP. In particular, some interviewees indicate that unpermitted development occurs frequently. Such unpermitted development may occur, in part, due to the time it takes to obtain a permit for development.

### 4.3 Public Lands

The Public Lands Ordinance 2010 governs disposition of public lands and lands rights by the Government.<sup>206</sup> Under the Ordinance, public lands (*domaniale gronden*) can be alienated only when in the interests of the country,<sup>207</sup> and such transfers are subject to restrictions and may require an ordinance or decree.<sup>208</sup> Public lands and rights are managed by or on behalf of the Governor pursuant to regulations made pursuant to the Ordinance,<sup>209</sup> and lands may be rented or leased subject to taxation and other provisions.<sup>210</sup> Notably, “all agreements of lease or any other form of use” of public land and rights must be made in writing.<sup>211</sup>

Public lands in Curaçao include all lands held by the Island of Curaçao within former Netherlands Antilles, as well as all lands held by the Netherlands Antilles itself in Curaçao, which were

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<sup>202</sup> EOP art. 9.4.

<sup>203</sup> *Id.* (“Planning permission is refused if the work or activities, or directly or indirectly its likely consequences, cause damage in the region to scientific, historical, cultural and/or scenic values, or to the potential for recovery values which is disproportionate to the need to work or work interest.”).

<sup>204</sup> EOP art. 13.

<sup>205</sup> *Id.*

<sup>206</sup> Ordinance regulating the management of domanial land and other domanial rights (Ordinance Public Lands), [*Landsverordening tot regeling van het beheer van de domaniale gronden en van andere domaniale rechten (Landsverordening domaniale gronden)*], A.B. 2010, no. 87 app. U.

<sup>207</sup> *Id.* art. 2.

<sup>208</sup> *Id.* arts. 3-6.

<sup>209</sup> *Id.* art. 7.

<sup>210</sup> *Id.* arts. 7-9.

<sup>211</sup> *Id.* art. 9.



transferred upon constitutional change in 2010.<sup>212</sup> The latter includes not only government buildings but also the “coasts, bays, and coves of our territory.”<sup>213</sup> Some public lands have been placed under private management in national parks—particularly Shete Boka National Park, which includes “pocket beaches” used for sea turtle nesting (see Section 4.5 of this Report). Beaches in Curaçao below the high tide line are public, unless otherwise designated. Regardless, the land that must be crossed to access a beach, however, may be private land—which, as a practical matter, makes some beaches accessible only by sea.<sup>214</sup>

#### 4.4 Protected areas to implement international obligations

Curaçao, through the Kingdom of the Netherlands, is a party to several international legal instruments providing for the creation of protected areas, including in marine spaces. These instruments notably include the Convention on Biological Diversity (CBD), the SPAW Protocol to the Cartagena Convention, and the Ramsar Convention. However, the establishment of enforceable protected areas as provided by these instruments requires further implementing legal action by Curaçao.

The Kingdom has created a Nature Policy Plan of the Caribbean Netherlands to assist in the implementation of international and regional instruments on nature and biodiversity by serving as a framework for more specific national nature management plans.<sup>215</sup> While the Plan currently focuses on the BES islands, Curaçao has been invited to join it.<sup>216</sup> The plan contains support for strengthening marine parks—in particular, for the creation of a marine mammal sanctuary for the whole Dutch Caribbean,<sup>217</sup> which is also included in the EEZ management plan for the Dutch Caribbean that Curaçao has signed<sup>218</sup> (see Section 2.2 of this Report). In this respect, joining the Nature Policy Plan could reinforce Curaçao’s existing commitments toward the establishment of a large-scale marine mammal sanctuary.

##### 4.4.1 Convention on Biological Diversity protected areas

The CBD calls on its parties to, “as far as possible and as appropriate,” establish a “system of protected areas or areas where special measures need to be taken to conserve biological diversity.”<sup>219</sup> In addition, among other requirements, parties are to develop guidelines for selection,

<sup>212</sup> *Id.* at Explanatory Memorandum.

<sup>213</sup> *Id.*

<sup>214</sup> Personal communications (both on file with ELI). For a nuanced discussion of Curaçao beach ownership and public access, see generally J. Sybesma, “All Beaches Have Free Access [*Alle stranden moeten vrij toegankelijk*],” pub’d in an edited volume [*Karel Bongenaar; Een Koninkrijksvriend*] (2001) (on file with ELI).

<sup>215</sup> Netherlands Ministry of Economic Affairs, Nature Policy Plan: The Caribbean Netherlands 2013-2017 4-6 (2013) (“The Plan is rooted in the international agreements, conventions and regional agreements the Kingdom has committed itself to and in national legislation on nature and biodiversity in the Caribbean Netherlands. The Nature Policy Plan is not concerned with the protection of species and areas not subject to international agreements.”).

<sup>216</sup> The authors are not aware that Curaçao has yet done so.

<sup>217</sup> Netherlands Ministry of Economic Affairs, Nature Policy Plan: The Caribbean Netherlands 2013-2017 at 26 (2013).

<sup>218</sup> H.W.G. Meesters, D.M.E. Slijkerman, M. de Graaf, and A.O. Debrot, Management plan for the natural resources of the EEZ of the Dutch Caribbean, Report no. C100/10, *IMARES*, 10-10-2010, at 48-49.

<sup>219</sup> Convention on Biological Diversity art. 8.



establishment, and management of such areas where necessary and “promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas.”<sup>220</sup> Under the convention, a “protected area” is “a geographically defined area, which is designated or regulated and managed to achieve specific conservation objectives.”<sup>221</sup> The Conference of the Parties (COP) to the CBD has established a “Programme of Work on Marine and Coastal Biodiversity” and in a decision in 2004 urged parties to adopt a framework for a national network of coastal and marine protected areas, including both areas where sustainable extractive use is allowed and where it is not.<sup>222</sup> The SPAW Protocol, discussed below in Section 4.4.2, serves as a mechanism to achieve regional implementation of CBD objectives.<sup>223</sup>

Generally speaking, Curaçao law provides for creation of protected areas to implement the CBD through the 1998 Netherlands Antilles Ordinance on Nature Conservation and Protection.<sup>224</sup> The Ordinance authorizes creation of nature parks, which per the COP decision could provide the legal basis for a network of coastal and marine MPAs in Curaçao given development of decrees needed to develop a management structure and plan. However, no CBD nature parks have yet been established in Curaçao using this or any other law.

#### 4.4.2 SPAW Protocol protected areas

The SPAW Protocol—known formally as the Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region—was negotiated as a protocol to the broader Cartagena Convention, which seeks to protect and conserve the marine environment throughout the Caribbean. The SPAW Protocol focuses especially on protection and sustainable management of habitats and threatened and endangered species, including by requiring parties to establish protected areas when necessary to sustain the natural resources of the Wider Caribbean Region.<sup>225</sup> It is, in part, a regional approach to assist with implementation of the Convention on Biological Diversity. The Protocol identifies four particular purposes for which such protected areas should be established:

- representative types of coastal and marine ecosystems of adequate size to ensure their long-term viability and to maintain biological and genetic diversity;
- habitats and their associated ecosystems critical to the survival and recovery of endangered, threatened or endemic species of flora or fauna;

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<sup>220</sup> *Id.*

<sup>221</sup> *Id.* art. 2.

<sup>222</sup> Decision adopted by the Conference of the Parties to the Convention on Biological Diversity at its seventh meeting, VII/5. Marine and coastal biological diversity (2004).

<sup>223</sup> UNEP Caribbean Environment Programme, “Overview of the SPAW Protocol,” at <http://www.cep.unep.org/cartagena-convention/spaw-protocol>.

<sup>224</sup> Ordinance laying down rules for the management of nature and the protection of animal and plant species (National Ordinance on Nature Conservation and Protection 1998) [*Landsverordening houdende regels inzake het beheer van de natuur en de bescherming van de daarin voorkomende dier- en plantsoorten* (*Landsverordening grondslagen natuurbeheer en –bescherming*)], P.B. 1998, no. 49, art. 10. Modified by P.B.: 2001, no. 80; 2001, no. 41; 2007, no. 18; 2011, no. 49 (31-32). The ordinance continues in force post-2010.

<sup>225</sup> SPAW Protocol art. 4. The SPAW Protocol was ratified by the Kingdom of the Netherlands in 1992. See “Status of the Cartagena Convention and Protocols,” at [http://www.car-spaw-rac.org/IMG/pdf/pays\\_ratifies\\_spaw.pdf](http://www.car-spaw-rac.org/IMG/pdf/pays_ratifies_spaw.pdf).



- the productivity of ecosystems and natural resources that provide economic or social benefits and upon which the welfare of local inhabitants is dependent; and
- areas of special biological, ecological, educational, scientific, historic, cultural, recreational, archaeological, aesthetic, or economic value, including in particular, areas whose ecological and biological processes are essential to the functioning of the Wider Caribbean ecosystems.<sup>226</sup>

The Protocol further calls upon parties to “adopt and implement planning, management, and enforcement measures for protected areas,”<sup>227</sup> which may include buffer zones.<sup>228</sup>

The SPAW Protocol is implemented in Curaçao through two Netherlands Antilles ordinances. First, the Ordinance on Nature Conservation and Protection 1998 implements a variety of international environmental instruments, including the SPAW Protocol and the Ramsar Convention and CBD, which are described below.<sup>229</sup> In part, the Ordinance directed Island Councils (*eilandsraad*, now the Curaçao Parliament) to create “nature parks” (*natuurparken*) “insofar as possible” as part of treaty implementation.<sup>230</sup> Curaçao has not yet established any such parks under the Ordinance, although one island ordinance and two decrees to create management frameworks for implementation have been developed in draft form.<sup>231</sup>

Second, the Maritime Ordinance 2007<sup>232</sup> explicitly authorizes Curaçao to create protected areas (*beschermde gebied*) within the meaning of the SPAW Protocol. Under this Ordinance, “sections of the territorial sea or of the exclusive economic zone can be designated as protected areas as referred to in Article 4 of the SPAW Protocol” by national decree providing for an order in council.<sup>233</sup> Such national decrees must take into account relevant international regulations and provide rules for the use of the area—including any restrictions or prohibitions on navigation.<sup>234</sup>

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<sup>226</sup> *Id.*

<sup>227</sup> SPAW Protocol art. 6.

<sup>228</sup> SPAW Protocol art. 8.

<sup>229</sup> Ordinance laying down rules for the management of nature and the protection of animal and plant species (National Ordinance on Nature Conservation and Protection 1998) [*Landsverordening houdende regels inzake het beheer van de natuur en de bescherming van de daarin voorkomende dier- en plantsoorten (Landsverordening grondslagen natuurbeheer en – bescherming)*], P.B. 1998, no. 49, art. 10. Modified by P.B.: 2001, no. 80; 2001, no. 41; 2007, no. 18; 2011, no. 49 (31-32). The ordinance continues in force post-2010.

<sup>230</sup> 1998 No. 49 art. 10.

<sup>231</sup> See Nature Conservation Ordinance Curaçao, Draft No. 3 [*Eilandsverordening Natuurbeheer Curaçao*], 2009 (establishing general legal framework, requiring development of a five-year Nature Plan, and detailing procedures for designating protected areas by ordinance); Decree on Nature Conservation, Draft [*Ontwerp Eilandsbesluit Natuurbeheer*]; Decree on Marine Conservation, Draft [*Ontwerp Eilandsbesluit marine natuurbeheer*] (setting forth measures to be applied to the marine environment, including measures for the establishment and management of marine protected areas) (all on file with ELI).

<sup>232</sup> Ordinance laying down rules for the management of maritime areas in the Netherlands Antilles (Maritime Ordinance 2007) [*Landsverordening houdende regels inzake het beheer van de maritieme gebieden in de Nederlandse Antillen (Landsverordening Maritiem Beheer) (LvMB)*], P.B. 2007, no. 18.

<sup>233</sup> Maritime Ordinance, P.B. 2007, no. 18 art. 29.

<sup>234</sup> *Id.* art. 29.



To date, no SPAW protected areas have been designated under either the 1998 or 2007 ordinance, and the SPAW Secretariat lists no SPAW areas within Curaçao territory.<sup>235</sup> However, several SPAW Protocol protected areas do exist within the broader Dutch Caribbean that may provide guidance to Curaçao in establishing protected areas. These protected areas include—

- Bonaire National Marine Park;
- Man O War Shoal Marine Park (Sint Maarten);
- Quill/Boven National Park (Sint Eustatius);
- Sint Eustatius National Marine Park; and
- Saba National Marine Park; Saba Bank National Park (see Box 2).

**Box 2. Saba Bank as an example of a SPAW Protocol protected area.**

In September 2010, the Netherlands Antilles promulgated a decree designating Saba Bank as a marine protected area within the meaning of the SPAW Protocol, based on authorization in both the Maritime Ordinance 2007 and the Ordinance on Nature Conservation and Protection 1998.<sup>236</sup> The decree prohibits vessels from anchoring in the Saba Bank, except for certain vessels (including registered fishing vessels with a valid fishing license for any part of the Saba Bank and ported on Saba, Sint Maarten, or Sint Eustatius).<sup>237</sup> The Maritime Administrator (formerly, the Minister of Traffic and Transport of the Netherlands Antilles) may grant conditional exemptions to this prohibition for purposes that serve the interest of the marine environment on Saba Bank and may be necessary for scientific research or instructional purposes.<sup>238</sup> Additionally, crossing the Bank in any vessel larger than 300 gross tons is prohibited, as the Saba Bank was formally designated by the International Maritime Organization as a Particularly Sensitive Sea Area (PSSA) in 2012.<sup>239</sup>

#### 4.4.3 Ramsar Convention (Convention on Wetlands) protected areas

The Ramsar Convention calls upon each party to designate wetlands for inclusion on the list of wetlands of international importance (the Ramsar list).<sup>240</sup> The boundaries of these wetlands are to be delineated on a map and may include riparian and coastal areas adjacent to wetlands and islands or bodies of water deeper than six meters within the wetland.<sup>241</sup> The Convention directs that parties “shall formulate and implement their planning so as to promote the conservation” and “wise use” of listed wetlands<sup>242</sup> and “shall promote the conservation of wetlands and waterfowl by

<sup>235</sup> CAR-SPAW-RAC, Listing of Protected Areas under the SPAW Protocol, at <http://www.spaw-palisting.org/>.

<sup>236</sup> National Decree designating Saba Bank protected area [*Landsbesluit aanwijzing Saba Bank tot beschermd gebied*], P.B. 2010, no. 94.

<sup>237</sup> *Id.* art. 2. The master of any excepted vessel must report to the Coast Guard when crossing the Saba Bank boundaries.

<sup>238</sup> No. 94 art. 3.

<sup>239</sup> IMO, “Saba Bank designated Particularly Sensitive Sea Area by IMO Marine Environment Protection Committee,” Oct. 9, 2012, at [http://www.imo.org/en/MediaCentre/pressbriefings/pages/42-mepc-64.aspx-.V3\\_ls1dtm3A](http://www.imo.org/en/MediaCentre/pressbriefings/pages/42-mepc-64.aspx-.V3_ls1dtm3A).

<sup>240</sup> Convention on Wetlands of International Importance especially as waterfowl habitat, Ramsar, 2.2.1971, as amended by the Protocol of 3.12.1982 and the Amendments of 28.5.1987 art. 2. Wetlands are to be selected based on their international importance in terms of ecology, botany, zoology, limnology, or hydrology. *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.* art. 3.



establishing nature reserves on wetlands”<sup>243</sup> However, it does not require that listed wetlands be granted specific legal protections or legally-designated as protected areas.

The 1998 Netherlands Antilles Ordinance on Nature Conservation and Protection authorizes designation of nature parks to implement the Ramsar Convention.<sup>244</sup> As noted above, Curaçao has not, to date, established parks under the ordinance. However, four Curaçao sites are included on the Ramsar list.<sup>245</sup> These sites were named by the Netherlands in 2013 after preliminary identification by GMN and nomination by the Council of Ministers.<sup>246</sup> These sites include:

- Malpais/Sint Michiel (includes two lakes and the hyper-saline St. Michiel lagoon);
- Muizenberg;
- Northwest Curaçao (includes parts of the Christoffel Natural Park); and
- Rif-Sint Marie.<sup>247</sup>

Development in each of these areas is subject to certain limitations under the 1995 Island Development Plan, or EOP.<sup>248</sup> Muizenberg is designated in the EOP as a park area,<sup>249</sup> while the other three sites are designated as conservation areas.<sup>250</sup> However, these sites are not otherwise protected through restrictions on use or activities that may affect them.

#### 4.4.4 Revision of Nature Conservation and Protection Ordinance 1998

While the Ordinance on Nature Conservation and Protection 1998 provides important authority for creation of protected areas to meet obligations under international agreements, it requires additional authorities for implementation in Curaçao. The draft Nature Conservation Ordinance of 2009 is a third draft of such implementing authority<sup>251</sup> and would provide several important provisions, including on the establishment and management of marine and terrestrial nature parks and establishment of a Nature Fund for the management of natural parks in Curaçao.

While a full review of this draft Ordinance is beyond the scope of this Report, as it is now outdated due to the 2010 constitutional revision, the draft does offer some guidance for future efforts to

<sup>243</sup> *Id.* art. 4.

<sup>244</sup> Ordinance laying down rules for the management of nature and the protection of animal and plant species (National Ordinance on Nature Conservation and Protection 1998) [*Landsverordening houdende regels inzake het beheer van de natuur en de bescherming van de daarin voorkomende dier- en plantsoorten (Landsverordening grondslagen natuurbeheer en – bescherming)*], P.B. 1998, no. 49 art. 10. Modified by P.B.: 2001, no. 80; 2001, no. 41; 2007, no. 18; 2011, no. 49 (31-32). The ordinance continues in force post-2010.

<sup>245</sup> The List of Wetlands of International Importance, 21 Jan. 2016 at 31.

<sup>246</sup> Versgeperst, Identificatie RAMSAR gebieden op Curaçao, 26 Aug. 2012 (noting that GMN initially identified nine sites for nomination, of which the Council selected four). *See also* Ramsar, Netherlands names four new Caribbean Ramsar Sites (undated).

<sup>247</sup> The List of Wetlands of International Importance, 21 Jan. 2016 at 31.

<sup>248</sup> EOP, *Eilandelijk Ontwikkelingsplan Curaçao*, A.B. 1995, no. 36.

<sup>249</sup> Mark A. Vermeij and Valérie F. Chamberland, Curaçao Proposed Ramsar area “Muizenberg”, 11 Nov. 2012.

<sup>250</sup> *See* Mark J.A. Vermeij and Valérie F. Chamberland, Curaçao Proposed Ramsar area “Malpais/Sint Michiel”, Nov. 11, 2012; Mark J.A. Vermeij and Valérie F. Chamberland, Curaçao Proposed Ramsar area “Northwest Curaçao”, Nov. 11, 2012; Mark J.A. Vermeij and Valérie F. Chamberland, Curaçao Proposed Ramsar area “Rif-Sint Marie”, Nov. 11, 2012.

<sup>251</sup> Nature Conservation Ordinance Curaçao, draft no. 3 [*Eilandsverordening Natuurbeheer Curaçao*], 2009 (on file with ELI).



implement or revise the 1998 ordinance or to establish sustainable funding streams. As to the latter, the draft Ordinance would allow the Council of Ministers to issue a decree to impose a levy (*heffing*) on park users, including companies that use a park, the proceeds of which would be placed in a Nature Fund (*Natuurfonds*) to be used exclusively for Curaçao nature management “in the broadest sense of the word”—the specifics on such usage to be left to the decree if more specificity is desired.<sup>252</sup> The draft would also have enabled park management by an administrator, subject to audit and subsidy restrictions.<sup>253</sup>

#### 4.5 Park areas under private management

Despite the absence of protected areas in Curaçao operating under a formal legal mandate, Curaçao has created several “parks” that, while not created under any formal legal authority, are well known, used to conserve open or relatively undisturbed spaces, and have established sustainable funding sources. These parks notably include the Curaçao Marine Park, Christoffel National Park, Shete Boka National Park, and other areas primarily managed by Caribbean Research and Management of Biodiversity (CARMABI), a non-profit foundation.<sup>254</sup> CARMABI manages these park areas with its own funding and the help of sponsors, while receiving a small subsidy for the management of Christoffelpark.<sup>255</sup> In addition, as described below, a funding system has been created to provide funding to key park areas.

Though not established under any specific legal authority, some of these areas exist on government-owned lands and thereby are protected from development. While the basis for CARMABI’s management of public lands is not recorded in Curaçao law, it appears that CARMABI manages these lands on behalf of the Governor, under contract.

The Curaçao Marine Park, also known as the Curaçao Underwater Park, was created in 1983 to protect relatively well-preserved areas of coral reef, mangroves, and seagrass.<sup>256</sup> The park extends from Breezes Hotel to the eastern tip of the island, from the high-water mark on shore to the 60 m depth contour, and covers a surface area of 600 hectares (1482 acres) of reef and 436 hectares (1077 acres) of inner bays.<sup>257</sup> CARMABI notes that the Curaçao Marine Park has “largely failed to accomplish the objectives of reef conservation and management,” citing in particular the lack of an adequate legal basis for the management of the park.<sup>258</sup>

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<sup>252</sup> *Id.* art. 13.

<sup>253</sup> *Id.*

<sup>254</sup> CARMABI, General Information. CARMABI today is the result of the combination in 1996 of the original Carmabi Foundation, founded in 1955, and *Stichting Nationale Parken* (STINAPA), established in 1962 to address marine and terrestrial conservation. *Id.* Today, it manages Christoffelpark; Shete Boka National Park; Daaibooi; Hato Caves; Kabouterbos; Seru di Seinpost; Caves on the San Pedro plain; and Hermanus & Jan Kok. *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> CARMABI, Curaçao Marine Park introduction; see also Dutch Caribbean Nature Alliance (DCNA), Curaçao Underwater Park introduction.

<sup>257</sup> *Id.*

<sup>258</sup> Dr. MJA Vermeij and Ms. VF Chamberland (Carmabi Foundation, Curaao), “Appendix: an overview of specific rules and regulations to protect Curaçao’s marine life.” Ramsar sites information NL2119, Jan. 22, 2012, at <https://rsis.ramsar.org/RISapp/files/RISrep/NL2119RISformer.pdf>.



CARMABI in 1995 proposed to remedy the absence of legal authority through development of a Curaçao Marine Management Zone (CMMZ) plan, which would extend the Marine Park to encompass Curaçao's entire reef system, seagrass beds and mangroves and provide a management structure for the island's near-shore marine environment.<sup>259</sup> The government signaled a willingness to consider formal legal protection for the plan, including in a contemporary tourism plan and through a memorandum between the Netherlands Antilles Ministry of Health and Environment and the Dutch Ministry of Agriculture, Nature Conservation and Fisheries.<sup>260</sup> However, no further work to implement the CMMZ plan has been undertaken to date.

While Christoffelpark, Shete Boka National Park, and Curaçao Marine Park lack legal foundation or protections, they are unique in that a sustainable funding mechanism has been created for them. The Dutch Caribbean Nature Alliance (DCNA) Conservation Trust Fund (CTF) is a global fund for support of protected areas in the six Dutch Caribbean islands. The fund's genesis was a 2002 request by the Netherlands Antilles for a study of how to sustainably fund protected area management in the region.<sup>261</sup> The CTF was created after the resulting 2005 feasibility study determined that a trust fund was the only viable funding option.<sup>262</sup> Established within the framework of the new DCNA, the Trust Fund was established as a non-government, non-profit foundation whose mission is to "assist nature conservation organisations throughout the Dutch Caribbean to safeguard nature and promote sustainable use of the islands' natural resources."<sup>263</sup>

The CTF is an endowment fund in which only the revenues (or net benefits) of the fund (and not the capital) are available to cover the management costs of the parks. These revenues may be used only to—

- provide core funding for specific marine and terrestrial parks—in Curaçao, this includes Curaçao Underwater Park and Christoffel Park (including Shete Boka Park); and
- cover DCNA operational costs, up to a maximum of 20% of total revenues.<sup>264</sup>

The revenues of the trust fund are scheduled to be distributed to the park management organizations as a percentage of assets, such that CARMABI would receive about 18% of the DCNA income (Table 9).<sup>265</sup>

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<sup>259</sup> *Id.*

<sup>260</sup> *See id.* at 3, citing Curaçao Tourism Development Bureau, Curaçao's Tourism Master Plan § 12.4 at 119 (1995) ("In order to conserve the coastal strip, both shore and sea, the Government will support the creation of a coastal protection zone around the island of Curaçao, through the introduction of legislation to extend the existing marine park and to protect and conserve the foreshore, sea and the natural flora and fauna").

<sup>261</sup> DCNA, Annual Report 2012 at 62 (describing history of Trust Fund).

<sup>262</sup> *Id.*; Aid Environment, Barry Spergel, and Ecovision, Sustainable Funding for Nature Parks in the Netherlands Antilles: Feasibility Study of a Protected Areas Trust Fund (2005).

<sup>263</sup> DCNA, Multi Year Plan 2013-2017 at 2. DCNA is an umbrella organization for the independent organizations responsible for protected area management on the six islands of the Dutch Caribbean. Each member, including CARMABI, nominates a representative to the DCNA board, where they serve with outside experts and representatives from international and local NGO's and conservation organizations.

<sup>264</sup> *See* DCNA, Bylaws of the Dutch Caribbean Nature Alliance, ver. 07-2009 art. 8 (2009) [under revision].

<sup>265</sup> *Id.*



Table 9. Scheduled distribution of assets of CTF.

Organization	Island	Percentage
Fundacion Parke Nacional Arikok	Aruba	12.0 %
Stichting Nationale Parken, Bonaire	Bonaire	18.4 %
CARMABI	Curaçao	18.4%
Saba Conservation Foundation	Saba	14.9%
St Eustatius National Parks Foundation	St Eustatius	14.9%
Foundation for the Conservation and Preservation of Nature on Sint Maarten	St Maarten	9.7%
DCNA	--	11.7%

The feasibility study calculated that the Fund should accumulate €24 million to produce sufficient income to fund park needs (based on 6% annual income), which was to be reached by 2016<sup>266</sup> through investment by the Netherlands Ministry of the Interior, Dutch Postcode Lottery, and other donors (*e.g.*, IUCN or WWF) as well as accrual of income on that investment.<sup>267</sup> However, fund assets totaled only €8 million by the end of 2012, leading DCNA to recognize that “it is no longer realistic to expect that a 24 million Euro target will be met by 2016 and it is therefore questionable whether this would be sufficient to meet the trust fund’s original goals given current market returns averaging 2-3%.”<sup>268</sup> As a result of fund underperformance, the approach of the expected beginning of payout from the fund in 2016, and the new constitutional order in the Dutch Caribbean, DCNA is reviewing its organizational documents, which may result in changes to the structure and function of the fund (potentially including conversion to a sinking fund).

<sup>266</sup> Aid Environment, Barry Spergel, Ecovision, “Feasibility Study of a Protected Areas Trust Fund,” 2005, at <http://www.dcbd.nl/sites/www.dcbd.nl/files/documents/TrustfundstudyNethAntilles-complete.pdf>.

<sup>267</sup> See DCNA, *Bylaws of the Dutch Caribbean Nature Alliance*, ver. 07-2009 art. 8 (2009) [under revision] (“all dividends and revenues from the Trust Fund are to be reinvested in the Trust Fund for the duration of the funding assistance from the Dutch Ministry of the Interior (BZK) i.e. until post 2015”).

<sup>268</sup> DCNA, *Annual Report 2012*, at 63-65.



## 5 Planning and Land Use

Curaçao has a longstanding system of land development planning, as well as more recent legal authority specifically governing coastal and marine development. The Ministry of Traffic, Transport, and Spatial Planning (*Ministerie van Verkeer, Vervoer en Ruimtelijke Planning*, VVRP) is responsible for land development planning, which is carried out by several departments, including Land Development Use and Planning (*Ruimtelijke Ordening en Planning*, ROP).<sup>269</sup>

The key laws include:

- the National Ordinance on Planning and Zoning 1976 (*Landsverordening grondslagen ruimtelijke ontwikkelingsplanning*, LGRO), setting the general framework and the general obligation for islands to establish an Island Development Plan;<sup>270</sup>
- the Island Ordinance on Planning and Zoning 1980 (*Eilandsverordening Ruimtelijke Ontwikkelingsplanning Curaçao 1980*, EROC 1980),<sup>271</sup> creating the framework for LGRO implementation in Curaçao and detailing the development planning process;
- the Island Development Plan 1995 (*Eilandelijk Ontwikkelingsplan Curaçao*, EOP),<sup>272</sup> implementing the LGRO and EROC to guide development in Curaçao; and
- the Maritime Ordinance 2007, which requires permission for coastal development in Curaçao.

In addition to these primary laws, a number of additional ordinances address specific aspects of land use practice in Curaçao. A discussion of these laws, such as the Building Ordinance 1935 and the Expropriation Ordinance, are beyond the scope of this Report.

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<sup>269</sup> Administrative Organization Ordinance 2010 [*Landsverordening ambtelijk bestuurlijke Organisatie*], A.B. 2010, no. 87 art. 12. The National Ordinance on Planning and Zoning 1976 (LGRO) designates implementation bodies that include the Netherlands Antilles Planning Development Bureau [*Planbureau Ontwikkelingsplanning Nederlandse Antilles*], whose task was to assist the Minister, conduct research and provide opinions for the development planning and to supervise compliance with the Ordinance; and the Coordination Committee on Development Planning, whose task was to promote the coherence and focus of government policy for the development of the area of the Netherlands Antilles, to the extent relevant to and appropriate to the context of spatial development. LGRO Ch. IV. These institutions were dissolved after 2010 and their roles are now subsumed within the VVRP as indicated above.

<sup>270</sup> LGRO, Ordinance laying down rules concerning the foundations of the spatial development planning and to amend the Expropriation Regulation (National Ordinance on Planning and Zoning 1976) [*Landsverordening van de 8ste september 1976, houdende voorschriften betreffende de grondslagen van de ruimtelijke ontwikkelingsplanning en tot wijziging van de Onteigeningsverordening (Landsverordening grondslagen ruimtelijke ontwikkelingsplanning)*], P.B. 1960, no. 161, P.B. 1976, no. 195.

<sup>271</sup> EROC, Ordinance for implementing the National Ordinance on planning and zoning 1976 and amending the Building and Housing Ordinance 1935 (Planning and Zoning Ordinance 1980) [*Eilandsverordening ter uitvoering van de Landsverordening grondslagen ruimtelijke ontwikkelingsplanning en tot wijziging van de Bouw- en Woningverordening 1995 (Eilandsverordening Ruimtelijke Ontwikkelingsplanning Curaçao)*], A.B. 1980, no. 6, as amended. The EROC entered into force in 1983.

<sup>272</sup> Island Regulation on Spatial Development, [*Eilandsverordening inhoudende een ontwikkelingsplan met bestemmingsvoorschriften (Eilandelijk Ontwikkelingsplan Curaçao)*], A.B. 1995, no. 36. The EOP entered into force on May 23, 1997. Decree of May 15, 1997, A.B. 1997, no. 24.



## 5.1 LGRO and EROC

The 1976 LGRO (the national ordinance) sets forth the general framework for and obliges each island of the Dutch Caribbean to create an Island Development Plan. Curaçao promulgated the EROC (its island ordinance) to guide implementation of the LGRO shortly after the LGRO was enacted in (indeed, before LGRO even came into force<sup>273</sup>). While some provisions of the LGRO are unique, the EROC also repeats and further details various LGRO provisions.

The LGRO seeks to establish a coherent and sustainable government policy for the development of the area of the Netherlands Antilles on ‘lands’ subject to its grant of authority.<sup>274</sup> The LGRO does not clearly define whether or which marine areas are included in the lands within its scope. This question has been of interest to commentators for some time, as indicated in a 2002 Netherlands Antilles planning handbook:

On one side, as there is no clear definition of the physical scope within the Ordinance, it can be concluded that it intended to extend the spatial development of the island towards the entire territory over which jurisdiction is present. This would also include the sea, as it has been confirmed by a court ruling from 1965 that declared that the islands’ jurisdiction over their entire territory did include the territorial sea. On the other hand, the LGRO 1976 in its article 9 states that the island government can establish development plan regulations for the ‘lands’ [*grond*] included in the plan. Article 1.2 defines ‘land’ as the “inlets, bays and waters within the coastline” [*de inhammen, wateren en baaien binnen de kustlijn*].<sup>275</sup>

This analysis suggests that Curaçao had jurisdiction (within the Netherlands Antilles system) to plan in marine areas, but the LGRO did not clearly authorize it to exercise this jurisdiction other than for inland waters within Curaçao’s baseline (*e.g.*, the Schottegat and potentially other large bays such as Caracasbaai).<sup>276</sup> In practice, while the EOP does cover some islets within bays, it does not include development protections for marine areas.

The general objectives of the LGRO include: spatial development to seek economic prosperity and social and cultural development; a balance of development and space kept available; preservation of a healthy environment; housing and social and cultural facilities that keep pace with population

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<sup>273</sup> The LGRO entered into force in Curaçao in 1982 with the exception of Articles 4, 5 and 6, which are still not applicable in Curaçao today. P.B. 1982 no. 24. The excluded articles call for the elaboration of a ten-year development program identifying the longer-term objectives for economic and socio-cultural development to the extent relevant for spatial development; this program was to serve as a general framework for multi-annual plans and other implementation projects. An economic policy was approved by the Council of Ministers in 2013 but not signed. Personal communication, Feb. 2016 (on file with ELI).

<sup>274</sup> LGRO art. 2.

<sup>275</sup> M.A. Heldeweg, J. Sybesma, m.m.v. L.J.J. Rogier, *Handboek Nederlands-Antilliaans Omgevingsrecht: Inleiding tot het recht inzake milieu, natuur en ruimtelijke ontwikkeling op de Nederlandse Antillen*, Boom Juridische Uitgevers: Den Haag (SNAAR deel 6), 2002, blz 266 e.v. at 4.1, 4.3.1 (discussing ruling).

<sup>276</sup> On the other hand, a contemporary theory by CARMABI argues that the government has been engaging in spatial development in the territorial sea—notably, by allocating the Curaçao Underwater Park to CARMABI for conservation and management. CARMABI, “Zienswijze Carmabi met betrekking tot de concept Landsverordening tot herziening van het Eilandelijk Ontwikkelingsplan Curaçao (PB 1995, no. 36).”



growth; and adaptive development of development planning.<sup>277</sup> To accomplish these objectives, the LGRO and EROC require the Executive Council (presumably now VVRP) to elaborate a development plan by ordinance to serve as a framework for long-term planning and for other implementing projects.<sup>278</sup> A development plan consists of:

- a summary of the plan, including an explanation of the objectives, policies and guidelines upon which it is based;
- maps depicting development or showing the objectives, policies, or guidelines of the development plan;
- if necessary, planning rules (*bestemmingsvoorschriften*) as defined in Article 9, which may specify restrictions on construction, on how to carry out other works and activities in, on or above the indicated ground, and on the use of such land and buildings standing thereon; and
- an explanation, including a report of the underlying research.<sup>279</sup>

The LGRO also controls the contents of the EROC, and specifically calls on Curaçao to include provisions for timely disclosure, review of the draft plan, and timely notice of its publication. The draft plan must be open to interested persons and stakeholders must be provided an opportunity to submit objections.<sup>280</sup> After adoption, the plan is binding on the island government and the public, and it serves as a general framework for long-term plans, development plans, and other implementation projects.<sup>281</sup> Curaçao is required to consider revisions to its plan at least every five years.<sup>282</sup> Since spatial development laws substantially affect private property rights, the LGRO also provides safeguards for parties who suffer harm as a result of the allocation provisions.<sup>283</sup>

The EROC development planning rules consist of: a) one or more allocation maps with accompanying statement, on which the allocation of the land is designated; and b) provisions relating to the allocations.<sup>284</sup> An “allocation” is defined as the purpose for which the land, which includes the inlets, bays, and other waters within the shoreline, may be used for proper spatial development. Allocations categories include residential, business purposes, retail and service purposes, recreational purposes, social purposes, traffic purposes, agricultural purposes, and aims of landscape and nature conservation (*doeleindenvan landschaps en natuurbhoud*).<sup>285</sup> An important element of the allocation rules is that there may be limitations: restrictions with regard to construction, on or above the included ground, the use of that land, and the buildings located

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<sup>277</sup> LGRO art. 3. In practice, however, as discussed below, the plan is revised only if deemed necessary.

<sup>278</sup> LGRO art. 7. *See also* EROC art. 3 (requiring consideration of the natural state of the area, population trends, development of sources of wealth, social and cultural development, housing, retail, schools, health and leisure facilities, the legal situation, and land values).

<sup>279</sup> LGRO art. 7; EROC art. 4.

<sup>280</sup> LGRO art. 13 (1).

<sup>281</sup> EROC art. 4.

<sup>282</sup> LGRO art. 8.

<sup>283</sup> *Id.* art. 13(2).

<sup>284</sup> EROC ch. III.

<sup>285</sup> *Id.* art. 9



thereon. Also the planning rules contain binding rules regarding the order in which the realization of certain significant elements of the plan can be made.<sup>286</sup>

If a development plan includes planning rules, then these may include both specific and general guidance regarding the spatial design of the project area.<sup>287</sup> In addition, EROC indicates that any such planning rules take precedence over provisions of the Building and Housing Regulation 1935.<sup>288</sup> The allocation rules and the effects detailed would govern the allocation of the land and the roads and other traffic areas. This means that, as far as grounds are eligible for building, the nature and dimensions of the buildings, as well as their placement relative to each other and relative to the road and the permissibility of structures other than buildings, can be regulated.<sup>289</sup>

A development plan may determine that it is prohibited within an area with a specific allocation to carry out certain construction without written authorization from VVRP. Planning rules could also include provisions concerning the permissibility of such works and activities. Works and activities are understood to include mining, excavation, landfill, leveling, or blasting, building roads and other site paving, installation of above-ground and underground constructions, installation or equipment, works, and activities that affect water resources, fitting quays or berths, felling of trees and other vegetation, planting of land, demolition of buildings, and the construction of refuse and waste dumps. It is important to note that the reasons for refusing permission to build should be imperatively and exhaustively determined. Planning permission should be refused if the intended work or activities are contrary to planning rules contained in the development plan or to other requirements of the Ordinance.<sup>290</sup>

Additionally, planning rules may stipulate that it is prohibited to use buildings and undeveloped land in a manner or for a purpose contrary to given allocation—the so-called “user instructions.” VVRP may grant an exemption from the ban if there was no urgent need to limit the most efficient use.<sup>291</sup> Planning rules may further provide that VVRP is authorized to grant exemption from its provisions or impose additional requirements. Exemptions should be based on clearly defined grounds, such as the fact that third-party interests on adjoining and adjacent land will not be seriously harmed by granting the exemption.<sup>292</sup>

EROC provides additional rules for towns and villages, whose historical, urban, or touristic and cultural values may require special protection. Planning rules could thus, in addition to the normal restrictions, implement further restrictions with respect to construction, demolition, and changes to the external appearance of buildings. These restrictions may, for example, pertain to the use or composition of materials, facade articulation, roof shape, or plot layout.<sup>293</sup>

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<sup>286</sup> *Id.* art. 9.

<sup>287</sup> *Id.* art. 14.

<sup>288</sup> *Id.*

<sup>289</sup> *Id.* art. 15.

<sup>290</sup> *Id.* art. 20.

<sup>291</sup> *Id.* art. 21.

<sup>292</sup> *Id.* arts. 22-24.

<sup>293</sup> *Id.* art. 19.



An important tool for prevention of land speculation and interventions that violate the scheduled allocation in the development phase is the ability to declare a provisional decree (*Voorbereidingsbesluit*). By provisional decree, VVRP can declare that a development plan is being prepared. Such a decree can promulgate anticipatory restrictions regarding the construction, performance of other work or activities in, on, or, above the ground, and the use of land and buildings. A building permit can be granted only if the plans satisfy the government-planned spatial development as contained in the allocation requirements of the development plan being prepared.

Notice of a provisional decree must be given to the Island Council (presumably now Parliament), and such decision must be published in the Official Bulletin and made available for public inspection. A provisional decree expires one year from the date a draft development plan for inspection is set.<sup>294</sup> In addition, according to the EROC, an execution plan or a modification plan must contain: a) maps with accompanying explanation; b) provisions relating to elaborate or changed allocation; and c) an explanation.<sup>295</sup> The execution plan or modification plan is deemed to be part of the planning rules associated with a development plan. Specific provisions are further detailed regarding the procedure to elaborate such an execution plan or modification plan.<sup>296</sup>

## 5.2 EOP

Curaçao completed its Island Development Plan (EOP) in 1995,<sup>297</sup> and it took effect in 1997. The EOP establishes area designations to which are attached “Global Allocation Rules” (*Globale Bestemmingen*). These areas are set out on a GIS-based map, as required by the LGRO and EROC. The map is not included with the regulation as printed, but rather is a separate document. Types of area designations include:

- urban residential areas;<sup>298</sup>
- towns;<sup>299</sup>
- industrial areas;<sup>300</sup>
- airport;<sup>301</sup>
- touristic areas;<sup>302</sup>
- agricultural areas;<sup>303</sup>
- conservation areas;<sup>304</sup>
- (urban) park areas;<sup>305</sup>

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<sup>294</sup> *Id.* art. 25.

<sup>295</sup> An execution plan implements the more generic plan. A modification plan modifies a previous plan.

<sup>296</sup> EROC arts. 16-18.

<sup>297</sup> EOP 1995, Island Regulation on Spatial Development, [*Eilandsverordening inhoudende een ontwikkelingsplan met bestemmingsvoorschriften (Eilandelijk Ontwikkelingsplan Curaçao)*], (A.B. 1995, no. 36).

<sup>298</sup> *Id.* art. 3.

<sup>299</sup> *Id.* art. 4.

<sup>300</sup> *Id.* art. 5.

<sup>301</sup> *Id.* art. 6.

<sup>302</sup> *Id.* art. 7.

<sup>303</sup> *Id.* art. 8.

<sup>304</sup> *Id.* art. 9.

<sup>305</sup> *Id.* art. 10.



- rural residential areas;<sup>306</sup>
- open land;<sup>307</sup>
- water;<sup>308</sup> and
- highways.<sup>309</sup>

Each of these area designations includes associated allocation rules and describes how the area's objectives must be pursued. It is important to note that the EOP does not provide for the management of conservation or park areas, but rather guides the types of development that can occur there, read in connection with the other applicable ordinances.<sup>310</sup> Key EOP area designations relevant to marine management in Curaçao include:

- **Touristic areas:** Areas intended for the development of recreational facilities, with an emphasis on tourism facilities.<sup>311</sup> Some listed touristic areas include feature a landscape, cultural, or nature protection purpose, such as *Jan Thielbaai*, *Caracasbaaischiereiland* (for its scientific importance and its mangrove forest). Special provisions allows for buildings and amenities to support fishing and certain other commercial purposes.
- **Conservation areas:** Areas for preservation and restoration of natural scientific, historic, cultural, and landscape values.<sup>312</sup> Buildings and other facilities are allowed in these areas for the purpose of preservation of the protected values of the site, for traffic purposes, and for extensive day recreation in the outdoors that does not interfere disproportionately with the values of the area. Certain activities in these areas requires a construction permit, including mining, excavating landfill, construction of paved areas, works and activities that may affect the water balance of the groundwater, applying quays and berths for ships, and felling and uprooting of trees or other vegetation.<sup>313</sup> Activities in particular conservation areas may also be limited. For example, in *Gronden te Oostpunt* (Eastpoint), a maximum of 20% of the total protected area can be developed if specific provisions and procedures are followed, including preparation by the landowner of an Environmental Impact Assessment in which the plans are checked against pre-defined guidelines and criteria, all this entirely by and on behalf of the landowner. Other conservation areas include: Waterloo, Zuurzak, Harmonie, Ascencion, and Isla di Yerba.<sup>314</sup>
- **Park areas:** Areas dedicated to the development of urban parks and to conservation and restoration of the existing recreational, scenic, and natural values.<sup>315</sup> Development is

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<sup>306</sup> *Id.* art. 11.

<sup>307</sup> *Id.* art. 12.

<sup>308</sup> *Id.* art. 13.

<sup>309</sup> *Id.* art. 14.

<sup>310</sup> M.A. Heldeweg, J. Sybesma, m.m.v. L.J.J. Rogier, *Handboek Nederlands-Antilliaans Omgevingsrecht; Inleiding tot het recht inzake milieu, natuur en ruimtelijke ontwikkeling op de Nederlandse Antillen*, Boom Juridische Uitgevers: Den Haag (SNAAR deel 6), 2002, blz 266 e.v. (4.1.), at [http://doc.utwente.nl/86648/1/No.127a\(2003\)HandboekNederlands-AntilliaansomgevingsrechtAuteursversiefinaalconcept-Boom.pdf](http://doc.utwente.nl/86648/1/No.127a(2003)HandboekNederlands-AntilliaansomgevingsrechtAuteursversiefinaalconcept-Boom.pdf), p. 176.

<sup>311</sup> EOP art. 8.

<sup>312</sup> *Id.* art. 9.

<sup>313</sup> *Id.* art. 9(4).

<sup>314</sup> *Id.* art. 9(3).

<sup>315</sup> *Id.* art. 10.



allowed in park areas if it is in support of green spaces, recreational facilities, traffic access, facilities for water, landscaping, or culture and nature conservation. Construction in a park area requires a permit. Park areas include Kabouterbos, Sapate, Scherpenheuvel, Muizenberg, Piscadera, Kleinere gebiedjes, Terrein bij Ronde Klip, Brakkeput Ariba, and Brakkeput Mei Mei.

- **Water areas:** Areas (within the Curaçao baseline) serving the purpose of shipping, water resources, or recreation.<sup>316</sup> Water areas may also be used for conservation and restoration of the existing landscape and natural values. Development in water areas is allowed for the purpose of navigation, water resources, recreation, traffic (to connect the banks), and landscape and nature conservation. A permit is required to build higher than six meters in order to balance against possible environmental nuisance. A permit is also required for proposed development in a location where water is not available adjacent to an industrial area. Permitting decisions must balance the interest served by the development against the possible damage to local submerged flora and fauna and riparian vegetation.

The EOP also addresses nuisances.<sup>317</sup> Activities that by their nature, purpose, or function should be expected to result in a nuisance are prohibited—unless specific measures can be taken to sufficiently overcome the nuisance. Nuisance is broadly defined by the EOP to include—

excessive discomfort caused by fire or explosion; excessive noise, stench, or wave output compared to adjacent parcels; excessive emissions or the possibility of substances or gases that pose health hazards; no or inadequate facilities for the disposal of sewage water or oil; insufficient provision for the storage and disposal of solid and liquid waste; excessive nuisance arising from conflicts between vessels themselves, and in particular between motor boats and sailing boats and swimmers; excessive nuisance by anchoring vessels in public waters; overcrowding a public anchorage area; and activities late into the evening and the night that cause nuisance.

### 5.3 Implementation and Future of the EOP

While the existing EOP has been the subject of criticism and previous governments have called for EOP revision,<sup>318</sup> these proposals are controversial—including within the Government itself. As such, proposals for revision are best viewed in the context of ongoing debates over the form and future of land development in Curaçao—e.g., in areas such as Oostpunt. Recent reports indicate that a new Development Plan for 2015-2020 is under consideration, but it has been criticized by developers<sup>319</sup> as well as environmental advocates.<sup>320</sup>

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<sup>316</sup> *Id.* art. 13.

<sup>317</sup> *Id.* art. 13(d).

<sup>318</sup> Hope and Confidence. The Government Programme: 2013-2016. A summary at 5-6.

<sup>319</sup> “EOP Strongly Criticized,” *Curaçao Chronicle*, Apr. 14, 2014, at <http://curacaochronicle.com/economy/eop-strongly-criticized/>, in ELI scoping document.

<sup>320</sup> Green Force, “Project Developers Do Not Care about EOP,” *Curaçao Chronicle*, Apr. 15, 2014, at <http://curacaochronicle.com/economy/green-force-project-developers-do-not-care-about-eop/>, in ELI scoping document.



## 6 Maritime and Shipping

The maritime economy has been important to Curaçao's economic life since the colonial era as a consequence of Willemstad's protected harbor. While a complete review of maritime law in Curaçao is beyond the scope of this Report, this chapter introduces the institutions relevant to the shipping sector in Curaçao and also describes the Maritime Ordinance 2007 as it relates to shipping. In addition to the Maritime Ordinance, the many other laws governing marine vessel traffic include the following:

- the Vessels Ordinance 1930 (addressing vessel marking and licensing; the harbor master, pilots, and police responsible for monitoring vessel movement in harbors, bays, and territorial waters);<sup>321</sup>
- the Harbor Regulation 1936 (authorizing the harbor master to control the ports and harbors of Curaçao and providing for Customs clearance);<sup>322</sup>
- the Foreign Vessels Decree 1939 (requiring permission to use Curaçao waters other than for transit or port access);<sup>323</sup>
- the Ordinance on the prevention of pollution from ships 1993, and its implementing regulations (implementing the London Convention 1972 prohibiting ocean dumping and discharge of oil and harmful substances);<sup>324</sup>
- the Temporary Decree on Harbor Security 2004 (providing for harbor security);<sup>325</sup> and
- the Ships Decree 2004 (promulgating a kingdom decree on ship safety and certification implementing the Convention for the Safety of Life at Sea (SOLAS)).<sup>326</sup>

<sup>321</sup> Ordinance on monitoring the movements of vessels in ports and bays and in the territorial waters of the territory of Curaçao (Vessels Ordinance 1930) [*Verordening betreffende toezicht op de bewegingen van vaartuigen in de havens en baaien en in de territoriale wateren van het gebiedsdeel Curaçao (Vaartuigenverordening 1930)*], P.B. 1930, no. 72.

<sup>322</sup> Harbour Regulation Curaçao 1936 [*Verordening van den 7den Mei 1936, tot vaststelling van een nieuw reglement voor de haven van Curaçao (Havenreglement Curaçao 1936)*], A.B. 1936, no. 104 (on file with ELI).

<sup>323</sup> Decision of the 11th of September 1939, the prohibition on sailing vessels of foreign nationality to hold in itself, without written authorization, in the bays and territorial waters of Curaçao [*Besluit van den 11den September 1939, houdende verbod voor zeilvaartuigen van vreemde nationaliteit om zich, zonder schriftelijke vergunning, in de baaien en territoriale wateren van Curaçao op te houden*].

<sup>324</sup> National ordinance of November 3, 1993 on rules for the prevention of pollution from ships (Ordinance on the Prevention of Pollution from Ships) [*Landsverordening van 3 November 1993 houdende regels ter voorkoming van verontreiniging door schepen (Landsverordening voorkoming van verontreiniging door schepen)*], P.B. 1993 No. 108; National decree containing general Measures, from the 26th August 1995 for the implementation of Article 7, first and fourth paragraphs, of the Ordinance on Prevention of Pollution from Ships (PB 1993, no. 108) [*LANDSBESLUIT, HOUDENDE ALGEMENE MAATREGELEN, van de 26 ste augustus 1995 ter uitvoering van artikel 7, eerste en vierde lid, van de Landsverordening voorkoming verontreiniging door schepen (P.B. 1993, no. 108)*], P.B. 1995 No. 163; National decree containing general measures of the 26th August 1995 implementing Article 9, paragraph and Article 41 of the Ordinance on the Prevention of Pollution from Ships [*Landsbesluit, houdende algemene maatregelen, van de 26 ste augustus 1995 ter uitvoering van artikel 9, derde lid, en artikel 41 van de Landsverordening voorkoming van verontreiniging door schepen*], P.B. 1995 No. 162.

<sup>325</sup> National Decree Containing General Measures of the 25th June 2004, temporarily managing the improvement of the security of ships and port facilities [*Landsbesluit, houdende algemene maatregelen, van de 25ste juni 2004, tijdelijk regelende de verbetering van de beveiliging van schepen en havenfaciliteiten (Tijdelijk havenbeveiligingsbesluit)*], P.B. 2004, no. 51.



## 6.1 Shipping Institutions in Curaçao

### 6.1.1 Maritime Authority & ship registry

Prior to the constitutional change in 2010, Willemstad was the administrative capital of the Netherlands Antilles and as such served as the port of the flag registry for the Netherlands Antilles. After 10/10/10, all vessels carrying certificates and documents of the Netherlands Antilles retained Willemstad as port of the flag registry and continued to fly the flag of the Kingdom of the Netherlands. The former Directorate of Shipping and Maritime Affairs of the Netherlands Antilles (*Directie Scheepvaart en Maritieme Zaken*), which managed the registry and was already situated in Curaçao, was formally transferred to the country of Curaçao after 2010 as the Maritime Authority of Curaçao (*Maritieme Autoriteit van Curaçao*).<sup>327</sup> Beyond the change in name, the transfer had no external or internal legal effect. All flag state responsibilities concerning vessels registered in the former country Netherlands Antilles are now the responsibilities of Curaçao.<sup>328</sup> Rules for the registry are provided by the Kingdom Sea Letters Decree of Curaçao and Sint Maarten.<sup>329</sup>

### 6.1.2 Curaçao Ports Authority

Curaçao has four commercial ports, including ports at Willemstad, Fuik Bay, Caracas Bay, Bullen Bay, and St. Michiel's Bay, each of which is delimited in the Island Development Plan of 1995, or EOP.<sup>330</sup> The largest of these is at Willemstad, which has a large, natural harbor (the Schottegat) featuring an oil refinery, dry-dock, economic zone area, container terminal, and cargo wharves. Since 2004, the port of Willemstad has offered facilities in compliance with the International Ship and Port Facility Security Code (ISPS Code) of the International Maritime Organization (IMO).<sup>331</sup>

The Curaçao Ports Authority (CPA) has managed all ports and bays in Curaçao since 1981.<sup>332</sup> CPA is a limited liability company whose main shareholder is the island government of Curaçao. CPA owns the container and cruise terminals, as well as most of the wharves and the properties adjacent to the Schottegat. It describes its responsibilities to include commercial development; ensuring the quality of nautical services, safety, and security; and provision of port services (through itself and/or its partners or subsidiaries), including tugboat services; pilotage; vessel traffic control;

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<sup>326</sup> Decree of 30th June 2004 for promulgation of the decision of 18 June 2004 (Stb. 284), on rules relating to the safety and certification of ships (Ships Decree 2004) [*Besluit van de 30ste juni 2004 tot afkondiging van het besluit van 18 juni 2004 (Stb. 284), houdende regels met betrekking tot de veiligheid en certificering van zeeschepen (Scheepbesluit 2004)*], A.B. 2004, no. 58 (on file with ELI).

<sup>327</sup> See Directorate of Shipping and Maritime Affairs, *Welcome to DSMZ*, at <http://www.maritimecuracao.org>.

<sup>328</sup> See The Directorate of Shipping and Maritime Affairs on behalf of the Government of Curaçao, "Notice to Shipping," Oct. 5, 2010, Willemstad, Curaçao, at [http://www1.veristar.com/veristar/dps\\_info.nsf/0/ebc4c58f47f6ada2c12577c0003233d1/\\$FILE/Notice%20to%20Shipping.pdf](http://www1.veristar.com/veristar/dps_info.nsf/0/ebc4c58f47f6ada2c12577c0003233d1/$FILE/Notice%20to%20Shipping.pdf).

<sup>329</sup> Decree establishing rules related to the nationality of ships (Sea Letters Decree of Curaçao and Sint Maarten) [*Besluit houdende regelen met betrekking tot de nationaliteit van zeeschepen (Brieven besluit van Curaçao en Sint Maarten)*], Stb. 1993, 302, Explanatory Memorandum [*Memorie van Toelichting*].

<sup>330</sup> Curaçao Island Development Plan 1995 [*Eilandelijk Ontwikkelingsplan Curaçao*], A.B. 1995, no. 36.

<sup>331</sup> See Curaçao Ports Authority, *Port History*, at <http://www.curports.com/our-ports/port-history/>.

<sup>332</sup> See CPA, "Organization," at <http://www.curports.com/port-authority/organization/>.



bridge and ferry operations; enforcement of health, safety, security, and environmental regulations; and inspection, registration, and licensing of local vessels.<sup>333</sup>

As of 2011, Curaçao is a member of the Caribbean Understanding on Port State Control.<sup>334</sup>

Additionally, all of the maritime authorities within the Kingdom convene annually pursuant to the Maritime Consultancy Platform to discuss maritime and shipping affairs.<sup>335</sup>

## 6.2 Maritime Ordinance 2007

The Maritime Ordinance 2007 implements various international maritime treaties and regulates maritime affairs in Curaçao.<sup>336</sup> The Minister of Traffic, Transportation, and Spatial Planning (VVRP) is responsible for implementation of the Ordinance as the Administrator (*beheerder*) of the territorial sea and the EEZ, unless otherwise designated by another ordinance or delegated to another person or entity.<sup>337</sup> The Administrator is authorized to give instructions to the users of the maritime area.<sup>338</sup>

Substantively, the Maritime Ordinance 2007 establishes a framework that implements a variety of maritime treaties (Table 10). These provisions create restrictions applicable to ships and captains when operating within Curaçao waters. The Ordinance further allows for the promulgation of national decrees to implement these or other “binding conventions of international law that serve the same interest as the present national ordinance” (i.e., order, security, and protection of the environment) or to exempt categories of ships in whole or in part from the Ordinance.<sup>339</sup>

<sup>333</sup> *Id.*; see also CPA, “Environmental Policy,” at <http://www.curports.com/wp-content/uploads/2015/04/Environmental-policy.pdf>.

<sup>334</sup> See [http://www.caribbeanmou.org/news\\_press\\_release00.php](http://www.caribbeanmou.org/news_press_release00.php). “Port State Control is a check on visiting foreign ships to see that they comply with international rules on safety, pollution prevention and seafarers’ living and working conditions. It is a means of enforcing compliance where the owner and flag State have failed in their responsibility to implement or ensure compliance.” *Id.*

<sup>335</sup> Personal communication (on file with ELI).

<sup>336</sup> Maritime Ordinance 2007 [*Landsverordening maritiem beheer*], P.B. 2007, no. 18, brought into force by Decree of Dec. 28, 2007 [*landsbesluit van 28 december 2007*] P.B. 2008, no.1; Decree of Aug. 10, 2010 regulating the entry into force of article 29(1) of the Maritime Ordinance [*Landsbesluit regelende de inwerkingtreding van artikel 29, eerste lid, van de Landsverordening maritiem beheer*], P.B. 2010, no. 67; Decree of Oct. 8, 2010 regulating the entry into force of the remaining provisions of the Maritime Ordinance [*Landsbesluit regelende de inwerkingtreding van de resterende bepalingen van de Landsverordening maritiem beheer*] P.B. 2010, no. 111.

<sup>337</sup> No. 18 arts. 4-9. More specifically, the Administrator may assign to an executive committee responsibility for one or more designated marine areas. *Id.* art. 5. The Minister or the designated executive committee (with the approval of the Minister) may also authorize a legal entity to act on his/its behalf, pursuant to certain restrictions and regulations. *Id.* arts. 6-9.

<sup>338</sup> *Id.* art. 4 (2).

<sup>339</sup> *Id.* art. 3.



Table 10. International instruments implemented by Maritime Ordinance 2007.

Instrument	Section
Intervention Convention and Protocol	Arts. 40-43
Collisions at Sea Convention	Arts. 14-16
UNCLOS	Arts. 11- 31
MARPOL	Arts. 22, 37, 44
Border Convention	Art. 49
OPRC Convention	Arts. 35-39
SPAW Protocol	Art. 29
Protocol of London of 1996 for the Prevention of Marine Pollution by Dumping of Wastes and Other Matter	Arts. 44-48
UNESCO Convention on the Protection of the Underwater Cultural Heritage	Arts. 32-34

The breadth of the Maritime Ordinance means that its authorities extend beyond governance of shipping; provisions not discussed here but covered elsewhere in this Report include modifications of fisheries law (see Section 3.1 of this Report); authority for the creation of protected areas (see Section 4.4 of this Report), and licensure for construction and operation of structures in the ocean (see Section 9.1 of this Report).

Some provisions of the Ordinance seek to ensure safe navigation within Curaçao waters. These provisions require communications with the Administrator upon entry and departure; observance of traffic separation schemes, safety zones around structures, and traffic markings; and observance of the Convention on Collisions at Sea.<sup>340</sup> The Administrator may give instructions to the captain of a ship to ensure safe navigation or for the protection of the environment.<sup>341</sup> Mooring, anchoring, or otherwise staying with a ship in the territorial sea, other than through berthing, is prohibited (with certain exceptions) without or contrary to the consent of the Administrator.<sup>342</sup> In implementation of the Intervention Convention, the Minister may adopt measures to prevent serious harmful consequences of accidents and disasters at sea.<sup>343</sup>

The Maritime Ordinance also establishes rules for protection of the environment during shipping activities. A person (including a ship) causing, by action or omission, an object or substance to be deposited or released into Curaçao waters must report the incident and remove the object or substance from the water where practicable, except where such discharges are authorized under the MARPOL Convention or London Convention.<sup>344</sup> Release of smoke, fumes, gases, dust, or vapor in such manner as to cause danger, damage, or annoyance is similarly prohibited,<sup>345</sup> and a permit is

<sup>340</sup> *Id.* arts. 11-18.

<sup>341</sup> *Id.* art. 17(4), (5).

<sup>342</sup> *Id.* art. 19.

<sup>343</sup> *Id.* arts. 40-43.

<sup>344</sup> *Id.* art. 22. Reporting obligations are less comprehensive in the EEZ, where they apply only to ships and offshore installations. *Id.*

<sup>345</sup> *Id.* art. 25.



required to load or unload harmful or dangerous substances.<sup>346</sup> Additional rules governing shipping in the interests of public order, safety, and protection of the marine environment may be set by decree.<sup>347</sup>

Sinking ships or structures, or disposal or burning of waste or other substances in the territorial sea or EEZ are also prohibited pursuant to the Ordinance's implementation of the 1996 Protocol to the London Convention.<sup>348</sup> The London Convention itself is implemented through the National Ordinance on the Prevention of Pollution by Ships.<sup>349</sup> Oil spill prevention requirements are provided both in the Maritime Ordinance, through implementation of the OPRC Convention (allowing for issuance of decrees for oil spill contingency planning applicable to harbors, ships, and offshore installations),<sup>350</sup> and through the 1993 Ordinance on Prevention of Pollution from Ships (implementing the London Convention). Additionally, Curaçao hosts the Regional Marine Pollution Emergency, Information and Training Centre—Caribe (REMPEITC), a Regional Activity Centre (RAC) of the U.N. Environment Programme (UNEP) Caribbean Environment Programme.<sup>351</sup> RAC-REMPEITC assists countries in the Wider Caribbean Region to prevent and respond to pollution in the marine environment through planning development and assessment, training, technical support, and informational and public awareness activities.<sup>352</sup>

The Maritime Ordinance 2007 includes substantial compliance and enforcement provisions. It makes the police and other designated special agents responsible for supervising compliance with the provisions of the Ordinance.<sup>353</sup> All persons must provide full cooperation to these enforcement officials.<sup>354</sup>

The Ordinance provides enforcement officials with certain powers, but “only to the extent reasonably necessary for the performance of their duties.”<sup>355</sup> Specifically, enforcement officials are authorized to:

- solicit information;

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<sup>346</sup> *Id.* art. 27.

<sup>347</sup> *Id.* art. 24.

<sup>348</sup> *Id.* arts. 44-48 (implementing 1996 Protocol to London Convention); *see also* National Ordinance on the prevention of pollution by ships, P.B. 1993 no. 108 (implementing London Convention).

<sup>349</sup> P.B. 1993 no. 108.

<sup>350</sup> *Id.* arts. 35-39.

<sup>351</sup> *See* <http://www.racrempeitc.org/about-rempeitc>.

<sup>352</sup> *Id.* Activities are primarily funded by the International Maritime Organization (IMO), UNEP, and the U.N. Development Programme (UNDP). *Id.*

<sup>353</sup> Maritime Ordinance 2007 art. 51 (delegating enforcement responsibility to persons designated in Article 184 of the Criminal Code of the Netherlands Antilles and to officials or persons designated by national decree or by the Executive Council (presumably now the Minister of Justice)). Appointments must be published in the *Curaçao Courant*. Rules governing performance of duties of enforcement officials may be set by decree. *Id.* art. 51(3). *See also* Ordinance adopting a new Code of Criminal Procedure (Code of Criminal Procedure) [*Landsverordening houdende vaststelling van een nieuw Wetboek van Strafvordering (Wetboek van Strafvordering)*], A.B. 2010, nos. 86 and 87 art. 184 (1) (providing that police officers; officials of the Land Investigation [*Landsrecherche*]; and extraordinary agents of the police are responsible for the identification of offenses).

<sup>354</sup> No. 18 art. 51(4).

<sup>355</sup> *Id.* art. 52.



- demand access to all books, records, and other information and copy or temporarily remove them;
- inspect and examine goods and sample or temporarily seize them;
- enter all places except dwellings without explicit permission, but accompanied by persons designated by the occupant;
- examine ships and stationary vehicles, including cargo; and
- enter dwellings, including dwelling areas of vessels, without express permission from the occupant, in compliance with the requirements of the Code of Criminal Procedure.<sup>356</sup>

Additional powers with respect to ships include the authority to arrest or detain ships on suspicion of having violated certain articles of the Ordinance or related decrees, or on instructions from the Administrator, including with regard to:

- collisions;
- mooring without permission;
- releasing noxious substances;
- loading dangerous substances;
- violating SPAW Protocol protected area restriction decrees;
- broadcasting radio or TV signals;
- removing underwater cultural heritage;
- accident or disaster responsiveness instructions; and
- dumping of wastes or sinking of structures.<sup>357</sup>

The Ordinance further provides for responsibilities of the captain after arrest; operation of arrest by warrant; and detention. Enforcement staff may shut down work in marine areas for violation of certain provisions, including dumping, by issuance of a notice to the responsible person.<sup>358</sup>

Sanctions for violations may include administrative enforcement, incremental penalty payment, or punitive sanctions.

Administrative enforcement is delegated to the successor to the Minister of Public Health (of the Netherlands Antilles) (now presumably GMN), who can order removal, prevention, maintenance, or performance of actions or restrictions connected with a permit, as well as restoration of any damaged public works, at the expense of the responsible party.<sup>359</sup> Costs of administrative enforcement are recoverable by writ of execution issued by a bailiff, which can be challenged by the receiver.<sup>360</sup> Administrative enforcement action may include temporary seizure (or sale or destruction of articles that cannot be stored long term).<sup>361</sup>

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<sup>356</sup> *Id.*

<sup>357</sup> *Id.* arts. 53-56.

<sup>358</sup> *Id.* arts. 62-66.

<sup>359</sup> *Id.* arts. 67-69.

<sup>360</sup> *Id.* art. 70.

<sup>361</sup> *Id.* arts. 74-75.



As an alternative to administrative enforcement, the competent authority may order payment of an administrative penalty by either a lump sum by duration or per instance of the violation, up to a maximum amount that is reasonably proportionate to the severity of the violation and its effects. Such penalties must stipulate a period for corrective action prior to which the penalty is not immediately payable.<sup>362</sup>

Finally, the Ordinance sets out punitive sanctions for specific violations of provisions the Ordinance. The amounts of these sanctions range from NAF 25,000 to NAF 1,000,000 and/or four years' imprisonment.<sup>363</sup>

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<sup>362</sup> *Id.* art. 76.

<sup>363</sup> *Id.* arts. 80-82. Penalties were modified in 2011. National Ordinance containing provisions relating to the introduction of the new Penal Code (Ordinance Introduction of the Criminal Code) [*Invoeringslandsverordening Wetboek van Strafrecht*], P.B. 2011, Nos. 48, 49, 50.



## 7 Protection of fauna and flora

Curaçao's laws afford protection to certain marine organisms, including corals, animals, mangroves, and seagrass. Relevant laws include the Reef Management Ordinance 1976, the Ordinance on Nature Conservation and Protection 1998 (implementing the SPAW Protocol), and the Maritime Ordinance 2007.<sup>364</sup> Also, while not described in detail here, additional protections may be provided as a consequence of designation of areas containing key species (e.g., mangroves) as conservation or water areas under the Island Development Plan (EOP).<sup>365</sup>

### 7.1 Reef Management Ordinance

The original purpose of the Reef Management Ordinance (RMO) was to protect the island's coral reefs from collection activities related to the jewelry industry.<sup>366</sup> As such, it prohibits breaking or loosening corals or processing or selling corals, violation of which is a criminal offense and may be penalized by a fine of up to NAf 5,000 or imprisonment for up to two months.<sup>367</sup> However, as amended, the Ordinance also authorizes the Council of Ministers (now, presumably GMN) to promulgate a decree to prohibit harm to and use of marine fauna and plants.<sup>368</sup> Decrees may protect marine plants, including mangroves,<sup>369</sup> from the territorial sea or inland waters of Curaçao, and protections for any species can be limited based on organism size or time of year.<sup>370</sup> Nests and eggs of designated animals are also protected.<sup>371</sup> To date, despite calls from stakeholders,<sup>372</sup> no decree has been issued to protect mangroves or seagrass, or any marine fauna other than sea turtles, which were designated for protection in 1996.<sup>373</sup> Violation of provisions other than those specific to corals are civil offenses that may result in a fine of up to NAf 2,500 or imprisonment for one month; repeat offenders may receive double penalties.<sup>374</sup>

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<sup>364</sup> See MJA Vermeij and VF Chamberland, Appendix: an overview of specific rules and regulations to protect Curaçao's marine life, Ramsar sites information NL2119 (2012).

<sup>365</sup> Additionally, Curaçao has presented to the Parliament (*parlatino*) of the Community of Latin American and Caribbean States (CELAC) a Framework Law (*ley marco*) for Protection of the Marine Coastal Environment—Very Special Ecological Systems of Coral Reefs, Mangroves and Seagrass (draft and 2014 on file with ELI). CELAC is a regional, intergovernmental mechanism for dialogue and political agreement. See <http://www.celacinternational.org/>.

<sup>366</sup> Reef Ordinance Curaçao [*Rifbeheerverordening Curaçao*], A.B. 1976, no. 48, Explanatory Memorandum 1, as amended by A.B. 1989, no. 21 (allowing collection of corals for scientific or educational purposes or for the benefit of society); A.B. 1996, no. 13 (further protecting turtles).

<sup>367</sup> RMO arts. 2, 10, 13.

<sup>368</sup> *Id.* art. 3 (prohibiting killing, possessing (alive or dead), having for sale, selling, buying, transporting, transforming, or processing designated marine fauna and plants).

<sup>369</sup> RMO Explanatory Memorandum 4 (indicating that mangroves are marine plants within the scope of the Ordinance, as they provide spawning and breeding ground for many marine animals).

<sup>370</sup> RMO art. 3.

<sup>371</sup> Island ordinance for amending the Reef Management Ordinance Curaçao (A.B. 1976 no. 48), A.B. 1996 no. 13.

<sup>372</sup> Froukje Sijtsma, *Green Force: 'Bescherm de mangrove*, Versgeperst.com, Mar. 19, 2012.

<sup>373</sup> Island Decree for Protection of Sea Turtles [*Eilandsbesluit bescherming zeeschildpadden*], 1996 No. 8.

<sup>374</sup> RMO arts. 10, 13.



Before promulgating a decree, GMN must consult with professional organizations of fishermen and may consult with other interested parties, stakeholders, and services.<sup>375</sup> GMN also may grant exemptions allowing residents to collect for commercial use or individuals and organizations to collect for scientific or educational purposes.<sup>376</sup> To grant an exemption, GMN must follow strict, formal procedures and consult relevant stakeholders; permission may be withdrawn at any time if reasonable doubts arise regarding the authorized activity.<sup>377</sup> Users must keep certificates of exemption with them when engaged in the activity.<sup>378</sup>

The RMO also prohibits hunting for any marine fauna with “underwater hunting gear” (spear guns, etc.) or using means that harm the marine environment (*e.g.*, bleach), which may be designated by decree, as discussed in Section 3.3 of this Report.

## 7.2 Ordinance on Nature Conservation and Protection 1998

As discussed in Section 4.4 of this Report, the Ordinance on Nature Conservation and Protection 1998 implements international conventions, treaties, and protocols to which the Netherlands Antilles was—and Curaçao is—a party.<sup>379</sup> Several of these conventions are relevant to mangrove and seagrass protection, including: the SPAW Protocol to the Cartagena Convention, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Biological Diversity (CBD), the Ramsar Convention, the Bonn Convention, and the Sea Turtle Convention.

The SPAW Protocol calls upon its signatories to identify and protect threatened and endangered species of fauna and flora through national law, including the taking, possession, and killing of these species.<sup>380</sup> In addition, parties are to adopt cooperative measures to protect species listed on one of three Annexes to the Protocol,<sup>381</sup> which contain threatened or endangered plant species (Annex I); threatened or endangered animal species (Annex II); and animal and plant species that are not threatened or endangered but which require special measures to ensure their protection (Annex III).<sup>382</sup> A variety of species, including mangroves and seagrass, are listed in Annex III.<sup>383</sup>

CITES governs the trade in threatened and endangered species, which are listed in three appendices to the Convention.<sup>384</sup> The Convention requires parties to prohibit trade in listed species except in accordance with the provisions of the Convention.<sup>385</sup>

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<sup>375</sup> *Id.* art. 3.

<sup>376</sup> *Id.* arts. 4, 5.

<sup>377</sup> *Id.* arts. 4-5.

<sup>378</sup> *Id.* art. 8.

<sup>379</sup> Ordinance on Nature Conservation and Protection 1998 [*Landsverordening grondslagen natuurbeheer en -bescherming*], P.B. 1998, no. 49.

<sup>380</sup> SPAW Protocol art. 10.

<sup>381</sup> *Id.* art. 11.

<sup>382</sup> See CAR-SPAW-RAC, *Annexes of the SPAW Protocol*, at <http://car-spaw-rac.org/?Annexes-of-the-SPAW-Protocol,83> (species database).

<sup>383</sup> *Id.*

<sup>384</sup> CITES art. 2. Appendix I includes endangered species for which trade in specimens must be strictly regulated; Appendix II includes species which although not necessarily now threatened with extinction may



The CBD provides for the conservation and sustainable use of biological diversity, including with regard to access and sharing of the benefits arising out of the use of genetic resources.<sup>386</sup> To achieve these objectives, the Convention requires—among other mandates—that all parties:

- develop national strategies, plans, or programs for conservation and sustainable use;
- identify and monitor important “components of biological diversity,” including ecosystems, species and communities, and genetic resources, and activities likely to have significant adverse effects on these components; and
- take measures to conserve biodiversity by establishing a system of protected areas, regulating biological resources, and other means.<sup>387</sup>

Other components of the CBD specifically call for the use of incentive measures and require the introduction of measures to require environmental impact assessment.<sup>388</sup>

The Ramsar Convention provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.<sup>389</sup> The Bonn Convention, or the Convention on the Conservation of Migratory Species of Wild Animals, seeks to conserve terrestrial, aquatic, and avian migratory species throughout their range.<sup>390</sup> And the Inter-American Convention for the Protection and Conservation of Sea Turtles promotes the protection, conservation, and recovery of sea turtle populations.<sup>391</sup>

The Ordinance on Nature Conservation and Protection 1998 provides for implementation of each of these international instruments. To do so, the Ordinance requires the Minister of Health and the Environment of the Netherlands Antilles (now presumably GMN in Curaçao) to develop a national conservation plan every five years in consultation with the Executive Council (now the Council of Ministers).<sup>392</sup> A five-person Committee on Conservation and Protection is called upon to advise the Minister and Council of Minister on implementation of the Ordinance.<sup>393</sup> The Minister is required to designate a “managing authority” and a “scientific authority” to implement the Ordinance—in particular, the provisions related to trade in species under CITES.<sup>394</sup> In practice, GMN serves as the management authority. The requirements for trade in species pursuant to CITES are explicitly described in and endorsed by the Ordinance,<sup>395</sup> as are prohibitions with respect to listed species

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become so unless trade in specimens of such species is subject to strict regulation, and other species that must be regulated to protect these species; and Appendix III includes species which a Party identifies as subject to regulation to prevent or restrict exploitation, and as needing the co-operation of other Parties in the control of trade. *Id.*

<sup>385</sup> *Id.* arts. 2-5.

<sup>386</sup> CBD art. 1.

<sup>387</sup> *Id.* arts. 8-10, annex I.

<sup>388</sup> *Id.* arts. 11, 14.

<sup>389</sup> See <http://www.ramsar.org/>.

<sup>390</sup> See <http://www.cms.int/>.

<sup>391</sup> See <http://www.iacseaturtle.org/defaulteng.htm>.

<sup>392</sup> No. 48 art. 2. This requirement also applied to each island individually through creation of an island nature plan. *Id.* art. 9.

<sup>393</sup> *Id.* arts. 3-4.

<sup>394</sup> *Id.* arts. 5-6.

<sup>395</sup> *Id.* art. 7.



established in the SPAW Protocol, which are equally prohibited in Curaçao and are to be established by decree.<sup>396</sup>

While certain provisions of CITES and the SPAW Protocol are detailed in the Ordinance, most requirements of the Ordinance are delegated to each island (of the former Netherlands Antilles) and described only with general reference to the relevant conventions. For example, Article 13 of the Ordinance provides that “[t]he Island Council is responsible for the protection and management measures for species listed in the Annexes of the SPAW Protocol” and the requirements of the treaty apply in Curaçao. Similar facial adoption applies to the Sea Turtle Convention, Bonn Convention, CBD, and protected areas under the Ramsar Convention. The government of each island was to establish rules within two years to implement these protections.<sup>397</sup> To date, no such decrees have issued. However, the proposed draft Nature Conservation Ordinance 2009 would have provided additional authority for implementation of this responsibility.<sup>398</sup>

The Ordinance contains enforcement and penalty provisions. Personnel for supervision of compliance are to be appointed by decree (published in the *Curaçao Courant*), and are delegated authority including inspection of records, goods, places, and vessels, to the extent reasonably necessary—with access requiring the help of the police with respect to dwellings.<sup>399</sup> Detection of offenses is dealt with separately, by personnel identified in the Code of Criminal Procedure (*i.e.*, police) and other appointed persons (also as published in the *Courant*).<sup>400</sup> Penalties may be assessed administratively (presumably by order of GMN), which may include cost recover or financial penalties, which accrue to the government if collected.<sup>401</sup> Maximum penalties range from NAf 25,000 and/or imprisonment for up to six months, up to NAf 1 million and/or imprisonment for up to four years.<sup>402</sup>

### 7.3 Maritime Ordinance 2007

The Maritime Ordinance 2007 includes provisions on construction in the marine environment that may be relevant for the protection of marine flora and fauna.<sup>403</sup> The Ordinance requires a permit from the Minister of Traffic, Transportation and Spatial Planning, VVRP (as Administrator) to have or erect any construction, including coastal reclamation and causing a change to the level of the seabed, in Curaçao territorial waters or the EEZ.<sup>404</sup> Issuance of a permit is contingent on the Government’s evaluation of the effects of such construction on local ship traffic, the marine

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<sup>396</sup> *Id.* arts. 8, 8a, 8b, 10, 13, 15. The Ordinance refers to the SPAW Protocol text. See *id.* art. 8a (“It is forbidden to perform actions or activities referred to in Article 11, first paragraph, subparagraph a, of the SPAW Protocol ...”).

<sup>397</sup> *Id.* art. 15.

<sup>398</sup> Nature Conservation Ordinance Curaçao, draft no. 3 [*Eilandsverordening Natuurbeheer Curaçao*], at IV-V (2009) (on file with ELI) (including provisions on the protection of terrestrial and marine plants and animals).

<sup>399</sup> No. 48 art. 16.

<sup>400</sup> *Id.* art. 18.

<sup>401</sup> *Id.* arts. 20-32.

<sup>402</sup> *Id.* art. 33.

<sup>403</sup> Maritime Ordinance 2007 [*Landsverordening Maritiem Beheer*], P.B. 2007, no. 18.

<sup>404</sup> *Id.* art. 20.



environment, and archeological sites of potential interest.<sup>405</sup> This evaluation is to be performed in association with the successors to the Netherlands Antilles Ministers of Health and Social Development, Education and Culture, and Finance.<sup>406</sup> Thus, impacts on mangroves, seagrass beds, and corals (among other habitats) must be considered prior to coastal development that may impact them.

## 7.4 Forestry law

Curaçao has no significant forestry sector, and as such, the country has no legal framework for forestry.<sup>407</sup> This is typical of the region: an FAO publication issued when Curaçao was part of the Netherlands Antilles noted that “the government of the Netherlands Antilles and Aruba have never defined forestry as a policy as such, nor did they assign any department to be responsible for this whole field.”<sup>408</sup> As a result, there are no generally applicable forestry restrictions on the cutting or destruction of plants that might limit mangrove loss.

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<sup>405</sup> *Id.* arts. 20, 21, 23 (“When assessing the application for authorization referred to in Article 20, first paragraph, the effects of the construction and operation of the proposed building on the marine environment, nature, the safety of shipping and the maritime archaeological heritage should be explicitly considered.”). Further rules and procedures are contained in arts. 51-85.

<sup>406</sup> *Id.* art. 21(3).

<sup>407</sup> See Tim van den Brink, *Forestry policies in the Netherlands Antilles and Aruba*, in FORESTRY POLICIES IN THE CARIBBEAN, VOL. 2: REPORTS OF 28 SELECTED COUNTRIES AND TERRITORIES 395, FAO Forestry Paper 137/2 (1998).

<sup>408</sup> *Id.* at 397.



## 8 Pollution and Dumping

Land-based pollution is highly relevant to coastal water quality, as air pollution, agricultural runoff, wastewater, and sewage are easily transported to the sea in Curaçao. More specifically, the heavily industrialized Schottegat Bay is a major source of coastal water pollution.<sup>409</sup> Lack of regulations, lack of a long-term plan for waste management, and lack of capacity and technology to properly develop an efficient management system combine to create challenges for water quality management.<sup>410</sup> Informal conversations with Curaçaoans suggest public concern over how dumping by commercial facilities, industry, and shipping affects the island's inland and coastal waters.

The history of air, soil, and water pollution in Curaçao is closely related to the history of the oil refinery in the North of Schottegat. Built by Shell in 1915, it was sold to the government in 1985 for \$1 under the condition that no environmental claims against Shell would be pursued. Indeed, after several decades of oil dumping, a visible “tar lake” had appeared on the refinery lands. Today the Venezuelan company Petroleros de Venezuela SA (PDVSA) leases the refinery from the Curaçao government.

### 8.1 Authorities

In Curaçao, GMN is the Ministry responsible for the management of the environment and nature in general.<sup>411</sup> Two key legal authorities address land-based sources of pollution. First, the Nuisance Ordinance Curaçao 1994 creates a licensing system for industrial pollution.<sup>412</sup> Second, Curaçao more recently enacted the Public Order Ordinance 2015 to address a variety of deficiencies in the legal system—related to public order, safety, tranquility, and cleanliness—that arose as a result of

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<sup>409</sup> See documents at [www.luchtmetingencuracao.org](http://www.luchtmetingencuracao.org): Environment Service of Curaçao (Milieudienst Curaçao), “Environmental study downwind of Schottegat,” Apr. 2001. *De Werkgroep Milieunormering Nederlandse Antillen* “Final Report on Environmental regulations in the Netherlands Antilles, Air and Noise, Water and Wastewater, Waste” [*Eindrapport Milieunormen Nederlandse Antillen, Lucht en Geluid, Water en Afvalwater, Afval*], June 11, 2007, at <http://www.dcbd.nl/sites/www.dcbd.nl/files/documents/Geleuken%2520et%2520al%2520007%2520WNA%2520Rapport.pdf>. Pieter van der Torn, “Health complaints & air pollution from the Isla refinery in Curaçao; with special emphasis to the response to irregular situations,” Public Health Service of Rotterdam and surroundings, 21-9-99, CurIMS4.doc, at <http://www.luchtmetingencuracao.org/static/html/media/GGD%20Rotterdam%201999.pdf>.

<sup>410</sup> See Ministry of Health, Environment and Nature, “National Report of Curaçao for the Third International Conference on Small Island Developing States,” June 2014, at [http://www.sids2014.org/content/documents/599National%20Report%20Curacao%202014%20Sustainable%20Development%20FINAL%20\(July%202014\).pdf](http://www.sids2014.org/content/documents/599National%20Report%20Curacao%202014%20Sustainable%20Development%20FINAL%20(July%202014).pdf); TAC, “Strategies for Sustainable Long Term Economic Development in Curaçao. Final Report,” Ministry of General Affairs Curaçao, 12 May 2013, at [http://www.taceconomics.com/tacie/2013.05.14\\_Curaçao-Report.pdf](http://www.taceconomics.com/tacie/2013.05.14_Curaçao-Report.pdf).

<sup>411</sup> The repartition of the responsibilities within the government institutions in Curaçao after 2010 can be found in the Administrative Organization Ordinance of 2010. Administrative Organisation Ordinance 2010 [*Landsverordening ambtelijk bestuurlijke Organisatie*], A.B. 2010, no. 87.

<sup>412</sup> Nuisance Ordinance 1994 [*Hinderverordening*], A.B.1994, no. 40.



Curaçao's transition from the Netherlands Antilles to a country within the Kingdom of the Netherlands.<sup>413</sup> These two legal frameworks are the focus of this chapter.<sup>414</sup>

### 8.1.1 Permitting Industrial Pollution—Nuisance Ordinance Curaçao 1994

Controlling and monitoring industrial pollution of air quality, wastewater, and wastes in Curaçao is subject to the Nuisance Ordinance Curaçao 1994 [*Hinderverordening*]<sup>415</sup> and implementing decrees, jointly approved by the Netherlands Antilles Parliament and the Island Council of Curaçao in 1994<sup>416</sup> and transferred to the new Curaçao framework in 2010.<sup>417</sup> The Nuisance Ordinance 1994, which replaced the Nuisance Ordinance 1953, specifically applies to environmental hazards caused by commercial activities,<sup>418</sup> and it prohibits establishments from carrying out environmentally harmful activities without a nuisance license.<sup>419</sup>

The license system applies to a broad range of commercial establishments, including industrial facilities, public buildings, hotels and restaurants, sewage treatment plants, and facilities that store, treat, transport, process, destroy, and dispose of household and industrial waste.<sup>420</sup> This license system controls pollution in two ways: (a) by instituting a case-by-case restriction system for each individual polluter (the source-oriented track); and (b) by imposing a general set of standards to

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<sup>413</sup> Public Order Ordinance 2015 [*Landsverordening openbare orde*], P.B. 2015, no. 31. The Waste and Chemical Waste Ordinance of 1995 stipulates rules with respect to disposal of domestic-, industrial- and other waste categories. National Ordinance containing regulations on solid and chemical wastes and amending the Island Ordinance promote public order and community protection [*Eilandsverordening houdende regelen betreffende vast en chemische afvalstoffen en tot wijziging van de Eilandsverordening bevordering openbare orde en bescherming gemeenschap*], A.B. 1995, no. 47. However, the Waste and Chemical Waste Ordinance expired in 2010 at the same time as the constitutional change. National Ordinance on general transitional arrangement legislation and administration [*Landsverordening algemene overgangsregeling wetgeving en bestuur (Bijlage a.)*] P.B. 2010, 87, modified by P.B. 2010, 102.

<sup>414</sup> Other legal authorities, discussed elsewhere in this Report, are also relevant. For example, the Ordinance on Nature Conservation and Protection 1998 serves as the primary legal authority for protecting the environment. It calls upon the Minister of Health, Environment and Nature to develop and revisit every five years a National Conservation Plan, setting a framework for the general environmental policy, including identifying objectives and priorities for implementation. Ordinance on Nature Protection and Conservation 1998 [*Landsverordening grondslagen natuurbeheer en – bescherming*], P.B. 1998, no. 49. The Maritime Ordinance 2007 implements several international treaties that set relevant rules such as control of coastal water pollution from ships and by dumping. Maritime Ordinance 2007 [*Landsverordening maritiem beheer*], P.B. 2007, no. 18.

<sup>415</sup> Nuisance Ordinance Curaçao 1994 [*Hinderverordening*], A.B. 1994, no. 40.

<sup>416</sup> Environment Service of Curaçao (Milieudienst Curaçao), “Environmental study downwind of Schottegat,” April 2001, 9, at [www.luchtmetingencuracao.org](http://www.luchtmetingencuracao.org).

<sup>417</sup> As not part of the negative list. National Ordinance on general transitional arrangement legislation and administration [*Landsverordening algemene overgangsregeling wetgeving en bestuur (Bijlage a.)*] A.B. 2010, 87, at <http://archivo.parlamento.cw/downloads/10285.pdf>, modified by A.B. 2010, 102 <http://archivo.parlamento.cw/downloads/11022.pdf>.

<sup>418</sup> Nuisance Ordinance Curaçao 1994, Explanatory Memorandum [*Memorie van Toelichting*] no. 3.

<sup>419</sup> Nuisance Ordinance Curaçao 1994 art. 3.

<sup>420</sup> Decree containing general measures to lay down rules to implement Article 1, paragraph two, of the Nuisance Ordinance Curaçao 1994 [*Eilandsbesluit, houdende algemene maatregelen van de 28ste december 1994 tot het stellen van regels ter uitvoering van artikel 1, tweede lid, van de Hinderverordening Curaçao 1994*], A.B. 1994, no. 42 art. 1, (with in particular paragraph XVII, XXIV, XXV) (on file with ELI).



control the effect of pollution on the environment (the effect-oriented track).<sup>421</sup> These two approaches are described below.

### *8.1.1.1 License System—Authorizations and Restrictions*

The Nuisance Ordinance Curaçao focuses on individual polluting “establishments,”<sup>422</sup> with the aim of preventing and reducing pollution at the source. The Nuisance Decree 1994, no. 42 specifies the types of establishments that come within the scope of the Ordinance.<sup>423</sup> They include oil refineries, wastewater treatment plants, hotels, and restaurants, among others.

Water pollution from commercial sources can be included among the “environmentally harmful activities,” defined by the Nuisance Ordinance 1994 as “any human activity or act that is or may be deemed to be of an industrial nature, whether tied to a fixed location or not, which may result in danger, damage, or nuisance to the environment.”<sup>424</sup> Accompanying the Nuisance Ordinance is an Explanatory Memorandum, which provides binding guidance concerning the scope, purpose, and interpretation of the Ordinance. Regarding the term “environmentally harmful activities,” the Explanatory Memorandum states the basic principle that every activity undertaken by humans that could endanger, cause damage, or cause nuisance to the environment falls within the scope of the Nuisance Ordinance.

The general framework for the license system authorizes the Executive Council (presumably now GMN) to grant or refuse nuisance licenses within a six-month period following receipt of an application. Factors that must be taken into account when granting the license include—

- the existing situation of the environment, as far as it may be affected by the activity;
- the consequences which the activity may entail for the environment;
- the developments that may reasonably be expected and which are important in view of protection of the environment with regard to the activity; and
- the effects of environmentally harmful activities already taking place in the establishment and operations area.<sup>425</sup>

This list is not exhaustive and “the control of the impact for the environment will always be the central point of focus.”<sup>426</sup> A license can be refused only for the purpose of protecting the environment, giving substantial discretion to GMN.<sup>427</sup>

The Ordinance gives GMN the authority to enact decrees for its implementation. In 1994, three such decrees were published. Decree 1994, no. 42 defines what is considered an establishment to which

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<sup>421</sup> Pieter van der Torn, “Health complaints & air pollution from the Isla refinery in Curaçao; with special emphasis to the response to irregular situations,” Public Health Service of Rotterdam and Surroundings, 21-9-99, CurIMS4.doc 7, at

[http://www.luchtmetingencuracao.org/static\\_html/media/GGD%20Rotterdam%201999.pdf](http://www.luchtmetingencuracao.org/static_html/media/GGD%20Rotterdam%201999.pdf).

<sup>422</sup> Nuisance Ordinance Curaçao 1994 art. 1.

<sup>423</sup> Nuisance Decree 1994 [*Besluit*], no. 42.

<sup>424</sup> Nuisance Ordinance Curaçao 1994 art. 1, para. 1, a.

<sup>425</sup> Nuisance Ordinance Curaçao 1994 art. 15.

<sup>426</sup> Nuisance Ordinance Curaçao 1994, Explanatory Memorandum no. 3 for art. 15.

<sup>427</sup> Nuisance Ordinance Curaçao 1994, Explanatory Memorandum no. 3 for art. 18.



the obligation of a license applies.<sup>428</sup> Decree 1994, no. 43 details the documents necessary to apply for a license.<sup>429</sup> Decree 1994, no. 44 gives advisory power on the grant of license to specialized Ministry Departments, including the Environment and Nature Department (within GMN), the Urban/Rural Development and Housing Department, the Public Works Department, the Fire Department, the Safety Inspection, the Department of General and Legal Affairs, and the Department of Economic Affairs.<sup>430</sup>

Many other provisions in the Ordinance require action for implementation. For example, GMN “may enact rules in the interest of the environment” by decree having force of law.<sup>431</sup>

Enforcement of the Nuisance Ordinance Curaçao is performed by enforcement agents, with the possibility for the GMN to appoint officials and persons to be responsible for the enforcement of the provisions and the detection of violations.<sup>432</sup> Violations of the Ordinance can lead to administrative and penal sanctions.<sup>433</sup>

### 8.1.1.2 Environmental Standard—Attachment F

Beyond the source-oriented track, the Nuisance Ordinance Curaçao affords a second line of defense: the effect-oriented track. This approach focuses on the state of the environment.<sup>434</sup>

In Curaçao, the nuisance license granted to the oil refinery ISLA in 1994 in accordance with the Nuisance Ordinance 1994<sup>435</sup> included what is known as “Attachment F.”<sup>436</sup> This document sets the environmental standards and pollution control and monitoring procedures to be applied to oil refineries nuisance licenses in Curaçao. These standards are based on United States Environmental Protection Agency standards in place in 1994.<sup>437</sup>

<sup>428</sup> Nuisance Decree 1994, no. 42.

<sup>429</sup> Decree containing general measures to lay down rules to implement Article 6, paragraph two, of the Nuisance Ordinance Curaçao 1994 [*Eilandsbesluit, houdende algemene maatregelen van de 28ste december 1994 tot het stellen van regels ter uitvoering van artikel 6, tweede lid, van de Hinderverordening Curaçao 1994*], A.B. 1994, no. 43.

<sup>430</sup> Decree containing general measures to lay down rules to implement Article 8, paragraphs one and two, of the Nuisance Ordinance Curaçao 1994 [*Eilandsbesluit, houdende algemene maatregelen van de 28ste december 1994 tot het stellen van regels ter uitvoering van artikel 8, eerste en tweede lid, van de Hinderverordening Curaçao 1994*], A.B. 1994, no. 44.

<sup>431</sup> Nuisance Ordinance Curaçao 1994 art. 4.

<sup>432</sup> *Id.* arts. 42-45.

<sup>433</sup> *Id.* arts. 34-37, 46-49.

<sup>434</sup> Pieter van der Torn, “Health complaints & air pollution from the Isla refinery in Curaçao; with special emphasis to the response to irregular situations,” Public Health Service of Rotterdam and surroundings, 21-9-99, CurIMS4.doc, at

[http://www.luchtmetingencuracao.org/static\\_html/media/GGD%20Rotterdam%201999.pdf](http://www.luchtmetingencuracao.org/static_html/media/GGD%20Rotterdam%201999.pdf), p. 7.

<sup>435</sup> The Island of Curaçao, “Nuisance Permit ISLA” [*Hinderwet vergunning ISLA*], at

<http://www.luchtmetingencuracao.org/informatie.aspx>, under the title ‘*Hinderwet vergunning ISLA*.’

<sup>436</sup> The Island of Curaçao, “Attachment F: Proposed Regulations—Air Quality, Wastewaters & Waste,” July 1994, at [http://www.luchtmetingencuracao.org/static\\_html/media/Attachment%20F.pdf](http://www.luchtmetingencuracao.org/static_html/media/Attachment%20F.pdf).

<sup>437</sup> For detailed information about environmental standard applied in Curaçao, see de Werkgroep Milieunormering Nederlandse Antillen “Final Report on Environmental regulations in the Netherlands Antilles, Air and Noise, Water and Wastewater, Waste” [*Eindrapport Milieunormen Nederlandse Antillen, Lucht en Geluid, Water en Afvalwater, Afval*], June 11 2007, at



Attachment F includes proposed regulations for air quality (Regulation 1), wastewaters (Regulation 2), and wastes (Regulation 3); however it is not clear whether, when attached to a license, the provisions of Attachment F are mandatory or serve only as guidelines.

If finalized, proposed Regulation 2 would regulate the pollution of the water (“harbor, bay, Caribbean Sea, etc.”<sup>438</sup>) by wastewaters. It would exclude from regulation gaseous effluents emitted into the atmosphere, mining wastes, and agricultural wastes. Water quality standards are described further in this proposed regulation. It expressly addresses in Article 6.1(d) the existing petroleum refineries, requiring the development of an implementation plan to improve water quality discharged to the Schottegat Bay or the Caribbean Sea. It further sets minimum technical goals for such a plan. The proposed regulation also refers to a ‘Wastewater Structural Plan’ but does not indicate the origin of such a plan. It also implements a licensing system. The Environmental Service of Curaçao (ESC) is the authority that would be responsible for the administration and enforcement of these regulations.

In sum, the nuisance license system addresses applications on a case-by-case basis, and environmental standards regulations attach to a nuisance license rather than being generally applicable. A potential path forward would be to finalize the proposed regulations contained in Attachment F and apply them comprehensively.

### 8.1.2 Public Order Ordinance 2015

Prior to 10/10/10, the Public Order Ordinance 1980<sup>439</sup> and the Waste and Chemicals Waste Ordinance 1995<sup>440</sup> provided the legal framework for the management of waste in Curaçao. However, both of these ordinances expired in 2010 as part of the negative list<sup>441</sup> and were therefore not reactivated as new laws of Curaçao when it gained country status. A new Public Order Ordinance became law in July 2015, reinstating some of the requirements.<sup>442</sup> As of today, however, there is no new Waste and Chemicals Waste Ordinance to replace the repealed version.

The Public Order Ordinance 2015 implements a system of authorization (or license) and exemption with respect to waste. Articles 2 and 3 establish the general provisions that apply to the entire

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<http://www.dcbd.nl/sites/www.dcbd.nl/files/documents/Geleuken%2520et%2520al%25202007%2520WNA%2520Rapport.pdf>.

<sup>438</sup> Attachment F, Reg. 2 art. 2.

<sup>439</sup> Island Ordinance to promote public order and community protection [*Eilandsverordening bevordering openbare orde en bescherming gemeenschap*], A.B. 1980, no.19 expired due to the National Ordinance on general transitional arrangement legislation and administration [*Landsverordening algemene overgangsregeling wetgeving en bestuur (Bijlage a.)*] A.B. 2010, 87, modified by A.B. 2010, 102.

<sup>440</sup> National Ordinance containing regulations on solid and chemical wastes and amending the Island Ordinance promote public order and community protection [*Eilandsverordening houdende regelen betreffende vast en chemische afvalstoffen en tot wijziging van de Eilandsverordening bevordering openbare orde en bescherming gemeenschap* (A.B. 1980, no. 19)], A.B. 1995, no. 47 (has also expired).

<sup>441</sup> National Ordinance on general transitional arrangement legislation and administration [*Landsverordening algemene overgangsregeling wetgeving en bestuur (Bijlage a.)*] A.B. 2010, 87, modified by A.B. 2010, 102.

<sup>442</sup> Ordinance of July 22, 2015 establishes rules to promote the public order, peace and security, and to protect the community (Public Order Ordinance), [*Landsverordening van de 22ste juli 2015 houdende vaststelling van regels ter bevordering van de openbare orde, rust en veiligheid, en ter bescherming van de gemeenschap (Landsverordening openbare orde)*], P.B. 2015, no. 31 (on file with ELI).



Ordinance and also concern more specifically the grant of licenses or exemptions. Restrictions may be included in these licenses or exemptions. A ministerial regulation with general effects (*Ministeriele regeling met algemene werking*) can further be used to establish rules regarding the decision to refuse a license or exemption. Article 2, paragraph 3 covers withdrawal of the license or exemption. The fee for a grant of license or exemption is fixed by ordinance,<sup>443</sup> and further rules concerning the application process and models for license or exemption may be set by ministerial regulation with general effect.

The Public Order Ordinance includes two key definitions that address its scope. First, “waste” (*afvalstoffen*) means “all objects or substances, which the holder discards or intends to discard or is required to discard, except for recycling.”<sup>444</sup> Next, “public roads” (*openbare weg*) means “all streets, roads, alleys, walkways, squares, embankments, bridges, sidewalks, pavements, parks, or other land or places that are or not intended for the public service, factually accessible to everyone, and, to the extent that the facts mentioned in the relative articles can take place, all waterways” (*watervlakten*).<sup>445</sup>

The Ordinance prohibits, without a permit from the Minister of Traffic, Transportation, and Spatial Planning, pouring or throwing onto public roads any objects, materials, or wastewater.<sup>446</sup> It is further prohibited to discard waste (*afvalstoffen*) or residues of food, cans, paper, or other objects or substances on public roads (*openbare weg*).<sup>447</sup>

Particularly relevant with respect to coastal water quality is that the Ordinance grants to GMN authority for the collection of waste. Specifically, it prohibits the transfer of waste or offering of it for collection by an authority other than a designated one, except in limited circumstances. It requires permitted collectors to hold valid licenses. It also prohibits individuals from depositing or incinerating feces or other waste, or retaining trash and debris on worksites after the work has been completed.<sup>448</sup> The collection authority for Curaçao is the state-owned company Selikor NV.<sup>449</sup> The company states that it has an Environmental Policy that includes minimizing and preventing “soil, air, and water contamination as much as possible.”<sup>450</sup>

It is prohibited to discard, burn, or cause the flow of an object, substance, or dust in such a way that causes another’s property to become contaminated.<sup>451</sup> In addition, a permit from GMN is required to perform work that will cause noise, other nuisance of a serious nature, or harmful or disgusting air that could be perceived in neighboring yards or on the public road.<sup>452</sup>

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<sup>443</sup> Public Order Ordinance 2015 art. 3 (1).

<sup>444</sup> *Id.* art. 1.

<sup>445</sup> *Id.*

<sup>446</sup> *Id.* art. 15(b).

<sup>447</sup> *Id.* art. 20.

<sup>448</sup> *Id.* art. 26.

<sup>449</sup> See <http://www.selikor.com>.

<sup>450</sup> Selikor NV, “Environmental Policy,” at <http://www.selikor.com/pdf/EnvironmentalPolicy.pdf>.

<sup>451</sup> Public Order Ordinance art. 27.

<sup>452</sup> *Id.* art. 56.



## 9 Offshore Industry: Oil, Gas, Energy, and Mining

Curaçao law does not currently provide authority specifically governing offshore oil, gas, mining, or energy development. As a result, key laws in these areas are laws of general applicability—notably including the Maritime Ordinance 2007, which requires permission for floating facilities and construction activities in the ocean. This chapter reviews the application of the Maritime Ordinance in this sector as well as existing and draft authorities governing oil and gas and mining activity.

### 9.1 Maritime Ordinance 2007

Pursuant to the Maritime Ordinance 2007 ships (including dredges, drilling installations, and other floating craft) cannot moor, anchor, or stay with a ship in the territorial sea (other than by berthing) without or contrary to permission from the Minister of Traffic, Transportation and Spatial Planning (now VVRP, or other designated Administrator).<sup>453</sup> While no review or other specifications are required, this provision does ensure that the presence of any floating vessels and other objects (e.g., floating wind or wave energy facilities) used in offshore industry (for oil, gas, nodule or sand mining, energy, or other purposes) be communicated to the Administrator before deployment. In addition, such objects and other offshore facilities must comply with other maritime law provisions implemented by the Ordinance, including navigational safety and pollution control requirements,<sup>454</sup> as described in Section 6.2 of this Report.

The Maritime Ordinance provides more robust provisions governing creation of non-ship facilities in the ocean. A license from the Administrator is required to construct or maintain any structure (including a change to the seabed and laying and maintaining cables or pipes<sup>455</sup>) in or on the bottom of the territorial sea or EEZ, including coastal reclamation and activities changing the level or condition of the seabed.<sup>456</sup> This provision appears to extend to both placement of fixed structures (e.g., wind turbines) and mining that causes dredge or fill on the seabed. However, some facilities, like floating drilling platforms, may not clearly be within or excluded from coverage by this provision.

Activities that are considered construction or maintenance of a structure cannot receive a license unless the Administrator (in consultation with other listed ministries) assesses the application and explicitly considers the effects of the proposed construction *and its operation* on the marine environment, nature, shipping safety, and marine archaeological heritage.<sup>457</sup> An activity cannot be licensed if it “would, to an insurmountable degree, adversely [] affect” any one of these factors,

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<sup>453</sup> Maritime Ordinance 2007 [*Landsverordening Maritiem Beheer (LvMB)*], P.B. 2007, no. 18 arts. 1 (defining “ship”), 19. By ministerial order, the Minister may designate another administrative authority to carry out all or part of his or her duties, including for licensing. However, no such commission is known to exist to date. *Id.* arts. 4-6.

<sup>454</sup> *See, e.g., id.* art. 15 (implementing Convention on Collisions at Sea); art. 35 (implementing International Convention on Oil Pollution Preparedness, Response and Co-operation).

<sup>455</sup> *Id.* arts. 20, 23.

<sup>456</sup> *Id.* art. 20.

<sup>457</sup> *Id.* art. 21. The application must be published in two newspapers. *Id.* The ministers to be consulted are the (Netherlands Antilles) Ministers of Health and Nature; Education and Culture; and Finance. *Id.* These are presumably now the corresponding country Curaçao ministers.



while a permit may include restrictions and conditions to protect them.<sup>458</sup> Licenses may be revoked or modified under certain conditions and are not transferable.<sup>459</sup>

Finally, deposition of wastes at sea are subject to the Maritime Ordinance 2007 through implementation of the 1996 Protocol to the London Convention governing dumping of wastes at sea.<sup>460</sup> Under the Ordinance, no ship or structure in the territorial sea or EEZ may dispose of, burn, or store in the seabed or subsurface waste matter or other substances (including sinking of ships or other structures), except as authorized in the MARPOL Convention and the National Ordinance on the Prevention of Pollution from Ships (see Section 6.2 of this Report).<sup>461</sup> Additional rules may be established by decree, and the Minister can grant exemptions for discharge of substances or sinking of structures under certain circumstances.<sup>462</sup>

## 9.2 Oil and Gas Exploration and Extraction

No laws are currently in place to govern exploration for or extraction of oil and gas in the Curaçao seabed.<sup>463</sup> However, discussion surrounding the potential presence of gas and oil in the Curaçao seabed following a discovery in Aruba has led to development a draft Petroleum National Ordinance, which would replace relevant provisions of the earlier Ordinance of the Leeward Islands, which never entered into force and now has been repealed.

The draft ordinance would establish a legal framework for exploration for and extraction of oil and gas in the Curaçao seabed. The second draft of the ordinance was submitted for consideration to the States on April 23, 2015, by the Minister of General Affairs, the Minister of Finance, and the Minister of Justice.<sup>464</sup> It was criticized by members of the Parliament Central Committee in a preliminary report of May 20, 2015.<sup>465</sup> Criticism has included charges of a lack of transparency, a lack of consideration for the environment, and improper balance of power.<sup>466</sup> The draft appears to remain pending in Parliament.

While a detailed review of the draft Ordinance is beyond the scope of this report, an understanding of its structure is helpful. Pursuant to the draft, Curaçao owns all oil and gas in its territorial sea and the contiguous zone (including the seabed and subsoil).<sup>467</sup> Most of the responsibilities under the draft Ordinance are assigned to the Ministry of General Affairs. However, a legal entity may be

<sup>458</sup> *Id.*

<sup>459</sup> *Id.*

<sup>460</sup> See IMO, 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (summarizing protocol).

<sup>461</sup> Maritime Ordinance 2007 art. 44; see also National Ordinance on the prevention of pollution by ships (P.B. 1993 no. 108).

<sup>462</sup> Maritime Ordinance 2007 arts. 44(5), 45-46.

<sup>463</sup> See Dirk Ormel, Oil and gas extraction in Curaçao #3: the draft petroleum national ordinance explained, *Antillian Daily* [*Antillaans Dagblad*], Aug. 2013.

<sup>464</sup> Ordinance laying down rules regarding petroleum in the sea area of Curaçao, Curaçao State, Petroleum National Ordinance Draft 2015 [*Landsverordening houdende regelen ten aanzien van petroleum in het zeegebied van Curaçao (Petroleumlandsverordening zeegebied van Curaçao)*], *Staten van Curaçao, Zitting 2014-2015-067, Ontwerp 2*.

<sup>465</sup> Petroleumlandsverordening zeegebied van Curaçao. Voorlopig Verslag, *Zittingsjaar 2014-2015-067*.

<sup>466</sup> See Criticism MPs on draft legislation oil extraction, *Curaçao Chronicle*, May 20, 2015.

<sup>467</sup> Petroleum Ordinance Draft 2015 arts. 1, 2.



vested with responsibility, in the name of the Minister of General Affairs, to oversee compliance with the ordinance.<sup>468</sup> In addition, Curaçao may, by decree, transfer its ownership (and exclusive exploration and exploitation rights in certain areas) over seabed oil and gas to a specifically designated state-owned company wholly owned directly or indirectly by Curaçao, which could then contract with third parties.<sup>469</sup>

### 9.3 Mining

Mining appears to play only a small role in Curaçao's economy. For example, Mining Company of Curaçao (*Mijnmaatschappij Curaçao*) operations produce limestone, phosphate rock, solar salt, and sand for domestic use and export.<sup>470</sup> Relevant legal authorities governing mining activity include the Curaçao Mining Act 1909<sup>471</sup> and its implementing Mining Ordinance 1911.<sup>472</sup> The scope of these laws is limited, however, and no current laws explicitly extend to offshore mining activities.

The Mining Act 1909 establishes the general framework for mining in Curaçao. It applies only to minerals, defined as natural substances excavated or otherwise taken from the soil (*bodem*), excluding the substances that are generally used in Curaçao solely for road construction, making concrete, or housing and works.<sup>473</sup> This definition does not explicitly apply to minerals extracted from the seabed (*zeebodem*) or subsoil (*ondergrond*), and appears to exclude sand and gravel mining, as these are likely to be considered used solely for concrete production in Curaçao. These or other substances may be added to or removed from the scope of the Act by decree;<sup>474</sup> however, no such decrees appear to have issued. Minerals outside the scope of the Act appear not to be subject to any specific law, but the practice of mining for these substances may be limited by the Island Development Plan (EOP) or (in the maritime domain) by the Maritime Ordinance 2007.

All minerals within the scope of the Act are owned by Curaçao.<sup>475</sup> The right to search and survey for minerals can be obtained under a licensing system. The right to extract and mine the minerals can be obtained through concessions granted by the Governor.<sup>476</sup> Detailed rules are established by ordinance<sup>477</sup>—in this case, the Mining Ordinance 1911, which provides rules to implement the license and concession system.

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<sup>468</sup> *Id.* art. 6.

<sup>469</sup> *Id.* art. 2.

<sup>470</sup> Mining Company Curaçao, "Home," at <http://miningcompanycuracao.com/>. Quantity and origin (e.g., beach, seabed, or elsewhere) of sand mining is not provided.

<sup>471</sup> Act regulating the mining legal framework in the colony of Curaçao (Curaçao Mining Act) [*Wet van den 1sten Juli 1909 (Staatsblad No. 123), tot regeling van het mijnrecht in de kolonie Curaçao (Curacaose Mijnwet)*], P.B. 1909, no. 43.

<sup>472</sup> Ordinance implementing the Curaçao Mining Act (P.B. 1909, no. 43) and the regulation of certain therewith-related topics (Mining Ordinance) [*Verordening ter uitvoering der Curacaosche mijnwet (P. B. 1909 no. 43) en tot regeling van sommige daarmee in verband staande onderwerpen (Mijnverordening)*], P.B. 1911, no. 6.

<sup>473</sup> Mining Ordinance art. 1(1).

<sup>474</sup> *Id.* art. 1(6).

<sup>475</sup> *Id.* art. 1(2).

<sup>476</sup> *Id.* art. 1(3).

<sup>477</sup> *Id.* art. 1(6).



## 10 Pathways for Sustainable Ocean Policy in Curaçao

The foregoing legal and institutional assessment—considered together with the results of the Blue Halo Curaçao (BHC) science assessment, community consultation process, economic assessment, literature review, and discussions with many government officials—point to an array of policy pathways for the development of a Curaçao Sustainable Ocean Policy. These pathways, if adopted, can address many of the present-day challenges faced by the island nation while also ensuring the long-term health of Curaçao’s waters. This Chapter surveys these policy pathways from a legal and institutional perspective, organized by the ten overall policy recommendations being concurrently presented to the Government of Curaçao by the Waitt Institute (Table 4).

Table 11. Overall recommendations & policy pathways.

Recommendation	Related Policy Pathways
1. Designate 30% of Marine Environment as No-Take Reserves	1.1 Identify and develop no-take marine reserves through new legal mandate 1.2 Legally designate the existing Curaçao Marine Park as a marine reserve 1.3 Pass the 2011 draft no-fishing zone ordinance 1.4 Designate protected areas under key international agreements, including SPAW Protocol
2. Restore and Mitigate Ecosystem Damage	2.1 Develop natural resource damages law making responsible party liable for injury to natural resources, including coral reefs, mangroves, and seagrass 2.2 Pass law requiring mitigation when taking permitted actions that will destroy key habitats, including coral reefs, mangroves, and seagrass 2.3 Implement a public mooring program
3. Improve Domestic Fisheries Management	3.1 Update spearfishing ban to prohibit possession, sale, or import of spear guns and define spearfishing broadly 3.2 Update gillnet ban to prohibit use and possession, sale, or import of all gillnets 3.3 Designate fishing zones to exclude conflicting recreational use 3.4 Establish new fisheries management law to require a fisheries management plan, monitoring, and adaptive management
4. Improve Coastal Water Quality and Minimize Marine Debris	4.1 Expand water quality laws to adequately address marine and inland pollution 4.2 Improve implementation of the Public Order Ordinance 4.3 Create coastal buffer zones and coastal development best management practices to minimize runoff
5. Protect Threatened and Endangered Species	5.1 Protect sea turtle nesting beaches 5.2 Designate a marine mammal sanctuary 5.3 Designate a shark sanctuary
6. Improve Government Coordination	6.1 Make permanent the Blue Ribbon Committee for Blue Halo Curaçao with designated liaisons and collaborators across Government Ministries
7. Adopt an Enforceable Marine Spatial Plan	7.1 Adopt a marine spatial plan through Blue Halo Initiative process and pass individual pieces of legislation to address elements of the marine spatial plan 7.2 Pass comprehensive marine spatial planning legislation
8. Ensure Public Access to the Coast	8.1 Pass law requiring all new development to ensure public right-of-way to the coast and no fees to access the coast



Recommendation	Related Policy Pathways
	8.2 Pass law requiring existing developments to allow public access to the coast
9. Promote Research, Education and Participation	9.1 Create program for long-term ecological and fisheries monitoring 9.2 Design and implement appropriate training program for ocean managers, enforcement staff, and ocean users regarding existing and new ocean laws and policies 9.3 Improve ocean governance through public participation
10. Implement a Sustainable Finance System for Blue Halo Curaçao	10.1 Pass law establishing a special fund for Sustainable Ocean Policy implementation 10.2 Commit departmental funds on an ongoing basis to a Sustainable Ocean Policy special fund 10.3 Create system of user fees and fines to fund management 10.4 Create a donor system that can feed into special fund

Successful adoption of many of the policy pathways identified in this chapter will require changes to Curaçao's existing legal and policy framework—a framework that is currently in a state of transition and modernization in the wake of the watershed 2010 constitutional change. Generally speaking, such legal changes may be achieved by pursuing one or a combination of three approaches:

- adoption of *new, comprehensive legislation* (and associated subsidiary legislation and decrees) that replaces existing patchwork legal authorities and institutional arrangements—most of them rooted in the law of the former Netherlands Antilles;
- use of *targeted, incremental legislative modifications and decrees* that may not fully replace existing laws, but can enable them to function more effectively as a system to provide a sustainable ocean policy; and
- implementation of *policy changes at the Ministerial and Departmental levels* that improve the administration and enforcement of existing legal authorities.

The first nine chapters of this Report have considered numerous existing issues and legal authorities relevant to ocean management in Curaçao, on topics ranging from fisheries to protected areas to water pollution to shipping and industrial uses. Policy reform in most if not all of the areas may eventually be required as Curaçao strives to more sustainably develop, manage, use, and protect its ocean resources. However, we note that there is a particular urgency and opportunity for policy development in marine spatial planning, fisheries management, and sustainable use through the Blue Halo Curaçao partnership between the Government of Curaçao and the Waitt Institute.

The various policy pathways available to Curaçao are presented in summary fashion on the following pages, organized by overarching policy recommendation. Each recommendation first identifies relevant policy pathways. The section then describes for each pathway, in table format: the action(s) needed to adopt the pathway; legal and institutional considerations (if any); and a rationale with respect to adopting that pathway, along with any needed contextual discussion. Note that the actions here include only those actions needed to adopt the legal approach—and do *not* address on-the-ground implementation, which would come later after one or more pathways are selected through the Blue Halo Curaçao process by the Government.



## 10.1 Designate 30% of Marine Environment as No-Take Reserves

Marine scientists and other experts are calling for protection of 30% of marine environments to safeguard ocean resources and the services people depend upon. At the same time, there is a pressing need for legal designation and effective management of marine protected areas in Curaçao—including for some existing parks that lack legal recognition.

Policy pathways for protecting the marine environment through the adoption of protected areas are as follows:

- 1.1 Identify and develop no-take marine reserves through a new legal mandate
- 1.2 Legally designate the existing Curaçao Marine Park as a marine reserve
- 1.3 Pass the 2011 draft no-fishing zone ordinance
- 1.4 Designate protected areas under key international agreements, including SPAW Protocol

Table 12. Policy pathways for designating 30% of marine environment as no-take reserves.

Policy Pathway	Action(s) Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>No-Take Marine Reserves through New Legal Mandate</b>	<ul style="list-style-type: none"> <li>• Identification of sites</li> <li>• Passage of new national ordinance on no-take marine reserves by Parliament [or]</li> <li>• MEO designation, in consultation with Fisheries Commission (for National Fisheries Ordinance (NFO) approach) [or]</li> <li>• GMN Ministerial decree (for Fisheries Ordinance Curaçao (FOC) approach)</li> </ul>	The lead on this policy pathway could be taken by Parliament, or by MEO or GMN under existing fisheries laws	A comprehensive new ordinance providing for no-take marine reserves is preferable but could be difficult to achieve. Although pre-2010 fisheries authorities are a much more limited tool for establishing protected areas, these laws do provide a direct path for the establishment of such reserves without the need for a new ordinance.
<b>Legally Designate Existing Marine Park</b>	<ul style="list-style-type: none"> <li>• Passage of new national ordinance on marine reserves by Parliament, followed by designation of Curaçao Marine Park [or]</li> <li>• Use of more limited NFO or FOC</li> </ul>	The lead on this policy pathway could be taken by Parliament, or by MEO or GMN under existing fisheries laws	A comprehensive new ordinance providing for marine reserves is preferable but could be difficult to achieve. Although pre-2010 fisheries authorities are a more limited tool for establishing protected areas, these laws do



Policy Pathway	Action(s) Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
	approaches above		provide a path for the designation without the need for a new ordinance.
<b>Pass 2011 Draft No-Fishing Zone Ordinance</b>	Passage of draft ordinance by Parliament	GMN and MEO must come to agreement on the ordinance	Adoption of this ordinance has the potential benefit of building on a process already well underway—though stalled.
<b>SPAW Protocol/International Designations</b>	<ul style="list-style-type: none"> <li>• Identification of sites</li> <li>• Ensuring that sites satisfy SPAW listing requirements</li> <li>• Passage of ordinance by Parliament pursuant to Ordinance on Nature Conservation and Protection 1998 [or]</li> <li>• Ministerial decree pursuant to the Maritime Ordinance 2007</li> </ul>	<ul style="list-style-type: none"> <li>• To date, no SPAW protected areas designated under either of two ordinances, and the SPAW Secretariat lists no SPAW areas within Curaçao</li> <li>• Government encouraged to review and update draft Nature Conservation Ordinance 2009 as part of this policy pathway</li> <li>• The Maritime Ordinance provides a straightforward mechanism for creating a SPAW protected area</li> </ul>	The SPAW Protocol is a highly respected tool for conservation in the Dutch Caribbean. However, this general approach has yet to succeed in Curaçao, as one island ordinance and two decrees to create management frameworks for implementation have been developed in draft but not come to fruition.

## 10.2 Restore and Mitigate Ecosystem Damage

Curaçao has lost over half of its coral reefs since the 1980s. As additional development and utilization of the marine and coastal environment occurs, continued loss is anticipated. Proposed development includes the addition of a second mega-pier, which will destroy substantial coral reef and mangrove habitat. Other coastal development, ship groundings, anchoring, and other activities can individually or cumulatively cause significant impacts. Mechanisms to provide for natural resource damage liability, mitigation, and restoration are all needed.

Policy pathways for restoring ecosystems and mitigating ecosystem impacts and damage are as follows:

- 2.1 Develop natural resource damages law making responsible party liable for injury to natural resources, including coral reefs, mangroves and seagrass



2.2 Pass law requiring mitigation when taking permitted actions that will destroy key habitats, including coral reefs, mangroves, and seagrass

2.3 Implement a public mooring program

Table 13. Policy pathways for restoring and mitigating ecosystem damage.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Develop Natural Resource Damages Law</b>	Passage of new national ordinance by Parliament	<ul style="list-style-type: none"> <li>• Some liability requirements already exist, via conditional permitting and the ability of GMN to order, at the offender’s expense, removal of unlawful articles or restoration of associated damage (Fisheries Ordinance Curaçao (FOC))</li> <li>• But Reef Management Ordinance Explanatory Memo notes that fishermen have not committed an offence when they pull coral up with their anchors</li> </ul>	Existing piecemeal legal protections, even with an amendment to Reef Management Ordinance Explanatory Memo to prohibit fishing vessels from anchoring on corals, may not suffice to impose comprehensive natural resource damage liability. A new ordinance would be necessary to ensure that the person causing harm to key habitats—and not the Government or the public—bears the costs of restoration.
<b>Pass Law to Mitigate Habitat Destruction</b>	Passage of new national ordinance by Parliament	<ul style="list-style-type: none"> <li>• Maritime Ordinance 2007 (with VVRP as permitting authority) governs dredge and fill</li> <li>• Reef Management Ordinance (with GMN as permitting authority) protects against coral destruction</li> <li>• Curaçao has presented to the Parliament of the Community of Latin American and Caribbean States (CELAC) a Framework Law for Protection of the Marine Coastal Environment—Very Special Ecological Systems of Coral Reefs, Mangroves and</li> </ul>	Existing legal authorities lack formal mitigation requirements—i.e., avoidance of harm, minimization of harm, and restoration of injured resources. Although mitigation could conceivably be imposed through permit processes, a new national law could ensure a much more effective mitigation framework. Current discussions of possible mega-pier in Otrabanda and its impact on corals add to urgency.



Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Implement Public Mooring Program</b>	<ul style="list-style-type: none"> <li>Establishment of program</li> <li>Securing funding mechanism for program</li> <li>Ensuring public education to support compliance</li> </ul>	Seagrass	A new public mooring program can presumably be accomplished on an inter-ministerial or even inter-departmental basis without need for a new ordinance or decree. It will be important to align the program with existing permitting regimes and institutional responsibilities.
		<ul style="list-style-type: none"> <li>Key relevant legal authorities include Reef Management Ordinance and Maritime Ordinance 2007</li> <li>Consider engagement of multiple Government entities, including GMN, VVRP, Maritime Authority, and Coast Guard</li> </ul>	

### 10.3 Improve Domestic Fisheries Management

Curaçao’s existing legal framework for fisheries management is comprised of an amalgam of laws created prior to 10/10/10 that addresses Curaçao’s international and domestic fleet. While the laws prohibit some destructive practices, including spearfishing and gillnet use, the laws could be updated to create a far more robust fisheries management system and create the necessary enabling conditions for enforcement. The EU “yellow card” regarding Curaçao’s management of its international fleet provides an opportunity to design an improved system of fisheries management at both the international and domestic level. In addition, some civil servants have expressed the need to resolve management overlap between MEO and GMN. Some approaches to fisheries reform are already under serious discussion in Curaçao.

Policy pathways for improving domestic fisheries management are as follows:

- 3.1 Update spearfishing ban to prohibit possession, sale, or import of spear guns and define spearfishing broadly
- 3.2 Update gillnet ban to prohibit use and possession, sale, or import of all gillnets
- 3.3 Designate fishing zones to exclude conflicting recreational use
- 3.4 Establish new fisheries management law to require a fisheries management plan, monitoring, and adaptive management



Table 14. Policy pathways for improving domestic fisheries management.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Update Spearfishing Ban</b>	<ul style="list-style-type: none"> <li>• Passage of targeted national ordinance by Parliament to ban possession, sale, or import of spear guns, potentially as amendment to Reef Management Ordinance</li> <li>• Amendment of Explanatory Memorandum narrowly construing otherwise broad legal definition of spearfishing</li> </ul>	<ul style="list-style-type: none"> <li>• GMN is key institution, implementing Reef Management Ordinance</li> <li>• A ban on possession of spear guns would greatly facilitate enforcement by Coast Guard</li> </ul>	<p>Targeted modifications to the spearfishing ban represent a straightforward and needed modification to the law. Banning spear gun possession, sale, and import is likely a more difficult undertaking than expanding the interpretation of spearfishing.</p>
<b>Update Gillnet Ban</b>	<ul style="list-style-type: none"> <li>• Passage of targeted national ordinance by Parliament to prohibit possession, sale, and importation of gillnets, potentially as amendment to National Fisheries Ordinance (NFO) and/or Fisheries Ordinance Curaçao (FOC) [or]</li> <li>• Ministerial decree amending National Fisheries Decree (MEO) [or]</li> <li>• Ministerial decree amending Fisheries Decree Curaçao (GMN/AVB)</li> </ul>	<ul style="list-style-type: none"> <li>• National Fisheries Decree (MEO) governs gillnet use</li> <li>• Fisheries Decree Curaçao (GMN/AVB) governs gillnet use</li> <li>• A more robust set of legal restrictions would facilitate enforcement by the Coast Guard</li> </ul>	<p>Despite existing legal restrictions on gillnet usage, enforcement remains an ongoing problem. It may be possible for one or both of MEO and GMN to amend existing decrees that govern gillnetting to further limit usage and perhaps also possession. But a broad prohibition including sale and importation may require an ordinance. Additionally, such an ordinance could clarify responsibilities as between MEO and GMN/AVB.</p>
<b>Designate Fishing Zones for Exclusive Use by Fishers</b>	<ul style="list-style-type: none"> <li>• Determination of how zones would work and which non-fishing activities would be excluded</li> <li>• GMN Ministerial decree, pursuant to the Fisheries Ordinance Curaçao (FOC)</li> </ul>	<p>Decree would set out new rules for use of and access to “fishery zones”</p>	<p>This appears to be a policy pathway that GMN could adopt via decree absent the need for a new ordinance. However, given conflicting ocean uses, extensive public consultation would likely be a prerequisite to effective implementation.</p>



Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<p><b>Establish New Fisheries Management Law</b></p>	<ul style="list-style-type: none"> <li>• Passage by Parliament of draft 2015 Fisheries Ordinance prepared by MEO [or]</li> <li>• Passage of new national ordinance by Parliament not based on prior drafts (and perhaps drawing on BHC findings and recommendations)</li> </ul>	<p>Key institutional issue in fisheries reform arena is the partition of roles between MEO and GMN/AVB</p>	<p>Taken together, the patchwork of fisheries management authorities in Curaçao, the EU “yellow card,” and the start of a new constitutional era in 2010 all argue strongly in favor of a modern, comprehensive legal framework for fisheries. Beginning from the 2015 draft could speed adoption; however, calls for a greater role for GMN as the environmental Ministry—and the one with deep fisheries expertise—suggest that a fresh look at the draft may be helpful.</p>

### 10.4 Improve Coastal Water Quality and Minimize Marine Debris

Pollution of ocean waters due to poor water quality on Curaçao is a clear concern among ocean stakeholders. Prior to 10/10/10, the Public Order Ordinance 1980 and the Waste and Chemicals Waste Ordinance 1995 provided a legal framework for the management of waste in Curaçao. However, neither survived to the present day. A new Public Order Ordinance became law in 2015, reinstating some key water quality requirements, especially relating to trash. But there is no new Waste and Chemicals Waste Ordinance. In addition to the lack of legal mechanisms to ensure water quality, challenges persist with inadequate sewage treatment and waste disposal systems.

Policy pathways for improving coastal water quality and minimizing marine debris are as follows:

- 4.1 Expand water quality laws to adequately address marine and inland pollution
- 4.2 Improve implementation of the Public Order Ordinance
- 4.3 Create coastal buffer zones and coastal development best management practices to minimize runoff



Table 15. Policy pathways for improving coastal water quality and minimizing marine debris.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Expand Water Quality Laws</b>	<ul style="list-style-type: none"> <li>• Passage by Parliament of a comprehensive water quality ordinance to address marine and inland pollution; the law would ensure robust source-based and pollutant-based controls, a system to regularly test coastal water quality, a system of public notice for polluted water bodies, and water body-based control measures [or]</li> <li>• Passage by Parliament of a targeted water quality ordinance, perhaps as an amendment to the Public Order Ordinance 2015</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant existing legal authorities include the Nuisance Ordinance Curaçao 1994, and the Public Order Ordinance 2015</li> <li>• The “Attachment F” regulations from the Isla nuisance license (1994) are also relevant</li> <li>• Although Curaçao is not a party to the Land Based Sources Protocol of the Cartagena Convention, Curaçao could use the Protocol as guidance in the development of a new law</li> </ul>	<p>The absence of true water quality laws for the protection of marine and inland waters remains a gap in Curaçao’s legal framework for environmental protection. Post-2010, no new Waste and Chemicals Waste Ordinance has replaced prior repealed versions. A comprehensive new ordinance is preferable; however, Curaçao may also be able to build on its existing nuisance law and the recent, post-2010 public order law to achieve these protections in a more targeted way.</p>
<b>Improve Public Order Ordinance Implementation</b>	<p>Internal prioritization by VVRP and GMN of administration and implementation responsibilities under the Public Order Ordinance 2015</p>	<ul style="list-style-type: none"> <li>• VVRP and GMN have implementing authority under the Public Order Ordinance 2015</li> <li>• Also consider enhanced roles for Ministry of Justice and enforcement officials</li> </ul>	<p>Improving implementation of the existing law can be achieved at the Ministerial and departmental levels, absent the need for a new ordinance or decree.</p>
<b>Create Coastal Buffer Zones &amp; Development Best Management Practices</b>	<ul style="list-style-type: none"> <li>• Revision of the Existing Island Development Plan (EOP) by Parliament [or]</li> <li>• Targeted actions under existing EOP by VVRP including by way of permit conditions or new conservation area/water area designations</li> </ul>	<ul style="list-style-type: none"> <li>• Relevant legal authorities for development include the National Ordinance on Planning and Zoning 1976 (LGRO), the Island Ordinance on Planning and Zoning (EROC), and the Island Development Plan 1995 (EOP)</li> <li>• VVRP is the key implementing entity</li> </ul>	<p>A new EOP for Curaçao is long overdue. However, revision of the existing plan has engendered much controversy. VVRP may be able to act at the Ministerial level, although some legal uncertainty exists over the scope of legal authority to plan in marine waters beyond the baseline. This could argue in favor of an entirely new, post-2010 development ordinance for Curaçao.</p>



## 10.5 Protect Threatened and Endangered Species

Curaçao enjoys a wealth of marine life in its waters, including species that are endangered, threatened, and vulnerable. During community consultations, stakeholders from nature organizations have consistently called on the Government to better protect endangered species.

Policy pathways for protecting threatened and endangered species are as follows:

5.1 Protect sea turtle nesting beaches

5.2 Designate a marine mammal sanctuary

5.3 Designate a shark sanctuary

Table 16. Policy pathways for protecting threatened and endangered species.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Protect Sea Turtle Nesting Beaches</b>	<ul style="list-style-type: none"> <li>• Designation of specific beaches as protected areas during turtle nesting season</li> <li>• Creation of voluntary requirements for beach users and coastal property owners to support improved sea turtle conservation [or]</li> <li>• Passage of ordinance by Parliament pursuant to Ordinance on Nature Conservation and Protection 1998</li> </ul>	<ul style="list-style-type: none"> <li>• Sea turtles currently protected under Reef Management Ordinance (RMO) and Island Decree for Protection of Sea Turtles; disturbing nests is prohibited</li> <li>• GMN has Ministerial authority</li> <li>• Curaçao a party to Sea Turtle Convention</li> </ul>	Sea turtles and their nests already receive legal protection in Curaçao, but there is a need for additional rules governing beaches and beach access for key beaches during nesting season. This may be achieved through voluntary compliance by beach users and property owners (with appropriate Government enforcement of RMO and the Sea Turtle Decree), or through a formal ordinance passed to implement the SPAW Protocol and Sea Turtle Convention.
<b>Designate Marine Mammal Sanctuary</b>	<ul style="list-style-type: none"> <li>• Designation via passage of ordinance by Parliament pursuant to Ordinance on Nature Conservation and Protection 1998 [or]</li> <li>• Designation via GMN Ministerial decree pursuant to the Maritime</li> </ul>	<ul style="list-style-type: none"> <li>• The National Fisheries Decree already prohibits fishing for marine mammals without an exemption from GMN for scientific or educational grounds</li> <li>• The EEZ management plan for the Dutch Caribbean calls for the</li> </ul>	There have been consistent calls, still ongoing, for the establishment of an EEZ-wide marine mammal sanctuary for Kingdom waters that includes Curaçao. It is a short step from Curaçao’s existing law to designate a marine sanctuary,



Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
	<p>Ordinance 2007 [or]</p> <ul style="list-style-type: none"> <li>• Designation by decree of Council of Ministers, absent new legal authority, drawing on existing Curaçao laws and international commitments</li> </ul>	<p>creation of a marine mammal sanctuary for the entire Dutch Caribbean, including Curaçao</p> <ul style="list-style-type: none"> <li>• Curaçao has been asked to join the Nature Policy Plan of the Caribbean Netherlands (created by the Kingdom); the plan contains support for strengthening marine parks—in particular, for the creation of a Dutch Caribbean marine mammal sanctuary</li> <li>• The SPAW Protocol requires conservation of all marine mammals and implementation of the Action Plan for the Conservation of Marine Mammals in the Wider Caribbean (MMAP)</li> <li>• UNEP-Caribbean Environment Programmed supports protection of marine mammals under the SPAW Protocol</li> </ul>	<p>which would also fulfill existing commitments made by the Government of Curaçao and support the Caribbean-wide effort to create marine mammal sanctuaries.</p>
<p><b>Designate Shark Sanctuary</b></p>	<p>Designation via passage of ordinance by Parliament</p>	<ul style="list-style-type: none"> <li>• U.N. Food and Agriculture Organization developed an International Plan of Action for the Conservation and Management of Sharks, which calls upon all nations to adopt national plans to conserve and manage sharks; Curaçao lacks such a plan</li> <li>• St. Maarten has closed its EEZ to commercial shark fishing</li> </ul>	<p>Curaçao recently committed to passing legislation to designate a shark sanctuary in 2016.</p>



## 10.6 Improve Government Coordination

Curaçao has a busy ocean ... with fishing, diving, other recreation activities, boating, and shipping all adding to the utilization of and impacts to ocean resources. As with most nations, Curaçao’s ocean-related laws are a patchwork—with institutional implementation spread among various government bodies. To plan effectively for the ocean—reducing cumulative impacts, minimizing conflict, and making tradeoffs among competing uses—government coordination becomes essential. Curaçao faces the added challenge of needing to harmonize its laws and institutions after its transition to country status in 2010, combined with the reality that its Ministries, post-2010, possess significant authority and independence within their areas of expertise and responsibility.

The key policy pathway for improving coordination is as follows:

- 6.1 Make permanent the Blue Ribbon Committee for Blue Halo Curaçao with designated liaisons and collaborators across Government Ministries

Table 17. Policy pathways for improving government coordination.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Make Blue Ribbon Committee Permanent</b>	Joint establishment by responsible Ministries of new inter-ministerial committee, staffed through appointments by the secretaries general	<ul style="list-style-type: none"> <li>• New process could be supported by a Memorandum of Understanding (MoU) or similar agreement, perhaps derived from or modelled on the BHC process</li> <li>• This process-based policy approach could potentially be outcome-neutral if such a condition were necessary to secure support</li> </ul>	In the post-2010 era, Curaçao’s Ministries are significant independent centers of governmental authority—and their responsibilities are spread across fragmented, overlapping, and in some cases outdated legal authorities. In the absence of an integrated coastal zone management (ICZM) scheme, improved coordination is critical. This can be achieved, in part, through a low-cost, minimally intrusive inter-ministerial approach.



## 10.7 Adopt an Enforceable Marine Spatial Plan

Sustainable ocean management can be achieved through the tool of marine spatial planning (MSP), which is “a public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process. (UNESCO).” Many nations around the world have adopted MSP through legislation or policy. In the Caribbean, the Barbuda Council, as part of Barbuda Blue Halo, recently passed coastal zoning and fisheries regulations to establish a legally binding marine spatial plan.

Policy pathways for adopting an enforceable marine spatial plan are as follows:

- 7.1 Adopt a marine spatial plan through Blue Halo Initiative process and pass individual pieces of legislation to address elements of the marine spatial plan
- 7.2 Pass comprehensive marine spatial planning legislation

Table 18. Policy pathways for adopting an enforceable marine spatial plan.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Adopt Marine Spatial Plan (MSP) + Individual Pieces of Legislation</b>	<ul style="list-style-type: none"> <li>• Completion and adoption of MSP through Blue Halo Initiative process</li> <li>• Passage by Parliament of individual pieces of legislation that address elements of the MSP</li> </ul>	This pathway depends on Parliament and the Government taking separate action, as recommended through other policy pathways, on the subjects of fisheries management, marine protected areas, and water quality, among others	This incremental approach could prove more feasible than passage of a comprehensive law, but the success of the MSP would depend on the passage of multiple other pieces of effective legislation to ensure a robust legal framework.
<b>Pass Comprehensive MSP Legislation</b>	<ul style="list-style-type: none"> <li>• Completion of Blue Halo marine spatial plan</li> <li>• Passage of new national ordinance on MSP by Parliament that adopts plan</li> </ul>	<ul style="list-style-type: none"> <li>• Key feature of legislation would be designation of single Ministry as coordinating institution (see discussion of coordination at Pathway 6.1)</li> <li>• Ministries to be considered for coordinating role would likely include GMN, MEO, and VVRP (or, potentially, Ministry of General</li> </ul>	<p>A comprehensive MSP ordinance is preferable to more piecemeal options but could be difficult to achieve.</p> <p>A legislatively designated MSP lead institution could oversee coordination and contribute to more effective dispute resolution, greater accountability, and more consistent enforcement. (To pursue</p>



Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
		Affairs)	such a designation informally, absent an ordinance or decree, all relevant institutions would need to be comfortable ceding some degree of coordinating authority and responsibility if the designation is to be effective.)

### 10.8 Ensure Public Access to the Coast

Beaches and the marine environment in Curaçao are public unless otherwise designated by law. Nevertheless, many parts of the Curaçao coastline are effectively inaccessible to the public due to coastal development. In some places, coastal property owners charge beachgoers money for access to the beaches. As development continues, this alarming trend could mean that residents have little access to their marine environment, with the risk that many Curaçaoans become even more disconnected from the sea.

Policy pathways for ensuring public access to the coast are as follows:

- 8.1 Pass law requiring all new development to ensure public right-of-way to the coast and no fees to access the coast
- 8.2 Pass law requiring existing developments to allow public access to the coast

Table 19. Policy pathways for ensuring public access to the coast.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<b>Pass Coastal Access Law (New Development)</b>	Passage of new national ordinance by Parliament requiring that new development ensure public right-of-way to coast and no fees for access	May be able to build on experience of VVRP under relevant legal authorities for development: the National Ordinance on Planning and Zoning 1976 (LGRO), the Island Ordinance on Planning and Zoning (EROZ), and the Island Development Plan 1995 (EOP)	Below high tide line, beaches are public unless otherwise designated. But as a practical matter, due to coastal development, private landholdings, and often rocky coasts, public access is limited. Ensuring that new development activities are conducted consistent with public access is a sensible step,



Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
			although opposition seems likely. This pathway would put future developers on notice that access will be required.
<b>Pass Coastal Access Law (Existing Development)</b>	Passage of new national ordinance by Parliament requiring that existing development ensure public access to coast	<ul style="list-style-type: none"> <li>• This pathway will likely limit existing property rights, even if only minimally, and could generate claims for regulatory takings by private property owners</li> <li>• Art. 16 of Curaçao Constitution may be implicated</li> </ul>	This pathway is important given current difficulties of coastal access. It also seems likely to generate resistance from some property owners and developers.

### 10.9 Promote Research, Education and Participation

Fisheries management is limited by lack of reliable catch data. In addition, despite the considerable marine research conducted in Curaçao, substantial information about key characteristics of the coastal environment is lacking. Even more profound is the lack of research in Curaçao’s offshore environment, which makes up most of Curaçao’s ocean territory. However, Curaçao has substantial capacity in comparison to many Caribbean nations, with world-class marine scientists located at and visiting the CARMABI research station. One area of tourism focus for the Government of Curaçao has been the development of science tourism—i.e., encouraging researchers from around the world to visit and work in Curaçao. Developing a robust system to support ocean science should contribute to this effort. In addition to developing the knowledge needed to understand the marine environment, Curaçao must take the important step of getting that information to—and providing appropriate training for—the government officials, enforcement officers, and stakeholders who need it. Finally, ocean stewardship and management require effective and robust public participation in all its forms.

Policy pathways for promoting research, education, and public participation are as follows:

- 9.1 Create program for long-term ecological and fisheries monitoring
- 9.2 Design and implement appropriate training program for ocean managers, enforcement staff, and ocean users regarding existing and new ocean laws and policies
- 9.3 Improve ocean governance through public participation



Table 20. Policy pathways for promoting research, education and participation.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<p><b>Create Long-Term Ecological &amp; Fisheries Monitoring Program</b></p>	<ul style="list-style-type: none"> <li>• Inventory of existing monitoring programs in Curaçao and Dutch Caribbean as starting point</li> <li>• Design of program through BHC [or]</li> <li>• Incorporation of monitoring programs into new protected areas ordinance and/or new fisheries management ordinance (discussed in pathways above)</li> </ul>	<ul style="list-style-type: none"> <li>• No existing Curaçao legal authorities identified that mandate monitoring or establish a legal framework for doing so</li> <li>• Key Government institutions include GMN/AVB and MEO</li> <li>• Key stakeholders include CARMABI, DCNA, and the UNEP Caribbean Environment Programme</li> <li>• Key processes include the Dutch Caribbean Committee on Marine Biodiversity and Fisheries (CMBF), of which Curaçao is a member; and the Nature Policy Plan of the Caribbean Netherlands (which Curaçao may wish to join and whose 2013-2017 plan expressly addresses monitoring)</li> </ul>	<p>Designing and implementing effective legal and institutional tools depends over the long term on a foundation of robust ecological and fisheries monitoring data. The pathways for fisheries management reform, discussed above, will be limited by lack of reliable catch data. Design of a monitoring program should draw from local, regional, and institutional resources, and in particular should consider following monitoring recommendations from the Global Coral Reef Monitoring Network.</p>
<p><b>Design/Implement Training Program on New Ocean Laws and Policies</b></p>	<ul style="list-style-type: none"> <li>• Design by BHC partners of training initiatives</li> <li>• Securing source of funding, perhaps via special fund pathways</li> </ul>	<ul style="list-style-type: none"> <li>• Training programs should be designed for and tailored to key subsets of government officials: members of Parliament; subject-matter Ministries and their relevant department staffs (including legal staff), as well as the Ministry of Justice; enforcement officers in the Police and with the Coast Guard; and judges</li> <li>• Stakeholder/industry groups include sport fisheries, professional fisheries, boating and diving, recreational and</li> </ul>	<p>Success of a new ocean policy framework will depend on knowledgeable Government officials, policymakers, enforcement staff, and public stakeholders. This aim directly supports compliance and enforcement. The main consideration here may be identifying sources of funding to design and implement such activities.</p>



Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<p><b>Improve Ocean Governance through Public Participation</b></p>	<ul style="list-style-type: none"> <li>• Commitment by relevant Government institutions to engage public in decision-making to greatest extent allowable under the law</li> <li>• Ensuring that new ordinances or decrees implemented through other policy pathways include strong public participation mechanisms: e.g., public meetings, broad information sharing, notice-and-comment rulemaking, use of stakeholder advisory bodies, com-management structures</li> </ul>	<p>tourism, cruise lines, and the development sector (e.g., builders)</p> <p>Key Government institutions include GMN/AVB, MEO, and VVRP</p>	<p>Informed, engaged public participation is a fundamental principle of good governance and all environmental protection, including marine protection. It will be important for the Government to use the emergence of a new sustainable ocean policy as a vehicle to further engage the populace—one that has already in some ways become distant from the sea. This, in turn, should add legitimacy to the process and ultimately strengthen compliance and enforcement.</p>

### 10.10 Implement a Sustainable Finance System for Blue Halo Curaçao

Creating a system of sustainable financing for ocean management planning, development, implementation, monitoring, and adaptation is crucial for ocean management success. It also is one of the most challenging aspects of ocean management. Key approaches include the use of user fees and other payments for ecosystem services to support management, domestic budget allocation, and development assistance, among others. In addition to creating an appropriate funding stream, it is important to ensure a dedicated source of funding so that ocean management moves beyond the planning stage. Currently, Curaçao faces the added consideration of the ongoing Kingdom financial supervision process.

Policy pathways for implementing a sustainable finance system for Blue Halo Curaçao are as follows:

10.1 Pass law establishing a special fund for Sustainable Ocean Policy implementation

10.2 Commit departmental funds on an ongoing basis to a Sustainable Ocean Policy special fund



10.3 Create system of user fees and fines to fund management

10.4 Create a donor system that can feed into special fund

Table 21. Policy pathways for implementing a sustainable finance system for Blue Halo Curaçao.

Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
<p><b>Pass National Ordinance for Special Fund for BHC Implementation/ Enforcement</b></p>	<ul style="list-style-type: none"> <li>• Passage of national ordinance by Parliament to establish a special fund for BHC implementation and enforcement needs [or]</li> <li>• Creation of a special fund for coastal management by the MvF pursuant to the Government Accounting Ordinance 2010 (GAO)</li> </ul>	<ul style="list-style-type: none"> <li>• Post-2010 financial supervision for Curaçao is ongoing, so any pathway pursued under this overall recommendation should be coordinated with that process and with the Cft</li> <li>• A series of legal authorities are currently implicated in public finance decisions: Administrative Organization Ordinance 2010, GAO, Financial Supervision Act Curaçao and Sint Maarten 2010, Subsidies Ordinance 2007, Ordinance on Financial Management 2015</li> </ul>	<p>A dedicated, ongoing funding mechanism to support ocean management priorities is crucial. A new national ordinance is the clearest pathway to this end, and it would signal a national commitment and provide a point of public engagement. At the same time, it could be the most difficult pathway. Alternatively, or as a first step, the MvF could establish a special fund under existing law.</p>
<p><b>Commit Departmental Funds to BHC Special Fund</b></p>	<ul style="list-style-type: none"> <li>• GMN/MvF assessment of public funding needs (type, amount) for Blue Halo Curaçao special fund</li> <li>• Public commitment of funds from key Ministries with responsibilities in this area</li> </ul>	<ul style="list-style-type: none"> <li>• Key Ministries whose relevant departments may choose to commit funds include GMN, MEO, and VVRP</li> <li>• Commitments should be coordinated with MvF and the current financial supervision process</li> </ul>	<p>This pathway has the benefit of being informal. At the same time, however, there may be challenges in securing such commitments from existing budgets in a time of fiscal constraint.</p>
<p><b>Create System of User Fees &amp; Fines</b></p>	<ul style="list-style-type: none"> <li>• Passage of national ordinance by Parliament to establish a system of ocean user fees and fines (could be combined with pathway 10.1) [or]</li> <li>• Re-examination by Ministries/ departments with ocean-related</li> </ul>	<ul style="list-style-type: none"> <li>• Ministries with relevant permitting and licensing schemes include GMN, MEO, and VVRP</li> <li>• Government efforts here should be coordinated with MvF and the current financial supervision process</li> </ul>	<p>There is a compelling case to be made that ocean users—including divers, cruise ship passengers, boaters, and eco-tourists—should contribute to the financial health of the marine environment. Similarly, fines paid by those who misuse marine resources should support</p>



Framework Pathways	Action Needed for BHC	Legal/Institutional Considerations	Rationale & Discussion
	permitting or licensing authority of their legal avenues for imposing fees/fines under existing law • Commitment of resulting funds could be made pursuant to pathway 10.2		the ocean. The key considerations here may be political—with respect to both imposing costs on industry customers (fees) and potentially shifting government revenue streams from violators (fines).
<b>Create Donor System</b>	• Design of donor system by BHC partners • Government commitment to publicize system’s function and importance and to back its financial integrity	• Government efforts here should be coordinated with MvF and the current financial supervision process • CARMABI is key institutional stakeholder and partner, as is DCNA	Seeking donor support to fund ocean management from outside the island could be politically appealing. It will be important to study the experiences of the DCNA CTF (Conservation Trust Fund) to draw on lessons learned.