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# Legal Framework for Marine Protected Area Enforcement in Three Bays National Park, Haiti: Challenges and Opportunities



**Prepared By:**  
Environmental Law Institute  
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## Haiti

### *Introduction*

The Republic of Haiti has established a National System of Environmental Management (*Systeme National de Gestion de l'Environnement*, S.N.G.E.) that includes legal instruments for the establishment of natural protected areas.<sup>1</sup>

The Decree on the management of the environment and the regulation of the conduct of citizens for a sustainable development, 2006 (*Décret portant sur la gestion de l'environnement et de régulation de la conduite des citoyens et citoyennes pour un développement durable*) sets out national policies and principles regarding environmental conservation, and involves all levels of Haitian government in fulfilling the nation's duty to protect the environment.<sup>2</sup>

Legal terms for protected areas administered under the National Protected Area System include national parks, reserved zones, forestry reserves, registered natural sites, and zones under protection.<sup>3</sup>

### *Marine Protected Area Authorization*

The 2006 Decree provides the main legal authority for the creation of marine protected areas (MPAs). Additionally, management of the National Protected Area System falls under the authority of the National Agency of Protected Areas (ANAP),<sup>4</sup> within the Ministry of Environment (MDE). Protected areas (including MPAs) can be national, regional, or municipal, and must be created through regulations.<sup>5</sup> ANAP administers Haiti's MPAs must develop a Protected Areas Management Plan,<sup>6</sup> as well as site-specific management plans.<sup>7</sup>

In the exercise of its fisheries management functions, the Fisheries Service, an agency integrated into the MDE, may determine refuge zones or areas for fish species, as well as reserved areas.<sup>8</sup> The Fisheries Service is also tasked with dictating measures for the conservation and maintenance of the necessary conditions for the development of marine flora and fauna.<sup>9</sup> However, it must be noted that

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<sup>1</sup> Decree on the management of the environment and the regulation of the conduct of citizens for a sustainable development, 2006, Art. 28 <http://extwprlegs1.fao.org/docs/pdf/hai65901.pdf> .

<sup>2</sup> *Id.* at art. 7.

<sup>3</sup> *Id.* at art. 48 (“Le SNAP comprend actuellement les paires nationaux, les zones reservees, les reserves forestieres, les sites naturels classes et les zones sous protection.”)

<sup>4</sup> *Id.* at art. 53-4.

<sup>5</sup> *Id.* at art. 50.

<sup>6</sup> *Id.* at art. 54.2.

<sup>7</sup> *Id.* at art. 54.4.

<sup>8</sup> *Id.* at art. 57.13.

<sup>9</sup> *Id.* at art. 57.3.

the Fisheries Service is equally mandated to encourage industrialization of fisheries.<sup>10</sup> For the enforcement of its regulations, the Fisheries Service can appoint “Fisheries Agents.”<sup>11</sup>

In addition to these marine areas, the 2006 Decree for environmental protection provides for the creation of a “Conservatory of the Littoral” (Conservatoire du Littoral),<sup>12</sup> which would identify less degraded natural sites for conservation and also secure the protection of cultural and historical heritage.<sup>13</sup> To date, this Conservatory has yet to be created.

In recent years, Haiti has engaged in an effort to increase marine environmental protection. These efforts were given concrete expression through the enactment, in 2013, of Decrees for the creation of two MPAs. The first one was the Marine Protected Area of Port Salut/Aquin (Aire Protégée de Ressources Naturelles Gérées de Port Salut/Aquin).<sup>14</sup> Located in Southern Haiti, the Port Salut/Aquin MPA comprises five zoned areas for a total of nearly 1,000 square kilometers, including both marine and terrestrial sites.<sup>15</sup>

Created in December 11, 2013, the Three Bays Marine Protected Area (Aire Protégée de Ressources Naturelles Gérées des Trois Baies) is Haiti’s second Marine Protected Area (MPA). Located in Northeastern Haiti, it includes the bays of Limonade, Caracol, and Ft. Liberté, as well as the Lagon aux Boeufs.<sup>16</sup> According to the draft management plan for the Three Bays MPA, fisheries in the protected area are unsustainable and it is affected by coastal subsistence and artisanal fishers using illegal, small-mesh seine nets; fishing activities are not currently being monitored, and no limits enforced.<sup>17</sup>

The Decrees declaring the creation of both MPAs state that the long-term protection of marine biodiversity in these areas must be made compatible with the needs of the communities that depend

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<sup>10</sup> *Id.* at art. 57.5.

<sup>11</sup> Decree of 1987 on the organization and functioning of the Ministry of Agriculture, Natural Resource, and Rural Development (MARNDR). art. 97.

<sup>12</sup> Decree on the Environment, *supra* note 1, at art. 127.

<sup>13</sup> See Pascal Saffache, “The Haitian Marine Environment: Chronicle of an Ecological Disaster,” Caribbean Studies [Online], 5 | December 2006, posted on December 15, 2006, accessed March 29, 2018. URL: <http://journals.openedition.org/caribbean-studies/267>; DOI: 10.4000 / Caribbean Studies.267

<sup>14</sup> Decree declaring as protected area the marine and coastal complex situated in the South-West of the South peninsula and denominated the Protected Area of Managed Natural Resources of Port Salut/Aquin (*Arrête déclarant aire Protégée le complexe marin et côtère situe dans le Sud-Ouest de la péninsule Sud sur la dénomination de aire Protégée Ressources Naturelles Gérées de Port Salut/Aquin*), Le Moniteur, August 26, 2013, Available at: <http://extwprlegs1.fao.org/docs/pdf/Hai170633.pdf>

<sup>15</sup> See Fondation pour la Protection de la Biodiversité Marine (FoProBiM), Creation of a New Protected Area in Southwestern Haiti, available at [http://foprobim.org/uploads/3/1/6/6/3166555/decre\\_e\\_creation\\_of\\_pa\\_in\\_southwest.pdf](http://foprobim.org/uploads/3/1/6/6/3166555/decre_e_creation_of_pa_in_southwest.pdf)

<sup>16</sup> See Decree of 2013 declaring the Protected Area of the Three Bays (*Arrête déclarant d’Aire Protégée de Ressources Naturelles Gérées des Trois Baies” le complexe marin, côtier et terrestre, situé dans la moitié Est de la côte septentrionale d’Haïti*), Le Moniteur, March 21, 2014.

<sup>17</sup> The Protected Area of Managed Natural Resources of the Three Bays (PA3B) Draft Management Plan. 2017, at 46.

on these ecosystems.<sup>18</sup> According to the United Nations Environment Programme (UNEP), in 2017 two additional MPAs were created: Jeremie-Abricot and Baraderes-Cayemites<sup>19</sup>

### *Regulated Activities*

There is a lack of specific regulations describing prohibited activities on MPAs in Haiti. However, some legal instruments that generally apply to waters under Haitian jurisdiction include relevant provisions for the protection of the marine environment, setting basic elements for MPA compliance management. For example, the 2006 Decree on the Environment bans the discharge of substances that may increase the pollution of any marine waters in Haiti,<sup>20</sup> as well as the introduction in the Haitian marine environment of any substances that may affect marine biological resources, marine water quality, navigation, or fishing activities.<sup>21</sup>

Regarding human activities in protected areas, the Fisheries Decree of 1978 bans fishing, sand or stone dredging, harvesting of aquatic plants and in general any activities that may “disturb the free reproduction of fish.”<sup>22</sup> Under the law, any person engaging in fishing activities in Haiti must observe all rules and protections for the recovery of the fishing resources.<sup>23</sup>

The administration of fisheries in Haiti falls under MDE, and directly under the Directorate of Fisheries and Aquaculture (*Direction des Pêches et Aquaculture*, or DPAQ).<sup>24</sup> Under the Fisheries Decree, the Ministry of Environment (MDE), is responsible for developing and managing Fisheries, and administers all fisheries and fishing-related activities. The Fisheries Decree sets an overall mandate to take into account social and economic criteria for fisheries management.<sup>25</sup> It does not include specific references to environmental factors.

According to the Fisheries Decree, the Haitian State holds title to all marine areas and submerged lands as public trust.<sup>26</sup> In connection with this, the right to fish belongs to the State, which can then be granted to individuals, private companies, or fishing cooperatives.<sup>27</sup> The Decree provides a variety of restrictions on fishing activity, including license requirements, mesh sizes, and closed seasons.<sup>28</sup>

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<sup>18</sup> Decree declaring the Protected Area of the Three Bays, *supra* note 16, at art. 1. *See also* Decree declaring the Port Salut/Aquin Protected Area, *supra* note 14, at art. 1.

<sup>19</sup> See CEP-UNEP, Government of Haiti Declares 7 new Protected Areas, at <http://cep.unep.org/government-of-haiti-declares-7-new-protected-areas>

<sup>20</sup> Decree on the Environment, *supra* note 1 at art. 121

<sup>21</sup> *Id.* at art. 128

<sup>22</sup> Decree regulating the exercise of the right to fish in Haiti, and subordinating foreign individuals, corporations, and cooperatives to the issuance of a license by the Secretary of Agriculture, Natural Resources, and Rural Development (1978), art. 38.

<sup>23</sup> *Id.* at art. 8.

<sup>24</sup> Japan International Cooperation Agency (JICA). Haiti final report, 2009, at 9.

<sup>25</sup> Fisheries Decree of 1978, *supra* note 21 at art. 1

<sup>26</sup> *Id.* at art. 2

<sup>27</sup> *Id.* at art. 5

<sup>28</sup> *Id.* at art. 40-51.

Specifically, all fishing activities in Haitian waters require administrative approval.<sup>29</sup> In the exercise of fishing rights, every person must observe a series of requirements. For example, the State reserves the right to withdraw fishing rights from individuals or entities that do not furnish adequate information on their fishing activity to the Fisheries Service.<sup>30</sup> In addition, the capture of certain species like dolphins, porpoises and live sardines to be used as bait is prohibited.<sup>31</sup> As a general rule, the captain of the fishing boat is responsible for any violations of the Fishing Decree.<sup>32</sup> However, effective enforcement of these provisions remains a significant challenge.

To operate legally in Haitian waters, foreign fishing vessels must have a concession contract issued by the Fisheries Service, obtain a fishing permit from the Secretary of Agriculture, Natural Resources, and Rural Development, and present other documents pertaining to the good status and the nationality of the ship.<sup>33</sup> All seafood products harvested in Haitian waters must be landed in Haitian ports, regardless of their final destination.<sup>34</sup> Additionally, all fishing vessels over 3 tons are forbidden from fishing in areas less than 3 miles from the coast,<sup>35</sup> and the Secretary of Agriculture, Natural Resources, and Rural Development reserves the right to impose restrictions on fishing activity for reasons of “general interest.”<sup>36</sup>

It must be noted that, according to the 1978 Fisheries Decree, fishing in a protected area is considered a felony. The Fisheries Decree prohibits, for all Haitian waters, the discharge of any substances that may affect the ecology of watercourses and the use of explosives, drugs, poisonous chemicals and baits in water that may intoxicate or kill fish.<sup>37</sup> Additionally, it also prohibits the fishing and export of the Atlantic triton (*Charonia variegata*), all corals, removing turtle eggs, fishing for pinnipeds or cetaceans (unless with a special permit from the Secretary of Agriculture, Natural Resources and Rural Development), and cutting mangroves that serve as habitat to aquatic species (especially to oysters).<sup>38</sup> As a general rule, it is forbidden to fish for any species within 50 meters of the boundary of a protected area.<sup>39</sup>

In addition to this, the mayors of the five counties within Three Bays National Park (Limonade, Caracol, Terrier Rouge, Ft. Liberté and Ferrier) passed an inter-communal decree on April 2, 2018 targeted at banning damaging and unsustainable fishing methods within the Park, specifically the use of nets with small mesh sizes, with a total ban on their use implemented by January 1, 2020. The decree also includes provisions for the immediate banning of fishing / hunting of all sea turtles, marine mammals, aquarium fish and endangered cartilaginous fish, as well as the sale or possession

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<sup>29</sup> *Id.* at art. 3

<sup>30</sup> *Id.* at art. 8

<sup>31</sup> *Id.* at art. 12

<sup>32</sup> *Id.* at art. 15

<sup>33</sup> *Id.* at art. 16. See also arts. 20-21.

<sup>34</sup> *Id.* at art. 24.

<sup>35</sup> *Id.* at art. 34.

<sup>36</sup> *Id.* at art. 37.

<sup>37</sup> *Id.* at art. 95.

<sup>38</sup> *Id.* at art. 97- 100.

<sup>39</sup> *Id.* at art. 101.

of any of their parts, products or eggs.<sup>40</sup> This makes Three Bays National Park the only area in Haiti where the hunting of sea turtles and the possession of their parts is prohibited.<sup>41</sup>

According to the 2006 Decree on the Environment, the captain or person responsible for a vessel transporting hydrocarbons or dangerous substances in Haiti's territorial waters must promptly inform Haitian authorities of any event that may endanger the marine environment or public health.<sup>42</sup> The vessel owner must implement all necessary measures to put an end to the danger.<sup>43</sup>

### *Enforcement Tools*

Environmental protection is the responsibility of the Ministry of Justice and the Ministry of the Environment. The 2006 Decree on the Environment establishes the distribution of authority on specific topics. For example, the Protected Areas Surveillance Brigade (BSAP), formerly known as **Environmental Surveillance Corps** (*Corps de Surveillance de l'Environnement*) of the National Protected Areas Agency focuses on, inter alia, the following aspects relevant to MPA compliance management:<sup>44</sup>

- Providing information and engaging in public outreach for general attitude changes regarding the protection and sustainable use of biodiversity;
- Physical protection of the protected areas against any alteration not anticipated in the management plans;
- Sanction of offenses against the laws and regulations for ecosystem protection;
- Monitoring water quality and aquatic biodiversity in water areas under public trust;
- Sanction offenses against laws, regulations, and norms on the occupation of spaces in human settlements, acoustic nuisances, and waste management.

At the same time, the National Police is in charge of, among other matters:<sup>45</sup>

- Supervising compliance with environmental norms in waters under Haitian jurisdiction
- Conducting criminal investigations on environmental law violations
- Protecting life and property within protected areas, at the request of the Ministry of the Environment or the ANAP

Although the legal framework identifies specific enforcement agencies for environmental protection, the distribution of enforcement powers assigned to these agencies is still not available. For example, according to the Fisheries Decree, all fishing vessels in Haitian waters are subject to the control of three additional authorities: the Haitian Navy, the Customs Service, and the Fisheries Service.<sup>46</sup>

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<sup>40</sup> Inter-Communal By-Law Concerning the Management of Fishery Resources in the Protected Area of Natural Resources Managed in the Three Bays (Arrêté intercommunal portant sur la gestion des ressources halieutiques de l'Aire Protégée de Ressources Naturelles Gérées des Trois Baies (AP3B), 2 Avril 2018).

<sup>41</sup> WIDECAS (pers.comm), May 15, 2018

<sup>42</sup> Decree on the Environment, *supra* note 1 at art 130.

<sup>43</sup> *Id.* at art. 131.

<sup>44</sup> *Id.* at art. 64.

<sup>45</sup> *Id.* at art. 65.

<sup>46</sup> Fisheries Decree, *supra* note 21 at art. 18.

However, Haitian law has not defined the specific enforcement powers of the BSAP (formerly the Environmental Surveillance Corps) and there are no specific references to powers of MPA enforcement assigned to other enforcement agencies like the National Police or the Coast Guard.

The minutes of the proceedings of the agents of the BSAP, when recorded in the form required by agreement between the Ministry of the Environment and the Ministry of Justice, constitute valid evidence for administrative and criminal courts.<sup>47</sup> In addition, all sworn or non-sworn public servants that have been empowered to enforce the laws, including public health, maritime and air traffic control, coast guard, customs, and port and airport officers, can serve as complementary or assistance forces to environmental surveillance and enforcement.<sup>48</sup>

### *Penalties*

Haitian laws provide for criminal, civil, and administrative penalties for damage to the environment. The 2006 Decree on the Environment recognizes the responsibility for environmental damages in a very broad sense, including any attack, unauthorized exploitation, or environmental degradation of any sort, as well as any omission of the duty to protect the environment. The Decree mentions that damage to the environment can lead to both criminal penalties and the administrative duty to repair the damage.<sup>49</sup> However, specific regulations on natural resource damages are yet to be defined. As mentioned above, Haitian law has not established specific penalties for contraventions to MPA regulations. The most specific set of penalties relating to activities in the marine environment is included in the 1978 Fisheries Decree. Consequently, this section describes fisheries enforcement regulations that apply to all Haitian waters and not only to MPAs. Lack of enforcement constitutes the most significant limitation to the effective implementation of the penalties system.

#### Administrative penalties:

Fishers found guilty of more than two offenses against the fisheries management decree will be barred from obtaining a new fishing license.<sup>50</sup> It must be noted that, according to the 1978 Fisheries Decree, fishing in a protected area is considered a felony, although it does not provide for higher fines in case of certain activities conducted within the boundaries of the protected areas.<sup>51</sup>

#### Criminal Sanctions:

Haitian law provides for criminal and administrative penalties that include discretionary fines, imprisonment in case of default, and forfeiture of articles and gear. The Fisheries Decree broadly divides sanctions in two standards of seriousness: misdemeanors (*contraventions*) and felonies (*délits*).<sup>52</sup>

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<sup>47</sup> *Id.* at art. 66.

<sup>48</sup> *Id.* at art. 67.

<sup>49</sup> *Id.* at art. 152.

<sup>50</sup> *Id.* at art. 103.

<sup>51</sup> *Id.* at art. 38.

<sup>52</sup> *Id.* at arts. 131 & 132.

### Misdemeanors:

According to the Fisheries Decree, the following activities are considered misdemeanors, leading to a monetary fine of between 100 and 500 Haitian gourdes (approximately 1.6 to 7.8 USD as of 2018) or between 1 and 6 months of imprisonment if the fine is not paid:<sup>53</sup>

- Casting/installing a fishing net occupying more than 2/3 of a channel or watercourse<sup>54</sup>
- Transferring fishing permits, or not presenting documents showing their validity<sup>55</sup>
- Practicing fishing in spawning areas or areas with high presence of juvenile fishes<sup>56</sup>
- Introduction of non-indigenous species without being previously monitored<sup>57</sup>
- Harvesting, selling and exporting triton (*Charonia variegata*); fishing for turtle between May and October, collecting turtle eggs at any time, fishing for crabs between December 1<sup>st</sup> and May 31, fishing for pinnipeds or cetaceans without a special permit, and cutting mangroves, especially those that serve as nurseries for oysters.<sup>58</sup>
- Fishing for oysters without a permit<sup>59</sup>
- Capturing *pisquette* (dwarf herring) in estuaries<sup>60</sup>
- Failing to pay the fee for owing a fishing canoe<sup>61</sup>
- Interfering with the right of fisheries officers to inspect any facilities for purposes of conducting inspections<sup>62</sup>

In all these cases listed above, the law requires seizure of all goods, which will be immediately sold. The product of the sale must be consigned to central government funds.<sup>63</sup>

The following activities are considered misdemeanors leading to a fine of between 25 and 50 Haitian gourdes (approximately 0.39 to 0.78USD as of 2018) or imprisonment between 15 days to 1 month if the fine is not paid:

- Engaging in artisanal fishing without paying the required fee<sup>64</sup>
- Casting a fishing net without signaling buoys in its two extremes<sup>65</sup>

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<sup>53</sup> *Id.* at art 131.

<sup>54</sup> *Id.* at art. 43.

<sup>55</sup> *Id.* at art. 63.

<sup>56</sup> *Id.* at art. 93.

<sup>57</sup> *Id.* at art. 96.

<sup>58</sup> *Id.* at art. 97.

<sup>59</sup> *Id.* at art. 98.

<sup>60</sup> *Id.* at art. 99.

<sup>61</sup> *Id.* at art. 109.3.

<sup>62</sup> *Id.* at art. 121.

<sup>63</sup> The Decree refers to a BNRI bank account labeled as “promotion and protection of natural resources.” *Id.* at art 131.

<sup>64</sup> *Id.* at art. 10.

<sup>65</sup> *Id.* at art. 28.

- Using fishing traps of under 16mm of mesh size.<sup>66</sup> The authorities will also seize the fishing gear
- Setting longlines without the appropriate signaling devices<sup>67</sup>
- Using fishing nets of a longitude over 300 meters<sup>68</sup>
- Not observing the required distance between fishing nets<sup>69</sup>
- Not observing the rules regulating the proper utilization of fishing gear and minimum mesh size (under 16mm)<sup>70</sup>

The following activities are considered misdemeanors leading to a fine of between 100 to 500 gourdes (approximately 1.6 to 7.8 USD as of 2018) or imprisonment of 1 to 3 months for artisanal fishers if the fine is not paid:<sup>71</sup>

- Capturing unauthorized species or fishing outside authorized areas
- Not complying with the minimum sizes as established in the fishing permit or concession
- Not having Haitian nationals onboard for their training, according to a predetermined agreement
- Not having a proper fishing log onboard
- Not issuing the required report of fish landings every six months
- Failing to conform to the controls of fisheries inspectors

Using chemical products for fishing is a violation leading to a fine of between 100 and 500 gourdes (approximately 1.6 to 7.8 USD as of 2018) or imprisonment between 1-3 months.<sup>72</sup> The seized goods must be destroyed.

#### Felonies:

The following activities are considered felonies punishable by a fine of between 500 and 1000 gourdes (approximately between 7.8 and 15.5 USD as of 2018) or imprisonment between 6 months to one year if the fine is not paid:<sup>73</sup>

- Using the product of sport fishing for commercial purposes<sup>74</sup>
- Unlawfully removing fishes from fishing nets or traps, or damaging legally-installed fishing nets<sup>75</sup>
- Carrying harpoons in vessels engaged in fishing<sup>76</sup>

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<sup>66</sup> *Id.* at art. 30.

<sup>67</sup> *Id.* at art. 35.

<sup>68</sup> *Id.* at art. 42.

<sup>69</sup> *Id.* at art. 44.

<sup>70</sup> *Id.* at art. 46-8, 51.

<sup>71</sup> *Id.* at art. 69.

<sup>72</sup> *Id.* at art. 122.5.

<sup>73</sup> *Id.* at art. 132. 1.

<sup>74</sup> *Id.* at art. 7.

<sup>75</sup> *Id.* at art 27.

<sup>76</sup> *Id.* at art. 33.

- Fishing by non-nationals in the territorial sea<sup>77</sup>
- Fishing in reserved areas or removing marine flora, rocks, sand, or conducting other activities that may negatively affect the reproduction of marine species<sup>78</sup>
- Conducting fishing from vessels with an expired registration<sup>79</sup>
- Fishing for lobster during the closed season (April 1<sup>st</sup> through September 30<sup>th</sup>)<sup>80</sup>

Seized goods will be sold and the earnings consigned to central government funds.<sup>81</sup> In the case of the unlawful export of lobster or conch, these will be repackaged at the violator's expense.<sup>82</sup>

The following activities are felonies punishable by a fine of between 500 and 1000 gourdes (approximately between 7.8 and 15.5 USD as of 2018) or imprisonment between 1 to 3 years:<sup>83</sup>

- Failing to obtain a fishing permit for each operating fishing boat<sup>84</sup>
- Gun or harpoon fishing. Carrying guns or harpoons in vessels engaged in fishing<sup>85</sup>
- Failing to comply with the minimum mesh sizes required by law<sup>86</sup>

The stock and the fishing gear will be seized.

The following activities are felonies punishable by a fine of between 1000 and 2000 gourdes (15.5 to 31.1 USD as of 2018) or imprisonment between 1 and 3 years:<sup>87</sup>

- Not following the required procedures for measuring minimum sizes<sup>88</sup>
- Conducting fishing activities by foreign fishing boats without complying with the legal requirements, including registration<sup>89</sup>
- Failing to inform the authorities if a fishing permit owner is permanently stopping his/her activities, or if a licensed fishing vessel is ceasing operations<sup>90</sup>
- Conducting trawl fishing less than 3 miles from the coast<sup>91</sup>
- Fishing for bleeding tooth sea snail (*Nerita peloronta*), king helmet conch (*Cassia tuberosa*), and conch on the north and north-east regions, pertaining to a special announcement from the Ministry of Agriculture, Natural Resources, and Rural Development<sup>92</sup>

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<sup>77</sup> *Id.* at art. 36.

<sup>78</sup> *Id.* at art. 38.

<sup>79</sup> *Id.* at art 61.

<sup>80</sup> *Id.* at art 111.

<sup>81</sup> The law refers to a "caisse des depots et consignation." See Art. 132.1.

<sup>82</sup> *Id.* at art. 122.4.

<sup>83</sup> *Id.* at art. 132.2.

<sup>84</sup> *Id.* at art. 19.

<sup>85</sup> *Id.* at art. 32, 33.

<sup>86</sup> *Id.* at art. 40-2.

<sup>87</sup> *Id.* at art. 132.3.

<sup>88</sup> *Id.* at art. 11.

<sup>89</sup> *Id.* at art. 16, 20.

<sup>90</sup> *Id.* at art. 23.

<sup>91</sup> *Id.* at art. 50.

<sup>92</sup> *Id.* at art. 124.

In the cases mentioned above, the stock and the fishing gear will be seized, but in the case of the bleeding tooth sea snail (*Nerita peloronta*), king helmet conch (*Cassis tuberosa*), and conch captured on the north and north-east regions, the stock must be returned to sea.<sup>93</sup>

The following activities are felonies punishable by a fine of between 1000 and 2000 gourdes (15.5 to 31.1 USD as of 2018, approximately) or imprisonment from 6 months to one year:<sup>94</sup>

- Fishing for sardine to be used as bait, or fishing porpoises or dolphins, without a special authorization<sup>95</sup>
- Fishing within three miles from the coast with a fishing vessel of over 3 tons<sup>96</sup>
- Fishing using nets with links of 20 millimeters or less<sup>97</sup>
- Fishing with expired permits or permits obtained from other individuals (permits are non-transferable)<sup>98</sup>
- Light fishing less than 3 miles from the coast<sup>99</sup>
- Failing to land in Haitian ports seafood products harvested in Haitian waters<sup>100</sup>
- Conducting transshipment of seafood cargo<sup>101</sup>

In the case of fishing with expired permits or permits belonging to other individuals or fishing using nets with links of 20 millimeters or less, violation also leads to the revocation of the permit. In the case of the capture of sardine, and that of dolphins or porpoises without a special permit,<sup>102</sup> light fishing less than 3 miles from the coast, landing fishing in contravention of the rule about landing in Haitian ports, fishing within three miles from the coast with a fishing vessel of over 3 tons, or any case of transshipment, all the stock will be seized and the fishing licenses cancelled.

Violations of the obligation to present the vessel's registration information, documents stating vessel's nationality, and those relating to the sanitation of the vessel and its cargo are punishable by a fine of between 5000 and 25000 gourdes (between 77.6 and 388.2 USD as of 2018, approximately) and the seizure of the cargo; or between 1 and 2 years of imprisonment if the fine is not paid.<sup>103</sup>

Damages intentionally caused to fishing nets by any person fishing nets legally cast or installed are punishable by a fine of between 300 and 2000 gourdes (between 4.7 and 31.1 USD 2018, approximately), or between two months and one year of imprisonment if the fine is not paid.<sup>104</sup>

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<sup>93</sup> *Id.* at art. 132.3. See also Arts. 122.3 & 124.

<sup>94</sup> *Id.* at art. 132.4.

<sup>95</sup> *Id.* at art. 12.

<sup>96</sup> *Id.* at art. 34.

<sup>97</sup> *Id.* at art. 49.

<sup>98</sup> *Id.* at art. 61, 67.

<sup>99</sup> *Id.* at art. 13.

<sup>100</sup> *Id.* at art 24.

<sup>101</sup> *Id.* at art 76.

<sup>102</sup> *Id.* at art. 12.

<sup>103</sup> *Id.* at art. 132.5.

<sup>104</sup> *Id.* at art. 132.6.

Fishing above the maximum limits established in fishing permits and concessions,<sup>105</sup> selling lobsters with eggs,<sup>106</sup> the fishing and selling of lobsters under 5 ounces or 151 grams,<sup>107</sup> the selling or export of lobster meat (with the exception of lobster tails over 5 ounces), and the harvesting, selling and/or purchase of small conch is punishable by a fine of between 2000 and 10000 gourdes (between 31.1 and 155.3 USD as of 2018, approximately), or between 6 months and one year of imprisonment if the fine is not paid.<sup>108</sup> Although the Fisheries Law prescribes closed seasons for lobster fishing, these are rarely implemented.<sup>109</sup>

Finally, violations of the general rules for establishment of coastal infrastructure in support of fishing activities,<sup>110</sup> as well as conducting scientific research related to fishing and any exploration in national waters or the continental shelf without a permit<sup>111</sup> is punishable by a fine of between 2000 and 10000 gourdes (between 31.1 and 155.4 USD 2018, approximately), or between 6 months and one year of imprisonment if the fine is not paid.<sup>112</sup>

The Fisheries Decree does not include specific provisions on compounding fines of several infractions.

Under the 2018 decree concerning the management of fishery resources in Three Bays, the following penalties have been enacted:

- Fishing with nets with mesh less than 50 mm outside of the allowed periods will allow for the confiscation of the nets and is punishable by two weeks in prison and a fine of between 10000 and 20000 gourdes (between 155.3 and 310.6 USD)
- Possession of sea turtles, their eggs, or any of their parts is punishable by two weeks in prison, and a fine of between 10000 and 15000 gourdes (between 155.3 and 232.9 USD)
- The fishing or hunting of marine mammals, or the possession of its products, is punishable by two weeks in prison and a fine of between 30000 and 50000 gourdes (between 465.8 and 776.4 USD)
- The fishing or hunting of any cartilaginous fish, or the possession of its products, is punishable by two weeks in prison and a fine of between 10000 and 20000 gourdes (between 155.3 and 310.6 USD)
- The fishing or hunting of aquarium fish, or the possession of its products or eggs, is punishable by two weeks in prison and a fine of between 30000 and 50000 gourdes (465.8 and 776.4 USD)<sup>113</sup>.

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<sup>105</sup> *Id.* at art. 69.b).

<sup>106</sup> *Id.* at art. 112.

<sup>107</sup> *Id.* at art. 113 b).

<sup>108</sup> *Id.* at art. 132.7.

<sup>109</sup> See Japan International Cooperation Agency (JICA). Final Country Report: Haiti, at 16; available at [http://open\\_jicareport.jica.go.jp/pdf/12058533\\_03.pdf](http://open_jicareport.jica.go.jp/pdf/12058533_03.pdf)

<sup>110</sup> *Id.* at art 144.

<sup>111</sup> *Id.* at art. 145.

<sup>112</sup> *Id.* at art. 132.8.

<sup>113</sup> Inter-Communal By-Law, *supra* note 40, arts. 1-5

### *Notes on this review of Haiti's legal framework for MPA enforcement*

The following paragraphs aim at providing specific suggestions for enhancing the legal framework for MPA compliance management in Haiti. Implementing regulations still need to be developed for several laws particularly relevant for MPA management and enforcement, including the 1978 Fisheries Law and the 2006 Decree on environmental protection. Drafting and enacting these regulations is paramount to define specific MPA management and enforcement procedures, including the distribution of enforcement powers for MPA management, the issuance of measures for combating marine pollution, and the rules for the determination and adjudication of MPA violations.

### *Recommendations*

As the draft management plan for the Three Bays MPA states, it is fundamental to strengthen the “fisheries management regime, particularly with respect to the overall fishing effort and the development and enforcement of fisheries regulations regarding zoning, catch limits and gear restrictions.”<sup>114</sup>

First, it would be desirable for Haiti to complete development of its legal framework for national MPA laws and regulations. Developing regulations to the 2006 Decree on environmental protection and **updating** the 1978 Fisheries Decree, would be particularly helpful. Specifically, regulations to the Decree on environmental protection should include a description of MPA enforcement powers assigned to the BSAP, and to the Haitian Navy, the Customs Service, the Coast Guard, and/or any other enforcement agent that may be deputized as MPA enforcement officer. These enforcement powers should be defined broadly, to include the power to, without a warrant under reasonable grounds to believe that a violation has occurred, stop, board, require the presentation of permits and other documents, search, seize fishing gear and cargo, and arrest. They should also set criteria for adjudication of MPA violations and indicate specific sanctions and thresholds for natural resource damages. Similarly, the Regulations to the Fisheries Decree should establish enforcement powers for the Fisheries Service on MPA compliance management matters, specify higher penalties for unlawful fishing activities conducted within the boundaries of MPAs, and define broadly the persons liable for violations to the fisheries decree committed in MPAs. As a general measure, fisheries monetary penalties should be raised, and especially high fines should be imposed to MPA violations attributable to foreign fishing vessels. In this regard, the provisions of The Bahamas Fisheries Act<sup>115</sup> and the Barbuda Fisheries Regulations<sup>116</sup> provide interesting examples. In addition, the 2016 Environmental Law Institute Handbook of Legal Tools for Strengthening Marine Protected Area Enforcement<sup>117</sup> contains a suite of MPA compliance management mechanisms and associated legal language that might be useful to legal drafters in Haiti.

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<sup>114</sup> Draft Management Plan, *supra* note 17 at 47.

<sup>115</sup> Fisheries Resources (Jurisdiction and Conservation); [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1977/1977-0013/FisheriesResourcesJurisdictionandConservationAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1977/1977-0013/FisheriesResourcesJurisdictionandConservationAct_1.pdf)

<sup>116</sup> Barbuda (Fisheries) Regulations 2014, <http://waittinstitute.org/wp-content/uploads/2016/08/Barbuda-Fisheries-Regulations-2014-FINAL-12Aug2014.pdf>

<sup>117</sup> ELI. Legal Tools for Strengthening Marine Protected Area Enforcement. A Handbook. 2016, <https://www.eli.org/research-report/legal-tools-strengthening-marine-protected-area-enforcement-handbook>

Second, Haiti could strengthen its capacity to enforce MPA regulations by clarifying enforcement powers and streamlining interagency cooperation. Ideally, the legal reforms described above should address the clarification of fisheries and MPA enforcement competences. Specifically, a Regulation to the 2006 Decree on Environmental Protection could help clarify the concurrent jurisdiction between ANAP and the Ministry of Agriculture, establishing a leading agency for MPA compliance and a legal provision describing that fisheries officers can also act as environmental protection officers, with equal functions and enforcement powers. In this regard, the legal framework put in place by the 1995 Fisheries Act and the 2015 Niue Environment Act can provide an interesting example. The South Pacific island nation of Niue confronted its lack of at-sea enforcement personnel by establishing a legal framework that enables cross-recognition of enforcement capacity between environment officers, fisheries officers, the police force, and other officers “in the public service.”<sup>118</sup> The Haitian government could enact such a legal framework through a regulation to the 2006 Decree without the need to engage in a process of legislative reform.

Alternatively, a Memorandum of Understanding (MOU) between ANAP and the Ministry of Agriculture could achieve a similar level of coordination. An advantage of the MOU model is that, being a policy guidance document; it can be flexible in terms of its content and the characteristics of the coordination mechanism created. The dynamic nature of the MOU (compared to legal reform) is also its weakness, since MOUs are more vulnerable to changes in policy priorities and political cycles. The typical interagency MOU usually includes: (a) explanation of purpose; (b) background and rationale (explaining the need for an MOU), (c) a specific set of goals and targets, (d) the appointment of a joint committee and/or indication of responsible agency authorities or departments; (e) a coordination protocol, describing the distribution of functions and competences (for example, describing that one agency will issue fishing permits and the other will review and/or provide complementary authorizations). There are several good examples of MOUs for interagency coordination. The 2014 Memorandum of Understanding between the National Park Service and U.S. Fish and Wildlife Service for Interagency Cooperation at Assateague Island National Seashore and Chincoteague National Wildlife Refuge<sup>119</sup> is an example of a detailed agreement that lists specific activities for each party on the management of a protected area. Memorandums of Understanding can also contribute to clarify unclear terms relevant for the work of the interested agencies, establish coordination for the development of joint policy guidance documents (e.g. on the management of fisheries in and around MPAs), and establish protocols for the exchange of funding and/or personnel.<sup>120</sup>

Third, entering into regional and international maritime agreements can also help reinforce an MPA compliance management strategy for Haiti. The Caribbean community is active in the development

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<sup>118</sup> See Niue Environment Act 2015 at §44

<sup>119</sup> Memorandum of Understanding between the National Park Service and U.S. Fish and Wildlife Service for Interagency Cooperation at Assateague Island National Seashore and Chincoteague National Wildlife Refuge, 2014, available at [https://www.fws.gov/uploadedFiles/Appendix%20E\\_CHN%20Draft%20CCPEIS.pdf](https://www.fws.gov/uploadedFiles/Appendix%20E_CHN%20Draft%20CCPEIS.pdf)

<sup>120</sup> For an example of an MOU establishing a broad scope of interagency coordination see, e.g., the 2004 Memorandum of Understanding between the Marine Minerals Service (now Bureau of Ocean Energy Management) and the U.S. Coast Guard, available at <https://www.boem.gov/Environmental-Stewardship/Environmental-Studies/Partnerships/MOU-MMS-USCG-30-September-2004.aspx>

of legal instruments for cross-boundary cooperation. These include hard-law instruments, such as the Agreement Concerning Co-Operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area<sup>121</sup> or the 1992 Agreement Establishing Common Fisheries Surveillance Zones of the Organization of Eastern Caribbean States (OECS);<sup>122</sup> Memorandums of Understanding on MPA compliance management with neighboring countries, and “shiprider” agreements, which would allow Haitian MPA enforcement officers to ride along on a patrol vessel of another country within its EEZ, participating in surveillance and enforcement operations.<sup>123</sup>

In light of the increased complexity and intensity of human uses of ocean resources in Haiti, it would be desirable for the country to start developing an administrative regime for ocean management that allows for spatial management of uses, an adequate stewardship of potentially conflicting uses, and an appropriate licensing and marine zoning mechanism. Relevant laws and regulations could benefit from being updated to include the solicitation of stakeholder input, provide opportunities for public engagement and participation in environmental regulation, and the development of rules for transparency and access to information in fisheries management. For example, the development of coastal and marine spatial plans allows for the long-term determination of marine protected areas in a process that allows for broad stakeholder input, decision-making transparency, and public participation. The 2010 Marine (Scotland) Act provides a particularly detailed example of this process.<sup>124</sup>

### *Laws Analyzed*

This section lists the laws that were reviewed during this assessment. Only laws that explicitly covered uses and activities in MPAs were ultimately included in the above analysis.

- Inter-Communal By-Law Concerning the Management of Fishery Resources in the Protected Area of Natural Resources Managed in the Three Bays (2018)
- Decree declaring the *Trois Baies Natural Resources Protected Area* (2014).
- Ministerial Decree forbidding the exploitation of mangroves (2013).
- Decree on the management of the environment and the regulation of the conduct of citizens for a sustainable development (2006).
- Law of the National Police (1994).
- Decree creating an autonomous advisory institution named the National Commission of Patrimony (1989).
- Decree on the organization and functioning of the Ministry of Agriculture, Natural Resource, and Rural Development (MDE) (1987).

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<sup>121</sup> See Agreement Concerning Co-Operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area, <https://www.state.gov/s/l/2005/87198.htm>

<sup>122</sup> 1992 Agreement Establishing Common Fisheries Surveillance Zones of the Organization of Eastern Caribbean States, <http://extwprlegs1.fao.org/docs/pdf/ant1087.pdf>

<sup>123</sup> See for example the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, <https://www.ecolex.org/details/treaty/niue-treaty-on-cooperation-in-fisheries-surveillance-and-law-enforcement-in-the-south-pacific-region-tre-001964/>

<sup>124</sup> Marine (Scotland) Act, [http://www.legislation.gov.uk/asp/2010/5/pdfs/asp\\_20100005\\_en.pdf](http://www.legislation.gov.uk/asp/2010/5/pdfs/asp_20100005_en.pdf)

- Decree regulating the exercise of the right to fish in Haiti, and subordinating foreign individuals, corporations, and cooperatives to the issuance of a license by the Secretary of Agriculture, Natural Resources, and Rural Development (1978).
- Decree establishing the limits of the territorial waters of the Republic of Haiti (1972).