



ENVIRONMENTAL LAW AND POLICY IN SABAH: FROM RIDGE TO REEF

VOLUME 4: COASTS, ISLANDS AND SEAS

DRAFT FOR PEER REVIEW

Disclaimer, Acknowledgements and Call for Inputs

Disclaimer: This legal brief is intended as a means to engage with the relevant law and policy, and should not replace a thorough reading of the official documents themselves, which can be found online.

Acknowledgements: The authors have striven to provide an easily accessible and accurate overview of the law. Many thanks to the anonymous reviewers who have provided their inputs.

Call for inputs: We welcome further comments on content, format, and the brief's potential development and uses. Please email Holly Jonas (holly@foreversabah.org) and Harry Jonas (harry@foreversabah.org).

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INTRODUCTION

OVERVIEW

This brief provides an overview of the law relating to Sabah's coasts islands and seas, and provides details of the institutional arrangements, and relevant case law.

Notably, this legal brief is intended as a means to engage with the relevant laws, and should not replace a thorough reading of the laws themselves. The authors have striven to provide an easily accessible and accurate overview of the law, and we welcome comments on format, content and the brief's potential further development and uses.

SABAH'S COASTAL ZONE

Sabah has a Coastal Zone that extends from a contour line running inland at 60 metres above sea level to 3 nautical miles offshore. Sabah's Coastal Zone is subdivided into a number of sometimes overlapping areas:

1. Inland Boundary,
2. Coastal Shoreline,
3. Foreshore and Foreshore Reserve,
4. Nearshore,
5. Internal Waters,
6. Territorial Waters, and
7. An area that forms part of Malaysian Fisheries Waters and Maritime Waters.

A range of laws governs Sabah's Coastal Zone, including the following:

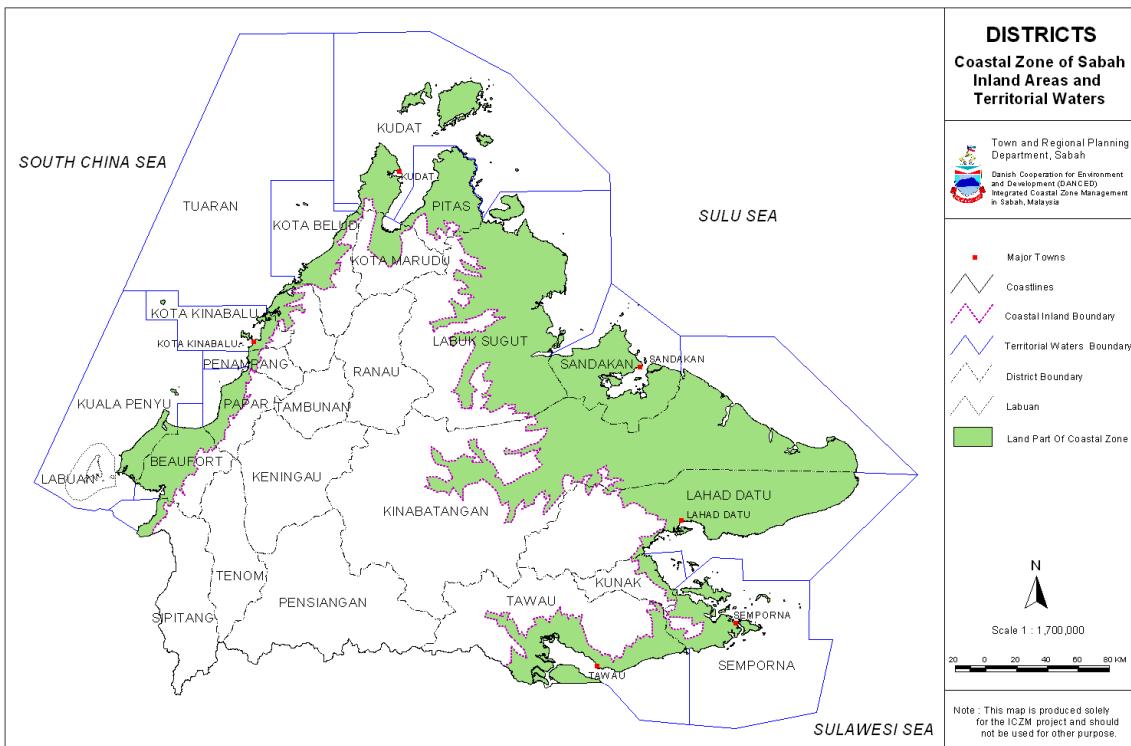
- [Land Ordinance \(1930\)](#),
- [Town and Country Planning Ordinance \(1950\)](#),
- [Drainage and Irrigation Ordinance \(1956\)](#),
- [Forest Enactment \(1968\)](#),
- [Parks Enactment \(1984\)](#),
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- [Environment Protection Enactment \(2002\)](#),
- [Ports and Harbours Enactment \(2002\)](#)
- [Sabah Water Supply Enactment \(2003\)](#), and
- [Sabah Inland Fisheries and Aquaculture Enactment \(2003\)](#).

In addition to the above laws, the following Federal laws also regulate the Nearshore and Territorial Waters of Sabah's Coastal Zone:

- [Territorial Sea Act \(2012\)](#),
- [Environmental Quality Act \(1974\)](#), and
- [Fisheries Act \(1985\)](#).

Although the State has a large degree of jurisdiction in the Coastal Zone, the Federal Constitution provides the Federal Government with certain jurisdiction to regulate in some areas of relevant law.¹ For example, the (Federal) Fisheries Act (1985) sets out the Federal Government's exclusive right to regulate fisheries-related matters in the Maritime Waters, an area that includes the Inland Waters, Territorial Waters and Malaysia's Exclusive Economic Zone.²

The map below illustrates Sabah's Inland Areas and Territorial Waters.



MALAYSIA'S EXCLUSIVE ECONOMIC ZONE

Beyond Sabah's Coastal Zone lies Malaysia's Exclusive Economic Zone (EEZ), a marine zone that extends from 3 to 200 nautical miles off the coast of Sabah.³ Malaysia's EEZ is a legal boundary defining the Federal government's sovereignty and right to

¹ Federal Constitution Malaysia, Article 74 and Ninth Schedule, Section 9(d); Fisheries Act 1985.

² The Territorial Waters is a part of the Malaysian Fisheries Waters, which encompasses the Internal Waters, the Territorial Sea and the Maritime Waters of the Exclusive Economic Zone, see (Malaysia) Fisheries Act 1985, Section 2; The Federal Government may also regulate Maritime and Estuarine Waters under the Federal Constitution Malaysia, Ninth Schedule, List I Section 9(d).

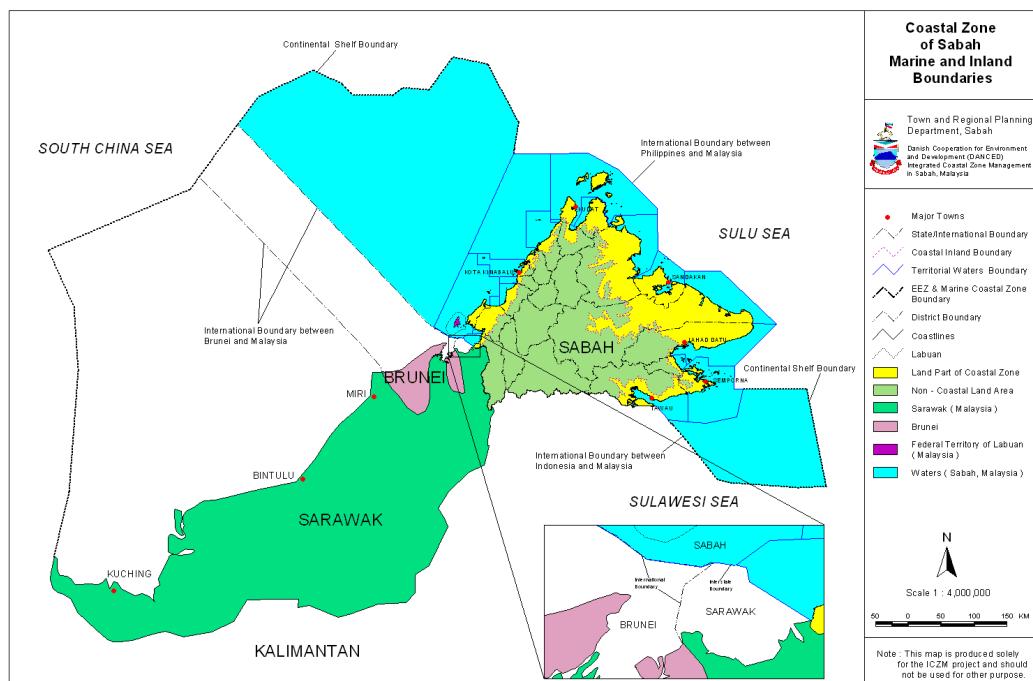
³ Except where this intercepts a foreign boundary and thereupon is negotiated amongst the relevant National authorities or put to arbitration. Notably, the Town and Regional Planning Department uses the term "Seaward Boundary" to describe the marine area from the shoreline. The term "Outer Seaward Boundary" is also used to describe the Federal EEZ. See the Town and Regional Planning Department's Report on Shoreline Management: <http://www.townplanning.sabah.gov.my/iczm/Reports/Coastal%20Profile%20Sabah/ch02/02-THE%20COASTAL%20ZONE%20OF%20SABAH.html>

access natural resources within the zone.⁴ The overall 200 nautical mile boundary of Malaysia's EEZ is measured from the baseline of the Territorial Waters, i.e. which begins seaward from the low-water line.⁵

The following Federal laws regulate Malaysia's Exclusive Economic Zone:

- [Continental Shelf Act \(1966\)](#),
- [Environmental Quality Act \(1974\)](#),
- [National Parks Act \(1980\)](#),
- [Exclusive Economic Zone Act \(1984\)](#),
- [Fisheries Act \(1985\)](#),
- [Wildlife Conservation Act \(2010\)](#), and
- [Customs Order\(s\) \(2012\)](#).

The figure below illustrates Malaysia's Exclusive Economic Zone beyond Sabah's Territorial Waters.



REGIONAL CONSIDERATIONS

In addition to Sabahan and Malaysian Federal laws that regulate the Coastal Zone and the Exclusive Economic Zone, the waters are included in regional programs and initiatives. The two most relevant are listed below, and involve the participation of agencies from State and Federal levels, cooperating with other agencies:

⁴ Exclusive Economic Zone Act 1984.

⁵ Exclusive Economic Zone Act 1984, Section 3(1).

- Sulu Sulawesi Marine Ecoregion Programme, and
- Coral Triangle Initiative.

OUTLINE OF THE BRIEF

This brief provides details and analysis of each of the sections outlined above, and will in time provide an overview of crosscutting issues and an overall analysis.

NOTE TO THE READER

The authors have done their best to integrate the relevant information while keeping the brief to a manageable length. However, there remain several outstanding questions. We have highlighted these in boxes throughout the text. We welcome your thoughts, inputs and questions.

We also acknowledge that there are other important issue areas that have not been dealt with in enough depth in this brief. These include: a) the status of laws and policies relevant to fish and coastal/marine wildlife, and b) the extent of conservation-related initiatives along Sabah's shoreline and in offshore areas. These two brief are currently being developed.

SABAH'S COASTAL ZONE

DESCRIPTION OF SABAH'S COASTAL ZONE

Sabah has a Coastal Zone that extends from the Inland Boundary (which runs along a 60 metre contour line i.e. a line that marks 60 meters above sea level) to the Seaward Boundary, which runs 3 nautical miles offshore. Sabah's Coastal Zone consists of the following boundaries and areas, which overlap with each other:

1. Inland Boundary
2. Coastal Shoreline,
3. Foreshore and Foreshore Reserve,
4. Nearshore,
5. Internal Waters,
6. Territorial Waters, and
7. Malaysian Fisheries Waters and Maritime Waters

Sections 1-7 below describe the areas listed above, and Section 8 provides commentary on the fact these areas are not clearly defined in law.

As a general rule, Sabahan laws govern Sabah's Coastal Zone. This rule is set out in the Ninth Schedule of Malaysia's Federal Constitution, which classifies State and Federal authority to legislate on subject matters.⁶ For example, land, inland and riverine fishing⁷ matters are reserved for the State.⁸ In contrast, the Federal government is allowed to legislate on matters relating to maritime and estuarine waters, with an exception to turtles.⁹

The Ninth Schedule also provides for overlaps where the State and Federal government may both legislate on subject matter. For example, both the Federal and State Government are authorized to legislate on the protection of wild animals and wild birds, along with regulating on drainage and irrigation issues.¹⁰ An overview of the Ninth Schedule of the Federal Constitution is provided in **Annex I**.

The next sections describe the boundaries and areas of Sabah's Coastal Zone working from the Inland Boundary out to sea.

1. Sabah's (Coastal Zone) Inland Boundary

The *Inland Boundary* is a line that marks the inland perimeter of Sabah's Coastal Zone.¹¹ The Inland Boundary is defined as a 60 metres contour line (i.e. 60 metres above sea level) that is intended to include coastal sensitive habitats such as all

⁶ State Land matters are under State jurisdiction, Malaysia Federal Constitution 1957, Ninth Schedule.

⁷ Malaysia Federal Constitution 1957, Ninth Schedule, List II, Section 12.

⁸ Malaysia Federal Constitution 1957, Ninth Schedule, List II, Section 2.

⁹ The Federal Government passed the Fisheries Act (1985) regulating fisheries in Maritime Waters, which includes water bodies within and outside of Malaysian Fisheries Waters, such as estuarine waters, marine culture system or fisheries, see Fisheries Act 1985.

¹⁰ Malaysia Federal Constitution 1957, Ninth Schedule, List III, Subsection 3.

¹¹ ICZM Project, The Coastal Zone of Sabah, Sabah Coastal Zone Profile 1998, see <http://www.townplanning.sabah.gov.my/iczm/Reports/Coastal%20Profile%20Sabah/ch02/02-THE%20COASTAL%20ZONE%20OF%20SABAH.html>

mangrove areas and coastal peat swamps.¹² The Inland Boundary may extend up to 100km from the coast in some areas due to gradually sloping floodplains.¹³

The Inland Boundary line has been used to manage development activity along the Coastal Shoreline.¹⁴ Both Federal and State agencies¹⁵ have adopted a recommended setback for coastal development activity planned within the Inland Boundary to stretch at least 60 metres from the Mean High High Water line.¹⁶ A recommended setback is used to identify how near a structure may be built from the Coastal Shoreline to reduce the impact of human activity and pollution to coastal habitats.¹⁷ Additionally, a 60 metres setback for development activity is utilized to protect structures from damages due to coastal erosion.¹⁸

2. Coastal Shoreline

An exact definition of the *Coastal Shoreline* is not provided by legislation, but is described in a planning document as having “an offshore and inland boundary”¹⁹ and encompassing an area extending from “60 m landward of mean high-high water to a water depth two to three times the maximum wave height.”²⁰ In Sabah, this water depth translates to approximately 12m below mean sea level.²¹ As a result, it overlaps with the Foreshore and Foreshore Reserve – discussed below. The Coastal Shoreline includes: mangrove areas; coastal peat swamps;²² estuaries; and tidal lagoon areas, with the exclusion of tidal rivers.²³

3. Foreshore and Foreshore Reserve

The *Foreshore Reserve* is identified as an area that extends at least 20 metres landward from the “Mean High High Water line.”²⁴ Notably, the term *Foreshore*

¹² ICZM Project, The Coastal Zone of Sabah, Sabah Coastal Zone Profile 1998.

¹³ ICZM Project, The Coastal Zone of Sabah, Sabah Coastal Zone Profile 1998; For a map of the Preliminary Inland Boundary, see <http://www.townplanning.sabah.gov.my/iczm/Reports/Coastal%20Profile%20Sabah/Figures/Figure%2004%20Districts.gif>

¹⁴ Shoreline Management in the ICZM Context in Sabah 1999, pp. 37-39.

¹⁵ Sabah’s Town and Regional Planning Department and Malaysia’s Drainage and Irrigation Department have adhered to Malaysia Drainage and Irrigation Department, “*Guidelines on Erosion Control for Development Projects in the Coastal Zone*”.

¹⁶ A high water mark or line is a point that represents the maximum rise of a body of water over land.

¹⁷ Shoreline Management in the ICZM Context in Sabah 1999, pp. 37-39, see <http://www.townplanning.sabah.gov.my/iczm/Reports/Shoreline%20Management/desc.html>

¹⁸ Shoreline Management in the ICZM Context in Sabah 1999, pp. 37-39.

¹⁹ ICZM Project, The Coastal Zone of Sabah, Sabah Coastal Zone Profile 1998; Shoreline Management in the Intercoastal Zone Management Context in Sabah, 1999.

²⁰ Shoreline Management in the ICZM Context in Sabah 1999, p. ii.

²¹ Shoreline Management in the ICZM Context in Sabah 1999, p. 2.

²² Shoreline Management in the ICZM Context in Sabah 1999, p. 20.

²³ Shoreline Management in the ICZM Context in Sabah 1999, p. 11.

²⁴ Shoreline Management in the ICZM Context in Sabah 1999, pp. 37-39.

Reserve is used interchangeably to also mean *Shore Reserve*, which is similarly defined under the Water Resources Enactment.²⁵

The *Foreshore* is an area of State land. The Foreshore is defined in Sabah's Land Ordinance as the region between the "high-water mark and low-water mark of ordinary spring tides."²⁶ The National Land Code (1965), a Federal law, defines the Foreshore by the same boundaries.

4. Nearshore

Located beyond the Foreshore and Foreshore Reserve, is the Nearshore. The term *Nearshore* is not defined by either State guidelines or legislation.²⁷ Nevertheless, the Nearshore has been described as a marine area of growing concern due to fishing and turbidity problems:²⁸ a water quality problem that has created an adverse impact on water clarity and marine habitats.²⁹ Nearshore turbidity has also been linked to problems of Inland riverine sediment run-off and coastal pollution.³⁰ No seaward boundary is provided for the Nearshore, thus the extent to which the Nearshore overlaps with the Territorial Waters is unclear.

5. Internal Waters

The *Fisheries Act (1980)* uses the term *Internal Waters* to refer to any area of the sea that is on the landward side of the baselines from which the breadth of the Territorial Sea of Malaysia is measured.³¹

6. Territorial Waters

Under the *Territorial Sea Act (2012)*, the boundary of the Territorial Waters of Malaysia is generally recognized to extend 12 nautical miles from the coast.³² An exception is made when applying certain Federal and State laws, which results in a limitation of the Territorial Waters boundary to 3 nautical miles from the low-water mark.³³ Sabah's right to exercise jurisdiction on State land issues in the Territorial Waters is limited to a 3 nautical mile boundary from the low-water line.³⁴ Sabah's *Territorial Waters* extend the State's jurisdictional boundaries offshore.³⁵

²⁵ Water Resources Enactment, Section 40.

²⁶ Land Ordinance 1930, Section 4.

²⁷ Shoreline Management in the ICZM Context in Sabah 1999.

²⁸ Shoreline Management in the ICZM Context in Sabah 1999, pp. 20-21,28.

²⁹ Shoreline Management in the ICZM Context in Sabah 1999, pp. 20-21,28.

³⁰ Shoreline Management in the ICZM Context in Sabah 1999, pp. 28-30.

³¹ Fisheries Act 1985, Section 2; See also the Territorial Sea Act (2012) and the Baseline of Maritime Zones Act (2006).

³² Territorial Sea Act 2012, Section 3(1).

³³ Territorial Sea Act 2012, Section 3(3); See also, Marine Boundary map available in Sabah's Coastal Zone Profile 1998, which identifies the boundaries of State Territorial Waters.

³⁴ Territorial Sea Act 2012, Section 3(3).

³⁵ Territorial Sea Act 2012.

Notably, the term *State Territorial Waters* is often used in reference to a State's jurisdiction within the Territorial Waters of Malaysia.³⁶ Although there are no laws that clearly define the meaning of State Territorial Waters, the terms *State Territorial Waters* and the *Territorial Waters of Malaysia* apply to the same area.

Annex II provides a clear chronology of laws relating to Sabah's Territorial Waters.

7. Malaysian Fisheries Waters and Maritime Waters

Malaysian fisheries waters overlap with the above areas and are defined in the *Fisheries Act (1985)* as: maritime waters under the jurisdiction of Malaysia over which exclusive fishing rights or fisheries management rights are claimed by law and includes a) the internal waters of Malaysia, b) the Territorial Sea of Malaysia (in this case of Sabah), and c) the maritime waters comprised in Malaysia's Exclusive Economic Zone (discussed below).³⁷

Maritime waters are, somewhat confusingly, defined as being "the marine waters adjacent to the coast that includes marine and estuarine waters within and beyond Malaysian Fisheries Waters."³⁸

The Malaysian Federal Government has exclusive fishing rights and authority to manage maritime and estuarine fisheries within Malaysian Fisheries Waters.³⁹ Any federal laws relating to Malaysia's Fisheries Waters applies to Malaysia's EEZ and the Continental Shelf.⁴⁰ Marine and Estuarine fisheries-related laws further extends to the Territorial Waters of Malaysia.⁴¹ Although the Federal government has exclusive authority to regulate the Malaysian Fisheries Waters, there is an overlap in the laws allowing for Sabah to govern land matters within the boundaries of the Territorial Waters of Malaysia.⁴²

8. Commentary

The above sections present an overview of the Coastal Zone boundaries and sub-zones based on existing State legislation and government departmental guidelines. Despite the various laws and planning documents relevant to Sabah's Coastal Zone, the literature suggests that the boundaries lack absolute clarity. In addition, varying terminology has been used to refer to the same or similar boundaries in the

³⁶ For examples referencing State Territorial Waters as area under State jurisdiction, see the National Land Code 1965, Section 5 and ICZM Project, The Coastal Zone of Sabah, Sabah Coastal Zone Profile 1998. The Town and Planning Ordinance 1950 also identifies land in the State of Sabah to include the Territorial Waters, see Town and Planning Ordinance 1950, Section 4(C)(2).

³⁷ Fisheries Act 1985, Section 2.

³⁸ Fisheries Act 1985, Section 2.

³⁹ Federal Constitution Malaysia, Ninth Schedule, List I, Section 9; and Exclusive Economic Zone Act 1984, Section 2.

⁴⁰ Exclusive Economic Zone Act 1984 Part III, Section 8.

⁴¹ Exclusive Economic Zone Act 1984, Section 2.

⁴² See Ninth Schedule of the Federal Constitution Malaysia and Territorial Sea Act 2012, which recognizes that Sabah has authority to regulate land related matters up to 3 nautical miles.

legislation and guidelines. This situation hinders the development of an exact complete profile in this brief.

The definition of clear boundaries of Sabah's Coastal Zone is crucial to the determination of State and Federal Government jurisdiction, including the departmental responsibility and enforcement power in designated coastal and marine areas.

LAWS RELEVANT TO SABAH'S COASTAL ZONE

This section discusses the relevant laws governing Sabah's Coastal Zone. The following laws regulate activities in Sabah's Coastal Shoreline, Inland, and Foreshore:

1. Land Ordinance (1930),
2. Town and Country Planning Ordinance (1950),
3. Drainage and Irrigation Ordinance (1956),
4. Sabah Ports Authority Enactment (1967),
5. Forest Enactment (1968),
6. Parks Enactment (1984),
7. Wildlife Conservation Enactment (1997),
8. Water Resources Enactment (1998),
9. Sabah Biodiversity Enactment (2000),
10. Environment Protection Enactment (2002),
11. Sabah Water Supply Enactment (2003), and
12. Sabah Inland Fisheries and Aquaculture Enactment (2003).

In addition to the State laws, the following Federal laws also regulate Sabah's Coastal Zone:

13. Territorial Sea Act,
14. Environmental Quality Act, and
15. Fisheries Act.

The Fisheries Act (1985) and the Environmental Quality Act (1974) - above - are enacted at the Federal level and regulate areas within and outside of Sabah's Coastal Zone. A discussion of these laws is reserved for the Exclusive Economic Zone section of this legal brief.

1. LAND ORDINANCE

Description

Sabah's *Land Ordinance (1930)* was enacted to regulate the use and alienation of land in Sabah. The *Land Ordinance* is particularly relevant to coastal and marine areas in designating the boundaries of State land and identifying Reserves. Special provisions in the Ordinance further provide for codification of traditional land claims to Native Title.

A full discussion of the Land Ordinance is available in *Environmental Law and Policy in Sabah: Land*.

Boundaries of Land

The Ordinance establishes that any land not reserved for public purpose usage or under private ownership may belong to the State.⁴³

Land

Land is broadly defined to reflect any one of the following meanings listed:

- a. The surface of the earth and all substances forming that surface,
- b. The earth below the surface and all substances therein,
- c. All vegetation and other natural products, whether or not requiring the periodical application of labour to their production, and whether on or below the surface,
- d. All things attached to the earth or permanently fastened to any thing attached to the earth, whether on or below the surface, and
- e. Land covered by water.⁴⁴

Foreshore Lands

The Land Ordinance defines the Foreshore as an area of State land situated between “the high-water mark and low-water mark of ordinary spring tides.”⁴⁵ The *National Land Code (1965)*, a Federal law, defines the Foreshore by the same boundaries.⁴⁶

Land Title

All titles or claims to land must be registered with the State.⁴⁷ Title issued by the State under the Land Ordinance is limited to surface areas.⁴⁸ Despite holding title to land, owners are prohibited from extracting, removing or transporting materials beyond the boundaries of surface areas.⁴⁹ Materials such as coral, shell or sand cannot be removed from State land without a license.⁵⁰ Similarly, the same types of

⁴³ Land Ordinance 1930, Section 4.

⁴⁴ Land Ordinance 1930, Section 4.

⁴⁵ The Town and Regional Planning Department report uses the terminology Foreshore Reserve, and defines this as a minimum 20 metres landward from the mean high-high water, Shoreline Management in the ICZM Context 1999, pp. 37-39.

⁴⁶ National Land Code 1965, Section 4.

⁴⁷ Land Ordinance 1930, Section 88.

⁴⁸ Land Ordinance 1930, Section 23.

⁴⁹ Land Ordinance 1930, Section 23.

⁵⁰ Land Ordinance 1930, Section 23; In a recent case, Vietnamese fishermen were caught with 20 tonnes of endangered and protected species of giant clams found onboard a fishing vessel. The case was transferred from Sabah’s Fisheries Department to Sabah’s Land and Survey Departments. Since the clams were not considered species of fish because they are found on the seabed (an area that is part of State land) it was a considered a penalty to remove the clams without authorization from the Land and Survey Department. The removal of the clams was cited as a violation under Section 168 of the Land Ordinance. See The Star Online, Twenty Tonnes of Giant Clams Seized From Vietnamese

materials found in rivers and seas cannot be taken from the land without a proper license.⁵¹

River and Seashore Reserves

With exception to lands with title, areas covered in water are recognized as State land.⁵² The *Land Ordinance* provides for the creation of either River or Seashore Reserves, which must be established through documents of title.⁵³ Reserves are established for land areas covered in water such as “all rivers, creeks, streams and watercourse, and of the seashore below high water mark...”⁵⁴ The Land Ordinance further gives the State Government the judgment to exercise additional power to designate portions of lands along water bodies, such as seashore areas *above* the high water mark, as reserves.⁵⁵

Reserves for Public or Residential Purpose

State lands may be designated for a public or residential purpose under the discretion of the Yang di-Pertua Negeri, who is required to justify the establishment of a Reserve with supporting evidence.⁵⁶ Reserves may be revoked in whole or in part. For Reserves that were originally designated for protection and public works, the revocation requires procedures of notice and publication in the *Gazette*.⁵⁷

Rights to Minerals

The State Government is guaranteed the right to access any minerals or deposits contained in State land. Specifically, “coal, minerals, precious stones and mineral oils” are identified as belonging to the Government.⁵⁸ Mineral oils are broadly defined to include “natural petroleum gas bitumen, asphalt and other bituminous substances...”⁵⁹ Through this right, the Government is allowed to enter upon land to acquire or extract the minerals listed above. The Government must compensate for any direct or incidental damages occurring on the land accessed for minerals.

The Minister⁶⁰ is also permitted to grant licenses to private entities or individuals intending to extract minerals or other elements contained in State land. Access to these areas for minerals or deposits is limited to rights of licensing and leasing of the land. Licenses are issued for a designated period based upon the Minister’s

Fisherment, 14 April 2014, <http://www.thestar.com.my/News/Nation/2014/04/14/Crime-cops-clam/>; See also The Borneo Post, *Fishing Boat with 20 Tonnes Giant Clams Seized*, a15 April 2014, <http://www.theborneopost.com/2014/04/15/fishing-boat-with-20-tonnes-giant-clams-seized/>

⁵¹ Sabah Land Ordinance 1930, Section 23A.

⁵² Sabah Land Ordinance 1930, Section 4.

⁵³ Sabah Land Ordinance 1930, Section 26.

⁵⁴ Sabah Land Ordinance 1930, Section 26(1)-(2).

⁵⁵ Sabah Land Ordinance 1930, Section 26(2).

⁵⁶ Sabah Land Ordinance 1930, Section 28(1).

⁵⁷ Sabah Land Ordinance 1930, Section 28(1)(3).

⁵⁸ Sabah Land Ordinance 1930, Section 24.

⁵⁹ Sabah Land Ordinance 1930, Section 24(4).

⁶⁰ The Lands and Surveys Department is responsible for enforcing the Land Ordinance and is under the supervision of Sabah’s Chief Minister.

judgment.

Native Lands

For native communities residing in or adjacent to the boundaries of coastal areas, land claim issues may arise.⁶¹ One of the purposes of the *Land Ordinance* was to incorporate traditional *adat* laws governing native people's rights and claims to lands.⁶² The establishment of Native Title allows for the formal recognition of Native Customary Rights to land.

Native Customary Rights

Native claims to land are provided for under the principle of Native Customary Rights, which is based on customary tenure of land.⁶³ Native Customary Rights are defined in the Sabah *Land Ordinance* and set out in the box below.

Native Customary Rights

- a. Land possessed by customary tenure,
- b. Land planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare,
- c. Isolated fruit trees, and sago, rotan, or other plants of economic value, that the claimant can prove to the satisfaction of the collector were planted or upkept and regularly enjoyed by him as his personal property,
- d. Grazing land that the claimant agrees to keep stocked with a sufficient number of cattle or horses to keep down the undergrowth,
- e. Land that has been cultivated or built on within three years,
- f. Burial grounds or shrines, and
- g. Usual rights of way for men or animals from rivers, roads, or houses to any or all of the above.⁶⁴

A Collector is assigned to document and decide all claims to Customary Tenure or rights to land.⁶⁵ Native Customary Rights to land are either recognized through monetary compensation or actual grant of land.⁶⁶ The grant of land is recognized with the issuance of title.⁶⁷

Land Claim Methods to Native Title

⁶¹ Justine Vaz, *An Analysis of International Law, National Legislation, Judgments, and Institutions as they Relate with Territories and Areas Conserved by Indigenous Peoples and Local Communities*, Malaysia, Report No. 15. Malaysia (2012).

⁶² Amity Doolittle, *Property & Politics in Sabah, Malaysia* (2005).

⁶³ Sabah Land Ordinance 1930, Section 15.

⁶⁴ Sabah Land Ordinance 1930, Section 15.

⁶⁵ Sabah Land Ordinance 1930, Section 14.

⁶⁶ Sabah Land Ordinance 1930, Section 16(1).

⁶⁷ Sabah Land Ordinance 1930, Section 16(1).

The process to acquire Native Title acknowledges Native Customary Rights to land along with an individual's right to use and occupy the land.⁶⁸ Claims may be converted into Native Title by establishing proof of continuous use or occupation of land.⁶⁹

An alternative option for native communities in acquiring Native Title is to seek Communal Title for the use of collective land. Communal Title allows for whole or partial subdivisions of collective lands.⁷⁰ For grant of Communal Title, the Collector of Land Revenue is appointed as a Trustee acting on behalf of the natives without any power of sale.⁷¹

Land may be granted communal title under the following three situations:

- Government designates state land for natives of Sabah,
- Grants to customary tenure of land, and
- Grants of land recognized under claim to native customary rights, so long as land is held for common usage and benefit to native communities and not assigned to private ownership.⁷²

Native Reserves

In acting to protect the present and future interests of natives of Sabah, the Yang di-Pertua Negeri may designate an area as a Native Reserve.⁷³ In establishing a Native Reserve, the purpose must be stated.⁷⁴ Alienation of land in a Native Reserve is restricted, with exceptions to alienation to natives to enter under the Register of Native Titles or Field Register.⁷⁵ The land of a Native Reserve may be used for future cultivation.⁷⁶ The Secretary of Natural Resources or District Officer of the Land and Surveys Department may be assigned as the trustee responsible for the control and management of a Native Reserve.⁷⁷

Case Study

Land Ownership in Tun Sakaran Marine Park

Description

Tun Sakaran Marine Park, also known as Semporna Islands Park is currently Sabah's largest marine park, extending across 35,000 hectares, and is formed of eight islands, including,

⁶⁸ Justine Vaz, *An Analysis of International Law, National Legislation, Judgments, and Institutions as they Relate with Territories and Areas Conserved by Indigenous Peoples and Local Communities*.

⁶⁹ Sabah Land Ordinance 1930, Section 65.

⁷⁰ Sabah Land Ordinance 1930, Section 77.

⁷¹ Sabah Land Ordinance 1930, Section 76.

⁷² Sabah Land Ordinance 1930, Section 76.

⁷³ Sabah Land Ordinance 1930, Section 78 (1).

⁷⁴ Sabah Land Ordinance 1930, Section 78(2).

⁷⁵ Sabah Land Ordinance 1930, Section 79.

⁷⁶ Sabah Land Ordinance 1930, Section 78(3).

⁷⁷ Sabah Land Ordinance 1930, Section 78 (3)-(4).

Sibuan Island; Maiga Island; Sebangkat Island; Selakan Island; Bodgaya Island; Boheydulang Island; Mantabuan Island; and Tetagan Island.⁷⁸ In the process of gazetting Tun Sakaran Marine Park, challenges were faced due to the different types of land ownership found among the proposed islands. Land ownership was not clearly resolved on some islands. The eight islands of the Park were made up of State land and land with Native Title, along with other land that had pending Native Customary land claims.⁷⁹

The section below provides an overview of the classification of ownership at the time of the draft proposal for Tun Sakaran Marine Park, in 2001. A description of Tun Sakaran Marine Park,, which was gazetted in 2004, is available in the section on the Parks Enactment, below.

Marine Areas

The proposed marine area, including all reefs, seabed, and lagoon were recognized as a part of State land.⁸⁰ In the establishment of Tun Sakaran Marine Park, the *Gazette* identified all of the coral reefs surrounding the Islands and in the near vicinity to be included as part of the protected area.⁸¹

State Land Conversion

As discussed later in this brief, Section 3 of the Parks Enactment allows the Yang di-Pertua Negeri to constitute any State land as a Park. Prior to the gazettlement of Tun Sakaran Marine Park, the entire land of Bodgaya Island, Boheydulang Island, and Tetagan Island belonged to the State.⁸² A portion of Sebangkat Island, 45 out of the 51 hectares of land, was also State property.⁸³

Native Title

On Selakan Island, there were 36 Native Titles issued. In establishing the Park, there were no disputes from individuals holding Native Title.⁸⁴ On Mantabuan Island, one Native Title was granted for the entire island, with five other claimants.⁸⁵

The gazettlement of Tun Sakaran Marine Park did not affect the existing Native Customary Rights held on the islands.⁸⁶

Land Claimed Under Native Customary Rights

At the time of the proposal for Tun Sakaran Marine Park, unresolved Native Customary Rights land claims were pending the approval of the Land and Survey Department. On Sebankat Island, there was one pending claim for six hectares. In addition, Maiga Island had

⁷⁸ Declaration of Tun Sakaran Marine Park, 22 July 2004, S.D. Plan No. 99197552.

⁷⁹ Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations, Management Plan for the Semporna Island Park Draft: 1-2001.

⁸⁰ A point noted in Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations

⁸¹ Declaration of Tun Sakaran Marine Park, 22 July 2004, S.D. Plan No. 99197552.

⁸² Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations, Management Plan for the Semporna Island Park.

⁸³ Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations, Section 10.2.2.

⁸⁴ Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations, Section 10.2.2.

⁸⁵ Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations, Section 10.2.2.

⁸⁶ Declaration of Tun Sakaran Marine Park, 22 July 2004, S.D. Plan No. 99197552.

six pending claims covering the entire island, while Pu Sibuan Island had thirty-two pending claims covering the entire island.⁸⁷

In issuing a decision for a claim for Native Title, the Land and Survey Department generally may take a few years to issue a final decision.⁸⁸ From the research conducted, it is unclear whether all of the pending Native Customary Rights claims for areas of Tun Sakaran Marine Park were resolved prior to the establishment of the Park. However, from the *Gazette* declaration for Tun Sakaran Marine Park, it appears that pending Native Title claims do not need to be resolved prior to gazetttement. This assumption is based on a provision of the Tun Sakaran Marine Park declaration that allowed for future claimants of Native Customary Rights to apply for Native Title to land.⁸⁹

Question

Were all the pending Native Customary Right land claims resolved prior to the gazetttement of Tun Sakaran Marine Park? Must land claims be resolved prior to gazetttement of a Park?

Institution and Implementation

Lands and Survey Department

The Land and Survey Department⁹⁰ (“the Department”) operates under the Chief Minister and is responsible for the implementation and enforcement of the Land Ordinance.⁹¹ The Department further handles the delineation of State land boundaries and conducts land surveys to settle land disputes.⁹² Another function of the Department is to define the boundaries of Reserves.⁹³ The Department also reviews and approves land applications and claims to Native Customary Rights.⁹⁴

The Land and Survey Department may enforce the provisions of the Land Ordinance through the Magistrate.⁹⁵ It is unclear if prosecutions are handled by the Land and Survey Department or must be referred to the Attorney General’s Office.⁹⁶

⁸⁷ Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations, Section 10.2.2. The authors are unable to find how this situation was resolved.

⁸⁸ Semporna Islands Darwin Project, Part 10 Legal Aspects and Regulations, Section 10.2.2.

⁸⁹ Claims to Native Customary Rights is allowed under Sections 15 and 16 of the Land Ordinance, Declaration of Tun Sakaran Marine Park, 22 July 2004, S.D. Plan No. 99197552.

⁹⁰ The Chief Minister’s Department has used the name Land and Survey (singular), see <http://www.sabah.gov.my/jkm/brdefault.asp>. However, the Department has also been referred to as the Lands and Surveys Department (plural).

⁹¹ Sabah Land and Survey Department, Official Website, Functions <http://www.jtu.sabah.gov.my/homepage/index.cfm?section=about&action=function>

⁹² Sabah Land and Survey Department, Official Website, Functions <http://www.jtu.sabah.gov.my/homepage/index.cfm?section=about&action=function>

⁹³ For example, the Land and Surveys Department may designate Reserves and may assign a District Officer to manage Reserves as a trustee, see Land Ordinance 1930, Section 78.

⁹⁴ Sabah Land and Surveys Department, Official Website, <http://www.jtu.sabah.gov.my>; Land Ordinance, Section 16.

⁹⁵ Land Ordinance 1930, Sections 164 and 165. See also, James Lam Chee Seng, Environmental Law in Malaysia (Borneo Edition) 2007, p. 23.

2. TOWN AND COUNTRY PLANNING ORDINANCE

Description

Sabah's *Town and Country Planning Ordinance (1950)*, contains rules and regulations for the structured development of land, towns and other areas in Sabah.⁹⁷ Multiple institutional bodies are responsible for implementing laws and guidelines relevant to development along Sabah's Coastal Shoreline and Inland Boundary.

Coastal Shoreline Areas as Land

Areas covered in water may be included within the classification of Sabah State land. Although the Ordinance does not specifically identify the Coastal Shoreline as land area, Sabah's Town and Regional Planning Department has emphasized the management of Sabah's Coastal Shoreline as a matter under State jurisdiction. For example, the Town and Regional Planning Department supported the development of a Shoreline Management Plan (discussed below) as part of a larger government initiative, known as the Integrated Coastal Zone Management Project.⁹⁸ The project was developed with the goal of identifying Sabah's coastal boundaries and strategizing recommendations for the development of structure plans relating to coastal areas (described below).⁹⁹

Overlap with Coastal Shoreline Areas

Amenities

The *Town and Planning Ordinance* regulates amenities that may be found along Sabah's Coastal Shoreline.¹⁰⁰ Some of the relevant amenities regulated under the Town and Planning Ordinance relate to the following initiatives: a) zoning development for agriculture, forestry, industry, commerce or open spaces like national parks; b) preservation of natural beauty sites; c) preservation of objections of archaeological or historical interest and; and d) prohibition, regulation and control of the disposal of waste materials and refuse.¹⁰¹

Water Supply Sewerage

A separate provision of the *Ordinance* further provides for the development and facilitation of "water supply, sewerage, drainage, sewerage disposal and refuse disposal".¹⁰² However, the *Ordinance* does not provide specific details as to the

⁹⁶ Statement made referring to how the Attorney General handles prosecutions under the Land Ordinance, see James Lam Chee Seng, Environmental Law in Malaysia (Borneo Edition) 2007, p. 23.

⁹⁷ Town and Planning Ordinance 1950.

⁹⁸ Integrated Coastal Zone Management Project Official Site, <http://www.townplanning.sabah.gov.my/iczm/>

⁹⁹ Shoreline Management in the ICZM Context in Sabah 1999.

¹⁰⁰ Town and Planning Ordinance 1950, Part IV. A definition for amenities is not provided under any legislation, however, amenities are commonly known in Town and Planning as natural or man-made features of a location that are utilized by the public.

¹⁰¹ Town and Planning Ordinance 1950, Part IV.

¹⁰² Town and Planning Ordinance 1950, Part IV.

extent in which sewerage and water supply issues should be regulated under the *Ordinance*. The management of drainage of water supply is provided for under *Sabah's Water Supply Enactment* (see below).

Structure Plans

To comply with the *Ordinance*'s provisions for controlled and progressive structural development of Sabah, Planning Schemes are required at the district and state level.¹⁰³ The term *Scheme* is also referred to as Plans under the Town and Planning Ordinance.¹⁰⁴ A Scheme at the district level is known as a District Plan.¹⁰⁵ At a district level, Scheme also means a Local Plan.¹⁰⁶

In addition to preparing plans at the district level, the Director of State Town and Regional Planning Department ("the Director") is responsible for preparing a draft Structure Plan for the entire State of Sabah.¹⁰⁷ The Structure Plan is intended to serve as a broad strategic policy for the development of land in Sabah, including the Territorial Waters of the State.¹⁰⁸

Prior to the development of the draft Structure Plan, the Director must undergo a series of steps in approving the plan. In developing a draft Structure Plan, the Director should preferably seek the advice and input of Local Authorities and other authorities.¹⁰⁹ The Director must then publicize the draft Structure Plan and seek the input of any persons or bodies that may be affected by the proposed plan.¹¹⁰ The feedback received from the stakeholders potentially affected must then be presented to the Central Town and Country Planning Board ("Central Board").¹¹¹

In a written statement, the draft Structure Plan must incorporate the following information:

1. A strategic policy that assesses the likely trends of the physical development of the State,
2. Policy and general proposals relating to the development and use of Sabah land, including territorial waters, and
3. Other important matters as determined by the Central Board.¹¹²

The draft Structure Plan is subject to the approval of the State Cabinet, who may require modifications and partially approve parts of the plan.¹¹³ In between the stages for Cabinet approval and Gazetttement of a draft Structure Plan, the Central

¹⁰³ Town and Planning Ordinance 1950, Part IA.

¹⁰⁴ Town and Planning Ordinance 1950, Section 2.

¹⁰⁵ Town and Planning Ordinance 1950, Section 2.

¹⁰⁶ Town and Planning Ordinance 1950, Section 2.

¹⁰⁷ Town and Planning Ordinance 1950, Part IA, Section 4C.

¹⁰⁸ This provision identifies Territorial Waters of the State as an area of State land, see Town and Planning Ordinance 1950, Part IA, Section 4C(2).

¹⁰⁹ Town and Planning Ordinance 1950, Part IA 4C(4).

¹¹⁰ Town and Planning Ordinance 1950, Section 4D.

¹¹¹ Town and Planning Ordinance 1950, Part IA.

¹¹² Town and Planning Ordinance 1950, Section 4C.

¹¹³ Town and Planning Ordinance 1950, Section 4E.

Board may need to resubmit proposals and amendments.¹¹⁴

Although District Plans have been developed at the district level, it is unclear whether a comprehensive draft Structure Plan for the entire Sabah has similarly been accomplished.

Development Control

To develop areas of land, planning permission is required. The development must be in compliance with a District or Local Plan.¹¹⁵ In applying for planning permission, the applicant is also required to submit an application layout plan, which must address some of the following measures:

- Protection and improvement of the land's physical environment,
- Preservation of the land's natural topography,
- Improvement of its landscape, and
- Preservation and planting of trees.¹¹⁶

Institutional Framework and Implementation

The following bodies and positions were formed under the *Ordinance*:

- Central Town and Country Planning Board,
- Director of State Town and Regional Planning Department (also the Town and Country Planner), and
- Local Authorities.

Sabah's Town and Regional Planning Department is also responsible for handling matters provided for under the *Town and Planning Ordinance*, discussed below.

Central Town and Country Planning Board

The Central Town and Country Planning Board serves as the body responsible for identifying and implementing potential policies and proposals for development activities within Sabah.¹¹⁷ The list provided below consists of relevant representatives from governmental agencies and institutions forming the Central Board:

- Ministry of Tourism, Culture and Environment,
- Department of Land and Survey,
- Department of Agriculture,
- State Economic Planning Unit,
- Department of Irrigation and Drainage,
- Sabah Ports and Harbours Department, and

¹¹⁴ Town and Planning Ordinance 1950, Section 4E (2)-(4).

¹¹⁵ Town and Planning Ordinance 1950, Section 28A; Development is defined as the carrying out of construction, building or engineering on, over or under land that will result in material change to the land, Town and Planning Ordinance 1950, Section 2.

¹¹⁶ Town and Planning Ordinance 1950, Section 28D(1)(a).

¹¹⁷ Town and Planning Ordinance 1950, Section 3(2).

- Department of Public Works.¹¹⁸

The Central Town and Country Planning Board is also responsible for overseeing Local Authorities who are required to develop Draft Schemes for individual districts, to be incorporated in a Comprehensive Development Plan for Sabah.¹¹⁹

Town and Country Planner and Director

The Town and Country Planner is assigned as the designated chief executive officer and advisor to the Central Board.¹²⁰ The Planner is also the Director of State Town and Planning Department.¹²¹ The Director is required to issue policies and proposals in the development of Sabah's lands and towns.¹²² The Director must also carry out additional duties as recommended or directed by the Central Board.¹²³ For example, the Director may act as an intermediary in relaying information to Local Authorities about the Central Board's decisions and proposed policies.¹²⁴

Local Planning Authorities

Local Planning Authorities are responsible for implementing policies and provisions specified under the Ordinance. A Local Planning Authority may only oversee the development of lands and buildings within a district's jurisdiction. The Local Authority is also responsible for preparing a draft Structure Plan, as discussed above.

Town and Regional Planning Department

Sabah's Town and Regional Planning Department oversees the development of towns and areas, including the Coastal Zone. This department also monitors setback development of areas and approving development of permanent structures along the Coastal Shoreline.¹²⁵

The Integrated Coastal Zone Management Unit (ICZM Unit) was formed in 1999, under the Town and Regional Planning Department to coordinate management projects relating to Sabah's coastal districts.

Inter-coastal Zone Management: Shoreline Management

In the late 1990s, the Sabah government led a collaborative initiative for the development of a fully Integrated Coastal Zone Management ("ICZM") project to effectively manage coastal resources.¹²⁶ The Ministry of Tourism, Culture and Environment, the Drainage and Irrigation Department, and the Town and Regional Planning Department were the main agencies

¹¹⁸ Town and Planning Ordinance 1950, Section 3.

¹¹⁹ James Lam Chee Seng, Environmental Law in Malaysia (Borneo Edition) 2007 p. 86.

¹²⁰ Town and Planning Ordinance 1950, Section 4.

¹²¹ Town and Planning Ordinance 1950, Section 4(1).

¹²² Town and Planning Ordinance 1950, Section 4.

¹²³ Town and Planning Ordinance 1950, Section 4(2)(a).

¹²⁴ Town and Planning Ordinance 1950, Section 4(2)(b).

¹²⁵ Shoreline Management in the ICZM Context 1999, page. 39.

¹²⁶ The following information in this section was adapted from resources detailing the Shoreline Management project, see Homepage for Sabah Integrated Coastal Zone Management available at <http://www.townplanning.sabah.gov.my/iczm/> and Shoreline Management in the ICZM Context 1999.

involved in the development of the initiative, along with the support received from the Danish government.

Through the ICZM project, the Sabah Government issued a series of coastal-related management plans and policies, including a plan assessing Coastal Shoreline development. The overall ICZM project was divided into three areas, 1) the Catchment Management Plan, 2) the Shoreline Management Plan, and 3) the Marine Management Plan.

The Shoreline Management Plan was specifically released as part of an initiative to address the development of Sabah's Coastal Shoreline.¹²⁷ The Shoreline Management Plan examined and strategized the management of inland and seaward boundaries straddling in between the Shoreline. The top area of concerns addressed in the Plan relates to coastal erosion, degradation of coral reefs, and restriction on coarse sediment supply from rivers and beach sand mining.

The Plan provides guidelines, diagrams and map of the Coastal Shoreline area and assessed the existing guidelines that impact the development of Sabah's Coastal Shoreline.¹²⁸ For example, the Plan recommended the need to follow guidelines for the setback of permanent structures to protect the coastal shorelines along with the clearing of mangrove forests.

The Marine Management Plan was developed to focus on the marine area beyond the Shoreline. Unlike the Shoreline Management Plan, it is unclear whether a Marine Management Plan has been developed, as the Town and Regional Planning Department have not issued a copy.

Despite the publication of the Shoreline Management Plan and the other focus areas of the overall ICZM project, it is also unclear as to the level of implementation of the ICZM Project at the State and local planning level.

3. DRAINAGE AND IRRIGATION ORDINANCE

Description

Sabah's *Drainage and Irrigation Ordinance (1956)* provides regulation on drainage and irrigation areas. The *Ordinance* contains provisions for the construction and facilitation of waste channels and water resources, particularly in urban areas, which may significantly impact coastal shoreline and marine areas.

Drainage Process

The drainage process is defined as a method of controlling the removal of water through man-made mechanisms or natural run off for agricultural and other purposes.¹²⁹ Drainage works are constructed to channel drainage for water and waste removal.

Institutions and Implementation

¹²⁷ Shoreline Management in the ICZM Context 1999.

¹²⁸ Shoreline Management in the ICZM Context 1999.

¹²⁹ Drainage and Irrigation Ordinance 1956, Section 2.

The *Drainage and Irrigation Ordinance* assigns power to the Minister in administering regulation of drainage and irrigation areas. The Yang di-Pertua Negeri has the power to select certain areas for either drainage or irrigation usage.¹³⁰

Drainage and Irrigation Committee

The Drainage and Irrigation Committee (“the Committee”) is authorized to make decisions and policies in accordance with the provisions of the Ordinance. One of the functions of the Committee is to classify lands for drainage and irrigation utilization.¹³¹ The Committee is made up of the following relevant members:

- District Officer Of the District (or the President Of The Municipality),
- Collector Of the District,
- Executive Officer As Secretary, and
- Director Of Agriculture.¹³²

Drainage and Irrigation Department

Sabah’s Drainage and Irrigation Department (“the Department”) is the institutional body established to handle irrigation and drainage matters, and is managed under Sabah’s Ministry of Agricultural and Food Industry.¹³³ Along with the standard irrigation and drainage concerns, the Department handles matters of hydrology, food mitigation, coastal engineering and urban drainage.

Sabah’s Drainage and Irrigation Department’s emphasis on coastal engineering addresses the concerns of development on coastal areas.¹³⁴ The Department works with the Federal Drainage and Irrigation Department¹³⁵ to address coastal priorities in the following three areas:

- Coastal erosion management,¹³⁶
- Improvement of the river mouth, and
- Maintenance of recreational beaches.¹³⁷

In addressing Coastal Shoreline development, the Department has also collaborated with Sabah’s Town and Regional Planning Department and Ministry of Tourism, Culture and Environment. Beyond the Department’s focus area listed above, it is unclear as to the extent of the Department’s authority and responsibility to address other sewerage and pollution problems linked to coastal areas.

¹³⁰ Drainage and Irrigation Ordinance 1956, Section 3.

¹³¹ Drainage and Irrigation Ordinance 1956, Section 4(1)(d).

¹³² Drainage and Irrigation Ordinance 1956, Section 4(2).

¹³³ Department of Drainage and Irrigation, <http://www.did.sabah.gov.my/>

¹³⁵ To address coastal erosion, the Department has previously referred to “*Guidelines on Erosion Control for Development Projects in the Coastal Zone*”, developed by the Malaysian (Federal) Drainage and Irrigation Department.

¹³⁶ Coastal Engineering, Department of Drainage and Irrigation, <http://www.did.sabah.gov.my/>

¹³⁷ Coastal Engineering, Department of Drainage and Irrigation, <http://www.did.sabah.gov.my/>

4. FOREST ENACTMENT

Description

The *Forest Enactment (1968)* provides protection and preservation to forests through the establishment of Forest Reserves.¹³⁸ Forest Reserves may be used to extend protection to habitats and areas found along the Coastal Shoreline and Inland Boundary, which includes mangroves, coastal peat swamps and wetlands.

A full discussion of the Forest Enactment is available in *Environmental Law and Policy in Sabah: Forests, Mangroves and Wildlife Reserves*.

Classes of Forest Reserves

There are seven classes of Forest Reserves: Protection Forest (Class I); Commercial Forest (Class II); Domestic Forest (Class III), Amenity Forest (Class IV); Mangrove Forests (Class V); Virgin Jungle Reserve (Class VI); and Wildlife Reserve (Class VII).¹³⁹

Establishment of a Forest Reserve

The establishment of a Forest Reserve is generally intended to ensure special protection reasons pertaining to soil, wildlife, ecological or water conservation.¹⁴⁰

The Yang di-Pertua Negeri may formally establish a Forest Reserve in areas not already reserved for a special or special purpose. The gazettlement of a Forest Reserve requires a multi-stage process of proposal, notice of proposal, period of restrictions on title and activities, objections to proposed land, and the review of objections.¹⁴¹

Mangrove Forests

Relevance to Coastal Zone

According to the Department of Forestry's 2012 Annual Report, mangroves in Sabah cover 331,325 hectares and constitute 57% of the total Mangroves in Malaysia.¹⁴² Mangroves are identified as areas of significance in Sabah as they provide physical protection along the shoreline and serves as a breeding ground for some marine species.¹⁴³ For coastal communities, mangroves also are important for their rich natural resources.

In addition to Mangrove Forests, tidal forest areas under the purview of the Inter-coastal Zone Management projects include the following boundaries found up to the 60 metre

¹³⁸ Forest Enactment 1968.

¹³⁹ Forest Enactment 1968, Section 5.

¹⁴⁰ Forest Enactment 1968, section 5A.

¹⁴¹ Forest Enactment 1968, Section 5A- 12.

¹⁴² Chapter 9, Forestry, Sabah Coastal Zone Profile, 1998, available at <http://www.townplanning.sabah.gov.my/iczm/Reports/Coastal%20Profile%20Sabah/ch09/09-FORESTRY.html>

¹⁴³ Chapter 9, Forestry, Sabah Coastal Zone Profile, 1998; Chapter 23 Forest Annual Report.

countour line: Beach Forest, Nipah Forests, Transitional Forest, Swamp Forest and Dipterocarp Forest.¹⁴⁴

Nipah Forests contain Nipah palm and are found in pure or mixed with mangrove species over large areas. Beach Forests are identified as an area found along the Coastal Shoreline and on some of the offshore islands. A definition of Transitional and Swamp Forests is not defined in the *ICZM Coastal Zone Profile on Forestry*, however these types of forests are placed in the same category as the Beach Forest. Dipterocarp Forests are also not defined.¹⁴⁵

Setback along Mangroves

Development along mangroves located near the Coast is generally not recommended, and generally varies depending on the location of drainage channels and the composition of the mangrove fringe.¹⁴⁶ The current guideline in place for development on the fringe of mangroves is 30 metres from the vegetation line, according to the (Federal) Department of Environment. The (State) Drainage and Irrigation Department recommends a 400m vegetation line that is generally not applicable to large inter-tidal mangrove areas.¹⁴⁷

Role of Department of Forestry

Management and protection of mangroves are under the responsibility of Sabah's Department of Forestry. Under the Forest Resource Division (FRM) and Forest Research Center (FRC), restoration programs are in place to manage mangrove forests and coastal areas along the coastal districts of Sandakan, Kudat and Beaufort.¹⁴⁸ Some of the rehabilitation projects include the replanting of trees and mangroves suffering environmental degradation along the coastal areas.

Protected Mangrove Forests

The following is a list of Protection Forest Reserves in Sabah which contain mangroves and are gazetted under the Forest Enactment.¹⁴⁹ Neither of these Forest Reserves are located along the Coastal Shoreline:

- Kota Kinabalu Wetland Centre, and
- Sepilok Forest Reserve.

¹⁴⁴ The following descriptions on the type of tidal forests is discussed *Chapter 9, Forestry, Sabah Coastal Zone Profile, 1998*.

¹⁴⁵ However, the Sabah Wildlife Department identifies Dipterocarp Forests based on their elevation level as follows: the Lowland Dipterocarp Forest (100 - 500 feet above sea level), Upland Dipterocarp Forest (500 - 1,500 feet above sea level) and Highland Dipterocarp Forest (1,500 - 3,000 feet above sea level). See: <http://www.wildlife.sabah.gov.my/NatureInSabah.htm>

¹⁴⁶ Shoreline Management in the ICZM Context in Sabah 1999, p. 41

¹⁴⁷ Shoreline Management in the ICZM Context in Sabah 1999, p. 40.

¹⁴⁸ Shoreline Management in the ICZM Context in Sabah 1999, p. 40.

¹⁴⁹ These Forest Reserves were listed under the World Wildlife Fund Malaysia website, http://www.wwf.org.my/about_wwf/what_we_do/forests_main/the_malaysian_rainforest/types_of_forests/mangrove_forests/

5. PARKS ENACTMENT

Description

The *Parks Enactment (1984)* provides for the establishment, management and administration of Parks and National Reserves in Sabah.

Types Of Protection

Either a Park or a Nature Reserve may be established under the *Parks Enactment*. As recognized under the *Land Ordinance*, a Park may be established on any area of land. A Nature Reserve may be established for any area of land as designated under Part II of the Enactment. Areas of land containing a minimum size of 2,500 acres but lacking one or more characteristics to qualify as a Park may instead be designated as a Nature Reserve.¹⁵⁰

Establishment of a Park or Nature Reserve

The process for designating land or aquatic areas as a Park or National Reserve in Sabah is generally initiated by the State Government. The process begins with the Yang di-Pertua Negeri proposing an area of land for a Park or Nature Reserve.¹⁵¹ The first step requires a lapse of a period of time from the notification of intention for a proposed Park or Nature Reserve.¹⁵² Once a publication of a notification of intention has been declared, the following activities are prohibited: alienation of land; building of a new house; formation of a plantation; clearing for cultivation; and hunting.¹⁵³

A proposed Park or Nature Reserve will undergo the following additional process for gazetttement:

- Publication of notice,
- Prohibitions on the alienation of land, new building and cultivation in the proposed area,
- Inquiry conducted by district Officer of Collection on potential objections and claims,
- Submission of fact of inquiry to the Yang di-Pertua Negeri of all rights, privileges, objections and opinions,
- Regulation imposed by Board to Exercise Right and Privilege, and
- Acquisition of land acquired for a Park or Nature Reserve (discussed below).¹⁵⁴

The establishment of a Park or Nature Reserves cannot easily be reversed. The notification for degazetttement requires specifying the proposed area of land, which no longer requires protection under a Park or Nature Reserve status.¹⁵⁵ A section or

¹⁵⁰ Parks Enactment 1984, Section 2.

¹⁵¹ Parks Enactment 1984, Section 3(b).

¹⁵² Parks Enactment 1984, Section 4.

¹⁵³ Parks Enactment 1984, Section 5.

¹⁵⁴ Parks Enactment 1984, Sections 2-13.

¹⁵⁵ Parks Enactment 1984, Section 18.

whole part of a Park and Nature Reserve may only be revoked based on supporting scientific research or thorough investigation to support degazettement of an area.

A detailed outline of the entire process and requirements for applying a Park or Reserve in Sabah is set out in *Environmental Law and Policy in Sabah: Parks and Nature Reserves*.

Land Conversion

State land that has been vested in the State and acquired under the *Land Acquisition Ordinance* may be declared as a Park or Nature Reserve.¹⁵⁶ The Yang di-Pertua Negeri has the power to acquire alienated land and use it for a public purpose.¹⁵⁷ Parks and Nature Reserves are considered land used for a public purpose.¹⁵⁸ The public must be given notice when a proposed Land will be converted into a Park or Reserve.¹⁵⁹

The *Parks Enactment* also allows for the partial or whole conversion of Forest Reserves, Game Sanctuary, Bird Sanctuary or any other Reserve or Sanctuary into a Park or National Reserve.¹⁶⁰ Once a Reserve or Sanctuary is converted to a Park or National Reserve, its previously designated status will be revoked.¹⁶¹

Recognized Species

Animals

The *Parks Enactment* contains provisions restricting activities harming animal species within Sabah Parks. Animals are defined to include a range of species, specifically those within the classification of “mammal, reptile, insect, bird, fish, crustacean, coral (whether living or dead) any vertebrate or invertebrate animal living in aquatic and terrestrial environment.”¹⁶² Some animals may be classified as such despite their physical characteristics. Portions of an animal, known as a *Trophy*, are also recognized as part of an animal.¹⁶³ A Trophy is a durable portion of an animal, whether or not alive.¹⁶⁴ A Trophy may include a “bone, claw, shell, carapace, plastron, feather, hair, hoof, ivory, beak, skin, tooth, tusk, or egg.”¹⁶⁵

Marine species fall into all of the various categories of animal species identified under the *Enactment*, such as mammal, fish, crustacean, arthropods, echinoderms,

¹⁵⁶ Parks Enactment 1984, Section 10.

¹⁵⁷ Land Acquisition Ordinance, section 3 (1)

¹⁵⁸ Land intended for a public purpose are to be used in connection with the conservation, improvement or exploitation of natural resources. Land Acquisition Ordinance, section 2 (h), Parks Enactment 1984, Section 10.

¹⁵⁹ Parks Enactment 1984, Section 6.

¹⁶⁰ Parks Enactment 1984, Section 12.

¹⁶¹ Parks Enactment 1984, Section 12.

¹⁶² Parks Enactment 1984, Section 2.

¹⁶³ Parks Enactment 1984, Section 2.

¹⁶⁴ Parks Enactment 1984, Section 2.

¹⁶⁵ Parks Enactment 1984, Section 2.

cnidarians, or coral. *Coral* is also defined to mean “living polyps and/or the external skeleton, hard calcereous or soft, dead or alive, individually or in colony.”¹⁶⁶

Plants

Protected Plants are species identified in Schedule I, Part II of the *Enactment*. The species listed are all found within inland or terrestrial areas.¹⁶⁷

Vegetation

Vegetation is defined as vegetable matter, living or dead.¹⁶⁸ Examples of aquatic organisms include vegetable matter such as the following aquatic plants: sea grass, seaweed, and marine algae.¹⁶⁹

Marine Parks

Both marine and terrestrial land protected areas have been implemented under the Parks Enactment, allowing for broad protection of species found within land and water bodies.

The *Enactment* originally incorporated seven gazetted Parks for management under the Sabah Parks Enactment, two of which are Marine Parks.¹⁷⁰ The most up to date list of Sabah Parks should be referred to in the *Gazette*. The following box presents a list of Marine Parks provided on the official Sabah Parks Department website, that have been gazetted since the Parks Enactment¹⁷¹

Marine Parks Under the Management of Sabah State Parks¹⁷²

1. Tunku Abdul Rahman Park (1974)
2. Turtle Islands Park (1977)
3. Palau Tiga Park (1978)
4. Tun Sakaran Marine Park (Semporna Islands Park) (2004)
5. Sipadan Island Park (2004)
6. Tun Mustapha Marine Park (expected to be gazetted in 2015)

Turtle Islands Park was originally gazetted under the Fauna Conservation Ordinance (1963) in 1977, which was repealed by the Wildlife Conservation Enactment (1997).¹⁷³ Turtle Islands Park, comprising of three islands is also identified as part of the Turtle Island Heritage Protected Area (TIHPA). Under this protected designation,

¹⁶⁶ Parks Enactment 1984, Section 2.

¹⁶⁷ Parks Enactment 1984, Schedule (Section 2).

¹⁶⁸ Parks Enactment 1984, Section 2.

¹⁶⁹ Parks Enactment 1984, Section 2.

¹⁷⁰ Parks Enactment 1984, Section 17.

¹⁷¹ Sabah State Parks website, <http://www.sabahparks.org.my/eng/public/default.asp#>

¹⁷² The above list of Marine Parks is listed on the Sabah State Parks website, <http://www.sabahparks.org.my/eng/public/default.asp#>

¹⁷³ Sabah Parks, Sanctuary for Marine Turtles, http://www.sabahparks.org.my/eng/turtle_island_park/

both Sabah and the Philippines government manage Turtle Islands Park as trans-boundary Marine Protected Area.¹⁷⁴

Regulated Activities

Activities that pose a risk of altering the natural landscape and natural resources in a Park or Nature Reserve are generally prohibited, with exceptions made by Sabah's Board of Trustees. Activities relating to mining or "prospecting for minerals" within Parks and Nature Reserves are also restricted.¹⁷⁵

The following abbreviated list provides an overview of activities prohibited within a Park or Nature Reserve.

Prohibited Acts

The following are prohibited acts unless undertaken with permission of the Board:

- Cutting, damaging, removing, destroying, setting fire or bombing of any coral, trees, protected plant, vegetation or any object of "geological, pre-historical, archaeological, historical, or other scientific interest",
- Damaging, setting fire or destroying any vegetation from activities conducted outside of Park or Reserve,
- Carrying or being in possession of a weapon, explosive trap, poison, noxious substance, boat, tractor, logging truck, or other devices and tools intended to collect specimens of plant or animal,
- Hunting, killing, injuring, capturing, disturbance of any animals other than coral or taking or harming of any egg or nest,
- Introducing or bringing in any vegetation and animal, including domestic animals;
- Removal of animals or vegetation, whether alive or dead,
- Removal of any mineral or any object of scientific interest,
- Destruction or defacing any object, whether animate or inanimate,
- Construction of buildings,
- Clearing or partitioning of land,
- Dispelling or discharging of elements such as oil, chemical, poison, or other toxic or waste matters including solid waste capable of harming vegetation or animals in or adjacent to water bodies flowing into the Park or Reserve,
- Obstruction or diversion of water flow into the Park or Nature Reserves
Use of media technology, such as recording or taking photographs' for commercial purposes,
- Entering beyond areas designated for public usage, and
- Carrying out research and data selection, including scientific or social and cultural data, with or without the collection of specimen.¹⁷⁶

¹⁷⁴ Sabah Parks, http://www.sabahparks.org.my/eng/turtle_island_park/; See also: <http://www.mima.gov.my/mima/wp-content/uploads/saveourtreasure.pdf>, and related to the bilateral Turtle Islands Heritage Protected Area between Malaysia and the Philippines, the IOSEA MoU to which Malaysia (and thus Sabah) is a signatory.

¹⁷⁵ Sabah Parks Enactment 1984, Section 48.

¹⁷⁶ Parks Enactment 1984, Section 48.

Due to the prohibitions in a Park or Nature Reserve, activities such as fishing, hunting or gathering of food sources are also restricted without express permission.¹⁷⁷ No distinction is made in the Enactment between activities conducted by visitors from activities of individuals residing within a Park or Nature Reserve.

Exceptions are made for the Director of Parks (“the Director”), who has the authority to kill, or assign others to kill or capture any animal within a Park or Reserve.¹⁷⁸ This power can only be exercised to ensure public safety, protection of property, scientific research, or to achieve the overall objective of preserving the environment or other fauna.¹⁷⁹ A further stipulation is made for rhinoceros and orangutans, which may only be killed if they pose a direct threat to human life.¹⁸⁰

Penalties will be subject to imprisonment fine, imprisonment or both, depending on the type of act committed.¹⁸¹

Offenses and Criminal Penalties

In addition to the acts prohibited above, any person who commits any of the following acts in a Park or Nature Reserve will be guilty of an offence:

- Hunting or intending to hunt any animal, bird or its nests,
- Collecting or intending to collect any vegetation or mineral,
- Failing to produce any animal, trophy, mineral, vegetation believed to be in a person’s possession,
- Failing to produce any firearms, weapons, traps, nets, materials believed to be used in violation of the Enactment,
- Resisting, threatening, or obstructing the Director, any Trustee or Park Officer in the performance of their duties, and
- Failing to produce a permit that is required under the provisions of the Enactment.¹⁸²

Any criminal actions that include the removal of animals, vegetation, or plants in a Park or Reserve will result in the property being returned to the Board of Trustees.¹⁸³

Power to Inspect and Arrest

The Director or a Park Officer is authorized to arrest any person based on reasonable suspicion alone.¹⁸⁴ If the Director, a Trustee or a Park Officer has reasonable grounds of suspicion, an individual and their property may be inspected, regardless of

¹⁷⁷ Sabah Parks Enactment 1984, Section 48(1).

¹⁷⁸ Parks Enactment 1984, Section 49.

¹⁷⁹ Parks Enactment 1984, Section 49.

¹⁸⁰ Parks Enactment 1984, Section 49.

¹⁸¹ Parks Enactment 1984, Section 48(2).

¹⁸² Parks Enactment 1984, Section 53.

¹⁸³ Parks Enactment 1984, Section 55.

¹⁸⁴ Parks Enactment 1984, Section 52.

whether the individual is within or outside of the Park boundary.¹⁸⁵ Such evidence of inspection may include the finding of a weapon, trap, net and other tools or instruments used to commit an offense.

The Director or any authorized Park Officer is within their powers to temporarily arrest or detain a person until he can be transferred into the custody of a police officer for any violation of the law.¹⁸⁶ A person who is arrested or detained without warrant can only be done so based on reasonable grounds that he would be expected to be liable without undue delay, trouble or expense.¹⁸⁷

Prosecution is reserved to a different authority, who must be authorized in writing by the Public Prosecutor to prosecute for offences under this Enactment (see below).¹⁸⁸

Protection and Reward of Informers

The *Enactment* further provides for protection of informants to help serve the overall objectives of a Park or Nature Reserve.¹⁸⁹ Informants are afforded the protection from revealing their identities to encourage the reporting of violators within a Park or Nature Reserve.¹⁹⁰ The Director may also have the option to reward an informant for reporting another's violation of the *Enactment*.¹⁹¹

Institutions and implementation

Administrative Roles

Board of Trustees

The Board of Trustees of Sabah Parks ("the Board") was established under the *Enactment*. The formation of this corporate body allows for the Board to sue or be sued.¹⁹² The Board consists of a Chairman, Deputy Chairman, three other executive office positions, four other members and the Director. The Director is recognized as a member of the board on the condition that the position possesses no voting power.¹⁹³

The Board is responsible for initiating, coordinating and controlling all activities for Sabah's Parks and Nature Reserves.¹⁹⁴ Upon the gazettlement of a Park, Title for

¹⁸⁵ Parks Enactment 1984, Section 51.

¹⁸⁶ Parks Enactment 1984, Section 52.

¹⁸⁷ Parks Enactment 1984, Section 52.

¹⁸⁸ Parks Enactment 1984, Section 54.

¹⁸⁹ Parks Enactment 1984, Section 58A.

¹⁹⁰ Parks Enactment 1984, 58A(1).

¹⁹¹ Parks Enactment 1984, 58A(4).

¹⁹² Parks Enactment 1984, Section 24 (1).

¹⁹³ Parks Enactment 1984, Section 24 (1).

¹⁹⁴ Parks Enactment 1984, Section 45.

State Park land is vested for nine hundred and ninety-nine years in the Board of Trustee.¹⁹⁵

In addition, the Board may issue recommendations to the Government on the methods and policies for the development of a Park or Nature Reserve.¹⁹⁶ The Board has the power to appoint functions to a committee, officer or servant to carry out provisions of the *Enactment*.¹⁹⁷ The Board is responsible for appointing the Director of Parks, whose authority, powers and functions is designated according to the Board. The Government must further approve any additions or alterations to established posts issued by the Board.¹⁹⁸

The Board is further authorized to handle a range of matters within a Park or Nature Reserve, including a) protecting the security and wellbeing of animals and vegetation; b) setting aside sections for breeding of animals or nurseries for vegetation; and c) providing accommodation, amenities and services to increase tourism to the Parks.¹⁹⁹ A full list of the Board's power is available in *Environmental Law and Policy in Sabah Parks and Nature Reserves*.

Minister

The Minister has the power to give directions and advice to the Board on areas of implementation.²⁰⁰ The Board is required to give the Minister information about the Parks and Nature Reserves upon request.²⁰¹

Director of Parks

The Director is responsible for administering the Parks Enactment and overseeing the administration of regulations provided for in the Enactment.²⁰² The Director is also responsible for recommending policies and regulations to the Minister, promoting and coordinating research, publishing an annual report of activities for the Parks and investigating other various matters to ensure proper implementation of the Enactment.²⁰³ With the approval of the Board, the officer may also appoint new Officers, Ranger and Wardens.²⁰⁴ A full list of the Director's duties and responsibilities is provided for in Section 41(1) of the Parks Enactment.

Honorary Park Rangers and Wardens

The Director may occasionally appoint suitable individuals to act as Honorary Park Rangers or Honorary Park Wardens who may only act within duties and

¹⁹⁵ Parks Enactment 19845, Section 13(5).

¹⁹⁶ Parks Enactment 1984, Section 45(b).

¹⁹⁷ Parks Enactment 1984, Section 59(1)(a).

¹⁹⁸ Parks Enactment 1984, Section 42.

¹⁹⁹ Parks Enactment 1985, Section 45.

²⁰⁰ Parks Enactment 1984, Section 60 (1).

²⁰¹ Parks Enactment 1984, Section 60 (2).

²⁰² Parks Enactment 1984, Section 41 (1).

²⁰³ Parks Enactment 1984, Section 41 (1), (a) (i-x).

²⁰⁴ Parks Enactment 1984, Section 41 (1), (a) (xi).

responsibilities authorized by the Director.²⁰⁵ Only appointments published in the *Gazette* will be recognized.²⁰⁶ Appointments are made on a three-year, renewable term basis.²⁰⁷

Case Study: Gazzettement of Tun Sakaran Marine Park

Description²⁰⁸

Tun Sakaran Marine Park (TSMP), also known as Semporna Islands Park, is situated in an area of 35,000 hectares in Darvel Bay of the Celebes Sea. TSMP was formed in July 2004 and is currently managed by Sabah Parks. Overfishing and destructive fishing practices has been a high concern in this area, as it has implicated the health of the reef ecosystems and limited fishing catches for local communities.

Residential Communities

TSMP consists of islands and coral reefs, that include communities residing in and around the park. Upholding section 15 and 16 of the Land Ordinance, the gazetttement of TSMP allowed for the continued and undisturbed native customary rights of all individuals residing within islands located in the marine Park. Within the Park, there are communities such as the Bajau Laut, who commonly fish in Park area for direct household consumption.²⁰⁹

Alternative Livelihoods

Within the TSMP, the Semporna Islands Darwin Project led a project to explore alternative livelihood opportunities for the residential communities who have historically been reliant on the fisheries resources. The alternative livelihoods project was implemented to explore the options in balancing sustainable access to natural marine resources, developing long-term income opportunities for the communities and ensuring environmental conservation of marine ecosystems. Some alternative livelihood projects that have been explored include the promotion of tourism and craftworks created from recyclable materials. With the involvement and input of the local community, homestays have been one of the options proposed under the Semporna Island Darwin Project. However, this option has been met with challenges due to infrastructure concerns relating to sewerage treatment and the need for a trash disposable system in communities. Other potential alternative livelihood opportunities explored for the TMSM communities include the farming and culture of marine resources such as seaweed, abalones and sea cucumbers.

Institutional Bodies

Sabah Parks

The Ministry of Tourism, Culture and Environment oversees the operation and management of Sabah Parks. The Sabah Parks Board of Trustee is also designated as

²⁰⁵ Parks Enactment 1984, Section 41A.

²⁰⁶ Parks Enactment 1984, Section 41A(2)(a).

²⁰⁷ Parks Enactment 1984, Section 41A(2)(b).

²⁰⁸ The following summary on Tun Sakaran Marine Park was adapted from the *Alternative Livelihoods Final Report*, Semporna Islands Darwin Project (2005-2008).

²⁰⁹ Alternative Livelihoods Final Report, Semporna Islands Darwin Project (2005-2008).

responsible for the administration of Sabah Parks. The Director of Parks is responsible for managing the operation of Sabah Parks Department.

Sabah Parks may handle enforcement in areas intended to protect natural resources, safety of visitors and public areas within Sabah Parks. The following list is some of functions performed by the department:

- Preparing a Plan or protection and enforcement of the Parks,
- Preparing changes and improving the policies of the Parks,
- Preparing draft amendment to the Parks Enactment, and
- Establishing and maintaining relationships with agencies and law enforcement in protected area.²¹⁰

The other priority areas of concerns under the Department's jurisdiction include issues such as climate change, agar wood, sea turtles, coral bleaching, beach erosion and community issues.²¹¹ Sabah Parks is a collaborator in the multi-sectorial Coral Triangle Initiative (discussed below).

6. WILDLIFE CONSERVATION ENACTMENT

Description

The *Wildlife Conservation Enactment (1997)* provides for the conservation and sustainable management of wildlife and habitats in Sabah. The law has successfully been applied to provide protection and conservation measures in marine and coastal areas. Because areas covered in water have been recognized as State land, the wildlife species and habitats found within marine and coastal areas fall under the scope of the Wildlife Conservation Enactment. Aquatic marine species, such as fish found in gazetted areas are also provided the same protection as other Wildlife Species under the *Enactment*.

Overview of Types of Protection

The *Wildlife Conservation Enactment* provides protection to wildlife species under the following three broad categories:

- Wildlife Sanctuaries,
- Conservation Area, and
- Wildlife Hunting Area.

Each of these species-related provisions provide a different level of protection and management of wildlife species and habitats. The establishment of a Wildlife Sanctuary provides the highest level of protection to wildlife species, enforcing the prohibition on any activity in a designated area. Meanwhile, Conservation Areas provide for short-term protection to species and habitats, while allowing for human

²¹⁰ Parks Management & Operation Division, Protection and Enforcement Section, <http://www.sabahparks.org.my/eng/public/Enforcement.asp>

²¹¹ Sabah Parks Official Site, <http://www.sabahparks.org.my/eng/public/#>

activity. The implementation of Wildlife Hunting Areas is intended to regulate species management and control.

The *Enactment* further addresses wildlife species protection under broader provisions recognizing plant and animal protection, discussed below.

Wildlife Sanctuaries

Establishment

Wildlife Sanctuaries can be established for any of the following reasons:

- Protecting and maintaining wildlife habitats and natural processes in an undisturbed state,
- Upholding of biodiversity values, or
- Ensuring protection of significant species of animals, plants, biotic communities or genetic resources.²¹²

Prior to establishing a Sanctuary, a series of steps must be followed, beginning with the proposal for a Sanctuary.²¹³ A proposed Sanctuary must provide a comprehensive description of the area intended for protection along with supporting assessment of the significant fauna and flora contained within the area.²¹⁴ The proposal must also include a section providing for the status of native or traditional rights after the gazettlement of a Sanctuary.²¹⁵ During this stage, proof of communication with relevant Government agencies likely to be implicated by the gazettlement of a Sanctuary must be documented and submitted.²¹⁶ In acquiring land for a Sanctuary, the Enactment utilizes the Land Acquisition Ordinance's provision for conversion of alienated land to serve a public purpose.²¹⁷

A detailed overview of the process for gazettlement of a Sanctuary is available in *Environmental Law and Policy in Sabah: Wildlife*.

Provisional Wildlife Sanctuaries

The Director of Wildlife has the power to establish a provisional Wildlife Sanctuary. A provisional Wildlife Sanctuary should be established when there is an urgent need to save wildlife, wildlife habitats or ecosystems from immediate danger.²¹⁸ The Director should give proper notice to the public of the provisional Sanctuary. The notice is effective for 120 days.²¹⁹ After the notice is published, the Minister has the option to

²¹² Wildlife Conservation Enactment 1997, Section 9.

²¹³ Wildlife Conservation Enactment 1997, Section 9(1).

²¹⁴ Wildlife Conservation Enactment 1997, Section 9(2).

²¹⁵ Wildlife Conservation Enactment 1997, Section 9(2)(d).

²¹⁶ Wildlife Conservation Enactment 1997, Section 9 (2).

²¹⁷ Wildlife Conservation Enactment 1997, Section 12.

²¹⁸ Wildlife Conservation Enactment 1997, section 22 (1).

²¹⁹ Wildlife Conservation Enactment 1997, section 22 (2).

rescind, vary or extend the declaration.²²⁰ Provisional Sanctuaries are under the same guidelines for management plans as Wildlife Sanctuaries.²²¹

Restrictions

Once a Wildlife Sanctuary becomes a protected area, a range of restrictions and prohibitions will subsequently take effect. A Wildlife Sanctuary can only be revoked, reduced in size or have redefined boundaries under resolution passed by the Legislative Assembly. Grants of land or alienation of land is also prohibited.²²²

Other restrictions pertain to the use of the land. For example, apart from the right extended to an officer or employee of a Sanctuary, residency within a Sanctuary is banned.²²³ Only public use areas are accessible to the public.²²⁴ Along with limitations placed on cultivation of land and harvesting of plants, the hunting of animals is further prohibited.²²⁵ Restrictions are also imposed on air vessels flying above and landing within the vicinity surrounding a Wildlife Sanctuary.²²⁶

The following is an abbreviated list of some of the prohibited activities that may apply to Wildlife Sanctuaries located in or adjacent to marine or coastal areas include the following activities:

- Searching for or collection of any animal product,
- Intentional damage or removal of any object of geological, prehistoric, marine or other scientific interest,
- Possession of an animal, animal product or plant, or
- Occupation, clearing, cultivation of any land.²²⁷

An individual who violates any of the prohibited offenses provided under the Enactment will be guilty of an offense and subject to a fine of 50,000 ringgit, imprisonment for five years, or both.²²⁸

Environmental Offenses

In addition to the restrictions listed above, the following activities would be deemed as an environmental offense within or outside a Wildlife Sanctuary:

Environmental Offenses in Wildlife Sanctuary

- The spreading of chemicals or toxic substances harmful to fauna or flora living in the Sanctuary,
- The discharging of oils, chemicals or other toxic or waste matter that may harm

²²⁰ Wildlife Conservation Enactment 1997, section 22 (3).

²²¹ Wildlife Conservation Enactment 1997, section 22 (4)–(6).

²²² Wildlife Conservation Enactment 1997, Section 9(8).

²²³ Wildlife Conservation Enactment 1997, Section 15(1).

²²⁴ Wildlife Conservation Enactment 1997, Section 15(2).

²²⁵ Wildlife Conservation Enactment 1997, Section 16.

²²⁶ Wildlife Conservation Enactment 1997, Section 19.

²²⁷ Wildlife Conservation Enactment 1997, Section 17.

²²⁸ Wildlife Conservation Enactment 1997, Section 17(3).

- fauna and flora in or surrounding the boundaries of any rivers, lakes, and waters of waters in or flowing into a Sanctuary, and
- The obstruction or diversion of rivers, pools, lakes or other water bodies in or flowing into a Wildlife Sanctuary.²²⁹

Regardless of whether the offense is committed by an individual or corporate body, a fine of 50,000 ringgit, imprisonment for five years or both will be imposed for violations.²³⁰ A Court may further impose a penalty to pay the Government an additional cost to remedy the damage caused in committing the environmental offense.²³¹

Exceptions to Restrictions and Prohibitions

The Director or officer in charge of a Wildlife Sanctuary has authority to make exceptions for some restrictions provided for in the Enactment. For example, without the authorization of the Director or officer of Wildlife Sanctuary, entry into non-public areas is prohibited.²³²

Native rights to land may be continually recognized and protected through the proposal process.²³³ If this right is provided for under a proposed Sanctuary, native or traditional rights are permitted to continue within the boundaries of an established Sanctuary.²³⁴ Exceptions to this provision are imposed if rights are forfeited.²³⁵ Forfeited native or traditional rights are recognized as such with monetary compensation.²³⁶

Conservation Area

Establishment and Objectives

A Conservation Area may be established primarily as a measure of control for protecting species in areas determined by the Yang di-Pertua Negeri.²³⁷ The process of establishing a Conservation Area is not as clearly set out under the Enactment in comparison to the provisions for a Wildlife Sanctuary and Wildlife Hunting Area.²³⁸

The control measures specifically involve implementation of a Conservation Area for wildlife, wildlife habitats, migration sites, migration corridors, sites of scientific importance, or for other values.²³⁹ A Conservation Area may further be established

²²⁹ Wildlife Conservation Enactment 1997, Section 18.

²³⁰ Wildlife Conservation Enactment 1997, Section 18 (1).

²³¹ Wildlife Conservation Enactment 1997, Section 18(2).

²³² Wildlife Conservation Enactment 1997, Section 15.

²³³ Wildlife Conservation Enactment 1997, Section 9(2)(c) and Section 20.

²³⁴ Wildlife Conservation Enactment 1997, Section 20(1).

²³⁵ Wildlife Conservation Enactment 1997, Section 20(1).

²³⁶ Wildlife Conservation Enactment 1997, Section 20.

²³⁷ Wildlife Conservation Enactment 1997, Section 21(1).

²³⁸ See all of Wildlife Conservation Enactment 1997, Section 21.

²³⁹ Wildlife Conservation Enactment 1997, Section 21.

to control the smuggling of animals, animal products or plants, and to provide security to wildlife or its habitats in areas surrounding a Wildlife Sanctuary.²⁴⁰

The broad language of the Enactment extends support to the establishment of a Conservation Area that contains high biodiversity value, such as coral reefs in coastal and marine areas.²⁴¹ Within a Conservation Area, management and control may be imposed in any of the following areas:

- Development projects,
- Hunting and the carrying of firearms and other means of hunting,
- Movement of animals, animal products and plants, and
- Aerial spraying of crops and grazing areas.²⁴²

Additionally, a Conservation Area does not contain as many restrictions as a Wildlife Sanctuary. In comparison to a Wildlife Sanctuary, residential and human activities may continue in a Conservation Area.²⁴³ However, the Minister of Tourism, Culture and Environment has the discretion to limit non-residential access to a Conservation Area for up to a period of 120 days.²⁴⁴ This limitation may be imposed to ensure the protection of threatened wildlife populations that use the land for migrating or breeding, or to restore or protect flora and wildlife habitats.²⁴⁵

Marine Protected Areas

The following is a list of Marine Protected Areas that have been recognized as Conservation Areas under the Wildlife Enactment:

- Sugud Island Marine Conservation Area (Lankayan, Billean, Tegapil Marine Conservation Area),
- Mantanani Kecil, and
- Sipadan.²⁴⁶

Wildlife Hunting Area

Establishment

²⁴⁰ Wildlife Conservation Enactment 1997, Section 21.

²⁴¹ Wildlife Conservation Enactment 1997, Section 21.

²⁴² Wildlife Conservation Enactment 1997, Section 21(2).

²⁴³ Wildlife Conservation Enactment 1997, Section 21(3).

²⁴⁴ Wildlife Conservation Enactment 1997, Section 22.

²⁴⁵ Wildlife Conservation Enactment 1997, Section 21(3).

²⁴⁶ The list of Marine conservation areas is provided by Sabah's Wildlife Department's Official Website, which has not been updated since 2004. 12 Hectares of Sipadan is reported as a Marine Sanctuary, see <http://www.wildlife.sabah.gov.my/>. However, Sipadan, is also listed as "Sipadan Islands Park" and was gazetted in 2004 and under the management of Sabah Parks, see http://www.sabahparks.org.my/eng/pulau_sipadan_park/. **Question:** Is Sipadan under the management of Sabah Parks or the Wildlife Department? Sabah's Wildlife Department's Official Website lists twelve hectares of Sipadan as a Marine Sanctuary, see <http://www.wildlife.sabah.gov.my/>. The Official Website has not been updated since 2004. However, the Sabah Parks Department also listed "Sipadan Island Park" as gazetted in 2004 and under the management of Sabah Parks, see http://www.sabahparks.org.my/eng/pulau_sipadan_park/.

Wildlife Hunting Areas are gazetted to manage animal populations and habitats in designated hunting areas.²⁴⁷ A Hunting Area is established based on necessity to manage wildlife populations.²⁴⁸ Similar steps for the establishment of a Wildlife Hunting Area apply to the provisions required for a proposed Wildlife Sanctuary.

Native Rights

A proposal for a Wildlife Hunting Area may allow for continued recognition of Native Rights in Hunting Areas upon gazetttement. Native rights to land should be recognized in a proposed Hunting Area. However, native rights may be eliminated or decreased based on an agreement between the Director of the Wildlife Department and individuals holding Native Title. The forfeiture of native rights to land in hunting area may be allowed through compensation.²⁴⁹

Restrictions

Many of the regulations and restrictions placed in Wildlife Sanctuaries are similarly imposed in Wildlife Hunting Areas. Penalties for these violations may similarly result in fines ranging from 10,000-50,000 ringgit or imprisonment for five years.²⁵⁰ A detailed overview of restrictions and penalties in Wildlife Hunting Areas is available in *Environmental Law and Policy in Sabah: Wildlife Conservation*.

Protection of Wildlife Species

The term *Wildlife*, as identified under this *Enactment*, includes animals and plants.²⁵¹

Restrictions Protecting Animals

With exclusion to domestic animals, *Animals* are defined as any vertebrate or invertebrate species and includes eggs.²⁵² Any living Protected Animal or animal product is deemed the property of the Government, unless the animal or animal product was legally obtained.²⁵³ A person may legally obtain a Protected Animal if the Minister, who acts on advice of the Director, authorizes the possession of a protected Animal.

If an animal is listed under Schedule 2 and Schedule 3 of the Enactment it is considered a Protected Animal. Protected Animals can be hunted with a licence but only for the quota listed on the licence.²⁵⁴ Animals in Schedule 1 are considered Totally Protected Animals and cannot be hunted at all.²⁵⁵

²⁴⁷ Wildlife Conservation Enactment 1997, section 64.

²⁴⁸ Wildlife Conservation Enactment 1997, Sections 64-73.

²⁴⁹ Wildlife Conservation Enactment 1997, Section 75.

²⁵⁰ Wildlife Conservation Enactment 1997, Sections 69-75.

²⁵¹ Wildlife Conservation Enactment 1997, Section 2.

²⁵² Wildlife Conservation Enactment 1997, Section 2.

²⁵³ Wildlife Conservation Enactment 1997, Section 40.

²⁵⁴ Wildlife Conservation Enactment, 1997, Sections 26 and 27.

²⁵⁵ Wildlife Conservation Enactment, 1997, Section 25(3)(a).

Protected Animals or animals held without a permit are considered to be held in captivity.²⁵⁶ The Director has the discretion to approve permits for possession of animal based on whether the applicant is suitable to keep the animal and has produced sufficient measures to prevent the escape of the animal. The Director or a Wildlife Officer has the authority to cancel a permit if possession of any animal is in violation with conditions provided for under the Enactment.

Control of Collection of Animal Products

Restrictions are placed on hunting or collecting for animal products.²⁵⁷ The Protected Animals, listed in Part I of Schedule I, are considered Totally Protected Animals. The collection of animals listed in Part I of Schedule 2 or 3 without a permit is further restricted.²⁵⁸ Collection of animal product is further banned according to provisions that regulate quota and hunting, as provided for under hunting regulations.²⁵⁹

The penalty or punishment for collecting animal product is a fine of 30,000 ringgit, three years imprisonment or both.²⁶⁰

Turtle Egg Collection Area

The Director has the authority to declare by notice the Gazette an area as a *Turtle Egg Traditional Collection Area*.²⁶¹ Once an area is reserved solely for the collection of turtle eggs, access to the area is limited to individuals with a permit.²⁶² The traditional rights of individuals who reside reasonably adjacent to a Turtle Egg Traditional Collection Area and whose Native Rights are recognized will remain unaltered.²⁶³ However, continued recognition of this right does not extend to any rights to sell turtle eggs.²⁶⁴

A person who sells or attempts to sell turtle eggs from a collection site will be guilty of an offence subject to a fine of 50,000 ringgit or imprisonment for five years, or both.²⁶⁵

Turtle Eggs-related Issues

The *Wildlife Conservation Enactment (1997)* classified the Green Turtle and the Hawksbill Turtle as *Totally Protected Animals*. Animals listed in Schedule 1²⁶⁶ cannot be hunted and are totally protected.²⁶⁷ Any person found guilty of hunting these

²⁵⁶ Wildlife Conservation Enactment 1997, Section 43.

²⁵⁷ Wildlife Conservation Enactment 1997, Section 84.

²⁵⁸ See the dedicated legal brief on the Wildlife Conservation Enactment for more information on the Schedules, Sabah's Institutional and Legal Frameworks: Wildlife Conservation.

²⁵⁹ Wildlife Conservation Enactment 1997, Section 48.

²⁶⁰ Wildlife Conservation Enactment 1997, Section 48(3).

²⁶¹ Wildlife Conservation Enactment 1997, Section 87.

²⁶² Wildlife Conservation Enactment 1997, Section 87(2).

²⁶³ Wildlife Conservation Enactment 1997, Section 87(2).

²⁶⁴ Wildlife Conservation Enactment 1997, Section 87(4)(b).

²⁶⁵ Wildlife Conservation Enactment 1997, Section 87 (4)

²⁶⁶ Schedule 1 lists total protected plants and animals, Part I lists animals, Part II lists plants.

²⁶⁷ Wildlife Conservation Enactment 1997, section 25 (1).

animals will be subject to a term of imprisonment between six months to five years.²⁶⁸ The protection of these turtles extends to the consumption and sale of Turtle Eggs.

Although, the consumption and sale of turtle eggs is prohibited, the Director of Wildlife does have the power to declare an area of land a Turtle Egg Traditional Collection Area. Traditional Collection Areas do not require a permit to collect Turtle Eggs, but must follow specific rules for the collection areas in order to protect the Native Customary Rights of those that live near the area. Collection areas allow people to collect turtle eggs but do not give them the right to sell the eggs.²⁶⁹ A person who sells or attempts to sell turtle eggs from a Traditional Collection Area will be guilty of an offence subject to a fine of fifty thousand ringgit or imprisonment for five years, or both.²⁷⁰

Case Law

In 2006, the High Court in Sabah and Sarawak decided two separate cases involving native rights claims against the State of Sabah, the Board of Trustees of Sabah Parks and the Assistant Collector of Land Revenue. Both cases were ruled in favor of individual Plaintiffs, Ab Rauf (Rauf) and Haji Abdillah (Abdillah).

In the case brought by Plaintiff, Rauf, against the State of Sabah and the Board of Trustees of the Sabah Parks of Land Revenue, Rauf represented himself and seventy family members claiming to have inherited the right to collect turtle eggs on Sipadan Island.²⁷¹ Rauf claimed that Sabah's prohibition on collecting turtle eggs, enforced in 1997, caused him and his family to experience significant loss and damages including the loss of two contracts with tourism companies worth MYR70,000. Rauf claimed that his living was dependent on the collection of turtle eggs. The Court recognized the Plaintiff's right to collect turtle eggs.

Rauf also claimed that the right to collect turtle eggs extended the Native Customary Rights to the entire island of Sipadan. The Court rejected the Plaintiff's claim to Native Customary Rights to the land, as the right to access the island to collect turtle eggs occurred for a short duration throughout the years.

In the case brought by Plaintiff, Abdillah, against the Assistant Collector of Land Revenue for Sipadan Island and the State of Sabah, Abdillah sued on behalf of the descendants of Panglima Aby Sari bin Goneh.²⁷² Abdillah's suit concerns the ownership of 2.5 acres of land on Sipadan Island, which includes a house and coconut orchard. Abdillah's great grandfather under Native Customary Rights inherited the 2.5 acre land which included the right to collect turtle eggs.²⁷³ In 2005,

²⁶⁸ Wildlife Conservation Enactment 1997, section 25 (3) (a).

²⁶⁹ Wildlife Conservation Enactment 1997, section 87 (2).

²⁷⁰ Wildlife Conservation Enactment 1997, section 87 (4).

²⁷¹ Ab Rauf Bin Mahajud v. the State Government of Sabah and the Board of Trustees of the Sabah Parks

²⁷² Haji Abdillah bin Haji Abdul Hamid v. ACLR of Semporna and the State Government

²⁷³ Native customary rights includes and planted with fruit trees, when the number of fruit trees amounts to fifty and upwards to each hectare, Land Ordinance, 1930, section 15 (b)

the Collector of Land Revenue caused the plaintiff and other individuals to vacate the island restricting their collection of turtle eggs.²⁷⁴

The High Court of Sabah ruled that native communities were allowed to collect turtle eggs on the limited and confined area of ownership of 2.5 acres.²⁷⁵ Since the Native Customary Rights to the land were inherited from a previous generation the right was to remain undisturbed.²⁷⁶

Protection of Plant Species

Plants are defined as any species of plant that includes the “stem, branch, tuber, bulb, corn, stock, budwood, cutting, layer, slip, sucker, flower, fruit, seed, or any other part or product attached or severed from the plant product.”²⁷⁷ A limited number of plant species have total protection status, all of which are found in terrestrial settings.²⁷⁸

Wildlife Hunting and Animals

The provisions regulating hunting activity provide protection to animal species. The act of Hunting is defined to include the pursuit, bothering, wounding, killing or capturing of any animal with the attempt to destroy or disturb any egg or nest.²⁷⁹ The regulation on Hunting is divided into the categories of a) total restriction on hunting of certain species and b) permission to hunt some species with a license. The Director of the Wildlife Department is responsible for declaring by notice in the *Gazette*, wildlife areas where licenses and permits may be issued.²⁸⁰ Under the Director’s power, wildlife areas may also be revoked or altered.

Strictly Protected Animals

Animal species listed in Part I of Schedule I (see the chart below) are wholly protected from hunting. A number of the animals listed below are found in marine or coastal areas. According to the most recent 2010 re-publication of the Wildlife Conservation Act, the following animals are assigned Totally Protected Species status:

| | |
|--------------------------------|--------------------------------------------------------------------|
| Part I (Schedule I) | Sumatra Rhinoceros (Dicerorhinus sumatrensis) Badak Sumatra |
| | Orang Utan (Pongo pygmaeus) Orang Utan |
| | Sun Bear (Helarctos malayanus) Beruang Madu |

²⁷⁴ Haji Abdillah bin Haji Abdul Hamid v. ACLR of Semporna and the State Government

²⁷⁵ The authors are following up to determine how use rights now operate in the park.

²⁷⁶ Haji Abdillah bin Haji Abdul Hamid v. ACLR of Semporna and the State Government

²⁷⁷ Wildlife Conservation Enactment 1997, Section 2.

²⁷⁸ Wildlife Conservation Enactment 1997, Part II of Schedule I, and Part II of Schedule II.

²⁷⁹ Wildlife Conservation Enactment 1997, Section 2.

²⁸⁰ Wildlife Conservation Enactment 1997, Section 109.

| | |
|--|--------------------------------------------------------------|
| | Dugong (Dugong dugon) Duyung |
| | Proboscis Monkey (Nasalis larvatus) Monyet Bangkatan |
| | Clouded Leopard (Neofelis nebulosa) Harimau Dahan |
| | Gharial (Tomistoma schlegeli) Buaya Julung julung |
| | Green Turtle (Chelonia mydas) Penyu Hijau |
| | Hawksbill Turtle (Eretmochelys imbricata) Penyu Sisik |
| | Benteng (Bos taurus indicus) Temdaduu. ²⁸¹ |

Licenses for Hunting

Licenses for hunting species listed under Schedule 2 and 3 of the Enactment²⁸² are required.²⁸³ Licenses are issued on a limited basis with hunting specifications. Each license contains a designation of a pre-approved quantity in which an authorized hunter is permitted to hunt a particular species.²⁸⁴ The issuance of a hunting license does not allow an individual to hunt on any alienated land, Forest Reserve, Park, reserved land or State land.²⁸⁵

Hunting licences can only be distributed to a person who has a valid firearm licence. The firearm licence should be appropriate for the type of hunting licence for which the person is applying.²⁸⁶ The Director has the power to distribute hunting licences and can refuse to approve a licence for any reason.²⁸⁷

Types of Hunting Licenses

The following is a list of the four types of hunting licenses that may be issued:

- Sporting,
- Commercial Hunting,
- Animal Kampung, and
- Other Licenses as specified.

The regulation on kampung licenses recognizes traditional hunting activity for local consumption. The provisions on kampung licenses provides for the establishment of kampung hunting areas, which allows for subsistence hunting for certain species

²⁸¹ There may be some discrepancies to this list, as some animals recently provided protection have not been published in official documents.

²⁸² Schedule 2 lists protected species of animals and plants-limited in hunting and collection under a licence, while Schedule 3 lists protected species of animals for which a hunting licence is required.

²⁸³ Wildlife Conservation Enactment 1997, Schedule 2 (Section 2).

²⁸⁴ Wildlife Conservation Enactment 1997, Section 25 (2), (a)-(b).

²⁸⁵ Wildlife Conservation Enactment 1997, Section 28(9).

²⁸⁶ Wildlife Conservation Enactment 1997, section 28 (1).

²⁸⁷ Wildlife Conservation Enactment 1997, section 28 (2).

designated under the license.²⁸⁸ The Director may regulate the types of weapons to use and the methods allowed for hunting animals in a designated kampung area.²⁸⁹ For an individual to possess a kampung license, one must belong to a kampung.²⁹⁰ A member of kampong must have held membership for at least a continuous period of twelve months prior to obtaining a license.²⁹¹

Protected Species Requiring a License

The following is a list of a number of marine mammal species restricted from hunting without a license:

| | |
|----------------------|--------------------------------------------------------------------------------------------|
| Part I | Smooth Otter (<i>Lutra perspicillata</i>) Memerang Licin |
| (Schedule II) | Sei Whale (<i>Balaenoptera borealis</i>) Ikan Paus Sei |
| | Bryde's Whale (<i>Balaenoptera borealis</i>) Ikan Paus Bryde |
| | Pigmy Sperm Whale (<i>Kogia breviceps</i>) Ikan Paus Nayan |
| | Killer Whale (<i>Orcinus orca</i>) Ikan Paus Buding |
| | Short-finned Pilot Whale (<i>Globicephala macrocephalus</i>) Ikan Paus Pendek Sirip |
| | Grey Dolphin (<i>Grampus griseus</i>) Dolfin Kelabu |
| | Bottlenose Dolphin (<i>Tursiops truncatus</i>) Dolfin Hidung Botol |
| | Irrawaddy Dolphin (<i>Orcaella brevirostris</i>) Dolfin Empesut |
| | Indo-Pacific Hump-backed Dolphin (<i>Sousa chinensis</i>) Dolfin Bongkok Bernie |

The overall list of marine species assigned protection status includes mammal species of otters, whales and dolphins.²⁹² A complete list of protected marine species is available in Schedule II of the *Wildlife Conservation Enactment*.²⁹³

Regulations on Hunting Methods

Certain restrictions on the type and methodology used in hunting of animals are imposed under a hunting license.²⁹⁴ For example, the hunting of animals from the period of six in the evening and six in the morning is banned.²⁹⁵ Hunting restrictions

²⁸⁸ Wildlife Conservation Enactment 1997, Section 32(5).

²⁸⁹ Wildlife Conservation Enactment 1997, Section 32.

²⁹⁰ Wildlife Conservation Enactment 1997, Section 32.

²⁹¹ Wildlife Conservation Enactment 1997, Section 2.

²⁹² Wildlife Conservation Enactment 1997, Schedule II, Part I.

²⁹³ See the dedicated legal brief on the Wildlife Conservation Enactment for more information on the Schedules, “*Sabah’s Institutional and Legal Frameworks: Wildlife Conservation*.”

²⁹⁴ Wildlife Conservation Enactment 1997, Section 33.

²⁹⁵ Wildlife Conservation Enactment 1997, Section 33(j).

and regulations may also be imposed in other areas, such as a dwelling, road, or track.²⁹⁶

In addition, hunting of animal cannot be used through the employment of drugs, poisons, poisoned weapons or poisoned baits.²⁹⁷ Explosives and traps that pose a threat to human life or bodily harm are also restricted.²⁹⁸ The same restrictions apply to devices that may produce an electric current to kill fish or any other animal.²⁹⁹

Institution and Implementation

Sabah Wildlife Department

The Ministry of Tourism, Culture and Environment, oversees the operation and management of the Sabah Wildlife Department. Protected areas provided under the Wildlife Conservation Enactment are directly under the responsibility of Sabah Wildlife Department.³⁰⁰ The Director of Wildlife and Wildlife Officers are responsible for the administration of provisions under the Wildlife Conservation Enactment.³⁰¹ The Wildlife Department is required to enforce regulations and manage boundaries within Sanctuaries, Conservation Areas and Hunting Areas.

Director's Authority

The Director is responsible for carrying out a range of duties that includes issuing advice on policies and regulating in the areas of conservation and management of wildlife and wildlife habitats.³⁰² An important duty delegated to the Director is his power to recommend to the Minister his input on the establishment of Wildlife Sanctuaries, Conservation Areas and Wildlife Hunting Areas.³⁰³ The Director may also serve as the liaison with the Federal Government and other State Departments for the adoption of integrated policies that aim for protection of wildlife and its habitats.³⁰⁴

Under the provisions of the Enactment, the Director may also be authorized to extend his powers to supervise and manage activities concerning protected areas and species in the *Wildlife Enactment*.³⁰⁵ Some of the many duties include the following:

- Managing and controlling of Wildlife Sanctuaries and Wildlife Hunting Areas,
- Designating areas for treatment for animals or nurseries for plants,³⁰⁶ and

²⁹⁶ Wildlife Conservation Enactment 1997, Section 34.

²⁹⁷ Wildlife Conservation Enactment 1997, Section 33(k).

²⁹⁸ Wildlife Conservation Enactment 1997, Section 33(k)(ii) and (iii).

²⁹⁹ Wildlife Conservation Enactment 1997, Section 33k(iv).

³⁰⁰ Wildlife Conservation Enactment 1997, Section 3.

³⁰¹ Wildlife Conservation Enactment 1997, Section 3.

³⁰² Wildlife Conservation Enactment 1997, Section 4.

³⁰³ Wildlife Conservation Enactment 1997, Section 4(b).

³⁰⁴ Wildlife Conservation Enactment 1997, Section 4(k).

³⁰⁵ Wildlife Conservation Enactment 1997, Section 5.

³⁰⁶ A case study on the permit to Gaya Island Resort to rehabilitate turtles will follow.

- Issuing licenses to private organizations or individuals to operate within Wildlife Sanctuaries and Wildlife Hunting Areas.

Activities not specifically listed within the scope of the Directors' authority may be carried out if it is proportionate with the goals of the *Wildlife Enactment*.

Honorary Wildlife Wardens

The Director may further appoint Honorary Wildlife Wardens who are instated to carry out provisions of the Enactment.³⁰⁷ Honorary Wildlife Wardens are appointed by gazettlement and duties are assigned according to conditions set by the Director, including the power to arrest violators who commit offenses under the Enactment.³⁰⁸

Case Study: Sugud Island Marine Conservation Area³⁰⁹

Establishment

The Sugud Island Marine Conservation Area ("SIMCA"), located in northeastern Sabah, was enacted under the Wildlife Conservation Enactment in 2001.³¹⁰ The gazettlement of SIMCA developed out of concerns of destructive commercial fishing methods explosives and cyanide blasting employed in the surrounding islands of Lankayan, Billean, and Tegapil. Turtle egg poaching was also widespread prior to the establishment of SIMCA. The push to convert SIMCA into a marine protected area was initiated by the owners of Lankayan Island Dive Resort, concerned with protecting the environmental and aesthetic features of the region critical for their business.

Private Management

In 2003, Reef Guardian took over management of SIMCA. Reef Guardian is still the designated authority responsible for enforcing conservation measures, and is not reliant on the support of the Sabah Wildlife Department. Reef Guardian is owned by the parent company of Lankayan Island Dive Resort, and generates income by charging conservation fees to overnight visitors. The Wildlife Department only handles enforcement of regulations in SIMCA. Members of Reef Guardian staff are trained and certified as Honorary Wildlife Wardens and regulate protections, and may exercise powers to arrest. These Honorary Wildlife Wardens regularly patrol the boundaries of SIMCA to ensure protection from destructive commercial fishing practices that impact the coral reefs.

Important Factors

The development and private management system in SIMCA was adapted according to the unique social and geographic make up of the islands. Prior to the development of SIMCA,

³⁰⁷ Wildlife Conservation Enactment 1997, Section 7.

³⁰⁸ Wildlife Conservation Enactment 1997, Section 7.

³⁰⁹ The following summary on SIMCA is adapted from Lydia C.L. Teh, et. al. Original Paper, A Private Management Approach To Coral Reef Conservation In Sabah, Malaysia 2007.

³¹⁰ Lydia C.L. Teh, et. al. Original Paper, A Private Management Approach To Coral Reef Conservation In Sabah, Malaysia 2007.

there was only one fishing family living on Lankayan Island, who agreed on the establishment of the resort and SIMCA.³¹¹ Because SIMCA is located far from any island communities and the waters were not previously used for traditional fishing practices, the development of SIMCA was a relatively straightforward process.³¹²

7. SABAH WATER RESOURCES ENACTMENT

Description

The Sabah *Water Resource Enactment (1998)* establishes rules relating to the sustainable management and efficiency of water activities, water conservation areas and water protection areas. Since the passage of the Water Resources Enactment, neither Water Conservation Areas nor Water Protection Areas have been implemented under this legislation.³¹³

A full discussion of the Water Resources Enactment is available in *Environmental Law and Policy in Sabah: Water Resources*.

Boundaries of Coastal and Shore Waters

Under the *Water Resources Enactment*, water is defined to include “drainage water, stormwater, wastewater, effluent and sewage generated by urban, industrial and agricultural activities” derived from a water body.³¹⁴ Within this boundary, lagoons and coastal waters are recognized as water bodies.³¹⁵

The boundaries of Sabah’s coastal waters are identified as a zone located between the sea and the coast of Sabah. The shores of a water body are defined as the “natural or artificially formed shore of the water body.”³¹⁶ Water bodies without a shore are to be marked by boundaries distinguishing aquatic and non-aquatic vegetation.³¹⁷

Inland Waters

Inland Waters are considered any water that is not covered by Federal laws.³¹⁸ The Director of Water Resources has the authority to determine the impact that certain activities will have on the water, beds, banks, shores and aquatic environment of Inland Waters. The Director is authorized to determine the type or class of vessel,

³¹¹ Lydia C.L. Teh, et. al. Original Paper, A Private Management Approach To Coral Reef Conservation In Sabah, Malaysia 2007.

³¹² Lydia C.L. Teh, et. al. Original Paper, A Private Management Approach To Coral Reef Conservation In Sabah, Malaysia 2007.

³¹³ Statement of Sabah Drainage and Irrigation Department official during a field visit to Telupid Forest Complex in June 2014.

³¹⁴ Water Resources Enactment 2010, Section (2)(1).

³¹⁵ Water Resources Enactment 2010, Section (2)(1).

³¹⁶ Water Resources Enactment 2010, Section (2)(1).

³¹⁷ Water Resources Enactment 2010, Section (2)(1).

³¹⁸ Water Resources Enactment, 1998, Section 47(3) and (4).

maximum speed and maximum draught of a vessel that can be used for navigation on Inland Waters.³¹⁹ The Minister of Tourism, Culture and Environment also has the authority to make rules governing Inland Waters.³²⁰

Water Protection and Water Conservation Areas

In recognizing the importance of protecting water resources, the *Enactment* provides for the development of Water Protection and Water Conservation Areas.

The primary objective of establishing Water Protection Areas is to regulate activities that may adversely impact the quality of a water resource.³²¹ In evaluating the substantial risk of environmental degradation or pollution to a specified area, the Yang di-Pertua Negeri has the power to convert State land or Forest Reverses to a Water Protection Area. Once a Water Protected Area is established, measures must be taken to set out a proposed plan for management of the area. Under Sections 3 and 4 of the *Land Acquisition Ordinance (1950)*, land held by private ownership or lease may also be converted to a Water Protection Area for a public purpose.³²²

Compared to the broad restrictions on any activities imposed within Water Protection Areas, a more balanced approach is applied with regard to Water Conservation Areas. There may be limitations and modifications of activities within designated Water Conservation Areas. Water Conservation Areas regulate activity on ground and surface water.³²³ Certain classes of activities within a Water Conservation Area are also permitted based on approval and licensing. Owners or occupiers of land are additionally subject to restrictions and modifications of activities in a Water Conservation Area.³²⁴

Establishment of Shore and River Reserves

The *Water Resources Enactment* further provides for the creation of Shore Reserves and River Reserves. The physical boundaries of Shore Reserves extend twenty metres from coastal waters.³²⁵ Within a Shore Reserve, limitations are placed on activities that may adversely reduce the quality of water resources and pose a risk to the aquatic environment.³²⁶ The Water Council, formed under this Enactment, is authorized to expand or decrease boundaries of a Shore Reserve in a specified area.³²⁷

In the report, *Shoreline Management in the ICZM Context in Sabah*, the term *Foreshore Reserve* is used interchangeably with the term *Seashore Reserve*. The report refers to the establishment of Foreshore Reserves under the *Water Resources*

³¹⁹ Water Resources Enactment, 1998, Section 47(2), (a)-(c).

³²⁰ Water Resources Enactment, 1998, Section 47(3).

³²¹ Water Resources Enactment 2010, Section 36 (1).

³²² Water Resources Enactment 2010, Section 36 (1).

³²³ Water Resources Enactment 2010, Section 38(1).

³²⁴ Water Resources Enactment 2010, Section 38 (3).

³²⁵ Water Resources Enactment 2010, Section 40(1)(a).

³²⁶ Water Resources Enactment 2010, Section 40(3).

³²⁷ Water Resources Enactment 2010, Section 40(4)(c).

Enactment and identifies this area to stretch twenty metres from the Mean High Water Mark.³²⁸ The Land and Survey Department is further identified as the agency responsible for defining the boundaries of a Foreshore Reserve.³²⁹

Regulation of Activities in Reserves

Certain activities may cause environmental degradation to a water resource. The following box below outlines the provision imposing regulation on activities within River Reserves and Shore Reserves to protect the water body.

Power of Director in River and Shore Reserves

The Enactment states that within a River Reserve or Shore Reserve (or on, in or above a water body), it is an offence to undertake, without the approval in writing of the Director, any activity which involves:

- a. The removal of natural vegetation or the removal or deposition of material,
- b. The erection of a structure or building, or
- c. The carrying out of a commercial or agricultural activity.³³⁰

The regulations of specific activities within Shore Reserves are primarily enforced to prevent harmful pollution as it may implicate the wellbeing of communities, water bodies and aquaculture environments. A comprehensive list of regulations, enforcement and procedures required for a license may be referred to under *Environmental Law and Policy in Sabah: Water Resources*.

Administration and Implementation of the Enactment

The *Water Resources Enactment* provides for the formation of the Water Council (“the Council”), a body responsible for advising the Minister of Tourism, Culture and Environment on matters pertaining to the sustainable management of water resources.³³¹ Within the Council’s broad scope of power, the body has the potential to issue recommendations that may positively benefit the quality of water bodies for both humans and the environment. Through the power to issue and revoke licensing activities within water bodies, the Council may restrict activities that pose a harmful risk to water resources, including Shore Reserves. The Council may further carry out policies and strategies to oversee and manage water resources.³³²

The following box provides an abbreviated list of Directors or their authorized representatives from different local and state institutional bodies who form the Council.³³³

³²⁸ Shoreline Management in the ICZM Context 1999, p. 39.

³²⁹ Shoreline Management in the ICZM Context 1999, p. 39.

³³⁰ Water Resources Enactment 2010, Section 41(1).

³³¹ Water Resources Enactment 2010, Section 4(1).

³³² Water Resources Enactment 2010, Section 4(1)(g).

³³³ Water Resources Enactment 2010, Section 5.

Water Council Membership

- a. A Chairman,
- b. The Permanent Secretary of the Ministry of Culture, Environment and Tourism,
- c. The Secretary for Natural Resources who shall be the Secretary to the Council,
- d. The Director of the Department of Lands and Surveys,
- e. The Director of the Forestry Department,
- f. The Director of the Department of Agriculture,
- g. The Director of Water Resources,
- h. The Director of the State Economic Planning Unit,
- i. The Director of the Department of Town and Regional Planning,
- j. The Director of the Department of Irrigation and Drainage,
- k. The Director of the Fisheries Department,
- l. The Director of the Water Department,
- m. The Director of the Department of Ports and Harbours,
- n. The Director of the Federal Department of Environment (Sabah Region),
- o. The Director of the Department of Geological Surveys, and
- p. Two other members with appropriate technical or academic expertise in matters related to water resources.³³⁴

The general membership of the Water Council reflects the potential role of each member in implementing and planning decisions relevant to Water Conservation Areas and Shore Reserves.

8. SABAH BIODIVERSITY ENACTMENT

Description

The *Sabah Biodiversity Enactment (2000)* is a law recognizing the significance of biodiversity, through the promotion of conservation and sustainable management of biological resources. For a comprehensive discussion of the Sabah Biodiversity Enactment, refer to *Environmental Law and Policy in Sabah: Biodiversity*.

Overview of Biodiversity

Biodiversity is recognized as a valuable resource understood as a part of complex ecosystems and interactions between microorganisms, plants and animals. Biodiversity is defined as biological diversity that derives from all living organisms and the ecosystems to which they belong.³³⁵ Biodiversity applies to plant materials, terrestrial, marine and aquatic ecosystems and the significant biological resources found within them.

Biological resources are derived from the genetic resources or materials of plants, animals, microbial origin that may have actual use or potential value for the environment and humanity. Biological resources especially contain valuable significance in research and biotechnology. The biotechnology industry primarily

³³⁴ Water Resources Enactment 2010, Section 5.

³³⁵ Sabah Biodiversity Enactment 2000, Section 2.

relies on the use of biological resources or derivatives to create modified products developed for specific use.

Access Application

Access license

To access Sabah's biological resources, researchers are required to apply for an access license.³³⁶ The permit process is set out in detail in the above-mentioned document.

Legal Proceedings, Offences and Penalties

Offences and Penalties

A person may be found to commit an offense if engaged in access activity without having a license.³³⁷ The access activity, unless authorized by the Council, limits removal of biological resources from its natural environment and the State.³³⁸ The penalty for this guilty offense is a maximum fine up to 50,000 ringgit, an imprisonment term up to five years or both.³³⁹

The exporting of biological resources for research purposes without a license is also banned in most areas of the State, including marine parks and territorial waters.³⁴⁰

Powers of Arrest

The Secretary of the Council (appointed by the Minister), any police officer, custom officers or other authorized officer who has reason to believe that a person is in violation of the Enactment is given the authority to arrest that person.³⁴¹ The power to arrest requires that a suspected violator refuse to provide adequate or proper identification.³⁴² The suspected violator will be dealt with under the Criminal Procedure Code for violation of the Biodiversity Enactment.³⁴³

Sabah Biodiversity Council

Membership

The Sabah Biodiversity Council ("the Council") was formed under the Enactment and consists of the Chairman (also serving as the Minister) and members from the following State departments:

- Natural Resources Office,

³³⁶ Sabah Biodiversity Enactment 2000, Section 15.

³³⁷ Sabah Biodiversity Enactment 2000, Section 26(a).

³³⁸ Sabah Biodiversity Enactment 2000, Section 26(c).

³³⁹ Sabah Biodiversity Enactment 2000, Section 26.

³⁴⁰ Sabah Biodiversity Enactment 2000, Section 28.

³⁴¹ Sabah Biodiversity Enactment 2000, Section 32.

³⁴² Sabah Biodiversity Enactment 2000, Section 32.

³⁴³ Sabah Biodiversity Enactment 2000, Section 35.

- Forestry Department,
- Sabah Parks,
- Wildlife Department,
- Environment Protection Department (formally Environment Conservation Department), and
- Water Resources.³⁴⁴

The other Council membership slots are reserved for individuals having substantial experience and expertise in biodiversity, conservation and management.³⁴⁵

Council Duties and Functions

The Council is responsible for upholding the values of biodiversity and sustainability. In addition to acting as an advisor to the State Government on conservation initiatives and strategies, the Council is required to perform the following functions listed below:

- Support the establishment and strengthening of the management of Sabah's biological resources,
- Formulate and review State policy on biotechnology and application of biotechnology,
- Co-ordinate local, state and national activities on conservation research and sustainable use of biological resources and biodiversity, and
- Facilitate preparations for regional and international activities on conservation research and sustainable use of biological resources and biodiversity.³⁴⁶

The Council is permitted to undertake additional activities as assigned or deemed necessary to carrying out their duties. In addition to the roles outlined in the Enactment, the Council has the power to approve and issue access license, with the authority to regulate or limit access to the State's biological resources.³⁴⁷

Sabah Biodiversity Centre

The Sabah Biodiversity Centre is established under the Enactment to manage conservation and use of Sabah's biodiversity to its full potential value.³⁴⁸ The Centre's operational approach is to promote the involvement and participation of governmental and non-governmental agencies in attaining their objectives. Access applications must be applied through the Sabah Biodiversity Centre. The Centre is responsible for ensuring the sustainable management of Sabah's biodiversity by implementing thirteen required functions.³⁴⁹ A list of the functions is available in *Environmental Law and Policy in Sabah: Biodiversity*.

³⁴⁴ Sabah Biodiversity Enactment 2000, Section 3(2).

³⁴⁵ Sabah Biodiversity Enactment 2000, Section (2)(i).

³⁴⁶ Sabah Biodiversity Enactment 2000, Section 3(1) (a-g).

³⁴⁷ Sabah Biodiversity Enactment 2000, Section 8.

³⁴⁸ Sabah Biodiversity Enactment 2000, Section 9.

³⁴⁹ Sabah Biodiversity Enactment 2000, Section 9.

9. ENVIRONMENT PROTECTION ENACTMENT

Description

The *Environment Protection Enactment (2002)* was established to ensure the protection of the environment.³⁵⁰ The *Enactment* primarily regulates in the area of pollution control affecting land and natural resources.³⁵¹

A full discussion of the Environment Protection Enactment is available in *Environmental Law and Policy in Sabah: Environmental Protection*.

Environmental Concerns

The Environment

The *Enactment* addresses the standard for implementing policies and plans relating to activities harmful to the environment.

Environment

The term *Environment* is defined to take on any of the following meanings:

- a. The external physical surroundings and conditions influencing development and growth of people, animals or plants and includes social, living or working conditions,
- b. All natural and physical resources,
- c. Ecosystems and their constituent parts including people and communities, and
- d. Amenity, aesthetic and cultural values.³⁵²

The *Enactment* does not make any distinctions between fresh water and marine aquatic environments.

Pollution

In ensuring protection of the Environment, the Environment Protection Enactment provides for the regulation and management of Pollution. The term *Pollution* is defined as an activity that adversely alters the Environment through the acts of discharging, emitting or disposing of waste or Pollutants.³⁵³ Pollutants or waste that create harm or a hazard to the public health and safety or welfare to people may be subject to regulation.³⁵⁴ Beyond regulating the potentially hazardous impact of

³⁵⁰ Environment Protection Enactment, 2002.

³⁵¹ James Lam Chee Seng, *Environment Law in Malaysia (Borneo Edition)* 2007.

³⁵² Environment Protection Enactment 2002, Section 2.

³⁵³ Environment Protection Enactment 2002, Section 2.

³⁵⁴ Environment Protection Enactment 2002, Section 2.

Pollution imposed on the human population, the Enactment regulates Pollution threats towards animals, birds, fish, aquatic life or plants.³⁵⁵

Pollution is identified as an environmental issue occurring in both land and water areas. Pollution activities that have direct or indirect adverse impact on the environment may include the discharging and depositing of waste. Pollutants include substances that take the form of any liquid, solid, gas or microorganisms and create an adverse impact on the environment, whether directly or indirectly.³⁵⁶

Pollutants

Substances with any of the following characteristics qualify as a Pollutant, including:

- a. Adversely alters the quality of any environment,
- b. Poses a hazardous or potentially hazardous threat to health and safety,
- c. Creates an adverse impact on the environment by altering the temperature or the physical, biological characteristic and quality of the environment, or
- d. Generates intolerable odours, noise or radioactivity.³⁵⁷

Establishment of Environmental Policies and Programmes

The *Enactment* contains provisions for the facilitation, planning and implementation of environmental protection policies. The Director may formulate environmental protection policies based on the recommendation or advice of the Minister of Tourism, Culture and Environment.³⁵⁸

Significant

The following meanings are provided to define *significant*:

- a. Magnitude of the effect in relation to the spatial boundaries,
- b. Permanence of the effect,
- c. Irreversibility of the effect,
- d. Cumulativeness over time of the effect, or
- e. Risks of the effect in relation to health and safety.³⁵⁹

Programmes are enacted with the objective to address environmental issues in areas facing significant environmental pollution or likely to experience significant environmental pollution due to a rapid growth in the concentration of human population.³⁶⁰ The term *significant* is defined used to evaluate the level of impact

³⁵⁵ Environment Protection Enactment 2002, Section 2.

³⁵⁶ Environment Protection Enactment 2002, Section 2.

³⁵⁷ Environment Protection Enactment 2002, Section 2.

³⁵⁸ Environment Protection Enactment 2002, Section 9.

³⁵⁹ Environment Protection Enactment 2002, Section 2.

³⁶⁰ Environment Protection Enactment 2002, Section 10(b)

that an activity may pose on the Environment.³⁶¹

The *Environment Protection Enactment* further provides measures for implementing Environment Protection Action Plans for designated protection areas. The Environment Protection Action Plans must take an integrated management approach to environmental protection by evaluating economic, social and environmental factors.³⁶²

The action plan must include a strategy that would address all of the following components:

- Strategy to control pollution from point sources,
- Process to acquire land, material, equipment, tools and appliances needed for the construction, installation, improvement, modification, repair, maintenance and operation of environmental protection facilities,
- Plan for inspecting, monitoring and controlling pollution, and
- Expected costs, charges and expenses needed the environmental protection plan.³⁶³

Examples of environmental protection facilities include central wastewater treatment plants or central waste disposal facilities.

Environment Protection Area

In ensuring protection of the environment, the Minister (Chairman of the Environmental Protection Council) is authorized to gazette both alienated and unalienated land as an Environmental Protection Area.³⁶⁴ Protection status may be assigned based on actual or potential pollution threats to an area.³⁶⁵

Prior to the development of any environment protection area, an Environmental Impact Assessment Report must also be submitted. The report must compellingly establish the need for the establishment of an Environmental Protection Area.

Environment Impact Assessments and Mitigation Measures

The Minister is responsible for identifying any development activity that poses an adverse impact on the environment.³⁶⁶ Through a *Gazette* notice, the development activity may be restricted within these areas.³⁶⁷ Permission to carry out development activity requires the submittal of an Environmental Impact Assessment Report or a Proposal to Mitigate Measures.

³⁶¹ Environment Protection Enactment 2002, Section 2.

³⁶² Environment Protection Enactment 2002, Section 10(3).

³⁶³ Environment Protection Enactment 2002, 10(3)(a)-(d).

³⁶⁴ Environment Protection Enactment 2002, Section 11.

³⁶⁵ Environment Protection Enactment 2002, Section 10.

³⁶⁶ Environment Protection Enactment 2002, Section 12.

³⁶⁷ Environment Protection Enactment 2002, Section 12

In the subsidiary laws of the Environment Protection Enactment, the Minister issued a scheduled list of activities that require either an Environmental Impact Assessment report or Proposal to Mitigate Measures.³⁶⁸ The following is a list of some of the prescribed activities, relevant to coastal and water regions, requiring a Proposal for Mitigation Measures:

- Quarrying within 200 metres from any streams or rivers,
- Development of resorts, recreational or tourism facilities covering a minimum area of 10 hectares and maximum of 30 hectares, or within 200 metres from the high-water mark of the coastal area,
- Construction of buildings for public purposes within 200 metres from the high-water mark of the coastal area, or
- Construction of open jetties of at least 100 metres for commercial or public use along.

The list provided below provides an overview of some of the relevant activities requiring an Environmental Impact Assessment Report, issued in *Environment Protection Order (Prescribed Activities) for Environmental Impact Assessment*:

- Reclamation of land by the sea or along river banks for development of housing, commercial or industrial estates, construction of major roads, or other public purposes,
- Development of resorts, recreational or tourism facilities covering a minimum area of 30 hectares,
- Construction of major roads or upgrading of major roads involving realignment and widening through settlement, coastal areas or wetland forests, or on hills with slopes having gradient of 20 degrees or more,
- Construction of port facilities (including warehouses, container yards and cargo storage facilities) for commercial use along rivers or sea front, or
- Construction of closed landing jetties for commercial or public use along rivers or sea front.³⁶⁹

General Restrictions

The Enactment further provides restrictions on any activity that may create a significantly adverse impact on the environment. Restrictions are allowed for the use of land, either on the surface or below the surface.³⁷⁰

Some of the notable activities further restricted under the Enactment include the following:

- Destruction, damage or disturbance to wildlife (plants and animals) and their habitats,
- Use of land to deposit pollutants on or under the land, and

³⁶⁸ Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005.

³⁶⁹ Environment Protection (Prescribed Activities) (Environmental Impact Assessment) Order 2005, Second Schedule [Paragraphs 3, 4 and 7].

³⁷⁰ Environment Protection Enactment 2002, Section 20.

- Dispersal of pollutants from vehicles passing through land.³⁷¹

Restrictions of Coastal Activities

The following coastal activities are restricted if they have or is likely to have a significantly negative effect on the environment:

- Reclaiming or draining of any foreshore or seabed,
- Altering, erecting, demolishing, placing, reconstructing or removing of any structure,
- Damaging, destroying or disturbing any foreshore or seabed through excavation, drilling or tunneling, and
- Depositing any pollutant in, on, or under any foreshore or seabed.³⁷²

The activities listed above are similarly applied to river and land areas.

Environment Hazard Zone

An area that is polluted or may create a significant risk to human health and safety or the environment may be gazetted as an Environmental Hazard Zone.³⁷³ The Director may impose necessary restrictions within and around an Environmental Hazard Zone to reduce the environmental hazard.³⁷⁴ The Minister is authorized to revoke any portions of an Environmental Hazard Zone once restrictions or precautions are no longer a concern.³⁷⁵

Offenses and Penalties

The Director of the Environment Protection Department (“the Director”) may also issue an abatement notice requiring an individual to cease any activity that violates regulations prohibited under the provisions of the Enactment.³⁷⁶ The Director or an environmental enforcement officer is authorized to arrest an individual without warrant under the belief that an offense has been committed.³⁷⁷ An arrested individual will be brought to a nearby police station or to a Magistrate and will be subjected to the Criminal Procedural Code.

The fines for violation of the various provisions of the *Enactment* ranges from 10,000 to 100,000 ringgit.³⁷⁸ Punishment for committing an offense may also be imposed with an imprisonment sentence ranging from one to five years.³⁷⁹ The heaviest penalty is imposed when an individual or corporation fails to comply with an

³⁷¹ Environment Protection Enactment 2002, Section 20.

³⁷² Environment Protection Enactment 2002, Section 29.

³⁷³ Environment Protection Enactment 2002, Section 18(1).

³⁷⁴ Environment Protection Enactment 2002, Section 18(2).

³⁷⁵ Environment Protection Enactment 2002, Section 18(3).

³⁷⁶ Environment Protection Enactment 2002, Section 52.

³⁷⁷ Environment Protection Enactment 2002, Section 40(1).

³⁷⁸ See Environment Protection Enactment 2002, Part X, listed in the outdated version of the Enactment. The Feb. 2013 version of the Enactment removed the list of penalties and offences.

³⁷⁹ See Environment Protection Enactment 2002, Part X, listed in the outdated version of the Enactment. The Feb. 2013 version of the Enactment removed the list of imprisonment term.

agreement with environmental conditions or mitigation declaration, signed after an Environmental Assessment Report or Proposal for Mitigation Measures.³⁸⁰ For a detailed list of offences and penalty for failure to comply with the provisions of the Enactment, see Part X of the Enactment.

Institutions and Implementation

Environment Protection Council

The Environmental Protection Council (“the Council”) was formed under the Enactment to provide advice to the State Government on environmental issues. In addition to the Director of the Environment Protection Department (“the Director”) and a Chairman (“the Minister”), the Council consists of Permanent Secretary or authorized representatives from some of the following government institutions:

- Natural Resources,
- Ministry of Tourism, Environment, Science and Technology,
- Ministry of Agriculture and Food Industries,
- Lands and Surveys, and
- Drainage and Irrigation.³⁸¹

A full list of Council membership is available in Part II, Section 3 of the Enactment.

Minister

The Minister of Tourism, Culture and Environment is responsible for handling matters relating to environmental protection under the Enactment.³⁸² The Minister is authorized to order the Director to prepare and develop an environmental protection policy consistent with the provisions of the Enactment.³⁸³

The Minister is further authorized to oversee the issuance of licenses, requiring licenses for the operation of activities that may pose a harmful risk to the environment. Regulation in this subject area allows for the Minister to control specific types and sizes of activity that cause pollution or may likely cause pollution.³⁸⁴

Environment Protection Department

The Environment Protection Department is under the direction of the Minister of Tourism, Culture and Environment. The Department was renamed from the Environmental Conservation Department to Environment Protection Department under the passage of the Environment Protection Enactment in 2002, which replaced the Conservation of Environment Enactment (1996).

³⁸⁰ Environment Protection Enactment 2002, Section 12(5) and Section 51.

³⁸¹ Environment Protection Enactment 2002, Section 3(2).

³⁸² For a detailed list of matters that the Minister is authorized to make regulations on see Environment Protection Enactment 2002, Section 60.

³⁸³ Environment Protection Enactment 2002, Section 9.

³⁸⁴ Environment Protection Enactment 2002, Section 17.

The Environment Protection Department was formed to enforce the provisions of the Environment Protection Enactment, and regulates subject matters concerning the environment.³⁸⁵ The Environment Protection Department is required to collaborate with the Environment Protection Council to provide advice on strategies and environmental management plans.

The following is a list of some of the programmes and plans developed with the involvement of the Environmental Protection Department:

- Sabah Shoreline Management Plan,
- Capacity Building of the Environmental Conservation Department, and
- Sabah Biodiversity Project.³⁸⁶

The Environmental Protection Department has also been involved in the development of the following policies and papers at the State level:

- Sabah Conservation Strategy, 1992,
- Sabah Master Tourism Plan, 1996, and
- Identification of Potentially Protected Areas (Sabah Biodiversity Conservation Project), 1998.

Director of the Environment Protection Department

The Director is allowed to develop any appropriate programme that is deemed necessary in areas where environmental pollution is currently or likely to be problematic. The Director is further required to implement an environment protection action plan for any area that is designated for environmental protection.³⁸⁷ Concerns for conservation in areas rich in biodiversity and stability of the environment is also within the scope of the Director's authority. A full list of the Director's authority is described in "*Sabah's Legal and Institutional Framework: Environmental Protection*."

10. PORTS AND HARBOURS ENACTMENT

Description

The primary legislation relating to Sabah's ports and harbours is the *Ports and Harbours Enactment (2002)*, which regulates activities within Sabah's Coastal Zone.³⁸⁸ The *Sabah Ports Authority Enactment (1981)* is also a related piece of

³⁸⁵ Sabah Environment Protection Department, http://www.sabah.gov.my/jpas/en_index.htm

³⁸⁶ As reported on the Environmental Protection Department Official Website, <http://www.sabah.gov.my/jpas/ecc/default.htm>

³⁸⁷ Environment Protection Enactment 2002, Section 10(2).

³⁸⁸ Ports and Harbours Enactment 2002 and its subsidiary regulations known as Ports and Harbours Regulation 2008.

legislation, which provides for the establishment of the state statutory body responsible for regulating Sabah's Ports³⁸⁹ and Harbours.³⁹⁰

Ports and Harbours Regulation

The *Ports and Harbour (Ports, Harbours and Dues) Regulations 2008* comes under the *Ports and Harbours Enactment (2002)*. This regulation prohibits the discharge of oil or mixtures containing oils into the ports or harbours of Sabah.³⁹¹ Pollution derived from land, vessels or apparatuses that transfers oil are both under the regulation of Sabah's Ports and Harbours Regulations 2008 and the MARPOL Convention.³⁹²

Financial liability is also imposed for the clearing and cleaning of waters caused by the oil pollution.³⁹³ Liability is placed on the master or owner of a vessel, occupier of the land or individual in charge of the apparatus where the discharge occurs.³⁹⁴ A person who commits an offense under this regulation is subject to a maximum fine up to 30,000 ringgit, an imprisonment term up to two years or both.³⁹⁵

Institution and Implementation

Sabah Ports Authority

In Malaysia, ports are generally under the authority of the Federal or State Government.³⁹⁶ In Sabah, the State managed ports are regulated under Sabah's Ports Authority, a state-level statutory body.³⁹⁷ Ports Authority ("the Authority") was originally formed under the *Sabah Ports Authority Enactment (1967)*, a law that was repealed and replaced by the *Sabah Ports Authority Enactment (1981)*.³⁹⁸

³⁸⁹ The Ports in Sabah are determined based on declaration in the Gazette, see Sabah Ports Authority Enactment 1981, Section 3.

³⁹⁰ The Ports Regulation (1968) is a subsidiary legislation under the Sabah Ports Authority Enactment, and was described in James Lam Chee Seng, Environmental Law In Malaysia (Borneo Edition) 2007, p. 51-52.

³⁹¹ Ports and Harbours Regulation, 2008, Section 39.

³⁹² Ports and Harbour (Ports, Harbours and Dues) Regulation, Section 39. The MARPOL Convention is the International Convention for the Prevention of Pollution from Ships, and stands for pollution of marine environments , see MARPOL, International Maritime Organization Official Website [http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-\(MARPOL\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx)

³⁹³ Ports and Harbours Regulation, 2008, Section 39(1).

³⁹⁴ Ports and Harbours Regulation, 2008, Section 39(1).

³⁹⁵ Ports and Harbours Regulation, 2008, Section 39(1).

³⁹⁶ Federal Constitution, Malaysia, Ninth Schedule List 1 Setion 9 and List IIA Section 15.

³⁹⁷ The Sabah Ports Authority is responsible for implementing regulations, such as the Ports Regulation 1968 (Reprint 1999), which was introduced in James Lam Chee Seng's Environmental Law in Malaysia. The book Environmental Law in Malaysia describes this regulation as providing measures for regulating pollution activity within Sabah's Ports. A full discussion of the Regulation's provision on pollution is not discussed here, as the authors of this legal brief have encountered difficulties in acquiring a copy of this regulation.

³⁹⁸ Sabah Port Authority Enactment 1981, Section 4(1). This law was also introduced in James Lam Chee Seng, Environmental Law In Malaysia (Borneo Edition) 2007, p. 51-52.

Sabah's Ports Authority is assigned responsibility for managing and regulating port operations in Sabah.³⁹⁹ The Sabah Ports Authority may also control the development and use of wharves and docks above or below the high water mark located near the boundaries of a port.⁴⁰⁰

Sabah's Ports Authority was assigned to be under the jurisdiction of Sabah's Ministry of Infrastructure and Development.⁴⁰¹ However, it is reported that in September of 2004, Sabah Ports Sendirian Berhad (SPSB) took over commercial management of all port operations from Sabah Ports Authority.⁴⁰²

11. SABAH WATER SUPPLY ENACTMENT

Description

The *Sabah Water Supply Enactment (2003)* replaced the *Water Supply Ordinance (1961)* and was passed to control and regulate the supply and distribution of water. The Enactment primarily contains provisions regulating the set up and use of water supply systems, with an emphasis on actions altering supply of water and the water systems.⁴⁰³ The Enactment further provides a provision on regulating the management and control of contamination and pollution to the water supply.⁴⁰⁴

Misuse and Damage to the Water Supply System

The Enactment provides for measures regulating misuse of the system, which may adversely impact the water supply system. The following acts are prohibited within a water supply system and may constitute an injury or misuse of a system:

- Bathing,
- Depositing of human waste, and
- Throwing of rubbish or any creatures.⁴⁰⁵

The Enactment further bans the depositing or allowing for the deposit of any earth, materials or liquid, whether done intentionally or negligently.⁴⁰⁶ Failure to abide by these regulations will result in a guilty offense and a maximum fine up to 50,000 ringgit, maximum imprisonment of two years or both.⁴⁰⁷ Continual offences may be imposed at a maximum fine up to 100,000 ringgit for each day the offense

³⁹⁹ Sabah Ports Authority, Introduction, Official Website, <http://www.lpps.sabah.gov.my/?q=content/introduction>

⁴⁰⁰ Sabah Port Authority Enactment 1981, Section 26.

⁴⁰¹ Sabah Ports Authority, <http://www.lpps.sabah.gov.my/?q=content/introduction>

⁴⁰² Sabah Ports, Suria Group Official Website, see <http://www.suriagroup.com.my/spsb/about-us/>.

Despite this transfer of management, the Sabah Port Authority still has powers to regulate Sabah's ports despite the changes in administration.

⁴⁰³ Sabah Water Supply Enactment 2003.

⁴⁰⁴ Sabah Water Supply Enactment 2003, Section 72(s)

⁴⁰⁵ Sabah Water Supply Enactment 2003, Section 49.

⁴⁰⁶ Sabah Water Supply Enactment 2003, Section 49(d).

⁴⁰⁷ Sabah Water Supply Enactment 2003, Section 49.

continues.⁴⁰⁸

Pollution of Water Supply

The Water Supply Enactment further regulates pollution of the water supply system.⁴⁰⁹ A pollutant is identified as a substance or matter that may pose a hazard to public health and safety to fish or aquatic life, or to plants.⁴¹⁰ Substances in the form of liquid, solid or gaseous form qualify as potentially hazardous and may include any crude oil, diesel oil, fuel oil, or lubrication oil.⁴¹¹ Pollution in water or waterworks may occur when there is an indirect or direct impact on the quality of water, creating a hazard to the public health, animals or plants.⁴¹²

Similar to the regulation on misuse and injury to the Water System, the Enactment also regulates pollution of the water supply system by any of the following acts:

- Depositing or allowing to be deposited any earth, material or liquid which would result in the substance being washed, dropped, or carried into the waterworks,
- Washing, bathing or throwing pollutants into the waterworks, and
- Throwing or causing for the entry of any creature dead or alive into the waterworks.⁴¹³

Violations for introducing a pollutant into a water system will result in a fine of 50,000 ringgit, an imprisonment term of up to two years, or both.⁴¹⁴ Compared to an offense in which a violator continually misuses or injures a water system, a repeated offense for pollution of a water supply does not carry additional penalties each day a violation continues unabated.

Institutions and Implementation

State Water Authority

The Sabah State Water Department was formed to enforce the provisions of the Enactment.⁴¹⁵ The Sabah State Water Department is also referred to as the State Water Authority under the Enactment, and is designated responsibility for handling the custody, management and administration of the water supply system.⁴¹⁶ The Department operates under the Ministry of Infrastructure Development.

The State Water Authority is also responsible for the following relevant functions:

⁴⁰⁸ Sabah Water Supply Enactment 2003, Section 49.

⁴⁰⁹ Sabah Water Supply Enactment 2003, Section 49.

⁴¹⁰ Sabah Water Supply Enactment 2003, Section 2.

⁴¹¹ Sabah Water Supply Enactment 2003, Section 2.

⁴¹² Sabah Water Supply Enactment 2003, Section 2.

⁴¹³ Sabah Water Supply Enactment 2003, Section 51.

⁴¹⁴ Sabah Water Supply Enactment 2003, Section 51

⁴¹⁵ The Enactment identifies the State Water Authority as the agency assigned to handle enforcement of the Sabah Water Supply Enactment.

⁴¹⁶ Sabah Water Supply Enactment 2003, Section 4.

- Managing the production and distribution of water,
- Ensuring the efficiency and quality in the supply of water,
- Prosecuting any offence made under this Enactment,
- Exercising regulatory functions as prescribed under the Enactment, and
- Proposing recommendations based on review of the Enactment to refer to the Minister.⁴¹⁷

A full list of the State Water Authority's powers, duties and responsibility is provided under Section 7 of the Sabah Water Supply Enactment (2003).

Department of Public Works

Sabah's Department of Public Works, or Jabatan Kerja Raya (JKR) is one of the government agencies responsible for sewerage issues. The primary functions of JKR's sewerage branch are to manage the plans, budget, design and implementation of sewerage systems for Local Authorities (refer to the Town and Planning Ordinance).⁴¹⁸ JKR also oversees the implementation of sewerage operation and maintenance programs and provides technical advice to other governmental agencies on the sewerage infrastructure.⁴¹⁹

Health Authority

The State Health Department ("the Health Authority") is a Federal agency with a branch located in Sabah and is responsible for handling matters relating to water supply, as provided for under the Enactment. For example, the Health Authority regulates concerns related to safe drinking water.⁴²⁰

12. SABAH INLAND FISHERIES AND AQUACULTURE ENACTMENT

Description

The Sabah *Inland Fisheries and Aquaculture Enactment (2003, not yet in force)*⁴²¹ provides for the management and use of Inland Fisheries, primarily regulating fresh water and riverine.⁴²² Although the provisions relating to Inland Fisheries and Aquaculture do not directly address the coastal and marine area, the Enactment controls inland area activities that may overlap with and impact marine and coastal areas.⁴²³

Inland Waters and Fisheries

⁴¹⁷ Sabah Water Supply Enactment 2003, Section 7.

⁴¹⁸ JKR Sewerage Branch Website, <http://www.jkr.sabah.gov.my/sewerage.html>

⁴¹⁹ JKR Sewerage Branch Website, <http://www.jkr.sabah.gov.my/sewerage.html>

⁴²⁰ Sabah Water Supply Enactment 2003, Section 2.

⁴²¹ **Question:** While the Enactment is stated as being "not yet in force", it seems that it is cited elsewhere as being effective. What is the current status of the Enactment?

⁴²² Sabah Inland Fisheries and Aquaculture Enactment (2003, not yet in force).

⁴²³ Town and Regional Planning Department, <http://www.townplanning.sabah.gov.my/iczm/Reports/Shoreline%20Management/mst-WATER.html>

The definition of *Inland Waters* and *Inland Fisheries* may extend to areas that include Sabah's Coastal Zone. Inland waters broadly apply to waters of any river, waterway, lake, reservoir, and watercourse, including the Foreshore and subterranean waters. Inland fisheries exclusively apply to fisheries in riverine waters.⁴²⁴ Riverine waters are defined as bodies of water in a 'river, lake, stream, pond or other waters in Sabah, with the exception of those in Malaysian Fisheries Waters'.⁴²⁵

Malaysian Fisheries Waters, as defined under the Fisheries Act (1985), refers to the maritime water under Malaysia's Federal jurisdiction where exclusive fishing rights or fisheries management rights are recognized.⁴²⁶ The Malaysian Fisheries Waters include the Territorial Sea of Malaysia and the Maritime Waters in the Exclusive Economic Zone of Malaysia.⁴²⁷

Inland Water Species

Aquatic life, as defined under the *Enactment*, generally means living organisms and fish.⁴²⁸ Any sources of food relied on by living organisms or fish are also considered *aquatic life*.⁴²⁹ A fish is recognized as either an aquatic animal or plant life, and includes "all species of finfish, crustacean, mollusk, aquatic animals, or their eggs or spawn, fry, fingerling, spat or young".⁴³⁰ Freshwater fish are to be identified by the Minister of Agriculture and Food Industries, Sabah⁴³¹ ("the Minister") through notification in the *Gazette*, and includes fish typically found in Inland Water throughout any stages of its life cycle.⁴³²

Deleterious Substance and Pollutants

The Inland Fisheries and Aquaculture Enactment provides regulations on activities that may impact Inland Waters and riverine. Deleterious Substances and Pollutants are identified as substances that have the potential to adversely impact Inland Waters and Aquaculture.⁴³³ These substances are categorized as contributors to environment degradation and alteration of water quality, which may detrimentally impact populations of fish species and fish habitats.⁴³⁴ Water that contains a large percentage of substance from chemical treatment or processing is also considered a deleterious substance.

⁴²⁴ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴²⁵ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴²⁶ Fisheries Act 1985, Section 2.

⁴²⁷ Fisheries Act 1985, Section 2.

⁴²⁸ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴²⁹ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴³⁰ Sabah Inland Fisheries and Aquaculture Enactment, Section 2. The definition is similarly defined the same under the Malaysia Fisheries Act 1985.

⁴³¹ Also formerly known as Ministry of Agriculture and Fisheries, Ministry of Agriculture and Food Industry Official Website, <http://www.sabah.gov.my/mafi/ENG/InfoFunction.html>

⁴³² The Enactment cites to the Minister responsible for fisheries, Sabah Inland Fisheries and Aquaculture Enactment, Section 2. In Sabah, Fisheries are stated as matters in Sabah are handled by Sabah Fisheries.

⁴³³ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴³⁴ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

Pollutants are regulated based on their potential impacts on riverine waters. A substance may be identified as a pollutant if it poses “hazards to human health or harm aquatic living resources” within riverine waters.⁴³⁵ Any potential damage to amenities or interference with continued use of riverine waters may be considered a pollutant.

Fisheries Plan

The Director of Sabah Fisheries (“the Director”) is required to develop and review the ongoing progress of Fisheries Plans.⁴³⁶ These plans must be based on scientific information and incorporate a strategy for the most effective use and management of fisheries resources. This may be achieved by balancing conservation and management of fishery resources with regulation on overfishing. The Fisheries Plan must further include the input of national and state policies, and other development plans and programmes.⁴³⁷ The Minister must approve any provisions to the Fisheries Plan.

Fish Habitat Protection

Restrictions on Activities

Restrictions are placed on activities occurring on land or near Inland Waters that may adversely impact or destroy fish habitats. Exceptions to these restrictions may be allowed with the discretion of the Director. Violators may be subject to monetary fines and imprisonment. The following list is an example of activities regulated, including those occurring in the Foreshore:

Restrictions on Activities

- a. Any alteration, erection, extension, placement, removal, use or demolition of any structure or part of any structure in, on, under or over land,
- b. Any excavation, drilling, tunneling or other disturbance of land,
- c. Reclaim or drain any foreshore, lake bottom or riverbed,
- d. Alter, erect, demolish, place, reconstruct or remove any structure or part of any structure that is fixed in, on, under or over any foreshore, lake bottom or riverbed, or
- e. Damage, destroy or disturb any foreshore, lake bottom or riverbed by excavating, drilling or tunneling other than for lawful purposes under any written law.⁴³⁸

Ban on Harmful Activities

In addition to regulating activities, the Inland Fisheries and Aquaculture Enactment provides restrictions on activities that may adversely impact the quality of water

⁴³⁵ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴³⁶ Sabah Inland Fisheries and Aquaculture Enactment, Section 7.

⁴³⁷ Sabah Inland Fisheries and Aquaculture Enactment, Section 7(b).

⁴³⁸ Sabah Inland Fisheries and Aquaculture Enactment, Section 55.

bodies, such as the act of throwing items overboard vessels.⁴³⁹ Ballast, garbage, sludge, quarry wastes and other Deleterious Substances are specifically banned from being placed into any river or lake or areas where fishing or Aquaculture activity takes place. Any remains or internal organs of fish or animals are banned from being placed or left on the shore, beach or bank of any river or lake areas.⁴⁴⁰ The same restrictions apply to decaying fish or fish left in a net or Aquaculture facility.

The restricted activities may correspond with actions carried on, in or around coastal areas.⁴⁴¹ The Enactment broadly includes activity on land or near inland waters that may potentially result in the “alteration, disruption or destruction of fish habitat”.⁴⁴² As a result, Deleterious Substances are also banned from riverine waters or any place that may navigate or travel to impact riverine waters. In regulating corporate entities and individuals, the Enactment further provides for regulations on the discharge of Deleterious Substances in riverine waters. The fines and penalties for committing fines in violation of Enactment include fines ranging from a minimum of 50,000 ringgit to a maximum of 100,000 ringgit, with the maximum fine imposed on corporate entities.⁴⁴³

Establishment of Fish Sanctuary

The Yang di-Pertua Negeri is authorized to declare certain riverine water regions as a Fish Sanctuary. A Fish Sanctuary should be developed in consultation with the Director and is limited to areas of riverine waters.⁴⁴⁴

A Fish Sanctuary may be established in a designated area for any of the following reasons:

- Provide special protection to aquatic life in a designated area, especially to rare and endangered aquatic life to further preserve and manage the natural breeding grounds and habitat of fish populations and aquatic life,
- Preserve and contribute to the pristine state and productivity of the area,
- Promote biodiversity values,
- Conserve the conditions needed to ensure access and use to “significant species of aquatic life or plants, biotic communities or genetic resources”,
- Sanction off an area “for the natural regeneration of aquatic life” to allow for the regrowth and natural regeneration of aquatic life,
- Utilize the area for scientific study and research, and
- Regulate recreational and other activities to prevent irreversible damage to its environment.⁴⁴⁵

Community Fisheries Management Zones

⁴³⁹ Sabah Inland Fisheries and Aquaculture Enactment, Section 56.

⁴⁴⁰ Sabah Inland Fisheries and Aquaculture Enactment, Section 56.

⁴⁴¹ Sabah Inland Fisheries and Aquaculture Enactment, Section 58.

⁴⁴² Sabah Inland Fisheries and Aquaculture Enactment, Section 55.

⁴⁴³ Sabah Inland Fisheries and Aquaculture Enactment, Section 56(2).

⁴⁴⁴ Sabah Inland Fisheries and Aquaculture Enactment, Sections 65- 76.

⁴⁴⁵ Sabah Inland Fisheries and Aquaculture Enactment, Section 65.

The Minister may Gazette an area as a Community Fisheries Management Zones. A Community Fisheries Management Zone is an area that the Director deems necessary to involve members of a village or local community to manage local fisheries resources.⁴⁴⁶ The management and conservation of a Community Fisheries Management Zone may be implemented in three areas a) fisheries resources, b) the fishery of an area, or c) part of an area in riverine waters.⁴⁴⁷ Authorised officers, members of a village or the local community must be appointed to form a Community Fisheries Management Zones Committee.⁴⁴⁸ The Minister is responsible for designating, prescribing, promoting and regulating on matters relating to the administration, management and regulation of these Zones.⁴⁴⁹

The penalty for violating regulations in a Community Fisheries Management Zone is a fine not exceeding 50,000 ringgit.⁴⁵⁰

Aquaculture Development

Aquaculture is defined as the process of breeding or raising of fish, turtle and frog species from the early stages of its life cycle.⁴⁵¹ The process does not apply to the containment or holding of fish in a facility.⁴⁵² The provisions regulating Aquaculture overlaps with the meaning of aquaculture used to regulate fish and turtle species in the (Federal) Fisheries Act 1985.⁴⁵³

Aquaculture Industry Zones may be developed through gazetttement. Within these Zones, the Minister may enforce restrictions on industrial development and activities to protect the area from pollutants.⁴⁵⁴ To set up an operation for an Aquaculture premise, an interested applicant must submit a copy of a license or permit to operate.⁴⁵⁵ Prior to issuance of an Aquaculture license, permit or authorization, the applicant must submit an environmental impact assessment report.⁴⁵⁶

Institution and Implementation

Powers of the Minister

The Minister of Agriculture and Food Industries has the power to implement regulations intended for conservation, development, management, and regulation Inland Fisheries and Aquaculture. The Minister may issue restrictions and fishing

⁴⁴⁶ Sabah Inland Fisheries and Aquaculture Enactment, Section 35(1).

⁴⁴⁷ Sabah Inland Fisheries and Aquaculture Enactment, Section 35(1).

⁴⁴⁸ Sabah Inland Fisheries and Aquaculture Enactment, Section 36.

⁴⁴⁹ Sabah Inland Fisheries and Aquaculture Enactment, Section 118 (t).

⁴⁵⁰ Sabah Inland Fisheries and Aquaculture Enactment, Section 37.

⁴⁵¹ Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴⁵² Sabah Inland Fisheries and Aquaculture Enactment, Section 2.

⁴⁵³ Sabah Inland Fisheries and Aquaculture Enactment, Section 2; Fisheries Act 317 (1997), Section 2.

⁴⁵⁴ Sabah Inland Fisheries and Aquaculture Enactment, Section 9.

⁴⁵⁵ Sabah Inland Fisheries and Aquaculture Enactment, Section 11.

⁴⁵⁶ Sabah Inland Fisheries and Aquaculture Enactment, Section 14.

regulations within riverine waters, aquaculture facilities, freshwater fishing, Fish Sanctuaries and Community Fisheries Management Zones.⁴⁵⁷

Department of Fisheries Sabah

Description

The Department of Fisheries Sabah (“Sabah Fisheries or the Department”)⁴⁵⁸ is designated responsibility for implementing the provisions of this law, which has not been enacted. Sabah Fisheries under the administration of the Ministry of Agriculture and Food Industries, Sabah. In addition to managing inland fisheries, Sabah Fisheries is assigned to formulate policies and strategic plans to address capture fisheries, aquaculture, fish processing and human and rural development. The Director of Sabah Fisheries may also delegate any of the powers vested in him to any officer of Sabah Fisheries and under notification in the *Gazette*.⁴⁵⁹

Enforcement Authority

Sabah Fisheries is responsible for carrying out the provisions of the Enactment. Sabah Fisheries acts as an enforcement unit in ensuring compliance with both State and Federal fisheries related law.⁴⁶⁰

The Department is also responsible for carrying out enforcement patrols, investigation of cases and prosecution of cases.⁴⁶¹ Enforcement is conducted in cooperation with other agencies such as the (Federal) Malaysian Maritime Enforcement Agency, (Federal) the Marine Police, (Federal) the Marine Department, and (State) the Department of Ports and Harbours.⁴⁶²

Policy and Programs in Fisheries

In addition to regulating Inland Fisheries, Sabah Fisheries regulates fisheries in the Coastal Zone to protect Sabah’s State interests in the industry and to enforce Federal regulation on fisheries. Sabah Fisheries collaborates with the Federal government to manage marine fisheries under the (Federal) Fisheries Act (1985). Sabah Fisheries refers to the Fisheries Act as one of two primary pieces of legislation followed by the State department.⁴⁶³ In addition to the Federal law on fisheries, Sabah Fisheries operates under the guidance and objectives of national and state policies relating to Fisheries, including the Third National Agriculture Policy and the Second Sabah

⁴⁵⁷ Sabah Inland Fisheries and Aquaculture Enactment, Section 118.

⁴⁵⁸ The agency is also referred to as the State Fisheries Department, see also Sabah Inland Fisheries and Aquaculture Enactment, Section 5.

⁴⁵⁹ Sabah Inland Fisheries and Aquaculture Enactment, Part II, Sections 4-6.

⁴⁶⁰ Department of Fisheries Sabah, Official Website, www.fishdept.sabah.gov.my

⁴⁶¹ As provided under the Sabah Inland Fisheries and Aquaculture Enactment and the Fisheries Act (1985); See also <http://www.fishdept.sabah.gov.my/?q=en/content/law-enforcement>

⁴⁶² Sabah Department of Fisheries, Law Enforcement see <http://www.fishdept.sabah.gov.my/?q=en/content/law-enforcement>.

⁴⁶³ The other legislation is the Inland Fisheries and Aquaculture Enactment, see Sabah Department of Fisheries, Law Enforcement see <http://www.fishdept.sabah.gov.my/?q=en/content/law-enforcement>.

Agriculture Policy.⁴⁶⁴ The Third National Agriculture Policy provides guidelines on the agricultural and forestry development in Malaysia.⁴⁶⁵ One of the target objectives is to address food security, including safety, quality and sustainability within the fisheries sector.⁴⁶⁶ In addition to targeting deep-sea fishing, aquaculture is an area highly prioritized by the State department.

Among the other programs under Sabah Fisheries, Capture Fisheries was developed out of the Sixth Malaysia Plan, with an emphasis on collecting and assessing basic fisheries data from fishermen, fishing villages, infrastructures to increase total fisheries production in Sabah.⁴⁶⁷

Sabah Fisheries has also addressed concerns relating to policy and programmes of the Aquaculture industry.⁴⁶⁸ For example, the Malaysia Aquafarm Certification Scheme is a strongly supported voluntary initiative designed to promote good farming practices developed in conjunction with conservation and environment protection efforts.⁴⁶⁹ The Aquafarm Scheme provides a baseline standard for promoting strategic farming and management practices for both freshwater and marine fish species.⁴⁷⁰ The Schemes are implemented in cooperation with the Department of Fisheries Malaysia, and include the aquaculture farm category of marine shrimp, marine fin-finish, and mollusks culture.⁴⁷¹

13. TERRITORIAL SEA ACT

Description

The recently enacted *Territorial Sea Act (2012)* was passed to define the boundaries of Malaysia's Territorial Waters.

Territorial Sea

⁴⁶⁴ Sabah Department of Fisheries, Policies and Guidelines <http://www.fishdept.sabah.gov.my/?q=en/content/policies-guidelines>

⁴⁶⁵ This policy operates up until the year 2010, See Malaysia 3rd National Agriculture Policy, <http://www.fishdept.sabah.gov.my/sites/default/files/uploads/basicpage/files/98/3rd-national-agriculture-policy.pdf>.

⁴⁶⁶ Malaysia 3rd National Agriculture Policy, Section 27 and 32.

⁴⁶⁷ The other programs include Aquaculture, Capture Fisheries, Fisheries Infrastructure, Research Resource Management, Socioeconomic Programs and Public Education and Environment, See <http://www.fishdept.sabah.gov.my/?q=en/content/capture-fisheries>

⁴⁶⁸ Department of Fisheries Sabah, Official Website, Aquaculture <http://www.fishdept.sabah.gov.my/?q=en/content/aquaculture>

⁴⁶⁹ Department of Fisheries Sabah, Official Website, Aquaculture <http://www.fishdept.sabah.gov.my/?q=en/content/aquaculture>

⁴⁷⁰ Department of Fisheries Sabah, Official Website, Aquaculture <http://www.fishdept.sabah.gov.my/?q=en/content/aquaculture>

⁴⁷¹ Department of Fisheries Sabah, Official Website, Aquaculture <http://www.fishdept.sabah.gov.my/?q=en/content/aquaculture>

Under the *Territorial Sea Act*, the term *Territorial Sea* is defined to mean the Territorial Waters of Malaysia.⁴⁷² The Territorial Sea is an area allocating the boundaries of Malaysia's sovereign right to the bed and subsoil.⁴⁷³

The Act provides for the breadth of the Territorial Sea to stretch 12 nautical miles from the coast, depending on the baseline measurement.⁴⁷⁴ However, in applying land laws off the coast of Sabah, the Territorial Sea is limited to a boundary of 3 nautical miles from the low-water mark.⁴⁷⁵ Similarly, any references to the Territorial Sea under the Continental Shelf Act (1996), Petroleum Mining Act (1966) and the National Land Code (1965) are to be applied with a boundary limited to 3 nautical miles from the low-water mark.⁴⁷⁶ Through this boundary designation, the Malaysian Federal Government may exercise jurisdiction to the land areas located beyond 3 nautical miles from the low-water line, in an area identified as Malaysia's Exclusive Economic Zone.⁴⁷⁷

Measurement of the Baselines

The *Territorial Sea Act* references the Baseline of Maritime Zones Act (2006) for determining the baseline measurement of Maritime Zones, such as the Territorial Sea in Malaysia.⁴⁷⁸ According to the Baseline of Maritime Zones Act, the baseline measurement may be read in three ways if not determined in the *Gazette*:

- The low-water line along the coast based on large scale charts;
- The seaward low-water line of a reef represented by symbol of charts; or
- The low-water line on a low-tide elevation that is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island.⁴⁷⁹

Off the coast of Sabah, the baseline point for the boundaries of the Territorial Sea of Malaysia is measured from the low-water mark.⁴⁸⁰

⁴⁷² Territorial Sea Act 2012.

⁴⁷³ Territorial Sea Act 2012.

⁴⁷⁴ Territorial Sea Act 2012, Section 3(1).

⁴⁷⁵ Territorial Sea Act 2012, Section 3(3): "...any written law relating to land in force in Sabah and Sarawak, any reference to territorial sea therein shall in relation to any territory be construed as a reference to such part of the sea adjacent to the coast thereof not exceeding 3 nautical miles measured from the low-water line"; However, the Federal Government still possesses jurisdiction on matters relating to Maritime Waters, such as fisheries within this boundary; See also the Ninth Schedule of the Malaysia Federal Constitution and the Fisheries Act (1985).

⁴⁷⁶ Territorial Sea Act 2012, Section 3(3).

⁴⁷⁷ Similar provisions apply for the two Federal laws, the Petroleum Act (1966) and the National Land Code(1965).

⁴⁷⁸ Baseline of Maritime Zones Act 2006, Section 5. For a description of Baseline Measurements, see the UN Territorial Sea and the Contiguous Zone, http://www.un.org/depts/los/convention_agreements/texts/unclos/part2.htm. Baseline measurement is used to determine the starting point of where to measure boundaries of Maritime Zones, particularly the Territorial Sea. Baselines are typically measured at the low-water line. Some States with fringing islands may be measured according to different baseline points.

⁴⁷⁹ Baseline of Maritime Zones Act 2006, Section 5.

⁴⁸⁰ Territorial Sea Act 2012, Section 3(3).

State Territorial Waters

The terms *State Territorial Waters* and *Territorial Waters* of a State has often been used interchangeably to refer to the Territorial Waters of Malaysia. There is no clear definition provided under any legislation or guidelines for the term State Territorial Waters. However, the term has been used to refer to a coastal state's jurisdiction on land matters that may expand the breadth of the Territorial Waters of Malaysia.⁴⁸¹ For example, the Town and Planning Ordinance mentions that the length of State land stretches out to the Territorial Waters.⁴⁸² In applying the Territorial Sea Act, the State Territorial Waters would only expand to a boundary of three nautical miles from the low-water mark.⁴⁸³

Exceptions to the Territorial Sea Boundary

The *Territorial Sea Act* also defines the scope of Sabah's jurisdictional boundary in Malaysia's Territorial Waters, restricting Sabah's jurisdiction to 3 nautical miles from the low-water line.⁴⁸⁴ Within this 3 nautical mile boundary, Sabah has jurisdiction to enforce and implement State laws on land related matters.⁴⁸⁵

In addition to Sabah's jurisdictional boundaries in the Territorial Sea, any references of the Territorial Sea under the *Continental Shelf Act (1996)*, *Petroleum Mining Act (1966)* and the *National Land Code (1965)* similarly is limited to a boundary of 3 nautical miles from the baseline of the low-water line.

⁴⁸¹ Section 4C(2) of the Town and Planning Ordinance 1950 recognizes that land in the State extends to the territorial waters. Section 5 of the National Land Code identifies State land to include the Territorial Waters. Finally in the report, The Coastal Zone of Sabah, Sabah Coastal Zone Profile 1998, the term State Territorial Waters is used to refer to his area. However, in contrast to common interpretation of the Territorial Waters, the report identifies this boundary to run 12 nautical miles.

⁴⁸² Town and Planning Ordinance 1950, Section 4C(2); There is not a distinction made between whether the Territorial Waters is State or Federal. The provision only identifies that the State has jurisdiction.

⁴⁸³ Territorial Sea Act, Section 3(3).

⁴⁸⁴ Territorial Sea Act 2012, Section 3(3).

⁴⁸⁵ Territorial Sea Act 2012, Section 3(3): "...any written law relating to land in force in Sabah and Sarawak, any reference to territorial sea therein shall in relation to any territory be construed as a reference to such part of the sea adjacent to the coast thereof not exceeding 3 nautical miles measured from the low-water line." The Federal Government still possesses jurisdiction on matters relating to Maritime Waters, such as fisheries within this boundary. See the Ninth Schedule of the Malaysia Federal Constitution and the Fisheries Act (1985).

EXCLUSIVE ECONOMIC ZONE

DESCRIPTION OF MALAYSIA'S EXCLUSIVE ECONOMIC ZONE

Beyond the boundary of Sabah's 3 nautical mile Coastal Zone lies Malaysia's Exclusive Economic Zone (EEZ), a physical boundary legally recognized under the (Federal) Exclusive Economic Zone Act. Malaysia's EEZ boundary is an area regulated under Federal laws and extends from 3 to 200 nautical miles off the coast of Sabah.⁴⁸⁶ In the report, *Sabah Coastal Zone Profile 1998*, the terms "Outer Seaward Boundary" and "Seaward Boundary" are used interchangeably to describe the Exclusive Economic Zone.⁴⁸⁷

The Exclusive Economic Zone Act recognizes Malaysia's EEZ as a part of the much larger marine area known as the Malaysian Fisheries Water.⁴⁸⁸ The Malaysian Fisheries Water is an area covering Malaysia's Exclusive Economic Zone, the Territorial Sea, and the Internal Waters of Malaysia.⁴⁸⁹ The Malaysian Fisheries Waters is under Federal jurisdiction.⁴⁹⁰ Any laws relating to the Malaysian Fisheries Waters extends to the boundaries of the Territorial Waters, Malaysia's EEZ and the Continental Shelf.⁴⁹¹

Since the Malaysian Fisheries Waters encompasses Sabah's Coastal Zone, there are jurisdictional overlaps that allow for the State Government to regulate matters within the Territorial Waters section of the Fisheries Waters.⁴⁹² The State may exercise jurisdiction on State land matters, which may extend to the breadth of the Territorial Sea.⁴⁹³ However, regulation of fisheries related matters still remains under Federal jurisdiction.⁴⁹⁴ The seaward boundary beyond and adjacent to the Territorial Sea is Malaysia's EEZ, which is an area that includes the Continental Shelf.⁴⁹⁵ Only Malaysian Federal laws applies to Malaysia's EEZ as areas of State land is limited to the length of the Territorial Waters.⁴⁹⁶

DESCRIPTION OF LAWS RELEVANT TO MALAYSIA'S EEZ

This next section provides an overview of the laws relevant to Malaysia's Exclusive Economic Zone. Notably, most of the laws are applicable to Malaysia's EEZ and some may overlap with the Coastal Zone. Since Malaysia's Fisheries Waters overlaps with

⁴⁸⁶ (Malaysia) Exclusive Economic Zone Act 1984.

⁴⁸⁷ The Town and Regional Planning Department uses the term "Seaward Boundary" to describe the marine area from the shoreline. The term "Outer Seaward Boundary" is also used to describe the federal EEZ. See the Town and Regional Planning Department's Report on Shoreline Management: <http://www.townplanning.sabah.gov.my/iczm/Reports/Coastal%20Profile%20Sabah/ch02/02-THE%20COASTAL%20ZONE%20OF%20SABAH.html>

⁴⁸⁸ Exclusive Economic Zone Act 1984.

⁴⁸⁹ Fisheries Act 1985, Section 2 (Interpretation of Malaysian Fisheries Water).

⁴⁹⁰ Fisheries Act 1985, Section 2; Federal Constitution Malaysia, Ninth Schedule List I, Section 9.

⁴⁹¹ Exclusive Economic Zone Act 1984 Part III, Section 8.

⁴⁹² This jurisdictional overlap allows the State to govern land issues, see Territorial Sea Act 2012, Section 3. The State may also act to enforce Fisheries Act to protect interest in Fisheries Resources, Fisheries Act 1985.

⁴⁹³ National Land Code Ordinance, Section 5; Territorial Sea Act 2012, Section 3(3).

⁴⁹⁴ Fisheries Act 1985, Section 2; Federal Constitution Malaysia, Ninth Schedule List I, Section 9.

⁴⁹⁵ Exclusive Economic Zone Act 1984; Continental Shelf Act 1966, Section 2.

⁴⁹⁶ National Land Code Ordinance, Section 5; Exclusive Economic Zone Act 1984, Sections 3-4.

Sabah's Coastal Zone there are jurisdictional overlaps permitting State governance on some subject matters.⁴⁹⁷ Within the Coastal Zone, the Federal government may enforce the *Environmental Quality Act (1974)* and the *Fisheries Act (1985)*, to the extent allowable to regulate environmental and fisheries related matters.⁴⁹⁸

The following laws and institutions regulate offshore marine activity under federal jurisdiction:

1. *Continental Shelf Act (1966)*,
2. *Environmental Quality Act (1974)*,
3. *National Parks Act (1980)*,
4. *Exclusive Economic Zone Act (1984)*,
5. *Fisheries Act (1985)*,
6. *Customs Order(s) (1988)*, and
7. *Wildlife Conservation Act (2010)*.

1. CONTINENTAL SHELF ACT

Description

The *Continental Shelf Act (1966)* recognizes Federal jurisdiction to the seabed, allowing for the Federal Government's right to exploit natural resources on and beneath the seabed.⁴⁹⁹

Continental Shelf

The *Continental Shelf* is defined as the seabed and subsoil of submarine areas.⁵⁰⁰ The boundary of the Continental Shelf is measured by the area of the seabed adjacent to the coast of Malaysia and beyond the limits of the Territorial Waters of the States.⁵⁰¹ The surface of the Continental Shelf is defined as extending to a maximum of two hundred metres below the surface of the sea.⁵⁰²

Federal Jurisdiction

Under the *Territorial Sea Act (2012)*, any references to the Territorial Sea or Territorial Waters in relation to the Continental Shelf Act is limited to a boundary of 3 nautical miles from the low-water mark off the coast.⁵⁰³ Beyond this boundary, the Malaysia government has jurisdiction of the Continental Shelf.

Restricted Activities

⁴⁹⁷ This jurisdictional overlap allows the State to govern land issues, see *Territorial Sea Act 2012*, Section 3.

⁴⁹⁸ *Environmental Quality Act 1974* and the *Fisheries Act 1985*.

⁴⁹⁹ *Continental Shelf Act 1966*.

⁵⁰⁰ *Continental Shelf Act 1966*, Section 2.

⁵⁰¹ *Continental Shelf Act 1966*, Section 2; see also *Territorial Sea Act 2012*.

⁵⁰² *Continental Shelf Act 1966*, Section 2.

⁵⁰³ *Territorial Sea Act 2012*, Section 3(3).

The extraction of minerals and natural resource such as petroleum found beneath the Continental Shelf is strictly limited to the Malaysian Federal Government.⁵⁰⁴ Exceptions are made for activities that have been granted a license.⁵⁰⁵

2. ENVIRONMENTAL QUALITY ACT

Description

The *Environmental Quality Act (1974)* is a Federal law and was enacted to improve the Environment and to prevent, abate, and manage pollution threats in Malaysia.⁵⁰⁶

The Environment

Under the *Environmental Quality Act*, the *Environment* is defined by physical factors, biological factors and aesthetic factors.⁵⁰⁷ The physical factors are determined by the land, water, atmosphere, climate, sound, odor, and taste which surround human beings.⁵⁰⁸ The biological factors include animal and plant life, while the social element of the environment factors in aesthetics.⁵⁰⁹

Restrictions on Pollution

Atmosphere

The *Environmental Quality Act* regulates activity within different spheres of the Environment to limit the impact of pollution to Malaysia as a whole. Only individuals or entities carrying a license may be allowed to emit or discharge an environmentally hazardous substance, pollutant or waste into the atmosphere.⁵¹⁰ Examples of prohibited acts of discharging of waste into the atmosphere may include any of the following activities:

- Allowing for matter to be released into the atmosphere,
- Allowing for the discharge of odors that are obnoxious or offensive,
- Burning of wastes from trade, process or industry, or
- Operating a fuel burning equipment that does not contain a properly installed device or control equipment.⁵¹¹

The penalty for discharging a hazardous substance, pollutant or waste may carry a maximum fine up to 100,000 ringgit, a maximum imprisonment term up to five years

⁵⁰⁴ Continental Shelf Act, 1966, Sections 3-4.

⁵⁰⁵ Continental Shelf Act 1966, Sections 4-6.

⁵⁰⁶ Environmental Quality Act 1974, Section 1.

⁵⁰⁷ Environmental Quality Act 1974, Section 2.

⁵⁰⁸ Environmental Quality Act 1974, Section 2.

⁵⁰⁹ Environmental Quality Act 1974, Section 2.

⁵¹⁰ Environmental Quality Act 1974, Section 22.

⁵¹¹ Environmental Quality Act 1974, Section 21(2).

or both.⁵¹² A fine of 1,000 ringgit, per day, may be imposed for activities that continue despite receipt of notice for abatement.⁵¹³

Inland Waters

The *Environmental Quality Act* also places restrictions against acts of emitting, discharging or depositing environmentally hazardous substances, pollutants or wastes into Inland Waters.⁵¹⁴ *Inland Waters* are defined to include, any “reservoir, pond, lake, river, stream, canal, drain, spring or well”.⁵¹⁵ Any part of the sea above the low-water line along the coast falls within the definition of Inland Waters.⁵¹⁶

The following situations listed below may qualify as an act of pollution in Inland Waters:

- Placement of waste where it may directly or indirectly gain access to waters,
- Placement of waste in a position that allows for it to fall, descend, drain, evaporate, be washed, blown into any water bodies, or
- Causing the temperature of the receiving waters to be increased or decreased beyond allowable limits.⁵¹⁷

An individual may still be liable for these acts even when committed negligently.⁵¹⁸

Prohibition on Discharges of Oils and Wastes into Malaysian Waters

The *Environmental Quality Act* additionally regulates the discharge or spilling of any oil or mixture containing oil and wastes into Malaysian Waters.⁵¹⁹ The Act cites to a definition of Malaysian Waters as provided under the *Emergency (Essential Powers) Ordinance (1969, no longer in effect)*, which defines the boundaries of the Territorial Sea of Malaysia to generally extend 12 nautical miles from the low-water.⁵²⁰ The area beyond the Territorial Sea of Malaysia (which runs up to 200 nautical miles from the low-water mark) is considered Malaysia's Exclusive Economic Zone.⁵²¹

Notably, under the same law, Sabah was limited to exercise State jurisdiction on land matters within the Territorial Sea to a boundary of 3 nautical miles from the low-water line.⁵²² Although the *Emergency (Essential Powers) Ordinance* is no longer in effect, the *Territorial Sea Act (2012)* similarly designates the length of the Territorial Sea off the coast of Sabah to be 3 nautical miles from the low-water line.⁵²³ A

⁵¹² Environmental Quality Act 1974. Section 22(3).

⁵¹³ Environmental Quality Act 1974. Section 22(3).

⁵¹⁴ Environmental Quality Act 1974, Section 25(1)).

⁵¹⁵ Environmental Quality Act 1974, Section 2.

⁵¹⁶ Environmental Quality Act 1974, Section 2.

⁵¹⁷ Environmental Quality Act 1974, Section 25(2).

⁵¹⁸ Environmental Quality Act 1974, Section 25(2)(b).

⁵¹⁹ Environmental Quality Act 1974, Section 27 and Section 28.

⁵²⁰ Emergency (Essential Powers) Ordinance (1969).

⁵²¹ Exclusive Economic Zone Act, 1984.

⁵²² Emergency (Essential Powers) Ordinance (1969).

⁵²³ Territorial Sea Act 2012, Section 3.

description of the Territorial Sea and the Exclusive Economic Zone is provided in the sections above.

In certain situations, special defenses are permitted in the discharge or spilling of environmentally hazardous substances. As long as reasonable care is taken to prevent, reduce or mitigate spilling or discharge, an individual will be exempt from penalty or liability if the discharge is a result of any of the following activities:

- Ensuring the safety of the vessel,
- Saving human life,
- Damage to the vessel,
- Leakage not resulting from negligence, and
- Effluent produced by operation for the refining of oil.⁵²⁴

The fine for discharging of either oils or wastes into Malaysia's waters may carry a maximum penalty of up to 500,000 ringgit, an imprisonment term up to a maximum of five years or both.⁵²⁵

Environmental Audits and Reports

An environmental audit must be carried out to evaluate the potential environmental risk of development or activities.⁵²⁶ A qualified personnel is generally assigned to conduct an environmental audit to monitor compliance with environmental regulatory requirements and oversee environmental management systems.⁵²⁷ Owners or occupiers of a vehicle, ship or premise(s) may be required to conduct an environmental audit and submit the report to the Director General of Environmental Quality.⁵²⁸

In addition to requiring environmental audits, the *Environmental Quality Act* may identify selected activities that may pose a significant impact on the environment as *Prescribed Activity*. A Prescribed Activity is any development activity categorized as likely to be harmful to the environment by notification in the *Gazette*.⁵²⁹ Any activity that is categorized as a Prescribed Activity will be restricted.⁵³⁰ Prior to carrying out a Prescribed Activity, an individual or owner is required to submit an environmental report for approval by the Director General.⁵³¹ The report must provide an assessment of the extent of the environmental impact of the Prescribed Activity and discuss proposed measures to prevent or mitigate the potential damage to the environment.⁵³² The Director General is within his discretion to determine whether the proposed measures would satisfactorily prevent or limit the damage to the

⁵²⁴ Environmental Quality Act 1974, Section 29C.

⁵²⁵ Environmental Quality Act 1974, Section 26 and 29.

⁵²⁶ Environmental Quality Act 1974, Section 33A.

⁵²⁷ Environmental Quality Act 1974, Section 2.

⁵²⁸ Environmental Quality Act 1974, Section 34A.

⁵²⁹ Environmental Quality Act 1974, Section 12(1).

⁵³⁰ Environmental Quality Act 1974, Section 12(3).

⁵³¹ Environmental Quality Act 1974, Section 34A.

⁵³² Environmental Quality Act 1974, 34A(2).

environment.⁵³³ Approval of the report is necessary for an individual or owner to continue carrying out the Prescribed Activity.⁵³⁴

Regulatory Power

The Minister of Science Technology and the Environment⁵³⁵ (“the Minister”) is authorized to issue different regulations on activities or practices that may adversely affect the environment. The Minister is allowed to prohibit certain materials for use in process, trade or industry.⁵³⁶ The Minister may also have the authority to control the use of environmentally hazard substances.⁵³⁷

The Minister may further issue prohibition orders to owners or occupier of an industrial plant or process to prevent operations that continually release environmentally hazardous substances, pollutants or wastes into the environment.⁵³⁸ If the environment, public health or safety may be significantly at risk, the Minister is permitted to issue a cease order to activities and require for the machinery, equipment or processes to end its operation.⁵³⁹

An individual guilty of an offence under these provisions described above will be subject to a maximum fine of 50,000 ringgit, an imprisonment term up to a maximum of two years or both.⁵⁴⁰

Owner or Occupier Liability

An owner or occupier of any vehicle, ship or premises must properly and efficiently maintain operating equipment to reduce or prevent adverse impact to the environment.⁵⁴¹

Control of Scheduled Wastes

Individuals are banned from placing, depositing, disposing or causing the disposal of any scheduled wastes on land or into Malaysian Waters.⁵⁴² Waste is defined as a matter that may take on different forms.⁵⁴³ Wastes may be any forms of solid, semi-solid or liquid, gas or vapor that is emitted, discharged or deposited in the environment and causes pollution.⁵⁴⁴

⁵³³ Environmental Quality Act 1974, 34A(3).

⁵³⁴ Environmental Quality Act 1974, 34A(4).

⁵³⁵ This Federal Act refers to the Minister “charged with the responsibility for environmental protection”, see Environmental Quality Act 1974, Section 2.

⁵³⁶ Environmental Quality Act 1974, Section 30.

⁵³⁷ Environmental Quality Act 1974, Section 30.

⁵³⁸ Environmental Quality Act 1974, Section 31(A)(1).

⁵³⁹ Environmental Quality Act 1974, Section 31A(2).

⁵⁴⁰ Environmental Quality Act 1974, Section 31A(3).

⁵⁴¹ Environmental Quality Act 1974, Section 32.

⁵⁴² Environmental Quality Act 1974, Section 34(B)(1).

⁵⁴³ Environmental Quality Act 1974, Section 2.

⁵⁴⁴ Environmental Quality Act 1974, Section 2.

Any violations relating to the provision on scheduled wastes will result in a maximum fine of 500,000 ringgit, an imprisonment term up to a maximum of five years or both.⁵⁴⁵

Institution and Implementation

Director General of Environmental Quality

The Director General's role is to administer any regulations provided for under the Act.⁵⁴⁶ Some of the other functions of the Director General listed below reflect the Government's responsibility to achieve the broader goals for environment protection, pollution control and waste management.⁵⁴⁷ The Director General is responsible to carry out the following duties:

- Recommend environmental protection policy and classifications for the environment among different sectors,
- Manage issuance of licenses that control volumes, types and effects of waste, discharges, emissions or deposits,
- Maintain liaisons and cooperative relations with each of the State Authorities in Malaysia, and
- Promote and co-ordinate initiatives for environmental management, waste management and pollution control.⁵⁴⁸

Environmental Quality Council

The Environmental Quality Council was established to serve as an advisor to the Minister on relevant matters pertaining to the Environmental Quality Act.⁵⁴⁹ The Council consists of Ministers from the various Federal agencies, including the Ministry of Science Technology and the Environment.⁵⁵⁰ In addition to members represented at the federal level, one representative from each of the States of Sabah and Sarawak serves as a member of the Council.⁵⁵¹ Members from the petroleum, oil palm, and rubber industries also represent the Council.⁵⁵²

Department of Environment Malaysia

The Department of Environment, Malaysia is responsible for enforcing the Environmental Quality Act and promoting conservation initiatives.⁵⁵³ The core initiatives of the Department are centered on the abatement and prevention of pollution threats in Malaysia.⁵⁵⁴ The Department of Environment operates under the umbrella of the Ministry of Natural Resources and Environment and works in

⁵⁴⁵ Environmental Quality Act 1974, Section 34(B)(4).

⁵⁴⁶ Environmental Quality Act 1974, Section 3(1)(a).

⁵⁴⁷ Environmental Quality Act 1974, Section 3(1)(a)-(o).

⁵⁴⁸ Environmental Quality Act 1974, Section 3(1)(a)-(o), See specifically subsections (b)-(d) and (m) .

⁵⁴⁹ Environmental Quality Act 1974, Section 4(1) and 4(2).

⁵⁵⁰ Environmental Quality Act 1974, Section 4(2)(b).

⁵⁵¹ Environmental Quality Act 1974, Section 4(f).

⁵⁵² Environmental Quality Act 1974, Section 4(g),(gg),(hh).

⁵⁵³ Department of Environment Malaysia, Official Website, <http://www.doe.gov.my>

⁵⁵⁴ Department of Environment Malaysia, Official Website, <http://www.doe.gov.my>

collaboration with other State departments.⁵⁵⁵ The Department is also responsible for dealing with matters related water resources and coastal management.⁵⁵⁶

Case Study: *Ketua Pengarah Jabatan Alam Sekitar & Anor Kajing Tubek & Ors and other appeals* (3 MLJ 23, 1997)⁵⁵⁷

Facts: In a suit representing 100,000 natives in the State of Sarawak, three individuals opposed the development of the Bakun Hydroelectric Project on land occupied and claimed under Native Customary Rights. At issue was whether the State Government of Sarawak was subject to the provisions of the Environmental Quality Act's regulation on protection of the Environment. The Environmental Quality Act requires the submittal and approval of Environmental Impact Assessment reports prior to carrying out any development or construction projects that are recognized to pose a significant harm to the Environment.

The individuals claimed that they were never given an opportunity to include their input of the potential impact to the construction of the hydroelectric project in an Environmental Impact Assessment report. The Sarawak Government made a counterargument introducing the Sarawak State legislation, the *Natural Resources Ordinance 1959* as the applicable law, not the *Environmental Quality Act*. The Sarawak Government relied on Article 74 of the Federal Constitution read alongside the Ninth Schedule of the Constitution, which listed land matters as within the State legislative authority (see Annex on the Ninth Schedule).

Outcome: The outcome of the case determined whether regulations on the Environment, under the Environmental Quality Act, subjected the State to compliance to Federal laws. The case went through an appeals process with a finding in favor for the Sarawak Government. The decision of the Appeals court relied on an assessment of where the construction activity was carried out. In context to the construction project, the Environment was determined as a matter within State jurisdiction because the activities were carried out on land and river areas found within State boundaries. The final decision further included an opinion stating that it was unlikely the intention of the Federal Government to pass the Environmental Quality Act to regulate the entire environment of Malaysia.

3. NATIONAL PARKS ACT

Description

The *National Parks Act (1980)* is a Federal law that provides for the establishment of National Parks and Reserves in Malaysia.

Exclusion of Sabah

The *National Parks Act* explicitly does not apply to the States of Sabah and Sarawak.⁵⁵⁸ All Parks and National Parks, in Sabah are reserved for management

⁵⁵⁵ The Department of Environment, Malaysia works with Sabah's Environment Protection Department.

⁵⁵⁶ Department of Environment Malaysia, Official Website, <http://www.doe.gov.my>

⁵⁵⁷ *Ketua Pengarah Jabatan Alam Sekitar & Anor Kajing Tubek & Ors and other appeals*, 3 MLJ 23, 1997; This case summary was also discussed in James Lam Chee Seng, Environmental Law in Malaysia (Borneo Ed.) 2007.

under the Sabah Parks Department. Due to this designation, marine protected areas in Sabah have been enacted under the two Sabahan Laws, the *Parks Enactment (1984)* or *Wildlife Conservation Enactment (1997)*, which are discussed in detail above.

4. EXCLUSIVE ECONOMIC ZONE ACT

Description

The *Exclusive Economic Zone Act (1984)* is a Federal legislation and was passed to regulate activities in the EEZ and the Continental Shelf of Malaysia.

Exclusive Economic Zone

Boundaries

The (federal) *Exclusive Economic Zone Act* defines the Malaysia's Exclusive Economic Zone (EEZ) as an area adjacent to and beyond the Territorial Sea of Malaysia. The EEZ runs a length of 3 to 200 nautical miles.⁵⁵⁹ However, the length of the 200 nautical miles of Malaysia's EEZ is measured according to a baseline measurement. The baseline measurement for Malaysia's EEZ begins from the low-water line marking the Territorial Water of the State and extends up to 200 nautical miles.⁵⁶⁰ The low-water line is defined as the point where the low-water intersects with the shore, and may include "the line along a coast or beach to which the sea recedes at low water."⁵⁶¹

Baseline Measurement

The boundary of Malaysia's Exclusive Economic Zone is dependent on the baselines measurement of the Territorial Sea, as provided under the (Federal) Baseline of Maritime Zones Act (2006).⁵⁶² The Baseline of Maritime Zones Act defines the ways to measure the Maritime Zones of Malaysia, a zone that includes the Territorial Sea, the Continental Shelf and Malaysia's EEZ. A description on the Territorial Sea Act (2012) and the Baseline of Maritime Zones Act is available in the above section.⁵⁶³

Sovereign Rights

Within the EEZ, the Malaysian Federal Government possesses the authority to exercise its sovereign rights. This right extends to activities such as the conservation and management of living and non-living natural resources.⁵⁶⁴ The Malaysian Federal Government may also economically exploit and designate the use of the EEZ for the

⁵⁵⁸ National Parks Act, 1980.

⁵⁵⁹ Exclusive Economic Zone Act 1984, Section 3; See also the Territorial Sea Act 2014, Section 3, which defines the Territorial Waters to run up to 3 nautical miles off the coast of Sabah. The EEZ begins where the Territorial Water ends.

⁵⁶⁰ Exclusive Economic Zone Act 1984.

⁵⁶¹ Exclusive Economic Zone Act 1984, Section 2.

⁵⁶² Baseline of Maritime Zones Act 2006, Act 660, Section 2.

⁵⁶³ Baseline of Maritime Zones Act 2006, Section 2 and Section 6.

⁵⁶⁴ Exclusive Economic Zone Act 1984, Section 4.

production of energy from water, currents and winds.⁵⁶⁵ The construction and installation of structures to perform marine scientific research or other preservation initiatives relating to the marine environment is also permitted in the EEZ.⁵⁶⁶

Banned Activities

With the exception to prior authorization provided for in the Act or written law, the Government may ban the following activities within the EEZ or on the Continental Shelf:

- Exploration or exploitation of any living or non-living natural resources,
- Search, excavation or drilling operation,
- Performing Marine scientific research, or
- Establishing or construction of any obstructive artificial island, installation or structure.⁵⁶⁷

Fisheries

Malaysia's Economic Exclusive Zone is determined as part of Malaysian Fisheries Waters.⁵⁶⁸ Malaysian Fisheries Waters is comprised of the Internal Waters, the Territorial Sea and the Exclusive Economic Zone of Malaysia, an area where the Malaysian Federal Government may exercise "sovereign and exclusive rights over fisheries."⁵⁶⁹ Any Federal laws relating to Malaysia's Fisheries Waters includes Malaysia's EEZ and the Continental Shelf.⁵⁷⁰

The EEZ Act further identifies that the Minister of Agriculture & Agro-Based Industry as the Ministry responsible for the management of fisheries in Malaysia's EEZ.⁵⁷¹

Protection and Preservation of the Marine Environment

In addition to the exercising the sovereign right to exploit natural resources in Malaysia, the Malaysian Federal Government is required to still adhere to environmental policies and to protect marine environments.⁵⁷²

Regulation On Discharging And Dumping Of Substances

An individual may be charged with an offense and fined for committing acts of dumping or discharging oils, mixture containing oil, or pollutants from sea vessels

⁵⁶⁵ Exclusive Economic Zone Act 1984, Section 4 (a).

⁵⁶⁶ Exclusive Economic Zone Act 1984, Section 4 (b).

⁵⁶⁷ Exclusive Economic Zone Act 1984, Section 5(a)-(d).

⁵⁶⁸ Exclusive Economic Zone Act 1984, Part III, Section 6.

⁵⁶⁹ Exclusive Economic Zone Act 1984, Section 2.

⁵⁷⁰ Exclusive Economic Zone Act 1984 Part III, Section 8.

⁵⁷¹ Exclusive Economic Zone Act 1984, Section 7.

⁵⁷² Exclusive Economic Zone Act 1984, Part IV, Section 9

into the atmosphere or water, whether or not done intentionally.⁵⁷³ Regulation is also imposed on the discharge of oils or pollutants from land and aircraft vessels.⁵⁷⁴

A substance qualifies as a Pollutant if it creates a hazard to either human life or harms living resources in the sea or other marine life.⁵⁷⁵ Pollutant oils may include crude oil, diesel oil, fuel oil or lubricating Mixtures containing oil are considered as such if it contains an oil content of at least “one hundred parts or more in one million parts”.⁵⁷⁶

In addition to holding an individual directly liable for discharging chemicals from a vessel, an owner or individual in charge of operating a vessel may also be held liable for the offense.⁵⁷⁷ Exceptions are allowed in defense to these violations when an individual is forced to act out of necessity or emergency.⁵⁷⁸ The Director General of Environmental Quality (see Environmental Quality Act, above) may also permit the dumping of wastes through the issuance of a license.⁵⁷⁹

Reporting of Discharge

All discharges or escaping of oil substances or pollutants must be reported to the Director General. The failure to report a discharge may result in a fine up to a maximum of 10,000 ringgit.⁵⁸⁰

Mitigation Efforts Required

If the discharge of oil or pollutant substances poses a threat to Malaysia’s coastline, the marine environment or fishing activities conducted within the EEZ, the Director General is authorized to act to mitigate the damage.⁵⁸¹ The Director General has the authority to issue orders to assist in mitigation efforts.⁵⁸² The failure to abide by the Director General’s order may result in a fine up to a maximum of 10,000 ringgit.⁵⁸³ The costs to remove or mitigate damage to the marine environment shall be the responsibility of the individual or entity responsible for discharging the harmful substances.⁵⁸⁴

Detainment Of Vessel

The Director General may also exercise his authority to detain any vessel that discharges oil, mixture containing oil or pollutant.⁵⁸⁵ Further restrictions are placed

⁵⁷³ Exclusive Economic Zone Act 1984, Section 10.

⁵⁷⁴ Exclusive Economic Zone Act 1984, Section 10.

⁵⁷⁵ Exclusive Economic Zone Act 1984, Section 2.

⁵⁷⁶ Exclusive Economic Zone Act 1984, Section 2.

⁵⁷⁷ Exclusive Economic Zone Act 1984, Section 2.

⁵⁷⁸ Exclusive Economic Zone Act 1984, Section 11.

⁵⁷⁹ Exclusive Economic Zone Act 1984, Section 11.

⁵⁸⁰ Exclusive Economic Zone Act 1984, Section 12.

⁵⁸¹ Exclusive Economic Zone Act 1984, Section 14.

⁵⁸² Exclusive Economic Zone Act 1984, Section 14(1).

⁵⁸³ Exclusive Economic Zone Act 1984, section 14(2).

⁵⁸⁴ Exclusive Economic Zone Act 1984, Section 14(4).

⁵⁸⁵ Exclusive Economic Zone Act 1984, Section 15.

on vessels that have been detained and continue to travel out to sea without following proper release authorization.⁵⁸⁶

Additional Regulations

The EEZ Act also restricts marine scientific research and the establishment of artificial islands, installations and structures erected in the EEZ.⁵⁸⁷ However, the Federal Government may discretionally permit the carrying out of these activities.⁵⁸⁸

State or international organizations conducting research for scientific knowledge of the marine environment are generally granted consent in the EEZ.⁵⁸⁹ However, scientific research that poses a threat to the environment by introducing pollutants or other harmful substances is likely to be restricted.⁵⁹⁰ The Federal Government may also place conditions on research, such as monitoring research activities and requiring researchers to share collected data.⁵⁹¹

Enforcement

Rights of an Authorized Officer

An authorized officer may also take investigatory and enforcement measures when there is reasonable belief that an offense has been committed.⁵⁹² An officer is allowed to stop, board and search vessels within the EEZ.⁵⁹³ The officer is also authorized to arrest an individual or detain any article that was used in committing the offense.⁵⁹⁴

In accordance with international law, the EEZ Act also upholds the right to perform hot pursuit of foreign vehicles to bring a vessel into Malaysia's EEZ.⁵⁹⁵ Hot pursuit ends when the vessel being pursued enters either the Territorial Sea or EEZ of its own State or any other foreign State.

Power to Make Regulations

The Yang di-Pertuan Agong is authorized to create regulations for carrying out the provisions of the EEZ Act.⁵⁹⁶ The regulations may address any of the following issues in the EEZ and on the Continental Shelf:

- Restrictions on the type of marine scientific research conducted,

⁵⁸⁶ Exclusive Economic Zone Act 1984, Section 15.

⁵⁸⁷ Exclusive Economic Zone Act 1984, Sections 16 and 21.

⁵⁸⁸ Exclusive Economic Zone Act 1984, Section 16.

⁵⁸⁹ Exclusive Economic Zone Act 1984, Section 16.

⁵⁹⁰ Exclusive Economic Zone Act 1984, Section 17.

⁵⁹¹ Exclusive Economic Zone Act 1984, Sections 18 and 19.

⁵⁹² Exclusive Economic Zone Act 1984, Part VII.

⁵⁹³ Exclusive Economic Zone Act 1984, Section 24.

⁵⁹⁴ Exclusive Economic Zone Act 1984, Section 24(1)(e).

⁵⁹⁵ Exclusive Economic Zone Act 1984, Section 25.

⁵⁹⁶ Exclusive Economic Zone Act 1984, Section 41.

- Proposals for protection and preservation of the marine environment, including restrictions on foreign vessels that enter the internal waters of Malaysia,
- Construction, operation and use of artificial islands and other installations and structures,
- Exploration and exploitation of the exclusive economic zone for energy or economic purposes, or
- Any other necessary matters to give full effect to Malaysia's rights within the EEZ.⁵⁹⁷

The Yang di Pertuan Agong may also issue and modify written law regulating the EEZ and Continental Shelf.⁵⁹⁸ The final approval for new regulations or amendment must be approved at the House of Representatives level.⁵⁹⁹

Institution and Implementation

Malaysian Maritime Enforcement Agency (MMEA)

The *Exclusive Economic Zone Act* did not formally adopt an enforcement agency to handle matters in the EEZ and on the Continental Shelf. However, the Malaysian Maritime Enforcement Agency (MMEA), formed under the Malaysian Maritime Enforcement Agency Act (2004) operates within the EEZ.⁶⁰⁰ The primary role of the MMEA is to ensure the safety and security of the Malaysian Maritime Zone, which includes Internal Waters, the Territorial Sea, the Continental Shelf, the Exclusive Economic Zone and Malaysia's Fisheries Water".⁶⁰¹ Enforcement activity is primarily conducted in areas of peace and security along with the prevention and detection of criminal activity.

Acts that may implicate the peace and security of Malaysia includes the use or practice of handling weapons, pollution activity and fishing activities.⁶⁰² The MMEA has the authority to enforce law and order under Federal law and perform air and coastal surveillance.⁶⁰³ The MMEA is also responsible for managing and preventing maritime pollution in the High Seas, which is commonly known as the zone beyond the EEZ.⁶⁰⁴

Department of Fisheries Malaysia

The Department of Fisheries Malaysia operates under the Ministry of Agriculture & Agro-Based Industry Malaysia. Malaysia's Department of Fisheries is responsible for a handling range of fisheries management initiatives within Malaysia's EEZ.⁶⁰⁵ For

⁵⁹⁷ Exclusive Economic Zone Act 1984, Section 41(2).

⁵⁹⁸ Exclusive Economic Zone Act 1984, Section 42.

⁵⁹⁹ Exclusive Economic Zone Act 1984, Section 42(4).

⁶⁰⁰ Malaysian Maritime Enforcement Agency Act, 2004.

⁶⁰¹ Exclusive Economic Zone Act 1984, Section 2 (Interpretation of Malaysian Maritime Zone)

⁶⁰² Malaysian Maritime Enforcement Agency Act 2004, Section 7.

⁶⁰³ Malaysian Maritime Enforcement Agency Official Website, <http://www.mmea.gov.my>

⁶⁰⁴ Malaysian Maritime Enforcement Agency Official Website, <http://www.mmea.gov.my>

⁶⁰⁵ Malaysia Department of Fisheries Official Website, <http://www.dof.gov.my>

additional information on the functions and duties of Malaysia's Department of Fisheries see the description on the *Fisheries Act*, below.

Eastern Sabah Security Command

The Eastern Sabah Security Command (ESCCOM) is the agency primarily responsible for handling security related measures in Sabah.⁶⁰⁶ ESCCOM is currently authorized to exercise jurisdiction in the Eastern Sabah Security Zone, running along the eastern coastal districts of Sabah, which includes investigation of destructive fishing activities and poaching activities.⁶⁰⁷

5. FISHERIES ACT

Description

The *Fisheries Act (1985)* regulates Malaysia's Fisheries Waters through the conservation and management of maritime fishing and fisheries. The Act extends to regulation of maritime and estuarine fisheries according to State laws.⁶⁰⁸

The Federal Government is allowed to regulate on matters relating to maritime and estuarine fishing and fisheries, with an exclusion to turtles as provided under the Federal Constitution.⁶⁰⁹

Maritime Waters and Malaysia's Fisheries Waters

The *Fisheries Act* regulates Malaysia's Fisheries Waters.⁶¹⁰ The term *Maritime Waters* is defined to regulate areas of the sea adjacent to Malaysia.⁶¹¹ Maritime Waters may include water bodies within and outside of Malaysian fisheries waters, such as estuarine waters, marine culture system or fisheries.⁶¹² Estuarine Waters are defined by the boundaries where the mouth of the river up to the point upstream intersects with the seawater at neap tides.⁶¹³

Further, Malaysian Fisheries Water, as defined under this *Act*, refers to the Maritime Waters exclusively under Federal jurisdiction.⁶¹⁴ As a result, Malaysia's Federal Government is designated with exclusive fishing or fisheries rights within three areas:

- Malaysia's Internal Waters,
- Territorial Sea of Malaysia, and

⁶⁰⁶ Eastern Sabah Security Command Times Website, <http://esscom.gov.my>

⁶⁰⁷ Newspaper Reports on ESCCOM, <http://www.dailyexpress.com.my/news.cfm?NewsID=88912>; <http://www.newsabahtimes.com.my/nstweb/print/76455>

⁶⁰⁸ Fisheries Act 1985, Section 1.

⁶⁰⁹ See Annex I, describing the Ninth Schedule of the Federal Constitution.

⁶¹⁰ Fisheries Act 1985.

⁶¹¹ Fisheries Act 1985, Section 2.

⁶¹² Fisheries Act 1985, Section 2.

⁶¹³ Fisheries Act 1985, Section 2 (Interpretation of Estuarine Waters).

⁶¹⁴ Fisheries Act 1985, Section 2 (Interpretation of Malaysian Fisheries Waters).

- Malaysia's Exclusive Economic Zone.⁶¹⁵

The three boundaries listed above make up the Malaysian Fisheries Water. Malaysia's Internal Waters is defined as an area of the sea located from the landward side where the baselines of the breadth of the Territorial Sea of Malaysia are measured.⁶¹⁶ Off the coast of Sabah, the Territorial Sea is measured 3 nautical miles from the low-water line.⁶¹⁷ The Malaysian Fisheries Waters extends to the Malaysia's Exclusive Economic Zone, a boundary lengthening from 3 to 200 nautical miles from the coast.⁶¹⁸

State Regulation of Inland Fisheries and Turtles

The Fisheries Act allows for the State Authority⁶¹⁹ and Minister to provide measures of conservation, development, management and regulation relating to Inland Fisheries, turtles and turtle eggs.⁶²⁰ State regulation of Inland Fisheries is restricted to riverine waters, which are found on State land.⁶²¹

The State and Minister of the Agriculture and Agro-Based Industry⁶²² possesses the authority to pass regulations on turtles and Inland Fisheries.⁶²³ The Sabah State legislature enacted two separate regulations on turtles and Inland Fisheries. Regulation for Inland Fisheries is provided under the *Sabah Inland Fisheries and Aquaculture Enactment (2003)*, while the protection of turtle and turtle eggs are provided for under the *Wildlife Conservation Enactment (1997)*.⁶²⁴ The Fisheries Act also references to the State government's authority to adopt riverine fishing related laws to protect specific fish species or designate areas of protection.⁶²⁵ Despite the State's right to regulate fishing practices in riverine waters, Sabah has not implemented any regulation for protecting specific riverine fishes or fisheries.⁶²⁶

Maritime Fisheries

The term *Fishery* under the Fisheries Act is defined for the conservation and management of the supplies of any one or more stocks of fish that are classified as a unit.⁶²⁷ The management of fisheries and fishing practices is recognized as necessary

⁶¹⁵ Fisheries Act 1985, Section 2 (Interpretation of Malaysian Fisheries Waters).

⁶¹⁶ Fisheries Act 1985, Section 2 (Internal Waters of Malaysia).

⁶¹⁷ Territorial Sea Act 2012, Section 3(3).

⁶¹⁸ Exclusive Economic Zone Act 1984 Section 3; See also, Territorial Sea Act 2012.

⁶¹⁹ *State Authority* is defined as the authority assigned in a State to handle Inland Fisheries in a State. In Sabah, this would be the Minister of Agriculture and Food Supply; Fisheries Act 1985, Section 2.

⁶²⁰ Fisheries Act 1985, Section 38(1)-(2).

⁶²¹ Fisheries Act 1985, Section 2 (Interpretation of Inland Fisheries).

⁶²² The "Minister of the Federal Government who is in charge of regulating fisheries" may only enact laws to the Federal Territories of Kuala Lumpur and Labuan, see Fisheries Act 1985, Section 2.

⁶²³ Fisheries Act 1985, Section 2.

⁶²⁴ Inland Fisheries and Aquaculture Enactment 2003; Wildlife Conservation Enactment 1997.

⁶²⁵ This Act refers to sections 74 and 76 of the Malaysian Constitution, Fisheries Act 1985, Sections 1 and 38(1).

⁶²⁶ A point noted by A. Ali, R. Ali, M. Nasir I. Salleh in *Marine Fishery Resources Development and Management Department, Southeast Asian Fisheries Development Center, Section 6.1*, see: <http://www.fao.org/docrep/003/x2097e/X2097E18.htm>, Section 6.1.

⁶²⁷ Fisheries Act 1985, Section 2.

to achieve commercial objectives, to promote sustainability of food sources and to protect fish species.

One of the targeted methods to monitor fisheries is centered on prioritizing regulations that will prevent overfishing through fisheries plans.⁶²⁸ The Act further emphasizes the development of fishery-related plans to monitor species and fishing practices, which should be based on the assessment of scientific information.⁶²⁹ Proposed fisheries plan must be issued in adherence to national policies, development plans and programmes.⁶³⁰

Aquaculture and Inland Fisheries

Aquaculture is the process of raising a fish, either during the whole or part of its life cycle in an enclosed area.⁶³¹ Similar to farming practices, a culture system is used in aquaculture, which emphasizes methods for the growth and development of fishes.⁶³² Aquaculture is commonly implemented to rear animals to generate food supplies.⁶³³

For the aquaculture development, the Director General of Fisheries may collaborate with the State Authority to address matters relating to Inland Fisheries, specifically for the development of aquaculture.⁶³⁴

Live Fish Regulation

The provision regulating live fish applies to instances when fish is imported or exported out of Malaysia, or when fish are imported or imported from Sabah and Sarawak to West Malaysia.⁶³⁵

The practice of transporting live fish requires permission from the Director General.⁶³⁶ The Director General of Fisheries may also establish standards and regulations as deemed necessary to maintain the cleanliness of the fish exported, imported or transported for consumption.⁶³⁷ The provision for the control of live fish is also intended to protect against communicable fish disease and the release of non-indigenous fishes into the natural environment.⁶³⁸

Aquatic Species

Fish

⁶²⁸ Fisheries Act 1985, Section 6(1).

⁶²⁹ Fisheries Act 1985, Section 6(1).

⁶³⁰ Fisheries Act 1985, Section 6(1).

⁶³¹ Fisheries Act 1985, Section 2.

⁶³² Fisheries Act 1985, Section 2.

⁶³³ Fisheries Act 1985, Section 39.

⁶³⁴ Fisheries Act 1985, Section 39.

⁶³⁵ Fisheries Act 1985, Section 40(1)(a)-(f).

⁶³⁶ Fisheries Act 1985, Section 40(2).

⁶³⁷ Fisheries Act 1985, Section 40(2).

⁶³⁸ Fisheries Act 1985, Section 40(2).

Any aquatic animal or plant life may be identified as a fish species.⁶³⁹ Species of “finfish, crustacea, mollusca, aquatic mammals, or their eggs or spawn, fry, fingerling, spat or young” are included within this definition.⁶⁴⁰ However, species of otters, turtles or their eggs are not considered fish.⁶⁴¹

Federal Protection of Aquatic Mammals and Turtles

The Act further extends Malaysia Federal Government protection to aquatic mammals or turtles found beyond State jurisdiction.⁶⁴² An individual is prohibited from disturbing, harassing, catching or removing any mammals or turtles found in areas under Malaysia Federal Government jurisdiction, which includes areas of the Malaysian Fisheries Waters.⁶⁴³ Within the jurisdiction of States, aquatic mammals and turtles are protected according to the State’s laws.⁶⁴⁴ As previously mentioned, the laws protecting turtles and aquatic mammals found in Sabah are protected under the Wildlife Conservation Enactment and Sabah’s Inland Fisheries and Aquaculture Enactment.⁶⁴⁵

If a living aquatic mammal or turtle is mistakenly or unavoidably caught, the animal must be immediately released.⁶⁴⁶ A fine of up to 5,000 ringgit will be issued for the capturing or collection of any aquatic mammal or turtle found in Federal jurisdiction.⁶⁴⁷

Protection of Fish Species

The Minister has the power to designate control and management of endangered fish species.⁶⁴⁸ The Minister may issue guidelines for licensing and management of specific fishery.⁶⁴⁹ Regulations prohibiting the hunting of certain fishes and fishing areas may also be permitted, examples are provided below.⁶⁵⁰ The *Fisheries Act* does not provide a list of specific fish species afforded special protection.⁶⁵¹

Licensing and Permits

All fishing and fisheries activities occurring within Malaysian fisheries waters require the issuance of a license or permit. Licensing is required for the use of a local fishing vessel, fishing stakes, fishing appliance, fish-aggregation device or marine culture system.

⁶³⁹ Fisheries Act 1985, Section 2.

⁶⁴⁰ Fisheries Act 1985, Section 2.

⁶⁴¹ Fisheries Act 1985, Section 2.

⁶⁴² Fisheries Act 1985, Section 27(1).

⁶⁴³ This includes species found in Maritime Waters which is under the jurisdiction of Malaysia’s Federal Government, Fisheries Act 1985, Section 27 (1).

⁶⁴⁴ Fisheries Act 1985, Section 27(2).

⁶⁴⁵ See Inland Fisheries and Aquaculture Enactment 200_ and Wildlife Conservation Enactment 1997.

⁶⁴⁶ Fisheries Act 1985, Section 27(3).

⁶⁴⁷ Fisheries Act 1985, Section 27(4).

⁶⁴⁸ Fisheries Act 1985, Section 61(af).

⁶⁴⁹ Fisheries Act 1985, Section 61(e).

⁶⁵⁰ Fisheries Act 1985, Section 61(i).

⁶⁵¹ Fisheries Act 1985, Section 61.

Prohibitions against Certain Fishing Tools

The practices of fishing with explosives, poison, pollutants and other types of gear to kill, shock, disable or catch fish is generally prohibited.⁶⁵² Any person found in possession of these types of gear, whether or not they actually use the gear are presumed to have the intention to commit prohibited fishing practices.⁶⁵³

Establishment of Marine Parks or Marine Reserves

The *Fisheries Act* allows for the development of Marine Parks⁶⁵⁴ or Marine Reserves⁶⁵⁵ under the management of the Federal government in any areas of Malaysian Fisheries Waters.⁶⁵⁶ Marine Parks may be established in offshore coastal areas with the exception to Sabah.⁶⁵⁷ Only Marine Parks have been implemented in Peninsular Malaysia since this provision.⁶⁵⁸ Marine protection and conservation areas in Sabah have been generally been established under the Wildlife Conservation Enactment and the Sabah Parks Enactment (discussed above).

Institutions and Implementation

Powers of the Minister

The (Federal) Minister of Agriculture and Agro-Based Industry is given the power under the *Fisheries Act* to create regulations relating to measures of “conservation, development, and management of maritime and estuarine fishing and fisheries in Malaysia’s Fisheries Waters.”⁶⁵⁹ For a sample of regulations relating to Fisheries passed under the Minister, see below. The Minister may take the following actions to regulate on matters to protect and manage fish species:

- Provide for licensing, regulation and management of a designated fishery,
- Establish a closed season for a specific fishery area, specific species of fish or specific methods of fishing,
- Prescribe limitations on the quantity, size and weigh of fish captured and traded,
- Specify prohibited fishing areas for all fish, certain species of fish or methods of fishing,
- Prohibit or control the import and export of live fish, including freshwater

⁶⁵² *Fisheries Act 1985*, Section 26(1).

⁶⁵³ *Fisheries Act 1985*, Section 26(2).

⁶⁵⁴ A Marine Park is defined as an area of the sea zoned for protection 2 nautical miles from the lowest sea level, see the Department of Marine Park Website, <http://www.dmpm.nre.gov.my/what-is-marine-park.html?uweb=jtlzoned> area for a distance

⁶⁵⁵ A definition of Marine Reserves is not provided under the *Fisheries Act*. Information on the regulation of Marine Parks and Marine Reserves should be referred to under The Fisheries (Establishment of Marine Parks Malaysia) Order 1994.

⁶⁵⁶ Exceptions apply to Sabah in the language introducing the *Fisheries Act*, “Except for Part IX in its application to the State of Sabah”, see the provision on Marine Parks and Marine Reserves, *Fisheries Act, 1985*, Part IX, Section 41.

⁶⁵⁷ *Fisheries Act, 1985*, Part IX, Section 41.

⁶⁵⁸ The Fisheries (Establishment of Marine Parks Malaysia) Order 1994.

⁶⁵⁹ *Fisheries Act 1985*, Section 61.

- fish,
- Regulate aquaculture in maritime waters,
 - Organize and regulate fishing as a sport,
 - Prescribe penalties for offences,
 - Provide for conservation and management of turtles found beyond State jurisdiction,
 - Prescribe regulations for the control of endangered species of fish, and
 - Prescribe regulations for the control of movement of fish within Malaysia.⁶⁶⁰

Department of Fisheries Malaysia

The Department of Fisheries Malaysia (“Malaysia Fisheries”) is the primary institution responsible for implementing the provisions of the Fisheries Act. The Department handles matters ranging from the conservation of fisheries to management of food resources.⁶⁶¹ In addition to enforcing the Fisheries Act 1985, Malaysia Fisheries must ensure compliance with the Environmental Quality Act (1974) in protecting fisheries resources.⁶⁶²

Each of the departmental divisions of Malaysia Fisheries has been assigned with the primary function to protect fisheries resources. One division within Malaysia Fisheries, the Resource Protection Division was formed to ensure the sustainable management of offshore and inland fisheries resources.⁶⁶³ Another division of the department, the Resource Management Divisions is assigned to handle development plans for coastal fishery, deep-sea fishery and inland fishery resources.⁶⁶⁴

National Advisory Council for Marine Park and Marine Reserve

The *Fisheries Act* allows for the formation of the National Advisory Council for Marine Park and Marine Reserve (“the Council”) to act as an advisor to the Minister on matters relating to Marine Park or Marine Reserve areas.⁶⁶⁵ For example, the Council is responsible for implementation guidelines relating to marine conservation and protection.⁶⁶⁶

Department of Marine Park

Under the guidance of the Ministry of Natural Resources and Environment, the Marine Park Department⁶⁶⁷ is responsible for addressing matters relating to Marine Parks.⁶⁶⁸ The Department of Marine Parks oversees the protection of areas necessary to promote sustainability of fisheries resources.⁶⁶⁹ In particular, coral reef

⁶⁶⁰ Fisheries Act 1985, Section 61.

⁶⁶¹ Department of Fisheries Website, <http://www.dof.gov.my/en/divisions/-sections>.

⁶⁶² Department of Fisheries Website, <http://www.dof.gov.my/en/divisions/-sections>.

⁶⁶³ Department of Fisheries Website, <http://www.dof.gov.my/en/divisions/-sections>.

⁶⁶⁴ Department of Fisheries Website, <http://www.dof.gov.my/en/divisions/-sections>

⁶⁶⁵ Fisheries Act 1985, Section 41B.

⁶⁶⁶ Fisheries Act 1985, Section 41B(b).

⁶⁶⁷ Also referred to as the Marine Park Department.

⁶⁶⁸ Department of Marine Park, Official Website, http://www.dmpm.nre.gov.my/history_of_establishment.html?&lang=en

⁶⁶⁹ Department of Fisheries Website, <http://www.dof.gov.my/en/divisions/-sections>

regions are under the management of the Marine Park Department.⁶⁷⁰

Department of Fisheries Sabah

The Sabah Fisheries Department (“Sabah Fisheries”) currently works in collaboration with Malaysia Fisheries to manage fisheries resources and aquaculture. Sabah Fisheries operates under the (Sabah State) Ministry of Agriculture and Food Industry.

Although the Federal Fisheries related laws and regulation is under the jurisdiction of the Malaysia’s Federal Government, the State collaborates with the Federal Government in enforcing the (federal) Fisheries Act (discussed above). Sabah Fisheries collaborates with the Department of Fisheries Malaysia in programs for the development and management of Inland Fisheries and Aquaculture, as provided under the Sabah’s Inland Fisheries and Aquaculture Enactment (2003).⁶⁷¹ Sabah Fisheries also acts to protect fisheries resource inland and off Sabah’s coast to manage food resources and the fisheries industry.⁶⁷²

Malaysian Maritime Enforcement Agency

The Malaysian Maritime Enforcement Agency (discussed above) may also be authorized to regulate and enforce the (Federal) *Fisheries Act*.

Relevant Regulations Enacted Under the *Fisheries Act*⁶⁷³

Fisheries (Prohibition of Methods of Fishing) Regulation

The *Fisheries (Prohibition of Methods of Fishing) Regulation (1980)* provides restrictions on destructive methods of fishing to protect the coastal ecosystem.⁶⁷⁴ Specifically, the regulation prohibits pair trawling, cyanide fishing, electric fishing and use of explosives in Malaysian Fisheries Waters.⁶⁷⁵

Fisheries (Prohibited Areas) (Rantau Abang) Regulations

The *Fisheries (Prohibited Areas) (Rantau Abang) Regulations (1991)* designates Rantau

⁶⁷⁰ Department of Fisheries Website, <http://www.dof.gov.my/en/divisions/-/sections>

⁶⁷¹ Sabah Inland and Fisheries and Aquaculture Enactment (2003); Department of Fisheries Sabah, Official Website, www.fishdept.sabah.gov.my

⁶⁷² Department of Fisheries Sabah, Official Website, www.fishdept.sabah.gov.my

⁶⁷³ Some of these Regulations were cited from the Food and Agriculture Organization of the United Nations, see A. Ali, R. Ali, M. Nasir I. Salleh in *Marine Fishery Resources Development and Management Department, Southeast Asian Fisheries Development Center, Section 6.1*, <http://www.fao.org/docrep/003/x2097e/X2097E18.htm>.

⁶⁷⁴ Fisheries (Prohibition of Methods of Fishing) Regulation 1980.

⁶⁷⁵ This description was adapted from A. Ali, R. Ali, M. Nasir I. Salleh in *Marine Fishery Resources Development and Management Department, Southeast Asian Fisheries Development Center, Section 6.1*, see: <http://www.fao.org/docrep/003/x2097e/X2097E18.htm>; Fisheries (Prohibition of Methods of Fishing) Regulation 1980.

Abang, an area located 160 nautical miles off the coast as a fishery prohibited area to protect nesting turtles.⁶⁷⁶ The act of killing or capturing any fish in this area is banned, with exceptions made for some fishing methods that are not harmful to turtles.⁶⁷⁷

Fisheries (Control of Endangered Species of Fish) (Amendment) Regulations

The *Fisheries (Control of Endangered Species of Fish) Regulations (2008)* is an amendment, assigning the species from the Sawfish group with endangered species status.⁶⁷⁸

Fisheries (Protected Area for Sea-Cucumber) Regulations

The *Fisheries (Protected Area for Sea-Cucumber) Regulations (2000)* established a protected area and provides specific species protection to sea-cucumbers found in Palau Singa Besar in the State of Kedah.⁶⁷⁹ The regulation bans the acts of removing, capturing or collecting sea-cucumber in the designated protected area.⁶⁸⁰ The penalty for violating this regulation is a maximum fine up to 1,000 ringgit and an imprisonment term up to six months.⁶⁸¹ This regulation was established under a provision of the Fisheries Act recognizing the Minister's authority to designate prohibited areas for fishing of certain or all types of fish species.⁶⁸²

6. WILDLIFE CONSERVATION ACT

Description

The (*Federal*) *Wildlife Conservation Act (2010)* was legislated for the protection and conservation of wildlife within the jurisdiction of Peninsular Malaysia and the Federal Territory of Labuan.⁶⁸³ Sabah has enacted their own *Wildlife Conservation Enactment (1997)*, which similarly manages the protection of marine and terrestrial wildlife species (discussed above).⁶⁸⁴

Protected Species

This Federal law outlines provisions for protection and conservation areas, including Wildlife Reserves and Wildlife Sanctuaries.⁶⁸⁵ Within these areas, activities such as

⁶⁷⁶ This description was adapted from A. Ali, R. Ali, M. Nasir I. Salleh in *Marine Fishery Resources Development and Management Department, Southeast Asian Fisheries Development Center, Section 6.1*, see: <http://www.fao.org/docrep/003/x2097e/X2097E18.htm>; Fisheries (Prohibited Areas) (Rantau Abang) Regulation 1991.

⁶⁷⁷ This description was adapted from A. Ali, R. Ali, M. Nasir I. Salleh in *Marine Fishery Resources Development and Management Department, Southeast Asian Fisheries Development Center, Section 6.1*, see: <http://www.fao.org/docrep/003/x2097e/X2097E18.htm>; Fisheries (Prohibited Areas) (Rantau Abang) Regulation 1991.

⁶⁷⁸ Fisheries (Control of Endangered Species of Fish) (Amendment) Regulations, 2008.

⁶⁷⁹ Fisheries (Protected Area for Sea-Cucumber) Regulations 2010, First Schedule.

⁶⁸⁰ Fisheries (Protected Area for Sea-Cucumber) Regulations 2010, Sections 3-4 and Second Schedule.

⁶⁸¹ Fisheries (Protected Area for Sea-Cucumber) Regulations 2010, Section 6.

⁶⁸² Fisheries Act 1985, Section 61(i).

⁶⁸³ Wildlife Conservation Act 2010.

⁶⁸⁴ Wildlife Conservation Enactment 1997.

⁶⁸⁵ Wildlife Conservation Act 2010.

hunting and collecting of wildlife without a license or permission are prohibited.⁶⁸⁶ Regulations are imposed on hunting and other activities that may be harmful to specifically protected wildlife.⁶⁸⁷

The *Wildlife Conservation Act* only lists animals protected under federal jurisdiction.⁶⁸⁸ The wildlife species listed under the Fisheries Act (1985) are excluded from protection under the Wildlife Conservation Act.⁶⁸⁹

7. CUSTOMS (PROHIBITION OF EXPORTS AND IMPORTS) ORDERS

Description

The *Customs (Prohibition of Exports) Order (2012)* and the *Customs (Prohibition of Imports) Order (2012)* are federal laws, and provides a total ban on the import and export of turtle eggs.⁶⁹⁰

Protection of Turtles

These *Customs (Prohibition) Orders* may impose penalties for the importation and exportation of turtles.⁶⁹¹

⁶⁸⁶ Wildlife Conservation Act 2010, Sections 26 and 27.

⁶⁸⁷ Wildlife Conservation Act 2010.

⁶⁸⁸ Wildlife Conservation Act 2010, Schedule II.

⁶⁸⁹ Wildlife Conservation Act 2010, Section 2(2).

⁶⁹⁰ This regulation has since been amended from the 1988 regulation. Customs (Prohibition of Exports) Order 2012 and Customs (Prohibition of Imports) Order 2012; See Royal Malaysian Customs Department Official Website, <http://www.customs.gov.my/index.php/en/component/content/article/243>

⁶⁹¹ **Question:** Does the Federal law, Customs (Prohibition of Exports) and Customs (Prohibition of Imports) still prohibit the import and export of turtle eggs? Is there an up to date copy of the Federal regulation available? There has been reference to the 1988 version of these Federal regulations; however, the law has been since updated. The total ban on turtle eggs is made available on the Royal Malaysian Custom's Department Website, see: <http://www.customs.gov.my/index.php/en/component/content/article/243>

REGIONAL PROGRAMMES AND INITIATIVES

SULU SULAWESI MARINE ECOREGION PROGRAMME

Description

The Sulu Sulawesi Marine Ecoregion Programme (“SSME Programme”) was launched under the directive of the World Wildlife Fund Malaysia (“WWF Malaysia”).⁶⁹² The SSME Programme is centered on developing the coastal regions of Kudat-Banggi and Semporna as Priority Conservation Areas (“PCA”), and promoting the sustainability of the live fish trade industry.⁶⁹³

Priority Conservation Areas

WWF Malaysia’s programme in Kudat-Banggi and Semporna is designed to increase participation of multiple stakeholders, promote income livelihood and protect natural resources in Priority Conservation Areas (“PCA”). The multiple stakeholders involved include local communities, local and State government and the private sector, who have an interest in the ensuring the management of natural resources and conservation of threatened ecosystems.

The Kudat-Banggi project is valuable due to the marine ecosystem habitats and the threatened native and migratory species found within its boundaries.⁶⁹⁴ The region is also significant for its fishing grounds. The programme also emphasizes initiatives in promoting sustainable fisheries management among traditional and commercial fishermen and the aquaculture industry.⁶⁹⁵ In the Kudat-Banggi area, the establishment of the Tun Mustapha Park has been an ongoing process. The proposed park will be categorized as a multiple use park, which attempts to balance the interests of the residential communities, commercial industries and overall marine and wildlife habitats.

WWF Malaysia’s programme in Semporna is more focused on the development of the tourism industry and overall protection of coral reefs. The Priority Conservation Area in Semporna includes Tun Sakaran Marine Park and Sipadan Island Park, which are both managed by Sabah Parks. Other islands and areas without designated protection status are located within this PCA. WWF’s work in this PCA has dated back to substantive projects ranging from coral reef monitoring and direct support of the development of Tun Sakaran Marine Park.

Live Fish Trade

⁶⁹² The following description of the Sulu-Sulawesi Marine Ecoregion Programme was adapted from resources available from the Malaysia World Wildlife Fund Website, <http://www.wwf.org.my>

⁶⁹³ WWF, Sulu-Sulawesi Marine Ecoregion Programme, http://www.wwf.org.my/about_wwf/what_we_do/marine/sulu_sulawesi_marine_ecoregion_programme/

⁶⁹⁴ WWF, Sulu-Sulawesi Marine Ecoregion Programme, Kudat-Banggi Priority Conservation Area http://www.wwf.org.my/about_wwf/what_we_do/marine/sulu_sulawesi_marine_ecoregion_programme/kudat_banggi_priority_conservation_area/

⁶⁹⁵ WWF, Sulu-Sulawesi Marine Ecoregion Programme, Kudat-Banggi Priority Conservation Area http://www.wwf.org.my/about_wwf/what_we_do/marine/sulu_sulawesi_marine_ecoregion_programme/kudat_banggi_priority_conservation_area/

WWF's Live Reef Fish Trade Programme was developed to ensure protection of coral reefs and to promote sustainability of the live reef fish trade industry.⁶⁹⁶ The coastal areas of Kota Kinabalu, Tawau and Kudat are identified as targeted communities with a live fish trade industry. To address sustainability measures for economic livelihood and industry practices, the WWF's programme in this subject area is centered on developing stakeholder participation to build strong relationships with fishermen and traders.⁶⁹⁷

Institutions and Implementation

World Wildlife Fund Malaysia

The World Wildlife Fund for Nature-Malaysia is under the branch of the larger international conservation based organization, World Wildlife Fund ("WWF").⁶⁹⁸ WWF's work in Malaysia addresses natural environment issues through different frameworks such as promoting public awareness, advocating for policy initiatives, and working directly with local communities.

Local and State Level Involvement

The implementation of the different projects of the Sulu Sulawesi Marine Ecoregion Programme relies on the active participation of the local government and state management agencies, which may sometimes overlap with each other. A few of the government institutions involved in this Programme include:

- Sabah Parks,
- Department of Fisheries of Sabah, and
- Sabah Wildlife Department.

Each of these institutions plays a role in supporting WWF's initiatives in the Sulu-Sulawesi marine region. Sabah Parks is responsible for the management of gazetted Parks located within the Priority Conservation Areas. The Department of Fisheries oversees the management of sustainable fisheries resources and development of aquaculture programs. The Sabah Wildlife Department has trained community members living within the PCAs to become Honorary Wildlife Wardens. As Honorary Wildlife Wardens, community members have the authority to enforce provisions of the Wildlife Conservation Enactment, such as performing monitoring of restricted commercial fisheries activities or unlicensed activities.

CORAL TRIANGLE INITIATIVE

Description

⁶⁹⁶ WWF Factsheet, *Managing the Live Reef Fish Trade in Sabah*, June 2013.

⁶⁹⁷ WWF Factsheet, *Managing the Live Reef Fish Trade in Sabah*, June 2013.

⁶⁹⁸ WWF Malaysia, Official Website: http://www.wwf.org.my/about_wwf/who_we_are/

In 2009, the Coral Triangle Initiative on Coral Reefs, Fisheries and Food Security (“CTI-CFF”), a multilateral partnership initiative, was established between six nations located within or bordering the Coral Triangle region, including: Malaysia, Indonesia, Papua New Guinea, the Philippines, Solomon Islands and Timor-Leste. These nations are also known as the CT6, and have signed onto the initiative to take on a non-binding commitment to address conservation and sustainability concerns within the Coral Triangle.

Regional Plan of Action

The six participating nations signed a declaration to collaboratively take measures to protect the Coral Triangle by implementing a Regional Plan of Action (“RPOA”). The RPOA contains five proposed goals that were developed as targeted initiatives to address priority concerns impacting the region:

- Designation of effectively managed seascapes,
- Application of an ecosystem approach to fisheries management,
- Establishment of a fully functional marine protected area system,
- Strengthening climate change adaptation and resilience, and
- Improving the status of threatened marine species.⁶⁹⁹

Malaysia National Plan of Action

Description⁷⁰⁰

Malaysia, along with the other cooperating nations, developed their own CTI-CFF National Plans of Action, which was adopted based on the nation’s own local, unique conditions.⁷⁰¹ Malaysia’s participation under CTI-CFF includes some emphasis on managing practices, which would promote sustainable coral reef ecosystems and water environmental systems.

Malaysia’s CTI National Plan of Action was developed with the following guiding principles in mind:

- Sustainable Development,
- Precautionary Approach,
- Public Participation,
- Respect for Culture and Indigenous Heritage,
- Right to Develop,
- Informed Decision-Making,
- Integrated Approach,
- International Cooperation and Coordination,
- Beneficiary Pays/Polluter Pays,

⁶⁹⁹ Coral Triangle Initiative Website, <http://www.coraltriangleinitiative.org>

⁷⁰⁰ The following summary on the Coral Triangle Initiative was adapted from information on the Coral Triangle Initiative made available on the Coral Triangle Initiative Official Website: Coral Triangle Initiative, see <http://www.coraltriangleinitiative.org>

⁷⁰¹ Coral Triangle Initiative, Malaysia, see <http://www.coraltriangleinitiative.org/country/malaysia>

- Conservation of Biological Diversity,
- Ecosystem Approach, and
- Equitable Benefit.⁷⁰²

These principles were developed to align with the CTI Regional Plan of Action and reflect Malaysia's commitment to addressing relevant concerns impacting the Coral Triangle.

Goals and Target Objectives

Malaysia's CTI National Plan of Action contains a set of five broad goals, which are developed in conjunction with a list of target objectives and action plans unique to Malaysia.⁷⁰³

The five overall goals of Malaysia's CTI National Plan of Action include:

- Designate and effectively manage Priority Seascapes areas,
- Achieve an Ecosystem Approach to Fisheries Management,
- Establish and manage marine protected areas,
- Address climate change dangers and concerns, and
- Improve the status of threatened marine species.

Malaysia's CTI National Plan of Action report provides a list with description of individual targets set out to achieve each of the proposed goals listed above. Each target objective also includes a specific action plan in which Malaysia has committed to in order to achieve the designated goal.

The section below provides an overview of some of the relevant goals, target and action plans relating to Sabah's coastal and marine areas:

Priority Seascapes Areas

Malaysia proposed to achieve the target of designating a set of priority seascapes for investment planning and action. To implement the planning and management goals of this target, the National Plan of Action lists a commitment to complete a National Coastal Zone Physical Plan for East Malaysia and Peninsular Malaysia by the year 2012. The tasks of conducting regular oceanographic surveys in the Sulu-Suluwesi Marine Ecoregion ("SSME") and Malaysian waters are also emphasized as an area of commitment.

The second target objective under this goal is to ensure the sustainable management of marine and coastal sources within Priority Seascapes for coastal communities the environment and economies relying on the coastal resources. Some of the relevant commitment to actions proposed includes the management and conservation of SSME mangrove forest reserves and the development of a Mangrove Information System.

⁷⁰² CTI Malaysia National Plan of Action 2012, Section 2.

⁷⁰³ CTI Malaysia National Plan of Action 2012, Section 2.

Ecosystem Approach to Fisheries Management

One target objective provided under this goal is to develop a strong legislative, policy and regulatory framework to achieve an Ecosystem Approach to Fisheries Management (“EAFM”), which utilizes the input and involvement of multiple stakeholders within different overlapping communities and industries. Some of the policy related action plans under this target objective includes a commitment to establish a national policy on EAFM, updating of the Fisheries Act 1985 to reflect EAFM principles, development of EAFM Strategy for Sabah Fisheries. In the area of monitoring and enforcement, this target objective aims to increase participation of coastal community and fishers in reporting illegal fishing activities and increasing the operational capacity of MMEA and maritime enforcement.

Another target objective proposed the development of a new initiative called the Sustainable Coastal Fisheries and Poverty Reduction Initiative (COASTFISH), to address measures to improve the income and livelihood opportunities for coastal communities while protecting food securities.

Marine Protected Areas

In aiming for the establishment of marine protected areas, a target objective of this goal is to establish a region-wide Coral Triangle MPA system (CTMPAS), which would link individual Marine Protected Areas (MPAs) and networks of MPAs to increase income and food security for coastal communities while addressing marine conservation. The ultimate target is to establish marine sanctuaries and protection for near-shore habitats, particularly assigning these areas as No Take Replenishment Zones, which will allow for sustainable management of fisheries resources.

Threatened Marine Species

This targeted objective relating to threatened marine species, was developed to protect populations facing a rapid decline. Sharks, sea turtles, seabirds, marine mammals, corals, and mangroves are recognized under this National Plan of Action as facing a rapid decline in numbers. Malaysia has signed onto a commitment to halt the decline rate by the year 2015, to prevent extinction of threatened species and improve the status of the listed species and other species listed under the IUCN Red List of Threatened Species. For sea turtles and sharks, Malaysia has made a commitment to Implement a National Plan of Action for Conservation and Management to improve the status of these species. The Action plan to protect threatened species from depletion is based on the objective to promote policies such as regulating fishing vessel practices and the by-catch of threatened species in capture fisheries.⁷⁰⁴

Institutions and Implementation

Malaysia’s participation in CTI-CFF relies on the involvement of different Federal and State agencies. Participating Members of the Sabah State government office include

⁷⁰⁴ CTI Malaysia Nation Plan of Action, 2012, p. 78.

the Chief Minister Department, Sabah's Federal Secretary's Office, Sabah Economic Planning Unit, the Ministry of Tourism, Culture and Environment, and the Ministry of Agriculture and Food Industry.

In addition to governmental agencies needed for participation in the CTI-CFF, Malaysia's progress with proposed targeted goals require the participation and collaboration of the private sector, universities, other organizations and international governments. For example, public-private supported projects promoting alternative livelihood for coastal communities has been propped as a way to promote sustainable ecotourism that are not reliant on the marine natural resources.⁷⁰⁵

⁷⁰⁵ Coral Triangle Initiative Website, <http://www.coraltriangleinitiative.org/news/alternative-livelihood-project-boosts-marine-resource-management-malaysia>

ANNEXES

ANNEX I

Sabah's Legislative Authority

Article 74 and 76 of the Federal Constitution designates that the Federal Parliament and the Legislative Authority of a State may legislate on matters, as provided for under the Ninth Schedule. The Ninth Schedule of the Constitution designates matters which may be reserved solely under jurisdiction of the State or Federal government, and which may be legislated concurrently.

The Ninth Schedule is divided into three parts, allocating the powers of the State Legislature and the federal Parliament to legislate on designated subject matters. The Ninth Schedule is divided into the following:

- List I-Federal List,
- List II-State List, and
- List III-Concurrent List.

The Federal Government is allowed to make laws under the Federal List and Concurrent List, while the State Legislature is authorized to legislate on matters provided for under the State List or Concurrent List. In addition to the Concurrent list, Sabah and Sarawak are also allowed to legislate in areas provided for under the supplement of List IIIA. Article 77 of the Constitution also allows for matters not provided for in any of the Ninth schedule to be legislated by the State.⁷⁰⁶

The following lists provides a general overview of relevant subjects from the Ninth Schedule, *Legislative Lists* of the Constitution pertaining to marine and coastal areas:

| RELEVANT LEGISLATIVE LISTS | |
|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| NINTH SCHEDULE, FEDERAL CONSTITUTION OF MALAYSIA | |
| List I | Federal List |
| | Trade, Commerce and Industry, ⁷⁰⁷ |
| | Shipping Navigation and Fisheries (including ports and Harbours and foreshores, maritime and estuarine fishing and fisheries, with exclusion of turtles), ⁷⁰⁸ |
| | Welfare of aborigines, ⁷⁰⁹ and |
| | Tourism. ⁷¹⁰ |

⁷⁰⁶ Malaysia Federal Constitution 1957, Article 77.

⁷⁰⁷ Malaysia Federal Constitution 1957, Ninth Schedule, List I, Subsection 8.

⁷⁰⁸ Malaysia Federal Constitution 1957, Ninth Schedule, List I, Subsection 9.

⁷⁰⁹ Malaysia Federal Constitution 1957, Ninth Schedule, List I, Subsection 16.

⁷¹⁰ Malaysia Federal Constitution 1957, Ninth Schedule, List I, Subsection 25(a).

| | |
|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| List II | State list |
| | Land matters, ⁷¹¹ |
| | Agriculture and forestry, ⁷¹² |
| | Local government (Administration and Public Nuisance Matters in Local Authority Areas) ⁷¹³ |
| | State works and water (Public Works For State Purposes, Roads, Bridges And Ferries, Water Supply, Rivers And Canals- Subject To The Federal List, Riparian Rights) ⁷¹⁴ , and |
| | Turtles and Riverine Fishing. ⁷¹⁵ |
| List IIA | State Supplement List |
| | Native Law and Customs ⁷¹⁶ , |
| | Ports and Harbors ⁷¹⁷ , and |
| | Foreshores ⁷¹⁸ . |
| List III | Concurrent List (State and Federal) |
| | Protection of wild animals and wild birds; National parks, ⁷¹⁹ |
| | Town and country planning, ⁷²⁰ |
| | Public health, sanitation and the prevention of diseases, |
| | Drainage and Irrigation, and ⁷²¹ |
| | Rehabilitation of land, which has suffered soil erosion. ⁷²² |
| List IIIA | Concurrent supplement list |
| | Shipping less than 15 registered tons, including the carriage of passengers and goods by shipping, maritime and estuarine fishing |

⁷¹¹ Malaysia Federal Constitution 1957, Ninth Schedule, List II, Subsection 2.

⁷¹² Malaysia Federal Constitution 1957, Ninth Schedule, List II Subsection 3.

⁷¹³ Malaysia Federal Constitution 1957, Ninth Schedule, List II, Subsection 4.

⁷¹⁴ Malaysia Federal Constitution 1957, Ninth Schedule, List II Subsection 6.

⁷¹⁵ Malaysia Federal Constitution 1957, Ninth Schedule, List II, Subsection 12.

⁷¹⁶ Malaysia Federal Constitution 1957, Ninth Schedule, List IIA, Subsection 13.

⁷¹⁷ Malaysia Federal Constitution 1957, Ninth Schedule, List IIA, Subsection 15.

⁷¹⁸ Malaysia Federal Constitution 1957, Ninth Schedule, List IIA, Subsection 15.

⁷¹⁹ Malaysia Federal Constitution 1957, Ninth Schedule, List III, Subsection 3.

⁷²⁰ Malaysia Federal Constitution 1957, Ninth Schedule, List III, Subsection 5.

⁷²¹ Malaysia Federal Constitution 1957, Ninth Schedule, List III, Subsection 8.

⁷²² Malaysia Federal Constitution 1957, Ninth Schedule, List III, Subsection 9.

| | |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>and fisheries,⁷²³</p> <p>Agriculture and forestry research, control of agricultural pests and protection against such pests, prevention of plant diseases.⁷²⁴</p> |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

⁷²³ Malaysia Federal Constitution 1957, Ninth Schedule, LIST IIIA, Subsection 12.

⁷²⁴ Malaysia Federal Constitution 1957, Ninth Schedule, LIST IIIA, Subsection 14.

ANNEX II

Chronology of Laws Relating to Sabah's Territorial Waters

Overview

The following chronological overview of the laws relating to the Territorial Waters of Malaysia is intended to highlight the various distinctions and overlaps of State and Federal jurisdictional boundaries. These laws also underscore how the boundaries of the Territorial Sea or the Territorial Waters are defined to extend the Federal Government jurisdiction to land areas within the Maritime Waters.

There are nine pieces of legislation that together provide the overarching regulatory framework for Sabah's legal and institutional arrangement relating to its Territorial Waters. These include:

1. (Sabah) Land Ordinance (1930)
2. National Land Code (1965)
3. Continental Shelf Act (1966)
4. Petroleum Mining Act (1966)
5. Emergency (Essential Powers) Ordinance (1969)
6. Exclusive Economic Zone Act (1984)
7. Fisheries Act (1985)
8. Maritime Baseline Measurement Act (2010)
9. Territorial Sea Act (2012)

With an exception to the Land Ordinance (1930), all the laws listed above are Federal laws. Although all of the listed laws relate to Sabah's Coastal Zone, only some are comprehensively discussed in this legal brief.

1. Land Ordinance

The *Land Ordinance (1930)*, a Sabah State law, was enacted to regulate the use and alienation of land in Sabah.⁷²⁵ The *Ordinance* provides a definition of State Land to include the Foreshore and land areas covered in water.⁷²⁶ Notably, the Ninth Schedule of the Constitution designates land matters in Sabah to be a matter under State jurisdiction.⁷²⁷

2. National Land Ordinance

The *National Land Ordinance (1930)*, a Federal law, was enacted to regulate land matters in Peninsular Malaysia.⁷²⁸ Although the *National Land Ordinance* does not apply to Sabah, it is useful for understanding the limitations of State land under Federal legislation.⁷²⁹ State land is defined as all the land, including the bed of any

⁷²⁵ Land Ordinance 1930.

⁷²⁶ Land Ordinance 1930, Section 4.

⁷²⁷ Federal Constitution Malaysia, Ninth Schedule List II, Section 2.

⁷²⁸ National Land Code 1965.

⁷²⁹ National Land Code 1965, Section 5 (State Land).

river and the foreshore and bed of the sea found within “the territories of the State or the limits of territorial waters.”⁷³⁰ This Federal definition recognizes for the extension of State land to encompass the breadth of the Territorial Waters of Malaysia.⁷³¹

3. Continental Shelf Act

The *Continental Shelf Act (1966)* upholds the Federal Government’s right to exploit natural resources on and beneath the seabed.⁷³² The Act recognizes that the Federal government has sole jurisdiction to the Continental Shelf, which begins at an area adjacent to the coast of Malaysia and beyond the limits of the Territorial Waters.⁷³³ This law, applied in conjunction with the *Territorial Sea Act (2012)*, provides for the boundary of the Continental Shelf to begin 3 nautical miles offshore from the low-water mark.⁷³⁴

4. Petroleum Mining Act

The *Petroleum Mining Act (1969)* provides for regulations on the Malaysian Federal Government’s right to mining and searching for petroleum, located offshore and inland.⁷³⁵ An exception is made for Sabah, where application of this Federal law only pertains to offshore land, an area identified as the Continental Shelf.⁷³⁶

5. Emergency (Essential Powers) Ordinance

The *Emergency (Essential Powers) Ordinance (1969, no longer in force)* was a law passed during a time when Malaysia was under a state of emergency. Along with other provisions guaranteeing the Federal government special powers during a state of emergency, a provision declaring the boundaries of the Territorial Waters of Malaysia was made.

The *Ordinance* defined the boundaries of the Territorial Waters of Malaysia to stretch 12 nautical miles.⁷³⁷ However, when applying certain Federal laws and State land laws, the Territorial Waters was limited to a boundary of 3 nautical miles from the low-water mark.⁷³⁸ Off the coasts of Sabah and Sarawak, the Territorial Waters were reduced to 3 nautical miles when applying State land laws.⁷³⁹ Additionally, any references to the Territorial Sea under the *Continental Shelf Act (1996)*, *Petroleum Mining Act (1966)* and the *National Land Code (1965)* reduced the Territorial Waters

⁷³⁰ National Land Code 1965, Section 5 (State Land).

⁷³¹ National Land Code 1965, Section 5 (State Land); and Territorial Sea Act 2012, Section 3.

⁷³² Continental Shelf Act 1966, Act 83.

⁷³³ Continental Shelf Act 1966, Act 83, Section 2; see also Territorial Sea Act 2012.

⁷³⁴ Territorial Sea Act 2012, Section 3(3).

⁷³⁵ Petroleum Mining Act 1966, Section 1(1).

⁷³⁶ Petroleum Mining Act 1966, Section 1(1).

⁷³⁷ Emergency (Essential Powers) Ordinance, No. 7, 1969, Section 3.

⁷³⁸ The language of the Ordinance is as follows, “...any written law relating to land in force in Sabah and Sarawak, any reference to territorial waters therein shall in relation to any territory be construed as a reference to such part of the sea adjacent to the coast thereof not exceeding three nautical miles measured from the low-water mark.” Emergency (Essential Powers) Ordinance 1969, Section 4(2).

⁷³⁹ Emergency (Essential Powers) Ordinance 1969, Section 4(2).

to 3 nautical miles from the coast.⁷⁴⁰ These exceptions to the boundaries of the Territorial Waters allowed for beginning of Malaysia's Exclusive Economic Zone, an area under Federal jurisdiction and beyond the designated 3 nautical mile mark.⁷⁴¹

The *Emergency (Essential Powers) Ordinance* was only lifted in 2011. However, the boundaries of the Territorial Waters have remained the same with the passage of the *Territorial Sea Act (2012)*, which designated the same provisions defining the boundaries of the Territorial Waters.⁷⁴²

6. Exclusive Economic Zone Act

The *Exclusive Economic Zone Act (1984)* was passed to regulate offshore activities in Malaysia's Exclusive Economic Zone (EEZ) and the Continental Shelf.⁷⁴³ Within the EEZ, Malaysia has the exclusive authority to exercise its sovereign rights and to provide for the conservation and management of living and non-living natural resources.⁷⁴⁴

The *Exclusive Economic Zone Act* establishes the EEZ as an area adjacent to and beyond the Territorial Sea of Malaysia, stretching from up to 200 nautical miles from the beginning of the Territorial Waters.⁷⁴⁵ The breadth of the EEZ is measured according to the baseline measurement of the Territorial Sea, which is based on how the boundary is defined under the *Territorial Sea Act*.⁷⁴⁶ Malaysia's EEZ begins at the 3 nautical of the baseline measurement off the coast.⁷⁴⁷

7. Fisheries Act

The *Fisheries Act (1985)* provides measures for the conservation and management of maritime fishing and fisheries within Malaysian Fisheries Waters. The Act further defines the boundaries of the Malaysian Fisheries Waters. Malaysian Fisheries Waters is recognized as the Maritime Waters under the jurisdiction of the Federal government.⁷⁴⁸ The Malaysian Fisheries Waters includes:

- The Internal Waters or Malaysia,
- The Territorial Seas of Malaysia, and
- The Maritime Waters in the Exclusive Economic Zone of Malaysia.⁷⁴⁹

Under the Fisheries Act, maritime and estuarine fisheries are recognized as within the scope of Federal jurisdiction.⁷⁵⁰ However, the Sabah government has the

⁷⁴⁰ Emergency (Essential Powers) Ordinance 1969, Section 4(2).

⁷⁴¹ Emergency (Essential Powers) Ordinance 1969, Section 4(2); See the Exclusive Economic Zone Act 1984, which begins where the Territorial Waters ends.

⁷⁴² The Territorial Sea still runs for 12 nautical miles with a limitation of 3 nautical miles when applying Sabah land laws and other Federal laws, Territorial Sea Act 2012, Section 3.

⁷⁴³ Exclusive Economic Zone Act 1984.

⁷⁴⁴ Exclusive Economic Zone Act 1984.

⁷⁴⁵ Exclusive Economic Zone Act 1984, Section 2(1).

⁷⁴⁶ Exclusive Economic Zone Act 1984, Section 2; Territorial Sea Act 2012.

⁷⁴⁷ Territorial Sea Act 2012, Section 3(3).

⁷⁴⁸ Fisheries Act 1985, Section 2.

⁷⁴⁹ Fisheries Act 1985, Section 2.

exclusive right to regulate on matters relating to turtles and riverine fishing.⁷⁵¹ Sabah may regulate turtles found inland and within the Coastal Zone, which includes the Territorial Waters.⁷⁵² A provision of this act further provides Federal protection to turtles found within the Maritime Fisheries Waters and beyond the boundaries of State jurisdiction.⁷⁵³ Since Malaysia's Exclusive Economic Zone is an area of the Malaysian Fisheries Waters beyond State jurisdiction, turtles are extended protection under Federal law.⁷⁵⁴

8. Maritime Baseline Measurement Act

The *Baseline of Maritime Zones Act (2006)* is a law providing for the determination of baseline measurements of the Maritime Zones, a zone that includes the Territorial Sea, the Continental Shelf and Malaysia's EEZ.⁷⁵⁵ If the Yang di-Peruan Agong has not published in the *Gazette* the geographic coordinates for base points of baselines measurements for the Territorial Sea, the Act provides a provision to determine the Maritime Zones of Malaysia in three other ways. The following base points may be used for measurement of the Territorial Sea:

- The low-water line along the coast as marked on large scale charts,
- The seaward low-water line of a reef as shown by the appropriate symbol on charts, or
- The low-water line on a low-tide elevation that is situated wholly or partly at a distance not exceeding the breadth of the Territorial Sea from the mainland or an island.⁷⁵⁶

Under the *Territorial Sea Act*, the baseline measurement of the Territorial Sea from the coast of Sabah is identified as the low-water mark.⁷⁵⁷ In applying designated Federal Acts, specifically the *Continental Shelf Act (1996)*, *Petroleum Mining Act (1966)* and the *National Land Code (1965)*, the Territorial Sea is also measured from the low-water mark.⁷⁵⁸

9. Territorial Sea Act

Soon after the *Emergency (Essential Powers) Ordinance (1969)* was lifted in 2011, the *Territorial Sea Act (2012)* was passed. The provisions of the *Territorial Sea Act* and the *Emergency (Essential Powers) Ordinance* on the Territorial Waters similarly define the Territorial Waters under the same boundaries.

The Act defines the Territorial Sea, also known as the Territorial Waters, as an area designated for recognition of Malaysia's sovereign right to the bed and subsoil.⁷⁵⁹

⁷⁵⁰ Fisheries Act 1985, Section 1.

⁷⁵¹ Fisheries Act, 1985 and the Federal Constitution, Malaysia, Ninth Schedule, List 2, Section 12.

⁷⁵² Fisheries Act, 1985 and the Federal Constitution, Malaysia, Ninth Schedule, List 2, Section 12.

⁷⁵³ Fisheries Act, 1985, Section 27.

⁷⁵⁴ Fisheries Act, 1985, Section 27 and Section 2.

⁷⁵⁵ Baseline of Maritime Zones Act 2006, Act 660, Sections 5 and 6.

⁷⁵⁶ Baseline of Maritime Zones Act 2006, Sections 4 and 5(1).

⁷⁵⁷ Territorial Sea Act 2012, Section 3(3).

⁷⁵⁸ Territorial Sea Act 2012, Section 3(3).

⁷⁵⁹ Territorial Sea Act 2012.

Depending on the baseline measurement, the breadth of the Territorial Sea stretches 12 nautical miles from the coast.⁷⁶⁰ However, in applying land related laws off the coast of Sabah, the Territorial Sea is limited to a boundary of 3 nautical miles from the low-water mark.⁷⁶¹ Similarly, any references to the Territorial Sea under the *Continental Shelf Act (1996)*, *Petroleum Mining Act (1966)* and the National Land Code (1965) must be applied in line with a boundary limited to 3 nautical miles from the low-water mark.⁷⁶² This limitation allows for the Malaysian Federal Government to exercise jurisdiction to land areas beyond the point of 3 nautical miles from the low-water line, marking the beginning of Malaysia's EEZ.⁷⁶³

⁷⁶⁰ Territorial Sea Act 2012, Section 3(1).

⁷⁶¹ Territorial Sea Act 2012, Section 3(3): "...any written law relating to land in force in Sabah and Sarawak, any reference to territorial sea therein shall in relation to any territory be construed as a reference to such part of the sea adjacent to the coast thereof not exceeding 3 nautical miles measured from the low-water line"; However, the Federal Government still possesses jurisdiction on matters relating to Maritime Waters, such as fisheries within this boundary; See also the Ninth Schedule of the Malaysia Federal Constitution, Ninth Schedule List II and the Fisheries Act (1985).

⁷⁶² Territorial Sea Act, Section 3(3).

⁷⁶³ Malaysia's EEZ begins at the point after the boundary of the Territorial Sea, Exclusive Economic Zone Act, Section 3.