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LEGAL TOOLS FOR STRENGTHENING

MARINE PROTECTED AREA ENFORCEMENT



LEGAL TOOLS FOR STRENGTHENING MARINE PROTECTED AREA ENFORCEMENT

A HANDBOOK

ENVIRONMENTAL LAW INSTITUTE

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About the Environmental Law Institute (ELI) Ocean Program

ELI is a research and education organization that works with governments, NGOs, and communities to help foster practical, innovative, and just solutions to environmental challenges. To address threats to the marine environment, the ELI Ocean Program focuses on strengthening ocean and coastal law and policy domestically and internationally. We support ocean management systems that are based on local priorities, inclusive and effective processes, and best available information.



PRISTINE SEAS

About National Geographic Pristine Seas

National Geographic and Explorer-in-Residence Dr. Enric Sala launched the Pristine Seas project in 2008 to identify, survey, protect, and restore the last truly wild places in the ocean. Through exploration, scientific research, economic and policy analysis, and outreach, we work to establish marine reserves where marine life can thrive—while ensuring that they will be effectively managed for years to come. Partnering with heads of state, local governments and communities, NGOs, and business leaders is critical to our success. Pristine Seas is one of National Geographic's key initiatives dedicated to environmental preservation. The National Geographic Society is the largest nonprofit supporter of the environment in the world.

Legal Tools for Strengthening Marine Protected Area Enforcement: A Handbook. A PDF file of this report may be obtained for no cost from the Environmental Law Institute website at www.eli.org. Please contact Xiao Recio-Blanco (recio-blanco@eli.org) for more information.

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ABBREVIATIONS

AIS	Automatic Identification System
CBD	Convention on Biological Diversity
DWF	Distant Water Fishing
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
GPS	Global Positioning System
IMB	International Maritime Boundaries
IMO	International Maritime Organization
IUCN	International Union for Conservation of Nature
ITLOS	International Tribunal for the Law of the Sea
IUU Fishing	Illegal, Unreported, and Unregulated Fishing
MCS	Monitoring, Control, and Surveillance
MoU	Memorandum of Understanding
MPA	Marine Protected Area
OECS	Organisation of Eastern Caribbean States
PES	Payments for Ecosystem Services
PSMA	FAO Port State Measures Agreement
PSSA	Particularly Sensitive Sea Area
RFMO	Regional Fisheries Management Organization
SOLAS	International Convention for the Safety of Life at Sea
UNCLOS	United Nations Convention on the Law of the Sea
UNFSA	United Nations Fish Stocks Agreement
VMS	Vessel Monitoring System

I. INTRODUCTION

A. PURPOSE OF HANDBOOK AND HOW TO USE IT

This Handbook is intended to serve as a resource for anyone seeking to ensure that (1) the legal requirements of *existing* marine protected areas (MPAs) are enforced as effectively as possible, and (2) *new* MPA laws are drafted to support compliance and enforcement, with monitoring, control, and surveillance (MCS) firmly in mind.¹ The Handbook summarizes various legal tools and approaches for enhancing MPA enforcement and provides detailed sample provisions that countries may use to implement those approaches. The Handbook should be particularly useful for legislators and government policymakers in developing countries that are pursuing more effective enforcement of large-scale MPA designations. It chiefly considers enforcement of MPA requirements that control or prohibit fishing activities within a substantial portion of a country's exclusive economic zone (EEZ). It also may be a helpful tool for nonprofit organizations and citizens advocating for improved enforcement of existing MPA requirements. The Handbook is written with the assumption that readers will have some familiarity with law or policy.

Although the Handbook offers a wide range of options for strengthening MPA enforcement, there is no “one-size-fits-all” approach to ensure the effective enforcement of all legal requirements for all MPAs in all places. Legal systems, local norms, legislative requirements, geography, a diversity of stakeholders, and even the objectives of particular MPAs vary widely, so it is essential for every country to carefully consider local needs and adjust any sample provision found in this Handbook accordingly.

Despite such a variety in contexts and needs, many developing countries do face common problems when it comes to MPA enforcement—from limited financial resources and technical capacity, to challenges with proving violations, to weak enforcement authority, to legal barriers that impede the adoption of new enforcement technologies. On the most basic level, MPA enforcement presents enormous challenges when countries lack an adequate number of well maintained patrol vessels, remote monitoring devices, and other equipment necessary to conduct effective offshore or even dockside enforcement. This Handbook was developed primarily in consideration of commonly confronted challenges.

Many new MPAs have been established around the world to address pressing urgent challenges, but ultimately face problems of institutional competence and unclear jurisdiction. Some MPAs are defined as complex, multiple-use zones, which can pose challenges to monitoring and enforcement. At the same time, MPAs that were established informally or at a time when enforcement concerns were less prominent now operate with insufficient regulations to govern the many human activities that impact marine resources. This Handbook addresses these

¹ “Monitoring” is the continuous requirement for the measurement of fishing effort characteristics and resource yields; “control” refers the regulatory conditions under which the exploitation of the resource may be conducted; and “surveillance” is the degree and types of observations required to maintain compliance with the regulatory controls imposed on fishing activities. See FAO, *A Fishery Manager's Guidebook: Management Measures and Their Application*, Ch. 8. (2002), at <http://www.fao.org/docrep/005/y3427e/y3427e00.htm#Contents>. In this Handbook, the word “enforcement” is used as a shorthand for the full suite of monitoring, control, surveillance, and enforcement actions.

Legal Tools for Strengthening MPA Enforcement

and other shortfalls by identifying legal tools and approaches that can be used to strengthen enforcement of MPA requirements.²

Part I of the Handbook provides a brief orientation to the reader. It first describes what is meant by the term MPA and introduces the basic categories of MPAs. Part I then explains the concepts of dockside and at-sea enforcement and notes the importance of surveillance. Part I also explores how the reader might identify failures of MPA enforcement. Finally, Part I concludes with ten overarching principles of MPA enforcement. These principles are intended to serve as guiding elements for MPA enforcement that should be considered as the reader evaluates the array of available options for targeted MPA reform.

Part II catalogues various different legal tools and approaches that may be employed to increase the enforceability of MPA requirements and to improve overall compliance. These approaches are intended to be considered on an individual basis. Legal drafters should consider whether and how these tools can be presented as targeted amendments that can be introduced within a country's current legal framework, as an alternative to ambitious new legislation that can be politically difficult to achieve. Next, Part III contains sample provisions that provide examples of how to implement the legal tools and approaches described in Part II. Countries should tailor these sample provisions for their own needs and circumstances, as discussed above.

Ultimately, this Handbook will be most useful in situations where: (1) an MPA is not satisfying its intended purpose(s); (2) this is due at least in part to a failure by ocean users to comply with the MPA's requirements; and (3) the law is not being successfully enforced against violators in appropriate circumstances.

Although the sorts of targeted legal provisions described in this Handbook cannot solve every enforcement-related problem, they can help to ensure that a country's legal framework facilitates enforcement—or, at a minimum, that a country's laws do not stand in the way of enforcement. For countries considering new MPAs, the Handbook reminds drafters that compliance and enforcement begin with MPA legal requirements and institutional mandates (especially for enforcement personnel) that are clear, concise, and unambiguous.³

B. MARINE PROTECTED AREAS

The term “marine protected area,” or “MPA,” is used as shorthand throughout this Handbook to describe a broad variety of area-based designations in the marine environment. A marine protected area is defined by the International Union for Conservation of Nature (IUCN) as “any area of intertidal or subtidal terrain, together with its overlying water and associated flora, fauna, historical and cultural features, which has been reserved by law or other effective means to protect part or all of the enclosed environment.”⁴ The legal definition of MPA varies widely around the world. MPAs differ in their level of protection from no-take marine reserves, to MPAs that create some limits on fishing but do not prohibit it altogether, to MPAs that address non-living, cultural resources or limit other types of marine activities in addition to or instead of fishing. The lack of a uniform definition of MPA

² This Handbook is *not* intended as guidance on how to design MPAs (except to remind the reader that in doing so one must bear in mind the need to enforce their requirements), how to manage MPAs, how to use or deploy new surveillance technologies, or how to conduct law enforcement activities. Many resources are already publicly available on these subjects.

³ Appendix II contains tips for MPA legal drafters.

⁴ World Commission on Protected Areas (WCPA), Guidelines for Marine Protected Areas. Best Practice Protected Area Guidelines Series No. 3, at <https://portals.iucn.org/library/efiles/edocs/PAG-003.pdf>.

is a potential hurdle to effective conservation via establishment and execution of legal authority for the creation or expansion of MPAs. On the other hand, the legal drafter who is aware of this great variation in MPA legal authorities, even within a single country, may take advantage of it.⁵

The goals of MPAs often include habitat protection, biodiversity protection, fish and fisheries productivity, and maintenance or enhancement of other ecosystem services. Key pressures on and threats to ocean resources may be direct—such as overfishing, coastal development, and offshore industrial activities—or more indirect and diffuse—such as climate change and tourism. All of these threats drive the call for and development of MPAs.

The Convention on Biological Diversity (CBD) Aichi Targets call on the world to protect at least ten percent of coastal and marine areas by 2020.⁶ This objective, reinforced by the UN’s 2015 Sustainable Development Goals,⁷ is still far from being achieved and may not be enough, according to many scientists and conservation groups, to ensure effective, global conservation of the marine environment.⁸ Some recent large-scale MPA designations do point to a growing trend to protect the marine environment from destructive human impacts. These include, for example, the designation and expansion of the Northwestern Hawaiian Islands Marine Monument 2006 (later named the Papahānaumokuākea National Monument),⁹ designation of Kiribati’s Phoenix Islands as a large-scale marine reserve in 2009,¹⁰ designation of 80% of Palau’s waters as a marine sanctuary in 2015,¹¹ and designation of the Nazca-Desventuradas Marine Park in Chile in that same year.¹² Initiatives like Big Ocean (Figure 1) seek to coordinate management practices of large MPAs and generate transboundary networks of collaboration.

⁵ In the United States, for example, federal authority to designate MPAs includes the “development of national marine sanctuaries under the National Marine Sanctuaries Act and establishment of marine monuments by presidential proclamation under the Antiquities Act,” as well as other State-level statutes and sector-specific laws. See Kathryn Mengerink, Evaluating Ocean Protection, 31 *Environmental Forum* 4 (2014), at <http://eli-ocean.org/wp-content/blogs.dir/7/files/Mengerink-Evaluating-Ocean-Protection-2014.pdf>.

⁶ See Aichi Target 11, stating that “[b]y 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes,” at <https://www.cbd.int/sp/targets/>.

⁷ United Nations Sustainable Development Goals, Goal 14.5 (“By 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information.”), at <https://sustainabledevelopment.un.org/sdg14>.

⁸ See, e.g., Chris Mooney and Juliet Eilperin, “More of the planet was protected in 2015 than ever. Few noticed because it was underwater,” *Washington Post*, Oct. 23, 2015 (noting that today, “[m]any scientists and conservation groups advocate putting 30 percent of the ocean under full protection”).

⁹ Proclamation 8031—Establishment of the Northwestern Hawaiian Islands Marine National Monument. See also Papahānaumokuākea Marine National Monument, at <http://www.papahanaumokuakea.gov/>.

¹⁰ Phoenix Islands Protected Area, at <http://www.phoenixislands.org/index.php>.

¹¹ Palau National Marine Sanctuary Act of 2015, at <http://faolex.fao.org/docs/pdf/pau152765.pdf>.

¹² See Jane Lee, National Geographic Society, “Chile Creates Largest Marine Reserve in the Americas,” Oct. 5, 2015, at <http://news.nationalgeographic.com/2015/10/151005-desventuradas-islands-marine-protected-area-conservation-science/>.

Legal Tools for Strengthening MPA Enforcement

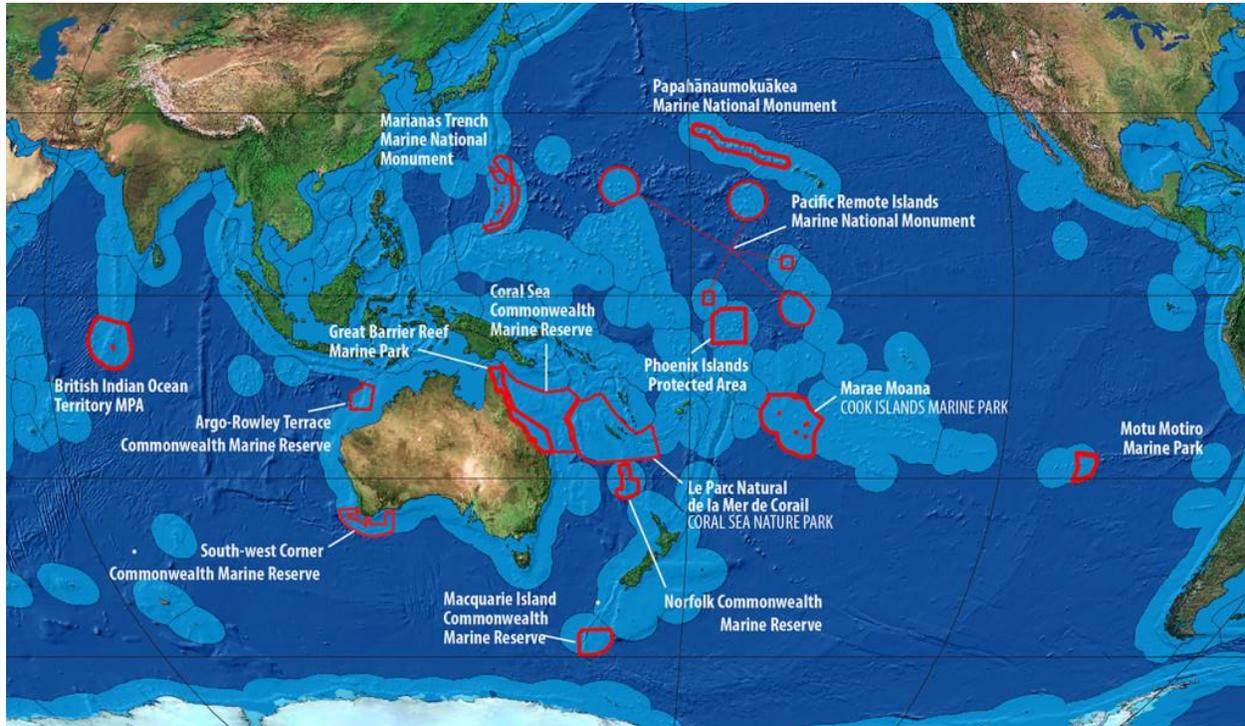


Figure 1. Large-scale MPAs included in the Big Ocean Initiative.¹³

Two key types of MPAs. This Handbook focuses on two general categories of MPAs. The primary focus is on large-scale, remote MPAs that are typically located far offshore from the coastal state and face threats from illegal, unreported, and unregulated (IUU) fishing activities undertaken by distant water fishing (DWF) vessels flagged in far-away countries. The main culprit from non-compliance is industrial fishing.¹⁴

The Handbook also addresses small, near-shore MPAs that may be subject to overuse or misuse by domestic fishers (which may include small-scale, artisanal, and subsistence fishers that fish via vessel or from shore) and other coastal resource users (such as recreational boaters and divers). Water pollution from inland and coastal sources, as well as from shipping, can also lead to violations of MPA requirements.

While some enforcement policy approaches may be appropriate for both of these broad categories of MPAs, the many differences tend to suggest that they may require unique policy approaches. For example, while there is a focus on illegal fishing throughout the Handbook, enforcement mechanisms targeting small-scale domestic fishing vessels and actors present different challenges than enforcement involving large-scale domestic fishing vessels or large-scale foreign fishing vessels. The next section explains some of the distinctions between how MPA violations are detected and where interventions occur.

¹³ Figure 1 shows the location of the fourteen large MPAs included as “Big Ocean” partner sites as of November 2014. Red lines represent MPA boundaries, dark-blue areas are portions of the High Seas, and light-blue ocean areas are the EEZs of coastal states. See <http://bigoceanmanagers.org/>.

¹⁴ The term “industrial fishing” is used in this Handbook to describe fishing activities carried out by large-scale vessels that employ technologically complex fishing systems and gear.

C. DOCKSIDE AND AT-SEA ENFORCEMENT; SURVEILLANCE

The requirements of an MPA are, generally speaking, enforceable either dockside or at sea, including after detection via remote-sensing tools. The nature of violations detected, the information gleaned from the people or behavioral patterns encountered, and the cost of detection vary according to the type of enforcement strategy employed. Dockside enforcement strategies may be very effective in circumstances where vessels land catch locally, where vessel masters and harvest techniques are well known, or where there is a reliable database of vessel names and authorizations. At-sea boarding, as well as offshore surveillance and reporting tools such as vessel monitoring systems (VMS), on the other hand, are needed to provide a credible enforcement presence for large-scale and remote MPAs and to contend with distant-water IUU fishing vessels.

Dockside enforcement is largely limited to enforcement actions by coastal countries against vessels that come to port in that coastal country (barring a cross-jurisdictional arrangement) and to gathering information that may, in the aggregate, shed light on patterns of illicit behavior. This information, however, can be cumbersome to coordinate, maintain, analyze, and bring to bear in support of enforcement on behalf of the coastal nation or in partnership with other interested States. Given that ports and harbors where catch from industrial vessels is landed are usually identified in advance, the number of personnel can be comparatively smaller than what is required for at-sea enforcement. A measure of dockside control also can be exerted with few (if any) boats and potentially less training than what is required for at-sea enforcement operations. Additionally, some dockside strategies, such as gathering information from vessel logs and—when appropriate and properly authorized—from onboard electronic systems, may be especially suited to promote enforcement for large, offshore, remote MPAs located in a coastal state's EEZ. Other techniques may be more appropriate to confront the enforcement problems of smaller, near-shore MPAs.

Effective at-sea enforcement requires a fleet suitable to meet the threat and is most effective when staffed by professional, well-trained enforcement officers who possess clearly defined powers of search, seizure, and arrest. Remote monitoring capable of covering large areas can also substantially enhance the ability to enforce at sea. At-sea enforcement is essential for achieving compliance by fishers who land their catch in jurisdictions other than the flag state, absent an effective cross-jurisdictional dockside enforcement program.

Surveillance strategies involve the capacity to monitor, from a distance, the activities of fishing vessels and the presence of vessels in restricted areas. Remote surveillance operations have traditionally been performed from aircraft. However, technological developments—and especially the use of satellite data for remote sensing and surveillance—are advancing the world's ability to identify and address illegal activity. Examples of such technology include acoustic monitoring buoys, unmanned surface vehicles (USV), autonomous underwater vehicles (AUV), and unmanned aerial vehicles (UAV) or systems (UAS), as well as vessel monitoring systems (VMS) and automatic identification systems (AIS) to track vessel activity and location, onboard video surveillance of catch and bycatch, and near real-time electronic logbook recording.

In addition to being useful for identifying illegal activity, these technologies can identify future potential violations and help maximize the impact of limited enforcement resources by targeting problem areas. The cost of these technologies has been decreasing sharply, opening up additional opportunities for their use. Due to their inherent advantages, certain technologies are becoming mainstream. Requiring vessels fishing near or within MPA boundaries to participate in a vessel monitoring system, for example, is a sound and highly recommended practice. Evaluation of suitable technologies and the feasibility of an implementing law or regulation should be near the forefront of efforts to establish, expand, or improve management of MPAs.

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Because these technologies are rapidly evolving, their admissibility in the courtroom is still gaining acceptance and may be subject to legal challenge. For example, most on-board vessel monitoring systems are not immune to tampering of “spoofing.” Consequently, although technological tools continue to enable more effective detection, countries may be limited in their ability to intercept and prosecute illegal actors detected using these methods alone.

D. FAILURES OF MPA ENFORCEMENT

When assessing the need for legal reforms to improve MPA enforcement, a country should begin with the main justification for the existence of the MPA. As noted, MPAs may be created for a range of reasons, from ensuring the provision of certain ecosystem services or other economic benefits, to preserving the aesthetic value of special marine spaces, to promoting national security and friendly international relations. Declarations, charters, or charges associated with newly designated MPAs typically establish their intended purposes and use. These statements, tempered with an assessment of current conditions and use patterns, establish a benchmark to work toward.¹⁵

The great difficulty of detecting illegal activities is common to nearly all MPAs. The reasons for this are straightforward. The expansiveness of large MPAs offers *de facto* concealment to harvesting activity. Near-shore sites may see little traffic during specific seasons or times of day; complex shorelines and coral and rock outcroppings may provide physical concealment for violations. Adequately monitoring human activity in and around an MPA for compliance with the law is both essential and universally challenging.

Improving compliance through enforcement begins with an understanding of what the enforcement threats and problems are. Users of this Handbook are strongly encouraged to talk to the people who are charged with enforcing the MPA law (e.g., coast guard, police, park rangers—collectively referred to in this Handbook as “enforcement officers”) as well as those who are required to comply with the law (e.g., fishermen, recreational boaters, divers). Law enforcement personnel and regular ocean users likely know where the enforcement problems lie and may have ideas for solutions.¹⁶

Analyzing the most common problems MPA enforcement officers encounter in the field may help identify legal hurdles to effective MPA enforcement. At times, officers may find they lack the necessary enforcement powers to fully address the main challenges they face within a specific MPA. For example, an MPA law may grant an enforcement officer the power to search a vessel, but not to seize illegal fishing gear or cargo. The rules as to what must be done with seized cargo might be unclear, leading to too much discretion, in turn leading to the cargo or fishing gear being returned to the violator. Or, suitable training may be lacking, such that the officers authorized to

¹⁵ Failure to achieve widespread compliance with an MPA law does not *necessarily* point to a need for more enforcement action. For example, if local fishers or other stakeholders are unaware of the existence of an MPA, or of its exact location, or if gear restrictions within an MPA are unclear, the best response may be to launch an educational campaign or other efforts to improve public awareness. In some instances, fault lies with the legal drafters: multiple-use MPA regulations may have imposed use requirements, activity specifications, or geographical restrictions that are too complex for most users to understand, leading to confusion and a range of unintended violations. Ideally, the goal is to increase voluntary compliance to the highest possible level and target enforcement resources to offenders who intentionally seek to violate the law.

¹⁶ Additionally, enforcement personnel and ocean stakeholders who are consulted early may later become allies in pursuing needed changes to the law. Once those changes are in place, these same people can also become partners in implementing the changes and making the law work in practice.

enforce MPA regulations are unclear about the steps to take to build cases that will lead to positive enforcement outcomes. In some instances, violations of MPA regulations may be treated as inconsequential, or as victimless crimes, by others within a country's legal system. These perceptions, or a bias in favor of resource use over conservation, can underpin decisions to under-resource MPA enforcement capabilities.

Sometimes enforcement agencies are unable to enforce the MPA law effectively because of gaps or overlap in authority among agencies. In other instances, enforcement officers may have such broad responsibility under the law that their job becomes difficult. Often a small number of enforcement staff are responsible for patrolling enormous ocean and coastal areas, and such staff may further be tasked with satisfying various other national law enforcement priorities, such as environmental protection, ensuring the safety of life at sea, drug interdiction, and combating piracy. Many enforcement agents lack training in fisheries or MPAs. Some countries may rely on the police force or other officials with broad enforcement portfolios for MPA enforcement. In addition, there may be limitations on availability of prosecutors to pursue cases. Judges may lack adequate training to address the complexities of fisheries and MPA management, or even a full appreciation of the value of robust MPA enforcement. Or prosecutions that do proceed may be unsuccessful due insufficient evidence.

Even in the absence of evidence that MPA enforcement is weak or failing, countries may wish to take advantage of political or other opportunities to strengthen the legal framework for enforcement. For example, the introduction of new MPA legislation or a desire to amend existing MPA legislation could provide occasion to shore up enforcement provisions that are already on the books. Similarly, otherwise ongoing processes to amend fisheries laws—or even other relevant laws of general application, such as criminal codes and evidentiary codes—could present an opportunity to offer targeted provisions that would help MPA enforcement agencies to do their job more effectively.

E. TEN PRINCIPLES FOR EFFECTIVE MARINE PROTECTED AREA ENFORCEMENT

To ensure that existing MPA requirements are effectively enforced—or that a new MPA is designed so as to facilitate effective enforcement—it is helpful to keep in mind several broad principles of MPA enforcement. These principles, first conceptualized and developed collaboratively at a national meeting of MPA enforcement experts,¹⁷ are set forth in Table 1.

Table 1. Principles for Effective MPA Enforcement.

Effective MPA Enforcement ...	
1	Begins with sound, adaptive MPA design and public education.
2	Is fair, consistent, transparent, and governed by the rule of law.
3	Is carried out by trained enforcement officers with clear legal mandates and broad enforcement powers who possess robust maritime domain awareness.
4	Leads to timely legal action, supported by admissible evidence to prove violations, and the imposition of appropriate penalties by neutral decision-makers.
5	Deters would-be violators and increases overall compliance with the law by establishing a high likelihood of detection. It relies on a highly visible enforcement presence as a component of an effective enforcement posture.
6	Is prioritized and adequately funded by government.
7	Is cooperative, within and among government ministries and enforcement agencies, and with the public. It also makes full use of regional and international cooperation, collaboration, partnerships, and institutions.
8	Uses available data, information, and intelligence to anticipate shifting and emerging threats and to plan countering operations, rather than solely responding to observed violations.
9	Ensures that the results of enforcement activities are communicated to the public, information about ensuing proceedings and penalties is shared in a transparent manner, and enforcement authorities are responsive to public input and concerns.
10	Employs modern technologies and approaches without becoming overly dependent on them.

These principles embody sound enforcement practice and good governance. The Handbook user should compare any proposed legal reforms in his or her country with this list. Most proposed legal reforms to strengthen MPA enforcement should be consistent with and promote these principles. Proposed reforms that contradict one or more of these principles should be adopted only after scrutiny and with a compelling justification.

Each principle is briefly summarized below.

1. EFFECTIVE MPA ENFORCEMENT BEGINS WITH SOUND, ADAPTIVE MPA DESIGN AND PUBLIC EDUCATION.

A goal of every MPA designation and its implementing law(s) is to have all affected stakeholders and the public comply with its requirements. Where there is substantial compliance, limited enforcement resources may be focused on the subset of actors that intentionally or repeatedly violate the law. Achieving this high degree of compliance begins with an MPA law that is clearly and simply drafted, with the direct involvement of relevant stakeholders, and a public that understands and respects the purpose and requirements of the law. This includes tailoring the MPA and any implementing regulations to the goals that the MPA was created to achieve. In addition,

¹⁷ Meeting of experts convened at the Environmental Law Institute, Washington, DC, June 9-10, 2016. Details on file with the authors.

the requirements of the MPA should be able to adapt as conservation needs change and evolve. Voluntary action to follow the requirements of the law is the most important tool for achieving this critical goal of compliance. The public should believe in the legitimacy of the law and its objectives for protecting marine resources within the MPA.¹⁸

2. EFFECTIVE MPA ENFORCEMENT IS FAIR, CONSISTENT, TRANSPARENT, AND GOVERNED BY THE RULE OF LAW.

To be perceived as legitimate by users and stakeholders, MPA enforcement should consistently result in the imposition of penalties that are appropriate to the severity of the offense. Penalties should be predictable (meaning that fines, or fine ranges, applicable to certain offenses should be publicly listed and continually assessed), and fair. While similar violations are treated with consistency, enforcement officers and courts should also possess some flexibility to adjust the penalty in most cases based on the circumstances. In order to ensure that the system is both fair and perceived as fair, transparency is essential. The public should be able to see what enforcement actions are being taken and understand why. Enforcement and punishment must always be governed by the rule of law—that is, based on and constrained by existing legal authority, subject to privacy and due process rights of the accused, and not driven by the whims of government officials.

3. EFFECTIVE MPA ENFORCEMENT IS CARRIED OUT BY TRAINED ENFORCEMENT OFFICERS WITH CLEAR LEGAL MANDATES AND BROAD ENFORCEMENT POWERS WHO POSSESS ROBUST MARITIME DOMAIN AWARENESS.

To successfully perform their duties, officials charged with enforcing the requirements of an MPA should have a clear legal mandate as to their jurisdiction and responsibilities under the MPA law. Gaps and overlap in the legal authority of enforcement agencies should be minimal, and the lead or coordinating entity for MPA enforcement should be defined. Ideally, enforcement officers will be professional, sworn,¹⁹ thoroughly trained, and vested with basic enforcement powers: the ability to detain, search, seize, and arrest—both at sea and on land. The scope of these enforcement powers should be clearly spelled out in the law (if not in an MPA law, then elsewhere in a country’s laws) to guard against overreach and abuse of power. Finally, enforcement officers should cultivate maritime domain awareness and have access to tools that support that awareness, which is essential given the vastness of the sea and the complexity and unpredictability of actors and activities that can affect MPAs.

4. EFFECTIVE MPA ENFORCEMENT LEADS TO TIMELY LEGAL ACTION, SUPPORTED BY ADMISSIBLE EVIDENCE TO PROVE VIOLATIONS, AND THE IMPOSITION OF APPROPRIATE PENALTIES BY NEUTRAL DECISION-MAKERS.

MPA enforcement action should lead seamlessly and swiftly to prosecution or other appropriate enforcement action by government officials. MPA enforcement officers should be capable of collecting, preserving, and

¹⁸ See Sutinen, J.G., and K. Kuperan. 1999. “A SocioEconomic Theory of Regulatory Compliance.” *International Journal of Social Economics*. Volume 26, Number 11. 174-93.

¹⁹ Although definitions vary, a “sworn” law enforcement officer typically has taken an oath to uphold the laws of his or her jurisdiction, possesses full arrest power, and (depending on the country) is authorized to use force and carry a firearm. See, e.g., United States Office of Justice Programs, Bureau of Justice Statistics, “What is the difference between sworn and nonsworn officers?” at <http://www.bjs.gov/index.cfm?ty=qa&iid=356>. Non-sworn or civilian officers lack the full suite of law enforcement powers.

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presenting evidence that will be admissible through the country's legal processes to demonstrate liability for violations. Courts or other neutral decision-makers should be able to understand and apply the relevant law and impose penalties for MPA violations in a fair and consistent manner. Each step taken in any legal proceedings should be documented and supported and result in a written final judgment that is reasoned and publicly available. Resolution of cases through a plea or other forms of settlement, which may beneficially conserve time and resources for the parties and the court, should occur only after proper charging documents have issued, and then only in accordance with the law.

5. EFFECTIVE MPA ENFORCEMENT DETERS WOULD-BE VIOLATORS AND INCREASES OVERALL COMPLIANCE WITH THE LAW BY ESTABLISHING A HIGH LIKELIHOOD OF DETECTION. IT RELIES ON A HIGHLY VISIBLE ENFORCEMENT PRESENCE AS A COMPONENT OF AN EFFECTIVE ENFORCEMENT POSTURE.

Effective enforcement, carrying with it tangible consequences, has the specific effect of deterring those who have been apprehended from committing future violations. It also has the more general effect of deterring others, who become more aware of enforcement and its consequences, from committing MPA violations. An increase in deterrence equates to increased compliance with the MPA law and with MPA restrictions—which, as has been discussed, is an overarching goal.

The highly visible presence²⁰ of enforcement officers may dissuade people from committing violations in a high-use area of the MPA while also building public confidence that authorities are actively doing their job to safeguard MPAs. Alternatively, use of covert enforcement to catch a lone violator in a remote area, and subsequent publicity about such enforcement action, may encourage compliance by a potential violator by altering his or her perception of the likelihood of apprehension.

6. EFFECTIVE MPA ENFORCEMENT IS PRIORITIZED AND ADEQUATELY FUNDED BY GOVERNMENT.

Scarce national resources must be spread across many competing, high-profile needs at sea that go beyond MPA enforcement—from combatting illegal immigration and drug trafficking to ensuring the safety of human life. Effective MPA enforcement thus depends on the willingness of a country to prioritize the needs of MPAs and environmental protection, or at least ensure that enforcement resources and assets are shared with other top national priorities. Additionally, countries should ensure that one or more mechanisms are available to generate adequate funding for MPA enforcement needs—including, potentially, funds that are derived from MPA-related fines and asset forfeiture.

Strong MPAs can have positive outcomes for the sustainability of fisheries resources. However, in most cases developing states lack sufficient funding to ensure adequate levels of MPA monitoring and enforcement. One funding strategy is to link payments that governments negotiate with foreign entities on behalf of long distance fleets to monitoring and enforcement actions in both near-shore and offshore MPAs. This targeted funding

²⁰ This means that enforcement officers make themselves seen by, and their presence known to, the public through patrols, operations, outreach, and communications. Also, information about enforcement actions and their results is communicated through the media and made available to the public.

approach can ensure that each MPA has a substantive fraction of funding available to invest in monitoring, training, education, and other measures.

7. EFFECTIVE MPA ENFORCEMENT IS COOPERATIVE, WITHIN AND AMONG GOVERNMENT MINISTRIES AND ENFORCEMENT AGENCIES, AND WITH THE PUBLIC. IT ALSO MAKES FULL USE OF REGIONAL AND INTERNATIONAL COOPERATION, COLLABORATION, PARTNERSHIPS, AND INSTITUTIONS.

Effective enforcement of MPA requirements goes well beyond individual enforcement officers or even individual enforcement agencies. Effective enforcement requires communication capacity within and across ministries/agencies for the purposes of planning, coordination, and the sharing of information and resources. Government prosecution and legal authorities should understand the circumstances that enforcement officers typically encounter in the field. Conversely, enforcement officers should have a sense of the kind of evidence that must be presented in the courtroom. Enforcement also benefits from public participation and cooperation with trusted enforcement authorities, and when those authorities understand the needs of ocean resource users. In particular, the help of local fishermen and other ocean users is paramount to the effective detection of illegal activities.

Cooperation does not stop at national borders. It should include regional and international partners, as well. It is challenging for any country, regardless of its level of economic development and resources, to unilaterally conduct comprehensive surveillance and enforcement activities across all of its large-scale, remote MPAs. MPA enforcement has increasingly become a regional and international undertaking—especially as distant water fleets engaged in IUU fishing scour the world’s oceans and seek to avoid detection. Modern MPA and fisheries enforcement takes advantage of bilateral agreements, regional mechanisms, technology, and international arrangements to build capacity, expand the reach of limited assets, develop cooperative or regional enforcement operations, and generally serve as a force multiplier across vast ocean spaces.

8. EFFECTIVE MPA ENFORCEMENT USES AVAILABLE DATA, INFORMATION, AND INTELLIGENCE TO ANTICIPATE SHIFTING AND EMERGING THREATS AND TO PLAN COUNTERING OPERATIONS, RATHER THAN SOLELY RESPONDING TO OBSERVED VIOLATIONS.

Effective MPA enforcement is not limited to responding to violations that have already occurred. It also includes preventive mechanisms: enforcement agencies should make use of their available tools and resources to understand how and where violations are likely to occur, to plan, and to take affirmative steps to deter or interdict anticipated illegal actions. This may involve interacting with law-abiding fishermen and, in the case of near-shore MPAs, with coastal communities. Frequent collaboration with other enforcement agencies, domestic and international, is another key element of proactive enforcement.

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9. EFFECTIVE MPA ENFORCEMENT ENSURES THAT THE RESULTS OF ENFORCEMENT ACTIVITIES ARE COMMUNICATED TO THE PUBLIC, INFORMATION ABOUT ENSUING PROCEEDINGS AND PENALTIES IS SHARED IN A TRANSPARENT MANNER, AND ENFORCEMENT AUTHORITIES ARE RESPONSIVE TO PUBLIC INPUT AND CONCERNS.

Enforcement agencies are likely to experience the greatest success when they engage in two-way communication with the public. This means communicating the results of enforcement operations and subsequent legal proceedings to the public by way of the media, and also listening to and responding to public concerns and criticism when they arise. This transparency can lend credibility to the work of enforcement agencies and help to reinforce their legitimacy and build trust with the public. Enforcement authorities should actively seek the cooperation of the public, and maintain open communication channels to receive and react to public input.

10. EFFECTIVE MPA ENFORCEMENT EMPLOYS MODERN TECHNOLOGIES AND APPROACHES WITHOUT BECOMING OVERLY DEPENDENT ON THEM.

High-tech surveillance tools and other modern technologies are an increasingly important component of MPA enforcement, helping enforcement officers to monitor activities at sea and identify patterns of behavior. To the extent possible, countries should take advantage of technological advances to enhance their enforcement capabilities, and their laws should embrace the use of evidence derived from new and emerging technologies. However, technology is just one component of the monitoring, control, surveillance, and enforcement continuum and is best viewed as one tool in the toolkit.

* * *

These enforcement principles can provide practical guidance for transforming MPAs that may exist only on paper into meaningful, real-world, marine conservation areas whose requirements are broadly understood and well enforced. The Handbook user is encouraged to refer back to these principles often in the course of reviewing the detailed legal tools and approaches in Part II and the sample provisions in Parts III.

II. LEGAL TOOLS AND APPROACHES FOR STRENGTHENING MPA ENFORCEMENT AND COMPLIANCE

The following sections provide an inventory of legal tools and approaches for strengthening MPA enforcement and compliance. These tools and approaches are intended to modify key aspects of the legal and institutional framework governing marine protected areas. The MPA legal and institutional framework encompasses a country's MPA law or laws, as well as all of the other legal instruments and institutions that play a role in implementing or enforcing the MPA law. Relevant legal instruments may include administrative regulations, ministerial decrees, executive orders, or even guidance documents or management plans. They may also include bilateral, regional, and international agreements. Additionally, the phrase covers non-MPA laws that nevertheless contain provisions relevant to MPAs—such as fisheries laws, environmental protection statutes, criminal codes, and evidentiary codes. Relevant institutions can include enforcement agencies (police, coast guard, park wardens, etc.), ministries or agencies with subject-matter expertise (environment, agriculture and fisheries, justice, etc.), and the courts. Every country's legal and institutional framework governing MPAs is different, so each country must decide for itself which approaches for strengthening MPA enforcement are the most appropriate and where they fit within its existing framework.

The tools and approaches that follow may be implemented by way of the corresponding sample provisions contained in Part III of the Handbook. Although the circumstances of each MPA will vary, even within the boundaries of a single country, many of the challenges to effective enforcement are common—and can potentially be addressed by way of these approaches.

A. DESIGNING MPAS FOR ENFORCEMENT

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Designated Access Points and Mandatory Routes	Sample Provision 1
Fishing Bans	Sample Provision 2 Sample Provision 3
Prohibiting Industrial Fishing in Near-Shore Waters	Sample Provision 4

Attainment of a high degree of compliance supported by sustained, effective enforcement begins at the MPA design stage. This is when an MPA law is being conceptualized and drafted, and the geographical area is being designated.²¹

While the specifics of MPA design are not the focus of this Handbook, design has important implications for how easy—or how difficult—it will be to enforce the requirements of the MPA in practice. For instance, an MPA that

²¹ This section speaks generally in terms of “MPA design.” Note that there can be important differences between the design of an MPA *law* and the design of the *specific MPA*—which may be further defined by administrative regulations, management plans, and other non-statutory authorities. Although this Handbook is concerned mainly with laws and opportunities for strengthening existing laws, the Handbook user should be alert to opportunities to improve enforcement at any appropriate level: statute, regulation, management plan, etc.

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can be easily accessed by enforcement officers will foster more effective enforcement.²² Also, certain types of MPA restrictions may be easier to enforce. For example, a prohibition on the *possession* of certain gear is easier to enforce than a prohibition on the *use* of that gear for fishing, as it may be difficult to observe someone in the act of using illicit gear. Similarly, setting conditions that require retention of caught fish intact, rather than filleted or altered, facilitates species identification by enforcement officers. To reinforce restrictions on unauthorized fishing in an MPA, countries should also consider imposing geographical limitations on the actions of the industrial fishing fleet.

Careful consideration of MPA boundaries is also necessary. MPA delineations that rely on straight lines and are easily discernable with navigation equipment are most easily enforced. An ecosystem approach may suggest aligning area boundaries with the edges of specific habitats, a marine ecoregion, or other natural features that best reflect the ranges of critical resources, but long-term requirements such as ease of enforcement are also important to consider in planning stages.

Establishing clear expectations and a baseline for managing human activity in the MPA is also important. This means that a key factor in MPA design is whether the default is that activities are prohibited unless expressly allowed; or, conversely, that activities are allowed unless expressly prohibited. The most common approach—under which areas are open unless closed, and gear is allowed unless banned—poses greater difficulties for enforcement officers than an approach under which the starting point is a prohibition on access and gear use, except under narrow circumstances.

Other considerations include the creation of mechanisms to pay for effective enforcement. In addition to support through general funds, such mechanisms can be funded through access permits and fees, fines collected from illegal actors, and through payments for ecosystem services (PES).

Several additional design approaches can make MPA requirements easier for users to understand (aiding compliance) and violations easier for enforcement officers to detect (aiding enforcement). First, countries can designate a single **embarkation point for access** to an MPA. Such a measure facilitates control of vessels present within the boundaries of the MPA, reduces costs by establishing a reference point for all enforcement measures (e.g., inspection of harvested seafood, fishing gear, or permits), and allows for the establishment of a single, common office for permit applications and collection of fees. This type of approach is most relevant for near-shore MPAs that may be accessed by small-scale vessels launched from land²³ or MPAs that are visited by snorkelers and divers entering from shore.

Second, there is strong evidence that the most successful MPAs in terms of conservation outcomes have declared, at least in part, **no-take zones**.²⁴ MPA enforcement can be simplified if the declaration of a no-take zone is

²² Of course, many factors may bear on setting the boundaries of an MPA, and some may weigh against ease of access. All things being equal, however, ease of access for enforcement officers will aid enforcement.

²³ An example of such an approach is provided by the gray whale breeding grounds in San Ignacio Lagoon in Baja, Mexico where vessels launch from specific access points in the bay and the grounds are patrolled by a local “sheriff”—a senior local fisherman who monitors the reserve.

²⁴ See, e.g., Graham J. Edgar, “Global conservation outcomes depend on marine protected areas with five key features,” *Nature* 2014. In this case, researchers focused on the definition of no-take zones as the main feature of “effective enforcement,” which they then categorized on three levels: low (“paper park”), mid, and high.

reinforced by a rebuttable presumption²⁵ that any fishing vessel that is found inside the boundaries of an MPA without its fishing gear stowed and unavailable for use is presumed to be fishing illegally.

Third, an effective way to ensure that no unauthorized fishing occurs within the boundaries of an MPA is to impose geographical limits on the actions of the industrial fishing fleet. This is especially helpful in the case of small, near-shore MPAs: even where local fishing is allowed in MPAs, bans on industrial-scale fishing vessels may still be desirable. A general **prohibition of industrial fishing in near-shore areas** is a potentially cost-effective enforcement measure to ensure that no industrial fishing practices, legal or illegal, threaten the stability of near-shore MPAs and nearby areas that provide a source of subsistence fishing for coastal populations. For example, Peruvian regulations for the management of the *anchoveta*²⁶ limit near-shore fishing (up to 10 nautical miles) to the artisanal and small-scale fleets.²⁷ The provision acts as a ban to industrial-scale fishing in waters less than 10 nautical miles offshore on the center-north region. Such a prohibition may be easier to enforce if combined with the requirement that offshore vessels use Vessel Monitoring System (VMS) or Automatic Identification System (AIS) location devices,²⁸ the establishment of mandatory entry/exit routes to or from near-shore marine areas for all industrial fishing vessels, or both. Any industrial fishing vessel found transiting outside of the designated routes, absent *force majeure*, would be suspected of illegal fishing.

To strengthen such a prohibition, coastal countries can also take one or both of the following steps:

- Clearly mark all MPAs and near-shore areas to be avoided by commercial vessels in navigation charts and with marker buoys; and
- Designate mandatory navigation routes that industrial fishing vessels must follow when approaching or leaving near-shore areas.

Two international legal instruments can help reinforce fishing prohibitions and mandatory routes for foreign-flagged industrial fishing vessels. First, the FAO Port State Measures Agreement (PSMA) requires all signatory parties to designate one or several mandatory ports to which foreign-flagged vessels may request entry. According to this rule, it can be possible to require foreign-flagged vessels to follow a specific approach route to the designated port(s). If a vessel does not comply with a mandatory route established within the 12 nautical miles of the territorial sea, its behavior could be seen as suspect, and the responsible party may be found liable.

Second, the International Maritime Organization's (IMO) designation of a Particularly Sensitive Sea Area (PSSA) allows coastal states to establish closed areas to navigation and mandatory routes in or around marine areas of special vulnerability or importance. The basic procedure is as follows: the government interested in declaring a

²⁵ See Section II.D for further discussion of rebuttable presumptions.

²⁶ *Engraulis ringens*. See <http://www.iucnredlist.org/details/183775/0>.

²⁷ Peruvian Decreto Supremo 005-2012-PRODUCE, as amended, defines vessels of 10 cubic meters or less of storage capacity as "artesanal" (artisanal), and vessels of up to 32.6 cubic meters of storage capacity as "menor escala" (small-scale).

²⁸ VMS systems carry a transceiver unit that transmits a vessel's GPS coordinates via a communications satellite to a monitoring station on shore (VMS). No binding international agreement requires the use of VMS, but the units are commonly required by regional fisheries management organizations (RFMOs) and coastal states. AIS devices are broadcast systems that operate in the VHF maritime band and transmit information on the identity, location, and bearing of the vessel. As per Regulation 19 of Chapter V of the Safety of Life at Sea (SOLAS) Convention (Section 2.4), all ships above 300 gross tonnes are required to carry AIS Class A transponders. Class B AIS transponders are voluntary for smaller vessels. See <https://mcanet.mcga.gov.uk/public/c4/solasv/index.html>.

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PSSA in its waters must submit a proposal to IMO's Marine Environment Protection Committee (MEPC) demonstrating the ecological, socio-economic, and scientific significance of the area and its vulnerability, and requesting the approval of "associated protective measures," or actions that are to be adopted by IMO, such as an area to be avoided. Applications must give due regard to the interests of the coastal state, the flag state(s), and all relevant stakeholders. MEPC reviews the application and may approve such designation by IMO resolution. The resolution must then be adopted by implementing regulation at the domestic level.²⁹

B. ENFORCEMENT POWERS

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Authority to Enforce MPA Law; Designation of Lead Enforcement Authority	Sample Provision 5
Cross-Deputization; Appointment of New MPA Enforcement Officers; Temporary Appointment of Foreign Officers	Sample Provision 6
Use of Resources of Other Government Agencies	Sample Provision 7
Exercise of MPA Enforcement Powers	Sample Provision 8
Right of Hot Pursuit	Sample Provision 9 Sample Provision 10

²⁹ Foreign-flagged vessels that do not intend to enter into port may argue that this measure contravenes the principle of innocent passage. Although this is a controversial issue, coastal states seeking to limit the movements of foreign fishing vessels may build on the provisions of the UN Convention on the Law of the Sea that allows coastal states to "adopt laws and regulations [...] relating to innocent passage [...] in respect of [...] the conservation of the living resources of the sea; [and] the prevention of infringement of the fisheries laws and regulations of the coastal State." Art. 21. UNCLOS further allows the coastal state to establish "sea lanes and traffic separation schemes" that are mandatory for all foreign vessels. Art. 22.1. UNCLOS gives broad enforcement powers to the coastal state, which is authorized to take "necessary steps in its territorial sea to prevent passage which is not innocent." The infringement of domestic fisheries laws can be considered non-innocent passage. Art. 25.1. For example, the Bahamas Archipelagic Waters and Maritime Jurisdiction Act of 1993, art. 5(2), builds on UNCLOS' description of non-innocent passage to further consider as non-innocent "any fishing activities other than in accordance with the Fisheries Resources (Jurisdiction and Conservation) Act." Consequently, as long as a mandatory route is established within the territorial sea (12 nm), its infringement by foreign fishing vessels could be interpreted as non-innocent.

Finally, under UNCLOS the coastal state is entitled to "suspend temporarily" the innocent passage of foreign ships to ensure the protection of its security. Art. 25.3. It may be argued that IUU fishing that disrupts the economic stability of small coastal populations threatens the security of the coastal nation. Although UNCLOS describes the suspension as "temporary," there are no specific limits regarding its duration.

To ensure strong MPA enforcement, clarity of enforcement roles, and public accountability, MPA laws should **indicate which agencies or institutions have jurisdiction to take enforcement action, as well as which institutions have prosecutorial and adjudicatory authority**. Key to the success of any MPA are the government officials who possess the legal authority, skills, training, and resources to fully and fairly implement and enforce the law. Also, law enforcement officers should possess a broad range of enforcement powers.³⁰ The law should not present barriers to law enforcement agencies working together; and the law may authorize cross-deputization and even the temporary or permanent appointment of foreign officers for enforcement purposes.

For every MPA, the law should be clear as to which ministries, agencies, departments, or other government institutions have jurisdiction to enforce the requirements of the MPA. Particularly where institutions have overlapping jurisdiction under the law, each institution's roles and limitations should be made as clear as possible. Additionally, the law should indicate which institution possesses lead enforcement authority for the MPA.

A country may seek to expand its MPA enforcement staffing by allowing for the creation of **cross-deputization arrangements among key ministries, agencies, or other government institutions**. This can have the benefit of expanding existing personnel for monitoring and enforcement purposes. On the other hand, increasing staffing without appropriate training and resources can undercut effective enforcement. Cross-deputization is a tool that should be used with care and to meet targeted needs. Cross-deputization must be well explained and publicized to avoid confusion among government officials and the broader public.

Relatedly, a country can authorize the execution of agreements between and among government agencies to allow for the use of **personnel or funds of other government agencies** to conduct MPA enforcement actions.

A country may seek to further expand its MPA enforcement resources by authorizing the minister or agency administrator responsible for implementing the MPA law to appoint new MPA enforcement officers. These appointments would supplement existing enforcement staffing through agencies such as the police and coast guard. For example, enforcement powers can be temporarily granted to officials for specific seasonal time periods, such as for the preservation of migratory routes for whales, or the protection of sea turtle nesting on beaches. Some illegal networks are international in nature. In these instances, partnering with foreign governments to align against networked threats where they exist is essential.

Law enforcement at sea entails challenges not present on land. These include the added complexity of working in the often harsh conditions of the marine environment; the importance of safety inspections for protecting life at sea; and the difficulty of obtaining warrants for transient, difficult-to-detect activity. The law should empower enforcement officials to address these challenges.

The **basic legal powers of enforcement include detention, search, investigation, seizure, and arrest**. Ideally, sworn officers charged with enforcing the requirements of MPAs will possess all of these powers. These powers are often created and delegated *outside* of a country's MPA law—in laws of general applicability as well as in other laws specific to the marine or terrestrial environment. These may include, for example, the laws establishing a country's police force and coast guard, as well as the laws governing fisheries, parks, a country's armed forces, and the like.³¹ A country's legal framework should be clear as to whether and how basic enforcement powers may be

³⁰ The treatment of enforcement powers in Parts II and III of this Handbook borrows heavily from the framing, analysis, and citations on this topic contained in an earlier Environmental Law Institute publication, *Legal Frameworks for MPA Enforcement in the Caribbean: Challenges and Opportunities* 6-13 (rev. ed. June 2015) (lead author Read D. Porter) (hereinafter *Legal Frameworks*).

³¹ *Id.* at 6.

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exercised at sea. Additionally, the failure to comply with lawful requests by enforcement officers should be treated as legal violations.

The execution of enforcement powers at sea has important implications for civil rights and privacy, particularly where an individual's person, possessions, and living quarters are at issue. Each country must strike its own balance between civil rights and the right to privacy, and the level of suspicion required for enforcement officers to invoke their powers.³²

Finally, it is important for a country's enforcement officers to have legal authority to pursue vessels suspected of violating its MPA requirements **beyond the country's territorial waters, into its EEZ, and even onto the high seas**. Even for countries that lack the staffing and resources to engage in such pursuit, it is helpful for deterrence purposes to include a provision in domestic law asserting the country's right and signaling its intention to pursue violators.

Countries should make use of the right of hot pursuit to its fullest extent to hold vessels involved in illegal activities within an MPA responsible for their actions. Pursuant to UNCLOS, the **right of hot pursuit** is subject to two fundamental requirements.³³ First, pursuit must be uninterrupted, and, second, lawful hot pursuit "ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State."³⁴ Under traditional international law, maintaining a direct contact with the pursued vessel by a vessel or aircraft was the only way to ensure an uninterrupted pursuit, which could impose a significant logistical and economic burden on the state undertaking the pursuit.

There are at least two sets of options countries can adopt to increase the efficacy of their hot-pursuit provisions. First, coastal countries can adopt provisions that allow for the use of remote monitoring technologies to fulfill the requirements of legal hot pursuit. Recent international agreements such as the Australia-France Agreement on Cooperative Enforcement of Fisheries Law³⁵ encourage a more updated, flexible interpretation of the concept of hot pursuit by enabling its exercise through the use of "technical means." The broad concept of "technical means" allows the coastal states to use vessel tracking devices or satellite imagery as valid instruments to ensure the uninterrupted pursuit of foreign vessels, and to gather evidence of their illegal actions. However, the legal drafter should take into account that this interpretation has not been tested to date in international litigation and is subject to legal challenge. In addition, the Australia-France agreement provides that one state party may take over the pursuit commenced by the other party,³⁶ and share in the costs of the operation.

Second, countries can simplify the requirements for the forfeiture of vessels involved in MPA violations by establishing automatic transfers of legal ownership if the conditions for legal hot pursuit are met. For example, Australia included a provision under its Fisheries Management Act of 1991 that mandates the **automatic forfeiture** and transfer of legal ownership of a vessel at the time illegal fishing activities are detected (triggering hot pursuit),

³² See, e.g., *Legal Frameworks*, note 30 at 10.

³³ See UNCLOS § 111 (Right of hot pursuit).

³⁴ UNCLOS § 111.3.

³⁵ Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands, 2007.

³⁶ *Id.* art. 4.4.

and not later.³⁷ Although such a provision gives strong leverage to the coastal state, it has not been tested yet in international courts.

Countries can also establish legal cooperation mechanisms that help combat the use of flags of convenience. For example, international treaties such as the Agreement on Cooperation Against Drug Trafficking in the Caribbean³⁸ provides that all states party authorize law enforcement officials of the other parties to board and search vessels flying their flag that may be suspected of illegal activities.

C. DETECTION

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Duty to Report Catch	Sample Provision 11
Logbook Requirements	Sample Provision 12
Vessel Monitoring System (VMS)	Sample Provision 13
Electronic Position and Data Transfer Technology	Sample Provision 14
Vessel Monitoring System Operations	Sample Provision 15
Video Monitoring on Fishing Vessels	Sample Provision 16
Port Access Requirements	Sample Provision 17

The probability that an MPA violator will be detected at sea, interdicted, and successfully prosecuted is typically low. Therefore, it is important for law enforcement agencies to gather as much information as possible, and from as many different sources as possible, with respect to the activities taking place in and around MPAs.

Effective MPA management and enforcement rely heavily on **recordkeeping and reporting**. These techniques are equally important to evaluate harvest for both scientific monitoring and compliance monitoring. Several types of records are relevant for MPA enforcement purposes, which should be available to both at-sea and dockside enforcement staff. In addition to traditional methods of using and maintaining hard copies of records and reports, electronic reporting and recordkeeping have become an important component of the enforcement framework.

Countries can employ a variety of **monitoring and surveillance methods** to help ensure compliance with MPA requirements, building on the increasing interest in and use of remote monitoring and other technologies.³⁹ These methods will vary based on the technical capacity and financial resources of the enforcing agency, location of the

³⁷ Australia's Fisheries Management Act of 1991 art. s 106A. See <https://www.legislation.gov.au/Details/C2016C00795>. For additional information, see Warwick Gullet, "Smooth Sailing for Australia's Automatic Forfeiture of Foreign Fishing Vessels," 22 *Environmental and Planning Law Journal* 3, 169-73 (2005).

³⁸ Agreement Concerning Co-Operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area art. 16.

³⁹ Sandra Brooke, Tse Yang Lim & Jeff Ardron, Surveillance and Enforcement of Remote Maritime Areas (SERMA), at https://marine-conservation.org/media/filer_public/2011/09/19/serma_tech-options_v12.pdf.

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MPA, and kinds of users accessing the resource. For fisheries, monitoring approaches can include catch, gear, and vessel monitoring to evaluate how fish are harvested, what species are being caught, and where.

The suite of at-sea catch monitoring methodologies from which coastal countries can select include self-reporting by the fishing vessel using logbooks, the use of third-party, onboard observers to evaluate catch both for scientific assessment and for enforcement purposes, the use of video monitoring of the vessel deck, the use of onboard scales to determine catch weights, the use of environmental DNA to identify catch composition, and the use of at-sea boarding to evaluate compliance (catch, gear, and/or safety). Vessel boarding, catch counts and weights, and logbook reporting can also be conducted dockside.

One of the most powerful tools to deter illegal fishing activities in or around an MPA consists on the use of vessel monitoring devices and systems. Fully monitoring the integrity of remote MPAs by means of patrol boats and aircraft would likely require expenditures for enforcement assets and personnel that no one country would be willing to assume. Nevertheless, some technological advances have made less expensive methods of monitoring available, including global positioning systems (GPS), VMS, and AIS. VMS devices securely transmit the location of a fishing vessel during a fishing trip, but their cost can be relatively high, and the data are generally not made available to the public. AIS is more affordable, contributes to safe navigation, and the data are public and show promise as a tool for scientific research and for managing human activities at sea.⁴⁰ Vessel operators can turn off or tamper with AIS systems, but such “spoofing” behavior at sea is detectable and can be a warning flag for illegal activity.⁴¹ Requiring all industrial fishing vessels as a condition of their fishing permit to have an installed and operating remote monitoring device such as VMS or AIS on board would aid enforcement of remote MPA requirements. For near-shore MPAs, enforcement officers may employ on-shore, line-of-sight surveillance methods or utilize at-sea enforcement vessels to detect violations.

VMS and AIS data can track where a vessel is or has been. However, if the data are not shared with enforcement authorities in a timely manner, fish harvested from within a no-take zone or other MPA may enter the marketplace as legally caught seafood. Countries can seek to avoid this problem by requiring all large industrial fishing vessels, prior to their arrival to port, to provide a record of the vessel’s position data obtained from the VMS and/or AIS to prove that they have not been operating within an MPA. Fishing vessels that do not have VMS and/or AIS on board, or that have failed to report its malfunction, may be considered to have engaged in fishing in an MPA unless able to demonstrate otherwise.

⁴⁰ AIS range can be more limited, but the technology is swiftly evolving. See M.D. Robards, “Conservation science and policy applications of the marine AIS system,” 1 *Bull. Mar. Sci.* 75, 75-103 (2016), at <http://vislab-com.unh.edu/~schwehr/papers/2016-RobardsEtAl-AIS-conservation.pdf>.

⁴¹ See Douglas J. McCauley, “Ending hide and seek at sea,” 351 *Science* 6278, 1148-50 (2016), at <http://science.sciencemag.org/content/351/6278/1148.full>.

D. ADJUDICATION OF MPA VIOLATIONS

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Persons Liable	Sample Provision 18
Admissibility of Evidence to Prove Violations at Sea	Sample Provision 19
Presumption of Illegal Harvest	Sample Provision 20
Presumptions Regarding Logbook Entries	Sample Provision 21
Presumption of Illegal Harvest In Case of Inoperable Vessel Location Device	Sample Provision 22
Presumption of Responsibility for Acts or Omissions Giving Rise to Violation	Sample Provision 23
Presumption of No Lawful Permission to Engage in Activity Giving Rise to Violation	Sample Provision 24
Ticketing and Payment of Fines & Administrative Fees	Sample Provision 25
Settlement of Enforcement Actions; Negotiated Pleas	Sample Provision 26

Violation of the requirements of an MPA can result in government officials bringing an enforcement action against the offender. Enforcement proceedings before a court can be criminal or civil (and in some countries, ministry or agency officials can oversee streamlined administrative proceedings of a quasi-judicial nature). These actions usually involve the filing of a formal written complaint or other charging document, leading to proceedings before a judge or administrative officer to determine the alleged violator's liability and decide on a penalty. Despite significant differences in these processes from country to country, the adjudication of MPA violations raises certain common obstacles that can be addressed through targeted amendments to a country's laws.⁴²

A common problem with addressing illegal activity at sea, including violations of MPA requirements, is ensuring that the persons ultimately responsible for the violation (including those with the most to gain financially from it) are held liable and subjected to a fair and appropriate legal penalty.⁴³ While a vessel's master and crew may be held liable for violations on a vessel, best practice is to hold the vessel's owner liable, as well—particularly if there

⁴² The treatment of adjudication of MPA violations appearing in Parts II and III of this Handbook borrows heavily from the framing, analysis, and citations on this topic contained in an earlier Environmental Law Institute publication, *Legal Frameworks for MPA Enforcement in the Caribbean: Challenges and Opportunities* 14-16 (rev. ed. June 2015) (lead author Read D. Porter).

⁴³ The standard of fairness is likely to lead to different interpretations, depending on the interested party. The concept of what is "fair and appropriate" might vary if determined by the State, by the prosecutor, and/or by MPA site managers.

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is evidence that the master and crew are acting at the direction of the owner.⁴⁴ By **broadly defining** as a matter of law **who may be liable for MPA violations**, a country can help ensure that responsible actors are prosecuted and potentially deter such activity in the first place.

To demonstrate a person's liability for violating an MPA requirement, the government or prosecuting authority bears the legal burden of proving the violation before a court or other tribunal. To do so, the government must present **admissible evidence** that persuades the court or other fact-finder that the law was violated and that the accused person was responsible for the violation. Obtaining, preserving, and presenting evidence of MPA violations that is both admissible and persuasive can be challenging. Difficulties of proof are particularly acute when a country has limited enforcement resources; where the alleged violation occurs far away from shore; where the alleged violator claims that he had permission; or where a combination of these factors are in play.

A country can facilitate successful enforcement actions by ensuring that its laws, to the greatest extent possible, account for difficulties of proving MPA violations. This can be done in several ways, including by broadening standards of admissibility for evidence used to prove legal violations at sea; and by adopting rebuttable legal "presumptions" that, in specified situations, assign the initial burden of producing evidence to the alleged violator. **Strict liability** provisions can apply under certain circumstances, such as when the violator is found in possession of a protected species or when the violator takes actions that constitute a clear danger to the health and stability of an MPA.

Given the difficulty of obtaining, preserving, and presenting evidence in legal proceedings, a country's laws should **provide for the admissibility of any type of reliable evidence to prove MPA violations**. At a minimum, the law should not discriminate against particular types of evidence, including evidence associated with the emerging technologies discussed earlier. Evidence used to prove a violation of an MPA law can come from a wide variety of sources, including, but not limited to: eyewitness testimony (from an enforcement officer, a citizen, or anyone else); photographs; video recordings; satellite data or other electronic information revealing a ship's location and course; a vessel's logbook; catch and equipment found aboard a vessel; or, a combination of these sources.

By codifying certain **presumptions** about activities carried out by a vessel in or near an MPA, a country can simplify matters of proof for its enforcement authorities and place the burden of producing evidence on the alleged violator—the party with the most ready access to the information.⁴⁵ With a legal presumption, the law initially presumes that certain facts are true, but the alleged violator is allowed to produce admissible evidence that rebuts that presumption. Such presumptions may be helpful in addressing one or more of the following common factual scenarios related to fishing in an MPA that can present difficulties of proof for the government:

- establishing **what** type/species of fish were caught;
- establishing **where** fish were caught;

⁴⁴ But note that there may be very good reasons not to prosecute DWF IUU vessel crew, especially where crewmembers are vulnerable, may have been subjected to human rights violations, and lack either influence with the vessel master or any meaningful input in the vessel's fishing operations.

⁴⁵ In a court case, the *burden of proof*, also known as the *burden of persuasion*, typically rests with the party asserting a claim or defense—e.g., the government when it seeks to prove a criminal offense, or a defendant asserting an affirmative defense—and remains with that party throughout. *Standards of proof* may include, for example, proof beyond a reasonable doubt (common in criminal matters), proof by clear and convincing evidence (often used in fraud cases), and proof by a preponderance of the evidence—that is, a "more likely than not" standard (typical in civil actions).

- establishing **how** fish were caught;
- establishing **who** aboard a vessel is responsible for a violation; and
- establishing whether the alleged violator had **permission** to engage in the otherwise prohibited activity.

Finally, to promote the smooth operation of MPA enforcement, as well as the timely and efficient administration of justice, the legal system should encourage acceptance of responsibility by those who have violated the MPA law. Violators who are prepared to acknowledge liability and accept the imposition of a penalty should be allowed to do so prior to final judgment in any enforcement action, saving the parties and the judiciary time and expense. This may be achieved through, for example, the use of a **ticketing system for minor violations** and the authorization of prosecutors or other government officials to **negotiate the resolution of enforcement actions prior to judgment**. Written documentation of alleged violations is critical to maintain a paper trail, ensure the accountability of all persons involved in the process, and minimize the risk of public corruption.

E. PENALTIES

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Written Warning	Sample Provision 27
Penalties	Sample Provision 28
Corporate Penalty	Sample Provision 29
Continuing Offenses	Sample Provision 30
Penalties for Foreign Fishing Vessels	Sample Provision 31
Compounding of an Offense	Sample Provision 32
Permit Sanctions	Sample Provision 33
Automatic Termination of License	Sample Provision 34
Forfeiture and Seizure	Sample Provision 35
Seizure of Gear and/or Cargo	Sample Provision 36
Sale of Forfeited Goods	Sample Provision 37
Sale of Forfeited Fish	Sample Provision 38
Natural Resource Damages	Sample Provision 39
Imprisonment	Sample Provision 40

Most MPA enforcement strategies are prescriptive and establish what interested parties can and cannot do. To be effective, such prescriptive measures must be backed by fair, consistent, pre-established penalties for violations. The threat of imposing penalties is a tool for deterring negative behavior and encouraging compliance with prescribed rules. Penalties in the form of monetary fines can make it more expensive to conduct illegal fishing activities, including in MPAs. The additional risk of seizure and forfeiture of illegal catch, as well as gear and even vessels used to violate the law, adds a further deterrent.

Penalty provisions corresponding to MPA violations should be **drafted to provide clarity as to the nature of the violation and the extent of the penalty that will be imposed**. The more serious an MPA offense, the more severe the penalty should be. Higher fines may be imposed on individuals who violate fisheries regulations within the

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boundaries of an MPA (e.g., fishing out of season). Similarly, higher penalties may be imposed for repeat offenders—i.e., recidivists.

Types of penalties may be roughly classified in six categories: 1) warnings (verbal or written), 2) civil penalties or criminal fines, 3) permit sanctions, 4) forfeiture, 5) payment for damage to natural resources, and 6) imprisonment.

First, for the least serious violations (e.g., a person entering a no-take zone without a permit but who has not carried out any harmful action), enforcement authorities can choose to deliver a verbal or **written warning**. Warnings have a limited deterrent effect. If enforcement authorities maintain an adequate record of violators, however, such warnings can be used by enforcement agencies to impose higher fines in cases of recidivism.

Second, governments can implement enforcement by imposing **monetary penalties and fines** on violators. Monetary penalties are perhaps the most common type of penalty and may be imposed through ticketing systems, out-of-court administrative settlements, or in court by a judge or magistrate.

Monetary penalties can be fixed or discretionary. Fixed penalties are generally lower, but have a set deterrent effect. Discretionary penalties typically set a range and are capped, but provide little guidance for what actually happens in practice. These approaches can be combined in systems that set a high discretionary fine range by law, but rely on a lower fixed fine by schedule pursuant to that law, or by administrative regulation. Such an approach provides guidance to enforcement agencies and courts, while preserving discretion to consider the facts of specific cases and adjust the penalty amount accordingly.

Countries can achieve a significant deterrent effect by imposing **high monetary penalties**, even if the risk of being caught is very low given the limited enforcement capacity on the marine environment. In some cases, governments can take full account of the variety of circumstances regarding MPA violations by raising monetary penalties due to **repeated offenses**, or **adjusting them to the violator's ability to pay** (e.g., fines can be linked to a country's minimum wage). Countries can establish **higher fines for foreign fishing vessels**; however, absent an uncommonly strong relationship with the vessel's flag state or a strong international agreement, the ability to collect these fines turns on a country's legal and organizational capability to detain a suspect vessel in port. An additional measure of deterrence may result from imposing higher monetary penalties on **corporations** or other entities that violate MPA requirements.

Large maximum penalties can act as incentives for violators to seek settlement of their violations out of court, an approach that has the further benefit of reducing the costs of prosecution. **Settlements** should always be made subject to an external check (e.g., ratification through judicial process) to avoid corruption.

Certain MPA violations run the risk of increasing environmental damage if they are allowed to continue for long periods of time (e.g., water pollution from ships). Monetary penalties should be increased or multiplied in cases of such **continuing violations**.

Third, coastal countries, and especially those that host significant international fishing activities in their waters, can protect their MPAs from unauthorized fishing by imposing strong **permit sanctions** (suspension or revocation of a permit or license) in appropriate circumstances. If a vessel is discovered illegally fishing in an MPA (or fishing in contravention of any fishing regulation), this may properly lead to, in addition to the individual sanction imposed to the owner of the vessel, a temporary suspension or permanent cancellation of the fishing permit. Permit sanctions are generally considered to be the most effective deterrent against fisheries violations, as they prevent

commercial fishers from returning to the fishery for a fixed period of time, or even permanently. Permit sanctions can also apply to other types of activities for which permission is required, such as ecotourism. Additionally, a permit sanction measure can be used to revoke licenses issued to corporations or vessels engaging in activities that suggest an intention to evade or circumvent fisheries regulations.

Fourth, countries should provide that illegal fishing within an MPA will promptly lead to the **seizure and forfeiture of fish, gear, or even vessels**. Such measures are important as they help to ensure that violators do not profit from their ill-gotten gains. For example, fish caught illegally should be forfeited to the state rather than sold for profit by the violator. It is important that forfeitures of this type are distinguished from monetary penalties and not counted towards the amount of any fines that may be imposed. Consistency in applying forfeiture measures is fundamental to maintaining the deterrent power of this penalty. If, when a violator is identified, law enforcement is lax in pursuing forfeiture measures (e.g., the vessel and/or the fishing gear is returned to the violator after a short period of time), the penalty may lose its deterrent effect not only on the current violator, but also on future violators who may reasonably expect to be treated on equally benign terms. Returning gear and other equipment to a violator should be authorized only in very specific conditions (e.g., for some mitigating circumstances) and subject to a strict external control to avoid corruption.

Forfeiture penalties may rely on legal presumptions with respect to certain prohibited fishing practices. Specific forfeiture measures may cover catch, cargo, gear and equipment, or vessels themselves. Upon forfeiture, the government is typically entitled to sell or otherwise dispose of the forfeited goods. Provisions for the sale of seized seafood (or its release, if the catch is alive) may require additional procedures, given the perishable nature of the goods. Conversely, should a presumed violator be found not guilty or the forfeiture invalidated by a court, the law should provide for the return or replacement of the forfeited goods, or their monetary value.

Fifth, given the importance of the resources that MPAs are typically intended to safeguard, penalties imposed as a consequence of MPA law violations should account for injuries to natural resources. **Natural resource damage** provisions hold responsibility parties liable for such injuries and require such parties to either restore the injured resource or pay for the cost of doing so. In addition, **mandates for community service payments** address intangible detriments to dependent communities from harm caused by illegal actors. For example, a company that spills oil will be responsible for cleanup as well as restoration of injured resources, including harm to wildlife and other natural resources, recreation resources, ecosystem services, and property (e.g., signage, markers, or mooring buoys).

Sixth, governments can deter MPA violations by **imprisoning** violators in addition to or in lieu of fines. While imprisonment is uncommon for violation of environmental laws, it may be appropriate in extreme cases—e.g., repeat offenders, intentional violators, or actions that result in severe damage—and can serve as a potent deterrent. In some instances, imprisonment may be the only appropriate means of penalizing an offender who is guilty of a severe violation and poses a flight risk.

Alternative penalties such as participation in restoration, monitoring, or management activities, or assistance with public education, can sometimes transform violators into advocates—and regardless, their work on behalf of the MPA can be beneficial.

Finally, countries can help deter future violations by ensuring that sanctions and penalties imposed as a consequence of MPA law violations are publicized widely.

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F. REQUIREMENTS PERTAINING TO INTERNATIONAL VESSELS/FISHERS

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Trial <i>in Absentia</i> ; Issuance of Notice to International Fishing Vessels	Sample Provision 41
Bond Measures; Release of Seized Property	Sample Provision 42
Recovery of Pursuit Costs	Sample Provision 43

Coastal developing countries with a large EEZ, significant fisheries resources, and few at-sea enforcement assets are the most affected by IUU fishing activities conducted by foreign—and even stateless—fishing vessels. Coastal countries can help to defend their environmental and economic interests by entering into international instruments like the 1995 **United Nations Fish Stocks Agreement** (UNFSA)⁴⁶ and the 2009 **FAO Port State Measures Agreement** (PSMA),⁴⁷ which constitute efforts to control the exploitation of highly migratory and straddling stocks and halt IUU fishing, respectively. Although ratifying these instruments may only indirectly promote MPA enforcement, implementation at the domestic level can further reinforce MPA requirements.⁴⁸

In addition to the ratification and implementation of these international instruments, coastal states can further strengthen MPA enforcement with respect to the actions of the DWF fleet by providing for trial *in absentia* and the use of bond measures.

Even when detected, vessels engaged in IUU fishing may successfully avoid capture by coastal state law enforcement authorities. But if the vessels have been identified, the coastal state can still seek to initiate legal proceedings against the vessel owner or operator.⁴⁹ **A fair trial is possible even in absence of the accused**, especially if the violator deliberately fails to appear in court. As such, countries can provide for trial *in absentia* in appropriate circumstances.

A coastal state is entitled to impose **bond measures** to secure the appearance of international vessels and crew that have been arrested as a consequence of a violation of the coastal state's laws on fisheries management and

⁴⁶ United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

⁴⁷ FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.

⁴⁸ The PSMA establishes duties for port states to, *inter alia*, designate specific ports to be used by foreign vessels; share information and ensure international cooperation; deny entry into port to vessels suspected to have engaged in IUU fishing; and inspect foreign-flagged vessels that have been denied entry into other ports, or that are suspected of engaging in IUU fishing. To implement the PSMA, nations must enact domestic port state regulations mirroring the PSMA requirements.

⁴⁹ The United Nations International Covenant on Civil and Political Rights provides that as part of the right to a fair trial, “everyone charged with a criminal offense shall have the right [...] to be tried in his presence”—a right that is common in countries around the world.

ocean conservation.⁵⁰ The FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing requires States to adopt sanctions of “sufficient severity to effectively prevent”⁵¹ IUU fishing.⁵²

A coastal state can demand full payment of the bond imposed on the owner or operator of the foreign fishing vessel prior to the release of the vessel. A country also is entitled to **recover all costs** incurred in the process of pursuing and apprehending a fishing vessel.

G. DETECTION AND ADJUDICATION OF OTHER VIOLATIONS

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Ship Notification Procedure for Passage without Interruption	Sample Provision 44
Ship Recordkeeping and Reporting Requirement	Sample Provision 45
False Statements to Enforcement Officers; False Statements in Required Records or Reports	Sample Provision 46
Conspiracy	Sample Provision 47
Detection and Prosecution of Other Offenses at Sea; Human Rights Violation; Illegal Substances	Sample Provision 48 Sample Provision 49
Inspection of Vessels for Safety and Other Lawful Purposes; Evidence of MPA Violations	Sample Provision 50

In some cases, those who are violating the MPA law are also violating other laws, and these other violations may be easier to detect and prosecute. They may include, for example, violations of recordkeeping or reporting requirements, as well as crimes of falsehood and deception, particularly those directed at MPA enforcement officers. Countries can seek to use this situation to their advantage when it comes to MPA enforcement. It is important to identify and pursue illegal acts by MPA violators that are related to, but potentially separate and distinct from, violations of traditional MPA restrictions on location, fishing activities, gear, species, and the like. A country’s legal framework should facilitate this approach, or at least not impede it.

In addition, as a practical matter, a country can benefit from linking its MPA enforcement efforts to ongoing efforts to enforce the law in more high-profile, resource-intensive areas, such as illegal immigration, drug trafficking, customs regulation, money laundering, tax violations, and ensuring the safety of life at sea. One approach is to

⁵⁰ UNCLOS has established a series of requirements applicable to bond measures. For example, the vessel and crew shall be “promptly released upon the posting of reasonable bond or other security.” UNCLOS art. 73.

⁵¹ FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Sec. 21.

⁵² In the *Camouco* case before the International Tribunal for the Law of the Sea (ITLOS), ITLOS set forth a series of factors that should be taken into account to estimate the reasonableness of a bond, including “the gravity of the alleged offenses, the penalties imposed or imposable under the laws of the detaining State, [and] the value of the detained vessel and of the cargo seized.” See ITLOS *Camouco* Case (Panama v. France) 2000 § 67.

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mandate that a single agency enforce all laws that address illegal activities occurring at sea.⁵³ Where this is the case, that enforcement agency must have sufficient resources and personnel to dedicate to MPAs, fisheries regulation, and environmental protection laws.

Any type of vessel may enter or approach an MPA at any time, and for myriad reasons—some innocent and some illegal. By requiring that **vessels report and record basic information about their presence in or near an MPA**, consistent with the requirements of international law, a country can obtain valuable information about the activity taking place there while raising public awareness about the MPA. Additionally, failure by a vessel to comply with such requirements can be deemed a violation of the law, providing an independent basis for enforcement—even in the absence of evidence of illegal fishing or other MPA violations.

In addition, vessel masters, crewmembers, owners, and charterers who engage in or are responsible for fishing and other activities conducted in and around MPAs may have many occasions to interact with a country's enforcement authorities and other government officials—in person or otherwise. These situations include, for example, applying for fishing or access permits; speaking with and answering questions posed by enforcement officers during inspections or other encounters; submitting MPA entry or exit notifications; making statements or answering questions under oath or penalty of perjury; or simply by way of maintaining required records.

False or deceptive statements of fact made to government officials in many of these scenarios may, depending on a country's laws and the precise circumstances, rise to the level of a criminal offense. These types of offenses are typically addressed by a country's criminal code through laws of general application. Examples of relevant offenses include making false statements, criminal fraud, perjury, and forgery. These crimes typically involve one or more of the following elements:

- the making of a false statement of material fact
- to a government official or in a legal proceeding
- under oath or under penalty of perjury, or as part of an official investigation or process
- knowingly, with an intent to deceive, or with an intent to obtain a personal benefit
- with the expectation that someone will act or refrain from acting in reliance on that statement.

Given the difficulty of detecting and proving violations of MPA requirements, countries should confirm, first, that they have sufficient laws on the books to address crimes of falsehood and deception that violators may commit to facilitate or cover up their MPA violations; and, second, that MPA enforcement officers are familiar with the elements required to prove these offenses. This knowledge will also assist enforcement officers in their conversations with potential violators.

Additionally, countries may choose to amend their MPA laws to incorporate crimes of falsehood and deception directly into the MPA legal framework.

Countries can also include the crime of **conspiracy** in their MPA law. IUU fishing within the boundaries of an MPA is carried out by fishing vessels that, in nearly all cases, have crews of more than one person. The crime of conspiracy

⁵³ This is the case, for example, with the Dutch Caribbean Coast Guard.

focuses on the illegal agreement entered into by the co-conspirators, which is evidenced by some overt act in furtherance of the conspiracy.⁵⁴

For many coastal states, combatting illegal immigration and human trafficking is a growing priority. This means that significant law enforcement staffing, funding, patrol time, and other assets are directed to the detection and prosecution of these offenses, and to ensuring the physical safety of illegal immigrants, refugees, and others who may be the victims of these crimes. To the extent possible, countries can **link the enforcement of immigration and human rights laws to the enforcement of MPA laws.**

Similarly, fighting the trafficking of illegal drugs at sea is an international law enforcement priority, and also a national enforcement priority in many countries, demanding substantial funding and dedication of staffing resources. Again, to the extent possible, countries should **link the enforcement of drug laws to the enforcement of MPA laws.**

By looking for associations and patterns in illegal trafficking at sea, whatever the cargo or contraband may be, governments can bring the full complement of enforcement expertise to bear on professional violators—those that make their living by persistently and intentionally undermining maritime governance regimes, including those that protect special areas. Establishing real-time or virtual fusion cells that provide for shared awareness of illicit maritime activities can help overcome impediments to whole government approaches to thwarting criminal activities at sea.⁵⁵

Finally, one of the principal responsibilities of maritime enforcement authorities is to protect lives and property by helping to ensure that vessels are safely maintained and operated, as embodied by instruments such as the SOLAS Convention. Although a vessel's flag state retains ultimately responsibility for that vessel's compliance with maintenance and operations standards, most countries have embraced port state control measures that provide for the inspection of foreign vessels pursuant to memoranda of understanding and national laws.⁵⁶ Today, the concept of port state control also includes checks against IUU fishing.⁵⁷

When a country inspects vessels to ensure compliance with **safety requirements**, or for any other lawful purpose, **inspection personnel should be authorized and encouraged to act on evidence of MPA violations**, where doing so is consistent with international law. This is true whether inspection personnel are enforcement officers working at sea, or port state control inspectors working on land.

⁵⁴ As discussed earlier in footnote 44, however, IUU DWF vessel crew are often vulnerable and in many instances may not be appropriate targets for prosecution.

⁵⁵ "Fusion cells" under "whole of government approaches" are integrated information-sharing initiatives aimed at improving coordination between government agencies involved in maritime domain awareness. *See, e.g., Routledge Handbook of Naval Strategy and Security* (Joachim Krause & Sebastian Bruns eds.), 153-4 (2016).

⁵⁶ *See, e.g., Paris Memorandum of Understanding on Port State Control*, 1982.

⁵⁷ A significant new advance was the entry into force in June 2016 of the FAO 2009 Port State Measures Agreement.

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H. SHARING ENFORCEMENT POWERS

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Bilateral Agreements. Ad Hoc Bilateral Cooperation in Absence of a RFMO	Sample Provision 51
Multilateral Agreements. Regional Fisheries Surveillance Agreements	Sample Provision 52

Pursuant to UNCLOS, all states are obligated to cooperate for the conservation of the marine environment.⁵⁸ UNCLOS highlights the responsibility of all countries to govern their ocean jurisdiction in a manner that respects the marine life that inhabits their waters. The duty to cooperate becomes particularly relevant for the successful management of remote MPAs located in the EEZ.

Management of industrial fishing in most nations' EEZs tends to be characterized by a great imbalance. Large DWF fleets harvest marine resources in waters under the jurisdiction of developing countries and are under the duty to observe the laws of those coastal states regarding marine protection. However, as previously noted, most coastal countries lack the financial resources and technical capacity to vigorously enforce their marine management laws—and may not be in a position to enforce them at all.

These enormous challenges demand active regional and international collaboration, in terms of both data sharing and joint enforcement activities. Collection and dissemination of enforcement data across regions or globally can enable a collaborative response to international bad actors. With the extremely limited capacity of some small island developing countries in particular, data collection and sharing with partners that have more robust capacity may be the chief mechanism, or even the only mechanism, for achieving successful enforcement outcomes. In addition, countries can partner regionally or globally to collaborate in MPA enforcement, including for example, providing aerial surveillance and patrolling a partner country's waters.

One measure coastal countries can take to increase their surveillance capacity is to enter into **ship rider agreements**. Ship rider agreements allow for an enforcement officer from a host country to ride along on a patrol vessel of another country within its EEZ. The presence of the officer empowers the foreign patrol vessel to enforce the laws of the enforcement officer's country. This creates a means by which countries with more limited resources can benefit from countries with greater capacity. And the countries that own the patrol vessels benefit not only from making the ocean safer, but also by making more productive use of time that they would otherwise be without enforcement authority (ie, when they are passing through other nations' EEZs).

Governments can enter into **bilateral agreements** for the monitoring and control of fishing activities and conservation measures or enter into **regional agreements** that aim at coordinating the efforts of their enforcement vessels and personnel, as well as information sharing. The 1992 **Niue Treaty** on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region provides a good example. The Niue Treaty

⁵⁸ See UNCLOS arts. 116-19 (conservation of straddling fish stocks); art. 192 (general obligation to protect and preserve the marine environment). As the vast majority of countries are parties to UNCLOS, its provisions have become customary international law.

allows ship rider agreements between the parties, as well as direct surveillance of the waters of one party by patrol vessels of another party. The treaty also includes provisions on information sharing, prosecution, and enforcement. Similarly, the 1992 Agreement Establishing Common Fisheries Surveillance Zones of the Organization of Eastern Caribbean States (OECS) offers another good example. According to the Agreement, the “authorised officers” of all member states have jurisdiction to enforce the fisheries laws of all member states, with wide enforcement powers.

Neighboring coastal countries can create common fishery and conservation zones where **fishing activities are co-managed**. This increases information sharing, transparency, and efficacy while reducing costs and simplifying implementation procedures. In some cases, countries may create a joint committee to act as the management authority. These mechanisms have been used in the context of negotiations over international maritime boundaries (IMB), but there is no impediment to using a similar approach in regions where maritime boundaries have already been fixed. Moreover, in marine areas where IMB delimitation is still pending and contentious, joint fishery and conservation zones may provide a positive means of focusing negotiations on the benefits available to all interested parties, such as ocean conservation and sustainable resource exploitation.

In the case of bilateral agreements, countries can enhance their enforcement capacity by granting law enforcement authorities of the other country the right to board and inspect a fishing vessel flying the first country’s flag, where that vessel is suspected of IUU fishing.

I. SHARING INFORMATION

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Information Sharing on Enforcement	Sample Provision 53
Information Sharing on Port Inspections	Sample Provision 54
Computerized Information Systems	Sample Provision 55
International Cooperation Networks to Combat IUU Fishing	Sample Provision 56
Common Vessel Registries	Sample Provision 57

Countries that share an interest with their neighbors on the sustainable use and conservation of the marine environment can support effective MPA monitoring and enforcement by sharing **relevant information on fisheries management**. Monitoring and enforcement strategies rely heavily on access to accurate, up-to-date information. In particular, enforcement actions can be more effective where enforcement agencies from neighboring coastal countries share a **common, updated registry of fishing facilities, target species, and authorized fishing vessels**. In addition to being a practical tool, information sharing is a duty of all countries under international law. UNCLOS describes the duty to “exchange [] information and data acquired about pollution of the marine environment” and

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encourages states to “endeavour to participate actively in regional and global programmes to acquire knowledge for the assessment of the nature and extent of pollution.”⁵⁹

States should also seek to make evidence available to prosecuting authorities in other States, to the extent permitted by national laws and regulations.⁶⁰ Many national laws include data confidentiality provisions. While appropriate data controls are important, it is critical to balance them with provisions that allow for the sharing of information for enforcement purposes.

Countries can increase their protection from IUU fishing by ratifying PSMA. States party to UNFSA will benefit from the creation of a global transparency mechanism to channel the exchange of information on port measures and IUU-suspected vessels.⁶¹

States seeking to improve their dockside controls on fishing vessels can build on the inspection protocols created for the implementation of memoranda of understanding (MoUs) on port state controls. These MoUs standardize measures for **inspecting foreign vessels** to verify that they satisfy international requirements in various areas.⁶² Some MoUs have established online platforms⁶³ to facilitate information sharing on inspections conducted, sanctions imposed, and black lists of noncompliant vessels.

Countries can choose to enter into **legally binding international agreements to harmonize their domestic legal frameworks** around a set of common objectives. Domestic legal frameworks often differ with respect to what activities are considered to be IUU fishing, as well as on the consequences of illegal fishing and the actions that must be taken to prevent it. Many MPA violators are aware of these regulatory mismatches and may seek to take advantage of them.

Countries should strive to prevent IUU fishing products, including those harvested illegally in MPAs, from entering the market by cooperating with other nations to establish common customs codes for fish imports. **Customs codes** for fish in most nations are too unspecific and reflect neither the variety of fish species being commercially sold

⁵⁹ UNCLOS art. 200. Each state is further charged with “provid[ing] other States with a reasonable opportunity to obtain from it, or with its cooperation, information necessary to prevent and control damage to the health and safety of persons and to the marine environment.” *Id.* art. 242. UNFSA requires member states to establish or participate in a regional fisheries management organization (RFMO) to create “appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement.” UNFSA art. 10(h). Under UNFSA, flag states must ensure that vessels are compatible with the agreed system of monitoring, control, and surveillance. *Id.* art. 14. This provision affects all states party to UNFSA, regardless of their participations in RFMOs.

⁶⁰ *Id.* art. 20.

⁶¹ PSMA art. 16.

⁶² Topics of inspection range from fire safety and compliance with the International Safety Management Code, to the International Convention for the Prevention of Pollution from Ships (MARPOL) Annex I requirements on pollution by oil and on labor conditions. There are currently nine regional MoUs active globally.

⁶³ See, e.g., Memorandum of Understanding on Port State Control in the Asia-Pacific Region, Asia Pacific Computerized Information System (APCIS), at http://www.tokyo-mou.org/inspections_detentions/psc_database.php.

nor the true origin of seafood products. Countries must cooperate either regionally or internationally to close these important gaps.⁶⁴

J. OTHER COOPERATION

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Transboundary MPAs	Sample Provision 58
International Agreements to Limit Fishing Effort	Sample Provision 59
Allocation of Funds to Natural Resources Protection	Sample Provision 60

Some countries have further reinforced cooperation on MPA implementation and enforcement through the establishment of transboundary MPAs. In most cases, these “**transboundary**” MPAs are in fact two MPAs that have been created through the enactment of domestic laws and that connect on either side of a maritime boundary.⁶⁵ These efforts provide a forum for coordination, information sharing, scientific cooperation, and harmonized monitoring and enforcement measures.

Countries can improve their collaboration in ensuring sustainable fishing and the protection of the marine environment through the ratification of international instruments that **harmonize** certain kinds of activities, such as **vessel registry procedures**, **distribution of total allowable catch (TAC) rights** to fish for certain species, and information sharing.⁶⁶

Regrettably, corruption of public officials is a common problem affecting small-scale and industrial fisheries. For example, some fisheries enforcement agents working in small, geographically remote locations may be tempted to seek payment in exchange for ignoring violations; others may find themselves subjected to pressure from superiors to overlook illegal actions occurring in areas under their jurisdiction. At a higher level, a government official negotiating a fisheries agreement might be tempted to agree to conditions that are not in his or her country’s best economic interest.

Countries should consider establishing special funds or accounts for marine conservation that include fees and fines collected through enforcement actions. To ensure that fines are used to support MPA management, fines collected as a consequence of MPA violations can be allocated to **special MPA trustees** or held in special accounts.

⁶⁴ For example, the European Union has made some efforts towards regional harmonization of custom requirements for fish imports. See Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, Ch. III, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:286:0001:0032:EN:PDF>.

⁶⁵ Examples include the Mesoamerican Barrier Reef (Mexico, Belize, Honduras) and the Pelagos Marine Mammal Sanctuary (France, Italy, Monaco).

⁶⁶ TACs are increasingly common in fisheries management. TACs impose an annual catch limit on a certain fish species in a defined sea area. Several RFMOs impose TACs to regulate the fishing activities of their member states, although in many instances the TACs are voluntary and member states are free to instruct the vessels flying their flags to exceed the regionally imposed limit. Some fisheries organizations have created catch-limit systems that are fully transferable.

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Government agencies could be limited to withdrawing funds only to undertake specific marine conservation actions.

K. ROLE OF COMMUNITY

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Transfer of Jurisdiction over Near-Shore Marine Management to Local Authorities	Sample Provision 61
Citizen Cooperation in Monitoring and Enforcement	Sample Provision 62
Self-Regulation. Community-Based MPA Enforcement	Sample Provision 63
Co-Management; Deputization of Local Authorities	Sample Provision 64

Technological advances such as the use of VMS devices, as well as increasingly robust international cooperation efforts, can help to address many problems associated with lack of effective MPA enforcement. Legal frameworks should therefore facilitate the broad acceptance and use of new technologies and expanded international cooperation. However, these approaches are inadequate to solve the specific problems affecting monitoring and enforcement of near-shore MPAs. Near-shore MPAs, located close to populated areas and fishing communities, are more likely to be affected by illegal actions from small-scale, artisanal fishing fleets. Although technological advances in the remote positioning of small vessels have been significant, the large number of small boats engaged in artisanal fishing can make it extremely difficult to monitor their movements effectively.

To ensure that MPA requirements are observed for near-shore MPAs, countries should embrace cooperation from local communities of fishers. This cooperation can take several forms, from the use of citizen councils that explain the benefits of an MPA, to the deputization of local authorities to make up for a lack of enforcement staff. A combination of cooperation with enforcement authorities, self-regulation, and assignment of exclusive fishing rights can increase voluntary compliance with MPA conservation measures. In many cases, moral obligations or social peer pressure can act as significant deterrents to illegal action. Cultural affinity for an MPA and the resources it supports can foster an ethical standard among portions of the population, and in so doing bind those people to higher standards of conduct.

One approach to encouraging the direct involvement of local communities in MPA enforcement is to **transfer jurisdictional rights to manage some or all fishery resources and marine protection measures in near-shore areas to municipalities** or local governments.

Several successful cases of near-shore MPA enforcement have relied heavily **on citizen participation**.⁶⁷ Citizens and local residents may help overcome the chronic problem of a lack of adequate means for monitoring and

⁶⁷ See, e.g., the case of the Cabo Pulmo National Park in Mexico, where effective enforcement was based on strong support from the local communities and direct involvement of locals in monitoring and enforcement. Cabo Pulmo: A Marine Protected Area enables biodiversity and the local economy to rebound. Ocean Optimism Lex Project. Earthjustice – Smithsonian Institution, 2015, at <https://ocean.si.edu/how-laws-around-world-help-improve-ocean->

enforcement by directly participating in monitoring and enforcement activities, education and outreach, conflict-resolution, and regular assessment workshops.

Local communities will be more invested in MPA enforcement if they are allowed to draft and implement their own MPA management rules. In this process, public participation, openness, and clarity of locally drafted rules is fundamental to ensuring broad support and a high level of voluntary compliance. Local rules for MPA enforcement are not intended to replicate national or international protection measures. Instead, the main advantage of **self-regulation** is that it allows interested groups to adapt regulatory measures to the particular socioeconomic characteristics of their local communities and to the environmental features of their local MPA.

Collaboration with informed local communities can be an effective tool for MPA implementation and support effective enforcement. Regardless of the existence of no-take zones within an MPA, restrictions on fishing within the boundaries of an MPA must be drafted to ensure that fishers have an understanding of the importance of conservation as well as a personal stake in ensuring that the MPA's requirements are adequately enforced. This can be achieved through stakeholder participation and monitoring programs, including **co-management and the cooperation of local communities in inspections**.

Community collaboration can be institutionalized in MPA management rules, such as in the case of the Cabo Pulmo MPA in Mexico, or focused on informal cooperation agreements. For example, in the Saba Bank of the Dutch Caribbean, the Coast Guard has engaged fishermen in reporting illegal fishing by providing them with a checklist of important information for which they should collect, such as the name of the vessel, registration number, or letters that could identify the vessel, the time and location of the sighting, and the like. In addition, the distribution of collective fishing rights for certain species to specific groups of fishers is another approach to promote compliance in and around MPAs.

Yet another measure to strengthen monitoring and enforcement activities in or around an MPA can be the **deputization of government officials**, providing them with the capacity to arrest individuals and seize property when they identify illegal actions committed within an MPA. This approach may offer a prompt, direct solution to moments of crisis where immediate action is needed—for example, if illegal fishing is dramatically increasing. This measure can also be used as a temporary, transitional tool while broader, longer-term reforms are put into place.

Finally, there can be a greater likelihood of conflict between fishers from neighboring communities that fish in the same sea area. As a general rule, only boats that comply with MPA management rules and have a valid permit should be allowed to fish in the waters of an MPA or its buffer zone.

health. Cabo Pulmo communities have also created monitoring committees for the protection of certain species, such as turtles. See <http://pncabopulmo.conanp.gob.mx/monitoreo.php>.

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L. OTHER MECHANISMS

This section discusses the following legal tools and approaches, which may be implemented by way of the sample provisions in Part III:

Legal Tool/Approach	Sample Provision (Part III)
Prohibition of Trafficking in Fish, Wildlife, and Plants in Violation of Domestic/Foreign Law	Sample Provision 65
Citizen Suits	Sample Provision 66
	Sample Provision 67

Countries can add a layer of protection against the export of protected marine species or the sale of IUU fishing products by introducing a **prohibition on trafficking in fish, wildlife, and plants in violation of domestic or foreign law**. Illegal trade in wildlife and marine resources is a multi-billion dollar industry that poses great threats to the marine environment and gravely affects the efficacy of rule of law in many highly biodiverse countries. Illegal trafficking in marine species can be linked to other international criminal activities and organized crime. Such a prohibition also serves to extend liability beyond fishermen to downstream importers, brokers, processors, and retailers. By modeling such an anti-trafficking approach on the Lacey Act of the United States, countries can expand this prohibition on trafficking to include fish, wildlife, and plants obtained not only in violation of domestic laws, but also in violation of foreign laws. Though controversial, such a provision can be used to increase the protective reach of a nation’s environmental protection laws.

To ensure effective management, it is fundamental that any illegal action occurring within the boundaries of an MPA is likely to lead to negative consequences for the violator. Sometimes government agencies may lack the resources or the will to pursue MPA violators, despite clear violations of the law. Citizen suits, often referred to as “citizen enforcement,” allow for legal action by nonprofits, citizen groups, or individual citizens against those who violate the law. Citizen suits can also be used to sue government officials who fail, through their actions or omissions, to fulfill their nondiscretionary duties under the law. Citizen suits typically provide injunctive relief—that is, the remedy sought is a court order that the defendant take, or cease taking, some action. Citizen suits serve as a *de facto* oversight mechanism that can help compel government officials to comply with MPA law requirements. A citizen suit provision can narrowly allow for legal actions by affected citizens who can demonstrate injury from defendant’s MPA violation(s); or, such provisions can be written more broadly, to allow **any person who witnesses illegal activity to sue the violator**. Citizen suits are a powerful tool in the environmental toolbox and can add an important backstop to effective MPA management,⁶⁸ especially in those MPAs where government monitoring activities are minimal or non-existent and environmental organizations or citizen groups are active.

Allowing individuals or citizen groups to file suit against people fishing illegally can also be helpful when establishing a system of exclusive fishing rights, because it allows the fishers/associations of fishers who manage that resource to protect their economic and livelihood interests in court. These suits should be protected from legal actions aimed at harassing plaintiffs, driving up their costs, or otherwise thwarting an adequate

⁶⁸ This measure was included in the Act establishing the Tubbataha Reefs Natural Park. The Tubbataha MPA is considered one of the most successful MPAs in the Philippines. See, e.g., Patrick Christie & Alan T. White, Best Practices in Governance and Enforcement of Marine Protected Areas: An Overview. FAO Expert Workshop on Marine Protected Areas and Fisheries Management: Review of Issues and Considerations (2006).

investigation.⁶⁹ Additionally, countries adopting citizen suit provisions with respect to MPAs should consider waiving or significantly reducing court costs as a means of encouraging citizen enforcement.

⁶⁹ In the United States, such harassing litigation is referred to as a SLAPP suit, or a “strategic lawsuit against public participation.”

III. COMPENDIUM OF SAMPLE ENFORCEMENT PROVISIONS

This Part contains sample legal provisions that developing countries can reference in their efforts to strengthen compliance with and enforcement of MPA requirements. These provisions track and are cross-referenced to the discussions contained in Part II of the Handbook and offer detailed examples of how the legal tools and approaches described in Part II may be expressed through legislation, regulations, decrees, executive orders, international agreements, or other instruments. Many of the provisions included here have been adapted from, or are informed by, existing legal provisions used in countries around the world.

Most of the sample provisions are intended to inform potential amendments to a country’s existing MPA legislation. In some instances, however, it will be more appropriate or even necessary to amend *other* laws outside of existing MPA legislation to strengthen MPA enforcement. These other laws might include, for example, fisheries laws that establish closed seasons or authorize the use of only certain types of fishing gear. Or laws that are more general in application than the marine environment—such as a country’s criminal code or evidentiary code. Some provisions could have analogous civil or criminal provisions. Sometimes, the provisions are best implemented not through laws but through agreements between or among countries. Following each sample provision contained in this Part, the authors suggest one or more likely locations for that provision within a country’s legal framework. These locations are summarized in Table 2.

Table 2. Potential Placement of Legal Provisions to Strengthen MPA Enforcement

Location(s) within a Country’s Legal Framework
MPA law
Fisheries law
Environmental protection law
Evidentiary code
Criminal code
Civil code
Shipping / port authority law
Executive order
Administrative regulation
Ministerial decree
International agreement (bilateral or multilateral)

Table 2 Explanatory Note. *References to “law” may include national or federal legislation (statutes, ordinances, and the like), or even state or provincial legislation. References to “administrative regulation” and “ministerial decree” typically include legal actions taken by executive or administrative bodies that are intended to implement national legislation. For most of the sample provisions in this Handbook, an administrative or ministerial approach can be taken (rather than a legislative approach) as long as the ministry or agency has legal authority to do so under existing law.*

Changing a country’s legal framework for any purpose is rarely an easy task and involves many political and other considerations that are beyond the scope of this Handbook. The sample provisions that follow are mainly intended to assist government officials in countries that are already seeking to strengthen MPA enforcement, or that are designing a new MPA framework and want to ensure that it is enforcement friendly, as well as NGOs seeking to achieve stronger MPA enforcement. In all cases, these sample provisions are best viewed as a starting point. The legal drafter may, for example, choose to rely on an entire sample provision or only on one or more subsections of a sample provision. Or, the legal drafter may simply wish to use these samples as inspiration. The final legal language selected by the drafter will depend on that country’s legal system and current legal framework for

marine protection, legal drafting norms, the goals and requirements of the particular MPA, the needs of that MPA's users, and the local context.

Where bracketed [] text appears in these sample provisions, the authors intend for the legal drafter *to insert information specific to his or her country*.

A. DESIGNING MPAS FOR ENFORCEMENT

1. Designated Access Points and Mandatory Routes

Sample Provision 1⁷⁰

Section __. MPA Access Designations

(a) Visitors to the [specified MPA] may embark / disembark only at the sites and / or docks authorized and marked by the [environmental protection authority / MPA management authority].

(b) When transiting the [specified MPA], visitors shall use only the routes designated by the [environmental protection authority / MPA management authority].

Potential location for Sample Provision 1

- MPA law

2. Fishing Bans

Sample Provision 2⁷¹

Section __. No-Take Marine Reserve Designation

The [specified MPA] shall be a zone where fishing or the extraction, disturbance, destruction, removal, or alternation of any [specified MPA] resource by any person is expressly prohibited.

Sample Provision 3⁷²

Section __. Fishing Prohibition

It shall be unlawful for any person to actually or attempt to hunt, catch, fish for, kill, take, gather, remove, destroy, disturb, or possess any resource, whether living or nonliving, or any products derived from those

⁷⁰ Adapted in part from Cabo Pulmo Management Plan Regulations Rules 13, 25, at http://www.conanp.gob.mx/que_hacemos/pdf/programas_manejo/cabo.pdf.

⁷¹ Adapted in part from Palau National Marine Sanctuary Act of 2015 § 149, at <http://faolex.fao.org/docs/pdf/pau152765.pdf>.

⁷² Adapted in part from Philippines Republic Act No. 10067. An Act establishing the Tubbataha Reefs natural Park in the province of Palawan as a Protected Area under the NIPAS ACT (R.A. 7586) and the Strategic Environmental Plan (SEP) for Palawan Act (R.A. 7611), providing for its management and for other purposes §26.

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resources. The unauthorized entry of a vessel into the [specified MPA] shall be prima facie evidence of violation of this section.

Potential locations for Sample Provisions 2-3

- MPA law
- Fisheries law

3. Prohibiting Industrial Fishing in Near-Shore Waters

Sample Provision 4⁷³

Section __. Prohibition of Industrial Fishing in Nearshore Waters

(a) Fishing by industrial vessels is prohibited in nearshore waters.

(b) For the purposes of this [law], industrial vessels are those with a storage capacity of [X cubic meters] or more.

(c) For the purposes of this [law], nearshore waters are those up to [ten] nautical miles, measured from baselines determined in the declaration of the [country] territorial sea.

(d) Any industrial vessel located in nearshore waters with its fishing gear displayed is presumed to be conducting fishing activities in contravention of this [law].

Drafter's Note: the term "industrial vessels" as it appears in subsection (b) may alternatively be defined based on the use of certain fishing gear/methods, rather than based on storage capacity.

Drafter's Note 2: instead of distances from baselines, exact latitudes and longitudes could be used, wherever possible, to determine the zones closed to industrial fishing

Potential locations for Sample Provision 4

- MPA law
- Fisheries law
- Environmental protection law
- Shipping / port authority law

⁷³ Adapted in part from Florida Basic Commercial Fishing Regulations 2013 at 6; UNCLOS art. 3; SOLAS Ch. IV; and Decreto Supremo 005-2012 (Peru) art. 2.

B. ENFORCEMENT POWERS

1. Who Can Enforce the MPA Law? Agency Jurisdiction, Designation of Lead Enforcement Authority, Cross-Deputization, Appointment of Enforcement Officers, and Shared Financial Resources

Sample Provision 5

Section __. Authority to Enforce MPA Law; Designation of Lead Enforcement Authority

(a) Pursuant to this law, the following [ministries, agency officials] have authority to enforce the requirements of this law: [list ministries, agency officials].

(b) The [ministries, agencies, or institutions] identified in subsection (a) shall use best efforts to coordinate their enforcement activities pursuant to this law to avoid gaps in enforcement and unnecessary redundancies.

(c) [Specified ministry, agency, or institution] possesses lead enforcement authority with respect to the [MPA law].

Sample Provision 6⁷⁴

Section __. Cross-Deputization; Appointment of New MPA Enforcement Officers; Temporary Appointment of Foreign Officers

(a) Cross-Deputization. Subject to the following limitations, the [ministries, agency officials] responsible for enforcing the requirements of this law are authorized to develop and implement written, interagency agreements between or among themselves and such other persons as the [minister] may designate.

Limitations. (1) This subsection creates no new enforcement powers. It expands, by written agreement, the availability of existing enforcement powers of one [ministry, agency, or institution] to law enforcement officers at another [ministry, agency, or institution] for purposes enforcing MPA requirements.

(2) Cross-deputized enforcement officers are subject to oversight, training, and education requirements as least as stringent as those of the [ministries, agencies, or institutions] with statutory responsibility for enforcing this law.

(3) An interagency agreement implemented under this subsection creates no new enforceable rights in third parties.

(b) Appointment of New MPA Enforcement Officer by [Minister/Administrator]. Pursuant to this section, the [Minister/Administrator] may appoint, in writing, persons to serve as MPA enforcement officers for purposes of this law. Such appointments are separate from, and do not affect, the authority of other [ministries, agencies, or institutions] possessing lawful enforcement authority pursuant to this or other laws.

⁷⁴ Subsections (b) and (c) are adapted in part from Virgin Islands National Parks Act, 2006, No. 4 § 56.

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(1) The [Minister/Administrator] shall specify in each such instrument of appointment the powers of enforcement in relation to that appointment, but under no circumstances may such enforcement powers exceed the broadest enforcement powers of the [ministries, agencies, or institutions] with existing statutory responsibility for enforcing this law.

(2) In making appointments under this section, the [Minister/Administrator] shall:

(A) Be satisfied that persons so appointed have fully and successfully completed all proper training necessary for carrying out the enforcement powers identified in the instrument of appointment; or

(B) Make the appointments contingent on the full and successful completion of such training.

(c) Temporary Appointment of Foreign Officer by [Minister/Administrator] for Enforcement Purposes. Pursuant to this section, the [Minister/Administrator] may appoint, in writing, foreign officers to serve as MPA enforcement officers for purposes of this law on a temporary basis. Such appointments are separate from, and do not affect, the authority of other [ministries, agencies, or institutions] possessing lawful enforcement authority pursuant to this law or any other law.

(1) The [Minister/Administrator] shall specify in each such instrument of appointment the powers of enforcement in relation to that appointment, but under no circumstances may such enforcement powers exceed the broadest enforcement powers of the [ministries, agencies, or institutions] with statutory responsibility for enforcing this law.

(2) In making appointments under this section, the [Minister/Administrator] shall:

(A) Be satisfied that persons so appointed have fully and successfully completed all proper training necessary for carrying out the enforcement powers identified in the instrument of appointment; or

(B) Make the appointments contingent on the full and successful completion of such training.

(3) No such temporary appointment of a foreign officer may exceed a period of [twelve months], subject to renewal for additional [twelve-month] periods, granted at the discretion of the [Minister/Administrator] and issued in writing.

(4) To carry out this subsection, the [Minister/Administrator] is authorized, in consultation with [other ministry, agency, or department responsible for foreign affairs], to enter into a written agreement with a foreign law enforcement agency.

Sample Provision 7⁷⁵

Section __. Use of Resources of Other Government Agencies

The [Minister/Administrator] may, in his discretion, enter into an agreement with a [State / sub-national entity / agency] to use the resources, personnel, services, or facilities of that [State / sub-national entity /

⁷⁵ Adapted in part from U.S. National Marine Sanctuaries Act, 16 U.S.C. 1442 § 311.

agency] on a reimbursable or non-reimbursable basis to assist in enforcing this law and otherwise carrying out its purposes and policies.

Potential location for Sample Provisions 5-7

- MPA law (new section(s) at the beginning of the subchapter on enforcement)

2. Having the Right Enforcement Tools for the Job: Clarifying the Powers of Detention, Search, Seizure, and Arrest at Sea

Sample Provision 8⁷⁶

Section __. Exercise of MPA Enforcement Powers

(a) Where an enforcement officer has reasonable grounds for believing a person has violated a material requirement of this law or committed an offense under this law, the officer may, with or without a warrant:

(1) Stop, detain, and search the person, and stop, detain, board, and search any vehicle, vessel, boat, underwater craft, land craft, aircraft, or other mechanical or non-mechanical conveyance connected with the person that reasonably appears to have been used in the commission of a violation or offense under this law, and search any other person, cargo, catch, gear, and other articles or equipment aboard the vehicle, vessel, or conveyance;

(2) Seize any—

(A) Vehicle, vessel, or conveyance referred to in paragraph (a)(1), together with any stores, cargo, and other articles or substances thereon—such articles including, without limitation, fishing gear and equipment;

(B) Weapon, equipment, or device of any kind that reasonably appears to have been used in the commission of the material violation or offense;

(C) Cargo or catch that reasonably appears to have been transported, harvested, or otherwise obtained in connection with the commission of the material violation of offense;

(3) Request—

(A) The name, address, and other identifying information of the person;

(B) In the case of a vehicle, vessel, or conveyance—

(i) The name, address, and other identifying information of the master, crew members, charterer, insurer, and vessel owner;

(ii) Access to the vessel’s certified logbook;

(iii) Registration, inspection records, and insurance records for the vessel;

⁷⁶ Adapted in part from Virgin Islands National Parks Act, 2006, No. 4 § 57.

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(iv) Licenses, permits, and any other documentation pertaining to the lawful operation of the vessel and the activities of its master and crew;

(v) Access to any GPS or other electronic tracking information;

(4) [If it appears to the enforcement officer to be necessary to arrest the person immediately to ensure that the purposes of this law are not defeated] / [If the enforcement officer has probable cause to believe a material violation or offense occurred and that this person committed it], arrest such person without a warrant, and the provisions of the [country's criminal code] shall otherwise apply.

(b) Any person, including a master, crew member, charterer, or vessel owner, who fails to comply with the provisions of this section, including by failure to respond to a lawful request for information made by an enforcement officer under paragraph (a)(3), commits a separate offense and is subject to a fine not exceeding [amount], or to imprisonment for a term not exceeding [X months], or both.

(c) This section does not confer powers of search, seizure, or arrest on enforcement officers who otherwise lack such powers.

Drafter's Note 1: it is important that the legal drafter ensure that this provision is consistent with his or her country's law governing warrantless arrest and seizure.

Drafter's Note 2: this sample provision may be modified to further tailor the powers of search, seizure, or arrest in the MPA enforcement context, and to clarify the various standards that apply in certain circumstances (e.g., reasonable suspicion, probable cause). For example, circumstances justifying seizure or arrest could be spelled out in greater detail; though there is a benefit to allowing enforcement officers to retain some flexibility.

Drafter's Note 3: this sample provision does not include authority to search premises on land in connection with MPA enforcement. However, the ability to carry out law enforcement powers on land can be a valuable tool for the MPA enforcement officer.

Potential locations for Sample Provision 8

- MPA law (new section in the subchapter on enforcement)
- Subsection (b) may be separately included as a new section in the MPA law, together with other offenses

3. Crossing Jurisdictional Lines: Hot Pursuit

Sample Provision 9⁷⁷

Section __. Pursuit of Fleeing Vessels; Right of Hot Pursuit

(a) Pursuant to this section, where an enforcement officer has reasonable grounds for believing a person aboard a vessel has violated a material requirement of the [MPA law] or committed an offense under this

⁷⁷ Adapted in part from Virgin Islands National Parks Act No. 4 of 2006, § 57.

law, and the person's vessel ignores, evades, or otherwise disobeys a lawful order by the enforcement officer to stop, the enforcement officer is authorized to pursue the vessel.

(b) An enforcement officer may pursue such vessel—

(1) In [country's] internal waters;

(2) In [country's] territorial waters and contiguous zone;

(3) In [country's] exclusive economic zone; and

(4) Onto the high seas, pursuant to the right of hot pursuit as that doctrine is articulated in Section 111 of the United Nations Convention on the Law of the Sea. The right of hot pursuit terminates when the vessel pursued enters the territorial sea of its own state or of a third state, except where a cooperation agreement between [country] and the pursued vessel's state, or between [country] and a third state, is in effect and provides otherwise.

(c) An enforcement officer may make such pursuit notwithstanding the flag state of the vessel pursued.

(d) Any person causing a vessel to disobey a lawful order by enforcement officers to stop, or causing such vessel to flee from enforcement officers, commits a separate offense and is subject to a fine not exceeding [amount], or to imprisonment for a term not exceeding [X months], or both.

Sample Provision 10⁷⁸

Section __. Hot Pursuit by Technical Means; International Coordination of Hot Pursuit Operations

(a) Hot pursuit of a fishing vessel believed to be fishing illegally may be commenced by an authorized vessel of either Party [to this Treaty / Agreement].

(b) Hot pursuit may be commenced upon fulfilling the following conditions:

(1) The authorities of the relevant Party have good reason to believe that the fishing vessel or one of its boats has violated the laws of the Party within whose maritime zone the vessel is detected. The basis for such belief may include:

(A) Direct visual contact with the fishing vessel or one of its boats by the authorized vessel; or

(B) Evidence obtained by or on behalf of the authorized vessel by technical means; and

(2) A clear signal to stop has been given to the fishing vessel by or on behalf of the authorized vessel that enables it to be seen or heard by the fishing vessel.

(c) Hot pursuit is deemed to have continued without interruption from the commencement of the hot pursuit to interception as long as the relevant authorized vessel or vessels:

⁷⁸ Adapted in part from Agreement on Cooperative Enforcement of Fisheries Laws Between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands art. 4.

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(1) Maintain continual positive identification and tracking of the fishing vessel by, *inter alia*, the means described in paragraphs (b)(1)(A) and (B) of this section; and

(2) From time to time continue to signal the fishing vessel to stop.

(d) An authorized vessel of one Party may take over the hot pursuit commenced by an authorized vessel of the other Party.

Potential locations for Sample Provisions 9-10

- International agreement
- MPA law (new section in the subchapter on enforcement)
- Subsection (d) of Sample Provision 9 may be separately included as a new section in the MPA law, together with other offenses

C. DETECTION

1. Recordkeeping and Reporting

Sample Provision 11⁷⁹

Section __. Duty to Report Catch

The owner or operator of a vessel shall complete a daily [information form] on catch, bycatch, and discard data. Reporting shall be conducted in accordance to the [standardized logbook / form]. The owner or operator shall ensure that such form is submitted to the [specified ministry, agency, or institution] on or before [specific date / time of arrival to port].

Potential locations for Sample Provision 11

- MPA law
- Fisheries law

2. Monitoring and Surveillance Methods

Sample Provision 12⁸⁰

Section __. Logbook Requirements

(a) The master, owner, operator, or other person responsible for the operation of a licensed vessel of [x size] or greater shall keep a fishing logbook and submit landing and transshipment declarations to the [MPA and/or fisheries authority]. The responsible person shall maintain the fishing logbook in electronic form and should submit the landing and transshipment declarations electronically.

⁷⁹ Based on and adapted from United States 42 U.S.C. § 11023 (Toxic chemical release forms).

⁸⁰ Adapted in part from European Council Regulations No. 1224/2009 of 20 November 2009, at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1224&from=EN>.

(b) The responsible person identified in subsection (a) shall ensure that the logbook contains the following information:

- (1) The external identification number and the name of the fishing vessel;
- (2) The FAO alpha-3 code of each species and the relevant geographical area in which the catches were taken;
- (3) The date of catches;
- (4) The date of departure from and of arrival to port, and the duration of the fishing trip;
- (5) The type of gear, mesh size, and dimension;
- (6) The estimated quantities of each species in kilograms live weight or, where appropriate, the number of individuals; and
- (7) The number of fishing operations.

Sample Provision 13⁸¹

Section __. Vessel Monitoring System (VMS)

(a) The master, owner, operator, charterer, or other person responsible for the operation of a licensed vessel registered to [country], of [x size] overall or more shall ensure that the fishing vessel has installed on board a fully functioning device that allows that vessel to be automatically located and identified through the vessel monitoring system by transmitting position data at regular intervals to the [MPA and / or fisheries authority].

(b) When a foreign fishing vessel is fishing in [country's] waters, the vessel shall have installed a fully functioning unit that allows the vessel to be automatically located and identified through the vessel monitoring system by transmitting position data at regular intervals to the [MPA and / or fisheries authority] or the flag State.

(c) For those vessels referred to in subsection (b) that transmit vessel monitoring data to the flag State, such flag State shall make available the vessel monitoring system data of that vessel by automatic transmission to the [MPA and / or Fisheries Authority].

Drafter's Note: a challenge with VMS is that the reporting period is not continuous. To avoid a situation where a vessel fishes illegally in an MPA during the non-reporting window, consider either (1) establishing an MPA that includes a buffer zone around the area where protection is desired, or (2) requiring that vessels suspected of illegal fishing submit VMS position reports at 15-minute intervals.

⁸¹ Adapted in part from European Council Regulations, No. 1224/2009 of 20 November 2009, at <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R1224&from=EN>.

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Sample Provision 14⁸²

Section __. Electronic Position and Data Transfer Technology

Upon the request of the [licensing ministry, agency, or institution], the master, owner, operator, or charterer of a vessel shall ensure that a vessel monitoring system (VMS) unit is installed and maintained in good working order on the vessel.

Sample Provision 15⁸³

Section __. Vessel Monitoring System Operations

The master, owner, operator, charterer, or other person responsible for the operation of a licensed vessel shall ensure that the vessel monitoring system (VMS) unit is switched on and is operating properly at all times during the period of validity of a license issued by [country].

Sample Provision 16⁸⁴

Section __. Video Monitoring on Fishing Vessels

(a) The owner, operator, or master of a vessel of [x size] or greater shall provide and maintain in good working order a video monitoring system approved by [fisheries authority]. The video monitoring system requirements in subsection (b) must be met when the vessel is fishing in the [specified MPA].

(b) The owner, operator, or master must ensure that the video monitoring system:

- (1) Records and retains video for all periods when fish are flowing past the sorting area; and
- (2) Provides sufficient resolution and field of view to allow for observation of: all areas where fish are sorted, all crew actions in these areas, and individual fish in the storage container.

Sample Provision 17⁸⁵

Section __. Port Access Requirements

(a) A vessel (or the vessel owner, operator, or master) seeking entry to port shall submit to the [relevant ministry, agency, or institution], in advance of its arrival in port, the vessel's position data obtained from the vessel monitoring system (VMS) device at the time of or immediately after its transmission to the vendor or receiver.

⁸² Adapted in part from The Nauru Agreement. Second Implementing Arrangement (1990) art. II, at <http://www.pnatuna.com/sites/default/files/2nd%20Implementing%20Arrangement.pdf>.

⁸³ Adapted in part from The Nauru Agreement. Third Implementing Arrangement (2010) art. I.4, at <http://www.pnatuna.com/sites/default/files/3rd%20Implementing%20Arrangement%20%28Amended%20-%2011September%202010%29.pdf>.

⁸⁴ Adapted in part from Alaska Fisheries Regulations, 50 CFR § 679.28, at <https://alaskafisheries.noaa.gov/sites/default/files/679b28.pdf>.

⁸⁵ Adapted in part from U.S. implementing legislation to the Port State Measures Agreement. 16 U.S.C. § 1826j

(b) Subject to subsection (c), the [relevant ministry, agency, or institution] shall deny a vessel use of the port if the vessel owner, operator, or master—

- (1) Is unable to produce the VMS data required;
- (2) Provides incomplete VMS data; or
- (3) Provides unverifiable VMS data.

(c) Notwithstanding the requirements of this section, the [relevant ministry, agency, or institution] may allow port entry or the use of port services if doing so is essential to the safety or health of the crew or the safety of the vessel, or otherwise necessary in the sound discretion of [the relevant ministry, agency, or institution].

Potential locations for Sample Provisions 12-17

- MPA law
- Fisheries law

D. ADJUDICATION OF MPA VIOLATIONS

1. Who Is Legally Liable? Assigning Liability for Violations Broadly

Sample Provision 18

Section __. Persons Liable

(a) When any person aboard a vessel commits an offense under this [law], the following persons are equally liable for that offense:

- (1) The vessel master;
- (2) The charterer of the vessel; and
- (3) The owner of the vessel.

(b) This section is not limited to natural persons.

(c) Persons identified in this section may be charged and tried *in absentia* consistent with applicable law.

Drafter's Note: This provision may require an amendment to the definition of "person" under the MPA law to ensure that corporate entities may be held liable.

Potential location for Sample Provision 18

- MPA law (subsection in provision setting forth offenses)

2. Facilitating Proof of MPA Violations

a. Defining Admissible Evidence Broadly for Violations at Sea

Sample Provision 19

Section __. Admissibility of Evidence to Prove Violations at Sea

(a) Any form of admissible evidence may be used to prove a violation or to assert an affirmative defense in proceedings brought under the [MPA law]. Such evidence may include, without limitation: witness testimony, photographs and video recordings (including those obtained from mobile phones), GPS tracking and position information and other electronic data, satellite imagery, and other information resulting from emerging technologies.

(b) Proof of violations at sea may include both direct and circumstantial evidence.

(c) Nothing in this section or elsewhere in the law shall be construed as limiting the types of evidence that are admissible in legal proceedings concerning violations at sea, nor does the mere fact that evidence was obtained from a third party (such as a fisherman or a passerby) affect the admissibility or weight of such evidence.

Potential locations for Sample Provision 19

- MPA law (subsection in provision setting forth offenses)
- Evidentiary code (special provision on evidence used in cases involving enforcement actions requiring proof of illegal activities at sea)
- Criminal code

b. Codifying Rebuttable Presumptions

Sample Provision 20⁸⁶

Section __. Presumption of Illegal Harvest

(a) Subject to subsection (b) of this section, when a vessel has been involved in a violation of the [MPA law] [e.g., fishing in a prohibited location or using illegal gear] and fish are found aboard that vessel, it is presumed that a person aboard the vessel harvested those fish in violation of the [MPA law].

(b) Any person subject to a presumption arising under subsection (a) of this section may rebut the presumption by producing admissible evidence that the fish were not harvested in violation of the [MPA law].

(c) This section does not shift the burden of persuasion, which remains on the party who had it originally.

⁸⁶ Adapted in part from U.S. Fed. R. of Evid. 301.

Sample Provision 21⁸⁷

Section __. Presumptions Regarding Logbook Entries

(a) Subject to subsection (b) of this section, the location of catch [or other event] identified in a certified copy of the logbook or other official record maintained aboard a vessel is presumed to be an accurate description of the location where the catch was made [or the event occurred].

(b) Any person subject to a presumption arising under subsection (a) of this section may rebut the presumption by producing admissible evidence that the location of catch [or other event] identified in the logbook or other official record is inaccurate.

(c) Subject to subsection (d) of this section, missing, incomplete, or incomprehensible logbook entries are presumed to contain information unfavorable to the vessel owner.

(d) Any person subject to a presumption arising under subsection (c) of this section may rebut the presumption by producing admissible evidence to the contrary.

(e) This section does not shift the burden of persuasion, which remains on the party who had it originally.

Drafter's Note: this presumption could potentially be used to the benefit of violators who intentionally maintain inaccurate records.

Sample Provision 22

Section __. Presumption of Illegal Harvest In Case of Inoperable Vessel Location Device

(a) If at any time a mandatory vessel location device becomes inoperable, the vessel master shall promptly notify the [relevant ministry, agency, or institution] and return to port if no operational back-up monitoring device is on board.

(b) Any vessel that fails to take action in accordance with subsection (a) is presumed to be fishing illegally and landed fish will be presumed to have been caught in violation of the [MPA law].

(c) Any person subject to a presumption arising under subsection (b) of this section may rebut the presumption by producing admissible evidence that the fish were not harvested in violation of the [MPA law].

(d) This section does not shift the burden of persuasion, which remains on the party who had it originally.

Sample Provision 23⁸⁸

Section __. Presumption of Responsibility for Acts or Omissions Giving Rise to Violation

(a) Subject to subsection (b) of this section, the following individuals or entities are presumed to be responsible for the acts or omissions aboard a vessel that give rise to a violation of the [MPA law]:

⁸⁷ Adapted in part from U.S. Fed. R. of Evid. 301.

⁸⁸ Adapted in part from U.S. Federal Rules of Evidence 301.

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(1) The vessel master;

(2) Vessel crew directly involved in such acts or omissions, or whose title or position aboard the vessel would reasonably suggest direct involvement;

(3) The charterer of the vessel; and

(4) The owner of the vessel.

(b) Any person subject to a presumption arising under subsection (a) of this section may rebut the presumption by producing admissible evidence of a lack of responsibility for such acts or omissions.

(c) This section does not shift the burden of persuasion, which remains on the party who had it originally.

Sample Provision 24⁸⁹

Section __. Presumption of No Lawful Permission to Engage in Activity Giving Rise to Violation

(a) Subject to subsection (b) of this section, it is presumed that a person engaging in activity that violates the [MPA law] and gives rise to an offense has done so without authorization from any lawful source.

(b) Any person subject to a presumption arising under subsection (a) of this section may rebut the presumption by producing admissible evidence that he possessed appropriate [written] authorization pursuant to the [MPA law or other legal authority]—such as an officially issued license or permit.

(c) This section does not shift the burden of persuasion, which remains on the party who had it originally.

Drafter's Note: this presumption could alternatively be framed by way of an affirmative defense to an alleged violation of the MPA law. This would have a similar effect of placing the burden of proof on the party asserting that defense—i.e., the alleged violator.

Potential location for Sample Provisions 20-24

- MPA law (following provision(s) that set forth offenses)
- Evidentiary code

3. Ensuring an Efficient MPA Enforcement Framework: Ticketing, Case Settlement, and Negotiated Pleas

Sample Provision 25

Section __. Ticketing and Payment of Fines & Administrative Fees

(a) The [ministry or agency with responsibility for administering the MPA law] may, by regulation [or decree], establish a written ticketing system for use in addressing certain minor violations of the [MPA law] committed by persons on vessels flagged to [country]. Violations subject to this ticketing system may include some or all of the following: [list of violations by MPA law section or subsection].

⁸⁹ Adapted in part from U.S. Federal Rules of Evidence 301.

(b) The ticketing system established pursuant to this section must satisfy the following minimum requirements:

- (1) Specify the violations of the [MPA law] to which the ticketing system applies;
- (2) Specify that no form of payment may be made to, or accepted by, sworn enforcement officers, or otherwise made or accepted, at the time of ticketing, with the sole exception of electronic payment methods subject to independent, third-party verification;
- (3) Provide for standardized content and formatting for the pre-printed written ticket, including: information as how, where, by when, and to whom the fine and any related administrative fees are to be paid; and an explanation of how to contest the ticket;
- (4) Require that a copy of the ticket be provided to the alleged violator, a copy of the ticket be retained by the issuing enforcement authority, and a copy of the ticket be submitted to the [ministry or agency with prosecuting authority]; and
- (5) Require that the designated payee issue a written receipt to the payor, noting the full amount paid, and that the payee maintain an electronic copy of this receipt for at least [x] years.

(c) The [ministry or agency with responsibility for administering the MPA law] shall, by regulation, maintain a schedule of fines and any related administrative fees applicable to tickets issued under this system. The [ministry or agency] shall publicly maintain this schedule on its website and also make it available, in writing and at no charge, to any person upon request.

Potential location for Sample Provision 25

- MPA law (new section following provision(s) that set forth minor violations)

Sample Provision 26

Section __. Settlement of Enforcement Actions; Negotiated Pleas

(a) The [ministry or government agency with responsibility for administering the MPA law] and the [prosecuting authority] are authorized to negotiate with a defendant the settlement of an enforcement action or negotiate a plea in a criminal action, at any time following the filing of a complaint or charging document, and prior to entry of judgment.

(b) Requirement of court approval.

- (1) No settlement agreement, negotiated plea, or other out-of-court resolution of a civil or criminal enforcement action intended by the parties to result in the imposition of a fine, incarceration, or other penalty is valid until the court accepts such plea and approves such case resolution, consistent with the laws of [country].
- (2) No court may approve the settlement of an enforcement action brought under the [MPA law] in the absence of a charging document or complaint duly filed and served in accordance with the laws of [country].
- (3) In a criminal enforcement action, it is the exclusive responsibility of the court to:

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(A) Approve or deny the defendant’s request to enter a plea of guilty or no contest, subject to the laws of [country]; and

(B) Render judgment and Impose sentence on the defendant. The court shall consider, among other factors, the terms of any recommended plea agreement presented by the parties.

Drafter’s Note: these provisions implicate a country’s rules of civil and criminal procedure, as well as the discretion of the court. If the country already has strong, clear laws or rules governing the out-of-court settlement of enforcement actions, it may suffice to reference those existing requirements in the text of the MPA law.

Potential locations for Sample Provision 26

- MPA law (new section following provisions setting forth offenses)
- Criminal code/Civil code (amendments to provisions on case settlement)

E. PENALTIES

1. Warnings

Sample Provision 27⁹⁰

Section __. Written Warning

(a) Any person authorized to enforce the [MPA law] may issue a written warning.

(b) The written warning must:

- (1) Clearly indicate that it is a “written warning;”
- (2) State the factual and legal basis for its issuance;
- (3) Advise the respondent of its potential effect in the event of a future violation; and
- (4) Inform the respondent of the right of review and appeal.

(c) The [enforcement authority] shall maintain a record of all written warnings that are issued.

(d) If, within 120 days of the date of issuance of a written warning, further investigation indicates that the violation is more serious than realized at the time the written warning was issued, or that the respondent previously committed a similar violation for which a written warning was issued or other enforcement action was taken, the [enforcement authority] may withdraw the warning and commence administrative or judicial proceedings.

(e) A written warning may be used as a basis for dealing more severely with a subsequent offense, including, but not limited to, a violation of the same statute or an offense involving an activity that is related to the prior offense.

⁹⁰ Adapted in part from United States 15 CFR § 904.401.

Potential locations for Sample Provision 27

- MPA law
- Fisheries law
- Criminal code

2. Monetary Penalties

Sample Provision 28⁹¹

Section __. Penalties

Any person who, in a marine protected area, without permission granted pursuant to [MPA law or other relevant fisheries law]—

- (1) Fishes or attempts to fish;
- (2) Takes or destroys any flora or fauna other than fish;
- (3) Dredges, extracts sand and gravel, discharges or deposits wastes or any other polluting matter, or in any other way disturbs, alters, or destroys the natural environment; or
- (4) Constructs or erects any buildings or other structures on or over any land or waters within such a reserve

—commits an offense and is liable to a fine not exceeding [max. penalty].

Sample Provision 29⁹²

Section __. Corporate Penalty

- (a) If a person commits an offense in violation of the [MPA law], and the act or omission giving rise to the offense was undertaken by the person on behalf of a corporation, the corporation is liable to a fine not exceeding [max. penalty].
- (b) A fine imposed pursuant to this section is in addition to any sanction imposed on the natural person or persons who committed the offense.

⁹¹ Adapted in part from Antigua and Barbuda 2006 Fisheries Act, No. 22 of 2006 § 53.

⁹² Adapted in part from Republica Dominicana, Ley General Sobre Medio Ambiente y Recursos Naturales [General Law on the Environment and Natural Resources], No. 64-00 (2000) art. 176.

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Sample Provision 30⁹³

Section __. Continuing Offenses

Any person who contravenes a provision of this [law] shall be guilty of an offense and liable on summary conviction to a fine of [monetary penalty], and in the case of a continuing offense to a further fine of [additional monetary penalty] for each day on which the offense continues.

Sample Provision 31⁹⁴

Section __. Penalties for Foreign Fishing Vessels

No person shall use a foreign fishing vessel for fishing or related activities without a valid foreign fishing license. Where a fishing vessel is used in contravention of this section, or of any condition of the foreign fishing license, the master, owner, and charterer of that vessel is each guilty of an offense and liable to a fine of [monetary penalty].

Sample Provision 32⁹⁵

Section __. Compounding of an Offense

(a) The [relevant ministry, agency, or prosecuting authority], where it is satisfied that a person has committed an offense under the [MPA law], may compound such offense by accepting from such person a sum of money not exceeding the maximum fine specified for that offense.

(b) On compounding an offense under this section the [government official] may forfeit any article seized or the proceeds of sale of such article, as he / she may reasonably think fit.

(c) No offense may be compounded under this section unless the person who has committed the offense has expressed his willingness in a prescribed form that the offense shall be so dealt with.

(d) The compounding of an offense under this section shall be notified in writing under the signature of both parties to the court.

(e) In any proceedings brought against a person for an offense under the [MPA law], it shall be a defense if such person proves that the offense with which he is charged has been compounded under this section.

Drafter's Note: this form of settling a criminal action should not be confused with the crime of compounding, which refers to a situation where the victim of a crime accepts a bribe or other consideration in exchange for not reporting information or otherwise hampering a prosecution.

Potential locations for Sample Provisions 28-32

⁹³ Adapted in part from Antigua & Barbuda. Marine Areas (Preservation and Enhancement) Act 9173 (as amended), CAP. 259 § 3.

⁹⁴ Adapted in part from Fisheries Act of 1986. Saint Vincent and The Grenadines § 8, at <http://faolex.fao.org/docs/pdf/stv2112.pdf>.

⁹⁵ Adapted in part from Antigua and Barbuda Fisheries Act of 2006 § 74.

- MPA law
- Fisheries law
- Criminal code

3. Permit Sanctions

Sample Provision 33⁹⁶

Section __. Permit Sanctions

In addition to imposing any other lawful penalty upon a person for a violation of this law, the court may, with respect to that person or a vessel used in the commission of an offense:

- (1) Revoke, temporarily or permanently, any [fishing] permit issued with respect to such person or vessel, with or without prejudice to the issuance of subsequent permits;
- (2) Suspend such permit for a period of time considered by the court to be appropriate; or
- (3) Impose additional conditions and restrictions on any permit issued to or applied for by such person or vessel under the [MPA law / fisheries law].

Drafter's Note: it is also common to authorize the relevant ministry or agency to impose permit sanctions administratively.

Sample Provision 34⁹⁷

Section __. Automatic Termination of License

(a) Where either the flag state registry or the ownership of a licensed vessel changes, or it is established that a licensed vessel has more than one flag state registration, or a change of ownership not approved by the [relevant ministry, agency, or institution], any current license in respect of the vessel shall automatically terminate.

(b) Where the good standing of a licensed vessel is withdrawn by the [licensing State], any current license in respect of the vessel shall automatically terminate.

Potential locations for Sample Provisions 33-34

- Fisheries law
- MPA law

⁹⁶ Adapted in part from Dominican Republic. General Law on the Environment and Natural Resources art. 183; and from 16 U.S.C. § 1858 (g) (permit sanctions).

⁹⁷ Adapted in part from Papua New Guinea Fisheries Regulations § 20.

4. Forfeiture and seizure

Sample Provision 35⁹⁸

Section __. Forfeiture and Seizure

Where a person is convicted of an offense under this [law], the court, in addition to any other penalty imposed, may order that any fishing vessel (together with its gear, stores and cargo), aquaculture facility (together with its stores and cargo), vehicle, fishing gear, net, or other fishing appliance used in the commission of the offense shall be forfeited.

Sample Provision 36⁹⁹

Section __. Seizure of Gear and/or Cargo

It is lawful for an enforcement officer to seize and confiscate any fish, bird, flora and fauna, wreck, buoy, or marker that he has reasonable cause to believe has been taken from a marine protected area without permission.

Sample Provision 37¹⁰⁰

Section __. Sale of Forfeited Goods

The [relevant ministry, agency, or institution] may dispose of forfeited vessels, structures, effects, materials, and equipment at public auction. Proceeds shall accrue to [the MPA management budget] / [the MPA enforcement authority] for the exclusive purpose of supporting MPA enforcement activities.

Sample Provision 38¹⁰¹

Section __. Sale of Forfeited Fish

Because of the perishable nature of fish when not chilled or frozen, an enforcement officer may cause to be sold, for not less than its reasonable market value, unchilled or unfrozen fish seized and forfeited under the [MPA law / fisheries law].

Potential locations for Sample Provisions 35-38

- Fisheries law
- MPA law
- Environmental protection law

⁹⁸ Adapted from Barbuda Fisheries Act of 2006 § 69.

⁹⁹ Adapted in part from Barbuda Marine Areas (Preservation and Enhancement) Regulations, S.B.O. 25/1973 § 10.

¹⁰⁰ Adapted in part from Section 33 (Fines and forfeitures) of the Tubbataha Reefs Natural Park in the Province of Palawan as a protected area under the NIPAS Act (RA 7586) and the strategic environmental plan (SEP) for Palawan Act (RA. 7611) providing for its management and for other purposes.

¹⁰¹ Adapted in part from United States 50 CFR § 635.70.

5. Natural Resource Damages

Sample Provision 39¹⁰²

Section __. Natural Resource Damages

- (a) Any person who destroys, causes the loss of, or injures any marine resource in the [specified MPA] is liable upon conviction for an amount equal to the sum of—
- (1) The resulting response costs and damages; and
 - (2) Any interest on that amount as prescribed by the court.
- (b) Any vessel used to destroy, cause the loss of, or injure any resource shall be liable in rem to the [relevant ministry, agency, or institution] for response costs and damages resulting from such destruction, loss, or injury. The amount of that liability shall constitute a maritime lien on the vessel and may be recovered in an action in rem in any court of [nation] that has jurisdiction over the vessel.
- (c) A person is not liable under this section if that person establishes that—
- (1) The destruction, loss, or injury was caused solely by an act of God, an act of war, or an act or omission of a third party, and the person acted with due care;
 - (2) The destruction, loss, or injury was caused by an activity authorized by the laws of [country]; or
 - (3) The destruction, loss, or injury was negligible.
- (d) Damages recoverable under this section include all of the following—
- (1) Compensation for—
 - (A) The cost of replacing, restoring, or acquiring the equivalent of a resource;
 - (B) The value of the lost use of a resource pending its restoration or replacement or the acquisition of an equivalent resource; or
 - (C) The value of a resource if the resource cannot be restored or replaced or if the equivalent of such resource cannot be acquired;
 - (2) The cost of damage assessments;
 - (3) The cost of monitoring, curation, and / or conservation appropriate to an injured resource; and
 - (4) The cost of enforcement actions undertaken by the [relevant ministry, agency, or institution] in response to the destruction or loss of, or injury to, a resource.

Potential location for Sample Provision 39

- MPA law

¹⁰² Adapted in part from United States 16 CFR § 1443.

6. Imprisonment

Sample Provision 40¹⁰³

Section __. Imprisonment

Any person who, without reasonable excuse, fails to comply with any regulations made with respect to the control of any activities in, or the management of, [specified MPA] shall be guilty of an offense and liable on conviction on indictment, to a fine of [max. penalty], or to imprisonment for [max. imprisonment time], or to both such fine and imprisonment.

Drafter's Note: a provision on imprisonment may also be included as a penalty for a specific offense defined under the MPA law.

Potential location for Sample Provision 40

- MPA law

F. REQUIREMENTS PERTAINING TO INTERNATIONAL VESSELS/FISHERS

1. Trial *in Absentia* of International Fishing Vessels

Sample Provision 41¹⁰⁴

Section __. Trial *In Absentia* for MPA Violations

(a) Any person who contravenes a provision of this [law] need not be present at trial under the following circumstances:

(1) Organizational Defendant. The defendant is an organization represented by counsel who is present.

(2) Misdemeanor Offense. The offense is punishable by fine or by imprisonment for not more than one year, or both, and with the defendant's written consent, the court permits arraignment, plea, trial, and sentencing to occur by video conferencing or in the defendant's absence.

(b) Waiving Continued Presence.

(1) A defendant who was initially present at trial, or who had pleaded guilty, waives the right to be present under the following circumstances:

(A) When the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial;

(B) In a noncapital case, when the defendant is voluntarily absent during sentencing; or

¹⁰³ Adapted in part from Barbuda Physical Planning Act No. 6 of 2003 § 80.

¹⁰⁴ Adapted in part from United States Federal Rules of Criminal Procedure Rule 43.

(C) When the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom.

(2) Waiver's Effect. If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

Potential locations for Sample Provision 41

- Fisheries law
- Criminal code

2. Bond measures

Sample Provision 42¹⁰⁵

Section __. Release of seized property

(a) The release of a seized vessel shall be determined by a judge at the place of the seizure upon the posting of a bond, the amount and arrangements for payment of which the judge shall determine in accordance with the provisions of the [Criminal code / Civil code].

(b) The [relevant ministry, agency, or institution] may authorize the release of anything seized but not forfeited under this [law] to—

- (1) The owner;
- (2) The person entitled to the possession of the thing; or
- (3) The person from whom the thing was seized.

(c) The [relevant ministry, agency, or institution] may authorize the release of anything subject to—

- (1) Any condition relating to the payment of a bond;
- (2) Any condition relating to the provision of any other security; or
- (3) Any other condition the [relevant ministry, agency, or institution] determines.

(d) The amount of payment of a bond or the provision of a security is to be equivalent to the current market value of the thing.

(e) Violation of a condition imposed pursuant to subsection (c) is punishable by a fine not exceeding [maximum penalty].

(f) In addition to a fine imposed pursuant to subsection (e), a court may order the person to pay compensation for any damage or loss caused by the offense.

¹⁰⁵ Adapted in part from Palau, Environmental Quality Protection Act § 165; in Australia (Tasmania). Living Marine Resources Management Act 1995 §231, and from France Law No. 83-582 art. 3, as amended.

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Sample Provision 43¹⁰⁶

Section __. Recovery of pursuit costs

(a) Recovery of pursuit costs

The regulations may set out principles for the recovery of the costs incurred by or on behalf of [country] that are directly attributable to the conduct of pursuit activities.

(b) Debt in relation to pursuit costs

(1) This subsection applies to a foreign boat if:

(A) The foreign vessel has been given a visual or auditory signal to stop by a vessel or aircraft clearly marked and identifiable as being on government service of [State name]; and

(B) The master of the vessel fails:

(i) To stop the vessel; or

(ii) To bring the vessel to a place and to remain in control of the boat at that place in accordance with the requirements of the [enforcement authority]; and

(C) As a result of that failure, pursuit activities are taken in respect of the vessel culminating in its arrival at a place in [country territory] or an external Territory that is determined to be the processing place in relation to that vessel.

(2) Subject to the operation of this subsection, the owner of a foreign vessel to which this Subdivision applies is liable to pay to [State name], by way of penalty, all pursuit costs incurred in respect of that vessel.

(3) If a foreign vessel has more than one owner, then the owners are jointly and severally liable to pay the pursuit costs incurred in respect of the vessel.

(4) Costs payable by an owner of a foreign vessel to the [State name] under this subsection may be recovered by [country] as a debt due to the [country] in a court of competent jurisdiction.

Potential location for Sample Provisions 42-43

- Fisheries law
- MPA law
- Criminal code

¹⁰⁶ Adapted in part from Australia. Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Bill 2003 § 106L-M.

G. DETECTION AND ADJUDICATION OF OTHER VIOLATIONS

1. Notification, Reporting, and Recordkeeping Requirements

Sample Provision 44 (for restricted-access, large-scale MPA)¹⁰⁷

Section __. Ship Notification Procedure for Passage without Interruption

(a) Except as provided in this section, no person shall enter [specified MPA] without written, advance permission granted by the [Minister/Administrator whose ministry/agency is responsible for administering the MPA].

(b) Notification Procedure. Vessels [meeting certain size requirements] may pass without interruption through [specified MPA] only if they satisfy entry and exit notification requirements.

(c) The [Minister/Administrator whose ministry/agency is responsible for administering the MPA] shall establish notification requirements, consistent with standard International Maritime Organization format and syntax, to be used for entry and exit notifications. Such requirements may include the following information:

- (1) Vessel name, call sign, flag, and International Maritime Organization identification number;
- (2) Home port;
- (3) Date and time of entry/exit;
- (4) Position when making report;
- (5) True course and speed;
- (6) Destination and ETA;
- (7) Intended and actual route through [the MPA] and reporting area;
- (8) Name, address, and telephone number of owner and charterer;
- (9) The tonnage of fish held on board;
- (10) General categories of any hazardous cargo on board;
- (11) Any vessel defects or deficiencies that restrict maneuverability or impair normal navigation;
- (12) Size of vessel (length overall and gross tonnage) and propulsion type (e.g., motor or sail); and
- (13) [for exit notification only] Any pollution incident or goods lost overboard within [the MPA].

¹⁰⁷ Adapted in part from Proclamation 8031 of June 15, 2006, Establishment of the Northwestern Hawaiian Islands Marine National Monument, 71 Fed. Reg. 36443; and http://www.papahanaumokuakea.gov/resource/ship_reporting.html.

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(d) The master of a vessel subject to this section shall submit entry and exit notifications that comply with the requirements for such notifications established by [the Minister/Administrator], that are in standard International Maritime Organization format and syntax, and that are in the [x] language.

(1) The master of a vessel with email capability shall submit an email entry notification upon entering the reporting area (area extending 10 miles out and entirely around [specified MPA] boundary) and shall submit an email exit notification upon exiting the reporting area.

(2) The master of a vessel without email capability shall submit entry and exit notifications by e-mail (e.g., from home or office), telephone, or fax not less than 72 hours nor more than one month prior to entering [the MPA] for uninterrupted passage and within 12 hours of departing [the MPA].

The master shall make additional reports whenever there is a change in navigation status or circumstances.

(e) The master shall maintain a written record of reports made under this section for a period of not less than two years and shall make such written records available for inspection upon request by the [Minister/Administrator] or his designee, or by an enforcement officer.

(f) A vessel passing through [the MPA] without interruption pursuant to this section shall not conduct fishing activities, engage in marine scientific research, carry out other research or survey activities, or engage in any other activity except those required to effect safe and expeditious passage through [the MPA] and reporting area.

(g) Any person who violates the requirements of this section commits an offense and is subject to a fine not exceeding [amount], or to imprisonment for a term not exceeding [X months], or both.

Potential locations for Sample Provision 44

- MPA law (new section)
- Subsection (g) may be separately included as a new section in the MPA law, together with other offenses

Sample Provision 45 (for MPAs without access restrictions)¹⁰⁸

Section __. Ship Recordkeeping and Reporting Requirement

(a) The master of a vessel [meeting certain size requirements] that enters the reporting area (area extending 10 miles out and entirely around [specified MPA] boundary) for any purpose shall comply with the recordkeeping and reporting requirements of this section.

(b) For each separate entry into the reporting area, the master of a vessel subject to this section shall maintain a written record of the following information:

(1) Vessel name, call sign, flag, and International Maritime Organization identification number;

¹⁰⁸ Adapted in part from Proclamation 8031 of June 15, 2006, Establishment of the Northwestern Hawaiian Islands Marine National Monument, 71 Fed. Reg. 36443.

- (2) Home port;
 - (3) Date and time of entry and exit;
 - (4) Purpose for entry into the reporting area and any activity conducted within the area, and for vessels conducting fishing activities—
 - (A) Target species;
 - (B) Description of catch, including species type(s) and weight;
 - (C) Description of gear employed; and
 - (D) Licensing information.
 - (5) Route taken through the reporting area;
 - (6) Name, address, and telephone number of owner and charterer;
 - (7) General categories of any hazardous cargo on board;
 - (8) Any vessel defects or deficiencies that restricted maneuverability or impaired normal navigation;
 - (9) Size of vessel (length overall and gross tonnage) and propulsion type (e.g., motor or sail); and
 - (10) Any pollution incident or goods lost overboard within [specified MPA].
- (c) At least once per calendar year, the master of a vessel entering [specified MPA] one or more times shall submit to the [Minister/Administrator whose ministry/agency is responsible for administering the MPA] all records maintained pursuant to this section, in the [X] language.
- (d) The master shall maintain a written record of reports made under this section for a period of not less than two years and shall make such written records available for inspection upon request by the [Minister/Administrator] or his designee, or by an enforcement officer.
- (e) Any person who violates the requirements of this section commits an offense and is subject to a fine not exceeding [amount], or to imprisonment for a term not exceeding [X months], or both.

Drafter's Note: this provision may be modified to apply only to certain types/sizes of vessels, or to require additional requirements for certain types/sizes of vessels.

Potential locations for Sample Provision 45

- MPA law (new section(s) at the beginning of the subchapter on enforcement)
- Subsection (e) may be separately included as a new section in the MPA law, together with other offenses

2. Crimes of Falsehood and Deception

Sample Provision 46

Section __. False Statements to Enforcement Officers; False Statements in Required Records or Reports

(a) For purposes of this section—

(1) A statement is “materially” false if it is significant, rather than trivial, and has a natural tendency to influence; and

(2) A “writing” includes, without limitation, all handwritten and printed documents, as well as electronic communications such as emails, faxes, and texts.

(b) Each of the following acts constitutes an offense:

(1) Knowingly making a materially false statement, verbally or in writing, to an enforcement officer who is in the course of performing his or her duties;

(2) Knowingly making a materially false statement in a written application for a license, permit, registration, or in any similar official request, pursuant to this law;

(3) Knowingly making a materially false statement, verbally or in writing, in any report, notification, or other government communication required by this law; and

(4) Knowingly falsifying any record or data, including vessel tracking and locational data.

(c) Any person who violates this section is subject to a fine not exceeding [amount], or to imprisonment for a term not exceeding [X months], or both.

(d) It is not a defense that the person to whom a false statement under this section was made did not rely on the statement or was not deceived by the statement.

Potential location for Sample Provision 46

- MPA law (new offense provision)

3. Conspiracy

Sample Provision 47¹⁰⁹

Section __. Conspiracy

If two or more persons agree either to commit any offense under [this law], or to defraud the [country government], or any agency thereof, in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be guilty of the offense of conspiracy.

¹⁰⁹ Adapted in part from United States 18 U.S.C. § 371.

Potential location for Sample Provision 47

- MPA Law

4. Human Rights

Sample provision 48

Section __. Detection and Prosecution of Other Offenses at Sea

(a) Enforcement officers carrying out their duties pursuant to this [law / order / decree / regulation / MoU] shall use best efforts to detect violations of and enforce the requirements of other laws pertaining to the activities of vessels at sea, including but not limited to: [list of laws, including the MPA law].

(b) Enforcement officers detecting such violations shall either—

- (1) Investigate or enforce such laws pursuant to their own legal powers of enforcement; or
- (2) Promptly refer such violations immediately to other appropriate enforcement officials.

Potential locations for Sample Provision 48

- Law establishing jurisdiction and duty of enforcement agency (police, coast guard, etc.); this provision could also be promulgated as an administrative regulation or ministerial decree pursuant to such a law
- Executive order addressed to combatting illegal immigration and human trafficking, and to protecting refugees at sea
- Memorandum of understanding among national law enforcement agencies

5. Possession of Illegal Substances

Sample Provision 49

Section __. Detection and Prosecution of Other Offenses at Sea

(a) Enforcement officers carrying out their duties pursuant to this [law / order / decree / regulation / MoU] shall use best efforts to detect violations of and enforce the requirements of other laws pertaining to the activities of vessels at sea, including but not limited to: [list of laws, including the MPA law].

(b) Enforcement officers detecting such violations shall either—

- (1) Investigate or enforce such laws pursuant to their own legal powers of enforcement; or
- (2) Promptly refer such violations immediately to other appropriate enforcement officials.

Potential locations for Sample Provision 49

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- Law establishing jurisdiction and duty of enforcement agency (police, coast guard, etc.); this provision could also be promulgated as an administrative regulation or ministerial decree pursuant to such a law
- Executive order addressed to combatting trafficking in drugs
- Memorandum of understanding among national law enforcement agencies

6. Safety of Life at Sea

Sample Provision 50

Section __. Inspection of Vessels for Safety and Other Lawful Purposes; Evidence of MPA Violations

(a) For the purpose of this section, “vessel inspection” refers to the physical boarding of a ship by enforcement officers in the conduct of their duties.

(b) During the course of any vessel inspection that is carried out—

(1) To ensure the health and safety of crew or passengers;

(2) To satisfy customs or immigration requirements;

(3) To ensure compliance with international conventions and other arrangements to which [country] is a party, including, without limitation, [the International Convention for the Safety of Life at Sea] [Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing] [the International Convention for the Prevention of Pollution from Ships] [the Paris Memorandum of Understanding on Port State Control];

(4) In responding to an emergency request; or

(5) For any other lawful purpose

—an enforcement officer, port state control inspector, or any other official authorized to conduct a vessel inspection shall, upon identifying evidence that any person aboard the vessel has violated this law or committed an offense under this law, communicate this information immediately to personnel with enforcement authority under this law for further investigation and potential enforcement action.

(c) In developing criteria for ship risk profiles to prioritize vessels for port state control inspection, or inspection for any other lawful purpose at sea or in port, [the relevant ministry, agency, or institution] shall include criteria relevant to a vessel’s presence or likely presence in [specified MPA].

Potential locations for Sample Provision 50

- MPA law (new section in enforcement subchapter)
- National laws or port State control memoranda of understanding providing for vessel inspection for safety or other lawful purposes

H. SHARING ENFORCEMENT POWERS

1. Bilateral agreements. Ad Hoc Bilateral Cooperation in Absence of a RFMO

Sample Provision 51¹¹⁰

Section __. The Common Fishery and Conservation Zone

(a) Common Fishery / Conservation Zone

[The Contracting Parties] have agreed to establish the [Common Fishery / Conservation Zone] in the respective areas of [x nautical miles] of the exclusive economic zones of the two countries from the demarcation line determined in the [relevant Maritime Boundaries Agreement between parties].

(b) The actual extent of the [Common Fishery / Conservation Zone] is the water area encircled by straight lines connecting the following points: [include latitude/longitude data].

(c) The Contracting Parties shall determine annually the quantity of operating fishing vessels for each party in the [Common Fishery / Conservation Zone].

(d) Fishing vessels of both parties in the [Common Fishery / Conservation Zone] shall comply with the regulations on preservation and management of fishery resources laid down by the [Joint Committee].

(e) The competent authorities of the [Parties] shall monitor and inspect the nationals and fishing vessels of both parties in their own water areas of the [Common Fishery / Conservation Zone] in accordance with the regulations laid down by the [Joint Committee] based on the characteristics of the [Common Fishery / Conservation Zone] and in line with the domestic laws of both parties on preservation and management of fishery resources.

(f) The competent authorities of both parties, if necessary, may coordinate to conduct joint monitoring and inspection.

Potential locations for Sample Provision 51

- International agreement
- Maritime Boundaries Treaty

¹¹⁰ Adapted in part from the China-Vietnam Fishery Agreement in the Gulf of Tonkin. Common Fishery Zone. (2000).

2. Multilateral Agreements. Regional Fisheries Surveillance Agreements

Sample Provision 52¹¹¹

Section __. International Agreement for Fisheries Surveillance and Enforcement

1. Use of assets and personnel

(a) The parties to this Agreement may from time to time make available to a requesting party a vessel for the purposes of fisheries surveillance and enforcement in the waters of the requesting party in accordance with the terms and conditions of this Agreement.

(b) The ownership, command, and control of any vessel and the command of personnel made available under this Agreement shall always remain with the assisting party but the requesting party may exercise day-to-day direction of the vessel during an operation in its waters, provided that such direction is consistent with the scope and objectives of [the fisheries surveillance / marine conservation] operation.

(c) Before the commencement of an operation, the parties shall agree as to the scope of the fisheries surveillance and enforcement objectives for the operation.

(d) The requesting party shall designate in writing those of its officers who are authorized to go aboard the assisting party's vessel to perform operations at such times and places in the waters of the requesting party and in such manner as both parties agree, provided that such duties do not contravene the laws of the assisting party.

(e) The vessel of the assisting party shall display its National Flag and the [Fisheries Surveillance and Law Enforcement Flag].

(f) Officers designated under subsection (d) shall carry the identification issued to them by their respective governments and an identity card at all times while onboard a vessel during an operation.

(g) The parties to this Agreement shall advise each other of any circumstances, as they arise, which may prejudice the effective use of any vessel provided under this Agreement. The parties agree to consult on actions to be taken as a consequence of such circumstances. In the event that there is an inability to reach agreement either party has the right to cancel the operation.

(h) The parties to this Agreement shall grant clearance for any vessel provided by the assisting party under this Agreement.

(i) Prior to any operation, the requesting party shall provide to the assisting party copies of the fisheries and sea boundaries legislation, together with the delimiting coordinates of its waters and Marine Protected Areas, a current list of foreign fishing vessels licensed to engage in fishing in its waters, and any other information deemed necessary for the purposes of this Agreement.

¹¹¹ Adapted in part from The Niue Treaty. Subsidiary Agreement: Federated States of Micronesia/Marshall Islands/Palau Agreement, signed in February 2002. The entire agreement could serve as a model for future regional fisheries surveillance arrangements.

Potential location for Sample Provision 52

- International agreement

I. SHARING INFORMATION

1. Information Sharing on At-Sea Monitoring Activities

Sample Provision 53¹¹²**Section __. Information Sharing on Enforcement**

(a) Each Party shall, to the extent permitted by its national laws and regulations, provide to any other Party directly, information relevant to the purposes of this [Treaty / Agreement], including but not limited to information about:

- (1) The location and movement of foreign fishing vessels;
- (2) Foreign fishing vessel licensing; and
- (3) Fisheries surveillance and law enforcement activities.

(b) The Parties shall develop standard forms and procedures for reporting information provided under this section and effective methods for communicating such information.

Potential location for Sample Provision 53

- International agreement

2. Information Sharing on Port Inspections

Sample Provision 54¹¹³**Section __. Provision of Information**

(a) Each Authority shall report on its inspections under the Memorandum and their results, in accordance with the procedures specified in the Manual.

(b) Arrangements will be made for the exchange of inspection information with other regional organizations working under a similar memorandum of understanding.

(c) The Authorities shall, upon the request of another Authority, endeavor to secure evidence relating to suspected violations [...]. In case of suspected violations involving the discharge of harmful substances, an Authority will, upon the request of another Authority, visit in port the ship suspected of such a violation to obtain information and, where appropriate, to take a sample of any alleged pollutant.

¹¹² Adapted in part from the Nauru Agreement art. IV.

¹¹³ Adapted in part from the Tokyo MoU § 4.

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Sample Provision 55¹¹⁴

Section __. Computerized Information System

(a) Introduction

- (1) The State Parties hereby create the [Computerized Information System].
- (2) The main purposes of the [Computerized Information System] are:
 - (A) To help the Authorities in selecting ships for inspection;
 - (B) To harmonize inspection procedures;
 - (C) To exchange inspection information between member states;
 - (D) To assist in the elimination of substandard ship deficiencies since all inspection data are available in the region;
 - (E) To exclude repeated inspections; and
 - (F) To analyze [port state / fisheries monitoring] activities both in the entire region and those of each participating Authority for effective feedback.

(b) General requirements

- (1) State Parties will provide the [Computerized Information System], by means of computerized data transmission, with information of foreign ship inspections made in the national ports. The inspection information should be submitted by direct computerized input on a daily basis and not later than [X] days after date of the inspection. The Authorities are responsible for the integrity and authenticity of the data submitted to the [Computerized Information System] database.
- (2) The [Computerized Information System] should provide the users with the following capabilities:
 - (A) Each Authority will be able to obtain up-to-date information on all inspections of a particular ship and her identification data;
 - (B) Easy and quick recording of every inspection immediately following inspection completion;
 - (C) The system should ensure that the information being recorded is accurate and complete;
 - (D) Auditing of data changes should provide the administrative staff with the information of time and author of any changes;
 - (E) The system should ensure security of the data from unauthorized access and from changes being made by unauthorized users;
 - (F) Enabling data search tools;

¹¹⁴ Adapted in part from Tokyo MoU Manual 2004, at <http://www.simic.net.cn/upload/2007-11/20071121151932947.pdf>.

- (G) Obtaining statistics from the system in various reporting formats;
- (H) The system should be capable of being used by personnel with minimal knowledge or expertise in computer operations;
- (I) Internet technology should be a basis for the [Computerized Information System], and at the least, an “MS Windows”-based user platform would be supported by the system;
- (J) Transmitting data to the [Computerized Information System] via Internet by either a local office or the national server should be provided on a real-time basis and on batch;
- (K) Acknowledging an error of input data entered on the web-site on a real-time basis, to enable the operator to rectify the error immediately;
- (L) The system should distinguish an initial inspection from a follow-up inspection;
- (M) Backup facilities should be stipulated in the system to ensure data safety;
- (N) Set-up and operational costs should be minimal;
- (O) On-line help should be provided to all users;
- (P) Full inspection history for each ship should be available, as well as ability to track all associated inspections.

Potential location for Sample Provisions 54-55

- International agreement

3. International Cooperation Networks to Combat IUU Fishing

Sample Provision 56¹¹⁵

Section __. International Cooperation Network

- (a) State Parties to this agreement shall endeavor:
- (1) To harmonize provisions that regulate illegal, unreported, and unregulated fishing;
 - (2) To adapt and update this agreement for the better fulfillment of its objectives;
 - (3) To coordinate the actions of their respective monitoring and enforcement national and regional bodies; and
 - (4) To exchange information on IUU fishing with Regional Fisheries Management Organizations.

¹¹⁵ Adapted in part from Sistema de la Integración Centroamericana (SICA) Regional Regulation OSP-08-2014 to prevent deter and eliminate Illegal, Unregulated and Undeclared Fishing in SICA Member Countries [Reglamento Regional OSP-08-2014 para Prevenir, Desalentar y Eliminar la Pesca Ilegal, no Declarada y no Reglamentada en los Países Miembros del SICA], at <http://www.sica.int/busqueda/secciones.aspx?IdItem=79762&IdCat=48&IdEnt=47>.

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(b) Regional Network. A [Regional Fisheries Management Network], composed of the fisheries authorities of all States Parties is hereby created. The purpose of the Network is to coordinate, gather, and share information between national institutions and regional organizations to prevent, deter and eliminate IUU fishing.

(c) Port state measures. Fisheries authorities of all State Parties shall coordinate with their respective maritime and port authorities to create procedures to prevent access to their ports by ships that may have undertaken IUU fishing or participated in activities in support of IUU fishing.

Potential location for Sample Provision 56

- International agreement

4. Creation of Common Vessel Registries

Sample Provision 57¹¹⁶

Section __. Common Vessel Registry

(a) The [Integrated Fisheries and Aquaculture Registry] is hereby created.

(b) Scope. This Regulation shall apply to all fishing vessels in each State Party.

(c) Data entry. Each State Party will enter in the [Integrated Fisheries and Aquaculture Registry] the data on each Party's fishing vessels.

(d) Data update. States are required to update the data in the [Integrated Fisheries and Aquaculture Registry] no later than on the fifth day of each month.

(e) Data access. All State Parties shall have full access to the information contained in the [Integrated Fisheries and Aquaculture Registry].

Potential location for Sample Provision 57

- International agreement

¹¹⁶ Adapted in part from Regional Regulation OSP-01-09 on the Integrated Centro American Fisheries and Aquaculture Registry [Reglamento OSP-01-09 del Sistema Integrado de Registro Pesquero y Acuicola Centroamericano], at <http://www.sica.int/busqueda/secciones.aspx?IdItem=79762&IdCat=48&IdEnt=47>.

J. OTHER COOPERATION

1. Transboundary MPAs

Sample Provision 58¹¹⁷

Section __. Transboundary MPAs

(a) The parties establish a marine sanctuary within the area of [geographic area], whose biological diversity and richness represent an indispensable attribute for the protection of marine species and their habitats.

(b) The sanctuary is composed of [description of marine areas included]. The limits of the sanctuary are the following: [add coordinates].

(c) The Parties undertake to adopt within the sanctuary the appropriate measures so as to ensure the favorable conservation of marine species, by protecting both them and their habitat, from any negative direct or indirect impacts resulting from human activities.

(d) The Parties shall conduct monitoring activities within the sanctuary and shall intensify the fight against any form of pollution, whether of maritime or land-based origin having or likely to have a direct or indirect impact on the marine environment conservation status.

(e) Within the sanctuary the Parties will forbid any deliberate take or intentional disturbance of marine life.

(f) To ensure the application of the measures included in the present Agreement, the Parties appeal, in particular, to the authorities responsible for maritime patrolling. They agree to exchange all relevant information recorded in this context. To this purpose the Parties will facilitate the mutual use of their air and maritime ports through simplified procedures.

(g) In the part of the sanctuary located within the waters subject to its sovereignty or jurisdiction, each of the State Parties to the present Agreement is responsible for the application of the relevant provisions.

(h) In the other parts of the sanctuary, each of the State Parties is responsible for the application of the provisions of the present Agreement with respect to ships flying its flag as well as, within the limits provided for by the rules of international law, with respect to ships flying the flag of third States.

Potential location for Sample Provision 58

- International agreement
- International non-binding declaration

¹¹⁷ Adapted in part from Agreement between Italy, France, and Monaco on the creation of a Mediterranean Sanctuary for marine mammals (Pelagos Marine Sanctuary).

2. International Agreements to Limit the Fishing Effort

Sample Provision 59¹¹⁸

Section __. Fisheries Management Measures

(a) The parties to this [Agreement] will meet [once] a year at a Management Meeting for the purpose of reviewing the current status of [target fish species] stocks and to establish necessary measures for their management and conservation.

(b) Each Party will ensure that its nationals and fishing vessels comply with any management measures adopted by the Management Meeting.

(c) The decisions of the Management Meeting will be arrived at by consensus and will be binding on the Parties.

(d) The Parties agree that the number of licenses that may be issued to purse seine vessels of individual fleets will not exceed [the limit set out in Annex I / number].

(e) The agreed limits on the number of licenses that may be issued will be reviewed at the Management Meeting. The Parties agree that any alteration to the maximum allocations must be approved by all the Parties.

(f) Licenses will be issued on the basis of the vessel's record of compliance with the national laws and regulations and reporting requirements of Parties. Vessels with poor records of reporting and compliance will receive the lowest priority.

Potential location for Sample Provision 59

- International agreement

3. Allocation of Funds to MPA Management and Enforcement

Sample Provision 60¹¹⁹

Section __. Allocation of Funds to Natural Resources Protection, Restoration, or Replacement

In the case of an injury to, destruction of, or loss of natural resources resulting from a violation of this law, liability shall be to the [national government / State government / indigenous authority / local authority] for natural resources belonging to, managed by, controlled by, or appertaining to such [State / local authority]. Sums recovered by the [government] under this section shall be retained by the [government / State / local authority], without further appropriation, for use only to restore, replace, or acquire the equivalent of such natural resources.

¹¹⁸ Adapted in part from Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery (1995). The Palau Arrangement established a limit of 205 purse seine vessels in the waters of all participant states.

¹¹⁹ Adapted in part from 42 U.S.C. § 9607(f)(1) (Natural resources liability; designation of public trustees of natural resources).

Potential location for Sample Provision 60

- MPA Law

K. ROLE OF COMMUNITY

1. Transfer of Jurisdiction over Near-Shore Marine Management to Local Authorities

Sample Provision 61¹²⁰**Section __. Municipal Waters**

(a) Municipal waters are the marine waters included between two lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore inlands and [fifteen] kilometers from such coastline.

(b) Where two municipalities are so situated on opposite shores that there is less than [thirty] kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

(c) The municipal government shall have jurisdiction over municipal waters as defined in this [law]. The municipal / city government, in consultation with the [national / federal authorities] shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery / aquatic resources within their respective municipal waters.

(d) The municipal government may, in consultation with the [national / federal authorities], enact appropriate ordinances for this purpose and in accordance with the [fisheries laws / regulations].

(e) The municipal government shall also enforce all fishery laws and regulations, as well as valid fishery ordinances enacted by the municipal council.

(f) The management of contiguous fishery resources such as bays that straddle several municipalities, cities, or provinces, shall be carried out in an integrated manner, and shall not be based on political subdivisions of municipal waters to facilitate their management as single resource systems. The municipal governments that share or border such resources may group themselves and coordinate with each other to achieve the objectives of integrated fishery resource management.

(g) Grant of Fishing Privileges in Municipal Waters. The duly registered municipal fisher cooperatives shall have preference in the grant of fishery rights by the Municipal /City Council pursuant to this [law]

¹²⁰ Adapted in part from Philippines Republic Act No. 8550, An Act Providing for the Development, management and Conservation of the Fisheries and Aquatic Resources, Integrating all Laws Pertinent Thereto, and for other purposes 1998, Ch. II art. 1 §§ 16-25.

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(h) All fishery related activities in municipal waters, as defined in this Code, shall be utilized by municipal fishers and their cooperatives who are listed as such in the registry of municipal fishers.

(i) Resident municipal fishers of the municipality concerned and their organizations / cooperatives shall have priority to exploit municipal and demarcated fishery areas of said municipality.

(j) Whenever it is determined by the municipal government and the [federal / national fisheries management authorities] that a municipal water is overfished based on available data or information, or is in danger of being overfished, the municipal government shall prohibit or limit fishery activities in said waters.

(k) The [federal / national fisheries management authorities] and the municipal governments shall provide support to municipal fishers through appropriate technology and research, credit, production, and marketing.

Potential location for Sample Provision 61

- Fisheries law

2. Citizen Cooperation in Monitoring and Enforcement

Sample Provision 62¹²¹

Section __. Citizen Collaboration in Monitoring and Enforcement

(a) Collaboration in monitoring and enforcement. The [managing agency] shall promote the participation by organized civil society groups, certified and endorsed by the [managing agency], in actions of coordinated community policing through the creation of participatory monitoring committees.

(b) Assessment workshops. The [managing agency] shall promote efforts by organized civil society groups, certified and endorsed by the [managing agency], to conduct meetings to oversee the functioning of the participatory monitoring committees.

(c) Information sessions on MPA enforcement regulations. The [managing agency] shall promote efforts by organized civil society groups, certified and endorsed by the [managing agency], to conduct briefings in villages in or near [specified MPA] on ecological awareness and prevention of illegal activities.

(d) Conflict resolution. The [managing agency] shall facilitate for organized civil society groups, certified and endorsed by the [managing agency], conflict resolution with respect to the exploitation of natural resources.

Potential location for Sample Provision 62

- MPA law

¹²¹ Adapted in part from Cabo Pulmo Natural Protected Area Management Plan, p.50. Translated from Spanish and adapted by the authors. http://www.conanp.gob.mx/que_hacemos/pdf/programas_manejo/cabo.pdf (in Spanish).

3. Self-Regulation. Community-Based MPA Enforcement

Sample Provision 63¹²²

Section __. Community-Based MPA Enforcement

(a) Each [local community] shall, after consultation with [the MPA management agency / environmental protection agency], draft and implement the rules that set forth the conservation and management measures that will govern the [specified MPA].

(b) The set of [MPA management measures] shall be adopted as required in [regulation describing the basic requirements of community-based management rules].

Potential location for Sample Provision 63

- MPA law

4. Co-management

Sample Provision 64¹²³

Section __. Deputization of Local Authorities

(a) Pursuant to the provisions of [environmental protection / MPA declaration law], the [local authorities/ government officials] are hereby deputized as [Conservation Officers], to take effect immediately.

(b) By virtue of this deputation, the above deputized [Conservation Officers] are hereby authorized to enforce laws and regulations on [MPA conservation] as administered by the [environmental ministry], specifically by way of the following:

(1) To detect violations of such laws and regulations on [MPA conservation] and to arrest, even without warrant, any person who has committed or is committing in their presence any of the offenses indicated in the [list of relevant laws/orders].

(2) To seize/confiscate the boats, gear, tools, equipment, and other paraphernalia used in the commission of the offenses, as instruments of the crime, including the catch thereof as proceeds of the crime, pursuant to [relevant Criminal Code provisions].

(c) In all instances of detention, arrest, apprehension, or seizure, aforesaid officers, observing the period prescribed by law from the time of arrest and seizure, shall file the proper complaint with the appropriate officials designated by law to conduct preliminary investigation and cause the filing of the proper information in court.

¹²² Adapted in part from 2008 American Samoa Community-based Fisheries Management Program.

¹²³ Adapted in part from Philippines MNR ADMINISTRATIVE ORDER No. 1 Series of 1983, Deputizing the Provincial Governors, and Vice-Governors, Municipal Mayors, Vice-Mayors, and Barangay Captains in Areas Critical for the Protection of Marine Turtles in the Philippines as Conservation Officers, at oneocean.org/download/990330/ao1-83.doc.

Legal Tools for Strengthening MPA Enforcement

Potential location for Sample Provision 64

- MPA law

L. OTHER MECHANISMS

1. Prohibition on Trafficking in Fish, Wildlife, and Plants (“Lacey Act”-Styled Provision)

Sample provision 65¹²⁴

Section __. Prohibition on Trafficking in Fish, Wildlife, and Plants in Violation of Domestic or Foreign Law

It is unlawful for any person to:

(1) Import, export, transport, sell, receive, acquire, or purchase any fish or wildlife or plant taken, possessed, transported, or sold in violation of any law, treaty, or regulation of [country];

(2) Import, export, transport, sell, receive, acquire, or purchase—

(A) any fish or wildlife taken, possessed, transported, or sold in violation of any foreign law;

(B) any plant—

(i) taken, possessed, transported, or sold in violation of any foreign law that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area (including a marine protected area);

(III) the taking of plants from an officially designated area; or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or fees required for the plant by any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any foreign law governing the export or transshipment of plants; or

(C) any prohibited wildlife species (except as otherwise allowed for by law);

(3) Within the maritime and territorial jurisdiction of [country]—

¹²⁴ Adapted from the United States Lacey Act, 16 U.S.C. § 3372 (Prohibited acts).

(A) Possess any fish or wildlife taken, possessed, transported, or sold in violation of any foreign law, or

(B) to possess any plant—

(i) taken, possessed, transported, or sold in violation of any foreign law that protects plants or that regulates—

(I) the theft of plants;

(II) the taking of plants from a park, forest reserve, or other officially protected area (including a marine protected area);

(III) the taking of plants from an officially designated area; or

(IV) the taking of plants without, or contrary to, required authorization;

(ii) taken, possessed, transported, or sold without the payment of appropriate royalties, taxes, or fees required for the plant by any foreign law; or

(iii) taken, possessed, transported, or sold in violation of any limitation under any foreign law governing the export or transshipment of plants; or

(4) Attempt to commit any act described in paragraphs (1), (2), or (3).

Drafter's Note: the Lacey Act is a powerful U.S. enforcement tool, as it expands the reach of fish, wildlife, and plant protection laws by looking to the laws of other countries. For this reason, it has also been very controversial. The drafter should be alert to any potential legal restrictions on using a Lacey Act analog in his or her country.

Potential location for Sample Provision 65

- Environmental protection law
- MPA law

2. Citizen Enforcement

Sample Provision 66¹²⁵

Section __. Citizen Suit

(a) For the purposes of enforcing the provisions of this [law], any citizen may file an appropriate civil action in the proper court against:

(1) Any person who violates or fails to comply with the provisions of this [law] or its implementing regulations; or

¹²⁵ Adapted in part from Section 37 of the Act Establishing the Tubbataha Reefs Natural Park in the Province of Palawan as a protected area under the NIPAS Act (RA 7586) and the strategic environmental plan (SEP) for Palawan Act (RA. 7611) providing for its management and for other purposes.

Legal Tools for Strengthening MPA Enforcement

(2) Any public officer who willfully or grossly neglects the performance of an act, specifically enjoined as a duty by this [law] or its implementing regulations; or abuses his authority in the performance of his duty; or, in any manner improperly performs his duties under this [law] or its implementing regulations—

Provided, however, that no suit can be filed until after a thirty (30)-day notice has been given to the public officer and the alleged violator concerned, and no appropriate action has been taken thereon.

(b) Upon prima facie showing of the non-enforcement or violations complained of, the court shall exempt such action from the payment of [filing fees, injunction bond for the issuance of preliminary injunction]. In the event that the citizen should prevail, the court shall award reasonable attorney's fees, and litigation costs as appropriate.

Drafter's Note: this is a very broad example of a citizen suit provision, as it contains no requirement of injury by the plaintiff. The citizen suit provision on which this sample is based was drafted specifically to facilitate MPA enforcement.

Sample Provision 67¹²⁶

Section __. Citizen Suit

(a) Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf—

(1) Against any person (including a governmental instrumentality or agency to the extent permitted by law) who is alleged to be in violation of this law [or specific provisions of this law, listed]; or

(2) Against the [relevant Minister / Administrator] where there is alleged a failure of the [Minister / Administrator] to perform any act or duty under this law that is not discretionary with the [Minister / Administrator].

(b) No action may be commenced—

(1) Under subsection (a)(1) of this section—

(A) Prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the [Minister / Administrator], and (ii) to any alleged violator; or

(B) If the [Minister / Administrator] has commenced and is diligently prosecuting a civil or criminal action in a court require compliance with the law, but in any such court action any citizen may intervene as a matter of right.

(2) Under subsection (a)(2) of this section prior to sixty days after the plaintiff has given notice of such action to the [Minister / Administrator]. Notice under this subsection shall be given in such manner as the [Minister / Administrator] shall prescribe by regulation.

(c) Intervention by [Minister / Administrator]; Government interests protected.

¹²⁶ Adapted from United States Clean Water Act, 33 USC § 1365 (Citizen suits).

(1) In such action under this section, the [Minister / Administrator], if not a party, may intervene as a matter of right.

(2) Whenever any action is brought under this section in a court, the plaintiff shall serve a copy of the complaint on the [Minister of Justice / Attorney General] and the [relevant Minister / Administrator]. No consent judgment shall be entered in an action in which the government is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the [Minister of Justice / Attorney General] and the [relevant Minister / Administrator].

(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the law.

(e) For the purposes of this section, the term “citizen” means a person or persons having an interest that is or may be adversely affected.

Potential location for Sample Provisions 66-67

- MPA law

APPENDIX I. AGREEMENTS WITH OTHER COUNTRIES

The effective use of multilateral and bilateral cooperation agreements—from major global treaties to more localized bilateral agreements—provide a powerful means for developing countries to expand the reach and impact of their enforcement capabilities.

Most developing countries that seek to strengthen the enforcement of their marine protected area (MPA) requirements are likely already party to various international agreements that affect how these countries may lawfully write and enforce their domestic laws. In particular, the legal drafter should be aware of **key global treaties** that may bear on the regulation of fisheries, offshore law enforcement and interactions with foreign vessels, and governance of large-scale and remote MPAs. Even when a country is not party to a particular treaty, familiarity with the treaty's requirements may assist the legal drafter in understanding how other nations view a particular topic, helping the drafter to craft domestic laws that are consistent with international requirements, norms, and expectations.

Countries should also take advantage of new or existing **opportunities for regional cooperation**, for example through regional fisheries management organizations (RFMOs).

Finally, countries should explore opportunities for entering into **Memoranda of Understanding (MoUs) with neighboring countries** where shared interests exist.

This Appendix provides examples of agreements that are relevant to MPA enforcement and that can serve as models, or inspiration, to the developing country that is looking to expand on its international collaboration by partnering with one or more of its neighbors.

A. MAJOR TREATIES AND INTERNATIONAL AGREEMENTS

Convention on Biological Diversity (CBD)

The Convention on Biological Diversity has as its objectives the conservation of biological diversity, the sustainable use of the components of biological diversity, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. The CBD entered into force in 1993.

Main website

<https://www.cbd.int>

Treaty text

<https://www.cbd.int/convention/text/>

List of parties

<https://www.cbd.int/information/parties.shtml>

The purpose of the Port State Measures Agreement is to prevent, deter, and eliminate illegal, unreported, and unregulated (IUU) fishing through the implementation of robust port State measures. The application of the measures set out in the agreement by the port State parties is intended to contribute to harmonized port State measures, enhanced regional and international cooperation, and a blockage of the flow of illegal fish into national and international markets. The PSMA entered into force in 2016.

Main website

<http://www.fao.org/fishery/psm/agreement/en>

Treaty text

http://www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf

List of parties

http://www.fao.org/fileadmin/user_upload/legal/docs/037s-e.pdf

International Convention for the Safety of Life at Sea (SOLAS)

The Safety of Life at Sea Convention is the key international treaty concerning the safety of merchant vessels. The main objective is to specify minimum standards for safe construction, equipment, and operation of ships. Flag States are responsible for ensuring compliance, but control provisions allow for inspection of ships by port States. SOLAS entered into force in 1980.

Main website

[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\),-1974.aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS),-1974.aspx)

Treaty text

[https://treaties.un.org/doc/Publication/UNTS/Volume 1184/volume-1184-I-18961-English.pdf](https://treaties.un.org/doc/Publication/UNTS/Volume%201184/volume-1184-I-18961-English.pdf)

List of parties

<http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>
[click on "Status of Multilateral Conventions"]

United Nations Convention on the Law of the Sea (UNCLOS)

The United Nations Convention on the Law of the Sea establishes a comprehensive legal framework governing how activities are carried out at sea. UNCLOS entered into force in 1994.

Main website

http://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

Treaty text

http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

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List of parties

http://www.un.org/depts/los/reference_files/status2010.pdf

United Nations Fish Stocks Agreement (UNFSA)

The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks establishes the legal regime governing the conservation and management of straddling and highly migratory fish stocks, with a view to ensuring their long-term conservation and sustainable use. The UNFSA entered into force in 2001.

Main website

http://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm

Treaty text

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N95/274/67/PDF/N9527467.pdf?OpenElement>

List of parties

http://www.un.org/depts/los/reference_files/status2010.pdf

B. RFMOS AND REGIONAL AGREEMENTS

Western and Central Pacific Fisheries Commission (WCPFC)

The WCPFC Convention seeks to address problems in the management of high seas fisheries resulting from unregulated fishing, over-capitalization, excessive fleet capacity, vessel re-flagging to escape controls, insufficiently selective gear, unreliable databases, and insufficient multilateral cooperation in respect to conservation and management of highly migratory fish stocks. The Convention entered into force in 2004.

Main website

<https://www.wcpfc.int/>

Treaty text

<https://www.wcpfc.int/system/files/text.pdf>

List of parties

https://www.wcpfc.int/system/files/WCPFC10-2013-06 Status of the Convention_0.pdf

International Commission for the Conservation of Atlantic Tunas (ICCAT)

The International Commission for the Conservation of Atlantic Tunas is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas. The organization was established at a Conference of Plenipotentiaries, which prepared and adopted the International Convention for the Conservation of Atlantic

Tunas [download the Basic Texts, including the Convention, 389Kb], signed in Rio de Janeiro, Brazil, in 1966. After a ratification process, the Convention entered formally into force in 1969.

Main website

<http://www.iccat.int/en/>

Treaty text

<http://www.iccat.int/Documents/Commission/BasicTexts.pdf>

List of parties

<http://www.iccat.int/en/contracting.htm>

Indian Ocean Tuna Commission (IOTC)

The IOTC was established in 1993 at the 105th Session of the Council of the Food and Agriculture Organization of the United Nations (FAO) under Article XIV of the FAO constitution. The IOTC seeks to promote cooperation among the Contracting Parties (Members) and Cooperating Non-Contracting Parties with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by the organization's establishing Agreement and encouraging sustainable development of fisheries based on such stocks. The Agreement for the creation of the IOTC was signed in 1993 and entered into force in 1996.

Main website

<http://www.iotc.org/>

Treaty text

<http://www.iotc.org/sites/default/files/documents/2012/5/25/IOTC%20Agreement.pdf>

List of parties

<http://www.iotc.org/about-iotc/structure-commission>

Inter-American Tropical Tuna Commission

The IATTC is responsible for the conservation and management of tuna and other marine resources in the Eastern Pacific Ocean.

Main website

<http://www.iattc.org/>

Treaty text

http://www.iattc.org/PDFFiles/IATTC_convention_1949.pdf

List of parties

<http://www.iattc.org/MembersMap.htm>

Commission for the Conservation of Southern Bluefin Tuna (CCSBT)

The CCSBT is an intergovernmental organization responsible for the management of southern Bluefin tuna throughout its distribution. The CCSBT's objective is to ensure, through appropriate management, the conservation and optimum utilization of southern Bluefin tuna.

Main website

<https://www.ccsbt.org/>

Treaty text

https://www.ccsbt.org/sites/ccsbt.org/files/userfiles/file/docs_english/basic_documents/convention.pdf

List of parties

<https://www.ccsbt.org/en/content/origins-convention>

South East Atlantic Fisheries Organisation (SEAFO)

The SEAFO is an intergovernmental fisheries science and management body. SEAFO's primary purpose is to ensure the long-term conservation and sustainable use of all living marine resources in the South East Atlantic Ocean, and to safeguard the environment and marine ecosystems in which the resources are located.

Main website

<http://www.seafo.org/>

Treaty text

http://www.seafo.org/media/313b8708-4171-4360-a0f3-7a27f3b0235a/SEAFOweb/pdf/COMM/open/SEAFO%20Convention_pdf

List of parties

<http://www.seafo.org/About/Contracting-Parties>

South Pacific Regional Fisheries Management Organisation (SPRFMO)

The SPRFMO is an inter-governmental organisation that is committed to the long-term conservation and sustainable use of the fishery resources of the South Pacific Ocean and in so doing safeguarding the marine ecosystems in which the resources are located. The SPRFMO Convention applies to the high seas of the South Pacific, covering about a fourth of the Earth's high seas areas. Currently, the main commercial resources managed by the SPRFMO are Jack mackerel and jumbo flying squid in the Southwest Pacific and, to a much lesser degree, deep-sea species associated with seamounts in the Southeast Pacific.

Main website

<http://www.sprfmo.int/>

Treaty text

<http://www.sprfmo.int/assets/Basic-Documents/Convention-web.pdf>

List of parties

<http://www.sprfmo.int/about/status-of-the-convention/>

Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region

The treaty provides a framework to promote maximum effectiveness in regional fisheries surveillance and enforcement through cooperation between countries in the region. The main benefits include assistance to countries with inadequate surveillance and enforcement capabilities and the creation of facilities to follow the movement of fishing vessels from one zone to another.

Main website

https://www.ffa.int/niue_treaty

Treaty text

https://www.ffa.int/system/files/Niue%20Treaty_0.pdf

List of parties

<http://www.ecolex.org/details/niue-treaty-on-cooperation-in-fisheries-surveillance-and-law-enforcement-in-the-south-pacific-region-tre-001964/participants/>

Arrangement between the Cook Islands, New Zealand, Niue, Samoa, Tonga and Tokelau on Cooperation in Fisheries Surveillance and Law Enforcement Subsidiary to the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region of 9 July 1992 (“Te Vaka Toa Arrangement”)

This implementing arrangement to the Niue Agreement creates a cooperation mechanism on fisheries monitoring, control, surveillance, and enforcement activities, both domestically and on the high seas.

Treaty text

<http://www.tevakamoana.org/legal-framework/te-vaka-toa-arrangement>

The Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Stocks (PNA)

The PNA seeks the promotion of regional cooperation and coordination of fisheries policies. The PNA controls the world's largest sustainable tuna purse seine fishery, including around 50% of the global supply of skipjack tuna, the most commonly canned tuna.

Main website

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<http://www.pnatuna.com/>

Treaty text

http://www.pnatuna.com/sites/default/files/Latest%20Nauru%20Agreement_0.pdf

List of parties

<http://www.pnatuna.com/About-Us>

Sistema de la Integración Centroamericana (SICA)

The purpose of SICA is to realize the integration of Central America in order for the Isthmus to become a Region of Peace, Freedom, Democracy and Development. Its objectives are, inter alia, to consolidate democracy, to set up a new model of regional security based on the reasonable balance of forces, the strengthening of civilian authority, the overcoming of extreme poverty, the promotion of sustainable development, the protection of the environment, and the eradication of violence, corruption, terrorism, and drug and arms trafficking.

Main website

http://www.sica.int/index_en.aspx

Treaty text

<http://www.sica.int/consulta/documento.aspx?Idn=320&IdEnt=401&Idm=2>

List of parties

http://www.sica.int/miembros/miembros_en.aspx

C. MEMORANDA OF UNDERSTANDING AND BILATERAL AGREEMENTS

Memorandum of Understanding on Port State Control in the Asia-Pacific Region (Tokyo MoU)

The Tokyo MOU is an inter-governmental cooperative organization on port State control (PSC) in the Asia-Pacific region. The Tokyo MoU aims to eliminate substandard shipping in the Asia-Pacific region and to promote the effective implementation, and the universal and uniform application, of relevant IMO/ILO instruments on ships operating in the region.

Main website

<http://www.tokyo-mou.org/>

MoU text

<http://www.tokyo-mou.org/doc/Memorandum%20rev15.pdf>

List of parties

http://www.tokyo-mou.org/organization/organizational_structure.php

Paris Memorandum of Understanding on Port State Control (Paris MoU)

The Paris Memorandum of Understanding on Port State Control is the official document in which the 27 participating Maritime Authorities agree to implement a harmonized system of Port State Control. Its mission is to eliminate the operation of sub-standard ships through a harmonized system of port State control in the States Parties.

Main website

<https://www.parismou.org/>

MoU text

https://www.parismou.org/system/files/Paris%20MoU%2C%20including%2039th%20amendment%20_rev%20final_.pdf

List of parties

<https://www.parismou.org/about-us/organisation>

Agreement on Fishery Co-operation in the Tonkin Gulf between the Government of the People's Republic of China and the Government of the Socialist Republic of Vietnam

This bilateral agreement established a Common Fishery Zone (CFZ) in the Gulf of Tonkin, in the respective areas of 30.5 nautical miles of the exclusive economic zones of the two countries. In the CFZ, both countries jointly make fishing resources management and marine conservation decisions.

Agreement text

<http://faolex.fao.org/docs/pdf/bi-51872.pdf>

Fisheries Partnership Agreement between the European Community and the Islamic Republic of Mauritania

The Agreement establishes the conditions governing access by EU fishing vessels to Mauritanian waters, upon financial contribution according to the conditions specified in the Protocol. The aim is to establish responsible fishing in Mauritanian fishing zones to guarantee the conservation and sustainable exploitation of fisheries resources and develop the Mauritanian fisheries sector. The agreement includes a one-million EUR contribution per year for the financial support the Banc d'Arguin National Park and MPA.

Agreement text

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2006.343.01.0001.01.ENG

APPENDIX II. TIPS FOR DRAFTING ENFORCEABLE MPA PROVISIONS

Effective enforcement of any law begins with sensible policies that are expressed through clear, concise legal drafting. Whether preparing an amendment to an existing MPA law or developing new MPA legislation, the legal drafter should frame provisions with an eye toward eventual compliance (will the public understand what is required?) and enforcement (will enforcement officers be empowered to effectively enforce the law against violators?). Following are several tips for the legal drafter working in the MPA context.¹²⁷

TIP #1: Draft MPA restrictions as clearly, directly, and simply as possible.

Legal drafters provide a great service to enforcement personnel by drafting MPA restrictions (as to location, gear, activities, species, etc.), that are as clear, direct, and simple as possible. Straightforward legal drafting makes it easier for enforcement personnel to detect and respond to violations in the field; easier for prosecutors and other government officials to successfully pursue legal action; and easier for courts to determine whether the law has been violated. Clearly expressed MPA restrictions and requirements also make it easier for ocean users and other members of the public to understand what is allowed and what is prohibited, and thus to know whether they are following the law.

Conversely, legal provisions that are lengthy, ambiguous, or convoluted make it more difficult for law enforcement, prosecutors, and judges to effectively enforce the law. And poorly drafted provisions make it difficult even for well-intentioned members of the public to follow the law.

TIP #2: Ensure that the law penalizes the acts and omissions that violate the most important MPA requirements.

The text of the law should clearly assign an appropriate degree of civil or criminal liability to persons who violate the most important aspects of the law. This seems obvious. But offenses are sometimes defined so broadly as to criminalize the most trivial noncompliance with the law (which can lead to confusion about what is really illegal and stand in the way of effective enforcement). Or, offenses may be defined so narrowly as to inadvertently omit liability for violations that policymakers intended to be punished. It should be clear to anyone reading an MPA law what the law prohibits and what the penalties are for violating those prohibitions.

TIP #3: Strike a balance between achieving brevity and simplicity for enforcement purposes and achieving an appropriate level of detail for purposes of ensuring a law well tailored to local needs and circumstances.

Although this tip is more applicable to the MPA policymaker than to the person drafting an MPA law, its inclusion here recognizes that the legal drafter plays an important role in translating the goals of legislators and other policymakers into enforceable legal provisions. Every MPA law reflects different policy choices made to address local circumstances. These policy choices may result in MPA restrictions that are either more or less difficult to enforce.

¹²⁷ This Appendix draws heavily from an excellent resource for legal drafters working on international assistance projects: Ken Rosenbaum, *Legislative Drafting Guide: A Practitioner's View*, FAO Legal Papers Online #64, Feb. 2007, at <http://www.fao.org/3/a-bb097e.pdf>. The *Legislative Drafting Guide* provides invaluable, user-friendly advice for both the first-time legal drafter and the seasoned legal drafting expert.

On the one hand, the violation of a simple but broad MPA restriction (e.g., do not enter a certain area) is far easier to detect, interdict, and prosecute than the violation of a narrower, more targeted restriction (e.g., do not take a certain species within a certain area, or at a certain time). Simple bright-line rules tend to be very enforcement friendly. On the other hand, more tailored, detailed MPA requirements may better recognize and account for local needs and context—which can actually aid in compliance. One general approach to this problem is to maintain the clearest, simplest requirements possible at the level of legislation but allow for more flexibility and detail at the level of the administrative regulations or management plans used to implement the law.

TIP #4: When assigning responsibilities under the law, be as plain as possible about who is required to do what.

An important role for any law is to assign responsibilities to specific actors: for example, the government shall do such and such, or a vessel master shall not do such and such. Confusion can arise when the actor charged with carrying out a responsibility is omitted from the provision. For these reasons, the following provision is problematic: “Failure to file an annual report shall result in revocation of the fishing license.” This language leaves several unanswered questions. Failure to file by whom? Revocation of the fishing license by whom—or is the revocation automatic? Is it clear which annual report is intended, and is it also clear how that report is to be filed? Like any good writer, the MPA legal drafter should seek to help the reader as much as possible—particularly given the many difficulties already inherent in MPA enforcement.

TIP #5: Be aware of existing laws and requirements that may result in conflict or confusion—including domestic laws as well as international obligations.

Rarely do legal drafters write on a blank slate. Instead, they typically work against a complex background of other national, local, and international legal requirements. With respect to MPA enforcement, the drafter should at a minimum be familiar with his or her country’s constitution; existing laws and implementing regulations on marine protection, fisheries, and other environmental subjects; other relevant laws on criminal procedure and evidence; and international obligations involving marine and coastal issues (see Appendix 1). Too often, legal drafters fail to identify situations where a new law will either be in conflict with an existing law, or where the fit between the two laws will be unclear—a situation that can lead to future gaps in enforcement, as well as litigation as courts are left to sort out the confusion. It is far better for the drafter to acknowledge potential conflict and confusion through the drafting process, even where this may require proposing a repeal of prior law.