

Legal Frameworks for MPA Enforcement in the Caribbean: *Challenges and Opportunities*

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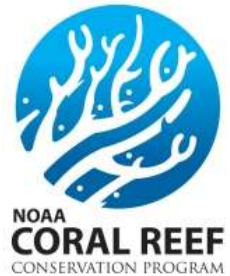


Why study MPA
enforcement?



Project Development

- *Concept: To identify best practices in MPA legislation across the Caribbean*
- Developed at peer-to-peer regional workshop: *Building compliance and enhancing enforcement for marine protected areas in the Caribbean*
 - 22 MPA managers
 - 14 countries and territories



Legal Frameworks For MPA Enforcement In The Caribbean

- Sponsored by the Caribbean Environment Program of the United Nations Environment Programme, in support of the Caribbean Challenge Initiative
- Funding from the Directorate General for Development Cooperation of the Italian Ministry of Foreign Affairs.
- On behalf of GCFI
- ELI provided substantial independent support.



GEOGRAPHIC SCOPE

Bahamas

Turks & Caicos

BVI

Antigua & Barbuda

Dominican Republic

St. Lucia

St. Vincent & Grenadines

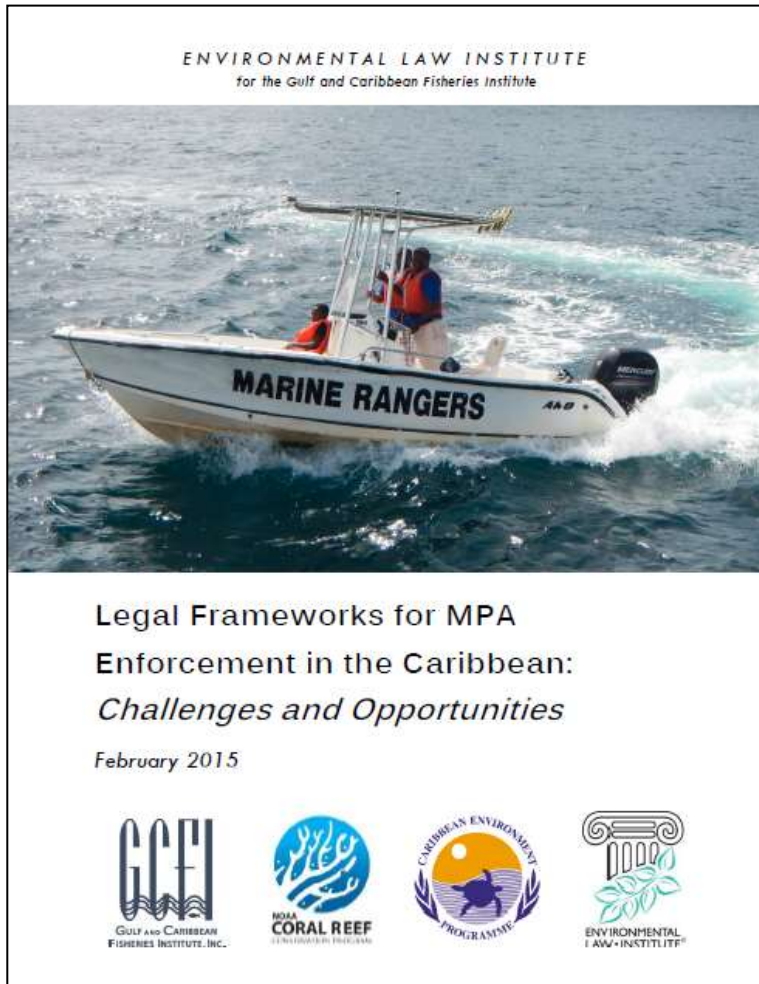
Grenada

Methodology

1. Readily accessible legislation
 - Fisheries
 - National parks
 - Does not include general policing laws
2. Law as written - not implementation
3. Research conducted in 2013
4. Peer review of draft report by in-country experts



Legal Frameworks for MPA Enforcement in the Caribbean: Challenges and Opportunities



- Comparative assessment:
 - Regulatory structure
 - Enforcement powers
 - Adjudication of violations
 - Penalties
- In-depth country profiles



1. REGULATORY STRUCTURE
2. ENFORCEMENT POWERS
3. ADJUDICATION
4. PENALTIES



Principles

MPAs can be enforceable only if:

1. they are established and managed with legislative authority
2. restrictions on activity in MPAs are based on legal authority and are enforceable if violated



Two types of MPA legislation

1. MPA or “protected area” laws
 - establish specific MPA areas
 - establish categories of MPAs, with details of specific areas left to regulations
2. General laws
 - create specific MPAs or categories of MPAs as part of broader goals
 - e.g., Marine Reserves in fisheries laws

MPAs without legislative authority cannot be enforced.



Elements of enforceable MPA legislation

- authority to create substantive restrictions on activities in MPA
 - Established in legislation or in regulations
 - Management plans generally cannot be enforced
- necessary enforcement powers,
- basis for adjudication of violations, and
- penalties for violations of law and regulations



How can activity be regulated?

- Regulatory approaches
 - Prohibitions
 - Licences
 - Ad hoc authorisation or permission
 - *Different options are more or less difficult to enforce and administer*
- Broad or narrow restrictions
 - Regulate specific species or gear, or all fishing during a closed season?
 - Choices on what to regulate affect enforceability of restrictions



In practice...

- Countries studied have multiple types of MPAs and multiple legal authorities
- Regulation and enforcement differ both in approach and breadth
- Approaches reflect need to balance benefits of standardization with need to tailor restrictions to particular areas, uses, and purposes





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Key enforcement powers

- Search
 - Vessels, premises
 - Including production of licenses and identification
- Seizure
 - Vessels and items used in commission of offense
 - Fruits of illegal activity (e.g., illegal fish)
- Arrest

Strong enforcement programs provide officers with all three categories of powers



Many types of enforcement agents

- Police / constabulary
- Coast Guard / Defence Force
- Fisheries officers
- Park wardens / rangers

Each type of agent has different powers drawn from legislation, which should be appropriate to their needs and training

Table 1: Example of Enforcement Authorities: Marine Law Enforcement Agents in Antigua and Barbuda

Law	Enforcement Agents
Police Act	Police
Defence Act	Coast Guard
Fisheries Act	Fisheries Officers, other " <u>authorised</u> officers" (police and coast guard)
National Parks Act	None



Enforcement powers provided in *fisheries* legislation

Country	Search	Seizure	Arrest
Antigua & Barbuda	X	X	X
The Bahamas	X	X	X
British Virgin Islands	X	X	X
Dominican Republic*	X	X	
Grenada	X	X	
Saint Lucia	X	X	
Saint Vincent and the Grenadines	X	X	
Turks and Caicos Islands**	X	X	X

*incorporates powers of inspectors in general environment law

** law provides fisheries officers with all the powers of a police officer



Enforcement powers provided in *national parks* legislation

Country	Search	Seizure	Arrest
Antigua & Barbuda			
The Bahamas*	X	X	
British Virgin Islands	X	X	X
Dominican Republic**	X	X	
Grenada	X	X	X
Saint Lucia			X
Saint Vincent and the Grenadines			X
Turks and Caicos Islands		X	X

* implied based on powers of constables under Police Act

** incorporates powers of inspectors under General Environment Law



Observations

1. British commonwealth countries differ from DR, which leaves more enforcement powers in general environment law
2. BVI provides broadest enforcement powers to both fisheries and national parks enforcement staff
3. Generally fisheries officers have more substantial authority than park wardens, but this differs (see St. Lucia, SVG)
4. The patchwork of laws and authorities requires coordination among agencies within each country.



Are differences a problem?

- Differences may reflect level of training, experience, or capacity of agents. Applied research is needed to evaluate each country and agent category.
- Some type of specialized enforcement agent should be trained, equipped, and empowered to enforce marine protection laws.
 - (Marines/coast guard currently may be important for capacity and for authority)



Resolving enforcement power deficits

- Cross-deputization can resolve some differences
 - T&C: fisheries officers are considered national park wardens
 - Grenada: fisheries officers are considered marine park wardens
 - BVI: automatic cross-deputisation of enforcement agents (fisheries officers, planning officers, etc.)
- Effectiveness of deputisation relies on availability of full array of powers and may result in confusion over responsibility



Search and seizure

- What can be searched?
- What can be seized?
- When is a warrant required?
- Is there a suspicion requirement?



What can be searched?

- Types of authorised searches must be set out in legislation
- Should include
 - vessels,
 - persons,
 - articles on vessels (gear and cargo),
 - vehicles,
 - premises on land,
 - production of licence, vessel registration, identification, other required documentation



What can be seized?

- Must be authorised by legislation
- Can include
 - Sampling catch
 - Vessels
 - Gear
 - Catch
 - Cargo
 - Other articles (e.g., weapons, snorkel gear)



Is a warrant required?

- Generally laws provide some search powers without warrant (e.g., produce fishing licence), but warrants required in other cases
- DR is silent on warrant requirement in fisheries law (not a common law country)
- T&C explicitly requires warrants in many cases



Is there a suspicion requirement?

- Officers can conduct some searches and seizures only if they believe a violation has occurred
- Other activities do not require suspicion





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ADJUDICATION





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PENALTIES

FUTURE DIRECTIONS

- Expand comparative work for additional countries and legislative frameworks
 - Dutch and French Caribbean
 - Mesoamerican reef
- Develop model legislation for regional harmonisation
 - OECS
 - CARICOM
 - others



QUESTIONS?

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