

COUNTRY REPORT: THE BAHAMAS:

Legislative Developments

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Introduction

This report provides a brief overview of the legislative developments concerning access to environmental information and public participation in developmental decisions, and the conservation and sustainable funding of Bahamian protected areas and resources. This report reviews the legislative developments in 2015 and assesses their success in providing governmental accountability, access to justice and public participation in environmental decision making.

Generally, environmental legislation in The Bahamas is outdated and fragmented. In recent years, however, a number of pieces of environmental legislation have been developed. This is most likely the result of regional and international commitments, as well as increasing pressure from various environmental groups both regionally and nationally. In 2010 and 2012, the government of The Bahamas enacted the *Planning and Subdivision Act* and *Freedom of Information Act* respectively. These Acts were met with much public criticism and presently there are two Bills that seek to address and rectify those criticisms. Further legislative developments include the enactment of the *Bahamas Protected Areas Fund Act 2013* and an amendment to *The Fisheries Resources (Jurisdiction and Conservation) Regulations*. These recent developments illustrate a new attitude toward environmental and resource preservation, while acknowledging the importance of access to information and public participation to ensure more effective legislative enforcement.

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Freedom of Information Act

The issue of freedom of information in the environmental field has gained ground in the region. Throughout the Latin American and Caribbean the regional movement toward access to information, public participation and access to justice principles has progressed into a Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development.¹ In the Declaration, signatory countries² (The Bahamas is not a signatory) have pledged to advance the implementation of a regional agreement on the three pillars of environmental democracy established in the Rio Declaration under Principle 10.

Prior to January 2012, The Bahamas had no Freedom of Information (FoI) legislation in place to enable its citizenry access to government-controlled information. However, amid public outcries and much criticism by citizens and civic groups,³ the Government of The Bahamas drafted and tabled its first *Freedom of Information Act* in 2012 (FoIA). The Act, although passed in 2012, has not been enforced to date due to the Minister responsible never announcing a date for its coming into operation and it never having been officially gazetted. A Committee was formed to review the 2012 Act and a revised Bill was published in 2015.

The Freedom of Information Act 2012

The FoIA 2012 was received sceptically by the public, who criticized the Act for many noted deficiencies. The shortcomings of the law included the lack of access to judicial or quasi-judicial bodies to challenge decisions made by Ministers of government agencies, the wide class of documents that are exempt from disclosure, the lack of definition of 'public interest' (relevant to justifying exemptions to the disclosure of information in the 'public interest'), and the lack of provisions for the disclosure of Environmental Impact Assessments (EIAs).

¹ Economic Commission for Latin America and the Caribbean, 'Principle 10' (*Economic Commission for Latin America and the Caribbean*) <<http://www.cepal.org/en/principio-10>> accessed 21 December 2015.

² Brazil, Chile, Columbia, Costa Rica, Dominican Republic, Ecuador, Honduras, Jamaica, Mexico, Panama, Peru, Trinidad and Tobago, Uruguay.

³ Royston Jones, 'Protestors demand Freedom of Information Act' *The Nassau Guardian* (New Providence, 12 June 2014) <<http://www.thenassauguardian.com/news/48018-protestors-demand-freedom-of-information-act>> accessed 21 December 2015; Dames, Candia. 'FOIA needs close to 100 amendments' *The Nassau Guardian* (New Providence, 16 June 2014) <<http://www.thenassauguardian.com/news/48114-foia-needs-close-to-100-amendments>>; Royston Jones, 'Minnis calls for FOIA, gender equality op-ed' *The Nassau Guardian* (New Providence, 23 December 2015) <<http://www.thenassauguardian.com/news/61505-minnis-calls-for-foia-gender-equality-in-op-ed>> accessed 21 December 2015.

Retired Justice Jeanne Thompson stated, 'What we seem to be left with is an Act with no teeth. We would still be in a position waiting for a whistle blower to let us know what is going on'.⁴

During this period, the need for an enforceable FoIA was never more apparent than in the Bahamian Bimini Bay litigation brought on behalf of a coalition of concerned residents, which took place in 2014.⁵ The case illustrates that without stringent requirements for information to be made accessible to the public under an enforceable and appropriate FoIA legislation, it can be extremely difficult to obtain information on projects and developments before they have progressed too quickly to be halted. An attorney representing the coalition, Dawson Malone, stated in an address to the public on the *Freedom of Information Act*, 'If I am relying on access to the court to vindicate my rights, I must have information to do so'.⁶ Due to the FoIA 2012 being unenforceable, there was no means for the coalition to obtain the necessary information to adequately challenge the development, and the coalition was put through the exorbitant expense of instituting a judicial review action. The lack of access to information in the Bimini Bay case is just one example of the disastrous consequences an unenforceable FoIA can have on public participation in national decision making.

The non-disclosure of EIAs was another barrier to the coalition in the Bimini Bay litigation. The EIA, which disclosed a number of negative environmental consequences of the development, was difficult to obtain. Although not in force at the time, the FoIA 2012 lacked the necessary statutory provisions on the disclosure of EIAs to ensure members of the community proper and thorough access to information to challenge the Bimini Bay development.

Since the draft of FoIA 2012 was released, various civic groups in the country have harshly criticized the Act.⁷ Critics called for extensive amendments to be made to the Act in order to render it satisfactory to the public. The Government of The Bahamas noted such

⁴ Renee Farquharson, 'Access to environmental information: Our right to know' *The Nassau Guardian* (New Providence, 14 November 2014):

<<http://www.thenassauguardian.com/bahamas-business/40-bahamas-business/51852-access-to-environmental-information-our-right-to-know->> accessed 21 December 2015.

⁵ Lisa Benjamin, 'Country Report: The Problem of Unpermitted Development and Fragmented Environmental Laws' (2015) 5 IUCNAEL EJournal:

<<http://www.iucnael.org/en/86-journal/issue/491-issue-20142>> accessed 2 January 2016.

⁶ Farquharson (n 4).

⁷ Candia Dames, 'FOIA needs close to 100 amendments' *The Nassau Guardian* (New Providence, 16 June 2014) <<http://www.thenassauguardian.com/news/48114-foia-needs-close-to-100-amendments>> accessed 21 December 2015.

extensive amendments and decided the FoIA 2012 would best be replaced by a new piece of legislation, the Freedom of Information Bill 2015 (FoIB).

The Freedom of Information Bill 2015 versus The Freedom of Information Act 2012

The Freedom of Information Bill was published in May 2015 but has not yet been passed. The Bill seeks to reinforce and give effect to certain fundamental principles underlining the system of constitutional democracy through governmental accountability, transparency, and public participation in national decision making by granting the public a right of access to records held by public authorities.⁸

A disturbing issue in the FoIA 2012 was the unfettered power of the Minister to deny requests for information. The Minister, upon denying a request for information, could issue an exemption certificate to the person who had made the application. Where a certificate had been issued, the Act deemed it was conclusive that the record was exempt and no judicial or quasi-judicial proceedings of any kind could be brought to challenge the decision of the Minister.⁹ The Minister was effectively given a veto power through these provisions, which, in effect, nullified the right of access to information granted in the legislation. The 2015 Bill addresses this by eliminating the unfettered power of the Minister.

There was also no definition of 'public interest' in the 2012 Act, and while the 2015 Bill does not provide a definition of public interest, it does set out public interest considerations which must be taken into account when deciding on disclosure. Further, the Information Commissioner is given the task of issuing guidelines on public interest considerations. In addition, the Bill clarifies that public interest considerations are not a blanket provision and the class of records exempt on the ground of public interest must satisfy a three tier test in order to be disclosed.¹⁰

Another vexing issue in the FoIA 2012 legislation was the list of exempt records. The statutory provisions on exempt records were extensive and included: records affecting security, defence or international relations; records relating to law enforcement; records subject to legal privilege; records affecting national economy; records revealing government's deliberative process; records which prejudice the effective conduct of public affairs; records relating to commercial interests; records relating to heritage sites; records relating to personal information; and records likely to endanger health and safety. This

⁸ Objects and Reasons, Freedom of Information Bill, 2015. The definition of public authority now covers a Ministry, Departments of Government, statutory body or authority incorporated or not, a public corporation wholly owned or partly owned by the Government, or any other body or organization specified in the Act.

⁹ Freedom of Information Act 2012, s 25.

¹⁰ Freedom of Information Bill 2015, s 16.

extensive list of exempt records does not appear to encourage the flow of information between state and citizen. The change in the Bill provides exceptions to the class of exempt records which in effect narrows the exemptions public authorities may rely on to withhold information. As a result, the provisions in the Bill define more clearly which records are exempt. Public authorities may not claim blanket exemptions but instead, the information requested must fall in the more narrowly defined provisions of exemptions. Further provisions allow for certain exemptions to be waived with the consent of appropriate parties.¹¹ These changes generally provide more certainty and clarity for both public officers and citizens who have to apply these exemptions.

The 2015 Bill also increases the autonomy of the Information Commissioner, which was deficient in the 2012 Act. Where a Minister has denied an application for information, the applicant who has exhausted internal review procedures may independently appeal a decision of a public authority to the Commissioner who has powers to conduct investigations, require evidence and compel witnesses to testify. The law provides for extensive review powers of sanctioned authorities to decisions denying persons access to information. Should procedures within the legislation be exhausted, persons have redress to the Supreme Court for a review of the decision by the Commissioner. The law places further accountability measures on the Commissioner to report to Parliament on the operation of the Act, ostensibly to review the Act's progress as well as its long and short term viability. To this end, the Commissioner must make annual reports on the number of exemptions claimed, the number of applications for information made, and the number of appeals against decisions *inter alia*.

Recommendations

The FoIB 2015, despite some shortcomings, represents significant progress toward governmental accountability, public participation in national decision making and access to information in environmental decision making. For too long, developments have negatively impacted the environment in The Bahamas with no progression towards transparency by public authorities and their role in these developments. Despite its merits, the FoIB 2015 still poses some challenges to environmental decision making due to its general nature and scope. EIAs, which form an integral part of environmental decision making, are not mentioned in the Bill as records which are specifically disclosable. While the Bahamas Environment Science and Technology (BEST) Commission does publicize EIAs on its website, it is not a statutory body and as a result it has no statutory duty to do so.¹² Further,

¹¹ Ibid, s 20(4).

¹² Benjamin (n 5).

as a private entity, the BEST Commission has no duty to respond to requests for information by public citizens. Recommendations to the 2015 FoIB would provide specific statutory provisions on access to EIAs to adequately challenge decisions by public authorities that affect the environment.

Bahamas Protected Areas Fund and the Fisheries Resources (Jurisdiction and Conservation) (Amendment) Regulations

This section covers The Bahamas Protected Areas Fund Act, its connection to the Caribbean Challenge Initiative and Marine Protected Areas in The Bahamas, and the recent amendment to legislation related to grouper conservation in The Bahamas.

Bahamas Protected Areas Fund

The Caribbean Challenge Initiative (CCI) is a marine conservation initiative in terms of which 9 Caribbean governments have signed a declaration pledging to safeguard the region's marine and coastal environment. The Caribbean countries that have signed the declaration are: (i) The Bahamas; (ii) The British Virgin Islands; (iii) Dominican Republic; (iv) Grenada; (v) Jamaica; (vi) Puerto Rico; (vii) St. Lucia; (viii) St. Kitts and Nevis; and (ix) St. Vincent and the Grenadines. There are two main goals of the CCI: (i) to conserve and manage at least 20% of the marine and coastal environment by 2020 (the 'twenty by twenty goal'); and (ii) to have established sustainable finance mechanisms to achieve the twenty by twenty goal. The CCI is important and significant to the region as it represents a collaborative effort throughout the Caribbean to achieve expanded protection for marine and coastal areas.

Recently, the Bahamas announced additional Marine Protected Areas (MPAs) and as a result increased its percentage of protected areas to 10%. These MPAs include expansions to the Exuma Cays Land and Sea Park, the first MPA established in 1958, and the addition of creek systems and marine reserves in the north and central Bahamas. The most recent MPAs include the Fowls Cays Land and Sea Park in Abaco, more specifically in the barrier islands of Great Abaco, and the expansion of both the Conception Island National Park and the West Side National Park of Andros, including Williams Island and Billy Island, where the newly discovered shark nursery is located. As such, The Bahamas is halfway to the twenty by twenty goal with five years remaining of the CCI. According to the Bahamas Reef Environmental Educational Foundation (BREEF), this increase in the percentage of MPAs in The Bahamas has met national goals for the year. Additionally, BREEF, while working along with the government, hopes to increase the amount of MPAs to 20% by 2020. The Caribbean Challenge Initiative has also encouraged Caribbean countries to commit to creating National Conservation Trust Funds endowed by new sustainable finance mechanisms to provide financial support for the management of protected areas.

The Caribbean Biodiversity Fund (CBF) is a regional endowment fund established in September 2012 with its corporate office in The Bahamas. The CBF has the objective to provide a sustainable flow of funds to support activities that contribute substantially to the conservation, protection and maintenance of biodiversity within the national protected areas systems or any other areas of environmental significance of participating countries. The CBF is the first regional endowment that will channel support to multiple National Conservation Trust Funds (NCTFs) established in participating countries. Its initial financial commitments amount to US\$42 million¹³, with commitments from Antigua and Barbuda, The Bahamas, Dominican Republic, Grenada, Jamaica, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines to further contribute.

In 2014, the *Bahamas Protected Areas Fund Act* (BPAF Act) became law. It provides for the establishment and regulation of The Bahamas Protected Areas Fund (BPAF). This legislation makes reference to the Caribbean Biodiversity Fund as the regional trust fund established to finance the national protected areas trust funds in such countries as it may, from time to time, decide to include.¹⁴ Broadly, the BPAF Act provides for there to be a Register of Protected Areas¹⁵ and establishes the BPAF as a corporate body with legal personality and perpetual succession.¹⁶ The BPAF Act provides for the financial structure of the fund and sets out potential sources of funding.¹⁷ The purpose of the BPAF is to ensure sustainable financing in perpetuity for the management of protected areas in The Bahamas, including financing for management activities under the CCI and the objectives of the CBF.¹⁸

Sustainable financing for protected areas is the ability to secure stable and sufficient long term financial resources, and to allocate the resources in a timely manner and appropriate form to cover the full costs of protected areas (direct and indirect) and ensure that the areas are managed effectively and efficiently.¹⁹ Sustainable financing is increasingly important to the management of protected areas as there are significant costs associated with the effective protection of protected areas in perpetuity. According to information provided by The Bahamas National Trust, sustainable financing helps to ensure that

¹³ The Caribbean Challenge Initiative: Sustainable Finance:

http://www.caribbeanchallengeinitiative.org/index.php?option=com_content&view=article&id=409&Itemid=255#.VqfwLFLy29Y, accessed 26 January 2016

¹⁴ The Bahamas Protected Areas Fund Act 2014, s 2.

¹⁵ Ibid, s 4.

¹⁶ Ibid, s 5.

¹⁷ Ibid, s 5(2).

¹⁸ Ibid, s 6.

¹⁹ Convention on Biological Diversity, 'Sustainable Finance' <<https://www.cbd.int/protected-old/sustainable.shtml>> accessed 7 January 2016.

ecological and economic benefits continue for the flora, fauna and people of The Bahamas.²⁰ As it stands presently, a 2008 Needs Assessment for The Bahamas National Protected Area System indicated that in the period between 2008 and 2018, there will be an estimated financial costs increase of some BSD\$151.8 million, with a projected financial gap of \$93 million, if sustainable financing mechanisms are not further developed.²¹

Additionally, the BPAF Act also provides for the BPAF to give grants and be dedicated to charitable purposes.²² The BPAF is controlled by eleven directors who should have experience in ecological science, biodiversity conservation, finance, law, investment management, fundraising and grant writing.²³ These skill sets are necessary for undertaking the responsibilities of the Fund.

Further, it should be recognised that the commitment that The Bahamas has made under the CCI is two-fold. Firstly, through the Caribbean Challenge Initiative, The Bahamas has committed to expand its protected areas. On 31 August 2015, 15 new parks were created and three parks were expanded comprising over 11 million acres in total. Secondly, through the CCI, The Bahamas has committed to improving the effective management of these protected areas. The effective management of these protected areas is directly related to sustainable financing and its mechanisms as protected areas cannot be properly managed without the costs being properly funded. This illustrates the correlation between the CCI and national funds. The BPAF Act for The Bahamas, therefore, is not only innovative in the sense that it aligns itself with the CCI appropriately, but also for the fact that The Bahamas was the first in the region to pass legislation to establish a national conservation fund for protected areas in 2014.

²⁰ Krista Sherman, 'Implementation status of the GEF FSP pilot 3 demonstration project – 'Tourism & Coral Reef Health in the Exuma Cays Land and Sea Park' (Sustainable Financing Workshop, 19 September 2012):

<http://www.bahamasprotected.com/bahamasprotected_pdf/BNT%20Project%20Output%20Documents/_Sustainable%20Finance%20Workshop%20Presentation%20%283%29.pdf> accessed 7 January 2016.

²¹ <http://bahamasprotected.com/> accessed 26 January 2016 ; Master Plan for BNPAS para 2.3.4 http://www.bahamasprotected.com/bahamasprotected_pdf/TNC%20Project%20Output%20Document/_Master%20Plan%20for%20the%20BNPAS-FINAL-2.pdf accessed 28 January 2016; Interview with Lynn Gape, Bahamas National Trust, Deputy Executive Director, (5 February 2016).

²² The Bahamas Protected Areas Fund Act 2014, s 9-10.

²³ *Ibid*, s 11.

The Fisheries Resources (Jurisdiction and Conservation) (Amendment) Regulations 2015

This amendment is quite relevant as it effectively provides for there to be an annual closed season for the Nassau grouper, an endangered species on the IUCN's Red List. The inclusion of the Nassau Grouper on the Red List is cause for grave concern. The Red List of threatened species informs policy development by providing an evaluation of the extinction risk of the species.²⁴ The Nassau Grouper is endangered due to overfishing and is highly vulnerable as it is a slow breeder. Without respect for a closed season during its spawning period, there is no opportunity for the species to safely reproduce. Independent of its status as a threatened species, it is also important to protect the Nassau Grouper as it plays an integral role in the delicate eco system of marine life in The Bahamas.

The *Fisheries Resources (Jurisdiction and Conservation) (Amendment) Regulations* prohibit the landing of grouper except for scientific research purposes. The closed season is from 1 December to 28 February. These dates reflect the species' breeding period. This encourages the continued spawning and conservation of the species. Prior to the amendment being passed, the decision and dates for a closed season were dependent on the political will of the Minister of Agriculture and Fisheries. This fuelled uncertainty for the protection of the Nassau Grouper which has continued to decline in population in recent years. The new legislation proposes to solve this problem by having a closed season with set dates according to the spawning period.²⁵ Thus, the decision to have a closed season is no longer dependent on the political will of the Minister of Agriculture and Fisheries. Further, according to BREEF, the closed season for the Nassau Grouper is stricter than other closed seasons because it does not allow for sale of the Nassau Grouper during the closed season (although the legislation does not specify if the restriction applies to fresh and frozen sales).²⁶

These developments are beneficial to The Bahamas as they directly align with the two major goals of the Caribbean Challenge Initiative; to protect twenty percent of the marine and coastal environments by 2020 and to provide sustainable funding mechanisms. The Bahamas has worked toward these goals through the expansion of protected areas and the conservation of marine life, specifically the Nassau grouper. Further, through the

²⁴ International Union for the Conservation of Nature, 'The IUCN Red List of Threatened Species' <http://www.iucn.org/about/work/programmes/species/our_work/the_iucn_red_list/> accessed 7 January 2016.

²⁵ 'Praise for Government as Grouper Season Closed' *The Tribune*, (New Providence, 6 December 2014) <<http://www.tribune242.com/news/2014/dec/11/praise-government-grouper-season-closed/>> accessed 7 January 2016.

²⁶ Interview with Casuarina McKinney Lambert, BREEF Director (15 December 2015).

implementation of legislation to regulate the Bahamas Protected Areas Fund, The Bahamas has sought to establish mechanisms to enable sustainable finance in so far as it relates to those protected areas.

Department of Environmental Planning and Protection Bill and Planning and Subdivision Bill

This section of the report discusses the development of environmental legislation in The Bahamas through two Bills: the Environmental Planning and Protection Bill 2015 and the Planning and Subdivision Bill 2015.

Department of Environmental Planning and Protection Bill 2015

One of the objectives of the Department of Environmental Planning and Protection Bill 2015 (DEPP Bill) was to cure the significant institutional fragmentation that The Bahamas suffers from. The issue of fragmented environmental laws was addressed in the IUCN EJournal's 2015 country report for The Bahamas.²⁷ The 2015 country report highlighted two cases in which the government and/or the Bahamian judiciary were unaware of the applicability of a piece of legislation. Due to excessive fragmentation, the 2015 article highlighted the need for a comprehensive and well-funded environmental protection agency, properly established by statute and equipped with officials who are well-versed with environmental legislation.

The DEPP Bill seeks to establish a government Department of Environmental Planning and Protection (the Department). The Department will be responsible for the integrated protection and sustainable management of the Bahamian environment and natural resources. The Department's primary responsibilities will include developing, implementing and promoting environmental protection standards, regulations for discharging wastes, a system of project review and approval, an environmental emergency programme, environmental information, and research, education and training. The Bill's overall objective is to consolidate environmental protection law and to centralise its responsibility.

The DEPP Bill was introduced following a rise in environmental litigation in The Bahamas and several oil spills on The Bahamas' capital island.²⁸ The DEPP Bill provides

²⁷ Benjamin (n 5).

²⁸ Ricardo Wells, 'Legal Action Considered Over Oil Spills At Clifton' *The Tribune*, (New Providence, 6 July 2015)

<<http://www.tribune242.com/news/2015/jul/06/legal-action-considered-over-oil-spills-clifton/>>

accessed 19 December 2015; Neil Hartnell, 'Cable Seeking \$15m Over Rubis Gas Leak' *The Tribune*, (New Providence, 9 July 2014)

<<http://www.tribune242.com/news/2014/jul/09/cable-seeking-15m-over-rubis-gas-leak/>> accessed 19 December 2015.

statutory authority for Environmental Impact Assessments (EIAs) for all activities reasonably expected to have significant environmental impact, whether on Crown or private lands. In doing so, the Bill creates a wide-reaching authority extending to all lands and all likely environmental threats. Further, projects requiring an EIA cannot commence without the issuance of an environmental clearance and environmental permit, effectively establishing necessary safeguards. In addition, the Department's Director has the authority to amend, suspend or cancel an environmental clearance or permit if new circumstances arise that may adversely affect the environment.

Under the DEPP Bill, the Minister is empowered to create offences punishable by fines, imprisonment or both. These offences may be of a continuing nature and may attract fines for each day the offence continues following conviction, which encourages swift rectification. Also of merit are the provisions relating to the recovery of costs incurred for remedying a consequence of any default.

The DEPP Bill provides for the encouragement and facilitation of environmental protection by the public. The Department is charged with developing programmes and dispersing information to the public to encourage a culture of public conservation and environmental appreciation.

Planning and Subdivision Bill 2015

The Planning and Subdivision Bill 2015 (PSB) responds to recurring issues under the *Planning and Subdivision Act 2010* (PSA) regarding extensive provisions and inadequate staffing.²⁹ The PSB, which is to repeal the PSA, proposes to further consolidate town and planning subdivision developments while increasing public participation in the approval process. One of the issues with the PSA was that inadequate resources were made available to the Department to implement the legislative provisions. Phillip Davis, the Deputy Prime Minister, stated that the government planned to meet the staffing inadequacies by moving to a larger space and hiring additional staff to meet the demand.³⁰

²⁹ Alison Lowe, 'DPM: Planning and Subdivision Act changes to 'increase transparency' *The Nassau Guardian* (New Providence, 19 June 2014):

<<http://www.thenassauguardian.com/bahamas-business/40-bahamas-business/48210-dpm-planning-and-subdivision-act-changes-to-increase-transparency>> accessed 2 January 2016; Natario McKenzie, 'Government urged to Remove Planning Bottlenecks' *The Tribune* (New Providence, 20 June 2014):

<<http://www.tribune242.com/news/2014/jun/20/govt-urged-to-remove-planning-bottlenecks/>> accessed 2 January 2016.

³⁰ Ibid.

Under the PSA, public access to information and public hearings are mandated for development applications. The public hearings facilitate public revision and questioning of the material and public input and representations. The Minister is also mandated to have regard to public submissions or representations when deliberating on a Land Use Plan. Following the finalisation of a Land Use Plan, the public is again engaged through making a copy of the finalised plan public. Any person may make written representations to the Minister within two months of publication and prior to the Minister's approval, and the Minister must have regard for these representations.

Under the PSB, public hearings are mandated for scheduled projects and other projects recommended by the Minister, albeit the number of public hearings is not legislated. However, in considering any Environmental Impact Statement (EIS), the deciding authority is only required to have regard for the EIS conclusions and comments from referral agencies. In short, the proposed changes in the Bill restrict public participation and rid the legislation of specific provisions for public engagement.

Weaknesses or Conflicts of the Bills

A more detailed examination of the Bills raises a number of questions in relation to weaknesses and overlap. These issues include the extent of Ministerial discretionary power and potential overlap between the Bills.

Ministerial discretionary power is prevalent in both Bills. For example, the Minister 'may make regulations and issue guidelines setting standards and establishing procedures for the preparation and review of environmental impact assessments'. Greater levels of certainty, accountability and transparency would be promoted if the requirements of an EIA were established in the Bill itself, and Ministerial responsibility was mandated and not merely discretionary. It is important to note that the appropriate Ministers under both Bills have the authority to prescribe these standards, which may lead to confusion and institutional overlap.

Another Ministerial discretionary power under the PSB involves determining the type and extent of consideration, inclusive of the criteria, procedures and timing of an EIS review. This power can effectively lessen the importance of the EIS in the decision making process, and cause potential conflict with the DEPP Bill. Additionally, the PSB seems to curb opportunities for public participation as there is no provision requiring public comment to be considered or given weight in the decision making process.

Both the DEPP Bill and the PSB have similar provisions relating to land use, public access to information and EIAs. The Department of Environmental Planning (under the DEPP Bill) is, however, required to work in tandem with the Department of Physical Planning (under the PSA) in relation to Land Use Plans. There is potential for confusion because both Departments are charged with developing some aspect in relation to the same subject

matter. At the same time, there are provisions in both Acts which require discretion to be exercised subject to conditions and restrictions in other legislation. By stripping the public consultation provisions in the PSB and inserting them into the DEPP Bill, both pieces of legislation must be passed in tandem to ensure that the public retains its right to be consulted. The simultaneous passing of both pieces of legislation is, however, unlikely due to low political momentum. It is also unlikely that the DEPP Bill will be passed. This would effectively strip the public of rights provided from existing legislation (the PSA) without them being introduced through the DEPP Bill. To eliminate this risk, both Bills should be developed, amended and passed together.

Conclusion

This report set out to analyse the efforts of the Bahamian government to enact, update and improve environmental legislation built on the three pillars of environmental democracy: access to information, access to justice and public participation in national decision making.

The FoIB 2015, despite certain deficiencies, represents an effort by the government to recognise a citizen right of access to information (governmental transparency, public participation and accountability). The Bill, however, faces some challenges due to the lack of statutory provisions on the disclosure of EIAs.

The enactment of the BPAF Act and the *Fisheries Resources (Jurisdiction and Conservation) (Amendment) Regulations 2015* represents one of the more comprehensive legislative developments in environmental protection laws within the country. These laws represent the efforts of The Bahamas to align with the major regional goals of the CCI. The establishment of the fund by the Act seeks to ensure sustainable financing for the management of protected areas in the Bahamas and the amendment of the Fisheries Regulations seeks to ensure the protection of the Nassau Grouper species in perpetuity.

The establishment of the Department of Environmental Planning and Protection and the PSA demonstrate an attempt to align the country with its regional and international responsibilities for sustainability and protection of the environment. The PSA, in particular, demonstrates this with regard to the rights of public participation in national decision making. The introduction of the PSB, however, seems to erode legislative development regarding public participation by stripping away some public participation rights. The Acts' objectives may also prove difficult to implement due to overlapping statutory provisions.