

**TOWARDS EFFECTIVE IMPLEMENTATION OF THE SEYCHELLES MARINE SPATIAL PLAN**

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**LEGAL CONSIDERATIONS AND ROADMAP**

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## ABBREVIATIONS

AONB	Areas of Outstanding Natural Beauty
CBD	Convention on Biological Diversity
EC	SMSP Executive Committee
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
GoS	Government of Seychelles
ICS	Island Conservation Society
IDC	Islands Development Company
IMO	International Maritime Organization
IUU	Illegal, Unreported, and Unregulated
MACCE	Ministry of Agriculture, Climate Change and Environment
MFBE	Ministry of Fisheries and Blue Economy
MPA	Marine Protected Area (general usage) Marine Protection Area (for purposes of the SMSP)
MSP	Marine Spatial Plan(ning)
NCCC	National Climate Change Committee
NISCC	National Information Sharing and Coordination Centre
NISTI	National Institute for Science Technology and Innovation
nm	nautical miles
NPNCA	National Parks and Nature Conservancy Act
NRC Act	Nature Reserves and Conservancy Act 2022
PSMA	Agreement on Port State Measures
RCOC	Regional Centre for Operations Coordination
SC	SMSP Steering Committee
SCG	Seychelles Coast Guard
SDGs	UN Sustainable Development Goals
SEA	Strategic Environmental Assessment
SeyCCAT	Seychelles Conservation and Climate Adaptation Trust
SFA	Seychelles Fishing Authority
SIF	Seychelles Islands Foundation
SMSA	Seychelles Maritime Safety Authority
SMSP	Seychelles Marine Spatial Plan
SOA	Seychelles Ocean Authority
SPA	Seychelles Ports Authority
SPGA	Seychelles Parks and Gardens Authority
TNC	The Nature Conservancy
UNCLOS	UN Convention on the Law of the Sea
UNFCC	UN Framework Convention on Climate Change
WIO	Western Indian Ocean

## EXECUTIVE SUMMARY

Seychelles is poised to complete work on the Seychelles Marine Spatial Plan (SMSP), the culmination of a ground-breaking effort launched in 2014 and supported through the first ever ocean debt conversion. As the Government-led SMSP Initiative prepares to implement the plan, Seychelles finds itself overall well positioned with respect to the national legal and policy framework governing ocean management. However, certain key steps remain to be completed to help make the SMSP legally binding and ensure successful long-term administration and oversight of the SMSP. Accordingly, this report: identifies and discusses various legal considerations with respect to national-level marine spatial planning; relies on those considerations to characterise and assess the current legal landscape for marine planning in Seychelles, noting potential gaps; and concludes with recommendations and a proposed legal “roadmap” for navigating the way forward.

The primary undertaking of this report is to compare Seychelles’ existing legal framework to a set of legal considerations, collected and adapted from other jurisdictions, that may be used to provide for marine spatial planning governance and to help ensure effective, long-term implementation of marine spatial planning on a comprehensive basis. Many of the considerations have already been addressed in Seychelles, to varying degrees, in the Cabinet-approved SMSP Policy and existing sectoral legislation—or otherwise through the extensive work carried out by the SMSP Initiative and its partners in recent years. Where particular considerations have *not* yet been addressed in Seychelles, however, or have not been addressed in a legally binding way, the Government of Seychelles (GoS) may wish to do so, to satisfy its commitments and to ensure durability of the SMSP.

A principal takeaway is that Seychelles has yet to adopt legislation, or issue regulations, dedicated *exclusively* to its ambitious marine spatial planning enterprise. Seychelles does, however, benefit from a strong and still evolving set of legal authorities governing its marine protected areas (MPAs, also known as marine protection areas in the SMSP Initiative), which to a significant degree form the core of the SMSP and are the basis for the nation’s ocean conservation commitments. All MPAs have been formally designated under law, although technical reclassifications of one category of MPAs and a degree of regulatory development remain to be carried out.

The most important pending legal issue is deciding upon and operationalising the governance framework to be used for marine spatial planning going forward. In this regard, the GoS may wish to reconsider the need for national marine spatial planning legislation that resolves and clarifies the governance arrangement—ideally by way of an entity specifically mandated to administer and implement the SMSP. Any new legislation could be compact and would necessarily be crafted to build on—and not replace or override—existing sectoral authorities. An “interim” governance arrangement currently being designed by way of a regulation under the Seychelles environmental legislation may be viewed as a bridge to a more comprehensive governance arrangement for the long term. The longer-term governance arrangement could take the form of a previously envisioned Seychelles Ocean Authority, which was articulated in a draft Bill and benefitted from significant stakeholder support.

Beyond establishing an institutional governance structure, any future marine spatial planning legislation could also provide for key aspects of the marine spatial planning process—i.e., the requirements for plan adoption, modification, revocation, review, and the like—as well as other legal considerations highlighted in this report.

Specifically, the following priority legal interventions, taken over the next 12–18 months, would facilitate implementation of the SMSP:

- *Governance structure.* Identify an institutional home for marine spatial planning (i.e., assign oversight and coordinating authority for the SMSP) by way of an existing entity or a new one (see Part II.E.1 of the current report)—taking into account any short-term, approved “interim” governance arrangement as may be necessary, but focusing primarily on SMSP needs over the longer term;
- *Binding status of plan/relationship to other laws.* Consider targeted legal action to make the SMSP binding on all persons and to clarify the role of the SMSP with respect to other existing legislation (see Parts II.F.4 & II.F.5);
- *Application of SMSP in the exclusive economic zone (EEZ).* Ensure that key legal authorities that support marine spatial planning in Seychelles apply, as a matter of law, in the EEZ (see Part II.A);
- *Full implementation of marine protected areas.* Move forward with legal steps on: MPA reclassification (where needed) and regulatory elaboration under the new protected areas legislation (particularly with respect to area management and co-management) (see Parts II.E.2 & II.F.1); and
- *Legal definitions.* Ensure clarity and consistency in the laws of Seychelles for key legal definitions relevant to marine spatial planning (see Part II.C).

A practical, prioritised approach to advancing these and other legal considerations is elaborated in the “roadmap” set forth in Table 5.

A remaining question is how best the GoS may satisfy its commitment, pursuant to the debt conversion agreement, to arrange for the SMSP to be “signed into law or regulations and have full force and effect in the Seychelles.” New marine spatial planning legislation would surely satisfy this requirement. In the absence of new legislative action, adoption of the SMSP through the quicker option of issuing a regulation (pursuant to existing environmental or maritime zones legislation) would also likely suffice. A concern with the regulatory pathway, however, is that it is of necessity limited, legally, by the scope and objects of the underlying Act that supports such regulation. Thus, implementation of the SMSP by regulation under the existing laws of Seychelles risks being constrained by the authorising legislation, and priorities (including for resources) under such legislation could diverge in the future from the needs of the SMSP process.

Lastly, the Annex to this report inventories the many relevant legal and policy developments in Seychelles since the issuance in 2015 of a comprehensive marine spatial planning legislative and policy review.

## PART I

### Introduction and Legal Context for Implementation of the Seychelles Marine Spatial Plan

Launched in 2014, the Seychelles Marine Spatial Plan Initiative (Initiative) seeks to protect and more effectively manage Seychelles' marine waters through the designation of new marine protected areas (MPAs)<sup>1</sup> and the implementation of a comprehensive marine spatial plan.<sup>2</sup> The Initiative is a process led by the Government of Seychelles (GoS),<sup>3</sup> which has committed to expanding MPAs and going beyond the Aichi targets for terrestrial and marine areas.<sup>4</sup>

In February 2016, the GoS, The Nature Conservancy (TNC), and the Seychelles Conservation and Climate Adaptation Trust (SeyCCAT) signed a legally binding agreement (the Seychelles–TNC Facilities Agreement) in the world's first ocean debt conversion. Through this ground-breaking effort, TNC provides financial and technical support to Seychelles, and the GoS repays the debt in support of long-term marine conservation, specifically involving a commitment to develop and implement the Seychelles Marine Spatial Plan (SMSP) and achieve a 30% protection goal.<sup>5</sup> In September 2020, the SMSP Policy was approved by Cabinet.<sup>6</sup> A first draft of the SMSP is targeted for release in early 2023.

Critical to the long-term success of the SMSP will be ensuring that the laws of Seychelles support and facilitate implementation of the plan and of broader marine spatial planning processes (i.e., the processes for developing, amending, implementing, and enforcing the plan). Establishing sound legal

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<sup>1</sup> This report primarily uses the accepted international term “marine *protected area*,” a term that appears in the Seychelles Marine Spatial Plan Policy and is defined in the 2013 Seychelles Protected Area Policy. It is important to note, however, that the term “marine *protection area*,” which also appears in the Seychelles Marine Spatial Plan Policy, has been favored by stakeholders, is used preferentially in the design of the marine spatial planning zoning framework, and will be used in the text of the Seychelles plan. This is at least in part because the term marine protected area has been perceived as being associated primarily with no-take areas. Except where the context otherwise dictates, this report for consistency uses the term “marine protected area”—with no prejudice to the local preference for the term “marine protection area.”

<sup>2</sup> In February 2014, the Government of Seychelles committed to developing a marine spatial plan for all of its marine waters with the objectives of expanding marine protections to 30 percent, addressing climate change adaptation, and supporting the Blue Economy. See “The Seychelles’ Marine Spatial Plan” (“one-pager”), at [https://seymsp.com/wp-content/uploads/2022/06/SeychellesMSP1Pager\\_A4\\_2022.pdf](https://seymsp.com/wp-content/uploads/2022/06/SeychellesMSP1Pager_A4_2022.pdf).

<sup>3</sup> Previously, a GoS–UN Development Programme (UNDP)–Global Environment Facility (GEF) project to undertake a comprehensive, science-based spatial analysis to identify priority conservation areas ran from March 2011 to June 2015.

<sup>4</sup> See Convention on Biological Diversity (CBD) Secretariat, “Aichi Biodiversity Targets,” at <https://www.cbd.int/sp/targets/>.

<sup>5</sup> See, e.g., “Seychelles Achieves 30 Percent Marine Conservation Commitment: New Protections Come from World’s First Debt Refinancing for Ocean Conservation,” 16 March 2018; Commonwealth Small States Centre of Excellence, “Case Study: Debt-for-Nature Finance Swap,” 10 April 2018; SMSP Project Team & Commonwealth Secretariat, “Case Study: Seychelles—Using Marine Spatial Planning to Meet the 30 Per Cent Marine Protected Areas Target,” 10 February 2021. See also “Memorandum of Understanding between The Nature Conservancy (TNC) and the Government of the Seychelles (August 2017).

<sup>6</sup> Seychelles Marine Spatial Plan Policy, 23 September 2020 (hereinafter SMSP Policy).

underpinnings for marine spatial planning is best practice internationally.<sup>7</sup> Additionally, pursuant to the Seychelles–TNC Facilities Agreement, the GoS has agreed to arrange for the SMSP be given full force and effect under the laws of Seychelles.<sup>8</sup>

To support eventual implementation of the SMSP, the Initiative early on commissioned a consultancy to review Seychelles’ legal and policy framework as it relates to marine spatial planning. This resulted in the issuance in 2015 of the Seychelles Marine Spatial Planning Legislative and Policy Review.<sup>9</sup> That report summarised at length existing legal authorities—national as well as international—and concluded that “existing legislation and policies govern most marine uses or themes in the MSP Initiative. There are, however, several gaps in existing legislation and policy ... .”<sup>10</sup> The 2015 legal report then identified various specific recommendations for addressing these gaps.<sup>11</sup> The 2015 legal report was issued at the outset of the SMSP process, long before most of the work of the Initiative had occurred and well prior to Cabinet’s approval of the SMSP Policy in 2020.

The current report was commissioned in 2022 to deliver a current, practical guide to legal implementation of the SMSP as the plan nears completion. The current report is *not* intended to provide a comprehensive review and analysis of the legal framework for ocean governance in Seychelles. Rather, partners within the Initiative have emphasised to the authors the need for a highly practical, targeted document that offers guidance on current issues of legal implementation with respect to the SMSP—as opposed to a legal reference work.

As such, the current report takes as a starting point the legal research and findings presented in the 2015 legal report.<sup>12</sup> Significant legal and policy developments relevant to marine spatial planning since publication of the 2015 legal report—and there have been many—are noted in the Annex to the current report. In sum, the contents of the 2015 legal report, as supplemented by these significant new developments, together characterise the existing legal and policy basis for implementing the SMSP. It is also important to note that, at the time of writing, much is in flux as the SMSP nears completion: the

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<sup>7</sup> Situating marine spatial planning within a nation’s legal framework is important for various reasons: e.g., to ensure the plan’s lawful adoption; to make the plan binding on all persons and to clarify the role of the plan with respect to other existing legislation; to provide for consistency of plan implementation and revisions; and to signal the support of the national government for sensible, science-based, participatory ocean management. *See, e.g.*, Blue Prosperity Coalition, *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters* (May 2020) at 7 (hereinafter *A Guide for Legal Drafters*). As a result, national and subnational marine spatial planning legislation has become increasingly common around the world. *Id.* at 8.

<sup>8</sup> See discussion at Part III, *infra*. See also Nomination file to designate, and re-designate, areas for protected area status under the National Parks and Nature Conservancy Act (NPNCA), as amended (1982), Part A Text, at 7 (“The Seychelles Marine Spatial Plan is being developed as a regulatory plan, where zones will be legally designated and enforced.”) (hereinafter Nomination file, Part A Text).

<sup>9</sup> Iris Carolus, Seychelles Marine Spatial Planning Legislative and Policy Review (Nov. 2015) (hereinafter the 2015 legal report), available at <https://seymsp.com/outputs/legislative-policy-review/>.

<sup>10</sup> *Id.* at 4.

<sup>11</sup> See *id.* at 4–6. The recommendations set forth in the 2015 legal report are revisited in Part III of the present report.

<sup>12</sup> The 2015 legal report, *supra* note 9 at Annex 1, contains a detailed inventory of relevant conventions, laws, policies, and institutions. Also, for an excellent discussion of Seychelles’ international claims and commitments relevant to the marine domain, see generally Patrick Vrancken, “Ch. 22—Seychelles,” in *The Law of the Sea: The African Union and Its Member States* (2017), at 607.

Initiative is active on many different fronts with respect to stakeholder engagements to finalise documents, coordination of consultancies, and legal and regulatory development.

Part II of the current report reviews the existing legal framework in Seychelles and identifies potential legal “gaps” with respect to implementation of the SMSP. This discussion is framed around a list of what the authors consider to be common legal considerations found in other marine spatial planning frameworks, outside of Seychelles, that, collectively, may be viewed as establishing something of a baseline for legal implementation for marine spatial planning. Though not absolute requirements for marine spatial planning, these legal considerations merit attention by the GoS as it moves forward with the SMSP.

Part III of this report presents recommendations based on the key findings from Part II and discusses what the authors suggest as the next legal steps for effective implementation of the SMSP. This information is presented in Table 5 as a legal “roadmap” for implementation: i.e., a practical, prioritised path forward for legal implementation articulated in terms of what legislation and regulations may be needed, and with what degree of priority.

## Part II

### Review of Existing Legal Framework/Identification of Gaps

To date, Seychelles has not adopted new legislation to establish a legal framework for marine spatial planning. Instead, Seychelles intends to rely largely on existing laws, complemented by the recent enactment of new protected areas legislation and formal policy development around marine spatial planning. This general approach was arrived at through stakeholder consultations undertaken in 2014–15 in the context of developing SMSP process guiding principles. As will be discussed later in this report, in accordance with the approach arrived at through stakeholder consultation, a draft Bill to establish a new Seychelles Ocean Authority (SOA) would have legislated certain aspects of marine spatial planning governance. That Bill has not been approved by the Executive (the President and Cabinet) and published in the Gazette; instead, an “interim” governance arrangement approved by Cabinet is expected to be established pursuant to regulation under the environmental protection legislation.

Thus, at present, the legal and policy basis for marine spatial planning in Seychelles consists principally of:

- the GoS’ commitment to marine spatial planning as set forth in the Seychelles–TNC Facilities Agreement;
- decisions of Cabinet (which establish GoS policy), including the decision adopting the SMSP Policy; and
- Seychelles’ relevant sectoral legislative and regulatory framework, in particular as it pertains to protected area governance.

With the SMSP nearing finalisation, the question arises as to what steps remain to ensure successful implementation under the laws of Seychelles.

Accordingly, this Part of the report compares Seychelles’ existing legal and policy framework—pursuant to which the SMSP Policy was developed—to a series of legal considerations that may be used to provide for marine spatial planning governance and help to ensure effective long-term implementation of marine spatial planning on a comprehensive basis. These considerations, as set forth in Table 1, are adapted from the 2020 publication, *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters*.<sup>13</sup> Certainly, none of the legal considerations that follow presents an absolute prerequisite for developing or implementing a marine spatial plan. Rather, these considerations, when addressed in law, can aid in implementation by clarifying governance structures, establishing a legally binding process, addressing potential conflicts with other laws, and, overall, lending legal certainty and durability to the enterprise of marine spatial planning.

**Table 1**  
**Legal Considerations for the Implementation of Marine Spatial Planning<sup>14</sup>**

→ Jurisdiction and intended scope
→ Objectives and guiding or interpretive principles

<sup>13</sup> See generally *A Guide for Legal Drafters*, supra note 7. The *Guide* has been cited as a legal resource by UNESCO/EC, MSPglobal: international guide on marine/maritime spatial planning (2021).

<sup>14</sup> See *A Guide for Legal Drafters*, supra note 7 at 12 (checklist of potential provisions and structure of marine spatial planning legislation).

→ Legal definitions of key terms
→ National policy for marine spatial planning
→ Institutional and administrative structures
⇒ Governmental administration and oversight of marine spatial planning
⇒ Marine protected area management
⇒ Marine advisory body
→ Marine spatial planning: plan content and processes; effect of plan
⇒ Plan elements and criteria; zoning
⇒ Plan adoption, modification, and revocation; plan duration and review
⇒ All ocean areas and uses; phased approach
⇒ Binding effect of plan
⇒ Relationship of plan to other laws
→ Public participation
→ Management of spatial data and other information
→ Authority to issue implementing regulations
→ Enforcement and compliance
→ Financial mechanisms
→ Conflict resolution
→ International harmonisation

Many of these legal considerations have been addressed, to varying degrees, in the Cabinet-approved Seychelles MSP Policy—or otherwise through the thorough work already carried out by the Initiative in recent years. Where particular considerations have *not* yet been addressed, however, or have not been addressed in a legally binding way, Seychelles may wish to do so.

Accordingly, the discussion that follows will: (1) introduce each legal consideration; and (2) briefly discuss the extent to which this legal consideration has been addressed, in full or in part, under the existing laws of Seychelles. The discussion contained here in Part II of this report provides the basis for the recommendations and legal “roadmap” contained in Part III of the report.

**A. Jurisdiction and intended scope**

Legal analysis typically begins with a discussion of *underlying legal jurisdiction* (i.e., what authority does the government possess?), as well as the *intended scope of the government action* in question (i.e., how did the government intend to use the authority it possesses?). With respect to the SMSP, this means considering: (1) the underlying authority of the GoS to regulate (or address via a policy) activities in Seychelles’ marine environment by way of spatial planning; and (2) the intended scope of the planning area (this can include the “horizontal,” or geographical coverage of the plan, as well as the “vertical,” or water column, coverage of the plan).

Under the Constitution, the territory of Seychelles includes the islands of the Seychelles Archipelago; the territorial waters and historic waters of Seychelles and the seabed and subsoil underlying

those waters; the airspace above those islands and waters; and such additional areas as may be declared by law to be part of the territory of Seychelles.<sup>15</sup> At the legislative level, the Maritime Zones Act 1999, together with the orders and regulations made thereunder, set forth Seychelles' claims of sovereignty and sovereign rights with respect to the nation's marine waters. Consistent with the UN Convention on the Law of the Sea (UNCLOS), Seychelles makes the following standard claims—

- a territorial sea extending to 12 nautical miles (nm) from baselines; and
- an exclusive economic zone (EEZ) extending to 200 nm from baselines (including a contiguous zone located between 12 and 24 nm from baselines).

Importantly, Seychelles has declared itself to be an archipelagic state and accordingly has, by subsidiary legislation, prescribed straight archipelagic baselines.<sup>16</sup> As a result, Seychelles has claimed archipelagic waters that comprise the areas of the sea on the landward side of any straight archipelagic baselines, up to the seaward limit of the internal waters. Additionally, Seychelles has made claims to an extended continental shelf, pursuant to article 76 of UNCLOS. In July 2022, the President signed a series of statutory instruments fixing new archipelagic and normal baselines<sup>17</sup> as well as, correspondingly, the precise boundaries of the territorial sea,<sup>18</sup> contiguous zone,<sup>19</sup> and EEZ.<sup>20</sup>

The Maritime Zones Act 1999 provides that the sovereign jurisdiction of Seychelles extends to the internal waters, archipelagic waters, and territorial sea—as well as to the seabed and subsoil underlying, and the air space over, such sea and waters. With respect to the EEZ, Seychelles asserts in this Act its sovereign rights for the purpose of exploring and exploiting, conserving, and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and winds. Also claimed is exclusive jurisdiction to regulate, authorise, and control marine scientific research; and jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution. Seychelles makes analogous claims of sovereign rights and jurisdiction with respect to its continental shelf.

With respect to the outer extent of its maritime zones, Seychelles has established maritime boundaries with France (Glorioso Islands), Tanzania, Mauritius, and Comoros.<sup>21</sup> Seychelles and

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<sup>15</sup> Const. art. 2. The Maritime Zones Act 1999 further provides that the “territory” of Seychelles includes the internal waters, archipelagic waters, and the territorial sea, and that the courts of Seychelles have jurisdiction over these areas.

<sup>16</sup> UNCLOS contains strict requirements for claims of archipelagic baselines, and a 2014 analysis by the United States (US) Government called into question whether Seychelles' claims in this regard conform to UNCLOS. See US Dep't of State, Bureau of Oceans and International Environmental and Scientific Affairs, “Limits in the Seas (no. 132)—Seychelles: Archipelagic and other Maritime Claims and Boundaries,” 14 February 2014, at 2–4 (hereinafter “Limits in the Seas”).

<sup>17</sup> Maritime Zones (Baselines) Order 2022. Regarding legal usage of the term “statutory instrument,” which in this instance addresses a presidential order, see *infra* note 110.

<sup>18</sup> Maritime Zones (Territorial Sea) Order 2022.

<sup>19</sup> Maritime Zones (Contiguous Zone) Order 2022.

<sup>20</sup> Maritime Zones (Exclusive Economic Zone) Order 2022.

<sup>21</sup> However, delineation of a very small portion of Seychelles' maritime boundaries remains subject to a longstanding dispute between France and Mauritius over Tromelin.

Madagascar have an undelimited maritime boundary.<sup>22</sup> Seychelles and Mauritius have agreed to jointly exercise sovereign rights on the extended continental shelf in the region of the Mascarene Plateau.<sup>23</sup>

Overall, Seychelles' *underlying legal jurisdiction* with respect to the regulation of its marine waters (and claimed maritime zones) is clearly established—subject only to final refinement of certain maritime boundaries with other nations.<sup>24</sup>

With respect to the *intent* of the GoS regarding marine spatial planning, the SMSP Policy provides that it is to be applied to the “marine environment,” which is defined for purposes of the Policy as “[t]he area from the high water mark to the limits of the [EEZ] of Seychelles.”<sup>25</sup> Thus the SMSP Policy conveys an intent to provide for planning for Seychelles' archipelagic waters, territorial sea, and EEZ.<sup>26</sup> The existing laws of Seychelles, as discussed above, plainly afford a legal basis for the SMSP Policy's stated intent to plan for these marine spaces—and also to plan vertically, throughout the water column and down to the seabed and subsoil—even in the absence of new marine spatial planning legislation.

However, an important related question is whether the intended scope of existing sectoral laws that are essential to marine spatial planning is sufficiently clear with respect to their application, especially in the EEZ. Pursuant to the Interpretation and General Provisions Act, every Act and statutory instrument of Seychelles extends to “the whole of Seychelles” in its application.<sup>27</sup> As noted above, under the Constitution, the territory of Seychelles includes the islands of the Seychelles Archipelago; the territorial waters and historic waters of Seychelles and the seabed and subsoil underlying those waters; the airspace above those islands and waters; and such additional areas as may be declared by law to be part of the

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<sup>22</sup> For a discussion of Seychelles' maritime boundary agreements, and an illustrative map, see “Limits in the Seas,” *supra* note 16 at 6–7 & 9.

<sup>23</sup> Treaty Concerning the Joint Exercise of Sovereign Rights over the Continental Shelf in the Mascarene Plateau Region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius, Vacoas, 13 March 2012, entered into force 18 June 2012, registration no. I-49782, registration date 11 July 2012; and Treaty Concerning the Joint Management of the Continental Shelf in the Mascarene Plateau Region between the Government of the Republic of Seychelles and the Government of the Republic of Mauritius, Vacoas, 13 March 2012, entered into force 18 June 2012, registration no. I-49783, registration date 11 July 2012.

See also Limits in the Seas,” *supra* note 16 at 4, 7, & 9. For more on Seychelles' maritime boundary delimitation agreements, as well as its deposits to the UN with respect to compliance with UNCLOS, see the collection of documents at Div. for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, UN, “Seychelles,” at <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/STATEFILES/SYC.htm>.

<sup>24</sup> That said, the absence of final, agreed-to delimitation of the precise extent of Seychelles' outer maritime boundaries does not hinder Seychelles' general authority to regulate in, and plan for, its marine waters.

<sup>25</sup> SMSP Policy, *supra* note 6 at 5.

<sup>26</sup> Conversely, the SMSP Policy conveys no intent to provide for planning in the internal waters of Seychelles (i.e., waters on the landward side of the low-water line or any closing lines) or with respect to any areas of extended continental shelf. Additionally, Annex VIII to the Nomination file to designate, and re-designate, areas for protected area status under the National Parks and Nature Conservancy Act (NPNCA) as amended (1982), at 19, provides that all terrestrial areas are “out of scope” for the SMSP—although “[t]errestrial activities and uses are in scope ... to the extent that the activity affects, impacts or influences the maritime zone and marine ecosystem (species, habitats, function).”

<sup>27</sup> Interpretation and General Provisions Act § 9 (Acts) & § 67(8) (statutory instruments, absent contrary intention).

territory of Seychelles.<sup>28</sup> And the Maritime Zones Act 1999 contains a provision referring to the territory of Seychelles as including “the internal waters, the archipelagic waters and the territorial sea of Seychelles.”<sup>29</sup> Thus it may be presumed that unless an Act expresses a contrary intent, its application extends only to, at the farthest, the outer boundary of the territorial sea.

The EEZ presents a separate question, as it is likely *not* understood to be part of the territory of Seychelles and thus not automatically covered by Seychelles’ Acts. There are, however, at least two ways to ensure a sectoral law’s application in the EEZ. First, the aforementioned Maritime Zones Act 1999 provides that the President may, by order, extend the application of any written law to the EEZ (or to the continental shelf).<sup>30</sup> Second, the National Assembly has the power to clarify on the face of any new Act the legislature’s intent to apply such Act in the EEZ (or to the continental shelf).<sup>31</sup>

The scope of relevant sectoral laws should be as clear as possible for the purposes of implementing the SMSP. With respect to existing Seychelles Acts that serve as building blocks for marine spatial planning and whether they clearly apply to persons and activities in the EEZ:

- the newly adopted, but not yet in operation, Nature Reserves and Conservancy Act 2022 (NRC Act) does not contain an application provision;<sup>32</sup>
- the Environment Protection Act 2016 contains no overarching provision on the scope of its application, and thus arguably applies only to the seaward boundaries of the territorial sea—though a broad definition of the term “environment” arguably provides some basis for a more expansive application;<sup>33</sup>

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<sup>28</sup> Const. art. 2.

<sup>29</sup> Maritime Zones Act 1999 § 22(1). The very next subsection of the Act separately refers to the EEZ and continental shelf, reinforcing the conclusion that they do not form part of the territory of Seychelles. *See id.* § 22(2). Although § 22 concerns the jurisdiction of courts, the characterisation of Seychelles’ territory for these purposes is consistent with the general understanding that a nation’s EEZ does not form part of its territory.

<sup>30</sup> Maritime Zones Act 1999 § 30(1). The authors are unaware of an instance of legislation having been so extended by order under the present Act. However, several older pieces of legislation were similarly extended pursuant to the Maritime Zones Act 1977, the predecessor to the current Maritime Zones Act 1999.

<sup>31</sup> This self-evident proposition is further confirmed by a constitutional provision: notwithstanding how the territory of Seychelles has been defined, any law “may proclaim complete or partial jurisdiction of the [Seychelles] over any other area of land, water or airspace.” Const. art. 2(2).

<sup>32</sup> Nor does its predecessor Act, the National Parks and Nature Conservancy Act (NPNCA), under which MPA designations have been made for purposes of the SMSP. However, the NPNCA will be repealed upon commencement of the NRC Act 2022 (which has yet to occur but presumably will soon), with earlier-designated protected areas deemed to be protected areas under the new law. NRC Act 2022 § 33(2)(e).

<sup>33</sup> Environment Protection Act 2016 § 2. It is also notable that the coastal zone management provisions authorise the Minister of Environment to declare one or more coastal zones, *id.* §§ 28–30, and to regulate, for environmental performance, petroleum and mineral exploration and exploitation activities carried out in the territorial waters and EEZ, *id.* § 31.

The scope of application of the environmental impact assessment (EIA) provisions is not expressly set forth in the Act, *id.* at pt. IV (§§ 43–53), although the authors understand from conversations with MACCE personnel that EIA requirements are applied both terrestrially and offshore. Despite the enactment of new environmental legislation in 2016, the EIA regulations, as amended, that were promulgated under the prior environmental legislation were saved and remain in force. *See* Environment Protection (Impact Assessment) Regulations 1996; Environment Protection (Impact Assessment) (Amendment) Regulations 2013.

- the Fisheries Act 2014 by its terms applies throughout the maritime zones of Seychelles by reference to “Seychelles waters;”<sup>34</sup>
- the Maritime Safety Authority Act 2019, despite the absence of an application provision, also references “Seychelles waters;”<sup>35</sup> and
- the Physical Planning Act 2021, though it lacks an application provision and thus presumably applies out to the seaward boundaries of the territorial sea, requires land use planning for every district, zone, island, or group of islands in Seychelles.<sup>36</sup>

Of special note are Seychelles’ protected areas legislation and environmental legislation. The NRC Act 2022 (yet to come into operation at the time of this report) is the new key mechanism for designating and managing MPAs, essentially replacing the NPNCA. The Environment Protection Act 2016 is essential as a source of legal authority for EIA and will also provide the legal basis for an “interim” governance arrangement for the SMSP that is to be situated within the Ministry for Agriculture, Climate Change and Environment (MACCE). Both Acts would benefit from further clarity as to their application in the EEZ.

## **B. Objectives and guiding or interpretive principles**

Defining the objectives of a marine spatial plan is “an opportunity to emphasize one or more beneficial aspects of planning and to provide a lens through which [marine spatial planning] should be understood by the public, implemented by the government, and interpreted by courts.”<sup>37</sup>

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It is also noteworthy that the Environment Protection Act 2016, § 2, includes a definition of “strategic environmental assessment” (SEA), which is used to evaluate policies, plans, and programmes. The authors have identified no mechanism in the laws of Seychelles for implementing SEA. If there were such a mechanism, the SMSP, as a new governmental plan, would itself arguably need to undergo a strategic environmental assessment.

Lastly, the scope of this Act is also important in that the Act will serve as the legislative basis for regulations to adopt an “interim” governance option for the SMSP. See discussion at pages 14–15, *infra*.

<sup>34</sup> See Fisheries Act 2014 §§ 2 & 3. Seychelles waters are defined to include the EEZ, the territorial sea, archipelagic waters, internal waters, and all other waters subject to the fisheries jurisdiction of Seychelles. *Id.* § 3.

The Fisheries (Aquaculture) Regulations 2020, issued pursuant to the Fisheries Act 2014, apply in three defined zones: a land-based zone, an inshore zone, and an offshore zone. The first two zone types are clearly defined, but an offshore zone is simply “the area beyond the inshore zone.” *Id.* § 2. It is unclear whether an offshore zone extends to the outer boundary of the territorial sea or to the outer boundary of the EEZ.

A comprehensive new fisheries act (currently in draft and subject to stakeholder consultations) would apply to “all areas and persons over which Seychelles exercises sovereignty, jurisdiction or sovereign rights ... .” Draft Fisheries Act (November 2022) § 2. The act would further clarify and simplify the definition of “Seychelles waters” to mean “any waters and continental shelf area over which Seychelles exercises jurisdiction or sovereign rights as provided in the Maritime Zones Act [1999].”

<sup>35</sup> The interpretation section defines Seychelles waters to include the EEZ, territorial waters, internal waters, and “all other waters subject to the jurisdiction of the Seychelles”—which presumably includes archipelagic waters. Maritime Safety Authority Act 2019 § 2. This definition differs slightly from that contained in the Fisheries Act 2014.

<sup>36</sup> “Land” for purposes of the Act is defined to include “land covered with water, the sea-bed and any building or other thing attached to land or permanently fastened to anything attached to land.” Physical Planning Act 2021 § 2.

<sup>37</sup> *A Guide for Legal Drafters*, *supra* note 7 at 17 (referring to objectives contained in MSP legislation).

In Seychelles, the “vision” of the SMSP is to “support a healthy productive marine environment, local communities, and the development of the Blue Economy through improved and integrated management for conservation, sustainable use and ecosystem resilience.”<sup>38</sup> The “mission” of the SMSP included a timeline for finalisation and implementation by 2021,<sup>39</sup> but—given global and national circumstances, including chiefly the COVID-19 pandemic—that timeline has been adjusted to 2023.

Following extensive stakeholder consultation, three initial overall objectives were developed in 2014 to guide the development of a Seychelles marine spatial plan that:

1. Legislates MPAs that are 30% of Seychelles’ EEZ;
2. Aligns and integrates with Blue Economy and other national initiatives in Seychelles; and
3. Addresses climate change in coastal and offshore habitats.<sup>40</sup>

In 2022, the SMSP Executive Committee (EC) approved a set of final goals and objectives for the SMSP that had been refined by the SMSP stakeholders and international subject matter experts. See Table 2.

**Table 2**  
**SMSP Goals and Objectives<sup>41</sup>**

<b>→ Goal 1: Increase Marine Protection Areas by 30 Percent</b>
<i>⇒ Identify new marine protection areas for 30% of the Exclusive Economic Zone and Territorial Sea by 2020 by representation of species and habitats and by total area.</i>
<b>→ Goal 2: Support the Blue Economy Agenda</b>
<i>⇒ Develop Allowable Activities Tables with sustainability criteria for MSP Zones by 2022 to support the Blue Economy Agenda throughout Seychelles’ coastal and marine environments.</i>
<b>→ Goal 3: Climate Change Adaptation</b>
<i>⇒ By 2020, develop climate change risk mapping for coral reefs and coastal protection to better understand the most important climate risks in Seychelles, and better understand options for adaptation measures and feasibility of implementing them.</i>

Thus, top-level objectives are clearly established and guide marine spatial planning policy in Seychelles. These could be readily included in marine spatial planning legislation if it were to be adopted.

Similarly, guiding or interpretive principles can shape the development of an MSP as well as inform the plan’s interpretation by stakeholders and by courts.<sup>42</sup> Once again, the SMSP Policy has addressed this point, setting forth what it describes as “operating principles.” Specifically, the SMSP is to

<sup>38</sup> SMSP Policy, *supra* note 6 at 9.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* The SMSP Policy also sets forth a more granular set of Seychelles MSP Action Plan objectives and activities. *Id.* at 11–19.

<sup>41</sup> See “Seychelles MSP—SMART Objectives,” 29 July 2022. These objectives were designed pursuant to the so-called SMART criteria: specific, measurable, achievable, relevant, and time-bound.

<sup>42</sup> *A Guide for Legal Drafters*, *supra* note 7 at 18.

be developed, implemented, and interpreted consistent with the following concepts: integration; ecosystem-based management; public trust; sustainability; transparency; participation; precautionary approach (Rio Declaration art. 15); adaptive management; coordination; and appropriate scale.<sup>43</sup> These principles are commonly seen and well accepted in the realm of marine spatial planning and could be given greater force if included in any future legislation—especially in that the GoS and courts would be bound to take the principles into account (or at least not contradict them) in the development, implementation, and interpretation of the SMSP.

### C. Legal definitions of key terms

In the absence of new MSP legislation, legal definitions for key scientific and policy terms are left to the existing laws of Seychelles.<sup>44</sup> Fortunately, many important terms are already clearly defined.

For example, international terms pertaining to Seychelles’ maritime zones are defined in the Maritime Zones Act 1999 and further elaborated in subsequent orders:

- *archipelagic waters*: the areas of the sea on the landward side of any straight archipelagic baselines, up to the seaward limit of the internal waters;<sup>45</sup>
- *baseline*: the low-water line or the archipelagic baselines, where prescribed;<sup>46</sup>
- *contiguous zone*: the areas of the sea that are beyond and adjacent to the territorial sea having, as their seaward limit, a line measured seaward from the baselines every point of which is 24 nm distant from the nearest point on the baselines;<sup>47</sup>
- *continental shelf*: the seabed and subsoil of the submarine areas that extend beyond the limit of the territorial sea throughout the natural prolongation of the land territory of Seychelles —(a) to the outer edge of the continental margin; or (b) to a distance of 200 nm from the baseline where the outer edge of the continental margin does not extend up to that distance;<sup>48</sup>
- *exclusive economic zone*: the areas beyond and adjacent to the territorial sea, having, as their seaward limit, a line measured seaward every point of which is at a distance of 200 nm from the nearest point on the baselines;<sup>49</sup>
- *internal waters*: the areas of the sea that are on the landward side of the low-water line or of the closing lines (the latter prescribed by the President);<sup>50</sup> and
- *territorial sea*: the line every point of which is at a distance of 12 nm from the nearest point of the baselines.<sup>51</sup>

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<sup>43</sup> SMSP Policy, *supra* note 6 at 5–6.

<sup>44</sup> See *A Guide for Legal Drafters*, *supra* note 7 at 13.

<sup>45</sup> Maritime Zones Act 1999 §§ 2 & 6; see also Maritime Zones (Baselines) Order 2022.

<sup>46</sup> Maritime Zones Act 1999 §§ 2 & 3(1); see also Maritime Zones (Baselines) Order 2022.

<sup>47</sup> Maritime Zones Act 1999 §§ 2 & 8; see also Maritime Zones (Contiguous Zone) Order 2022.

<sup>48</sup> Maritime Zones Act 1999 §§ 2 & 11(1).

<sup>49</sup> Maritime Zones Act 1999 §§ 2 & 9; see also Maritime Zones (Exclusive Economic Zone) Order 2022.

<sup>50</sup> Maritime Zones Act 1999 §§ 2 & 5(1).

<sup>51</sup> Maritime Zones Act 1999 §§ 2 & 4; see also Maritime Zones (Territorial Sea) Order 2022.

The NRC Act 2022, when operational, will also define important terms relevant to marine spatial planning, including, among others:

- *activity*: a process or operation whether commercial, industrial, domestic, agricultural or recreational carried out in a specific location or defined geographical space;<sup>52</sup>
- *environment*: air, water and land and the interrelationship which exists among and between air, water and land, and human beings, other living creatures, plants, micro-organisms and property;<sup>53</sup>
- *management plan*: a document which sets out the management approach, goals, and framework for decision making to be applied in a protected area over a given period of time;<sup>54</sup>
- *protected area*: a clearly defined geographical space, recognized, dedicated and managed to meet objectives for conservation or sustainable uses<sup>55</sup> and
- *sustainable use area*: a protected area with the objective for conservation and sustainable uses.<sup>56</sup>

As noted above, the Fisheries Act 2014 defines *Seychelles waters* as the EEZ, the territorial sea, archipelagic waters, internal waters, and all other waters subject to the fisheries jurisdiction of Seychelles.<sup>57</sup> And the Maritime Safety Authority Act 2019 defines the same term in a slightly different way.<sup>58</sup> Although it may be beneficial for Seychelles to harmonise these two legal definitions for Seychelles waters, this is probably not essential for purposes of the SMSP. This is because the term Seychelles waters legally includes internal waters—which are not, at present, within the scope of the SMSP Initiative.

One gap identified in legal definitions is with respect to basic planning and area-based terms, such as *marine spatial plan/marine spatial planning*; *marine protection areas*; and *marine zones*—all terms that appear in the SMSP Policy but that lack a corresponding definition in law. The SMSP Policy establishes three foundational types of marine zones (1, 2, and 3) that would benefit from formal legal definition.<sup>59</sup> Additionally, the authors of this current report have not identified any legislative or other legal definition for the SMSP Policy’s use of the jurisdictional term *marine environment* as the basis for spatial planning.<sup>60</sup>

While the absence of legal definitions for these terms does not preclude successful implementation of the SMSP, adoption of formal terms and definitions by Act, or by regulation, could add clarity and help to avoid future confusion.<sup>61</sup>

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<sup>52</sup> NRC Act 2022 § 2. *See also* Environment Protection Act 2016 § 2 (term defined in a slightly different way).

<sup>53</sup> NRC Act 2022 § 2. *See also* Environment Protection Act 2016 § 2 (term defined identically).

<sup>54</sup> NRC Act 2022 § 2.

<sup>55</sup> NRC Act 2022 § 2.

<sup>56</sup> NRC Act 2022 § 2.

<sup>57</sup> Fisheries Act 2014 § 3. *See also supra* note 34 and accompanying text.

<sup>58</sup> *See supra* note 35 and accompanying text.

<sup>59</sup> The three zone categories are high biodiversity protection (Zone 1), medium biodiversity protection and sustainable uses (Zone 2), and multiple uses (Zone 3). *See* SMSP Policy, *supra* note 6 at 10. These zones, and the SMSP zoning framework, are discussed *infra* at Part II.F.1 of this report.

<sup>60</sup> The SMSP Policy defines this as the “area from the high water mark to the limits of the Exclusive Economic Zone of Seychelles.” SMSP Policy, *supra* note 6 at 5. And the Seychelles Ocean Authority Bill 2020 provided that the new Authority would prepare a marine spatial plan for “seas falling within the [EEZ] of Seychelles.” *Id.* at § 5(1).

<sup>61</sup> Note that ensuring consistency among key definitions appearing in the laws of Seychelles appears to be a task well suited to the work of the Seychelles Law Commission. *See* Law Commission Act 2022 § 5 (Functions of the

## **D. National policy for marine spatial planning**

An ocean policy is a document that details the thinking and intended course of action of the government with respect to ocean management, often anticipating emerging and future uses.<sup>62</sup> Following extensive stakeholder consultation, review of other marine spatial planning policies worldwide, and expert international peer review, the SMSP Policy was approved by Cabinet in September 2020. An operating principle of the SMSP Policy is that it will be coordinated, meaning that “the process incorporates and builds upon other pertinent national initiatives such as the National Biodiversity Strategy and Action Plan, Seychelles Climate Policy & Strategy, Priorities [sic] and Nationally Determined Contribution, ... the Seychelles Blue Economy Roadmap, [and the] Seychelles National Development Strategy.”<sup>63</sup>

Unlike many nations contemplating legal implementation of a marine spatial planning initiative, Seychelles already benefits from a sophisticated policy (notwithstanding the absence of legal definitions for some key terms). Aspects of the Seychelles’ Policy could, of course, be enshrined in legislation—or, legislation could establish the mandate for maintaining and regularly revising or updating such a policy. This mandate could be assigned to any new or existing institutional body responsible for SMSP implementation.

## **E. Institutional and administrative structures**

### **1. Governmental administration and oversight of marine spatial planning**

Marine spatial planning necessarily implicates multiple government portfolios and ocean use sectors—and a vast range of stakeholders—making it a best practice to clearly assign a coordinating and oversight role to one or more ministries, departments, or authorities within government.<sup>64</sup> Otherwise, marine spatial planning is at risk of being deprioritized or neglected over time in the face of other pressing governmental priorities. Because of competing politics and policies, however, it can be challenging to assign marine spatial planning oversight and coordination to an existing governmental entity with sectoral responsibility (such as fisheries management, environmental protection, and planning). Another option is to establish a new governing body, which must not only have the necessary competence and resources, but also the authority, credibility, and staffing to ensure support from stakeholders.<sup>65</sup> Regardless of the approach selected, it is imperative to determine where the administration of marine spatial planning will lie within a government’s institutional framework.

When the SMSP Initiative launched in 2014, the lead authority for the development of the SMSP was the then-Ministry for Environment, Energy and Climate Change (MEECC)—today known as the Ministry for Agriculture, Climate Change and Environment (MACCE). MACCE continues to serve as the government lead for the SMSP Initiative. An Executive Committee (EC) is co-chaired by ministers from

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Commission). It would be prudent to share with the Commission for its consideration any inconsistencies or anomalies identified in this report, or by other means, as the SMSP enters the implementation stage.

<sup>62</sup> *A Guide for Legal Drafters*, *supra* note 7 at 20.

<sup>63</sup> SMSP Policy, *supra* note 6 at 6.

<sup>64</sup> *A Guide for Legal Drafters*, *supra* note 7 at 21.

<sup>65</sup> *A Guide for Legal Drafters*, *supra* note 7 at 22.

MACCE and the Ministry of Fisheries and Blue Economy (MFBE). An SMSP Steering Committee (SC) makes recommendations to the EC and is co-chaired by Principal Secretaries in MACCE.<sup>66</sup> Thus, as a matter of policy, government administration and oversight of the SMSP lies with MACCE. Trust has been built with stakeholders through extensive consultations for this Ministry to lead a multi-objective planning process and for decisions to be taken with the SMSP governance framework.

Consultations and a consultancy to develop options for longer-term governmental administration and oversight for implementation of the SMSP began as early as 2017. The four initial institutional options under consideration as a “home” for the SMSP have been: the Seychelles Planning Authority; the Ministry of Environment; the Department of Blue Economy; and a new, independent Ocean Authority. In September 2020, after having been endorsed by Cabinet in 2018 and following intensive stakeholder review and revisions, a draft Bill to establish a new Seychelles Ocean Authority (SOA) was finalised. The SOA would be a new body corporate, not a line agency, and would be charged with overseeing and guiding implementation of marine spatial planning in Seychelles.<sup>67</sup> This SOA option enjoyed significant stakeholder support. In October 2020, however, Seychelles’ national elections resulted in a change in government, and the global COVID-19 pandemic raised significant new fiscal concerns. Approvals for new authorities, including any potential SOA, were put on hold.

Beginning in November 2020, ministerial-level discussions were held to develop other options for SMSP governance, and SMSP stakeholder consultations were undertaken in June 2021 to discuss these options for implementation in the near term. In August 2021, Cabinet was presented with, and ultimately selected, an “interim” governance arrangement for implementing the SMSP process within the existing MACCE institutional structure for two years, in reliance on the existing Environment Protection Act 2016.<sup>68</sup> Accordingly, the draft SOA Bill has not advanced.

As of late 2022, a consultancy was in place to further develop this Cabinet-endorsed “interim” governance arrangement, including an operationalisation plan and annual budget. This consultancy is charged with examining whether the Environment Protection Act 2016 should be amended for SMSP implementation, especially with respect to sustainable management of Seychelles’ EEZ outside of the marine protected areas. The “interim” governance arrangement is to be operationalised pursuant to formal regulations promulgated under the Act.<sup>69</sup> The authors understand that this MACCE “interim” arrangement, which as of January 2023 had indeed reached the form of draft regulations, is expected within the GoS to serve as a bridge to an eventual independent Ocean Authority, and that there continues to be a real possibility that the SOA Bill, or a similar arrangement, will be under consideration in the near future.

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<sup>66</sup> For details of the current policy-level governance arrangement for the SMSP, see “Seychelles MSP Initiative–Process and Decision-making Framework,” at <https://seymsp.com/the-initiative/structure/>.

<sup>67</sup> Seychelles Ocean Authority (SOA) Bill § 4 (Functions of the Authority).

<sup>68</sup> See, e.g., Cabinet Decisions, 11 August 2021 (Cabinet Business), summarised at <https://www.statehouse.gov.sc/cabinet-decisions/5266/cabinet-business-wednesday-11th-august-2021>.

<sup>69</sup> The Environment Protection Act does not expressly contemplate marine spatial planning. However, § 9 allows for the establishment by regulation of such agencies and authorities as may be necessary for carrying out different functions under the Act, and § 8 provides for the establishment of one or more technical or advisory committees to advise on matters pertaining to the scientific and technical aspects of environmental protection and management. Section 80 provides that the Minister may make regulations for giving effect to the provisions of the Act, and in particular may provide for any such matter that may be necessary in pursuance of the objects of the Act.

Regardless of the pathway pursued, it is imperative that the GoS decide on an institutional home for the SMSP and its administration. The need for an institutional anchor for SMSP oversight is reinforced by the prior development and careful consideration of the SOA Bill (and stakeholder support for that approach) and the later Cabinet decision to pursue an “interim” governance arrangement. By eventually *legislating* a governance arrangement for the SMSP, the GoS could elevate and help to secure the role of marine spatial planning within government by establishing its place among other legislatively formalised institutions. This would also add to the durability of SMSP policy. Enacting governance legislation for marine spatial planning—along the lines of the SOA Bill or otherwise—also provides a means of easily addressing other legal considerations for marine spatial planning identified and in this report.

For the time being, as a matter of governmental policy and for purposes of the debt conversion agreement, MACCE continues to serve as the SMSP lead.<sup>70</sup>

## 2. Marine protected area management

The management of MPAs—which is distinct from the oversight and administration of the overall SMSP—is an important governance consideration and a core aspect of SMSP implementation. Pursuant to the NRC Act 2022, the Minister of Environment may, by order, declare an existing authority, or establish such authorities as may be considered necessary, to manage a protected area or category of protected areas.<sup>71</sup> The person managing a protected area may enter into a further management agreement for that area.<sup>72</sup> More specifically, the Minister of Environment will, under the NRC Act 2022, assign management of protected areas or enter into agreements with the relevant authority, parastatal entity, or private owners of land on islands adjacent to those areas.<sup>73</sup> The person managing a protected area may, in turn, with the prior approval of the Minister, enter into a management agreement with another person for the management of that protected area.<sup>74</sup>

Management agreements will be informed in part by what are known as the SMSP Allowable Activities Tables and will govern development of technical plans, as well as the daily management and implementation of each protected area.<sup>75</sup>

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<sup>70</sup> Thus MACCE bears primary institutional responsibility for delivering on the conservation commitments of the Seychelles–TNC Facilities Agreement.

<sup>71</sup> NRC Act 2022 § 11(1). Note that the NRC Act arose out of a review of the NPNCA, a review that was informed by the Seychelles Protected Areas Policy (October 2013). Thus, the NRC Act 2022 is more closely related to the decade-old Protected Areas Policy than to the more recently adopted SMSP Policy.

<sup>72</sup> NRC Act 2022 §§ 12(1) & 11(4).

<sup>73</sup> NRC Act 2022 § 11(4).

<sup>74</sup> NRC Act 2022 § 12(1).

<sup>75</sup> The SMSP must provide for “allowable activities,” and the Allowable Activities Tables, developed during the SMSP process and still being refined, are described in the SMSP Policy as a detailed and comprehensive matrix of allowable activities that addresses whether an activity is i) allowable, ii) conditionally allowable with reference to additional restrictions and conditions, or iii) not allowable, depending upon the particular Zone of the SMSP. SMSP Policy, *supra* note 6 at 4 & 10. See also NRC Act 2022 § 14 (clarifying when a person managing a protected area may “allow an activity” in the area).

At present, MPAs are managed by various entities: e.g., the Seychelles Islands Foundation (SIF) manages Aldabra Marine Special Reserve (a UNESCO World Heritage site), and Nature Seychelles manages Cousin Island. Some protected areas are managed by the recently constituted Seychelles Parks and Gardens Authority (SPGA), which resulted from a merger between the former Seychelles National Parks Authority (SNPA) and National Botanical Gardens Foundation (NBGF).<sup>76</sup> SPGA is a parastatal entity tasked with the management of mainly national parks (including marine) that were designated pre-SMSP.<sup>77</sup> SPGA also manages other categories of protected areas such as the Veuve Special Reserve. Generally speaking, SPGA is associated with the inner islands, and the outer islands are more associated with entities such as Islands Development Company (IDC) and Island Conservation Society (ICS).<sup>78</sup> The precise role for SPGA in the management of MPAs designated in connection with the SMSP remains a subject of discussion. For the SMSP, the large MPAs beyond the inner islands pose the greatest challenge for management, a point that has been noted and discussed throughout the SMSP process.

Pursuant to the NRC Act 2022, as noted above, MACCE is charged with administering and managing all protected areas designated under the Act—either directly or by delegation.<sup>79</sup> As MACCE does not at present have the staff or capacity for day-to-day management of the 13 Zone 1 and Zone 2 MPAs, the Ministry has indicated that delegation will be necessary. The designated Managing Authority for each such area will be empowered under the Act but will sit under the portfolio of, and report to, MACCE. MACCE will provide general oversight and ensure open lines of communication. Co-management is expected to be a feature of MPA management for areas under the SMSP.

### **3. Marine advisory body**

Marine spatial planning can benefit from the use of an advisory body to provide guidance and recommendations to government decision-makers throughout the planning process; such bodies typically bring expertise and may reflect a range of sectoral interests. It is also common to ensure that at least one member brings relevant scientific expertise. The body may be comprised exclusively of government personnel or have a broader membership that includes members of the public to represent the views of fishers, conservationists, and other stakeholder perspectives.<sup>80</sup> The mandate of such bodies may, but need not, be limited to providing non-binding guidance and recommendations.

In Seychelles, the SMSP Policy recommends the establishment of an independent panel of scientific experts for monitoring, data collection, and analysis in support of plan objectives and adaptive management.<sup>81</sup> And the Initiative's existing process and decision-making framework include bodies with

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<sup>76</sup> See Seychelles Parks and Gardens Authority Act 2022. The SPGA takes direction from the Minister of Environment. SPGA Act § 12.

<sup>77</sup> However, the management of some national parks—such as Silhouette National Park, managed by Island Conservation Society (ICS)—has been delegated to other entities.

<sup>78</sup> MACCE has indicated that as potentially more entities become involved in management activities for areas in the outer islands, memoranda of understanding among the various players might be an option.

<sup>79</sup> See NRC Act 2022 pt. VI (§§ 11–16).

<sup>80</sup> See *A Guide for Legal Drafters*, *supra* note 7 at 23.

<sup>81</sup> SMSP Policy, *supra* note 6 at 18.

scientific and other expertise for generating such advice and recommendations.<sup>82</sup> It is notable that the aforementioned SOA Bill would have established as a matter of law an independent Scientific Committee, made up of individual experts, to play this role.<sup>83</sup> Additionally, the Bill would have established at least two other representative mechanisms: a Board of the Authority, with members from across relevant government agencies and including NGOs and civil society;<sup>84</sup> and a Management Committee representative of the agencies (and others) that manage protected areas and the fishery agencies and associations.<sup>85</sup>

It will be important to determine what, if any, institutional mechanisms are available to play this advisory role in the future during SMSP implementation; how the role is to be assigned and given effect, in light of resource constraints; and the extent to which existing SMSP committees are retained or repurposed to play this role (e.g., the seven Technical Working Groups). In the meantime, there are viable options in this regard under existing law pursuant to the “interim” governance arrangement being contemplated under MACCE pursuant to the Environment Protection Act 2016.<sup>86</sup>

## **F. Marine spatial planning: plan content and processes; effect of plan**

The credibility and public acceptance of a marine spatial plan are influenced by the relied-upon process to develop the plan. This process should be clear, comprehensive, transparent, and highly participatory, and the resulting plan should be subject to review and modification. A properly adopted plan should carry the force of law to the extent allowable and practicable, binding all persons and fitting logically within the existing sectoral legal framework for marine management. Legal considerations pertaining to marine spatial plan content, processes, and effect are summarised below.

### **1. Plan elements and criteria; zoning**

A typical marine spatial plan includes a demarcated plan area (defined by geographical coordinates and illustrated by one or more maps) and identifies any zones within the plan area, specifying the uses that are allowed or prohibited within each zone.<sup>87</sup> Zones are often used to implement a marine spatial plan; such zones should build from existing uses and be the product of a highly participatory planning process.<sup>88</sup> Violating the requirements of a zone typically carries consequences, which are established by law or regulation.

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<sup>82</sup> *I.e.*, recommendations and advice can flow to the EC and to GoS Executive Management through the MSP SC and the Technical Working Groups. *See supra* note 66 & accompanying text.

<sup>83</sup> SOA Bill § 12.

<sup>84</sup> *Id.* § 6.

<sup>85</sup> *Id.* § 11.

<sup>86</sup> *See supra* note 69 regarding the establishment of technical or advisory committees under § 8. The Act further allows for the establishment of a National Environmental Advisory Council. Environment Protection Act 2016 §§ 11–13.

<sup>87</sup> *See A Guide for Legal Drafters, supra* note 7 at 26. Although a discussion of best practices for marine spatial planning is beyond the scope of the current report, Appendix B of *A Guide for Legal Drafters* contains an extensive list of resources that provide guidance on planning and drafting processes, explore different components of marine spatial planning, and highlight best practices and lessons learned from different jurisdictions.

<sup>88</sup> *A Guide for Legal Drafters, supra* note 7 at 30.

The SMSP provides for a demarcated planning boundary (the full EEZ, from high water) as well as zones that resulted from robust stakeholder consultation processes. The SMSP Policy establishes a simple, elegant zoning framework based on three categories: High Biodiversity Protection (Zone 1), Medium Biodiversity Protection and Sustainable Use (Zone 2), and Multiple Uses (Zone 3). Before enactment of the NRC Act 2022, MPAs under the SMSP were designated in 2020 under the National Parks and Nature Conservancy Act (NPNCA).<sup>89</sup> Zone 1 MPAs were designated as (Marine) National Parks and Zone 2 MPAs as (Marine) Areas of Outstanding Natural Beauty (AONB). Additionally, under Seychelles' fisheries law, a total of 9 industrial fishing exclusion areas are located within SMSP Zone 1 and Zone 2.<sup>90</sup> Finally, Zone 3 covers deep water, as well as inner islands Ports Authority boundary areas.<sup>91</sup>

With the NRC Act 2022 adopted but not yet commenced, the intention is for Zone 2 AONB areas to be reclassified by MACCE as Sustainable Use Areas, a category established by the Act.<sup>92</sup> Zone 1 areas will retain their existing categorisation. Although the NRC Act 2022 will repeal the NPNCA, all protected areas made under prior law retain their protected status. For an overview of the SMSP zoning framework, see Table 3.

**Table 3**  
**SMSP Zone Categories**<sup>93</sup>

SMSP Zone	Category	% of allocated marine waters / number of MPAs	Principal legal bases for areas within Zone / type of area
<b>Zone 1</b>	High biodiversity protection	15% / 5 MPAs	→ NPNCA § 5 / (marine) national park [category will not change under NRC Act 2022] → Fisheries Regulations 1987 (as amended) / industrial (foreign) fishing exclusion area
<b>Zone 2</b>	Medium biodiversity protection and sustainable uses	15% / 8 MPAs	→ NPNCA § 5 / (marine) area of outstanding natural beauty (AONB) [to be reclassified under NRC Act 2022 § 5(1)(e) to reflect changed category / sustainable use area]

<sup>89</sup> Note that the establishment of MPAs in Seychelles predates the modern SMSP process by many years. Most Seychelles MPAs were put in place in the 1970s and thereafter, with all of them established prior to 2000. The SMSP process is intended to be harmonised with these earlier national efforts at area-based protection (e.g., the Outer Islands Project).

<sup>90</sup> See Fisheries Regulations 1987 (as amended) § 5(a) & first sched. These regulations predate the current Fisheries Act 2014. See also the 2015 legal report, *supra* note 9 at 24–25 & table 2 (discussing fishery exclusion zones). These areas have been variously characterised as fishery exclusion zones, zones where fishing by foreign vessels is prohibited, and industrial fishing exclusion areas.

<sup>91</sup> The Seychelles Ports Authority, which is responsible to the Minister of Transport, was established pursuant to the Seychelles Ports Authority Act 2004.

<sup>92</sup> See, e.g., Nomination file, Part A: Text, *supra* note 8 at 17. See also NRC Act 22 § 33(2)(e) (allowing for Minister by notice published in the Gazette to reclassify existing protected areas under the categories contained in § 5(1)).

<sup>93</sup> See SMSP Policy, *supra* note 6 at 10.

SMSP Zone	Category	% of allocated marine waters / number of MPAs	Principal legal bases for areas within Zone / type of area
			→ Fisheries Regulations 1987 (as amended) / industrial (foreign) fishing exclusion area
<b>Zone 3</b>	Multiple uses	70%	Various legal bases / various area types (per sectoral laws governing the marine space)

All SMSP zones have been assigned accompanying criteria and coordinates. Draft Allowable Activities Tables have been published for SMSP zone categories or specific areas,<sup>94</sup> and the final tables will be completed in 2023.

The current SMSP process, as implemented by the GoS and the Initiative, is plainly resulting in a rigorous and detailed plan covering a clearly demarcated area. And the zoning process has been thoroughly considered, well developed, and made subject to stakeholder review. The area-based protections that form the core of Zones 1 and 2 have a legal basis pursuant to the NPNCA. And pursuant to the new NRC Act 2022, previously designated protected areas will retain their protected area status.<sup>95</sup> The Minister will reclassify the Zone 2 protected areas.<sup>96</sup> Regulations are now being drafted pursuant to the NRC Act 2022 to elaborate on the Act’s protected area categories and the criteria for their use.

A strength of the approach taken by the SMSP Initiative is that the zones with the most robust protections correlate to area-based protections contained in sectoral law—and especially the NPNCA and NRC Act 2022.<sup>97</sup> However, as has been noted, the framework for zoning *itself* is not currently contained in the law of Seychelles. Thus, the question remains how best the requirements for the SMSP, including the zoning process (with its typology and allowable activities framework), might be formalised in law.<sup>98</sup>

**2. Plan adoption, modification, and revocation; plan duration and review**

In addition to developing and adopting an initial marine spatial plan, there may be a need at some point to modify (or, less likely, to revoke) the plan. Although the SMSP will, on its own terms, provide a mechanism for plan modification, again, the question is whether there should be a source of legal authority setting forth requirements for the development, adoption, modification, or revocation of a

<sup>94</sup> Nomination file to designate, and re-designate, areas for protected area status under the National Parks and Nature Conservancy Act (NPNCA) as amended (1982), Annex IX.

<sup>95</sup> NRC Act 2022 § 33(2)(a).

<sup>96</sup> NRC Act 2022 § 33(2)(e).

<sup>97</sup> “As per the SMSP process, marine zones will be designated in accordance with the relevant national acts, legislation and agreements, and may change upon discussion and review during the MSP process and on plan review, evaluation and adaptation.” Annex VIII to the Nomination file to designate, and re-designate, areas for protected area status under the National Parks and Nature Conservancy Act (NPNCA) as amended (1982), at 19.

<sup>98</sup> A comprehensive new fisheries act (now in draft and subject to stakeholder consultations) would establish a zoning power on behalf of the Minister responsible for fisheries and further require inter-ministerial coordination with the aim of ensuring consistency and cooperation in the management of zones, areas, or plans as between fisheries management and “marine spatial planning.” Draft Fisheries Act (November 2022) § 11.

marine spatial plan—which could be provided legislatively.<sup>99</sup> Note that the development and modification of the *marine spatial plan* is separate from the designation and modification of *marine protected areas*, the latter being governed by existing laws of Seychelles, as discussed above.

A related issue is what the maximum period should be before the plan must be subjected to a review, with five years being a common period for other marine spatial plans around the world (e.g., Norway and Belgium). Review requirements help to ensure that a plan does not become stale and that it adapts to new sector developments or scientific information. Requirements can be included for a triggered or discretionary review based on changes in factual or legal circumstances.<sup>100</sup> Environmental monitoring—or monitoring of plan implementation—could also point to the need for plan review, or even modification.<sup>101</sup>

Closely connected is the matter of how long a properly adopted marine spatial plan remains in force (e.g., the duration could be indefinite or for a fixed period of years, with a sunset provision). Ideally, a marine spatial plan will remain in force until amended or revoked; this lends predictability for implementation, compliance, and enforcement, and makes it less likely that a change in political leadership or governmental priorities will sweep away an existing plan.<sup>102</sup>

In Seychelles, matters of plan process, review, and duration will be addressed on the face of the plan.<sup>103</sup> Further addressing such considerations in legislation would help ensure that they will be followed and also contributes to the durability of the processes that enable the plan and its implementation.<sup>104</sup> It is noteworthy that the SOA Bill included provisions for plan monitoring, evaluation, and review with respect to plan implementation and adaptive management.<sup>105</sup>

### **3. All ocean areas and uses; phased approach**

Another set of legal considerations is whether a marine spatial plan must cover the entire geographical ocean area subject to the country’s jurisdiction and whether a marine spatial plan must address all ocean uses within the plan area.<sup>106</sup> A related question is whether this must be done all at once, or, instead, can be undertaken in phases. When marine spatial planning is legislated, the answers to these questions clarify the reach and application of the law and help to avoid ambiguities.

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<sup>99</sup> *A Guide for Legal Drafters*, *supra* note 7 at 30.

<sup>100</sup> *A Guide for Legal Drafters*, *supra* note 7 at 34.

<sup>101</sup> Monitoring of a marine spatial plan can refer to the scientific data and indicators, and/or to monitoring of the effectiveness of the plan; the latter can be tied into a periodic review and reporting cycle. *A Guide for Legal Drafters*, *supra* note 7 at 54.

<sup>102</sup> *A Guide for Legal Drafters*, *supra* note 7 at 34.

<sup>103</sup> See also SMSP Policy, *supra* note 6 at 5 (committing the GoS to periodic review of the SMSP). Too, the SMSP Policy has a stated objective of monitoring to support adaptive management. *Id.* at 18.

<sup>104</sup> That said, the authors are cognizant that there are very real concerns with legislating review periods, which have proven challenging to implement in Seychelles. First, capacity constraints and political considerations can limit the effectiveness of review clauses. Second, it would be necessary to craft legislation such that if a mandatory review is missed, the plan remains in force.

<sup>105</sup> See SOA Bill §§ 4(2)(b) & 11(2)(f).

<sup>106</sup> See *A Guide for Legal Drafters*, *supra* note 7 at 33.

At the policy level, Seychelles has answered these questions. The SMSP: will cover 100% of Seychelles' ocean area; is largely comprehensive with respect to ocean uses throughout the Seychelles marine environment; and has been developed and will be implemented in a phased manner.<sup>107</sup> As discussed above, the geographical scope for planning is clearly set forth in the SMSP Policy. The protection goals had strict time-bound milestones that were satisfied in phases. Milestone 1 was for 15%, with Zone 1 (High Biodiversity Protection, 5%) and Zone 2 (Medium Biodiversity Protection and Sustainable Uses, 10%) designated to enable the disbursement of funds pursuant to the debt conversion agreement. Milestone 2 was for an additional 7.5% and Milestone 3 another 7.5%. Three Milestones were completed as per the debt conversion agreement by March 2020, 9 months ahead of schedule. Elaboration of Zone 3 (Multiple Uses, 70% to “optimise economic opportunities and the Blue Economy in Seychelles”) will be undertaken by the body that oversees the SMSP pursuant to an eventual governance arrangement.<sup>108</sup> As has already been noted, the SMSP does not include internal waters, and, as per stakeholder discussions and EC approval, no new MPAs were considered for the inner islands. The plan may, however, provide recommendations for addressing issues that arose during the MSP process that have been deemed outside the scope of the SMSP Initiative.

If Seychelles were to legislate with respect to marine spatial planning, these matters (i.e., going to geographical area, coverage of uses, and phasing) could readily be made the subject of legal requirements. This is not, however, a priority legal concern at present.

#### **4. Binding effect of plan**

A marine spatial plan—as well as marine spatial planning *processes*—should legally bind all persons to the extent allowable by law, which can be achieved by a simple provision to that effect in an appropriate Act, where marine spatial planning has been legislated.<sup>109</sup> While Seychelles has a comprehensive SMSP Policy, which has been adopted by Cabinet, the policy does not carry the weight of law as would an Act or even a statutory instrument.<sup>110</sup> And even if certain aspects of the marine spatial plan, for example the legally designated marine protected areas, are independently enforceable as a matter of sectoral law, overall compliance with the plan itself is not. The need for binding legal effect should also include the GoS, which bears many duties with respect to marine spatial planning.<sup>111</sup>

Thus, at present, while the GoS has committed to marine spatial planning by way of the Seychelles–TNC Facilities Agreement and formally adopted the rigorous SMSP Policy, there is as yet no

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<sup>107</sup> See, e.g., SMSP Policy, *supra* note 6 at 10 (discussing activities as being allowable, allowable with conditions, or not allowable within the SMSP Zones). National security matters are considered “out of scope” with respect to the SMSP; nor does the SMSP address, for example, shipping lanes.

<sup>108</sup> SMSP Policy, *supra* note 6 at 10.

<sup>109</sup> *A Guide for Legal Drafters*, *supra* note 7 at 35.

<sup>110</sup> A “statutory instrument” (or “subsidiary legislation”) is “any legislative or statutory instrument made in exercise of any power conferred by the National Assembly on a person or an authority by an Act to make subsidiary legislation, by way of proclamation, regulation, rule, order, rule of court, by-law, notification, resolution, notice or other instrument having the force of law.” Interpretation and General Provisions Act § 22, as amended by the Digitization and Publication of Gazette Act 2020 § 14 & sched. 1.

<sup>111</sup> An Act does not bind the Republic unless an express statement is included to this effect or unless the Republic is bound by necessary implication. Interpretation and General Provisions Act § 10.

legal requirement of compliance by all persons with the plan’s requirements—except insofar as such compliance is independently required by sectoral law.

## **5. Relationship of plan to other laws**

In addition to making a plan legally binding as to all persons, as discussed above, a further means of giving legal effect to a marine spatial plan is to clarify its relationship to other sectoral laws that apply in the marine space. Marine spatial planning is cross-sectoral by design, so it is imperative to seek consistency across legal frameworks. Absent marine spatial planning legislation, or a regulation adopted pursuant to an existing Act, any conflict between the marine spatial plan and other legislation must as a matter of law be resolved in favour of that other legislation.

Two types of legislative provisions, in particular, can help to ensure that the SMSP is not overridden by provisions in other laws:

- a requirement that licences, permits, certificates, permissions, and the like issued pursuant to other laws be consistent with a marine spatial plan to the greatest extent practicable; and
- a requirement that where an area is subject to a marine spatial plan, no new regulatory requirements may be imposed in that area except in conformance with the plan.<sup>112</sup>

As it stands, lawful actions taken in Seychelles pursuant to other existing legislation could, inadvertently or otherwise, displace determinations that were reached pursuant to the marine spatial planning process, supported by stakeholders, and reflected in the plan.

## **G. Public participation**

It is good practice to ensure that key procedural environmental rights are addressed with respect to public participation in connection with marine spatial planning: access to information, stakeholder engagement, and access to justice.<sup>113</sup>

Regarding access to information, the starting point should be that the plan and all related data and supporting materials are public, including anything that a ministry relies on to make decisions in the SMSP process (however, certain small sets of data points—e.g., habitat coordinates for endangered and commercially valuable species—might comprise exceptions).<sup>114</sup> Seychelles has engaged in robust information sharing related to the SMSP and disseminates information to stakeholders and the public through the Initiative’s website<sup>115</sup> and by way of regularly scheduled stakeholder consultations (discussed below). Draft documents, maps, and materials for stakeholder discussions and consultations are disseminated via email or web-based file sharing platforms (such as Dropbox). Draft materials for public consultations are shared during public information sessions. These actions are consistent with the Seychelles default that every person has a right to access information from a public body, subject to law.<sup>116</sup>

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<sup>112</sup> See *A Guide for Legal Drafters*, *supra* note 7 at 36–37. Such conformance can be difficult to achieve, making consultation provisions and extensive public participation indispensable.

<sup>113</sup> *A Guide for Legal Drafters*, *supra* note 7 at 38.

<sup>114</sup> *A Guide for Legal Drafters*, *supra* note 7 at 38–39.

<sup>115</sup> Seychelles Marine Spatial Plan Initiative, at <https://seymsp.com/>.

<sup>116</sup> See Access to Information Act 2018 § 8.

Regarding stakeholder engagement, active outreach—through social media or through maintaining an ocean stakeholder email group—is preferable to passively waiting for stakeholders to express interest.<sup>117</sup> Soliciting and incorporating input from stakeholders is also key to the success of an MSP process.<sup>118</sup> The SMSP has, from the beginning, “been founded on a broad iterative process of national stakeholder consultation. A governance framework with cross-sectoral committees, an MSP core administrative team and thematic technical working groups [were] established and supported by extensive stakeholder consultations and a series of national workshops.”<sup>119</sup> In its work to support the Initiative, TNC has, through more than 250 meetings, modelled a transparent and participatory approach. And the aforementioned SOA, as contemplated by the SOA Bill, would have been authorised to “encourage and promote public education, stakeholder communication and outreach.”<sup>120</sup>

Access to justice presents the question of whether persons aggrieved in connection with marine spatial planning have an adequate means of redress—ultimately, the courts. It may be that Seychelles’ sectoral laws provide all that is needed in this regard,<sup>121</sup> though it is worth considering whether any further elaboration of existing administrative appeals mechanisms and access to courts would be beneficial.

Seychelles has clearly emphasised public participation throughout the work of the Initiative and respected both mandatory and global best practice for public review of MSP outputs. Already, as noted in above, participation is established in the SMSP Policy as a guiding principle. In the absence of new MSP legislation, access to justice considerations involving the SMSP will remain subject to the existing laws of Seychelles.

## **H. Management of spatial data and other information**

A mechanism for the storage and management of marine spatial data, both for the public and for interagency use, can contribute to successful management of MPAs and more effective implementation of a plan.<sup>122</sup> Such data could be defined to include information beyond the plan itself, bringing in scientific and other information and data that underpin the plan. For some countries, management of and access to data and information presents a special challenge across all of government.

The Seychelles Marine Spatial Plan Atlas, developed as a way for stakeholders to view spatial data and use the maps relevant to the SMSP, is now being finalised.<sup>123</sup> Since 2014, stakeholders have been provided with paper maps as well as digital files on USB drives in PDF format. A mini-Atlas, created with 20 key data layers and printed for all members of the EC and SC, has been used during all consultations

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<sup>117</sup> *A Guide for Legal Drafters*, *supra* note 7 at 40.

<sup>118</sup> *A Guide for Legal Drafters*, *supra* note 7 at 41.

<sup>119</sup> SMSP Policy, *supra* note 6 at 9.

<sup>120</sup> SOA Bill § 4(2)(n).

<sup>121</sup> *E.g.*, the Environment Protection Act 2016 allows a person aggrieved by a decision of the Minister, or of an agency or authority constituted under the environmental legislation, to appeal to the Appeals Board. *Id.* at pt. VII (§§ 73–74). The NRC Act 2022 contains analogous provisions and relies on the same Appeals Board. NRC Act 2022 pt. X (§§ 28–29).

<sup>122</sup> *A Guide for Legal Drafters*, *supra* note 7 at 39.

<sup>123</sup> Seychelles Marine Spatial Plan Atlas, at <https://seymsp.com/outputs/atlas/>.

and public information sessions. The internet connection in Seychelles during 2014–2017 was insufficient for the use of online decision support tools (such as SeaSketch), and home or laptop computers are not available to all stakeholders. Spatial data have also been provided to stakeholders using a GeoPDF file format with 40+ layers and a sketching and participatory mapping function.

The Initiative works with MACCE, the GIS data custodian for the SMSP, to maintain the official geodatabase for any data enquiries. The SMSP provides annual updated geodatabase files to MACCE, and an online ArcGIS Hub will be completed in 2023 to provide the public with digital access for map and, where possible, individual data layers. Internet connection access and bandwidth are important considerations for data management and availability to stakeholders. SMSP stakeholders include the Seychelles Coast Guard (SCG) and other surveillance and enforcement entities (e.g., the Seychelles Maritime Safety Authority (SMSA), the National Information Sharing and Coordination Centre (NISCC), and the Regional Centre for Operations Coordination (RCOC)). Ensuring that monitoring, control, and surveillance have up-to-date spatial data is key to effective implementation and enforcement in the SMSP's zones.

The SMSP Policy does note that the current marine spatial plan was developed from “a limited available data set,” supplemented by anecdotal accounts, and that “key strategic gaps in current knowledge and information [should] be identified and wherever possible addressed by targeted research.”<sup>124</sup> The Seychelles Coastal Management Plan 2019–2024 addresses data gaps and summarises existing relevant data. While it focuses specifically on the coast, it may provide a useful starting point for a similar exercise for the entire marine environment.<sup>125</sup>

The SOA Bill would have assigned to a new Scientific Committee various functions pertaining to data requirements, data management, and data sharing.<sup>126</sup>

The launch of the SMSP process in 2014 presented a new opportunity to consider and advance how Seychelles manages scientific data and information and to determine whether spatial data should be folded into existing processes or made subject to some new mechanism. This topic has been discussed in Seychelles, and national coordination or information sharing entities have been proposed and initiated, such as under the prior National Institute for Science Technology and Innovation (NISTI)<sup>127</sup> or NISCC. This will continue to be a topic of conversation as implementation of the SMSP begins.

#### **I. Authority to issue implementing regulations**

Where a legislative basis has been established for marine spatial planning, the law will commonly assign to a minister or other governmental entity with responsibility for plan oversight the power to issue regulations to provide more granular detail with respect to plan implementation.<sup>128</sup> For example, the SOA

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<sup>124</sup> SMSP Policy, *supra* note 6 at 17. Though, to be sure, many MSP processes are developed with limited data or data gaps.

<sup>125</sup> See, e.g., Appendix C: Synthesis of Available Information for Coastal Management.

<sup>126</sup> SOA Bill § 12.

<sup>127</sup> In 2021, the NISTI Act 2014 was repealed, and NISTI's functions were transferred elsewhere in government.

<sup>128</sup> *A Guide for Legal Drafters*, *supra* note 7 at 52. In Seychelles, such assignment could also be to a non-governmental public authority or other persons.

bill would have afforded such regulatory authority to the Minister of Environment.<sup>129</sup> Accordingly, even where marine spatial planning processes are legislated, there remains a need for flexibility to allow for the fine tuning of legal implementation by those in government with relevant expertise.

Without legislation, this legal fine-tuning ability is absent, because regulations are a form of statutory instrument that carries the force of law but that depends entirely on the authority of, and is limited by the objects and scope of, an underlying Act.<sup>130</sup> It is true that under existing laws of Seychelles, various entities are empowered to issue regulations on subjects and processes that relate to the SMSP, including but not limited to: the Seychelles Fishing Authority (SFA), the Seychelles Maritime Safety Authority (SMSA),<sup>131</sup> SCG, and MACCE. In particular, regulations yet to be issued pursuant to the NRC Act 2022 will be critical for operationalising the protected areas that lie at the heart of the SMSP (e.g., with respect to management planning).<sup>132</sup> But these regulations are different in kind from regulations directed to the SMSP itself and to the overall marine spatial planning process.

## **J. Enforcement and compliance**

Enforcement mechanisms encourage compliance with the law and provide the government with a means of responding when violations occur.<sup>133</sup> Because marine spatial plans of necessity address many activities that are already regulated pursuant to existing sectoral laws, many (though not all) potential violations related to a plan will be covered by way of offences contained in those laws, or by way of a national penal code. Insofar as categories of violations related to marine spatial planning are not covered by existing laws, new offences can be established by way of marine spatial planning legislation, or by amendments to existing laws, as appropriate.

As has been noted, the GoS has to date relied largely on existing sectoral legislative authorities in connection with SMSP. Once all allowable activities have been identified for each SMSP Zone, it will be necessary to clarify which agencies or entities possess authority to enforce restrictions with respect to these activities (including the collection of fees or imposition of fines)—and under which legislation. Insofar as an activity under the plan should be made subject to enforcement, but such activity does not correspond to an applicable legal authority under the existing laws of Seychelles (e.g., as may be the case with certain recreational activities, or with new or emerging ocean uses), the GoS may need to make a case-specific determination as to how to ensure that the activity can properly be covered by enforcement provisions contained in either sectoral or generally applicable legislation.

Enforcement of the requirements of the SMSP will fall principally under the jurisdiction of the following entities: SCG, the Marine Unit of the Seychelles Police Force, MACCE, the SMSA, and the SFA/MFBE. At present, the SCG plays the preeminent role in law enforcement in the Seychelles EEZ, as it is the only agency with the necessary assets for long-range patrols. The SCG is typically the first responder

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<sup>129</sup> SOA Bill § 19.

<sup>130</sup> See *supra* note 110, discussing legal definition of “statutory instrument” under the laws of Seychelles.

<sup>131</sup> *E.g.*, regarding hirecraft, the authors understand that licensing has largely been assumed by the SMSA; the Licensing and Tourism Authorities had previously been more involved. Tourism Department Boat Charter Policy 2019.

<sup>132</sup> See NRC Act 2022 § 32.

<sup>133</sup> *A Guide for Legal Drafters*, *supra* note 7 at 46.

to maritime incidents, though it partners closely with all the other enforcement agencies and responds to their requests. On a case-by-case basis, as needed based on their subject matter focus and legal authority, personnel from other agencies join SCG personnel to investigate reports and intercept violators.<sup>134</sup> See Table 4 for an overview of enforcement roles and legal authority.

The SCG and its partners benefit from aerial surveillance provided by the Seychelles Air Force, which flies multiple times per week and both responds to requests from the SCG and provides information to the SCG. Additionally, the work of the SCG and other agencies is further supported by information sharing through the NISCC (National Information Sharing and Coordination Centre), which operates at the local level in Seychelles, and the RCOC (Regional Centre for Operations Coordination), which plays a regional role through an agreement among countries in the Western Indian Ocean (WIO) to provide joint maritime security.<sup>135</sup> With respect to MPA enforcement, given limited resources and the vast expanse of Seychelles' waters, the SCG presently relies mainly on sensors and on aircraft surveillance.

For their part, both MACCE and the SFA have direct enforcement authority but can also rely on authorised officers. Authorised officers are those who, subject to appointment pursuant to legislation, have enforcement powers for purposes of that law, including, e.g., the powers to stop and detain vessels, board vessels, investigate, search, seize property, and arrest suspected violators.<sup>136</sup>

**Table 4**  
**Enforcement Agencies**

<b>Agency</b>	<b>Role(s)</b>	<b>Key legal authority(ies)</b>
<b>Seychelles Coast Guard (SCG)</b>	<ul style="list-style-type: none"> <li>→ maritime arm of the Seychelles Defence Forces</li> <li>→ tasked with search and rescue, deterring maritime crime, and protecting the EEZ</li> <li>→ enforcement of Seychelles' maritime laws, maritime security, maritime safety and marine resource</li> </ul>	<ul style="list-style-type: none"> <li>→ Const. arts. 162–163 (as amended)</li> <li>→ Defence (Amendment) Act 2020</li> <li>→ Fisheries Act 2014</li> <li>→ Maritime Zones Act 1999</li> <li>→ Misuse of Drugs Act</li> <li>→ Seychelles Customs Management Act 2011</li> <li>→ UNCLOS</li> </ul>

<sup>134</sup> How the SCG directs its efforts and deploys its assets at any time depends largely on factors such as weather and the availability of information (from foreign partners as well as local agencies). E.g., in calm weather (outside of monsoon season), illegal trafficking and IUU fishing become more common. With respect to deepwater MPAs, typical threats are illegal fishing and poaching, though illegal fishing in this regard has decreased in recent years.

<sup>135</sup> In 2017, the NISCC and RCOC were opened in Seychelles to enhance maritime security. The NISCC is tasked with co-coordinating and managing the activities within the maritime sector, such as to provide sufficient maritime security necessary for sustainable development of the Blue Economy sector, while operating the Joint Rescue Coordination Centre (JRCC), coordinating oil spill responses and responses to coastal maritime crime, and operating the coastal radio station. The NISCC acts as a first point of contact and as the centre of maritime security operations for key national stakeholders. The main function of the RCOC is to conduct joint actions at sea, working alongside the Madagascar-based Regional Maritime Information Fusion Centre (RMIFC), which is responsible for exchanging and sharing maritime information and alerting the RCOC of any abnormal activity at sea.

<sup>136</sup> *A Guide for Legal Drafters*, *supra* note 7 at 51. See also, e.g., Environment Protection Act 2016 §§ 60–63; NRC Act 2022 pt. VIII (§§ 19–24); and Fisheries Act 2014 pt. V, subpt. 1 (§§ 48–51).

<b>Agency</b>	<b>Role(s)</b>	<b>Key legal authority(ies)</b>
	protection in relation to the maritime zones of Seychelles → enforcement of all maritime conventions or agreements	
<b>Marine Unit of the Seychelles Marine Police Force</b>	→ maritime law enforcement	→ Const. arts. 159–161 → Police Force Act → Penal Code
<b>MACCE &amp; Authorised Officers</b>	→ protected area enforcement → environmental enforcement	→ NRC Act 2022 → Environment Protection Act 2016
<b>Seychelles Maritime Safety Authority (SMSA)</b>	→ enforce Merchant Shipping Act → discharge Flag, Coastal and Port State responsibilities → ensure, in collaboration with other agencies, protection of the marine environment and prevention of pollution from ships and response to marine environment incidents → numerous other functions in maritime sector	→ Seychelles Maritime Safety Authority Act 2019
<b>Seychelles Fishing Authority (SFA) &amp; Authorised Fishery Officers/MFBE</b>	→ fisheries enforcement	→ Seychelles Fishing Authority Establishment Act → Fisheries Act 2014

Currently, policing of Seychelles' MPAs is undertaken mostly by MACCE, in partnership with the Police and the SCG as necessary. Surrounding certain islands in the inner islands, the Managing Authority for the corresponding MPA (as designated by MACCE) undertakes surveillance, usually with limited enforcement capacity (in terms of staffing, infrastructure, and the like). Despite being empowered to undertake many activities on the water, the SMSA does not, in practice, police the marine area.<sup>137</sup> It is expected that once management plans are in place, particularly for SMSP Zone 2 areas, sectoral enforcement roles will expand for certain key players (e.g., SMSA and SFA/MFBE).

<sup>137</sup> Interview 2022. See also Seychelles Maritime Safety Authority Act 2019 § 4(2).

Also noteworthy with respect to enforcement in marine waters is a 2022 amendment to the Constitution, adopted in conjunction with the Defence (Amendment) Act 2020.<sup>138</sup> The amendment clarifies the authority of the Seychelles Defence Forces “to enforce any written law in relation to public security, environmental protection, maritime security or maritime zones, and any other matters as may be specified in an Act.”<sup>139</sup> This reinforces that the national military has a role to play in marine protected area enforcement and other environmental protection matters at sea. And the Defence (Amendment) Act 2020 further clarifies and expands upon the duties and powers of the SCG with respect to law enforcement in the maritime zones of Seychelles.<sup>140</sup>

There are no evident legal gaps with respect to law enforcement in Seychelles’ maritime zones. However, a practical next step with respect to SMSP enforcement would be to prepare a matrix setting forth: (1) areas subject to the SMSP (e.g., by SMSP Zone, maritime zone, etc.); (2) agencies with enforcement powers that can be exercised in each area; and (3) the legal bases for enforcement in each area.<sup>141</sup> Because enforcement authority on paper may not always reflect what is actually taking place on the water, this matrix should be vetted with the SCG and other enforcement agencies.

Lastly, it bears reinforcing that there is a distinction between governmental authority to *enforce* the SMSP, on the one hand, and governmental authority to *administer and implement* the SMSP, on the other hand. Seychelles’ general law enforcement authority is clear and robust, as described here; questions of administrative and implementing authority, however, are less clear and thus form the basis of much of the discussion in Part II of this report.

## **K. Financial mechanisms**

An effective marine spatial planning regime should include one or more sources of funds to support sustainable marine management, as well as a workable mechanism for receiving and directing such funds as become available—from the full range of potential sources, both within and outside of government.<sup>142</sup>

The SMSP was born of an unprecedented debt conversion arrangement. In lieu of a government-controlled special fund, Seychelles legislatively established the Seychelles Conservation and Climate Adaptation Trust (SeyCCAT) to administer that arrangement.<sup>143</sup> SeyCCAT is an independent trust with a Board of Directors that operates in accordance with best practices in that it is able to accept funds from both within and outside of government, has criteria governing the specific purposes for which funds can be dispersed, and has administration, operations, record-keeping, and financial controls.<sup>144</sup> In November

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<sup>138</sup> Constitution of the Republic of Seychelles (Tenth Amendment) Act 2022. As of the time of this writing, this amendment is subject to a pending legal challenge.

<sup>139</sup> *Id.* § 3(ii).

<sup>140</sup> Defence (Amendment) Act 2020 § 2 (amending Defence Act by adding new §§, including to govern the duties and powers of the SCG). It is noteworthy that these articulated duties of the SCG are also assigned to “each member of the Defence Force assisting [the SCG] in an operation ... .” *Id.* § 2 (adding new § 35B(2) to the Defence Act).

<sup>141</sup> This could build upon Table 4.

<sup>142</sup> *A Guide for Legal Drafters*, *supra* note 7 at 42.

<sup>143</sup> SeyCCAT was established by the Conservation and Climate Adaptation Trust of Seychelles (SeyCCAT) Act 2015.

<sup>144</sup> *Id.*

2022, the SeyCCAT Act was amended “to make it clear that SeyCCAT can explore, develop or administer any fund or source of funding other than [listed funds];” “to widen the scope of Seychellois who are eligible for a grant from SeyCCAT;” ... and to allow for grants “to undertake any activity which is consistent with the objects of the Act, including the implementation of the Seychelles Marine Spatial Plans.”<sup>145</sup>

Notwithstanding the presence of a vibrant SeyCCAT, and the important new amendment to the SeyCCAT Act, there remains a long-term funding gap for SMSP implementation and for SeyCCAT itself. A consultancy is underway to explore long-term financing options, which could in turn point to the need for alternative/additional financing mechanisms and reliance on new taxes or fees.

#### **L. Conflict resolution**

Multiple ocean uses existing in the area covered by a marine spatial plan may lead to conflict among those uses and disputes over access. To be sure, conflicts between ocean uses already occur—and will occur in the presence or absence of a marine spatial plan. Of particular concern are plan designations that exclude or change user access, rather than spatial conflicts between users, per se. Guiding principles and criteria can assist in resolving those conflicts, as can directly empowering a governing body to resolve conflicts among users.<sup>146</sup>

The SMSP Policy has defined the plan’s vision, mission, and principles,<sup>147</sup> which can help to guide resolution of conflicts. However, there is no separate legal mechanism in place to provide for conflict resolution related to implementation of the SMSP (nor would, e.g., the SOA Bill have explicitly empowered a body to address conflict resolution). Indeed, in the 2014–2015 time frame, then-MEECC indicated that if conflicts related to the SMSP zones were to arise during SMSP implementation, these conflicts would be addressed pursuant to whichever Act had been used for the relevant MPA or Zone activities—i.e., conflict resolution would be left to the existing laws of Seychelles.

As a practical matter, capacity constraints in Seychelles may render the development of a new framework exclusively for conflict resolution impractical. Still, as implementation of the SMSP proceeds, the emergence and resolution of user conflicts will be a consideration to monitor.

#### **M. International harmonisation**

A national marine spatial planning initiative must be consistent with a country’s regional and international commitments, and, indeed, it can help to reinforce those commitments.<sup>148</sup> The stated goals of the SMSP include implementing Seychelles’ international commitments, as well as meeting and surpassing the Convention on Biological Diversity (CBD) Aichi and UN Sustainable Development Goal (SDG) target of 10% marine protection by 2020.<sup>149</sup> The GoS has also reaffirmed various international obligations and commitments in the SMSP Policy.

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<sup>145</sup> See Conservation and Climate Adaptation Trust of Seychelles (Amendment) Act 2022 (explanatory statement accompanying Bill).

<sup>146</sup> *A Guide for Legal Drafters*, *supra* note 7 at 55.

<sup>147</sup> See generally SMSP Policy, *supra* note 6.

<sup>148</sup> *A Guide for Legal Drafters*, *supra* note 7 at 55.

<sup>149</sup> SMSP Policy, *supra* note 6 at 3.

Seychelles' commitment to protect 30% of its marine area and to sustainably manage 100% positions Seychelles as a global leader in a push for coastal and ocean states to do so.<sup>150</sup> The SMSP Policy envisions the SMSP as a tool to address climate change in coastal and offshore habitats, and to assist Seychelles with respect to both climate mitigation and adaptation.<sup>151</sup> In Seychelles, MACCE has the mandate for climate affairs, and a National Climate Change Committee (NCCC) oversees implementation of the UN Framework Convention on Climate Change (UNFCCC) at the national level.<sup>152</sup>

The extensive stakeholder process for SMSP design ensured consultation with fisheries representatives and other ocean users whose engagement with Seychelles' marine environment is governed by regional and international commitments. And Seychelles is party to a range of international conventions, including many International Maritime Organization (IMO) instruments.<sup>153</sup> The SMSP can support the GoS on certain other of its international commitments, such as the Agreement on Port State Measures (PSMA) and addressing IUU fishing.

There is currently no legal requirement for marine spatial planning to be carried out consistent with Seychelles' international commitments.<sup>154</sup> Though the SOA Bill, as drafted, would require the Ocean Authority to "ensure pertinent international obligations [are] appropriately incorporated into the marine spatial plan management cycle, reported upon as required and provide advice and information to government on pertinent international relations."<sup>155</sup>

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<sup>150</sup> See, e.g., The High Level Panel for a Sustainable Ocean Economy Initiative, at <https://oceanpanel.org/>.

<sup>151</sup> See, e.g., SMSP Policy, *supra* note 6 at 9.

<sup>152</sup> 2015 legal report, *supra* note 9 at 12.

<sup>153</sup> See 2015 legal report, *supra* note 9, *passim*. Seychelles has been a member of the IMO since 1978.

<sup>154</sup> In most instances, treaties must be incorporated into the national law of Seychelles to have direct legal effects. See, e.g., discussion and citations at Vrancken, *supra* note 12 at 611. However, as Chief Justice Mathilda Twomey has explained, "[t]he Seychelles Constitution does not lend itself either to a classical monist or dualist system in terms of international law." Mathilda Twomey, *Legal Metissage in a Micro-Jurisdiction: The Mixing of Common Law and Civil Law in Seychelles* at 46, 46–48 (2017) (discussing complexities of domestic implementation of treaties in Seychelles, with special reference to arts. 64 & 48 of the Constitution).

<sup>155</sup> SOA Bill § 4(2)(e).

## PART III

### Discussion, Recommendations, and Legal Roadmap for Implementation

The GoS and its many partners, domestic and international, have for nearly a decade invested time, money, labour, and intellectual capital to build and lend momentum to the SMSP Initiative. This work emerges in significant part from an unprecedented debt conversion agreement that could become a model for global ocean conservation. As the SMSP nears completion, the most important pending legal issue is resolving the governance framework to be used for marine spatial planning.

Seychelles has yet to adopt legislation, or issue regulations, dedicated *exclusively* to its ambitious marine spatial planning enterprise.<sup>156</sup> Seychelles does, however, benefit from a strong if still evolving set of legal authorities governing its MPAs, which to a significant degree form the core of the SMSP and the nation’s ocean conservation commitments. All MPAs have been formally designated under law, though some technical reclassifications of Zone 2 areas and a degree of regulatory development remain to be addressed. Even so, legislation could be used to enshrine the 30% protection requirement *itself* in law, or to further elaborate on the requirements, typology, and allowable uses for SMSP Zones.<sup>157</sup>

An overarching response to the various legal considerations raised in Part II of this report is for the GoS to reconsider its need for national marine spatial planning legislation that resolves and clarifies the governance arrangement, ideally by way of a new, independent entity. Such legislation could be compact and would necessarily be crafted so as to build on—but not replace or override—existing sectoral authorities governing fisheries, the environment, planning, and maritime activities. As noted above in Part II, the “interim” governance arrangement presently being designed by way of a regulation under the Environment Protection Act 2016 is already seen by some as a bridge to a more comprehensive governance arrangement for the future. The longer-term arrangement could take the form of the already drafted and aforementioned SOA Bill, which benefitted from significant stakeholder support. In any event, the contemplated “interim” arrangement of necessity will, by law, be limited to the objects and scope of the environmental legislation.

Aside from clarifying the SMSP the governance arrangement, Part II of this report identifies many other considerations that point to potential legal development by Seychelles. Not all of these considerations necessarily present “gaps” to be filled; nor do all of them absolutely require legislative or regulatory action. All of these legal considerations, do, however, merit review as the GoS proceeds with marine spatial planning—some of them, in the view of the authors, on a priority basis.

Following is a list of top-level legal considerations distilled from the discussion in Part II of this report and reflecting issues that would benefit from action in the near-to-mid term to facilitate implementation of the SMSP:

- *Governance structure.* Identify an institutional home for marine spatial planning (i.e., assign oversight and coordinating authority for the SMSP) by way of an existing entity or a new one (see

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<sup>156</sup> As discussed *supra*, the SOA Bill, or a similar legal instrument, would have represented a substantial step in this regard—and may yet resurface for further consideration.

<sup>157</sup> The NRC Act 2022 allows the Minister to revise and alter the boundaries of a protected area when reclassifying it. No public consultation is required, although such process is required for designation. It is unclear from the Act if such revisions or alterations could expand or shrink a protected area, and therein lies a potential for the zones to be made smaller.

Part II.E.1 of the current report)—taking into account any short-term “interim” governance arrangement as may be necessary, but focusing primarily on SMSP needs over the longer term;

- *Binding status of plan/relationship to other laws.* Consider targeted legal action to make the SMSP binding on all persons and to clarify the role of the SMSP with respect to other existing legislation<sup>158</sup> (see Parts II.F.4 & II.F.5);
- *Application of SMSP in EEZ.* Ensure that key legal authorities that support marine spatial planning in Seychelles apply, as a matter of law, in the EEZ (see Part II.A);
- *Full implementation of marine protected areas.* Move forward with legal steps on: MPA reclassification (where needed) and regulatory elaboration under the NRC Act 2022 (particularly with respect to area management and co-management) (see Parts II.E.2 & II.F.1); and
- *Legal definitions.* Ensure clarity and consistency of key legal definitions relevant to marine spatial planning (see Part II.C).

These top-level recommendations align with the previously referenced 2015 legal report, which presented 17 recommendations in anticipation of the development of the SMSP and, eventually, of legislation governing marine spatial planning.<sup>159</sup> Nearly all of those 17 recommendations are directed to: strengthening sectoral policies and legislative frameworks with relevance to marine spatial planning; better aligning national law with Seychelles’ international commitments; and harmonising conflicting or fragmented legal requirements. While each of the 17 recommendations would be beneficial if adopted (and indeed, some have been addressed since 2015), one stands out as going directly to Seychelles’ legal implementation of marine spatial planning. Recommendation no. 5 speaks to the need for “a legal basis” for the marine spatial plan, which is presumed to come under the national planning legislation, but which could also be provided by way of “any other legislation that will be enacted for the demarcation of marine areas throughout the EEZ.”

The present report does not purport to prescribe *where* marine spatial planning should be assigned within government, or how extensively any potential marine spatial planning legislation should be framed. Even absent an SOA-style Bill that establishes an independent authority, a simple marine spatial planning Act could be used to address other priority legal considerations. Providing by legislation for key aspects of the marine spatial planning *process*—i.e., the requirements for plan adoption, modification, revocation, review, and the like—and other legal considerations highlighted in this report will help to sustain MSP well into the future.

A related point to consider is what remains for Seychelles to satisfy the requirement of the Seychelles–TNC Facilities Agreement that the GoS, with TNC’s ongoing support, shall arrange for the SMSP to be “signed into law or regulations and have full force and effect in the Seychelles.”<sup>160</sup> What the GoS and TNC intended with respect to the SMSP being “signed into law” and having “full force and effect” are ultimately questions for the parties to that agreement. Adopting new marine spatial planning legislation (via the SOA Bill or an analogue, or by amendment to an existing Act) would surely satisfy this requirement.

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<sup>158</sup> Specifically: require implementation of other laws to conform to the plan to the greatest extent practicable; and provide that no new regulatory requirements may be imposed in the SMSP area except in conformance with the plan.

<sup>159</sup> See 2015 legal report, *supra* note 9 at 74–75.

<sup>160</sup> The language of this condition was shared with the authors. However, the authors have not reviewed the agreement, nor can they provide legal advice regarding whether contractual commitments have been satisfied.

In the absence of new legislative action, giving legal effect to the SMSP through a regulation (pursuant to an existing Act) may also satisfy the requirement of the Seychelles–TNC Facilities Agreement. Indeed, the previously mentioned regulation, now in draft, being developed under the Environment Protection Act 2016 to implement an “interim” governance arrangement under MACCE for the SMSP contemplates a provision that would gazette the SMSP.<sup>161</sup> If the GoS does decide to proceed in the near term exclusively by way of a regulation, a key benefit to using the Environment Protection Act 2016 is that § 9 of the Act expressly allows for the creation of a new institutional structure.<sup>162</sup> As this current report has emphasised, reaching resolution on the legal framework for SMSP governance is a high priority.

Another possibility currently being discussed in Seychelles for gazetting the SMSP is to issue a new regulation pursuant to the Maritime Zones Act 1999 to do so. This Act, despite some appeal as a potential legal basis for marine spatial planning,<sup>163</sup> appears to lack the legal architecture for establishing an institutional home for marine spatial planning. And the Act by its terms assigns responsibilities to the President rather than to ministries, departments, or agencies with technical expertise. While the Maritime Zones Act 1999 is a fit for MSP from a subject matter perspective, it may be lacking from the perspective of establishing an institutional governance arrangement for MSP.

Over the long term, either of these two Acts could be legislatively *amended* to better accommodate marine spatial planning—again, if the GoS determines not to adopt new, purpose-built legislation for the SMSP. But a concern with administering marine spatial planning pursuant to a regulation under *any* current Act is that the reach of such regulation will always be constrained, as a matter of law, by the scope and objects of the underlying Act. And the aforementioned two Acts were not enacted by Parliament with marine spatial planning in mind.

Drawing on the discussion and recommendations above, Table 5 offers a legal “roadmap” to identify and prioritise action items to facilitate implementation of the SMSP.

**Table 5**  
**Legal Roadmap for Implementation of the SMSP**

Item	Action	Priority	Means	Comments
1a	Clarify permanent SMSP governance arrangement	Highest	New legislation (e.g., SOA) or amendment to an existing Act  A regulation-only approach would be	Most likely pathways are a new SOA or a permanent entity within MACCE, legislatively established

<sup>161</sup> Environment Protection (Seychelles Ocean Agency) Regulations (draft 2023) § 5(4).

<sup>162</sup> See discussion at *supra* note 69 and accompanying text. This is in fact the path that the present draft regulation for the “interim” governance arrangement takes in establishing a new Seychelles Ocean Agency. Environment Protection (Seychelles Ocean Agency) Regulations (draft 2023) § 3 & preamble.

<sup>163</sup> *I.e.*, the Act by design applies throughout the maritime zones of Seychelles, including the EEZ; allows for the regulation of persons and activities in the EEZ; and is non-sectoral and could thus helpfully be perceived as “neutral” with respect to ocean users and activities.

Item	Action	Priority	Means	Comments
			constrained by scope of the parent Act	
<b>1b</b>	Operationalise “interim” SMSP governance arrangement within MACCE	High	Regulation under Environment Protection Act 2016	Consultancy is underway and a regulation in draft; this Item should be undertaken with an eye toward resolving Item 1a
<b>2</b>	Ensure SMSP has binding legal effect & clarify relationship to other laws <sup>164</sup>	High	New legislation (e.g., SOA) or targeted amendments to existing sectoral legislation	Legal provisions that can bind SMSP as to all persons and clarify position of SMSP vis-à-vis other legislation
<b>3</b>	Clarify application of key sectoral legislation (esp. environmental & protected area) in EEZ	High	Order under Maritime Zones Act 1999 (or targeted legislative amendments)	Low-effort item
<b>4a</b>	Reclassify Zone 2 (Marine) AONB MPAs as Sustainable Use Areas	High	Notice issued pursuant to NRC Act 2022	Low-effort item following commencement of NRC Act 2022
<b>4b</b>	Issue implementing regulations under NRC Act 2022	High	Develop regulations under NRC Act 2022 regarding: (1) criteria for new categories (2) management plans (3) management agreements/co-management (4) site-specific issues	Consultancy underway

<sup>164</sup> Note that if the GoS were to adopt marine spatial planning legislation in any form, other legal considerations addressed in Part II of this report should be reviewed and considered for inclusion. For example: the use of objectives and guiding principles; the requirement of maintaining and from time to time updating the SMSP Policy; the establishment of a marine advisory body; and fixing various features of marine spatial planning processes in law. Any new MSP legislation need not be limited to establishing an institutional governance arrangement.

Item	Action	Priority	Means	Comments
			(5) clarification of SPGA role [possibly]	
4c	Provide for MPA plan management	High/Medium	Development of management agreements and management plans	Requires regulations (Item 4b); consultancy underway to develop management plan template
5	Ensure key legal terms defined/consistent	Medium	New legislation (e.g., SOA) or targeted amendments to/regulations under existing legislation (Maritime Zones Act 1999 or Environment Protection Act 2016)	Even if no new legal term for marine waters subject to the SMSP is adopted by law, any term settled on should be used consistently <sup>165</sup>  Also, consistency of legal definitions noted in this report is a potential matter to be taken up by the Seychelles Law Commission pursuant to its revision of laws work
6	Harmonise requirements of existing legislation (e.g., with respect to licensing and permitting) with SMSP implementation	Medium	Targeted legislative amendments, as needed	Ongoing task: consider the need for minor/conforming amendments to existing legislation to ensure seamless implementation of SMSP
7	Review and update Wild Animals and Birds Protection Act 1961 (WABPA) <sup>166</sup>	Medium/Low	Legislative amendments	Certain Nature Reserves with relevance to the SMSP were designated pursuant to the Act; review underway pursuant to a consultancy
8	Review and update of Fisheries Act 2014 and the Fisheries Regulations 1987	Medium/Low	Legislative & regulatory amendments	Review underway pursuant to a consultancy

<sup>165</sup> For example, as noted earlier in this report, some national laws use the term “Seychelles waters,” defined by law in slightly different ways. And the SOA Bill provided that the new Authority would prepare an MSP for “seas falling within the Economic Exclusion Zone [sic] of Seychelles.” *Id.* § 5(1). This will be an important consideration for any “interim” governance arrangement established under MACCE.

<sup>166</sup> Other potentially relevant legal review processes, beyond those identified in Table 5, are underway in Seychelles. These include, e.g., preparation of environment protection effluent discharge regulations (in draft and may be issued in 2023); and development of a Water Resources Management Bill (in draft but on hold as the draft is harmonised with other legislation).

<b>Item</b>	<b>Action</b>	<b>Priority</b>	<b>Means</b>	<b>Comments</b>
<b>9</b>	Clarify all enforcement authority relevant to the SMSP	Medium/Low	Policy document (matrix)	To be developed by a consultant and reviewed by enforcement agencies
<b>10</b>	Reclassify pre-SMSP MPAs	Low	Notice issued pursuant to NRC Act 2022	Needed for overall consistency within MPA network

The items identified in the legal “roadmap” would ideally be completed, by priority, in the coming 12–18 months. It is anticipated that many of these items can be addressed in parallel. Also, these items of necessity implicate various non-legal considerations, such as political preferences and the availability of funding and staffing resources—considerations that lie beyond the scope of the current report and that will require further discussion within the Initiative and, certainly, further stakeholder input.

## **ANNEX**

### **Legal and Policy Developments in Seychelles Relevant to Marine Spatial Planning (since 2015)**

This Annex supplements and updates the contents of the 2015 Seychelles Marine Spatial Planning Legislative and Policy Review by way of an inventory of relevant legal and policy developments in Seychelles that have been completed (or, in certain instances, initiated) subsequent to the issuance of the 2015 legal report.

#### **Constitution**

Constitution of the Republic of Seychelles (Tenth Amendment) Act 2022

#### **Acts**

Access to Information Act 2018

Conservation and Climate Adaptation Trust of Seychelles (SeyCCAT) Act 2015

Conservation and Climate Adaptation Trust of Seychelles (Amendment) Act 2022

Defence (Amendment) Act 2020

Digitization and Publication of Gazette Act 2020

Environment Protection Act 2016 [repealed Environment Protection Act 1994]

Law Commission Act 2022

Nature Reserves and Conservancy (NRC) Act 2022 [enacted but pending commencement; will repeal

National Parks and Nature Conservancy Act (NPNCA)]

Physical Planning Act 2021 [repealed Town and Country Planning Act]

Seychelles Maritime Safety Authority Act 2019

Seychelles National Institute for Culture, Heritage and the Arts Act 2021

Seychelles Parks and Gardens Authority (SPGA) Act 2022 [repealed Environment Protection (Seychelles National Parks Authority) Order 2009 and National Botanical Gardens Foundation Act 2009]

Trade of Wild Fauna and Flora Act 2021 [gives effect to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)]

National Institute of Science, Technology and Innovation (NISTI) Act 2014 repealed in 2021

Seychelles Ocean Authority (SOA) Bill (draft 2020)

Seychelles Fisheries Act 2014 and Fisheries Regulations 1987 under review [as of December 2022, stakeholder consultations were underway with respect to a new draft Fisheries Act, with accompanying regulations and schedules, that had been prepared by a consultant]

Wild Animals and Birds Protection Act (WABPA) under review [as of December 2022, a first draft had been prepared and would undergo public consultation]

#### **Regulations**

Environment Protection (Appeals Rules of Procedure) Regulations 2022

Environment Protection (Waste Services) Regulation 2021

Fisheries (Aquaculture) Regulations 2020

Fisheries (Mahé Plateau Trap and Line Fishery) Regulations 2021

Physical Planning (Appeals Rules of Procedure) Regulations 2022

National Parks Fees (Amendment) Regulations 2020

Environment Protection (Seychelles Ocean Agency) Regulations (draft 2023)

### **Orders**

Maritime Zones (Baselines) Order 2022 [repealed Maritime Zones (Baselines) Order 2008, as amended 2009]

Maritime Zones (Territorial Sea) Order 2022

Maritime Zones (Contiguous Zone) Order 2022

Maritime Zones (Exclusive Economic Zone) Order 2022 [repealed Maritime Zones (Exclusive Economic Zone and Continental Shelf) Order 2002; Maritime Zones (Exclusive Economic Zone and Continental Shelf) Order 2008; and Maritime Zones (Exclusive Economic Zone and Continental Shelf) Order 2014]

Maritime Zones (Extended Continental Shelf in the Northern Plateau Region) Order 2020

Aldabra Group (Marine) National Park (Designation) Order 2018

Amirantes (Marine) to Fortune Bank (Marine) Area of Outstanding Natural Beauty (Designation) Order 2018

National Parks and Nature Conservancy (Aldabra) Special Reserve (Designation) Order 2018

National Parks and Nature Conservancy (Aride Island) Special Reserve (Designation) Order 2018

Area of Outstanding Natural Beauty (Amirantes to Fortune Bank) (Marine) (Designation) Order 2020

Area of Outstanding Natural Beauty (Poivre Atoll) (Marine) (Designation) Order 2020

Area of Outstanding Natural Beauty (Denis Island) (Marine) (Designation) Order 2020

Area of Outstanding Natural Beauty (Farquhar Archipelago) (Marine) (Designation) Order 2020

Area of Outstanding Natural Beauty (Cosmoledo and Astove Archipelago) (Marine) (Designation) Order 2020

Area of Outstanding Natural Beauty (Farquhar Atoll) (Marine) (Designation) Order 2020

Area of Outstanding Natural Beauty (Alphonse Group) (Marine) (Designation) Order 2020

Area of Outstanding Natural Beauty (Desroches Atoll) (Marine) (Designation) Order 2020

National Parks (Aldabra Group) (Marine) (Designation) Order 2020

National Parks (Bird Island) (Ile aux Vaches) (Marine) (Designation) Order 2020

National Parks (Amirantes South) (Marine) (Designation) Order 2020

National Parks (D'Arros to Poivre Atolls) (Marine) (Designation) Order 2020

National Parks (D'Arros Atoll) (Marine) (Designation) Order 2020

### **Policies**

Seychelles Marine Spatial Plan Policy (September 2020)

Seychelles Blue Economy: Strategic Policy Framework and Roadmap Charting the future (2018–2030)

Seychelles Coastal Management Plan 2019–2024  
Seychelles Fisheries Comprehensive Plan (November 2019)  
Seychelles Fisheries Sector Policy and Strategy 2019  
Seychelles National Climate Change Policy (2020)  
Seychelles National Development Strategy 2019–2023  
Seychelles National Policy and Strategic Action Plan on Coral Reef Conservation and Management (2022)  
Seychelles Parks and Gardens Authority Strategic Plan 2022–2026  
Seychelles Sustainable Development Strategy 2012–2020  
Seychelles Wetland Policy and Action Plan 2019–2022

Seychelles Fisheries Harvest Strategy Policy (draft 2021)

**Other**

2021 Cabinet Decision for Final Approval of a Governance Arrangement for the Implementation of the  
Seychelles Marine Spatial Plan (second decision)  
Mahé Plateau Trap and Line Fishery Co-Management Plan 2020  
Seychelles Strategic Management Framework for marine protected areas in Seychelles (draft 2021)  
Seychelles Updated Nationally Determined Contribution (NDC) (July 2021)

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