

TECHNICAL COOPERATION PROGRAMME

TANZANIA

MARINE PARKS AND RESERVES ACT AND REGULATIONS

**Legislative Proposal Regarding the Management  
of Marine Resources in the Proposed  
Mafia Island Marine Reserve  
and Provision for Future Additional Reserves**

T.R. Young  
Legislative Consultant  
Legal Office, FAO

## TABLE OF CONTENTS

<b>I.</b>	<b>Introduction</b>	
	A. Terms of Reference	1
	B. Background	2
	1. General	2
	2. Mafia Island Marine Park (MIMP) Proposals	3
	a. Need for Protection	3
	b. Marine Park Proposals	4
	c. The MIMP Workshop	4
	d. The Mafia Island Steering/Technical Committee	4
	e. Interim Protection Measures	5
<b>II.</b>	<b>Existing Legislation Relevant to the Creation of Marine Parks</b>	<b>6</b>
	A. International Environment Agreements	6
	1. United Nations Convention on Law of the Sea (UNCLOS)	6
	2. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	6
	3. African Convention on the Conservation of Nature	7
	4. World Heritage Convention	7
	5. Other International Conventions Affecting Marine Areas and Conservation	7
	B. Fishing Agreement with the EC	7
	C. General Domestic Legislation	8
	1. Basic Governmental Authority	8
	a. Constitution	8
	b. Territorial Sea and Exclusive Economic Zone Act	8
	2. General Procedural, Interpretive and Administrative Laws	9
	a. Interpretation and General Clauses Act	9
	b. Local Government (District Authorities) Act	9
	c. Criminal Procedure Act	10
	d. Land Acquisition Act	10
	D. Laws and Policies Relating to Natural Resources	11
	1. Fisheries Laws and Marine Conservation	11
	a. Fisheries Act	11
	b. Fisheries Principal Regulations	12
	c. Fisheries (Marine Reserves) Regulations	12
	d. Fisheries (Explosives, Poisons, and Water Pollution) Regulations	13
	e. Fisheries (Inland Waters) Regulations	14
	f. Other Fisheries Regulations	14
	2. Wildlife, National Parks and Conservation Area Laws	14
	a. Wildlife Conservation Act	14
	b. Wildlife Regulations	15

	c.	National Parks Ordinance	16
	d.	National Parks Regulations	17
	e.	Ngorongoro Conservation Area Ordinance	18
3.		Forestry Laws and Policies	18
	a.	Forest Ordinance	18
	b.	Forest Regulations	19
	c.	Proposed Forest Ordinance Amendment	19
	d.	Tanzania Forestry Action Plan 1990-1991	20
	e.	Mangrove Management Plan	20
4.		Other Resource Management Laws	21
	a.	Mining Act	21
	b.	The Petroleum (Exploration and Production) Act	22
	c.	Antiquities Act	22
	d.	Public Lands (Preserved Areas) Ordinance	22
	e.	Protected Places and Areas Act	22
E.		Zanzibar Fisheries and Conservation Laws	23
	1.	Current Proposals	23
	2.	Existing Laws Relevant to Marine Parks	23

### III. Legislative Proposal 24

A.		Need for Additional Legislation	24
	1.	Unsuccessful Pre-existing Protections	24
	2.	Multiple Sustainable Use	24
	3.	Legislative Direction and Support	25
B.		Legislative Purposes	25
	1.	Prototype Project	25
	a.	Future Expansion	25
	b.	Focus of Governmental Efforts	26
	2.	Specific Objectives of the Legislation	26
	a.	Generating a Statement of Purpose	27
	b.	Nomenclature	27
	3.	Governmental Commitment to Stated Objectives	28
	4.	Local Involvement	28
C.		Nature of the Administrative Entity	29
	1.	Responsible Division	29
	a.	Expertise in Marine Matters	30
	b.	Zoning for Multiple Uses	30
	c.	Responsibility for Marine Parks involving Freshwater Areas	30
	d.	Manpower and Organization Activities	31
	e.	Relationship to Other Technical Agencies	31
	f.	Future Changes and Inter-Agency Cooperation	32
	2.	Structure of the Administrative Entity	32
	a.	Flexibility	32
	b.	Preference for Reformation and Dissolution of Parastatals	33
	c.	Financial Autonomy	33
	d.	Conclusion: Marine Parks and Reserves Unit	33

D.	Comprehensive Responses to Environmental and Conservation Legislation	34
1.	Pre-existing Geographical Jurisdiction	34
2.	"Subject Matter" Authority	34
3.	Environmental Assessment, Comprehensive Planning and Integrated Management	35
a.	The National Environmental Management Council	36
b.	The Planning Commission	36
c.	The Investment Promotion Centre	37
d.	Commissioner of Lands	37
E.	Extent and Boundaries of the Marine Parks	37
1.	Boundaries, Zoning and Jurisdiction	38
a.	Park Lands vs. Buffer Zone	38
b.	Relationship to District Boundaries	38
2.	Inclusion of Dry Land Areas within Park Boundaries	38
a.	Administration Buildings and Access Areas	39
b.	Forest, Wildlife, Habitat and Historic Areas	39
c.	Tidelands	40
d.	Other Coastal Lands	40
3.	Retention of Existing Reserves	41
F.	Comments on Specific Provisions	41
1.	Proposed Marine Parks and Reserves Act	41
2.	Proposed Regulations under the Marine Parks and Reserves Act	50

## Appendices

(Proposed) Marine Parks and Reserves Act	51
(Proposed) Marine Parks and Reserves Act Regulations	80
Bibliography	85
Persons Contacted in Connection with the Preparation of this Report	87

## I. INTRODUCTION

### A. Terms of Reference

The government of Tanzania has long recognized the importance of the sensitive and valuable marine resources along its coast. Initial efforts to protect these areas have proven insufficient, and these marine habitats, particularly the coral reef ecosystems, are fast being degraded or destroyed in many locations. The last two years have seen a resurgence in interest in conservation of these areas, and a recognition of the need to step-up the protection effort through the creation of marine parks or reserves. Recent interest has centered on the waters and coral reefs near Mafia Island, which is the only such marine area in Tanzania (and one of the few in East Africa) that is still considered to be in excellent condition.

The terms of reference of this consultancy were

- (a) examination of existing legislation, regulations, and programs relating to the preservation and management of sensitive marine areas, and the variety of uses and purposes within those areas;
- (b) development of the main elements of proposed legislative framework for the establishment, management, regulation and policing of marine parks and reserves;
- (c) presentation of a draft proposal for legislation at a workshop on Mafia Island, sponsored by Worldwide Fund for Nature (WWF) and attended by local residents, representatives of several ngos, corporations, and several agencies and parastatals within Tanzania's Ministry of Tourism, Natural Resources and the Environment; and
- (d) preparation of a report on legal issues and recommendations relating to the Mafia Island Marine Park and to the needs applicable to future designations of marine areas for protection.

Following briefing in Rome, the consultant arrived in Dar es Salaam on October 2, 1991, for the first of two missions in Tanzania (in October, 1991 and January, 1992, respectively) concerning the establishment of the Mafia Island Marine Park (MIMP). After a cycle of research and discussions with government officials in that city, including a meeting on October 7, with the Mafia Island Marine Park Steering Committee, she traveled to Arusha and met with officials of Tanzania National Parks (TANAPA), on October 10. On October 14, she went to Zanzibar, there conducting research and meetings with officials who have proposed the creation of marine parks and reserves on and around those islands. She returned to Dar es Salaam on October 17, and presented her preliminary findings and proposals to the Steering Committee. From October 20 to 24, she attended the workshop on Mafia, and there presented these legislative proposals and participated in and led various discussions concerning them, leaving Tanzania on October 25, 1991.

On January 22, 1992, the consultant returned to Tanzania. After meetings with members of the newly constituted Technical Committee of the proposed Mafia Island Marine Park, she met with many other officials and interested organizations in Dar es Salaam. On January 30, she traveled to Zanzibar for meetings with Dr. Ngoile and Dr. Horrill of the Institute of Marine Science, concerning the development of regulations and an administrative

framework for the MIMP and the task of obtaining governmental support for and parliamentary approval of the proposed Marine Parks and Reserves Act. She returned to Dar es Salaam in February 2 for more meetings and research. She left Tanzania on February 5, 1992.

## **B. Background**

**1. General.** The United Republic of Tanzania has a mainland area of about 94,500,000 ha and a population of 23.17 million people in 1988. The country boasts an impressive collection of twelve national parks including some of the most renowned and important parks worldwide. Serengeti National Park, Ngorongoro Conservation Area and Lake Manyara National Park have each have been designated as Biosphere Reserves. More than a third of Tanzania's total land area is under some form of protection, evidencing a commendable interest conservation, and supporting a growing tourist industry.

Tanzania's 1961 Arusha Manifesto set the tone of this commitment to conservation noting that

"The survival of our wildlife is a matter of grave concern to all of us in Africa.... In accepting the trusteeship of our wildlife we solemnly declare that we will do everything in our power to make sure that our children's grand-children will be able to enjoy this rich and precious inheritance."

(Julius K. Nyerere (then Chief Minister of Tanganyika) 7 September, 1961.) More recently, government policies have reaffirmed the need to "continue enacting and amending legislation on the conservation of wild animals, birds and other areas of importance for the benefit of current and future generations"; and to reinforce legal prohibitions on poaching, dynamite fishing and pollution of tourist attractions. (National Policy on Tourism, 1991)

The country's 669 miles (800 km) of coastline extends from Kenya in the north to Mozambique in the south. Its coastal waters contain some of the richest marine resources in the Indian Ocean, including excellent coral reefs and valuable species of aquatic life. Tanzania utilizes its coastal waters for a number of economic purposes, including an artisanal fish and fish products industry, the extraction of natural gas and sodium chloride, maritime transport, and recreation.

The country's inland waters include Lake Tanganyika on its western border and Lake Victoria on its northern border. These areas support a growing fishing and aquaculture industry, and boast an impressive array of wildlife.

The Republic includes three major islands. In the north, the former State of Zanzibar, consists of the main islands of Zanzibar and Pemba (22 to 45 miles offshore). In the south is the island of Mafia (20 miles offshore) whose southern area is the site of the proposed marine park.

Tanzania's territorial seas have been redrawn four times, since the country "inherited" a three-mile territorial sea from the United Kingdom at independence in 1961. Most recently (as discussed in II.A.1, II.B, and II.C.1.b, below), effective in October, 1989, Parliament

adopted a 200-mile exclusive economic zone, and reset the limits of its territorial seas at 12 miles. By this act, Tanzania assumed the full panoply of sovereign rights over all waters and submerged lands within the EEZ, "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living" of the waters within the EEZ, including specifically, "[j]urisdiction with regard to... the protection and preservation of the Marine environment."

Tourism is an important potential growth sector in Tanzania's economy, earning over 65 million dollars in 1990. Tourist resources include the coastline, off-shore islands, and historic ruins, as well as game parks and reserves. Regarding tourism, the government seeks "to increase foreign exchange earnings at the same time improving in the tourist attractions which are a valuable natural heritage for the entire World," and to strengthen and develop the involvement of local personnel in tourist operations in hotels, general services, engineering travel agencies, administration, rescue work, catering and ancillary fields. (National Policy on Tourism, 1991.)

**2. Mafia Island Marine Park Proposals.** Tanzania's coastal waters have long been a subject of international interest because of their rich diversity of marine life. Several areas of Tanzania's coastline have been the subject of scientific studies and proposals for protection, beginning with an excellent comprehensive proposal in the late sixties (Ray, 1968). Scientific interest in such proposals has not dimmed in the intervening years, and a wealth of data concerning the condition and importance of the sensitive marine habitats off Tanzania's coast is now available.

**a. Need for Protection.** Unfortunately, the 23 years since the initial studies have seen devastation of many of the coral reef areas targeted for protection. Dismaying local practices, particularly the oft-conducted but wholly illegal dynamite fishing, as well as more benignly intended activities such as coral "mining" and collecting mollusks for food and curio trade, have killed and/or flattened reefs in several areas, and caused serious harm in others.

Because of its small population (it is estimated that approximately 20,000 people live on Mafia and the eastern islands of Juani and Jibondo, both of which are within the boundaries of the proposed reserve) and its location, which is less convenient for non-local fishermen, Mafia Island has for the most part escaped the destruction caused elsewhere by off-island fishermen and other harvesters of marine resources. Its coral reefs have recently been described as "nearly pristine ... extremely rich in marine life diversity." (Horrill, 1991) Resource inventories of the area indicate the presence of over one hundred genera of live hard corals, hundreds of species of fish, five species of sea turtles, 50 species of bird, a local fruit bat, five of the six species of indigenous mangrove, and several sea grasses. Rumours of the presence of dugongs (a species of marine mammal in decline throughout East African coastal waters) are prevalent but unconfirmed. Many forest species, some unique to the island, can be found in a local forest area. (Dickinson, 1991)

Concerning current use of the site by local fishermen and other residents, one study (Horrill, 1991) notes that

"the area was found to be in almost pristine condition, where human activities such as fishing and collecting for food were at an equilibrium with the natural resources present. No obvious detrimental effects of pollution were noticed, which is hardly surprising, since there is no industry on Mafia. The community is relatively small and dispersed over a large area, living mainly off fishing, husbandry as well as subsistence farming."

This fortuitous condition cannot last long, however. Commentators have observed that the situation is gradually changing on Mafia Island, as demand for food increases, outside fishermen (moving farther afield as catches diminish in areas where reefs have been destroyed) start dynamite fishing around Mafia, and tourists are becoming increasingly aware of the recreational value of the island. (Horrill and Ngoile, 1991). Two small sites within the area proposed for Mafia Island Marine Park -- Chole Bay and Tutia Reef (encompassing far less than 10% of the total area proposed for the park) -- have been designated under Fisheries Regulations as "marine reserves." As discussed in part III.C.1. below, enforcement problems have prevented any real benefit or protection to accrue from this designation.

**b. Marine Park Proposals.** Protection of the reefs and other resources in the area is generally agreed to be necessary. A proposal to create Mafia Island Marine Park (MIMP) has evolved as organizations, corporations and government agencies sought to preserve the natural environment of Mafia Island in a manner that will allow use of available marine resources, encourage the development of tourism, and promote conservation, research and sensible management of this valuable marine environment.

Sincere local support for the MIMP is apparent, as well. The success of the marine park will rely almost entirely on district personnel, who in turn will rely on the cooperation and support of law-abiding local residents.

**c. The MIMP Workshop.** In October, 1991, at a well attended workshop of representatives of government, educational and scientific institutions, non-governmental organizations, private organizations, corporations, and Mafia District residents, many basic decisions were made concerning the designation, formation, and management of the proposed Mafia Island Marine Park. First among these decisions was a determination of the Park boundaries, development of a zoning system, and a delineation of the activities permitted within those zones. Other issues examined in the workshop included matters of operational administration and infrastructure of the MIMP, as well as legislation, procedures, enforcement, and institutions for the Marine Parks proposal.

**d. The Mafia Island Steering/Technical Committee.** The driving force in recent months behind the move to create a marine park at Mafia Island is a group referred to herein as the "Steering/Technical Committee." Originally appointed as an interim "Steering Committee" to prepare for the Mafia Island workshop, the Steering Committee has been reconstituted as a "Technical Committee;" its mandate: to bring the park into actual existence. The Steering/Technical Committee, as a decision-making body, has done an admirable job of enabling a two-way flow of ideas and information concerning the park and the lives and needs of the inhabitants of Mafia Island -- shaping the parameters of the park, both physically and conceptually.

Given the number of inputs into its decisions, the Steering/Technical Committee's determination of the parameters of the MIMP have changed over the course of this consultancy. As discussed in part III, below, these changes, particularly the decision to include large areas of dry land within the MIMP, may create potential legal difficulties that cannot be resolved in a single act and subsidiary legislation.

e. **Interim Protection Measures.** Since the workshop, officials at the highest levels have referred to the Mafia Island Marine Park project in favourable and supportive terms. Although gratifying and encouraging, such increased public awareness and interest in the marine park may indirectly harm it. The workshop and its follow-up activities and publicity have given everyone with any interest in Mafia or in tourism development a very complete knowledge of the resources in the area, their locations, and opportunities for their exploitation. Following the workshop, many proposals for projects have surfaced, some of which could, apparently, have devastating medium- and short-term effects on the proposed marine park. Similarly, commercial fishing concerns, which formerly relied on local fishermen (who jealously guarded their favourite fishing spots), now know exactly where the most critical fish-producing areas are.

Obviously, the need for swift protective action is great. Pending enactment of the proposed Act, efforts should be made to

(1) step-up enforcement of existing fisheries regulations, such as the licensing provisions, prohibitions on dynamite fishing and curtailment of the taking of sea turtles and other protected animals, etc.;

(2) declare the proposed "core protection zones" of the MIMP to be "marine reserves" under the existing regulations and enforce those regulations rigorously. In addition, some commenters have suggested protecting offshore islands throughout Tanzania's coastal waters by immediately adding them to the list of existing reserves. The possibility of adding some additional areas may need to be considered; and

(3) most important, coordinate with officers and agencies such as the National Environmental Management Council (NEMC), Commissioner of Lands, Planning Commission, and Forestry and Game divisions to ensure that none of them issue licenses, permissions, leases, authorizations or other orders that would harm the MIMP, without full consideration of all such impacts. In general, every effort should be made to encourage and participate in the commencement of a comprehensive resource management process for all of Mafia and the Mafia Channel.

Other particular concerns relate to the local acceptance of and involvement in the MIMP. The evidence available to the consultant first hand showed strong local enthusiasm for the park, however, to date socio-economic data concerning the area and the effect of the park on local residents and users is far from complete, and there is a need of systematic study in this area. This data may be of critical importance in ensuring that the marine park is operated in a way that fosters local involvement and the perception of that local people benefit from the existence of the park. In addition, such information will be needed by the planners creating the park's general management plan, and the Planning Agency in developing

a comprehensive management plan for resource management and other uses of the surrounding area.

## **II. EXISTING LEGISLATION RELEVANT TO THE CREATION OF MARINE PARKS**

A great many statutes, regulations, policies and programs relate to marine issues, or could otherwise impact the creation of marine parks and marine reserves in Tanzania. Consideration of, and coordination with, these laws and policies are essential to the success of the proposed Marine Parks and Reserves Act. Unfortunately, the availability, accessibility and indexing of Tanzania's statutes and regulations is limited. Throughout the consultancy, regulations were alluded to, and provisions discussed, whose existence could not be verified by the consultant. Given the difficulty of locating copies of statutory and regulatory materials known to be in force, the consultant cannot state with confidence whether all of the relevant statutes have been examined.

The following is a summary of the issues, laws, regulations and policies that appeared most relevant to the proposed legislation and other issues raised in this consultancy.

### **A. International Environmental Agreements**

**1. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA, Kingston, 1982.** Tanzania ratified UNCLOS in 1985; and, as noted in C.1.b, below, it has adopted a 200-mile exclusive economic zone following the language of the Convention. Relevant to marine protection, the Convention sets up programs including marine scientific research, protection of the marine environment, and the promotion of research centers. UNCLOS specifically discusses protection and study of "highly migratory species" including the dugong.

**2. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA, Washington, 1973 (CITES).** Tanzania was a 1980 signatory of and is a party to the Convention. It has not yet implemented the accord's provisions by specific legislation, nor has it formally designated a Scientific Authority or Management Authority thereunder. In 1974, however, (well before Tanzania's execution of CITES) the Ministry adopted regulations under the Wildlife Conservation Act, specifically limiting export of trophies made from any part of a CITES-protected species, except with specific written authorization from both the Director of Game and the Chief Research Officer of the Game Division. In all essentials, these provisions appear to parallel the CITES responsibilities of the Scientific and Management Authorities. Those regulations and the lists of protected species do not appear to have been amended since 1974.

There are many protected species within the MIMP, including sea turtles and possibly dugongs. It does not appear, however, that the capture of protected animals for export is occurring therein at significant levels. Some fishermen do admit to catching turtles for domestic consumption -- a clear violation of Tanzania law, as discussed in D.1.a.ii and D.2.a.ii, below.

3. **AFRICAN CONVENTION ON THE CONSERVATION OF NATURE, 1968.** Tanzania accepted this convention in 1974. Under its terms, the parties agreed to "adopt the measures necessary to ensure conservation, utilization, and development of soil, water, flora and faunal resources in accordance with scientific principles, with due regard to the best interests of the people." There is no domestic legislation specifically implementing this convention in Tanzania.

The convention defines categories of park and reserve in which human activities, including fishing, are subject to various degrees of control. States are obliged to "manage aquatic environments, whether in forest, brackish or coastal water, with a view to minimizing the deleterious effects of any water and land use practice which might adversely affect aquatic habitats" to prohibit fishing with poisons or explosives, and to protect many species including the dugong and all marine turtles.

Arguably, the phrase "manage aquatic environments" includes not only protection of nesting grounds, but also ensuring that critical marine habitats which provide food, protection and other benefits to protected animal species (such as coral reefs, mangrove swamps, and seagrass beds) be managed with consideration of their sustainability. All of the turtles found in the MIMP, as well as the dugong (if any) are protected species under this Convention.

4. **WORLD HERITAGE CONVENTION.** Tanzania is a party to this convention since 1977, and three of its protected areas (Ngorongoro conservation Area, Serengeti National Park, and Selous Game Reserve) have been proposed as World Heritage Sites having "outstanding universal value."

5. **OTHER INTERNATIONAL CONVENTIONS AFFECTING MARINE AREAS AND CONSERVATION.** According to official policy statements, Tanzania is not a party to the **UNESCO Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention)** but, according to official reports, is looking to join, and to nominate one or more "swamp areas." In addition, Tanzania has signed, but not ratified the following conventions that relate to marine environmental protection: **Convention on the Prevention of Marine Pollution by Dumping of Wastes or other Matters, (London, 1972); Convention on the High Seas (Geneva, 1958); and Convention on the Continental Shelf (Geneva, 1958).** None of these would limit the creation of protected areas within Tanzania's territorial sea.

#### **B. Fishing Agreement with the EC**

In December, 1990, pursuant to its jurisdiction over the EEZ, Tanzania entered into a fishing Agreement with the EC, under which both Parties undertook

-- "to coordinate action, either directly or within international organizations, to ensure the management and conservation of the living resources in the Indian Ocean," particularly in respect of "highly migratory species", as defined in UNCLOS and listed in one of the schedules to the Agreement, and

-- to facilitate the relevant scientific research.

Should Tanzania decide to adopt conservation measures which affect EC vessels, those measures must "be based on objective and scientific criteria and shall apply equally to [EC] and other third country vessels without prejudice to special arrangements between developing States within the same geographical area including reciprocal fishing arrangements."

The Agreement gives Tanzania access to information by requiring all EC vessels authorized to fish under the agreement to provide information related to their catch and to cooperate with Tanzania inspectors and biologists.

The Agreement establishes a joint committee to oversee matters of implementation, integration and proper function thereof. Among this committee's functions are (1) the general duty to review disputes and consult concerning all such matters; and (2) the specific duty to hold such consultations concerning any conservation measures which Tanzania adopts that affect the Agreement so that those measures can be adapted as annexes and protocols to the Agreement.

The "fishing zone" covered under the Agreement is not described, either therein or in the Act implementing the EEZ (see C.1.b, below). In particular, it is not clear on the face of the Agreement whether the territorial sea is included in or excluded from the "fishing zone."

The proposed MIMP is entirely within territorial waters. Many provisions of the proposed legislation may be used to limit or curtail fishing in the MIMP by outside fishermen, or those using non-traditional fishing methods. Such provisions will treat all foreign fishing activities equally.

## **C. General Domestic Legislation**

### **1. Basic Governmental Authority**

**a. CONSTITUTION.** Tanzania's 1977 Constitution, as amended in 1980 and 1984, is the basic law of the land. The former People's Republic of Zanzibar (consisting of Zanzibar, Pemba and numerous smaller islands), retained exclusive jurisdiction within its boundaries for all matters except topics specifically referenced in the Constitution of the United Republic of Tanzania, which are legislated by the National Assembly. Zanzibar's jurisdiction over its territorial waters is within its exclusive jurisdiction, as are matters of conservation and environmental protection. Zanzibar has a separate constitution, most recently amended in 1985.

**b. TERRITORIAL SEA AND EXCLUSIVE ECONOMIC ZONE ACT, No. 3, 1989.** By this act, Tanzania returned to a 12-mile territorial sea and adopted a 200-mile exclusive economic zone. The Act specifically enumerates Tanzania's sovereign rights within the EEZ "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living" therein, and specific jurisdiction with regard to "the protection and preservation of the marine environment." The act forbids unauthorized exploration, exploitation, research, or other economic activity within the EEZ, except by Tanzanian citizens and vessels of Tanzanian registry.

Tanzanian laws concerning, inter alia, fisheries, petroleum, mining, and national environmental management are made automatically applicable "to the exploration of natural resources and the question of marine pollution" in territorial waters and the EEZ." The purview of other legislation may be similarly extended by the Minister of Foreign Affairs, in consultation with Parliament and the appropriate administrative authority.

Within the EEZ, Tanzania is generally free to regulate or restrict activities. It may not prohibit the innocent passage of ships, however, but it can regulate them (by designating sea lanes, for example.) Fisheries officers, and police, customs and defense personnel are authorized to police the EEZ.

Mafia Island is less than 24 miles from the shoreline of mainland Tanzania; hence the entire Mafia channel would appear to be within Tanzania's territorial sea. "Innocent passage" by foreign vessels in the channel may be regulated in respect of the conservation of living resources of the sea; the prevention of infringement of Tanzania's fisheries laws and regulations; or the preservation of the environment of the coastal state.

## **2. General Procedural, Interpretive and Administrative Laws**

**a. INTERPRETATION AND GENERAL CLAUSES ACT, Cap. 1, 1972.** This Act establishes a number of interpretive conventions relative to Tanzania laws. Of particular interest are provisions for reorganization of offices or ministries, which specify that where an office or agency is eliminated by a reorganization, any statutorily created duties of that office (including appointment to advisory boards or other bodies) shall be re-delegated to the successor office, if any. If no single office is named as successor to the eliminated office, a Presidential order may be sought to determine who shall undertake such duties.

Statutory authority to make regulations or issue orders may be both specific or general, and the enumeration of special purposes for regulations does not derogate the generality of this power. The regulating authority may set specific penalties for breach of the regulations; however, such penalties may not (without specific statutory authorization) exceed seven thousand shillings (\$35 US) or imprisonment for more than two years. Where a corporation is charged with committing an offence, both the corporation and all persons "concerned as directors or officers with the management of the affairs of such body corporate" will be liable to punishment as violators, unless they can prove lack of knowledge of the offence. Under similar provisions an employer may be liable for the acts of his agents or employees.

Powers of appointment, when given, are also powers of termination. The person exercising such a power is also authorized to remove appointees. The actions of a board, committee or similar body cannot be invalidated solely because of a defect in the appointment or qualification of any of its members.

**b. LOCAL GOVERNMENT (DISTRICT AUTHORITIES) ACT, No. 7, 1982.** This Act creates a system for the registration of villages, and the creation of a village assembly (consisting of every villager above 18 years of age), and the

empowerment of a village council for each village. A similar system is provided for townships.

Village and township councils ("local authorities") may establish such permanent and special committees as they deem necessary or expedient for effective and efficient discharge of their functions as the local authority. Such committees may be authorized to exercise any of the local authority's functions except the adoption of bylaws and the making of decisions concerning revenues (imposing fees and borrowing money.)

The district council and the wards are the next level of jurisdiction. Many national laws and systems are enforced primarily by district officers. In particular, primary enforcement of the Fisheries, Forestry, and Wildlife Conservation Acts, although overseen by Divisions of the Ministry of Tourism, Natural Resources and Environment, is undertaken by the each District's Fisheries Officer, Forestry Officer and Game Officer, respectively. All sources consulted agreed that these officers, at the district level, cooperate well in enforcing natural resource laws, regardless of any competition among their respective divisions on the national level.

c. **CRIMINAL PROCEDURE ACT, No. 13, 1985; MAGISTRATES' COURTS ACT, No. 2, 1984.** These Acts specify the powers and jurisdiction of Tanzania's multi-level magistrate's court system, which determines all cases brought under the locally enforced natural resource conservation statutes. Where justified by the caseload, the Minister may authorize a resident magistrate to try any category of offense, or specify an area of extended power.

Private citizens who become aware of the commission of, or intent to commit, a criminal offense must report it to the authorities. The Acts do not provide for "citizen's arrest" and other types of temporary detention of violators by private citizens. Given that relatively few officials are charged with (and equipped for) patrolling Tanzania's coastal waters, and that response times within the large park area may be lengthy, the creation of a very carefully circumscribed private power of temporary detention may be of value, at least for the MIMP, particularly if local support for the marine parks continues to be strong.

d. **LAND ACQUISITION ACT, No. 47, 1967.** This Act provides for government acquisition of any land for public purposes. In addition to traditional public works, the term "public purpose" includes provision of sites for industrial development, mining, and use in agricultural development. Thus, this provision may be used to encourage economic development, as well as to acquire lands for public use.

The Act authorizes entry onto property for investigation of possible acquisitions. Any estate in land may be acquired under this Act. Full procedures for acquisition, compensation and appeal are included. Specific redevelopment provisions are also enumerated.

Compensation is paid "upon the same terms and conditions as the land acquired was held;" however no compensation is owed for any vacant land. Land that has only been fenced, hedged, levelled, ploughed, cleared, or used as a parking site, or land from which a building has been demolished, shall be considered vacant. No extra compensation can be paid for the probable enhancement of land values in future. Compensation for land on which

development is "inadequate," is limited to the value of the "unexhausted improvements in land." Rural land is inadequately developed if its development is not "in accordance with good estate management," in light of all known factors concerning it.

Reportedly, regulations under this Act limit all unpermitted construction and development within 200 meters (some sources said 100 meters) of the highest high water mark of all shorelines. These regulations were not available to the consultant. Shoreline areas within Tanzania are well utilized in many places, both by residential and commercial ventures. On Mafia, many dwellings were observable within 200 meters of the shore.

#### **D. Laws and Policies Relating to Natural Resources**

##### **I. Fisheries Laws and Marine Conservation**

a. **FISHERIES ACT, No. 6, 1970.** This act regulates the development and control of fishing industries, by a series of licensing, registration, fee, and penalty programs, as well as a series of prohibitions and controls on fishing methods and mechanisms, imports, exports, polluting and other hazardous activities, all of which are to be specified by regulation.

i. **Marine Reserves and Sanctuaries.** One sentence in the act authorizes the Minister, by regulation, to establish marine parks, sanctuaries or reserves "for any purpose whatsoever." As discussed in Part III, below, this bare authorization did not appear to the Steering/Technical Committee (or to the consultant) to provide an appropriate mandate and legislative basis for the MIMP and reserves. In the proposed Marine Parks and Reserves Act (attached to this report), this single sentence authorization is repealed and superseded.

ii. **Protected Species and Areas.** All aquatic and amphibious creatures, except those animals protected under the Wildlife Conservation Act (marine mammals), are regulated under this Act, either by licensing or outright prohibitions. The act authorizes the adoption of regulations protecting "spawning areas" as well as generally preventing the "obstruction and pollution of territorial waters."

As mentioned several times during this consultancy, the Act does not specifically discuss coral mining. Arguably, coral could be regulated under license provisions limiting the taking of "aquatic flora" -- a term which specifically includes "coral" within the enumerated definition -- or under basic limits on capture of fish and use of fish products (since coral is an animal, and therefore satisfies the general definition of "fish.") No specific regulations on this topic exist under either provision.

iii. **Enforcement.** Fisheries officers and police are empowered to board and search any vessel or premises and to seize illegally obtained or used fish or gear. Vessels and equipment used in the commission of an offense may be forfeited.

Maximum penalties for violation of the regulations are 20,000 shillings (\$89 US) or imprisonment of five years or both, for specifically listed offenses, and 10,000 shillings or two years in prison or both, for other contravention of the regulations.

**b. FISHERIES PRINCIPAL REGULATIONS, 1989.** Three levels of direct regulatory control are imposed under these regulations:

- (1) registration of all fishing vessels;
- (2) licensing of all fishing vessels (except government-owned vessels); and
- (3) licensing of fishermen and dealers in fish and fish products.

The regulations apply to both coastal and inland waters.

**i. Licenses.** Terms and conditions may be imposed on any license, as "necessary or expedient for the carrying into effect of the objectives and purposes of the Act and of these regulations," so long as conditions are not inconsistent with the Act or regulations. Particular conditions may restrict or control fishing methods or equipment, fish disposal, the number of fishermen or vessels employed in a particular purpose, closed seasons, and minimum size requirements. Licensees may be required to keep detailed records concerning their catches and the disposition thereof. Licensees are forbidden to kill sea turtles or to deal in species listed as endangered under any international convention to which Tanzania is a party.

A "Special License" may be granted allowing the taking of fish or aquatic flora for scientific and educational purposes or in food emergencies. Even under this provision, however, the taking of any protected species is prohibited, as is any "fishing in any Marine Reserves, parks or Sanctuary." This provision suggests that no licensing of these activities can be permitted except under special regulations or legislation. This is the only provision in the Principal Regulations to mention marine parks or reserves; there is no discussion of them in regard to ordinary licensees.

**ii. Offenses.** These regulations specify prohibitions on dynamite fishing, and poisoning or polluting any waters, whether by fishing practices or other means. As such they may supersede the provisions of the specific 1982 Regulations (discussed at D.I.d, below) covering the use of explosives or poisons and other water pollutants, but do not expressly do so. Also forbidden are any activities which disturb spawn or spawning fish, or any bed, bank or shallow in which they may be found. The regulations also limit import of fish species, and restrict the use of certain fishing methods and equipment. These restrictions may be specific to particular sites.

**iii. Penalties.** Violators may be subject to fines of not more than 10,000 shillings (\$45 US) or imprisonment for not more than 2 years or both for first offenders and approximately double that for second offenders. For dynamiting or poisoning fish, and for foreign vessels fishing in Tanzanian waters without permission, the minimum sentences are 10,000 shillings or three years imprisonment or both.

**c. FISHERIES (MARINE RESERVES) REGULATIONS, 1975.** Adopted in reliance on the one-sentence authorization in the Fisheries Act, these regulations

designate seven areas (those which the earliest study (Ray, 1968) proposed for marine park protection) as "marine reserves."

i. **Prohibited activities.** Within the designated areas, no one may

--collect any fish or other marine organism or have any fishing equipment in his possession;

--cut, carve, injure, mutilate, remove, displace or break off any undergrowth or formation or other flora;

--conduct mining, drilling or filling activities, dig any hole or impair any natural habitat or underwater scene;

--destroy, mark, deface, displace, remove or tamper with any sign, notice, placard or float;

--swim, wade, dive, or use diving equipment (except scientific research personnel who have obtained permission from the Director) or operate or anchor any vessel in a manner that would cause damage to marine life or formations.

Before entering a marine reserve, prior approval must be obtained from the Director of Fisheries.

ii. **Penalties.** Contravention of "any provision of these Regulations" can subject the guilty person to fines up to 20,000 shillings and imprisonment up to five years.

iii. **Specific reserves.** Two of the areas designated under this regulation, Chole Bay and Tutia Reef, are within the boundaries of the proposed Mafia Island Marine Park. Their total area constitutes much less than 10% of the area proposed for inclusion in MIMP.

d. **FISHERIES (EXPLOSIVES, POISONS, AND WATER POLLUTION) REGULATIONS, G.N. No. 109, 1982.** These regulations implement statutory prohibitions on dynamite fishing, fish poisoning or the possession of the instruments of these activities. Possession of fish obtained by these means is also an offense, as is any action or inaction which knowingly introduces or permits any solid, liquid or gaseous matter to pollute the waters.

Penalties may be 10,000 to 15,000 shillings (\$45-65 US) and/or imprisonment for not less than three nor more than four years, as well as forfeiture of equipment and illegally obtained fish or other products. If explosives or electronic devices have caused the harm to coral, the penalty shall be 20,000 shillings and/or five years in prison. Water pollution violators may be required to clean up polluted waters.

e. **FISHERIES (INLAND WATERS) REGULATIONS, G.N. No. 5, 1981.** These provisions regulate fishing methods in inland waters, designating closed seasons in specific areas of the great inland lakes, requiring that catches be landed at specific stations, and specifying the sizes of nets and the type of implements that may be used in freshwater fishing.

f. **OTHER FISHERIES REGULATIONS.** A few government officials have suggested that additional regulations may exist relating to marine reserves. Reportedly, for example there may be regulations or orders adding several other areas (one source said that all offshore islands were included) to the list of protected marine reserves. The consultant could not find such a regulation, nor any other evidence that it exists. As discussed in I.B.2.e, temporary protection of some or all of the offshore islands under the existing Marine Reserves Regulations may be appropriate.

## 2. **Wildlife, National Parks and Conservation Area Laws**

a. **WILDLIFE CONSERVATION ACT, No. 12, 1974.** This Act governs the protection of wildlife by the Game Division of the Ministry, authorizing the declaration of game reserves, partial game reserves, and game controlled areas.

i. **Basic provisions.** The capture of and trade in endangered species, animal products, and trophies is rigorously controlled under this Act. Hunters, authorized hunting associations, photographers, and those seeking to capture protected animals must obtain licenses as well. Special exemptions may be made for food emergencies and for the needs of scientific researchers, museums and educational institutions. The Act does not specifically implement CITES; but, appears to have been drafted with CITES in mind. (See II.A.2.)

The Game Division is authorized to require security in the form of money or a bond not exceeding 5000 shillings (\$22 US) from licensees and permittees, to ensure compliance with the Act and regulations.

ii. **Protected species and areas.** Any vertebrate animals may be protected under this Act, in two ways:

-- Creation of protected areas; and

-- Prohibition of the unlicensed hunting, killing, injuring and taking of listed "game animals" throughout Tanzania.

Technically, the Act could be used to protect vertebrate marine animals as well as terrestrial game; however, it does not offer any protections for invertebrates, plant species, or other marine features. Neither the Act nor the regulations contain any specific discussion of marine species or areas.

### iii. **Declaration of Protected Areas and Game.**

-- **Game reserves may be declared by the President.**

- **Game controlled areas** may be declared by the Minister.
- **Partial game reserves** may be created by the Director of Game.
- Animals may be declared **national game** by the Minister.

In each case, the only procedural limitation is the requirement of publication in the Gazette. According to officials within the Game Division, the process may take as little as three to five months (for the declaration of a partial game reserve.)

**iv. Nature of Protections.** In game reserves, entry is forbidden, except for residents and persons travelling on a highway which crosses through the reserve unless permission from the Director of Game is obtained. Possession of weapons, grazing stock, and cutting vegetation are also strictly controlled.

In both game reserves and game controlled areas, hunting, trapping and other activities that damage or disturb animals are forbidden, as are possession of any weapon for these purposes, except with permission from the Director of Game. Partial Game Reserves protect a specific animal or class of animals, within the specified area in the same manner as Game Reserves.

National game may not be hunted, killed, captured or wounded without first obtaining permission from the Director. The Director may also declare closed seasons on any animal or class of animals.

**v. Penalties.** Penalties vary greatly, with fines from 3,000 to 100,000 shillings (\$14 to \$444 US) and imprisonment from three months to seven years depending on the nature of the offense and the type of animal that has been killed, captured, damaged or molested. The Act also provides for compounding of offenses, and payment of rewards for information leading to the conviction of violators.

**vi. Procedural Matters.** In any allegation of illegal wounding, killing or capturing any animal, the accused bears burden of proving that the action was done in accordance with the Act and any permit or license. A certificate from the Director of Game is prima facie evidence of the value of trophies taken in violation of the provisions of the Act. The presence of a trophy in the defendant's property or baggage creates a rebuttable presumption that the trophy was in the defendant's possession. A similar burden of proof applies regarding possession or sale of a trophy or possession of an illegal weapon.

**vii. Wildlife Protection Unit.** The Wildlife Protection Unit within the Game Division is charged with responsibility for protecting wildlife from unlawful hunters, as well as general enforcement of the provisions of the Act. The Director of Game may organize the unit, with the consent of the Minister. A Wildlife Protection Fund is also created, administered by a corporate "Board of Trustees."

**b. WILDLIFE REGULATIONS, GNS 265-278, 1974.** These regulations focus on the licensing of tourists and sportsmen, their taking of game, trophies,

and photography. Appropriate weapons and hunting and capture methods are specified therein.

Game licenses and permits for the capture of animals are valid only in the specific areas named in the license. Separate provisions govern licenses granted to residents. The Director of Game has broad discretion to issue or refuse to issue licenses, based on his determination of the needs of the applicant, and the availability of game. A schedule of license fees is provided. Penalties and matters of compounding offenses is also fleshed out.

The regulations contain specific lists of game for which a license is required and of "national game" as defined in the Wildlife Act. Trophy registration requirements are also specified.

c. **NATIONAL PARKS ORDINANCE, No. 12, 1959 (Amended, No. 37, 1962; No. 44, 1963; amended, No. 7, 1967, amended by Game Parks Laws (Miscellaneous Amendments) Act, 1975).** This act established Serengeti, the first of Tanzania's game parks, and authorizes the creation of additional parks.

i. **Protected areas.** National parks may be created by proclamation of the Minister, with the consent of Parliament. Parliamentary consent is also required in order to change or revoke such a declaration. While not specifically limited to terrestrial areas, the Act does not refer to the protection of marine areas, providing only for declarations of "any area of land" as national parks. There are no specific limitations on fishing in national parks, but TANAPA's generic right to regulate is expansive enough to include the development of such restrictions. Interestingly, despite the lack of any express provision for marine areas, it is generally expected that TANAPA will be responsible for any protected freshwater marine areas. (See III.C.1.c.)

Upon the declaration of an area as a national park, all interests (other than mining rights) within the park's boundaries cease to exist, subject to compensation pursuant to the Land Acquisition Act (see II.C.2.d). The Minister may grant mining and other rights within national parks, so long as such grants are "not inconsistent with the purposes of the Ordinance." No specific statement of purposes is included in the Ordinance.

There are no provisions for buffer zones under this Act, and no regulations may be created regarding actions outside park boundaries, even actions that affect the parks. Concern about diminishing wildlife populations within parks has been raised in many recent studies and plans. One model under study is the recent proposal in Kenya which includes cash payments to nearby landowners whose lands are used by protected game.

ii. **Park administration.** Tanzania National Parks (TANAPA) is invested with authority to control, manage, administer and maintain national parks, and with specific authority to appoint officers and to develop and regulate all types of activities relating to the parks and furthering their goals.

TANAPA is authorized to --

-- construct structures, infrastructure and utilities as needed in the parks;

-- "take steps to ensure conservation and security of animal and vegetable life" within the parks, including setting aside breeding grounds and nurseries, recommending sites for tourist facilities, and licensing tourist and other operations and concessions;

-- sell or exchange specimens of animal or vegetable life or acquire any specimen for introduction into the parks;

-- operate transport services to the parks and to other places of scientific, historic or archaeological interest "which may be conveniently operated in connection with any national park;" and

-- establish and manage facilities for publicity, education and promotion related to the national parks.

**iii. Residence and entry.** No person may enter or reside in a national park without a permit, except for officers and trustees of the park authority, in furtherance of their duties. Holders of mining rights may exercise those rights only after written notice to the Trustees, and subject to limitations and conditions imposed at the time of such notice.

**iv. Offenses.** Hunting, killing or capturing animals (except in defense of persons or property) or disturbing their eggs or nests are illegal within national parks, as are possession of traps, weapons, poisons and explosives. Permission must be obtained before entering or residing within the parks. Regulations may be developed controlling access, residence, tourist and professional activities; restricting the introduction of species into the park, defacing structures or natural phenomena; and setting the requirements for licensing concessions.

Authorized officers may seize property used in the commission of offenses; anything illegally possessed in a national park; any domestic animals or vegetation introduced into the parks without permission; and any plants, animals, or other things illegally caught, killed, or sold.

**d. NATIONAL PARKS REGULATIONS, G.N. No. 255, 1970.** These regulations authorize and require the appointment of a Warden for each park, and empower the Director and Warden to impose restrictions on access to or activities within any park.

Basic rules in this document are applicable to all parks, revoking pre-existing regulations developed for individual parks. Permits (which are revocable if necessary in the Warden's opinion for proper management and control of the park) are required for entry, camping or driving a vehicle in a park. Special permission is required for persons who wish to bring special vehicles into the park (aircraft, 5-or-more-wheeled vehicles, etc.); discharge weapons; light fires; enter areas not normally used by the public; leave a vehicle (except in very limited circumstances); remove from the park or introduce into the park any plant, animal or other feature; post any notice or advertising; or erect any structure or fence. The

creation of any disturbance or nuisance, and the impersonation of an officer or other authorized person are strictly forbidden.

Individual park rules may be developed (in the form of written orders, notices and directions from the Park Warden or the Director of TANAPA) to set hours or periods during which the park will be closed; to close areas of the park; to restrict vehicular traffic; to prohibit the use of musical instruments or recording devices; and otherwise to prohibit damage, injury, disturbance, or provocation of any animal or plant in the Park.

e. **NGORONGORO CONSERVATION AREA ORDINANCE, No. 14, 1959; amended by Game Parks Laws (Miscellaneous Amendments) Act, 1975.** There are two critical differences between the Ngorongoro Conservation Area and the national parks. One difference is the full-time residence of members of the Masai Tribe within the area. Their residence is protected by statute as are their rights to hunt, sell products and charge admission to areas and events within the Conservation Area. The second important difference is that the Ordinance contains no provisions for the designation of any additional protected areas thereunder.

i. **Purposes.** The purposes of the creation and administration of the Conservation Area, as stated in the Ordinance, are "the conservation and development of the natural resources of the Conservation Area."

ii. **Funding.** To accomplish these objectives, the Ordinance establishes a Conservation Authority, which is charged with all administrative responsibility in the Area. Initially, all moneys collected by this authority were to be paid into the general revenues of the Treasury. Currently, the Authority is a parastatal body with a right to retain funds generated from operation of the Conservation Area and received from other sources.

iii. **Control of residence in the Conservation Area.** The Authority may require all persons who reside within the Conservation Area to obtain and present on demand a certificate of residence. These certificates are unrelated to the entry permits issued by the Authority to tourists and other visitors. The denial of a certificate of residence, or the imposition of conditions on such certificates may be appealed to District Officials.

The Authority may limit residents' settlement in, access to, agricultural cultivation of, grazing on, deforestation of, and grading or construction on, specific areas within the Conservation Area, in accordance with the purposes of the Ordinance. Special provisions discuss the manner of disseminating such orders issued by the Authority.

### 3. Forestry Laws and Policies

a. **FOREST ORDINANCE, Cap 389, 1959 (Amended, No. 1, 1965).** This Ordinance provides for the management and preservation of forest areas. Land areas may be protected by the creation of territorial forest reserves, local authority forest reserves, and privately entered forestry dedication covenants. Particular types of trees and plants may be protected even if not located on a protected area.

i. **Creation of reserves.** Reserves can be established only by following a specific procedure, including the solicitation of public comments and objections. A description of the Reserve must be published in the Gazette and exhibited at the office of every Area Commissioner in any district whose lands are included. Any comments received in response to the solicitation must be considered and investigated.

Land rights affected by the declaration must be assessed and compensated. Preexisting rights to use land and forest produce may, if proven, be exercised within the area after it has been declared a reserve. The creation of new rights, however, is strictly limited. Private forestry covenants may be entered into by mutual agreement, subject to appropriate conditions.

ii. **Prohibited activities.** Logging, pole cutting and other harvesting of forest produce, as well as construction and agriculture activities on forest reserves, are permitted only

-- with a license from the reserve authority (local forestry officials or the Forestry and Beekeeping Division), or

-- under a general or specific exemption regarding all or part of a reserve.

iii. **Protected Species.** No vegetation may be removed from or damaged on a forest reserve except in accordance with this ordinance. Particular trees or classes of trees (so-called "reserved trees") may be generally protected throughout the country (except on freehold or leasehold parcels) unless such trees are cut for use in African domestic arts and crafts, or for clearing land for African cultivation in localities where cultivation is not prohibited under any local rules or orders for the control of grazing or the prevention of soil erosion.

iv. **Offenses and penalties.** A series of offenses and penalties are created, with fines of three to five thousand shillings (\$11 to 22 US) and imprisonment of six months to two years, as well as forfeiture of any ill-gotten forest produce, illegally cultivated crops, or illegally grazed stock. The offender may also be required to pay the value of any forest produce damaged by his action and to remove any structures or enclosures.

b. **FOREST REGULATIONS, GN Nos. 73, 76, 138, 243, 250, 1959; GN Nos. 131, 314, 1965.** These regulations provide procedures for the Forest Managers' disposal of specified types of forest produce, and the prices to be obtained, and records to be kept. License provisions are specified, as are provisions for the marking of wood taken in compliance with the law. The regulations also list reserved trees. A general exception to the prohibition on removal of forest produce is created for persons collecting dead, fallen fuel wood for domestic use. A mechanism is provided for appeals from decisions made under the Act.

c. **PROPOSED FOREST ORDINANCE AMENDMENT, 1982.** Designed to regularize the gazetted forest system, this bill is still referred to as the "Forest Act proposal of 1982" despite the passage of nearly 10 years since it was proposed.

(Tanzania Forestry Action Plan, Ministry of Lands, Natural Resources and Tourism, 1989). In addition to maintaining the main provisions of the Forests Ordinance, it creates additional categories of protection. It also provides for the mapping of forest reserves (a project that has reportedly been rather haphazard, and occasionally quite inaccurate, in the past), the preparation of management and working plans for the reserves, the leasing of the state forests, and coordination of forest reserves with other government regulations activities such as those dealing with beekeeping, water resources, and fire-fighting.

**d. TANZANIA FORESTRY ACTION PLAN 1990-1991, Ministry of Lands, Natural Resources and Tourism, September, 1989.** This report and plan, examines comprehensively the issues and problems relative to the management of forest and related resources in Tanzania. Relevant to the marine parks proposal and conservation programs in Tanzania, the TFAP notes that

"The prime objective of the national parks is the protection, management and development of their biological and ecological resources for non-consumptive ends such as tourism, education and research. No hunting, grazing, cultivation, logging or settlement are allowed... None of the national parks have a management plan that clearly defines the type of management and administration necessary for development. Management has therefore concentrated on anti-poaching and the development of tourism.

The Wildlife Conservation Act regulates hunting and conservation of game animals in game controlled areas but fails to address itself to other forms of land use [cultivation, settlement, grazing and tree felling.] Conflicts between wildlife conservation and human activities are therefore a common problem in Game Controlled Areas."

TFAP recommends a management plan for conservation areas, that has the following elements:

- improvement of anti-poaching effectiveness;
- reduction of conflict between wildlife conservation and local people;
- introduction of a management plan and a zoning system for each conservation area; and
- initiation of a programme under which wildlife conservation will contribute to rural development.

**e. MANGROVE MANAGEMENT PLAN, TANZANIA, Ministry of Tourism, Natural Resources and Environment, 1991.** This excellent document examines in detail the needs of the mangrove swamps -- a critical habitat on which many marine and terrestrial species are dependent for breeding grounds, food, and protection.

There is some confusion within official circles in Tanzania, concerning the legal status of mangroves and the authority of government agencies to regulate mangroves swamps. In 1987, an order was reportedly published that included mangroves among the trees which could not be cut without advance permission. (Unfortunately, that order was not available for the consultant's review.) The order has, however, created confusion about the legal

status of mangroves and those who harvest them (mangroves are a major source of poles-- a necessity to construction in Tanzania.) Some have described the rule as "making a forest reserve out of any area in which a mangrove is found."

Professor Samesi, in the Mangrove Management Plan, makes it clear that the order merely adds mangroves to the list of protected trees, commenting on the ways in which the order may have added to confusion and dissention concerning this vital conservation effort:

"The major obstacle which has hitherto prevented rational use and conservation of mangroves in Tanzania has been a management policy which consists of controls and prohibitions without the means and capability to carry these out. It has not considered the traditional interests of people in their resource or their involvement in its management. The national ban on cutting mangroves, imposed in 1987, poisoned the relationship between people and government bodies even further."

The actual ban may be less harsh than public opinion believes. According to the Forestry Division, the ban does not apply to mangrove cutting and other forest produce harvesting for strictly private domestic use in the area in which they are cut. It is not clear whether this exception restates an informal practice or a provision of the order or regulation.

Professor Samesi also comments on the legal deficiencies of current mangrove management programs. "[T]he policy does not reflect the complex nature of the dynamic ecosystem and the need to involve several government and non-government bodies in decisions concerning its management. No overall authority exists which effectively coordinates conflicting issues, such as salt license and land titles, which concern the Division of Forestry, the Division of Lands and the Ministry of Water, Energy and Minerals simultaneously."

#### **4. Other Resource Management Laws**

a. **MINING ACT, No.17, 1979.** The provisions of this Act specifically apply to the "seabed and subsoil of the continental shelf." Among its restrictions, the Act controls the collection and mining of "rock, stone, gravel, sand, clay, volcanic ash or cinder or other minerals being used for the construction of buildings, roadways, dams, aerodromes or similar works, but does not include limestone burned for the production of lime or material used in the manufacture of cement." Any source of regulated building materials being used in public works must be considered a mine under this Act.

An exception from regulation is provided for the collection of regulated building materials for domestic use on the land from which the materials have been taken.

The Act licenses exploration for minerals, and sets out the rights of the holders of mineral rights. Mineral rights may not be asserted in national parks, forest reserves, game reserves, range development areas or the Ngorongoro Conservation Area, except with written consent from both the Minister responsible for mining affairs, and the official with authority over the particular reserve or area.

b. **THE PETROLEUM (EXPLORATION AND PRODUCTION) ACT, No. 27, 1980.** (Applies to both Zanzibar and mainland Tanzania) Among other things, this Act authorizes the Minister (responsible for petroleum exploration and development) to license the exploration of enumerated areas. Investigation may be authorized or required concerning the "physical impact of the possible effects of the industry on the environment." The Minister can require the licensee to provide copies of reports, analysis, and data.

c. **ANTIQUITIES ACT, No. 10, 1964; Amended. No 22, 1979.** [Many of the terms of this Act have been changed by the 1979 amendments to limit their scope to Tanganyika, thus excepting Zanzibar.] Under this Act, a list of "monuments and conservation areas" is created, and additional places may be added by the Minister charged with antiquities. Listed places may be entered at any time for inspection, repair or excavation, except that private residences may only be entered after 48 hours notice. The Minister may, but is not required to, acquire listed monuments or areas, in accordance with the Land Acquisition Act, as modified by specific provisions of this Act. Other relics may be protected under this act as well. Transactions and excavation involving such relics are strictly controlled as well.

The Act establishes an Advisory Council for Antiquities, whose duties are to develop a national policy on antiquities, and perform a number of other duties relative to the protection and identification of monuments, conservation areas and relics. The Act also creates a National Fund for Antiquities, to be administered by the Director of Antiquities.

It is an offence to deface or damage a listed monument or area, or to permit an animal to do so. The owner of a listed property may not demolish, alter, make additions to, or repair any monument without permission.

Within the MIMP is an area of many large and ancient historic ruins. These ruins do not appear to have been listed under this Act, as yet. There was, among the attendees of the MIMP Workshop, great interest in protecting these areas as a historic resource and a tourist area (either under the Antiquities Act or under a provision of the proposed Act.) The appropriateness of protection of this area should be further examined by archaeologists and historians.

d. **PUBLIC LANDS (PRESERVED AREAS) ORDINANCE, Cap 338, 1954.** Despite reference to "preserved areas," this act is not focused on conservation. It retains areas designated under the Act for future settlement and development, by forbidding current occupancy of areas. It provides for surveys and marking of the boundaries of every such area.

e. **PROTECTED PLACES AND AREAS ACT, No. 38, 1969.** This act actually relates to the designation of areas which local officials feel should be guarded or protected by government officers and watchmen. No criteria are stated for this designation.

## E. Zanzibar Fisheries and Conservation Laws

There are no plans for the merger or integration of the conservation and coastal planning operations of Zanzibar and mainland Tanzania. Hence, a summary of the laws of Zanzibar is outside the scope of this consultancy. Zanzibari officials did, however, express hope that the experiences of the Mafia Island Marine Park would provide useful experience and information for Zanzibar's proposals.

**1. Current Proposals.** Currently the Zanzibari government is very interested in creating parks, in conjunction with other activities relating to environmental matters. Last year, a Commission on Lands and Environment proposal concerning conservation and the creation of national parks excited swift and positive response in the highest levels of government. The Commission intends to go forward quickly to implement some of these recommendations.

One recommendation involves the creation of national parks, including marine parks. Two pilot parks have already been proposed. Current proposals recommend that an independent authority be created to manage the parks, utilizing some of the benefits from the park operations for the local communities.

Zanzibar is also discussing the development of an integrated coastal management plan. Specialized zoning will be developed for the new parks and for other existing and proposed conservation areas.

**2. Existing Laws Relevant to Marine Parks.** Zanzibar has gazetted eight forest reserves (pursuant to authority in the Forest Reserves Principal Legislation (Cap 120), 1946)) and legislated the protection of four mangrove forest reserves (Woodcutting (Protection and Control of the Chwaka Mangrove Forests) Rules (Gn. 99), 1946). A Wild Animals Decree (Cap. 128) protects animals listed on a schedule (which includes the hawksbill turtles.) Under the Decree, it is an offence to kill, wound, take by any method, expose or offer for sale, possess (whether alive or dead), export or attempt to export any listed animal, or aid and abet in these acts. A Wild Bird Protection Decree provides similar protections for any bird not bred in captivity except the Indian crow.

Zanzibar's Fisheries Act of 1988 is, in virtually all areas, similar to the Tanzania Fisheries Act, described above. Although it contains no specific provisions for marine reserves or parks, it does contain many conservation measures, including licensing or restriction of fishing, catches and fishing methods, and declaration closed seasons and controlled areas.

Other legislation relevant to marine parks includes its Woodcutting Amendment Decree, 1968 (Presidential Decree #4), which restricts the cutting of wood and mangrove poles on government land; and the Public Land Decree (Cap 93), Removal of Natural Products Rules, 1984, which specified that no person may excavate, remove, transport, or sell any stones, sand, gravel, lime or other natural produce of this nature from public lands without a permit. That decree also authorizes the minister to declare land or seashore to be protected areas, closed to any removal of natural products.

### III. LEGISLATIVE PROPOSAL

The proposed Marine Parks and Reserves Act and regulations (attached to this report) have evolved through the course of this consultancy, in an effort to reflect the changing objectives of the Steering/Technical Committee in its deliberations and documents. Critical issues affecting the decisions of the consultant include (1) the stated objectives driving the MIMP proposal; (2) the status of existing relevant legislation; (3) the administrative needs of the MIMP and existing marine reserves and the possibility of future development of additional marine parks; (4) issues of inter-agency cooperation and coordination with other existing and proposed programs; and (5) the physical characteristics of the proposed marine park, including appropriate protection for important coastal dry land areas.

#### A. Need for Additional Legislation

The first consideration in this consultancy was whether the creation of the Mafia Island Marine Park, and future marine parks and reserves should rely on existing statutory authority. As noted above, the Fisheries Act, 1970, contains specific authority for the creation of marine parks and reserves. Pursuant to that authority seven areas have been designated as "marine reserves." The one-sentence authorization from the Fisheries Act, however, does not appear to be sufficient legislative authority for the development of marine protected areas, for several reasons.

1. **Unsuccessful Pre-existing Protections.** As stressed by various officials, the history of the 1975 Marine Reserves Regulations is not positive. The dedication of seven marine reserves did nothing to halt the devastation of those areas. Lack of equipment and manpower have made enforcement ineffective, particularly with respect to dynamite fishing. Other methods of harvesting the sea's bounty, although in general legitimately perceived to be benign, may have a deleterious effect on the reefs as well. The collective damage from collection of mollusk shells for export, for example, causes significant harm in the intertidal areas and shallows, as does beach seining. These actions are much more difficult to regulate, particularly where more heinous activities such as dynamiting are continuing. If members of the public are aware of the marine reserves provisions at all, they also know that the protections were not successful. The public attention that will attend passage of a new Marine Parks and Reserves Act coupled with official and public involvement in organizing and regulating the MIMP and future protected areas may (is expected to) dissipate any residual impressions of governmental neglect engendered by the non-enforcement of the pre-existing protections. This perception of a new governmental interest in protecting the MIMP and reserve areas is critical, in light of the speed with which would-be developers have responded to rumors concerning the MIMP proposal. (See I.B.2.e.)

2. **Multiple Sustainable Use.** There is a significant difference between the objectives expressed by the Mafia Island Steering/Technical Committee and the apparent objectives of the existing Marine Reserves Regulations. The latter focus on strict conservation of the reserves and do not protect the needs of local users and scientific researchers. By contrast, the new protected areas will be dedicated to the concepts of multiple sustainable use and conservation. Sustainable development is critical to ensuring

both conservation of the species and habitats within the protected area and protection of the lives and lifestyles of local residents, who depend on the resources of the area, and thus is essential to the success of the proposed Mafia Island Marine Park.

**3. Legislative Direction and Support.** Regarding its regulation of marine species and resources, the Fisheries Division is evolving from a resource-utilization/exploitation perspective to a conservation/management/sustainable-development orientation. Legislative guidance, specifying the needs to be met, the powers granted, and the methods to be employed in meeting those needs is particularly important at this phase, and may strengthen the Unit's position vis-a-vis applicants for licenses or concessions that do not further the Act's stated purposes.

The use of such specific statements of legislative purpose is not unknown in Tanzania. The act creating the Ngorongoro Conservation Authority contains a specific statement of purpose. This example is important, because the Ngorongoro parallels the proposed Act in seeking to ensure long-term protection of the lifestyles of local residents in a protected area. The statement of purpose is designed to require continued commitment after enactment. As noted below, the general management plan and local involvement aspects of the proposed legislation also promote these objectives.

## **B. Legislative Purposes**

The creation of marine parks and reserves is unusual in Tanzania, in that it will specifically require zoning for multiple sustainable use as an integral component. Administrative licensing and monitoring programs will be instituted, predominantly at the local level, to regulate those uses, generally and seasonally, in order to assure sustainability and the maximum reasonable level of protection of the environment. To do so, the regulating body must balance the short-term desires and needs of many different and competing interests, in order to achieve a mutual long-term goal -- the continued existence of the marine habitat and resources. A clarity regarding legislative purposes and the means of achieving these objectives is essential to their attainment.

**1. Prototype Project.** The immediate purpose of the proposed act is the creation in law of the Mafia Island Marine Park ("MIMP"). It is important to keep in mind, however, that the MIMP is almost universally viewed as a prototype project, which, if successful, will become the blueprint for the protection of many coastal and marine areas in Tanzania and even in Zanzibar. Legislation relating to the Mafia Island Marine Park must tread a delicate balance between the specific needs of Mafia (and the desire to remain focused on the proposal at hand) and the more general need to create one legislative framework that will also encompass future marine parks and reserves.

**a. Future Expansion.** The legislation must allow for the creation of additional protected areas, without future revision or needless duplication of legislation and administration. Expansion may also occur because of enlarged responsibilities and activities within the MIMP, as well as the elevation of reserves to marine parks.

The original MIMP proposal projected a very small initial administrative organization. Two to four persons were to be needed, primarily for oversight and basic monitoring.

Although the current MIMP proposal has increased the initial manpower needs, it remains true that park administration may grow as the activities and needs of the park increase. Similarly, as the marine reserves are more actively administered, or more marine areas are protected, a larger Marine Parks and Reserves Unit may be needed.

The Ministry may determine at some time after the MIMP is well established, to transfer administrative duties to TANAPA, to incorporate them with administration of other protected areas in Tanzania, or to co-ordinate with other conservation, sustainable use, or integrated coastal zone management programs. The proposed Act must accommodate this possibility, to avoid the need for additional Parliamentary action without compromising the basic objectives behind protection of the marine parks and reserves.

**b. Focus of Governmental Efforts.** Many government representatives and other persons interviewed, expressed great concern that Tanzania's initial efforts at preserving the marine environment could easily become too diffused. Pointing to the degradation of the pre-existing "marine reserves," these commenters fear that a new marine protection effort will be ineffective, if it attempts to deal with more than one marine area at a time.

In response to this concern, the proposed Act requires that park-specific zoning and implementation plans and regulations must be developed for each marine park, as quickly as possible after it has been legally established. This provision requires government to focus on one park at a time, not creating a second park until the first is operational. In addition, the legislative requirements in the initial stages of park creation and operation will be kept simple, allowing later innovation after the basic protections are in effect.

One exception to the one-at-a-time requirement described above is the continued protection for existing "marine reserves." In essence, these provisions simply retain for the Fisheries Division, a basic power to protect these areas. Until such time as special provision may be made for these areas without diverting attention from the MIMP, the Unit is not expected to undertake any major efforts regarding the reserves. Given that little manpower has been expended to date for preservation of the marine reserves, retention of their status will constitute no additional cost or effort initially. As noted in III.D.3., there are ways in which even these passive protections may help to prevent permanent harm from development in these areas.

**2. Specific Objectives of the Legislation.** As detailed in the Rationale and Strategy of the Mafia Island Marine Park, the MIMP proposal seeks to promote four primary goals:

- (1) To protect pristine ecosystem processes and areas of high species and genetic diversity;
- (2) To stimulate rational development of unexploited natural resources including tourism;
- (3) To promote the sustainability of existing resource use incorporating recovery strategies for over-exploited species and resources; and

- (4) To ensure the involvement of Mafia residents in planning, developing and managing the Park, with priority of resource-utilization and other economic opportunities given to Mafia residents (pursuant to goals 2 and 3.)

In addition, the document lists 24 "objectives" in the categories of conservation, fishing, tourism, and development.

These goals and objectives were developed with local input and participation, at the Mafia Workshop. This method of goal development increases the number of potential concerns that can be dealt with before actual problems arise; and it gives all affected parties the knowledge that they participated and that their needs were considered. There is thus a greater chance of general support for the project from the affected communities, who better recognize the individual and collective benefits that will accrue from the enforcement of the protected status.

The development of consensus in creating the park and setting its goals is only the first step in this direction. Continued existence of this public approval may depend on encouragement of public participation throughout their implementation and the operation of the marine park, as discussed below, using these goals as a primary reference.

**a. Generating a Legislative Statement of Purpose.** When focused on the long-term perspective, the objectives of the various interest groups were virtually identical: Protection of the critical habitats and breeding grounds in the marine area, in order to insure a continuing and sustainable population of fish and other aquatic products, whether for purposes of sustaining the local livelihood, guaranteeing long-term availability of fish to markets, preventing environmental damage, or ensuring that tourist enterprises continue to attract visitors. Although some future parks may not require or focus on all of these objectives (areas which are no longer usable as fishing grounds, for example, may be primarily focused on restoration of coral reefs and habitats), these goals appear to support all of the potential purposes of multiple sustained use marine protected areas in Tanzania.

**b. Nomenclature.** Much of the discussion of the MIMP has focused on terminology. In particular, the use of the term "marine park" may be subject to negative local interpretation. In Tanzania, the term "park" has been applied only to areas dedicated for "strict conservation" -- i.e. allowing only tourism and little else -- definitely not allowing any non-officials to reside within park boundaries. Government officials, utilizing this definition, tended to question the propriety of permitting multiple uses of resources within an area designated as a "park." Similarly, local residents equate the term "park" with dislocation and potential hardships for ousted local residents. Persistence in this perception would spell disaster for the MIMP proposal.

The concept of utilization of resources within a protected area is not inconsistent with its designation as a park or reserve, however. (Salm & Clark, 1984.) Like many parks worldwide, the MIMP will implement a zoning arrangement to control a wide variety of resource uses and activities.

Reportedly, the workshop and other meetings have succeeded in correcting the general misapprehension about the nature of the proposed park. Little or no local prejudice on this point remains to threaten the success of the MIMP. The Steering/Technical Committee has therefore chosen to use the term "marine park." The Committee does not anticipate similar discomfort or concern at the declaration of future marine parks. The example of this park should demonstrate the benefits to local residents from creation of a marine park. In addition, TANAPA is currently creating zoning plans for the national parks, intending to institute a multiple-use system. It is hoped and expected that the remaining stigma attached to the word "park" will have dissipated by the time that additional marine parks are declared.

**3. Governmental Commitment to Stated Objectives.** Many at the Mafia workshop and other meetings expressed doubts that government officials would continue to support the carefully wrought objectives after creation of the park. Both government officials and private citizens feared that the multiple-use rhetoric will not be seen in practice and that the other governmental and individual interests will, at the end of the day, control the decisions and concessions made concerning the Park. Government officials, recognizing the need for public confidence and accountability, expressed concern that government's commitment to the enumerated purpose might flag or be ineffectually administered, eroding public support for future protection efforts. This scepticism may reflect the most critical tensions relating to this project.

Many factors may contribute to this fear. Mafia residents, for example, reportedly expressed fears that the rules and authorities relating to the MIMP will curtail activities (such as the octopus collection conducted by the women's cooperative.) Expansion of the park proposal to include entire islands and villages within the MIMP may increase concerns that the Fisheries Division will be involved in the everyday village governance, in ways that are detrimental to villagers.

A specific parliamentary statement of the purposes of creation of the park and commitment to public involvement in park decisions may be the first step in answering these concerns. Such a legislative statement in the proposed Act will require and regularize consideration of these purposes throughout the marine parks' existence. The Unit and other officials acting in accordance with the Act will be required to continually consider the purpose of the Act in their daily decisions.

**4. Local Involvement.** Involvement by local residents in park creation and operations may be the most difficult of the stated objectives to legally implement and protect. In practice, the melding of technical issues and sustainability determinations with local practices can be a time-consuming process. As noted above, the technical requirements of a sustainable use area are much greater than those of a strict conservation area. Coordination with the villages only increases the complication of the process. Later, individual orders and changes can affect local use of the park after the initial process has been completed.

These practical needs and concerns are compounded by local fears that the villages will be left out of some decision-making are significant. Equally, administrative officials are concerned that a complicated village consultation process will be required before every action

or decision affecting the marine park. Such a requirement might delay critical decisions until their effectiveness is jeopardized.

The solution is two-fold. Rather than requiring village involvement in all decisions, the Act will involve the villages primarily at the time of major decision-making, in the form of the creation of a "general management plan" for the marine park. That document will create zones, determine the size of the buffer zone, designate permissible actions within zones, set up permit criteria, and determine what benefits will be available to local residents. The villages will have a full right and opportunity to participate in this process. If the villages choose to avail themselves of this right, the decision-makers must consider and respond to all matters commented on by the villagers. If a village committee does not participate after receiving proper notice, however, the marine park officials may take action anyway.

After creation of the general management plan, the village interests are protected by the requirement that any action taken by the Warden or the Marine Parks and Reserves Unit must be consistent with the general management plan. Except in temporary emergency situations, inconsistent activities can only be approved by amendment of the general management plan, or by separately seeking village consent.

Regarding the marine reserves, the Unit may, but will not be required to develop a set of regulations that will generally substitute for a general management plan for the reserve. This permission allows the Unit to create a plan (involving local residents in that process) where the purposes of the proposed Act would suggest that such is necessary, but otherwise to maintain the Fisheries Division's existing power to create and manage marine reserves where necessary to serve the broader purposes for which that Division was created.

### **C. Nature of the Administrative Entity**

The selection of an institutional structure for administration of the marine parks and reserves was an issue of great concern and controversy among the participants in the Mafia Workshop. For this reason, the following discussion examines the relevant issues: jurisdiction and administrative structure.

**1. Responsible Division.** Many competing needs and problem areas impact the choice of custodian for Tanzania's proposed marine parks and reserves. Within the Ministry of Tourism, Natural Resources and Environment are many agencies involved in the management and conservation of terrestrial wildlife, forestry, and marine resources, including the Wildlife Division, the Forestry Division, and the Fisheries Division; parastatals such as Tanzania National Parks (TANAPA), Tanzania Fisheries Research Institute (TAFIRI), and National Environment Management Council (NEMC). As noted in D.3, below, the Planning Commission (in the President's office) and the Ministry of Lands, Housing and Urban Planning (through its land use and planning activities) are also involved in the conservation effort.

Although the Ministry of Tourism, Natural Resources and Environment and these entities had already acquiesced to the assignment of primary responsibility for the park to the Fisheries Division, the consultant was instructed to determine independently which

governmental organization should be tapped for this assignment. Several factors suggest that the Fisheries Division is the correct choice for supervision and implementation of the marine parks and reserves concept.

a. **Expertise in Marine Matters.** Initially, the marine parks will depend heavily on expertise in biological, physical, technological and economic matters relative to the marine environment and Tanzania's coastal ecology. Existing administrative and enforcement mechanisms governing fishing, coastal activities, and response to threats to the marine environment and species are reposed in Fisheries. Within the Fisheries umbrella parastatals such as TAFIRI and organizations such as the Mbegani Fisheries Development Centre, provide research services regarding utilization of marine life resources.

Expertise in the administration of protected areas is also important. However, the issues of marine matters and fishing licensing will be of greater importance in the MIMP's early years. Typically, the relative importance of administrative and technical issues in protected areas is determined by the nature of the protections. Areas of strict protection are most in need of administration and enforcement; while areas of multiple use generally require more technical involvement. Although some areas of the MIMP will involve strict protection (including the forest area slated for inclusion in the MIMP,) most of the park area will be marine areas in which a broad spectrum of uses will be permitted. TANAPA's mandate is focused on administration of land areas. At present, it does not appear to be reasonable to expect TANAPA to expand its scope by developing technical or administrative expertise and experience in marine matters.

b. **Zoning for Multiple Uses.** The concept of multi-use zoning is relatively untried in parks in Tanzania. TANAPA has only recently begun to develop zoning systems and plans for permitting and regulating traditional uses of the national parks - - licensing harvest of flora and fauna, for example. The new Udzungu Mountains National Park (the first forest area to be declared a national park) and Ngorongoro Crater Conservation Area (which may be incorporated into TANAPA in future) may also require the development of detailed plans for sustainable use. Adding the MIMP to TANAPA's existing areas of responsibility might put the MIMP at the bottom of a long list, delaying the development of the management plan, possibly until irreversible harm has been done to the area. By contrast, the proposed Act (attached to this document) requires such planning immediately upon creation of a marine park, as a first priority of the Unit.

c. **Responsibility for Marine Parks Involving Freshwater Areas.** There is a general expectation, expressed by both TANAPA and the Fisheries Division, that freshwater protected areas would be managed by TANAPA. This informal delegation of responsibility to TANAPA is based on the existence of parks such as Lake Manyara National Park, and especially Rubondo Island National Park in Lake Victoria. In the latter, fishing, and other taking of plants or animals from all waters within a specified distance of the island's shoreline are forbidden, and boating within that area is restricted to park purposes.

Examination of these existing freshwater protected areas indicates that the purpose of those protections is not comparable to the purposes behind the creation of marine parks and reserves. The protection of terrestrial "game" animals (including crocodiles in Lake Victoria) was the primary motivation for preservation of the Rubondo Island. The water

areas were included within the park for the protection of the terrestrial areas, as a buffer against outside activities that can damage game in the park. The underwater resources -- fish, amphibians and flora -- were not any part of the decision. Where protection of terrestrial game is the goal of protecting a freshwater area, a freshwater park should clearly be administered under TANAPA.

TANAPA's regulatory experience with Rubondo and Lake Manyara is not particularly relevant to the development of marine parks, however. The protection of areas such as the proposed MIMP, by contrast to Rubondo, will be based on other objectives and needs, especially those of sub-aquatic life forms.

Ultimately, in addition to the MIMP, marine areas in other coastal regions and inland waters may be considered as possible marine parks. Regarding these waters, whether coastal or inland, designation as either "marine parks" or "national parks" should depend on one determining factor. If fishing issues and marine species and habitats are a predominant reason for the protection of the area, such area should be a marine park or marine reserve. Where the waters are included primarily because of their importance to terrestrial game or resources, however, expertise with national parks administration may be of greater importance, and the area should be a national park.

**d. Manpower and Organization Activities.** The Fisheries Division's history as custodian of the marine reserves indicates a need to examine the question of manpower. Despite the 1975 declaration of seven areas as marine reserves, nearly all of these areas have been substantially degraded. According to reports, manpower shortages prevented the Fisheries Division from providing the training, education, administrative support, and political support to inspire, aid and allow local authorities to effectively manage the protected areas. In the Maziwi Island Reserve, the island itself -- an important turtle breeding ground -- has literally disappeared, washed into the sea when all of the vegetation was removed from it by military personnel.

It is not clear, given the extent of both Fisheries' and TANAPA's existing responsibilities, that either body is clearly preferable with respect to available manpower. The Steering/Technical Committee is locating funding sources which should alleviate some initial concerns, somewhat. These manpower issues must be considered at the time of enactment, however, and adequate provision made for the staffing needs of the marine parks and reserves, since the protections will be permanent, regardless of the availability of continued outside funding.

**e. Relationship to Other Technical Agencies.** The management of marine parks and reserves will require administration and enforcement concerning diverse issues such as wildlife conservation, sedimentation (clear-cutting activities and agriculture upstream of the reserve), tourism development (including hotels and infrastructure) and waste disposal. A number of agencies' and authorities' mandates require them to plan and administer regarding these areas or to coordinate environmental and conservation activities throughout the country. In particular, land areas and terrestrial flora and fauna will be included in the MIMP. The Wildlife Division is responsible for the coordination of all wildlife matters within Tanzania regardless of their geographical location on a national park or preserved area. This role could also apply to game found in marine parks.

f. **Future Changes and Inter-Agency Cooperation.** Many changes could occur after adoption of the proposed Act that might affect the choice of Fisheries as the initial custodian of all or any of the marine parks and reserves. The Fisheries Division does not appear interested in adopting the administration of marine parks as its primary occupation, and may wish to divest itself of this responsibility once it can be reasonably transferred to a separate administering body. (Such an arrangement would parallel the national parks, where TANAPA (located administratively within the Division of Wildlife) has administrative responsibility and the Wildlife Division is responsible for scientific/technical matters.)

Ultimately, the primacy of marine technical matters in determining the objectives of the park might be overtaken by other needs. If so, marine parks administration might become more efficient, either by (1) creation of a TANAPA-like parastatal within fisheries; (2) by transfer of the Marine Parks and Reserves Unit into TANAPA (if appropriate lines of communication were established and tested between TANAPA and the Fisheries Division); or (3) by reorganization of all of the various protection areas and conservation-related activities within the Ministry into a new parastatal (as Kenya has recently done.) This amalgamation should not occur, however, until it is clear that the marine parks will not suffer from neglect or inexperienced management as a result.

2. **Structure of the Administrative Entity.** Several factors affect the choice of an institutional structure for the marine parks and reserves in Tanzania.

a. **Flexibility.** The choice of administrative entity depends in part on the need for flexibility. Although it is expected that the marine parks will ultimately contribute to tourism in Tanzania, the MIMP is not expected to be self-supporting for several years. For this reason, initial proposals call for a very small administering body, primarily focused on monitoring and supervision. Given the current economic climate, Tanzania should not be expected to fund a larger organization without proof of the effectiveness of the protected area in terms of both tourism and local resource use. As the Unit develops and demonstrates its value, it may evolve into a more complete program.

The high cost of creation of a parastatal body is inconsistent with the creation of a small administrative organization for the marine parks and reserves (as presently envisioned.) Even the smallest parastatal authority must be a fully separate corporate body. As such, it must provide its own support services, financial services and retirement and health plans for its employees. These costs would be incurred to duplicate services that are adequately provided to units within the Ministry.

The MIMP obtains maximum flexibility to start small and grow as circumstances dictate by being managed, in the beginning, as a semi-autonomous unit within the Division of Fisheries, rather than a separately authorized parastatal authority. If the needs of the marine parks and reserves grow to require a much larger Unit, the Ministry and Parliament can determine the needs for an incorporated Unit. Such subsequent incorporation of such an administrative body is not unusual, and has occurred in Tanzania. (See for example the history of the Ngorongoro Conservation Authority.)

**b. Preference for Reformation and Dissolution of Parastatals.**

The government of Tanzania is deeply concerned about the proliferation of parastatal authorities within the government. (Daily News, October 23, 1991.) As has been frequently noted by international financial institutions, such authorities may increase government debt and cost, and are often inefficient. The power of parastatal bodies to incur debt is under scrutiny. Parastatals in Tanzania have been ordered to reorganize or disband unless they can show that they are or can be financially stable and independent of government subventions.

The MIMP and the Marine Parks and Reserves Unit are unlikely to be able to make such a showing, at least not immediately. In theory, parastatals which provide a necessary governmental service, should not be evaluated under standards applicable to commercial parastatals. Given the importance of tourism to the economy of Tanzania, and the amount of money taken in by TANAPA's parks, some government officials might feel that conservation is "commercial" for these purposes. At a minimum, the Fisheries Division should wait until it can demonstrate results (both economic and sociological) before seeking to create a parastatal authority.

**c. Financial Autonomy.** The most important advantage of parastatals in the context of national parks and reserves is their financial flexibility and independence. Conservation agencies must have some ability to make economic and budgetary decisions based on immediate and changing needs, free of the time-consuming ministerial process of allocating funds. MIMP authorities must respond to park problems more swiftly than would be allowed under normal ministerial purchasing policies and other monetary procedures. In addition, at least in the early years, the success of the MIMP and other marine parks and reserves will depend in part on the availability of capital from non-governmental organizations, some of whom have indicated interest in providing various types of support for the MIMP project. Such organizations will not contribute funds if they cannot be assured that those funds will go directly to the supported activities. In many countries, the use of a parastatal entity is the only way to obtain this level of financial autonomy.

Tanzania has developed another method of achieving this type of flexibility, however. In a few recent instances, such as Mbegani Fisheries Development Centre, and the anti-poaching squad of the Game Division, non-corporate entities have been allowed to utilize a revolving fund. Such fund may retain all earnings, donations and other funds received from or allocated for the unit's activities and may expend these amounts directly in accordance with its mandate. The existing examples of use of such funds were not legislatively created; however they serve as excellent models of the efficacy of this funding mechanism.

**d. Conclusion: Marine Parks and Reserves Unit.** The arrangement that allows the most flexibility for growth according to need, avoids needless expense and duplication, and (through the mechanism of the revolving fund) retains the advantage of economic flexibility, is the creation of a Unit within the Fisheries Division. In future, should the number, size, and needs of the marine parks and reserves warrant it, the Unit can be converted into a parastatal or merged into any new or existing authority. This transition will be easier, and less likely to necessitate the discharge or reassignment of large numbers of surplus personnel, if the Unit is not initially created as a corporate body.

#### D. **Comprehensive Responses to Environmental and Conservation Legislation.**

Although the marine parks and reserves will be directly supervised by the Unit, other legal authorities may assert jurisdiction over some or all of the MIMP. In some instances, jurisdiction may be asserted based on geographical boundary questions. Agencies, whose mandate is determined by subject matter may believe they have power to act, either because they do not know of the existence or extent of marine park protections, or because they believe their mandate extends to protected areas. Moreover, many occurrences outside the boundaries that can affect the area may be within the purview of other agencies, who may not be aware of the Act, or its effect on them.

1. **Pre-existing Geographical Jurisdiction.** As discussed in Part III, one purpose of the proposed Marine Parks and Reserves Act -- preserving and enhancing the lives of local residents -- may be at odds with the current proposal to include local villages within the boundaries of the MIMP. This type of overlap jurisdiction has been avoided in the national parks by eviction of all legal residents, a measure which the MIMP proponents have stated they will not adopt. This report recommends seeking alternatives to overlapping with local authority jurisdiction, wherever possible.

2. **"Subject Matter" Authority.** A number of overlapping and occasionally inconsistent statutes may affect protected areas. There are many agencies with potential responsibility within the area proposed for the MIMP, including the Fisheries Division, Wildlife Division, and Forestry Division, agencies or officers responsible for mining, government lands and harbours, and the villages within the area. Each has broad jurisdiction under its basic legislation, that could be interpreted as permitting them to overrule or ignore other authorities. Such laws may, in essence, empower the agency to act without considering the jurisdiction and needs of other agencies.

Moreover, many recent statutes relating to environmental action generally include specific provisions requiring co-ordination of official actions relative to environmental issues. Such laws serve as a response to Parliament's concerns about the lack of cohesive government action in the area. The number of such provisions, however, may well serve as an addition indicator of the continued existence of the problem, even after the first such statute was in operation. Any of these agencies may believe that it has authority to act in or affect the marine parks and reserves.

Great concern was expressed throughout this consultancy regarding the ability of officials, relying on this type of express statutory mandates, to take unilateral action such as granting concessions, leases, licenses or other permissions regarding lands or marine areas within the marine parks and reserves or within neighbouring lands (the "buffer zone.") All such action, whether beneficial or detrimental, should be coordinated through the Marine Parks and Reserves Unit to ensure that it does not alter the critical balances of conservation and sustainable development of the affected area.

Solution to this potential problem, even within a single protected area like the MIMP, cannot depend entirely on legislative prohibitions. Given the limited dissemination of new legislation in Tanzania, a simple prohibition of actions in or affecting the marine parks may have little practical effect on the actions of other governmental agencies. Legal prohibitions

can only serve as a deterrent to persons or organizations that are, and continue to be, aware of the law and its provisions. Even agencies which know of the existence of a protected area may not know the extent of the Wardens's authority or the limits he has legally imposed. Similarly, provisions requiring co-ordination can only be effective if actively implemented.

To validate and give positive effect to express prohibitions, the Marine Parks and Reserves Unit must pro-actively bring about this co-ordination by informing, and seeking to work with agencies with jurisdiction over relevant matters. The Unit must take the labouring oar in this process, since other agencies cannot be depended on to do so. As to each of the marine parks and marine reserves and their buffer zones, the Unit must stay abreast of proposed decisions and activities that may affect protected areas. so that it can provide such agencies with information about the legal requirements and environmental concerns relating to such proposals.

**3. Environmental Impact Assessment, Comprehensive Planning and Integrated Management.** Governmental activities outside the protected areas can have dramatic effects on those areas, particularly activities by agencies who are not responsible for conservation. Planning and specific resource management programs and proposals abound in Tanzania, in such areas as national parks, mangroves, forestry, game, and fisheries. These various programs may overlook problems or combine to create unexpected concerns. In creating the Division of Environment, the Ministry of Tourism, Natural Resources and Environment stated this problem quite succinctly:

"[There is a need] to ensure that environmental concerns receive the attention they deserve in all development programmes both in public and private hands. The horizontal nature of the environmental sector implies a multiplicity of interests at different levels on matters concerning environmental management. These multi-level interests need to be coordinated in order that they do not lead to fragmented approaches at the national level....

"In this country, specialized departments or units within government-line Ministries are also empowered to assume responsibility for environmental protection in their stated area of competence. In such a situation, progress in environmental management may only arise out of crisis management in response to isolated incidents..."

By the time such a crisis would arise with respect to the MIMP area, for example, irreparable damage would probably have already occurred.

Other activities in financial and other areas may compound these problems. A recent example of this type of indirect overlap relates to coral mining. Many fishermen and local residents supplement their income by mining coral which they sell as building stone, or burn for lime to be used in construction. Despite serious concern about this practice and attempts to limit it, coral and lime were widely sought and purchased in connection with the government-approved construction of a new runway at Dar es Salaam airport. Widespread destruction of both live and dead coral resulted from this practice. Recently, the airport project has apparently been halted. It is rumoured that an official directive has been issued stating that lime from coral should not be used in public works projects. This directive, if it exists, may have effected the saving of some parts of the MIMP and the marine reserves.

A formal protocol for comprehensive environmental assessment of all governmental actions and decisions in Tanzania is being developed, but may not be in place for some time. In the interim, the concept of environmental assessment (approved by Parliament in other legislation, and in policy statements, [see a., b., c., and d., below]) is being implemented informally.

In many ways, the Mafia Island Reserve is a microcosm of the various issues and concerns of coastal management programs. It is important that this project, which seems to be proceeding quickly toward establishment of the MIMP, develop in a way that will allow it to coordinate with integrated coastal management programs that are implemented in future. The most important factor in this process will be the utilization of existing planning agencies. Pending development of management plans and protocols, the Unit must coordinate informally with these agencies. The proposed legislation must encourage and require such planning, but allow formal procedure to be substituted in future. To this end, the Marine Parks and Reserves Unit should coordinate with the following agencies and parastatals --

**a. The National Environmental Management Council (NEMC)** is charged with creation of a National Conservation Strategy (NCS) for Tanzania, including a program of environmental assessment. Among its duties, the NEMC has been designated to study the sundry legislative provisions relating to the environment and to make recommendations concerning improvement of the United Republic's legislative response to these concerns.

**b. The Planning Commission**, an administrative body within the President's office, is under a mandate to ensure that development and other activities are undertaken with consideration for all of the circumstances. Currently, the creation of "comprehensive management plans" is an informal process within the Commission. The planning process requires the Commission to consult all parties interested in the use, development and occupancy of an area, and to consider all interests relating to that area. The Commission's Agriculture, Natural Resources and Tourism Section is specifically designated to develop plans for the management of lands in the vicinity of protected areas. The Marine Parks and Reserves Unit should coordinate with the Commission to create a comprehensive management plan for Mafia Island as early as possible.

[Note: There are many lands agencies with different but similar sounding titles (the Lands Commission and The Commissioner of Lands, for example, are two very different offices with different responsibilities.) The consultant was unable to meet with all of the agencies whose names appear to relate to land use planning. The Planning Commission was generally represented as the agency best qualified to create and implement comprehensive management plans, however, and appeared so to the consultant, as well.]

By coordinating with the Commission, the Marine Parks and Reserves Unit will avoid the need to create its own land use planning system, and will not duplicate existing services. Moreover, unlike any planning or regulatory program developed specifically under the proposed Reserves Act, the comprehensive plan developed by the Commission will extend to all activities on Mafia, including those outside the park boundaries and even those which would be outside the reasonable reach of "buffer zone" provisions. Hence, protection of the

park from activities and developments on land will not be limited to activities within the park.

c. **The Investment Promotion Centre** was created under the National Investment (Promotion and Protection) Act, 1990, to regulate and control private investment (both foreign and domestic.) Under this Act, all proposals to invest in new enterprises must apply to the Centre for a certificate permitting such activity. The Centre will circulate each application to --

-- the agency with sectoral responsibility for that type of enterprise, and

-- any other agency which the Centre feels might be affected by the proposed investment.

These agencies submit comments and concerns to the Centre, which may impose conditions on the applicant's certificate, on the inclusion of mitigation measures or solutions to these multi-disciplinary concerns. Although the Act does not particularly mention environmental and conservation issues, it does recognize the importance of forestry, fishing, game cropping, and tourism as priority areas for investment. The Ministry of Tourism, Natural Resources and Environment should coordinate with the Centre, so that conservation agencies, departments and parastatals are given some opportunity to comment under this Act.

d. **Commissioner of Lands.** The Commissioner of Lands, in the Ministry of Housing, Land and Urban Development, maintains a complete record of lands in Tanzania. On that record, the Commissioner's office notes all lands that are subject to protection under the Forest Act, the Wildlife Conservation Act, the National Parks Ordinance and the like. The Commissioner is consulted before any government lands are leased, and it will determine if those lands are under any protection. If so, the Commissioner will be able to use this information to prevent inappropriate leases or transactions relating to such lands. At present, that office does not keep any record of marine reserves, even though some contain islands. Recently, confusion over the status of certain of the marine reserve areas led to rumors that tourist hotel development might be allowed on islands within marine reserves.

The Fisheries Division should make sure that the Commission is aware of all dry-land areas within existing and proposed marine protected areas. This should help to ensure that governmental decisions concerning lands and permissions for development of lands gazetted under this Act begin with consideration of the legislative protection of the area.

## **E. Extent and Boundaries of the Marine Park**

Concerns relating to the size and characteristics of the MIMP raise a number of difficult legal issues concerning the lands waters and activities to be administered and protected. Many of these concerns can be handled legislatively; however, the consultant strongly recommends that park boundaries be drawn to exclude any areas, especially residential areas, unless those areas are specifically necessary to the biological integrity of the park.

1. **Boundaries, Zoning and Jurisdiction.** The determination of the physical boundaries of any marine or other park, depends initially on the scientific issues relating to the area necessary for protection of critical resources, and the types of resources and habitats to be protected. The determination, however, must be tempered by legal concerns relating to other rights in park lands. Areas to be included in the park should be evaluated by balancing their ecological necessity to the park against jurisdictional concerns raised by their inclusion.

a. **Park Lands vs. Buffer Zone.** Park areas are generally easier to control and supervise than external areas, even where the legislation states that activities impacting the park are not permitted outside park boundaries. Many legal, social and jurisdictional concerns, however, suggest that it may be preferable in many instances to avoid any conflict over the annexation of questionable areas into the park. Instead, these areas are stated to be in the "buffer zone" -- the area that, while not directly necessary to the integrity of the park as a habitat or set of habitats, is subject to certain limits. Activities in the buffer zone must be circumspect, its residents and officials should consider the potential effects on the park before taking action. The laws regulating buffer zone activities can invest the Marine Parks and Reserves Unit with a right to be involved in decisions concerning buffer zones, without having to assert complete jurisdiction over them. The Unit will not have to acquire an interest in buffer zone areas unless and until the area is added to the park, or the owner's rights in it are taken away. As noted in II.D.2.c, TANAPA is also considering the need for buffer zones in the national parks.

b. **Relationship to District Boundaries.** The boundaries of the MIMP were set so that the entire area would be within a single district, minimizing the potential problems arising from multiple-district administration of the first Reserve. Many proposals questioned the decision to gazette only the southern portion of the Mafia District, hoping to obtain protection for the entire island. Others suggested that the Reserve should extend farther across the channel to the Rufiji Delta (also slated for protection.)

The apparent conservation benefits of broader extension of park boundaries may be outweighed, in some cases, by political and legal questions. For example, national support for the MIMP project may diminish, if it appears to be a protectionist proposal for island residents, intended to eliminate competition from off-island fishermen. Therefore, the inclusion of any area to serve political or protectionist goals is not recommended.

The proposed Act allows future parks to include land from more than one district. The extent to which multi-district boundaries would impede efficiency of management might be examined in future, however, as compared to the potential benefit of including some of the Rufiji waters in the MIMP. Some attempt to co-ordinate with the Rufiji proposals may be appropriate, if only to ensure that any shipping lanes in the channel are appropriately considered between the two reserves.

2. **Inclusion of Dry Land Areas Within Park Boundaries.** The legal consequences and implications relating to jurisdiction over proposed park areas may be complex. After an incomplete survey of applicable statutes, there appear to be at least seven national authorities with apparent jurisdiction over some area or resource within the currently proposed boundaries of the MIMP. From the perspective of ease of legislation and enforcement, the simplest legislative solution would be to keep the marine parks out of this multiplicity of regulation as much as possible, by limiting the direct authority of the Marine Parks and Reserves Unit to waters and submerged lands. Concerning off-Reserve activities,

and the buffer zone, the Unit would advise or consult with local officials or other agencies, but would not act directly.

As currently proposed, however, many dry-land areas, including forest areas contiguous to the marine park, tidelands, shore areas, and in some instances, whole villages may be included within the boundary of the MIMP. Each type of dry land area poses a different set of issues regarding the administration of the marine parks and reserves.

It is strongly recommended that each such dry land area be separately evaluated, to determine whether the potential problems associated with extending jurisdiction to the area is outweighed by the potential benefits of protection of the area. In general, dry land within the park should include only (1) uninhabited dry-land areas which are of biological significance, (2) tidelands, and (3) other areas needed to backstop park administration activities. Some other lands (including inhabited lands) can be considered "buffer zone," and others may be entirely outside of the area of direct regulation under the proposed Marine Parks and Reserves Act (although actions on these lands that cause harm to the MIMP would still be prohibited.) In making this determination, it should be remembered that the Planning Commission will be developing a comprehensive management plan for the entire area in which the marine park is located (as to the MIMP, this plan will probably encompass the entire Mafia District), specifically taking the needs and goals of the MIMP into consideration.

a. **Administration Buildings and Access Areas.** The current proposal contemplates the regular daily presence in the MIMP of a Warden and one or more rangers charged with enforcement in the marine park. Given the MIMP's location and inaccessibility, a headquarters building and moorings are required. Other marine parks and reserves designated in the future, may need such lands as well.

Acquisition of any land necessary for structures and other appurtenances needed for the administration of the marine parks and for other related services should occur in accordance with the Land Acquisition Act. Under that act, reimbursement is determined by the value of improvements upon the property. At present there are many unimproved coastal areas around Mafia, Juani and Jibondo Islands suggesting that the acquisition of required lands may not present any significant economic problem for the Unit. As owners of land acquired in this fashion, the Marine Parks and Reserves Unit may use it in any appropriate manner consistent with the purposes for which it was acquired.

b. **Forest, Wildlife, Habitat and Historic Areas.** Several factors strongly indicated a need for extension of the responsibilities of the Marine Parks and Reserves Unit over special terrestrial areas. Representatives of a variety of interests from local residents to ngos expressed a keen interest in including dry lands, wetlands, and catchment areas, within the MIMP. Several unique or endangered marine or amphibious species live or breed in specific beaches, dry lands, or freshwater basin areas adjacent to the proposed MIMP. In addition, certain areas in southern Mafia have been suggested for strict protection as game or forest reserves due to their importance as habitats or breeding grounds for rare or important species, or important forest areas.

Officials from the Forestry and Game Divisions strongly recommended that all potential protected areas within the vicinity of a marine park be included within that park's protection, rather than seeking separate designation under the Forestry and Wildlife conservation Acts. As noted above, the same individuals will be charged with enforcement of the restrictions on these protected areas, regardless of the legislative authority under which

they are protected. Hence, combining them within a single park makes administrative sense and would appear to offer greater likelihood of active protection, by virtue of coordinated supervision, increased efficiency, and instruction for district enforcement personnel.

The choice of forest and wildlife areas to be protected should be based upon input from the Forest and Game Divisions. Forest areas which have game or forest species of importance, or which provide watershed protection or other integral needs should be included, as should breeding areas, and other areas which are integrally necessary to the biological integrity of the park.

Other dry land areas, those of historical and sociological importance, such as the historic ruins on Chole Island in the MIMP, may also deserve protection. These areas may either be added to the MIMP, or separately protected under the Antiquities Act. In either case, the Unit should coordinate with the Director of Antiquities concerning best methods of protecting and providing access to these areas.

**c. Tidelands.** From the outset of the MIMP proposal, park boundaries have been thought, at a minimum, to extend to all land up to the highest high water mark of the shoreline of park areas. These lands are generally within government jurisdiction. Where, however, such land is used for residential or other purposes, the marine park authorities' determination of proper use of these lands should consider both scientific/ecological needs and the size and permanence of the settlement, as discussed in part d., below.

**d. Other Coastal Lands.** Significant concern in protecting marine habitats that are near human settlements relates to human activities and development on land, which may affect the protected resources. Even relatively innocuous activities such as the siting of sewage outfalls could have a serious effect on the protected area.

Currently, to avoid these problems, the park proposal includes all lands within 200 meters of the shorelines of the park waters, as well as the entire islands of Juani and Jibondo and any uninhabited islands. These boundaries would include entire villages established under the Local Government (Rural Authorities) Act within the park.

Existing regulations reserve lands within 200-meters of the shore for government dispensation, and prohibit non-approved construction or other development thereon; however, many residences on Mafia already utilize these lands. Although the settlement of these areas may be illegal, and the MIMP may be legally justified in taking jurisdiction over them, such action may incur some negative response among local residents. Given that eviction of local residents is contrary to the stated purposes of the MIMP project, a decision to include these lands may force park officials to undertake a rather complicated regulatory program. The Warden might be placed at odds with village government, or used as an opposing authority in settling village disputes.

For this reason, it is recommended that residential areas be included in the marine park only where the biological need outweighs possible jurisdictional problems. Where inhabited areas are to be included, administrative matters must receive special, detailed attention. The general management plan may be used as a vehicle for determining by mutual agreement which issues and concerns relating to the villages' operations should be decided by the marine park authorities.

3. **Retention of Existing Reserves.** Despite the lack of success of the existing marine reserve provisions, the Act retains protection of the existing reserves, for two reasons. One is the possibility that, with more effort and education of the local people and officials, these provisions may have some potential to protect or improve the resources.

The second, more important, reason relates to government action and leasing or other promotion of new investment and activities. If properly coordinated with other agencies, the existence of a marine reserve, even where no on-site enforcement is ongoing, can protect the area from developers and commercial activities. As noted in III.D.3.d, the Commissioner of Lands is used to keeping careful records of the use and protection of preserved lands. The Commissioner has not typically kept a record of protections declared under fisheries authority, however. This protection is important, because under existing protocols, the Commission is consulted when the government wishes to assign rights to use or construct improvements or tourist facilities on lands. The Marine Parks and Reserves Unit should make sure that the Commissioner's office is directly notified of these protections and is thus able to perform this essential check on government sponsored or approved development within an area.

## F. **Comments on Specific Provisions.**

### 1. **PROPOSED MARINE PARKS AND RESERVES ACT.**

#### Section 2. **DEFINITIONS.**

The development of a definitional framework for the proposed Act and Regulations has been particularly difficult, given that the definitions are often the most accessible part of a legislative document, and thus the part most commented upon by persons whose expertise is outside the area of laws and legislation. Two basic types of problems have arisen affecting definitions:

1. *Biological and lexicological accuracy.* Certain creatures, such as coral and sponges are biologically "animal," but have traditionally been regulated in Tanzania as "flora." A definition that is biologically inaccurate may allow a loophole for the violator of environmentally protective acts. On the other hand, use of a biologically correct definition may lead to a situation where the local people do not know what actions are violations.
2. *Existing regulatory schemes.* As noted in III.D, above, many agencies are involved in the regulation of various aspects or features of the lands and waters that will be included within the marine parks and reserves. In many cases these agencies have overlapping and sometimes inconsistent statutory mandates. It is important that the new law clearly cover all matters governed by these agencies, in terms that are, to the greatest extent possible, compatible with their various statutes. Such coverage is necessary for two reasons: to ensure that the new Marine Parks and Reserves Unit is seen to have authority over all regulatory matters within areas protected thereunder; and to allow the Unit to work with or defer to other agencies where appropriate (for example, where the Game Division may be called upon to evaluate animals on lands within a marine park, or to develop regulations for protection or sustainable harvesting thereof.)

In general, it is preferable, where two acts are administered by the same division and enforced by the same personnel, that defined terms in both acts be as similar as possible. It is possible that divergence in definition could cause confusion among those called upon to draft subsidiary legislation, as well as among district enforcement personnel. Such alterations could also take on unexpected significance in court cases evaluating the provisions. Hence, where possible, the proposed Act and Regulations track the definitions in the Fisheries and Wildlife Acts. The problems of integrating those two acts, and the most critical divergences from their provisions are discussed below.

### **Basic Definitional Framework**

There are two levels of basic definition, the general or universal level which defines "animal" and "vegetation," and the more specific level which defines a particular subgroup of these general groups (*i.e.* "fish," which includes all marine animal life, as a subgroup of "animal"; and "aquatic flora" which is meant to be the marine subgroup of "vegetation."). The term "aquatic substrate" is also defined, however, there did not appear to be a need to define a universal classification for this term. Because this legislation is primarily aimed at protection of marine life, and because the "multi-use" component of the project is entirely so focused, specific terms are defined relative to marine resources of various types. On the other hand, in land areas protected under the auspices of the marine parks and reserves, strict protection is planned. Regulations protecting land animals are authorized under more general provisions (authorizing regulation of all "animals" and all "vegetation"), rather than under separate definitions of "terrestrial animals" and "terrestrial vegetation."

There are three justifications for the decision not to define separate categories of terrestrial life. First, definitions phrased in the negative or which contain large exception language ("all members of the animal kingdom *except marine life*") are more difficult for administering and enforcing personnel to understand and administer than general definitions, particularly in statutory authorization of regulatory bodies or programs.

Second, the authority of the Marine Parks and Reserves Unit is intended to be as comprehensive as possible within the protected areas. The creation of "either/or" categories, even if they do not omit something, tend to promote loopholes and unequal treatment.

Finally, there is a general opposition to lengthy legislation in Tanzania, which is already being suggested as a problem in passage of the proposed Act. Given the proposed Act's primary focus on marine life, it seems appropriate to economize in the definitions of terrestrial creatures (particularly since the proposed Act's definitions of "animal" and "vegetation" track the Wildlife Act in virtually all respects.)

### **Definitions of Marine Resource Categories**

As between the three marine categories ("fish," "aquatic flora" and "aquatic substrate"), there is a clear problem of overlap arising out of the Fisheries Act, as well as out of the local perceptions common to virtually all of the regulated community (as discussed in the example below.) This overlap has been retained, to ensure the breadth of authority to regulate, to allow the development of regulations based on specific needs, and to ensure that all of the areas potentially regulated by any agency are clearly covered by the proposed Act.

Owing to its unusual status, the regulation of coral under existing Tanzanian law is an excellent example of the problem, and the need for breadth in these categories. Technically, coral is an animal, and is thus included (although not mentioned specifically) under the definition of "fish" in the Fisheries Act. In addition, coral is specifically included in that Act's definition of "aquatic flora." Despite this double coverage, during the course of the consultant's mission, many sources stated that the Tanzania law did not regulate "coral mining." (The Mining Act does not cover this perceived oversight, because it specifically exempts all activities relative to the creation of lime for cement and other construction needs, and does not regulate the taking of organic life forms.)

If coral were included in only one category, regulating entities and the public might feel that some aspect of coral use or abuse was not protected under the proposed Act. The decision to include or exclude coral from the effect of particular regulations, whether relating to fishing, or to the mining of aquatic substrate, or to the taking of vegetation seems best left to the Unit or the Fisheries Division when it later adopts specific regulations concerning the sustainable uses of particular marine resources or categories, or when it grants or refuses to grant exemptions. To accomplish this end, it is not enough merely to make sure that all aspects of marine resources are technically covered under the proposed Act. It is essential that the regulators and the regulated community *recognize* that the Unit and the Fisheries Division have the power to protect all resources within the marine protected areas.

The Proposed Act and Regulations do not treat fish, aquatic flora, aquatic substrate or the products thereof differently from one another, but merely give the Unit and the Fisheries Division a broad authority to regulate, and to oversee enforcement activities. Hence, the overlapping of these categories does not create an inconsistency in the statute.

Natural resource regulations in Tanzania are quite specific concerning regulated and protected species, and the creation of regulatory exceptions is allowed on both categorical and individual bases. The Marine Parks and Reserves Unit, given the breadth of its authority over the protected areas, will be in a position to ensure that the regulations to be adopted continue to treat marine life and substrate in a consistent fashion. In all regulations that might be affected by the overlap, the Unit or the Fisheries Division should specifically consider and discuss particular species of concern (coral, sponges, etc.) and plan for a dissemination of information concerning such regulations -- including a specific discussion of the kinds of aquatic resources affected by the legislation.

### **Specific Definitions**

The following are the primary differences between the definitions in the proposed Act, and those in the Fisheries and Wildlife Acts:

"aquatic flora": Unlike the definition in the Fisheries Act, this term includes mangroves, which are the essential component of a critical habitat within many marine environments. This change, reflecting the importance of mangroves to the Marine Parks and Reserves, allows officers to regulate and control the cutting of mangroves. Given the number of legislative enactments that regulate mangrove use and protection, a specific statement concerning primary responsibility for mangroves within the marine parks and reserves seems essential.

The definition also deletes the specific reference to sponges and corals which are included within the Fisheries Act's definition. Many scientists and naturalists

who have been integrally involved in the Mafia Island Marine Park project, objected to the scientific inaccuracy of defining these **animals** as "flora." One purpose of any law, however, is to provide reasonable notice to the regulated population concerning the prohibited activities. Many such people are not aware that coral is alive; few will realize that it is an animal. In its present form, the proposed Act does not separately regulate fish, or aquatic flora. Prohibitions apply equally to all marine life within the marine parks and reserves. Hence, to appease those concerned with scientific accuracy, reference to coral and sponges was deleted from this definition.

"aquatic substrate": Minerals, sand, shells and other substrate are not regulated in the Fisheries Act, but will be necessarily covered under the proposed Act, to prevent unauthorized removal of sand and minerals.

"buffer zone": For consistency with the terminology used in the Tanzania Forestry Action Plan (TFAP), the term "buffer zone" will denote areas within a specified distance outside the boundary of a marine park or reserve. This term has been used in some of the preliminary documents relating to the Mafia Island to refer to non-core areas within the boundaries of the MIMP. The consultant regrets any confusion that may result from this terminology.

"fish": This definition includes marine mammals and protected wildlife that were excluded from the Fisheries Act definition, all of which are included within the Wildlife Act protections. Hence, this change amounts to a combination of the two Act's definitions. The definition in the proposed Act will include all aquatic fauna within the marine parks and reserves.

"fish product": This definition includes the "products" made from both fish and aquatic flora, thus insuring that trafficking in illegally harvested flora, or in lime made from illegally mined coral, or in craft items made from illegally obtained shells is no more acceptable than the removal or sale of the flora, coral or shellfish themselves.

"local resident user": This term was chosen so that both park residents and those who live outside the park but regularly use the area would be within its purview. Given the need to limit the number of residential areas within the park (to avoid direct conflict with the jurisdiction of villages), the Act focuses on use of the marine parks and reserves, rather than on the address of the individual users.

### **Section 3. THE MARINE PARKS AND RESERVES UNIT**

This section requires the establishment of the Unit which will have charge of all marine parks and reserves as they are established, and will control the funds for marine parks and reserves. Initially, with only one park and a minimal involvement in protection of the pre-existing reserves, the Steering/Technical Committee has declared that the Unit will to be very small, not involving a full time commitment by the Unit Manager, and relying primarily on existing financial services within the Fisheries Division. This choice appears realistic in light of the limited additional administrative responsibility that the Act will create among Fisheries Division officials (who have already incorporated the current administrative needs of the creation of the MIMP and existing marine reserves into the job requirements of specific Division officials.) The greatest need will be in the administration of the MIMP by its warden and staff, in conjunction with district officials.

## **Section 5. MARINE PARKS AND RESERVES REVOLVING FUND**

The revolving fund will allow the Marine Parks and Reserves Unit to operate semi-autonomously, without the cost and administrative difficulties of creation of a parastatal body. Clause (4) of this section allows the use of some of the funds generated by park operations for village improvements and other projects affecting local lifestyle. As noted in reports concerning the MIMP, the rhetoric concerning the benefits to the local community would be best validated in the eyes of local residents by a "mechanism for targeting some of the benefits of these parks to the local fishing communities." (Horrill, Ngoile, et al., 1992.) For example, to encourage protective activities by residents near its national parks, Kenya has reportedly promised cash payments to ranches whose property is used by migrating wildlife. The proposed park does not anticipate making any substantial profits in its early years of operation. If profits are generated in future, however, they may be used for the benefit of local villages.

## **Section 10. ENVIRONMENTAL IMPACT ASSESSMENT**

Pending development of a formal statute requiring the use of environmental impact assessments in decision-making regarding development and other activities in Tanzania, it is necessary to specifically require such assessments for activities in or affecting the marine parks. Informal policies of comprehensive regional and resource planning do exist, however, and a National Conservation Strategy is in process which is expected to include a formal assessment process. For these reasons, development of a separate detailed assessment protocol seemed to be unnecessary. Once the NCS provisions are complete, compliance with them would satisfy this provision of the Act.

## **Section 11. VILLAGE INVOLVEMENT**

This section, and section 13's statement of purpose, are among the most critical sections of the Act. The Steering/Technical Committee has, throughout the development of the MIMP proposal, assured local residents that the MIMP will protect their interests and needs, and stated that these protections would be ensured by a commitment within the legislation to these goals, and a provision for direct village involvement in the creation and operation of the park, especially in the development, implementation and amendment of the general management plan, zoning and regulations. Village committees will serve as public ombudsmen for affected communities. Full village involvement necessarily requires

- notice to the Warden or Unit Manager of potential village decisions that might affect the protected area;
- a mechanism for actively seeking the comments of the village committees prior to all decisions;
- a procedure for making decisions, to ensure that all such comments are considered.

These procedures give every village committee an opportunity to participate, but also give the Technical Committee and Warden a right to go ahead with necessary action if no input is received from the village within the regulatory time period following notice.

## **Section 12. DECLARATION OF MARINE PARKS AND RESERVES**

As under the National Parks Ordinance, the consent of Parliament is required for the declaration of a marine park. By contrast, like forest and game reserves, marine reserves may be declared by regulation, i.e. by action of the Ministry without additional action by Parliament. By express provision in sections 14 and 15, as well as under the Interpretation and General Clauses Act, rescission of either designation requires the same approvals as the initial designation. Thus, once designated, the Marine Parks cannot be redesignated without and act of Parliament, EXCEPT

- (1) minor border adjustments;
- (2) expansion or contraction of the buffer zone; or
- (3) re-designation of the marine park as a national park, subject to the condition that village involvement and the purposes for which the marine parks are created will continue to govern the regulatory protection of the area.

According to TANAPA, it is possible and not uncommon for a preserved area such as a game or forest reserve to be elevated to the status of national park.

Unlike marine parks, the designation of a marine reserve is intended to provide either (1) short-term protection for areas under study as potential marine parks, or (2) a mechanism for resource protection in areas of importance, that are not appropriate for marine park status. Areas in which resource restoration is needed, for example, may not possess the characteristics of marine parks, but may require special protection, in the form of strict conservation, affirmative restoration activities, or more restrictions than are applicable to non-controlled waters. Some breeding grounds may also require strict protection, in order to ensure the continued vitality of a species for purposes of sustainable use by local fishermen and others. This provision attempts to retain the Fisheries Division's ability to declare marine reserves, in accordance with its broader mandate, and to coordinate that ability with the needs and purposes of the proposed Act and Regulations.

## **Section 13 PURPOSES AND BENEFITS**

In addition to stating the purposes of multiple sustainable use and conservation, this section provides a basis for continued co-operation between the marine protected areas and the local residents. In particular, clause 4 specifically authorizes the Warden and the Unit to focus on the needs of local residents, and to provide benefits and opportunities to locals where that is possible, without unduly compromising other objectives.

## **Section 18 GENERAL MANAGEMENT PLANS**

The general management plan is the primary tool for examining, negotiating, reconciling, and combining the various needs and uses of the marine park into a single management approach and governing document. An immediate priority following the declaration of a marine park shall be the development and adoption of a general management plan implementing the purposes of the Act. A statutory deadline of six months for completion of this task should not be excessive, since much of the study and evaluation needed in the plan should probably have been completed prior to proposal of the area as a marine park. Except in emergency situations, or where the plan conflicts with a provision of the Act, no official action inconsistent with a marine park's general management plan may

be taken in that marine park. A plan may only be amended after the same village involvement process has been followed.

The Unit may, but is not required to, create regulations comparable to a general management plan, for any marine reserve. If adopted, these regulations will be considered to be a "general management plan" for purposes of the proposed Act, and must follow the same village involvement procedures.

## **Section 19 CO-ORDINATION WITH INTEGRATED PLANNING PROGRAMS**

For the maximum benefit to the marine parks and reserves and surrounding areas, and to eliminate the need to duplicate regional resource management expertise within the Unit, co-ordination with planning agencies is a must. Efforts should be made to initiate broader area planning activities by these agencies as early as possible in the marine park planning process. The Planning Commission has stated that once the MIMP is legally created the Commission's Agriculture, Natural Resources and Tourism section would begin the creation of a comprehensive management plan (possibly encompassing the whole Mafia District) for the area.

## **Section 20 BUFFER ZONE**

This provision gives the Unit some rights to exert influence over actions outside the marine parks and reserves that may, due to proximity, have direct or indirect impacts on the protected resources. In particular, the Unit may require that an environmental assessment be conducted before any new activity, development, construction, or other action is commenced in the buffer zone. The proposed Act also requires notice to the Warden prior to such activity, which will, if complied with, give the Unit time to seek mitigation or measures to eliminate the harm from the proposed action. The Unit should not count on compliance, however, but should remain aware of and participate in actions of agencies and authorities that might affect the marine parks and reserves.

## **Sections 23 - 26 PARK RESIDENTS AND "LOCAL RESIDENT USERS"**

These sections offer the Unit and Warden a range of options for the regulation and control of local resident users of the park. Villages are directly involved in the issuance of local resident user certificates, and indirectly involved in other residence and entry controls by virtue of the requirement that such controls must be in compliance with the general management plan, which is created with input from the villages.

A balanced approach to such protections and regulations is required, however. The concept of sustainable use necessarily requires that the regulating entity be empowered to control fishing and other resource use that threatens the sustainability of the resource. By contrast, the villagers need assurance that their livelihoods will be protected to the maximum extent possible. There is still a third interest to be protected, the national interest in the resource for tourism, and for the benefits of future generations and of the country at large.

Carried to extremes, these goals may conflict. For example, local residents have interpreted the statutory protection of their lifestyle to mean that outside fishermen could be excluded from the MIMP completely. Their support for the MIMP may have been partly based on this idea of creation of an exclusive club; as suggested by their recommendation of

additional areas for such protection. It may not be the best interest of the country to limit the use of the protected area to locals.

To achieve balance, the Act provides separate regulatory schemes for (1) the certification of local resident users, and (2) the licensing of other persons to act within the park. Both types of activity must be examined in the general management plan. The plan must also decide whether and how to exempt fishing, hunting, and gathering of aquatic flora and forest products, where such activities are undertaken for domestic use by the individual residing in the area.

The general management plan must also define rights of access for "local residents," deciding who should qualify for that status. The Act offers a definition of "local resident user" which may be varied by provision in the general management plan. That definition attempts to tread a fine line, being neither too broad nor too narrow, by considering the original intention of the preference for local people. The provision arises out of a desire to protect the lifestyles of villagers who rely on the resources of the marine parks and reserves. Limitation to residents of a particular area may impair the activities of long-time fishermen who live outside that boundary, but rely on the resources of the protected area. (In the MIMP, for example, the number of visiting fishermen has increased dramatically over the last 5-8 years.) A residence-based criteria may also allow for abuses by developers and speculators who are willing to establish some claim of residence in order to obtain priority in the exploitation of resources. The Act proposes a combination of residence, type of use, and time considerations, to determine whether a given individual qualifies for local-resident-user status. The provision also allows some flexibility for the Warden to issue certificates to persons who meet the spirit, but not the letter, of these qualifications.

## **Section 27 REGULATIONS**

Unless specifically required by the Act, regulations must be consistent with the general management plan of any marine park to which they apply.

Clause 7 allows the Warden and Unit Manager to issue emergency orders as needed to protect area or serve other purposes. If orders are not consistent with the general management plan, they must either (1) be of temporary duration (as necessary to respond to a temporary emergency) or (2) be submitted to villages for comment.

## **Section 37 PENALTIES**

The consultant was not able to develop a basis for evaluating penalty amounts under the Fisheries and Wildlife Acts. The Tanzania Forest Action Plan 1990-1991 (TFAP) evaluated similar penalties under the Forests Act. With regard to penalty amounts TFAP recommended substantial increases in penalty amounts to ensure that illegal behaviour was not subsidized by the value of illegally obtained forest products.

It is suggested that the minimum approach for penalties in all resource protection statutes should include consideration of the value of the resource in place, its value as a commodity sold by the violator, the cost of restoration of the damaged resources, and the need to adequately penalize the offender. Insufficient penalties would actually encourage violation. With respect to marine protected areas, however, a difficulty may arise, since many of the violators are actually wreaking much greater havoc upon the reefs than the value of the fish and resources taken, and the monetary value of this loss may be difficult to

establish with certainty. The proposed Act allows the imposition of additional penalties to reflect the value of the resource damage and/or the cost of repair of the damage, as well as punitive effect and other factors normally affecting the penalty decision. Determination of these sums will be within the judge or magistrate's discretion, however, the statute requires that the Unit's assessment of the value of resources taken or damaged must be accepted into evidence as *prima facie* proof of that value (after which it may be rebutted by evidence presented by the defendant.)

#### **Section 43    DETENTION PENDING ARRIVAL OF AUTHORIZED OFFICERS**

The size of the marine protected areas, the limited manpower resources within the Fisheries Division and district offices, and the difficulty of surveillance of fishing practices all prevent the apprehension of offenders such as dynamite fishermen. Mafia residents claim that they often observe violations and call authorized officers, only to watch the escape of the violator. This section will allow authorized officers to empower private citizens to detain a violator, when they receive such a call. This is an unusual provision under Tanzania law, but one that is perceived by the officers who would be charged with the duty to enforce the proposed Act to be necessary to any realistic attempt to actually protect the resources within a multiple-use area. The provision is extremely limited, requiring specific authorization by a district officer or the warden prior to any attempt to hold a violator, and allowing only a brief detention at the site of the offense, until an officer can be dispatched.

#### **Section 44    LOCAL PREFERENCE**

This section states a basis for selection between equivalent applicants for licenses, concessions and other contracts and arrangements, by giving preference to those applications that provide maximum involvement of local residents.

#### **Section 50    REPEALS**

The blank in this section must be filled by review of the Mining Act. (The consultant regrets that an indecipherable photocopy of relevant pages was not detected before her departure.)

#### **Schedules 1&2    BOARD OR TRUSTEES AND TECHNICAL COMMITTEE**

The composition of the Board of Trustees and the Technical Committees is designed to extend both the collective knowledge of the Board, and its relationship with other important agencies, divisions, and ministries.

#### **Schedule 4    MARINE RESERVES**

This schedule should include descriptions of all marine reserves existing under current law (and areas added prior to introduction of the legislation). As shown in the proposed Act, the descriptions include the areas listed in the existing Marine Reserves Regulations (excluding those within the MIMP.) The Fisheries division should re-examine these descriptions to verify that they correctly describe the protected areas. For example, the description of Maziwi Island Marine Reserve is difficult to interpret, and may contain an error.

## **2. PROPOSED REGULATIONS UNDER THE MARINE PARKS AND RESERVES ACT**

The Proposed Act authorizes the adoption of regulations covering many subjects and issues including appeals procedures, village involvement, fund operation, local resident users, licensing, fees, seasonal controls, co-operative associations, licensing and other provisions. Many of these regulations must be developed after additional determinations by the Steering/Technical Committee, after further investigation of the efficacy of various options, and in some cases, after the experience of a period of marine park operation. Others depend on technical evaluation of the needs of marine protection areas and an evaluation of the existing limits and provisions of the Fisheries Principal Regulations.

The Proposed Regulations attached to this report are focused on administrative and management issues, and the retention of basic protections for marine reserves. They do not provide specific regulations for the operation of the Marine Parks and Reserves Fund, however, for two reasons. First, prototype revolving funds in Tanzania have operated without statutory guidelines. The Mbegani Fisheries Development Centre (MFDC) has recently formalized its procedure by letter agreement with NORAD. The terms of that agreement, however, were not available to the consultant. Since the MFDC operates under the Fisheries Division, more information concerning the success of this agreement in regularizing fund operations and satisfying the needs of funding contributors should be evaluated and, if necessary in conjunction with the proposed Act, adapted into concise regulations for operation of the Fund.

### **Section 6 VILLAGE INVOLVEMENT**

Clause 3 provides the village with 30 days from receipt of notice to comment on a proposed action, order, plan amendment, regulation, etc. After this time, the Technical Committee may assume that the village has no objection to the proposal.

### **Section 7 APPEALS**

This provision requires the creation of an official outline or record of each appeal, and sets fees for appeals. A deadline for the filing of appeals is provided and a procedure for filing is given which provides the appellant with several easily accessible ways of filing his appeal.

### **Section 8 RESERVES**

This provision maintains the basic provisions of existing marine reserves protections, with minor adjustments.

TANZANIA

(Proposed) MARINE PARKS AND RESERVES ACT OF 199\_

To provide for the establishment, management and monitoring of marine parks and reserves, to establish a Marine Park and Marine Reserves, and to repeal certain provisions of existing legislation.

Ordered to be published by the Ministry of Tourism, National Resources and Environment.

Enacted by the Parliament of the United Republic of Tanzania.

**PART I**  
**Introductory Matters**

1. This Act may be cited as the Marine Parks and Reserves Act, 199\_, and shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

2. In this Act, unless the context otherwise requires--

"animal" includes any member of the animal kingdom, whether alive or dead, including fish, but shall not include humans. The term shall also include all or part of the shells, feathers, skin, eggs, or any other part of an animal;

"aquatic flora" means all aquatic plants, sea weeds, and water weeds, and other members of the aquatic vegetable kingdom, and any parts thereof, whether alive or dead, and shall include mangroves;

"appeals authority" means--

- on an appeal to the Unit Manager, the Unit Manager; and
- on an appeal to the Minister, the Minister;

"aquatic substrate" means any rock, stone, gravel, sand, shells, limestone, earth, and other geologic or submerged formation, and shall include "dead" coral, whether or not removed from its natural location;

"authorized officer" means the Unit Manager, any Warden or other officer designated pursuant to section 4 to enforce the provisions of this Act or any subsidiary legislation made under this Act, and any police officer or other fisheries officer;

"buffer zone" means any area outside of a Marine Park or Reserve which is declared to be the buffer zone of a Marine Park or Reserve pursuant to section 20;

"certificate" means a local resident user certificate as described in section 24;

"Director" means the Director of Fisheries;

"fish" means all forms of aquatic or amphibious life, whether alive or dead, including turtles, crabs and shellfish and marine mammals. The term shall include the spat, brood, fry, spawn, ova and young of all such fish;

"fish product" means anything made, collected, or obtained from fish or from aquatic flora and includes but is not limited to the following (or any products made therefrom): fish meal, dried fish, fish manure, offal, fish silage, canned fish, fish oil, pearl, mother of pearl, coral, shell, beche de mer, algae, sea weed, ambergris, larva and sponge;

"fishing industry" includes the collection, capture or gathering of fish, fish product, or aquatic flora and the manufacturing of fish products and the products of aquatic flora, and shall include the collection of coral;

"Fund" shall mean the Marine Parks and Reserves Fund to be established under section 5 of this Act;

"general management plan" means a general management plan adopted pursuant to section 18;

"local resident user" means any person so designated under section 24, based upon his place of residence and the length and purpose of such residence;

"Marine Park" means any area listed in the Third Schedule to this Act pursuant to section 12(1), and any area designated as a Marine Park pursuant to section 12(3);

"Marine Reserve" means any area listed in the Fourth Schedule to this Act pursuant to section 12(2), and any area designated as a Marine Reserve pursuant to section 12(4);

"Minister" means the Minister for the time being responsible for natural resources;

"Planning Commission" shall mean the Planning Commission in the President's Office and any division of that Commission or any regional planning body designated to create a comprehensive management plan for any area including a Marine Park or Reserve or a buffer zone or any part thereof;

"Principal Secretary" means the Principal Secretary of the Ministry of Tourism, Natural Resources and Environment;

"structure" means any marker, buoy, monument, fence, road, building, or other man-made item or item brought in from outside a Marine Park or Reserve, that is intentionally built or placed within a Marine Park or Reserve;

"Technical Committee" means any Technical Committee that shall be established pursuant to section 7;

"Trustees" means the Board of Trustees of the Marine Parks and Reserves Unit, established by section 6;

"Unit" means the Marine Parks and Reserves Unit, established under section 3;

"Unit Manager" means the person designated as the Unit Manager pursuant to section 4;

"vegetation" means any form of vegetable matter, alive or dead, whether growing on dry land or in fresh or salt water;

"village council" as to a Marine Park or Reserve means the village council designated pursuant to section 11 for that Marine Park or Reserve, and shall be read to include other local authorities such as township councils, municipal authorities, or city councils;

"village committee" as to a Marine Park or Reserve means the committee or representative authorized by a village council, pursuant to section 11 and shall include the village council, if no committee is designated;

"zone" means a zone created by a zoning plan;

"zoning plan" means the zoning provisions of a general management plan as described in section 21.

## **PART II**

### **Establishment of Marine Parks and Reserves Unit**

3. (1) The Director shall establish within the Division of Fisheries a unit to be known as the Marine Parks and Reserves Unit.
- (2) The functions of the Unit shall be --
  - (a) to establish, administer, and monitor Marine Parks and Reserves, for the purposes set forth in section 13;
  - (b) to administer and manage the Fund and to retain therein all funds generated by the operation of the Marine Parks and Reserves and the issuance of permits and licenses under this Act and the subsidiary legislation promulgated under this Act;
  - (c) to expend funds from the Fund and other sources in furtherance of the purposes set out in section 13; and
  - (d) to implement and enforce the provisions of this Act and all subsidiary legislation, pursuant to sections 18 through 32 of this Act.
4. The Director, in consultation with the Board of Trustees, shall
  - (a) appoint a Unit Manager, who shall administer the Unit;
  - (b) appoint a Warden for each Marine Park, who shall be an officer of the Marine Park and shall administer that Park, subject to the control and authorization of the Board of Trustees and the Unit Manager; and

- (c) designate such Marine Park and Reserve officers as may be necessary for the purpose of the administration of the Unit. All such officers shall have authority to enforce the Act and all subsidiary legislation, as provided in sections 23, and 26 through 29. The Director may authorize officers of other units and divisions to enforce or administer any provision of this Act or subsidiary legislation.

Subject to the foregoing, the administration of the Unit shall be organized and deployed in such manner as the Director may, with the consent of the Minister, determine.

5. (1) There is hereby established a Marine Parks and Reserves Revolving Fund, which will serve as a repository for

- (a) all funding received from the government for use within or relating to the Marine Parks or Reserves;
- (b) all voluntary subscription, donation or bequest received by the Unit or any Marine Park or Reserve from any source;
- (c) all proceeds from user and entry fees, tourism levies, proceeds from licensing fees and other charges imposed by the Marine Parks or Reserves Unit in respect of any activities on, or development of, any Marine Park or Reserve;
- (d) any other sum or property which may become vested in the Unit or any Marine Park or Reserve as a result of the performance by the Unit of its function; and
- (e) revenue from sustainable use or development of resources conducted by the Unit.

(2) The Unit Manager shall ensure that, where the donor of funds deposited in the Marine Parks and Reserves Revolving Fund requested that those funds be used at a particular Marine Park or Reserve, or for particular activities or equipment, all such funds be used in accordance with the donor's request.

(3) The Unit Manager shall, with the approval of the Director, expend other funds from the account in accordance with this Act, for the administration of the Marine Parks or Reserves or for any purpose relating to the functions of the Unit and the purposes of this Act.

(4) The Unit Manager shall, with the approval of the Director, expend surplus funds from this account for the benefit of the villages in the vicinity of Marine Parks and Reserves, in order to further the objectives of this Act as stated in section 13.

(5) The Minister shall issue such other orders or regulations concerning the functions and use of the Fund as he shall deem necessary, and shall, after consultation with the Minister for the time being responsible for finance, issue orders or regulations regarding the management of the Fund and an annual accounting for its use.

**PART III**  
**Board of Trustees and Technical Committee**

6. (1) The Minister, upon the advice of the Principal Secretary, shall appoint a Board of Trustees of the Marine Parks and Reserves Unit, which shall meet from time to time, but no less often than twice per year, to formulate policies concerning the Marine Parks and Reserves and related facilities and activities, oversee use of the Marine Parks and Reserves Revolving Fund, and advise the Minister concerning the approval of the Management Plan of any Marine Park or Marine Reserve, or any revision or amendment of such a plan.
- (2) In addition to its administrative duties, the Board of Trustees shall advise and direct the Unit Manager concerning
  - (a) the need to designate specified marine and coastal areas as Marine Parks, Marine Reserves, or buffer zones; and
  - (b) generally on the drafting and contents of regulations, implementation of those regulations, and other matters affecting Marine Parks and Reserves.
- (3) The Board of Trustees shall consist of such members, being not less than seven nor more than eleven in number, as the Minister may appoint.
- (4) The appointment and the tenure of office of Trustees; and the quorum, proceedings and meetings of the Board of Trustees shall be as provided in the First Schedule to this Act.
- (5) Subject to the provisions of clause (4), above, the Board of Trustees may regulate its own procedure.
7. (1) For each Marine Park, the Principal Secretary shall appoint a Technical Committee which shall meet from time to time, but no less often than three times per year, to oversee the operation of the Marine Parks, and to advise the Board of Trustees concerning the management and regulation of that Marine Park, and to consult with the Unit Manager and Warden on technical, scientific and operational matters concerning that Marine Park.
- (2) Each Technical Committee shall consist of such members, being not less than nine nor more than eleven in number, as the Principal Secretary may appoint.
- (3) The appointment and the tenure of office of members of each Technical Committee; and the quorum, proceedings and meetings of the Technical Committee shall be as provided in the Second Schedule to this Act.
- (4) Subject to the provisions of clause (3), above, the Technical Committees may regulate their own procedure.

**PART IV**  
**General Powers and Duties of the Unit**

8. (1) The Unit shall control, manage and administer the Marine Parks and Reserves, with the advice of the Technical Committees (concerning Marine Parks) and shall give effect to the purposes set out in section 13.

(2) So long as not inconsistent with the general management plan or regulations governing a Marine Park or Reserve, the Unit may, within such Marine Park or Reserve --

- (a) construct such roads, bridges, aerodromes, buildings and fences, provide such water supplies and carry out such other works as may be necessary for the purposes of this Act;
- (b) take such steps as will ensure the conservation, security and sustainable use of fish, aquatic flora, aquatic substrate, land, animals and vegetation;
- (c) reserve or set aside all or any portion of a Marine Park or Reserve as breeding places for fish and other animals, and as nurseries for aquatic flora and vegetation;
- (d) recommend sites suitable for the erection and operation, by other persons, of hotels and other buildings for the accommodation of visitors, shops or similar undertakings; and
- (e) control, operate, establish or manage any hotel, shop, tourist service or similar undertaking, or grant concessions or licenses to other persons to operate such services in any Marine Park or Reserve or in buildings under the control of the Unit.

(3) So long as not inconsistent with the general management plan or regulations governing a Marine Park or Reserve, the Unit may sell or exchange any specimen of animal or vegetable life in a Marine Park or Reserve and may purchase or exchange or otherwise acquire any specimen of animal or vegetable life which it may consider desirable to introduce into a Marine Park or Reserve.

9. The Unit may, both within and, with the consent of the Minister, outside the Marine Parks and Reserves undertake any of the following, as it deems appropriate in carrying out its function and promoting the purposes of this Act as set out in section 13 --

- (a) establish, operate or manage office and service for the purpose of their duties and functions under this Act, in the publicizing of their activities, the promotion of interest in the conservation of fish, aquatic flora, animals, vegetation, and other features and the assistance of visitors to the Marine Parks;
- (b) provide educational and informational services to local resident users of any Marine Park or Reserve;

- (c) establish, operate or manage or grant concessions or licenses to other persons to operate or manage on their behalf any rest camps, lodges, restaurants or other places for the accommodation of visitors travelling to or from any Marine Park or for the accommodation of visitors to any place of aesthetic, geologic, prehistoric, archaeological, historic, or scientific interest, which may be operated in connection with any Marine Park;
- (d) operate transport services for the conveyance of visitors to and from the Marine Parks or other places managed or operated by or on behalf of the Unit.

10. No construction or other activity within a Marine Park or Reserve, including activities authorized under sections 5, 8 and 9 of this Act, shall be undertaken without first determining whether an assessment of the environmental impacts of such activities is necessary, pursuant to legal requirements, policy or practice, or pursuant to any applicable general management plan or regulations developed under this Act or any comprehensive resource management plan for the area, including such Marine Park or Reserve.

#### **PART V Involvement of the Village Councils**

11. (1) The Warden, for each Marine Park, and the Unit Manager, as to each Marine Reserve, shall specify a list of villages in the vicinity of that Marine Park or Reserve, which affect and are affected by the Marine Park or Reserve. The general management plan may, by regulation, specify a minimum distance from the boundaries of a Marine Park or Reserve within which all villages must be included. Any other villages whose population regularly uses or affects the Marine Park or Reserve shall be listed under this section.
- (2) The village councils of each listed village shall be notified of this designation. Thereafter, the Warden (as to a Marine Park) and the Unit Manager (as to the Marine Reserves) shall receive notice of village councils meetings of each listed village.
- (3) The following shall be the duties of each village council, listed under clause (1) of this section, and may be performed either directly by the village council or through a designated "village committee" or other representative --
- (a) Each village listed under clause (1) for a Marine Park shall participate fully in all aspects of the development or any amendment of the regulations, zoning and general management plan for the Marine Park, whether such action involves formal planning, regulation or amendment procedures, or informal decision or special order which shall have the effect of regulating or amending these issues;
  - (b) Each listed village council shall advise the Technical Committee and/or the Warden (in the case of a Marine Park) or the Unit Manager (in the case of a Marine Reserve) concerning matters relevant to management and conservation of the Marine Park or Reserve; and

- (c) Each listed village council shall serve as a liaison between the members of the village or community and the Warden, Unit Manager, Technical Committee and Board of Trustees.
- (4) For each Marine Park, the Technical Committee or the Warden shall notify each listed village of all impending deliberations or decisions relating to matters described in clause (3)(a) of this section, by providing written notice to every district office within which a listed village is located, and by providing both written and oral notice to the village committee. Such notice shall solicit comments from the village inhabitants and shall give notice of the date of any meetings or the last date for receipt of comments. Prior to the decision, the Technical Committee shall consider and respond to all comments received.
- (5) The Minister shall, by regulation, develop a procedure by which the Village Councils shall be consulted under this section.
- (6) Except as provided in section 27(7), any decision concerning a matter described in section 11(3)(a) shall comply with this section, or it will be subject to invalidation by the Board of Trustees or the Minister.

## PART VI

### Declaration of Marine Parks and Reserves

12. (1) The area specified in the Third Schedule to this Act is hereby declared to be Tanzania's first Marine Park, to be referred to as the Mafia Island Marine Park.
- (2) The areas specified in the Fourth Schedule to this Act are hereby declared to be Marine Reserves.
- (3) The Minister, with the consent of Parliament, may by regulation published in the Gazette, declare any other area within the Tanzania territorial sea or exclusive economic zone or any island or coastal area to be a Marine Park, if
- (a) the area is of natural, scenic, scientific, historical or other importance or value, or
  - (b) preservation or management of the area is necessary to properly protect, permit access to, or allow public viewing or enjoyment of an area described in clause (a).
- (4) The Minister may, with the advice of the Board of Trustees, by regulation published in the Gazette declare any area within the Tanzania territorial sea or exclusive economic zone or other coastal area to be a Marine Reserve, if he believes the area will be found to be of natural, scenic, scientific or other importance, such that it may, in future be considered for declaration as a Marine Park, or if he feels that protection or management of the area will further the objectives of this Act, as set forth in section 13.
- (5) A Marine Park or Marine Reserve shall, unless specifically provided to the contrary in the declaration of such area or the regulations or general management plan

of the area, include all submerged or dry land, waters, airspace, tidelands, and subsoil within the area described.

(6) The Unit Manager shall notify local authorities and regional and national planning agencies of the designation.

13. The purposes of designation of a Marine Park or Reserve shall be --

(1) to protect, conserve, and restore the species, habitats, and genetic diversity of living and non-living marine resources and the ecological processes of marine and coastal areas;

(2) to stimulate the rational development of unexploited natural resources;

(3) to manage marine and coastal areas to promote the sustainability of existing resource use, and the recovery of areas and resources that have been over-exploited or otherwise damaged;

(4) to ensure that villages and local resident users in the vicinity of or dependent on a Marine Park or Marine Reserve are involved in all phases of the planning, development and management of that Marine Park or Marine Reserve, share in the benefits of operation of the protected area, and have priority in the resource use and economic opportunity afforded by the creation of the Marine Park or Reserve;

(5) to promote community-oriented education and dissemination of information concerning conservation and sustainable use of the marine parks and reserves; and

(6) to facilitate research and to monitor resource conditions and uses within the marine parks and reserves.

14. (1) Notwithstanding anything contained in the Interpretation and General Clauses Act no declaration made under clauses (1) and (3) of section 12 shall be amended or revoked, except under authority of an act of Parliament. Provided that the Minister may, by proclamation in the Gazette, alter the boundaries of any area declared to be a Marine Park.

(2) Except however, that the Minister may, by declaration, cause any Marine Park, or any part of a Marine Park to be declared a national park, in accordance with section 3 of the National Parks Ordinance, without further action by Parliament, so long as the Minister's declaration includes the specific assurance that

(a) all of the purposes of this Act specified in section 13 shall continue to apply to any area so designated; and

(b) the creation and review of regulations for such area shall be made in accordance with sections 11, 18, and 19.

15. (1) The Minister may, with the consent of the Board of Trustees, by regulation terminate the status of any Marine Reserve, if he determines that the provisions of clause (4) of section 12 do not apply to that area.

- (2) The Minister may, based upon the advice of the Unit Manager, adjust the boundaries of any Marine Reserve, by regulation published in the Gazette.
16. Any rights, titles, interests, franchises, leases, claims, privileges, exemptions, and immunities of any other person in any area that is or shall be declared to be a Marine Park shall be subject to the provisions of this Act and subsidiary legislation adopted pursuant to this Act, and shall be extinguished to the extent of conflict with express provisions thereof.
17. Except as specifically provided under this Act, no activity shall be permitted, and no right, license, title, interest, franchise, lease, claim, privilege, exemption, or immunity may be granted to any person or entity, by any person, agency or entity, whether government or private, in any area that has been designated as a Marine Park or Marine Reserve pursuant to this Act, unless
- (a) such grant is consistent with the relevant general management plan and regulations; and
  - (b) the express permission of its Warden, as to any Marine Park, or the Unit Manager, as to any Marine Reserve, has been obtained.

## PART VII General Management Plans

18. (1) The Minister shall adopt a general management plan for each Marine Park.
- (2) The Minister shall, by regulation, state the requirements for adoption of general management plan and shall specify the basic contents and form of the general management plan, which shall address, at least,
- (a) a full description of the nature and location of the Marine Park;
  - (b) a description of the biological, environmental, geologic and cultural resources of the area, use of the area by local residents;
  - (c) detailed statements of its proposed objectives, in accordance with section 13;
  - (d) a detailed account of the means and methods by which those objectives will be harmonized and carried out, including proposed activities, development and zoning pursuant to section 21; and
  - (e) regulations specifically implementing the zoning, local resident user, and other elements of the general management plan. Such regulations may distinguish between classes and categories of persons to whom the regulations apply.
- (3) Not later than six months after the declaration that an area is a Marine Park under section 12, the Technical Committee, with advice from the Village Committees and in coordination with the Planning Commission shall prepare and recommend to

the Board of Trustees a proposed general management plan for that Marine Park. The Board of Trustees shall consider such general management plan, and shall advise the Minister concerning adoption thereof.

(4) The Minister may, by regulation, create or adopt regulations for the management of any Marine Reserve, which shall state therein that they shall serve as a general management plan of the Marine Reserve. These regulations may specify any of the matters set forth in this section 18 but need not include all such matters, in the discretion of the Minister. If adopted, such regulations shall be considered a "general management plan" under this Act and shall be adopted and amended only by using the procedures set forth in sections 11(3),(4),(5), and (6) and this section 18.

19. In the creation of the general management plan, the Minister, Technical Committee, village committees and other participants shall work closely with the Planning Commission or any regional planning body to coordinate with the development of an appropriate comprehensive resource management plan for the park and surrounding lands.

### **PART VIII Buffer Zone**

20. (1) The general management plan may also specify a proposed buffer zone surrounding a Marine Park or Reserve, which may include terrestrial areas, tidelands, waters, submerged lands, airspace and subsoil. The Unit Manager shall notify local authorities and regional and national planning agencies of this designation.

(2) Following this notification, no governmental authority will permit any new use of any area within that buffer zone without first conducting an assessment of the environmental impacts of such activities pursuant to legal requirements, policy or practice, or pursuant to any applicable general management plan, comprehensive management plan or regulations developed under this Act. If any activity is proposed that will have any negative effect on the Marine Park or Reserve, including direct and indirect effects on the fish, animals, waters, aquatic flora, vegetation and aquatic substrate, that activity shall not be permitted without first consulting with and providing 90 days advance notice to the Unit Manager, the Warden, and the Technical Committee.

(3) The Minister may, by regulation, specify the minimum distance from a Marine Park or Reserve that shall be a "buffer zone" of that Marine Park or Reserve.

### **PART IX Zones Within Marine Parks**

21. (1) The Technical Committee shall draft and submit as part of the general management plan for a Marine Park, a plan of zoning of all areas within that Marine Park.

(2) The zoning component of the general management plan of a Marine Park shall include

- (a) a specific map showing the zones and boundaries of the Marine Park; and
- (b) proposed regulations describing the zones and delineating the activities permitted within each zone.

22. Nothing in this Act shall prevent the Unit Manager, with the consent of the Director, from authorizing any commercial activity, resource exploration or extraction, tourism development, or Unit administrative or operational facilities within a Marine Park or Reserve or its buffer zone, so long as such permission is consistent with the general management plan of that Marine Park or Reserve and the purposes of this Act.

## PART X Regulations Concerning Entry, Residence and Settlement

23. (1) After consultation with the village committees as described in 11, the Minister may, (after consultation with the Technical Committee, in the case of a Marine Park) make regulations prohibiting, restricting and controlling entry into and residence within a Marine Park or Marine Reserve or any part thereof.
- (2) Nothing in any regulations made under this section shall operate so as to prohibit --
- (a) the entry into or residence within any Marine Park or Reserve, or any part thereof, of the Warden, the Unit Manager, members of the Board of Trustee, members of the Technical Committee, authorized officers or persons authorized by such person, within the scope of their authorized activities;
  - (b) the entry into the Marine Park or Reserve upon any public highway of persons travelling through the Marine Park or Reserve along such highway; or upon any waterway or waters of travellers who are unable to avoid such an entry;
  - (c) the entry into the Marine Park or Reserve of any local resident users of that Marine Park or Reserve;
  - (d) the entry into or residence within the Marine Park or Reserve of the spouses, dependents and servants of a person specified in paragraphs (a) or (c) of this subsection to the extent of that person's right of access or residence; or
  - (e) the continued residence within a Marine Park or Reserve of any person whose ordinary residence was within the area at the establishment of such Marine Park or Reserve, except in compliance with the Land Acquisition Act, and section 46 of this Act.

Nothing in this subsection shall be construed as granting or recognizing any right or title to land or any interest in, over or under land within the Marine Park or Marine Reserve or as exempting any person from complying with any other provision of this

Act, or any subsidiary legislation, including provisions which restrict or control means or places of entry or occupancy.

(3) Regulations under this section may require the payment of fees on the issue of a permit to enter or to reside in the area, according to a schedule specifying different classes of persons or different purposes of entry or residence.

24. (1) The Minister may, after consultation with the Board of Trustees, make regulations

(a) requiring or authorizing the village committees to provide a list of local resident users from that village to whom access to the Marine Park or Reserve shall be granted pursuant to the general management plan; and/or

(b) requiring persons described in sections 23(2)(c) and (d) or any class thereof, who reside in or seek a continuing right to enter the Marine Park or Marine Reserve to apply for a local resident user certificate.

(2) Where local resident user certificates are required or authorized under clause (1), the general management plan --

(a) itemize qualifications, including place, time and purpose of residence, by which local resident users may qualify for certificates under clause (1);

(b) authorize or require the village committee of each listed village to issue local resident user certificates to any members of the village who may apply therefore and who qualify under those rules, and to provide the Warden a list of certificates issued; or

(c) authorize or require the Warden to issue local resident user certificates to persons not members of a village who qualify as local resident users.

(3) Any person aggrieved by the refusal of the Warden, Unit Manager, village committee or other authorized person to issue to him a local resident user certificate, or by the imposition of any condition in a certificate issued to him, may appeal the decision in accordance with the provisions of Part XII of this Act.

(4) Unless otherwise provided in specific regulations governing a Marine Park or reserve, the term "local resident user" shall mean any person who satisfies both (a) and (b), below --

(a) either

(i) resides within the boundaries of that Marine Park or Reserve or within \_\_\_ metres outside those boundaries; or

(ii) fishes, hunts or collects natural produce within the Marine Park or Reserve at least \_\_\_ days per year; and

(b) either

(i) has met the requirement of clause (a), above for at least \_\_\_ years; or

(ii) can satisfy the Warden that he has come to the area for the purpose of permanent residence and traditional means of subsistence, and not for the purpose of exploitation of the resources of the Marine Park or Reserve.

25. Except if inconsistent with any general management plan that applies to an area, regulations under sections 22, 23 and 24 may, --

- (a) be made in respect of all or any of the Marine Parks or Reserves or any part or parts thereof;
- (b) restrict, control or prohibit the entry or residence of any person who does not possess a permit or local user certificate issued hereunder;
- (c) impose such terms or conditions upon permits or local resident user certificates as shall be deemed appropriate including limits on the place or manner of entry or residence within the Marine Park or Reserve;
- (d) require any person within a Marine Park or Reserve, when requested by an authorized officer, to produce any certificate or permit issued to him or to demonstrate that he is a person to whom such rules apply;
- (e) require any holder to surrender such permit or certificate upon demand of an authorized officer or upon departure from the area;
- (f) prohibit, regulate or control entry into or residence within any specified area of a Marine Park or Reserve of any person who is not in possession of a permit or certificate or who is not in compliance therewith;
- (g) authorize the removal, by any authorized officer, of any person found within a Marine Park or Marine Reserve in contravention of any such rules;
- (h) empower the Warden to erect barriers on public roads into or within the Marine Park or Reserve for the control of entry into an area to which such rules apply;
- (i) set penalties not exceeding those provided in section 38(1) for the breach of any rule made under (d), (e) or (f) of this section or any term or condition of a license or certificate or the breach of any rule made under section 23; and
- (j) provide generally for all matters or things necessary or incidental to the foregoing.

26. (1) The Minister may, by special order, so long as not inconsistent with the general management plan, prohibit, restrict, or control residence or settlement in any part of the Marine Park for such time and in such manner as it thinks fit.
- (2) Orders made under this section may--
- (a) be made in respect of any category of residents or settlements;
  - (b) provide for exemptions, subject to such conditions as the Warden may think fit;
  - (c) authorize the removal of any person who takes up or continues residence or makes or continues any settlement in contravention of such order;
  - (d) authorize entry into any land within the Marine Park other than a dwelling house for purposes of determining the need for measures for the conservation or improvement of any area of the Marine Park, or for the taking of such measures, or constructing, inspecting or repairing any authorized works.

#### **PART XI Other Regulations**

27. (1) Except upon terms and conditions specified in regulations under this Act, consistent with the general management plan applicable to an area, which may include the requirement of a special license or permission issued by the Unit Manager or any officer designated in those regulations, no person may, within any Marine Park or Reserve:
- (a) fish, hunt, kill or capture any fish or animal or disturb any egg, nest, roe or spawn within the Marine Park or Reserve;
  - (b) gather, collect or remove any fish, animal, aquatic flora, or vegetation, whether alive or dead, or any sand, minerals, or aquatic substrate;
  - (c) sell or transport any fish, animal, aquatic flora, vegetation, or the products thereof or any sand, minerals, or aquatic substrate;
  - (d) be in possession of any weapon, explosive, trap or poison;
  - (e) engage in aquaculture;
  - (f) make salt;
  - (g) conduct any sport fishing, tourism or other commercial activity; or
  - (h) operate any vessel or vehicle within any Marine Park or Reserve.

- (i) clear or cultivate land for any agricultural use, or use or operate of agricultural implements, or machinery;
- (j) site, construct, or extend any buildings, roads or other works;
- (k) destroy, deface or remove any object within a Marine Park or Reserve;

Failure to comply with the provisions of this subsection shall be an offence. Provided that parts (a), (b), and (c) of this subsection shall not apply to any domestic animal or egg lawfully introduced into the Marine Park or Reserve.

Provided also that no order made under this subsection shall operate to require any person to demolish, destroy, alter or remove any buildings, works, roads or tracks of a permanent nature or any part thereof which were constructed prior to the enactment of this Act, except after compliance with the Land Acquisition Act and section 46 of this Act.

(2) The Minister may make regulations for the implementation of this Act, so long as not inconsistent with the general management plan of any Marine Park affected by such regulations. Without prejudice to the generality of this regulatory authority, such regulations may:

- (a) prohibit the introduction of grazing animals, or agricultural crops;
- (b) prescribe the periods or times during which a Marine Park or Reserve shall be open to the public;
- (c) prescribe the conditions under which all or any species of animal may be photographed in a Marine Park or Reserve;
- (d) prohibit or regulate the lighting of fires in a Marine Park or Reserve;
- (e) prohibit, control or regulate the introduction of any wild or domestic fish, animal, aquatic flora or vegetation into a Marine Park or Reserve;
- (f) prohibit, restrict or control the grading of any lands or the construction, maintenance or repair of artificial or natural drains, gullies, contour banks, and terraces, and the protection of slopes and closed areas;
- (g) restrict or control the collection, conservation or use of wells, boreholes, waterholes, streams, storm water, rivers, lakes or other waters;
- (h) prescribe the conditions and regulate the manner in which any person shall be granted any right, title, interest, authority, concession or license to operate hotels, shops or other facilities for the use of visitors to a Marine Park may exercise them, including requirements regarding

the provision of economic opportunity for local residents and the employment and training of local residents in these activities; and

- (i) prescribe the forms to be used and the fees to be paid in respect of any application or request described hereunder.

(3) The regulations may provide specific limitations on regulated activities based upon

- (a) the species of fish, animals, vegetation, or aquatic flora;
- (b) the methods employed in fishing, hunting, capturing and gathering of fish and aquatic flora;
- (c) the type of nets, gear and other equipment permitted in the Marine Park or Reserve;
- (d) the type of vessels and vehicles permitted in the Marine Park or Reserve;
- (e) the geographical location in which activities may be conducted; or
- (f) the district or village of residence of the applicant for license or other authorization.

(4) The regulations may close or limit such activities seasonally, or for any period of time.

(5) The Minister may, by regulation, authorize the Unit Manager to license to private individuals or entities the rights in accordance with the provisions of this Act or regulations to provide services within or relating to any Marine Park or Reserve, subject to approval of the Trustees, and to levy fees for such service providers. The licenses granted pursuant to this section shall take into consideration the provisions of sections 13(4) and 44 of this Act.

(6) The regulations described in clauses (1) and (2) of this section may --

- (a) prescribe fees for licenses or permissions and set the terms and conditions for issuance and the manner and form of application;
- (b) provide for exemptions or conditional exemptions in accordance with specified conditions, or for limitation of any provision or requirement to certain periods or seasons of the year, or to certain times or at certain intervals;
- (c) make provision for the qualification of authorized cooperatives and associations of local residents and the licensing of such associations; or
- (d) prescribe penalties not exceeding the amount set forth in section 38(1) for breach of the condition of any license, failure to obtain a license,

giving false information, or other violation of the regulations.

(7) Whenever the Unit Manager considers it necessary or expedient for the conservation of soil, the prevention of erosion, the minimization of sedimentation, or for the protection and preservation of natural resources within a Marine Park or Marine Reserve, he may issue special orders relating to any of the matters set forth in subsection (6) of this section. Such orders shall be of temporary effect, unless consistent with the general management plan, or ratified or approved by the Technical Committee (including village committees.)

(8) The Minister may, by regulation, designate some or all of the regulations under the Forest Act, the Wildlife Act, or the Antiquities Act to be applicable within the Marine Parks and Reserves or any of them, and may, but shall not be required to delegate all or part of the enforcement of such regulations to the officers authorized under such acts.

(9) No regulation, permission or order may be issued or adopted under this Act, except in compliance with the general management plan of any Marine Park to which it applies.

28. (1) No person shall:

- (a) engage in any commercial activity within a Marine Park or Reserve, unless specifically permitted by the general management plan or regulations adopted for that Marine Park or Reserve, to the extent of such permission;
- (b) conduct any mining or heavy industry within a Marine Park or Reserve;
- (c) conduct any mining or heavy industry outside the boundaries of a Marine Park or Reserve in a manner that causes any negative effect on that Marine Park or Reserve;
- (d) deposit or discharge any oil, chemicals, or other hazardous substances within any Marine Park or Reserve or buffer zone;
- (e) deposit or discharge any sewage, litter, rubbish, or other article or substance within any Marine Park or Reserve or buffer zone except in accordance with specific permission from the Warden, and consistent with the general management plan of the Marine Park or Reserve;
- (f) transfer any permit, license or certificate required under this Act or subsidiary legislation, or forge or otherwise obtain such document by misrepresentation or other illegal means; or
- (g) contravene this Act or any subsidiary legislation made under this Act or any direction given by an authorized officer.

(2) Any violation of this section shall constitute an offense hereunder.

29. (1) Nothing in this Act shall make it an offence to take all reasonable measures extending to the killing or injury of any animal, in defense of human life or in defense of property, unless such defense became necessary during commission of a violation under this Act or any regulation hereunder, or the behaviour of the animal necessitating such measures was the result of molestation or deliberate provocation by or with the knowledge and consent of the person concerned.
- (2) Any person who, in any circumstances whatsoever, kills or wounds an animal in a Marine Park or Reserve shall report that event at the earliest possible moment to the nearest authorized officer. Failure to so report shall constitute an offence under this Act.
30. Orders made under this Act shall be in writing and shall be published in the manner required by law, and shall be delivered to the village committees of all listed villages under section 11 for any Marine Park or Reserve to which such order applies.

## PART XII Appeals

31. (1) Any person aggrieved by--
- (a) the refusal of the Warden, village committee or any other person authorized in that behalf to issue or grant to him any permit, certificate or other authority which may be issued or granted under this Act or any subsidiary legislation made hereunder;
  - (b) any condition or term annexed to any such permit, certificate or other authority granted to him;
- may appeal to the Unit against such refusal or condition.
- (2) Any person aggrieved by the decision of the Unit on any appeal under subsection (1), may appeal against this decision to the Minister.
32. Any person aggrieved by any order made under this Act which adversely affects him, may appeal against such order to the Minister, provided that no appeal under this section shall lie concerning an order of general applicability, which has been subject of advance notice and solicitation of comments pursuant to section 11, hereof.
33. (1) On appeal under sections 31 and 32, the appeals authority may affirm, vary or set aside the decision or order and may give directions in respect of any thing previously done or suffered pursuant to the overturned or varied decision or order.
- (2) Subject to any further appeal provided for by this Act, the decision of the appeals authority and any direction given by it shall be final and binding upon all the parties concerned.
34. (1) Every appeal to the Unit under this Act shall be heard and determined by an Appellate Committee of the Unit consisting of the Unit Manager, who shall be

chairman of the Appellate Committee, and two members of the Board of Trustees nominated in that behalf by the Minister.

(2) The decision of a majority of the Appellate Committee shall be deemed to be the decision of the Unit and shall take effect accordingly.

35. The Minister may, by regulations--

- (a) prescribe the procedure on an appeal under sections 31 and 32 of this Act;
- (b) prescribe the fee to be paid on instituting any appeal; and
- (c) prescribe the time within which an appeal may be instituted.

### PART XIII Enforcement

36. Any person detained or things seized under the powers conferred upon authorized officers under this Act shall be taken as soon as possible before a court of competent jurisdiction to be dealt with according to law. Any authorized officer or other person authorized in writing by the Unit Manager or Warden may prosecute in subordinate courts of all contraventions of this Act or of any regulations made thereunder.

37. (1) Violators of section 28 of this Act shall be subject to a penalty of a fine not exceeding \_\_\_\_\_ shillings or to imprisonment for a term not exceeding \_\_\_\_ or both, for a first offence, or to a fine not exceeding \_\_\_\_\_ shillings or imprisonment for a term not exceeding \_\_\_\_ or both for subsequent offences.

(2) Where this Act specifies that an act or condition may constitute an offense, the Minister may provide in respect of such offence a penalty of a fine not exceeding \_\_\_\_\_ shillings or to imprisonment for a term not exceeding \_\_\_\_ or both, for a first offence, or to a fine not exceeding \_\_\_\_\_ shillings or imprisonment for a term not exceeding \_\_\_\_ or both for subsequent offences.

(3) Concerning all other violations, and any violation of section 27(2), and where any subsidiary legislation made under this Act makes no specific provision for penalty, any person guilty of the offence shall, upon conviction, be liable to a fine not exceeding \_\_\_\_\_ shillings or to imprisonment for a term not exceeding \_\_\_\_ or both, for a first offence, or to a fine not exceeding \_\_\_\_\_ shillings or imprisonment for a term not exceeding \_\_\_\_ or both for subsequent offences.

(4) Any person who violates section 27(1)(j) or (k), section 27(2)(d) or section 28(a), (b), (c), (d) or (e) or subsidiary legislation relating to such provisions shall be required to clean up all substances and articles discharged or to remove all articles built or placed within a Marine Park or Reserve or buffer zone, and to fines and imprisonment as set forth above.

(5) Any person who violates the provisions of this Act and whose action causes damage to any fish, animal, aquatic flora, vegetation, land, subsurface formation or

mineral within any Marine Park or Reserve may be liable for the value of the resources so damaged. For purposes of this section, the value of a resource shall include its biological, scientific and aesthetic values and its value to the continued integrity of the ecosystem of which it is a part. The cost of restoration of the resource so damaged may be used as some evidence of the value of the resource, or appraisal by other methods, if restoration of the resource is not possible.

(6) In addition to any other penalty assessed, a person convicted of an offense under this Act shall be ordered to forfeit to the government any weapon, explosive, trap, poison, vehicle, or other instrument used by that person in the course of committing the offense, as well as article or thing illegally possessed within a Marine Park or Reserve, and any animal, fish, aquatic flora, vegetation, sand, mineral, aquatic substrate, or other thing taken from the Marine Park or Reserve, or any product thereof.

(7) Any domestic animal, agricultural implements or machinery, found within a Marine Park or Reserve, except if lawfully present, and any vegetation that has been introduced in the Marine Park or Reserve without express permission, shall be the property of the Marine Parks and Reserves Unit and may be forfeited to the government or lawfully destroyed by an authorized officer.

38. (1) Any authorized officer may --

- (a) arrest any person found committing an offense under this Act or any subsidiary legislation made hereunder or whom he reasonably suspects of having committed such an offense, or whom he reasonably believes to be about to commit such an offense;
- (b) board and search any vehicle, vessel, or any part thereof;
- (c) enter any premises, building land or other place whatsoever;
- (d) seize, remove, and retain any fish, animal, vegetation, aquatic flora, sand, mineral, aquatic substrate or other thing or product thereof, illegally possessed, used or obtained in contravention of this Act or taken from the Marine Park or Reserve, or which appears to constitute evidence of an offense, when he suspects on reasonable grounds that an offense was committed.

(2) Whenever it is lawful under this Act for an authorized officer to seize and retain any item listed in (1)(d) of this section, it shall be lawful

- (a) to seize and retain
  - (i) any receptacle other than a vessel or vehicle, in which such item is contained;
  - (ii) any machinery (other than propellant machinery of a vessel or vehicle), implement, utensil, material or substance used for the commission of any offense under this Act or any regulation or subsidiary legislation made under this Act;

(iii) any book of account or other document which appears to him to contain evidence that an offense has been committed under this Act or any subsidiary legislation made under this Act; or

(b) to direct any vessel or vehicle in which such seizure occurs to proceed to such port or place in Tanzania as the officer shall direct for unloading the fish, fish product, aquatic flora, product of aquatic flora, mineral or other thing, after which the officer may detain the vessel or vehicle for a reasonable time necessary to effect the unloading.

(3) Where a magistrate is satisfied that an offense under this Act or subsidiary legislation has been committed in respect of which any item has been seized under (1) or (2) of this section, the magistrate may order such seized item to be forfeited to the government, and it may be dealt with as provided in clause 2 of section 11 of the Fisheries Act, 1970.

(4) Where, upon conviction for an offense under this Act or any subsidiary legislation, the court is satisfied that any vessel or vehicle was used in the commission of the offense, the court may order such vessel or vehicle to be forfeited to the government, unless the owner of the vessel or vehicle can satisfy the court that the vessel or vehicle was so used without his knowledge or consent.

39. In any proceedings for an offense under this section, a certificate signed by the Unit Manager and stating the value of any illegally obtained fish, animal, vegetation, aquatic flora, sand, mineral, aquatic substrate or other thing or product thereof, or any damage to the resources of a Marine Park or Reserve shall be admissible in evidence and shall be prima facie evidence of the matters stated therein including the fact that the signature thereon is that of the person holding the office specified therein

40. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which also constitutes an offence against this Act or from being liable under such other law to any greater punishment or penalty than that provided by this Act, provided that no person shall be punished twice for the same offence.

41. Nothing in this Act shall affect the right of the government or of any person to sue for and recover compensation for or in respect of damage or injury caused by an offence against this Act.

42. The court may award any amount not exceeding one half of any fine imposed for an offence under this Act to the person, other than a person in the service of the government, who has supplied information leading to the conviction of an offender.

43. An authorized officer may, orally or in writing, personally or by telephone, radio or other electronic communication device, authorize any person to detain for not more than \_\_\_\_\_ hours a person or persons whom the authorized officer reasonably believes based on personal knowledge or report to be a violator or to intend to violate the provisions of sections 27(1)(a) through (d), 27(1)(g) and 27(2)(f) and (j) or the regulations enacted thereunder, pending the arrival of authorized officers.

## PART XIV

### General

44. In the granting of licenses, concessions and other rights under this Act, preference shall be given where appropriate to local resident users and to the use of resources within the area of the Marine Park or Reserve to which such license, concession or rights apply.

45. No permit, license or certificate shall be issued under this Act to any person who has been disqualified because of past violation or license suspension under the Act or the Wildlife Act or the National Parks Ordinance or any written law of any country relating to the protection of wildlife, until the Unit Manager shall specifically lift such disqualification.

46. For purposes of the Land Acquisition Act, the Minister's decision to acquire any land, structure or other area under this Act shall be deemed an acquisition for a public purpose. However, in assessing the amount of compensation payable under that Act, no account shall be taken of the palaeological, archaeological, historic, ecological or scientific value, unless the person to be compensated himself paid any sum for that characteristic when he acquired the property. Notwithstanding any contrary provision of the Land Acquisition Act, no compensation shall be payable to the owner of any land or of any interest upon which works have been constructed, developed or improved after the announcement of proposals to declare the area to be a part of a Marine Park or Reserve, or after the development of any comprehensive or integrated plan for the management of the resources of the area, unless such construction, development or improvement shall have been done in reliance on express permission from the planning agency and from the Marine Parks and Reserves Unit.

47. Where the President considers that national interest requires that it is necessary that the better and more effective development of the Marine Parks and Reserves in Tanzania be conducted on a permanent and more coordinated basis, he may, by order published in the Gazette, declare the Marine Parks and Reserves Unit to be a body corporate.

48. Unless otherwise provided in this Act, any subsidiary legislation, or any applicable general management plan, no activity or omission that is a violation of the Fisheries Act, the Fisheries Principal Regulations, any other Fisheries Regulations, the Wildlife Act, or any other act or provision governing the conservation of natural resources shall be permitted within a Marine Park or Reserve.

49. The Director, an authorized officer, or any other public officer lawfully exercising his powers under this Act or under any subsidiary legislation shall be exempt from the provisions creating any offense, and from any action, liability, claim or demand, whatsoever.

## PART XV

### Repeal, Savings and Transitional Provisions

50. (1) This Act shall supersede the provisions of sub-clause (x) of clause (2) of section 7 of the Fisheries Act, 1970.

(2) The Fisheries (Marine Reserves) Regulations, 1975, are hereby cancelled.

(3) Section \_\_\_\_\_ of the Mining Act (No. 17 of 1979) is hereby amended by adding "in a marine park or reserve declared under the Marine Parks and Reserves

Act" following the words "Wildlife Conservation Act of 1974."

(4) Section 20 of the Wildlife Conservation Act (No. 12, 1974) is hereby amended by deleting the final period and adding the words "or in a marine park, in contravention of the Marine Parks and Reserves Act."

(5) Section 5(1) of the Forests Act (Cap. 389) is hereby amended by adding the following sentence following the final period: "Similarly, no such action shall be undertaken regarding any part of a marine park or marine reserve established under the Marine Parks and Reserves Act, without first consulting the Marine Parks and Reserves Unit, and compliance with the provisions of any applicable general management plan created thereunder."

(6) Section 6(1) of the Mining (Mineral Oil) Ordinance (Cap. 399) is hereby amended by deleting the period following paragraph (xvii) and adding the following new paragraph (xviii):

"xviii, land within any marine park or marine reserve or buffer zone established under the Marine Parks and Reserves Act, unless the licensee or lessee shall have first given notice to the Marine Parks and Reserves Unit, and unless such activity shall comply with all relevant provisions of that Act, subsidiary legislation and any relevant general management plan created under that Act."

51. Where any by-law made by a local authority is inconsistent with any provision of this Act or any subsidiary legislation or any applicable general management plan, the provision of this Act or of the subsidiary legislation or general management plan shall be construed so as to revoke, to the extent of the inconsistency, the provision of such by-law.

52. The President may, by order in the Gazette, add to, amend, vary or replace the First and Second Schedules to this Act.

## First Schedule

### BOARD OF TRUSTEES

1. The Board of Trustees shall include the following:
  - (a) the Principal Secretary or his representative, who shall be its Chairman;
  - (b) the Director of Fisheries;
  - (c) the Director of Game;
  - (d) a member of Parliament whose constituency includes the area of a Marine Park or Reserve;
  - (e) the Director General of the Land Use Planning Commission;
  - (f) the Conservator of Forests; and
  - (g) not less than one nor more than five other members.
  
2. PROCEDURAL MATTERS. Meetings of the Board of Trustees shall be governed by the following provisions:
  - (a) Except in the cases of misconduct or dereliction of duties, Trustees shall serve for a term of \_\_\_ years.
  - (b) Meetings of the Board of Trustees shall be held at such place and time as the Chairman may determine.
  - (c) The Chairman shall convene additional meetings of the Board of Trustees on the written request of any two members or when required to do so by the Minister.
  - (d) Five members shall constitute a quorum.
  - (e) When a member has any interest, direct or indirect, in the matter before the Trustees, he shall, as soon as reasonably practicable, disclose to the Chairman the nature of his interest, and shall not, except with the consent of a majority of the remaining members present and voting, take part in any deliberations or in the decision of the Board of Trustees.
  - (f) Subject to such other direction as the Minister may give, the Board of Trustees shall regulate its meetings and proceedings in such manner as it thinks fit.

## Second Schedule

### TECHNICAL COMMITTEE

1. For each Marine Park, the Technical Committee shall include, at least, the following:
  - (a) One representative of the Ministry currently responsible for Fisheries;
  - (b) Two persons who are members of village councils whose villages are in the vicinity of or affected by the Marine Park;
  - (c) One representative of a local authority from an area containing all or part of the Marine Park;
  - (d) One representative of a private commercial concern currently operating in the fish and fish products industry in the vicinity of the Marine Park;
  - (e) The district forest officer of one district which includes at least part of the Marine Park;
  - (f) One representative from the agency or parastatal at the time responsible for the promotion of tourism in Tanzania;
  - (g) Two representative from among the following types of institutions and organizations:
    - (i) The Institute of Marine Science, University of Dar es Salaam, or other scientific institution;
    - (ii) non-profit organizations concerned with wildlife conservation or environmental preservation; and
  - (h) Not more than two other members.
2. NON-VOTING MEMBERS. The Warden of the Marine Park shall serve as Secretary, and shall be an *ex officio* member of the Technical Committee. The Unit Manager shall be an *ex officio* member of the Technical Committee.
3. PROCEDURAL MATTERS. Meetings of the Technical Committee shall be governed by the following provisions:
  - (a) Except in the cases of misconduct or dereliction of duties, each member of the Technical Committee shall serve for a term of \_\_\_ years.
  - (b) The members of the Technical Committee shall select a Chairman from among their number.

- (c) Meetings of the members of the Technical Committee shall be held at least three times per year, at such place and time as the Chairman may determine.
- (d) The Chairman shall convene additional meetings of the Technical Committee on the written request of any two members or when required to do so by the Principal Secretary, Unit Manager, or Warden.
- (e) Five members shall constitute a quorum.
- (f) When a member has any interest, direct or indirect, in the matter before the Technical Committee, he shall, as soon as reasonably practicable, disclose to the Chairman the nature of his interest, and shall not, except with the consent of a majority of the remaining members present and voting, take part in any deliberations or in the decision of the Technical Committee.
- (g) Subject to such other direction as the Minister may give, the Technical Committee shall regulate its meetings and proceedings in such manner as it thinks fit.

4. ANNUAL REPORT. At least annually, the Technical Committee shall report to the Trustees concerning activities, proposed developments and other work on the Marine Parks and Reserves, for approval by the Trustees.

Third Schedule

**MAFIA ISLAND MARINE PARK**

[Insert metes and bounds or other appropriate legal description of the boundaries of the MIMP.]

## Fourth Schedule

### MARINE RESERVES

#### **FUNGU YASINI MARINE RESERVE:**

All that area consisting of land and ocean waters centred at Latitude 06 degrees, 36 feet 00 seconds South and Longitude 39 degrees 14 feet 30 seconds East and extending to depth of 5 fathoms below the mean low tide mark from the centre point described above.

#### **MBUDYA ISLAND MARINE RESERVE:**

All that area consisting of land and ocean waters centred at Latitude 06 degrees, 39 feet 30 seconds South and Longitude 39 degrees 15 feet 00 seconds East and extending to depth of 5 fathoms below the mean low tide mark from the centre point described above.

#### **BONGOYO ISLAND MARINE RESERVE:**

All that area consisting of land and ocean waters centred at Latitude 06 degrees, 43 feet 12 seconds South and Longitude 38 degrees 16 feet 00 seconds East and extending to depth of 5 fathoms below the mean low tide mark from the centre point described above.

#### **PANGAVINI ISLAND MARINE RESERVE:**

All that area consisting of land and ocean waters centred at Latitude 06 degrees, 40 feet 42 seconds South and Longitude 38 degrees 14 feet 12 seconds East and extending to depth of 5 fathoms below the mean low tide mark from the centre point described above.

#### **MAZIWI ISLAND MARINE RESERVE:**

All that area consisting of land and ocean waters centred to the north and south by 5 degrees 29 feet 48 seconds East and 5 degrees 31 feet 00 seconds East and extending to depth of 5 fathoms below the mean low tide mark from the centre point described above.

TANZANIA

(Proposed) MARINE PARKS AND RESERVES ACT OF 199\_

REGULATIONS

Adopted Pursuant to Section \_\_

Ordered to be published by the Ministry of Tourism, Natural Resources and Environment.

THE MARINE PARKS AND RESERVES (Administration, Management Plans and Marine Reserves) REGULATIONS, 199\_

1. These Regulations may be cited as the Marine Parks and Reserves (Administration, Management Plans and Marine Reserves) Regulations, 199\_, and shall apply to all Marine Parks and Reserves.

2. In these Regulations, unless the context otherwise requires the words defined in section 2 of the Act shall have the same meanings given therein, and --

"Act" shall mean the Marine Parks and Reserves Act of 199\_;

"Unit Manager" means the person designated as the Unit Manager of the Marine Parks and Reserves Unit, and includes any person duly authorized by him;

"Warden" as to any Marine Park means the person designated as the Warden of that Marine Park, and includes any person duly authorized by him.

3. GENERAL MANAGEMENT PLAN. The general management plan for a Marine Park shall address, at least, the following matters:

- (a) The exact location and description of the Marine Park;
- (b) a survey and inventory of the biological, environmental, geologic and cultural resources of the area;
- (c) information regarding socio-economics and culture of the residents of the area and of traditional uses of and practices with regard to the Marine Park area;
- (d) a description of management objectives;
- (e) a description of proposed research activities;
- (f) a description of the zoning and use restrictions applicable within the Marine Park, as described in section 11 of these Regulations;
- (g) specific qualifications of local resident users of the Marine Park,

including the length, purpose, and location of residence.

- (h) specific regulations concerning activities permitted in zoned areas in that Marine Park;
- (i) a description of proposed development of facilities for operation of the Marine Park;
- (j) plans for the development and management of recreation and tourism within the Marine Park or buffer zone;
- (k) rules for public use of the Marine Park;
- (l) a proposed buffer zone surrounding the Marine Park, as specified in section 20 of the Act; and
- (m) a list of villages to be designated pursuant to section 11 of the Act.

#### 4. ZONING.

- (1) The following zone classifications may be used in the management plans of the Marine Parks:

"Core Protection Zone" shall mean an area in which only activities relating to strict conservation and scientific study of the resources of the Marine Park shall be permitted.

"Conservation and Special Use Zone" mean an area in which specific enumerated uses and types of uses shall be permitted for only users who have obtained specific permission from the Warden or Unit Manager.

"Regulated Use Zone" shall mean an area in which certain uses and types of uses of particular importance to the purposes of the Marine Park shall be permitted, subject to limitations, or permit requirements.

"General Use Zone" shall mean any area within a Marine Park which is not designated as a Core Protection Zone, a Conservation and Special Use Zone, or a Regulated Use Zone. Activities in a General Use Zone may be subject to general regulations.

- (2) The general management plan may designate other categories or sub-categories of zones.
- (3) The zoning component of the management plan shall include
- (i) a specific map showing the zones and boundaries of the Marine Park, and
  - (ii) proposed regulations describing the zones and delineating the activities permitted within each zone.

5. BUFFER ZONE.

(1) The buffer zone surrounding the Marine Park or Reserve may include terrestrial areas, tidelands, waters, submerged lands, airspace and subsoil. The buffer zone shall include all areas which in the opinion of the Technical Committee (as to a Marine Park) or the Board of Trustees (as to a Marine Reserve) may affect the condition of that Marine Park or Reserve. If not otherwise stated in the regulations for a specific Marine Park or Reserve, the buffer zone of a Marine Park or Reserve shall include all lands, waters, airspace, seabed and subsoil within \_\_\_ meters of the borders of that Marine Park or Reserve.

(2) The Warden or Unit Manager shall give notice to all agencies with authority over any aspect of the development or use of lands within the buffer zone concerning the boundaries of that zone, and the restrictions on activities within it.

(3) No agency, authority or other decision-making body shall undertake or permit any action within the buffer zone that might harm or have any negative effect on the Marine Park or Reserve without first giving the Warden or Unit Manager 90-days advance notice prior to the commencement of the project or issuance of the permission. The Warden or Unit Manager may comment on the proposed project, and the decision-making body shall respond to the comments received, prior to the issuance of permission or taking of other action.

6. VILLAGE INVOLVEMENT

(1) The council of each village listed under section 11 of the Act shall exercise its rights and duties under that section, either directly or through a designated committee or other representative.

(2) Each village committee shall receive, prior to consideration by the Technical Committee notice concerning the provisions and effects of any regulations and management plan for the Marine Park or Reserve and all amendments and supplements or orders varying their effects. The village committee shall review such documents, and shall seek comments from affected local residents.

(3) Each village committee shall advise the Technical Committee, as to a Marine Park, or the Unit Manager, as to a Marine Reserve, orally or in writing, within 30 days of receipt of notice of these matters, concerning their opinions on such documents.

(4) The village committee shall receive notice of and shall be invited to attend all meetings of the Technical Committee.

(5) The village committee shall advise the Unit Manager concerning matters relevant to management and conservation of the Marine Park or Reserve.

## 7. APPEALS

(1) The applicant for any permit or certificate under the Act whose application has been denied or upon whose permit a condition or restriction has been imposed, or the holder of a permit that has been suspended, cancelled or amended by the addition of a condition or restriction, may appeal that decision to the appeal authority as set forth in the Act. Any person aggrieved by any order or decision rendered affecting his activity in, use of, or residency in a Marine Park or Reserve may appeal unless that order or decision was approved by the Technical Committee after soliciting and responding to comments pursuant to section 6 of these regulations and section 11 of the Act.

(2) In the event of any appeal, the appeals authority shall make a written record of

- (a) the nature of the permit, certificate or other authority in question;
- (b) the appellant's grievance; and
- (c) the decision of the appeal authority, including any directions to the issuing body.

(3) A copy of this record shall be provided to the appellant and the issuing body.

(4) Appeals may be commenced by the filing, in person or in writing, with the District Office, the Warden or the village committee who shall forward it immediately to the appeals authority. A fee of \_\_\_ shillings must be paid at the time of filing, unless the applicant requests and receives a deferral of such fee until the date of the hearing of the appeal.

(5) No appeal shall be permitted unless commenced not more than 60 days after the appellant receives notice of the decision appealed from.

(6) Pending decision of such appeal, it shall be a condition of any person's entry into the Marine Park or Reserve that he shall comply with any lawful order or direction, whether verbal or written, given or issued by the Warden or the Unit Manager or any authorized officer.

(7) If any person fails to comply with or contravenes any direction or order lawfully given to him under the provisions of the preceding paragraph, the Warden or Unit Manager may either verbally or in writing, forthwith cancel such a person's entry permit, without refund of any fees paid.

## 8. ACTIVITIES IN MARINE RESERVES.

(1) The following rules shall apply to all areas designated as Marine Reserves:

- (a) No person, unless specifically authorized by the Unit Manager shall take, cut, carve, injure, collect, break off or remove any fish, aquatic flora or aquatic substrate from a Marine Reserve or possess any equipment normally used for any prohibited activity in a Marine Reserve;
  - (b) No person shall dig, dredge, excavate, drill, or fill within a Marine Reserve or in any way damage or impair any submerged lands or formation or habitat within a Marine Reserve or bring or permit any equipment normally used for any prohibited activity into any Marine Reserve.
  - (c) No person shall anchor, cast, or drag any vessel, water craft, or mooring device within a Marine Reserve in such a manner as would likely strike, injure, or otherwise cause damage to any marine life or underwater feature.
  - (d) If any person, agency or entity, whether government or private, seeks to undertake or permit any activity or to grant any license, title, interest, franchise, lease, claim, privilege, exemption, or immunity in any Marine Reserve area, that person or entity must first obtain the permission of the Director, and such permission may only be granted, if the proposed activity is consistent with the purposes of the Act, and the Marine Reserve.
- (2) The Minister may designate zoning within any Marine Reserve, in accordance with the provisions of section 4 of these regulations.

#### 9. AUTHORIZED OFFICERS.

- (1) The Director shall appoint a Warden for each Marine Park who shall be an officer of the Marine Park, and shall administer that Park, subject to the control and authorization of the Board of Trustees and the Unit Manager. The Director may designate such other officers as, in his opinion, may be necessary for the purpose of the administration of the Act and subsidiary legislation made under the Act. All such officers shall have authority to enforce the Act and all regulations and subsidiary legislation made under the Act, to be known as Marine Park or Reserve Patrol Officers.
- (2) No person, other than a servant or agent of the Trustees, shall make use of or wear any badge, uniform or emblem authorized to be worn by any servant or agent of the Unit, or otherwise unlawfully hold himself out as being a Warden or any other servant or agent of the Unit.

10. In hiring under the Act, and in licensing concessions for services thereunder, the Unit Manager shall, in licensing private individuals or entities to provide services within or relating to any Marine Park or Reserve, give first priority to local resident users who are qualified to undertake such responsibility, and next priority to applicants who will commit to train and employ local resident users in all aspects of the licensed service or activity.

## BIBLIOGRAPHY

- Mayers, Ngoile, Horrill, Nyiti, Rumisha and Young. A Proposal for the Establishment of the Mafia Island Marine Park Tanzania  
Part I: A Rationale and Strategy  
Part II: Proceedings of the Planning Workshop  
Ministry of Tourism, Natural Resources and Environment  
Worldwide Fund for Nature (1992)
- Horrill, J.C. and Ngoile, M.A.K., Mafia Island Project Report No.2, September 1991  
Frontier Tanzania (Nov. 1991)
- Horrill, J.C., Mafia Island Project, Report No. 1, July 1990 to March 1991  
Frontier Tanzania (May 1991)
- Rumisha, "Meeting on Marine Parks in Tanzania: Legal and Institutional Framework on Protected Marine Life in Tanzania"  
Fisheries Division, Ministry of Tourism, National Resources  
and Environment (February 1991)
- Ngoile, M.A.K., The Development of a Marine National Park Mafia Island, Tanzania: The Current State of the Marine Development of the South Mafia Channel (December, 1989)  
Shell Petroleum Development (Tanzania) Ltd.  
University of Dar es Salaam  
Institute of Marine Science, Zanzibar
- Gaudian and Richmond, "Mafia Island Marine Park Project, Mafia Island, Tanzania: Scientific Report" (1990)  
The People's Trust for Endangered Species  
Imperial College, London
- Ray, G.C., Marine Parks for Tanzania (1968)  
Conservation Foundation, Washington, D.C.
- Bensted-Smith, "The Coastal Resources of Tanga Region, Tanzania" (July 1988)  
Regional National Resources Office  
Tanga Region  
and  
International Union for Conservation of Nature and Natural Resources, Regional  
Office for East Africa
- Mtango and Weiss, "The Exclusive Economic Zone and Tanzania: Considerations of a Developing Country"  
Ocean Development and International Law, Vol.14, No. 1 (1984)
- Salm and Clark, Marine and Coastal Protected Areas: A Guide for Planners and Managers  
IUCN (1984)

Hasan, International Action Programme on Water and Sustainable Agricultural Development,  
Country Review Report: Tanzania  
FAO (April 1991)

Environmental Profile: Tanzania  
Danida Ministry of Foreign Affairs  
Department of International Development Cooperation (1989)

Samesi, A.K., Management Plan for the Mangrove Ecosystem of Mainland Tanzania, volume  
II, Mangrove Management Plan of all Coastal Districts  
Ministry of Tourism, Natural Resources and Environment  
Forest and Beekeeping Department  
Catchment Forest Project  
Dar es Salaam(1991)

Tanzania Forestry Action Plan, 1990-91,  
Ministry of [Lands, Natural Resources and Tourism]  
Dar es Salaam (1989)

Tanzania National Policy on Tourism  
Ministry of Tourism, Natural Resources and Environment  
Dar Es Salaam (1991)

Tanzania National Investment Promotion Policy  
Ministry of Tourism, Natural Resources and Environment  
Dar es Salaam (1990)

Proceedings of the Workshop on Zanzibar Coastal Zone Management  
Department of Environment  
Commission for Lands and Environment  
Jambiani (1991)

Kahn, Fisheries Legislation in Zanzibar, FAO Rome 1982

Proceedings of the Workshop on Zanzibar Coastal Zone Management, Department of  
Environment, Commission for Lands and Environment, Zanzibar

Various report excerpts, Commission on Lands and Environment, Zanzibar, 1990 & 1991

Marine and Coastal Conservation in the East Africa Region  
UNEP - Regional Seas Report and Studies #39 (1984)(IUCN & UNEP)

The Economist Intelligence Unit, Tanzania Country Profile (1990-1991)

The Economist Intelligence Unit, Tanzania Country Report, No. 2 (1991)

## PERSONS CONTACTED

### MAFIA ISLAND STEERING/TECHNICAL COMMITTEE

Col. A.S.M. Kimbau, M.P., Mafia Constituency

Dr. M.A.K. Ngoile, Director, Institute of Marine Science, University of Dar es Salaam, Zanzibar

C.K. Rumisha, Fisheries Officer, Fisheries Division, Ministry of Tourism, Natural Resources and Environment, Dar es Salaam

P.Y. Nyiti, Conservation Officer, Wildlife Conservation Society of Tanzania, Dar es Salaam

Dr. J. C. Horrill, Research Fellow, Institute of Marine Sciences, Zanzibar

James Mayers, Project Development Officer, Worldwide Fund for Nature, Dar es Salaam

### ATTORNEY GENERAL'S CHAMBERS

Mrs. D. Byabato, Legislative Drafting Section

### PRESIDENT'S OFFICE

#### PLANNING COMMISSION

Mrs. Gonzora, Assistant Director for Agriculture, Natural Resources and Tourism, Dar es Salaam

### TANZANIA MINISTRY OF TOURISM, NATURAL RESOURCES AND ENVIRONMENT

Hon. A. Mgumia, Minister of Tourism, Natural Resources and Environment, Dar es Salaam

#### FISHERIES DIVISION

W.A.M. Sichone, Director of Fisheries, Dar es Salaam

T.A. Maembe, Chief Fisheries Officer, Dar es Salaam

Mrs. J.S. Uronu, Fisheries Licensing Section, Dar es Salaam

TANZANIA NATIONAL PARKS

David Babu, Director General, Arusha

Ben Kanza, Chief Park Warden H/Q, Arusha

A. Kajuni, Head, Planning Unit, Arusha

WILDLIFE DIVISION

Gervace T. Moshia, Senior Game Research Officer, Dar es Salaam

Mrs. R. Tibanyenda, Game Officer, Dar es Salaam

FORESTRY DIVISION

S.B. Mbwana, Senior Forest Officer, Dar es Salaam

NATIONAL ENVIRONMENTAL MANAGEMENT COUNCIL

Mr. Mheto, Acting Director, Dar es Salaam

Wilson M.K. Masilingi, Senior Legal Advisor, Dar es Salaam

B.L.M. Bakobi

COLLEGE OF AFRICAN WILDLIFE MANAGEMENT

O.M. Ndosu, Senior Instructor,

MINISTRY OF LANDS, HOUSING AND URBAN PLANNING

COMMISSIONER OF LANDS

Michael Luguru, Commissioner, Dar es Salaam

NATIONAL LAND USE PLANNING COMMISSION

G.K. Mango, Director of Physical Planning and Research

ZANZIBAR MINISTRY OF WATER, CONSTRUCTION, ENERGY, LANDS AND ENVIRONMENT

Muhammad Salim Sulaiman, Principal Secretary, Zanzibar

COMMISSION FOR LANDS AND ENVIRONMENT

Kassim M. Suleiman, Executive Secretary, Zanzibar

Shaib Juma, Director, Department of Survey and Urban Planning

Ghahlib Omar, Urban Planner

Colin Poulton, Environmental Economist

Robert Bensted-Smith, Environmental Advisor

#### FISHERIES COMMISSION

M.S.Nassor, Assistant Commissioner of Fisheries

#### UNIVERSITY OF DAR ES SALAAM

Dr. A.K. Semesi, Department of Botany

Dr. F.M. Urasa, Senior Lecturer, Department of Zoology

Salim Mzee Muhammed, Research Fellow, Institute of Marine Sciences

#### MAFIA DISTRICT

G.A.M. Msangi, for the District Administrative Officer

P. Mwolo, Planning Officer

S. Msoffe, Natural Resources Officer

G.K. Makinda, Forest Officer

G. Mokoki, Acting Fisheries Officer

P. Michael, Supt of Police

Mrs. H.O. Kimbau, UWT

#### OTHER GOVERNMENTAL REPRESENTATIVES

B.M. Musyoki, Senior Research Scientist, National Museum of Kenya, Lamu, Kenya

#### NON-GOVERNMENTAL ORGANIZATIONS

John I. Boshe, WWF Country Representative, Dar es Salaam

Dr. Tundi Agardy, Director, Marine Task Force, WWF-US, Washington, D.C.

Alex Dickenson, Field Director, Frontier-Tanzania, Dar es Salaam

Professor K. Howell, Wildlife Conservation Society of Tanzania

#### OTHER PERSONS

W. Moshi, Engineer, Tanzania Petroleum Development Corporation, Dar es Salaam

G. Kegge, General Manager, Shell Petroleum Development, Dar es Salaam

The consultant wishes to express particular gratitude to each of the persons listed above for their willingness to share their expertise, and for all of their assistance and courtesy throughout the two missions.

Special thanks to Dr. J.M. Newa and the Library staff of the University of Dar es Salaam for their kindness, assistance and professionalism.