

**The Law of Vessel Groundings in the Bahamas**  
**A Comparative Analysis with Recommendations for Statutory Reform**

**A Report to the Bahamas National Trust**



**Conservation Clinic**

**University of Florida Levin College of Law**

Amanda Broadwell, J.D.

University of Florida Levin College of Law

Tom Ankersen  
Director

Spring 2014

**UF** | Levin College of Law  
*Conservation Clinic*  
UNIVERSITY of FLORIDA

## Contents

Introduction .....	3
Hazards of Vessel Groundings .....	3
Legal Framework of the Bahamas .....	3
Vessel Grounding Law of Commonwealth Countries .....	6
Caribbean Commonwealth Countries.....	6
Belize .....	6
Cayman Islands .....	7
Jamaica.....	7
Great Britain.....	8
Vessel Grounding Law of the United States .....	9
Federal Statutes .....	9
Florida .....	12
Hawaii .....	14
U.S. Virgin Islands.....	14
Puerto Rico.....	15
Vessel Grounding Law of the Federated States of Micronesia.....	16
Conclusions and Recommendations.....	17
Application of Comparative Law to the Bahamas .....	17
Suggested Statutory Elements.....	18

## Introduction

Vessel groundings pose a serious environmental risk with high costs for restoration and rehabilitation. The Bahamas currently does not have any laws addressing incidents of vessel groundings within their jurisdiction. This paper first addresses the hazards of vessel groundings present to natural resources. Then, it discusses the legal framework of the Bahamas. Next, it provides a comparative of vessel groundings laws from other countries. This paper concludes with recommendations and specific suggested elements for a vessel grounding statute.

## Hazards of Vessel Groundings

Vessel groundings present hazard to natural resources, whether the grounding occurs on coral reef, sea grass meadow, or other shallow area. Vessel groundings cause damage through contact and also threaten further harm through oil pollution. Coral reefs are a particularly valuable habitat. While coral reefs represent a mere one percent of the ocean floor, twenty-five percent of all marine life is dependent on them.<sup>1</sup> Vessel groundings pose one of the most serious anthropogenic threats to coral reefs, causing reef destruction and often leading to oil spills that can have drastic effects on water quality.<sup>2</sup> Even anthropogenic actions such as small grounding events or anchoring can cause substantial damage in aggregate.<sup>3</sup>

In order for a government to get monetary damages to restore natural resources that have been injured by a vessel grounding incident, there must be a liable party and damage assessment. It is essential for the state with jurisdiction of the vessel grounding incident to have sufficient authority to impose liability for the grounding in order to collect damages. Liability for vessel grounding incidents may be imposed through statutory authority or through common law. The amount of damages is determined through natural resource damage assessment. Several methodologies exist for natural resource damage assessment and none of them has been globally recognized as the best, though it is important for countries to be prepared with a methodology for assessment at the time damage occurs.

## Legal Framework of the Bahamas

The Bahamas gained full independence from Great Britain on July 10, 1973, ending 325 years of British governance.<sup>4</sup> However, the Bahamas remains a member of the Commonwealth of Nations. This means that the British Queen is still recognized as the head of state and the

---

<sup>1</sup> Ward, Amber S. "Reefs in Crisis: A Look At the Chronic Destruction Caused By Ships." 5 *Ocean and Coastal Law Journal* 75, 75 (2000).

<sup>2</sup> *Id.* at 76.

<sup>3</sup> Gleason, Arthur C.R., et. al. "Damage Assessment of Vessel Grounding Injuries on Coral Reef Habitats Using Underwater Landscape Mosaics." 63<sup>rd</sup> Gulf and Caribbean Fisheries Institute. Pp. 126 (2010).

<sup>4</sup> The Bahamas Ministry of Tourism. "Remembering Our Past." Available at <http://www.bahamas.com/history>.

Privy Council is the highest court of appeal in the Bahamas,<sup>5</sup> but the Bahamas Constitution is the supreme law of the land.<sup>6</sup> As a Commonwealth, it is customary for the Bahamas to look to the laws of Britain and other common law countries in areas of law that are not fully developed.<sup>7</sup>

The Bahamas has several laws and regulations currently enacted that address the protection of marine resources and maritime activities.

1) Bahamas National Trust Act

The Bahamas National Trust Act of 1959 established the Bahamas National Trust (BNT), which is the quasi-governmental body with the power to purchase, take, hold, deal with and dispose of lands, including submarine areas.<sup>8</sup> The purpose of the BNT Act is to promote the permanent preservation of Bahamian land and sea areas for the benefit and enjoyment of the Bahamas.<sup>9</sup> Accordingly, the BNT has the authority to declare submarine areas “to be held for the benefit of the Bahamas” and therefore, inalienable.<sup>10</sup>

The Act also gives the BNT the authority to raise money,<sup>11</sup> charge admission to its property,<sup>12</sup> and make bylaws associated with BNT lands.<sup>13</sup> The BNT has the authority to create bylaws “generally for prohibiting or regulating any act or thing tending to injure or disfigure such lands or property or to interfere with the use and enjoyment thereof by the public.”<sup>14</sup> The BNT may also impose fines up to \$500 and “other penalties including confiscation of chattels but not including imprisonment upon persons found guilty upon summary conviction.”<sup>15</sup>

2) Merchant Shipping Act

The Merchant Shipping Act of 1976 governs a variety of maritime activities, such as the registration of ships, the control and orderly development of merchant shipping, qualifications of persons employed in the sea service, and limitations of liability.<sup>16</sup> Under the Merchant Shipping Act the Court can make an order to detain a foreign ship that has caused damage.<sup>17</sup> The Act also specifies that the Minister and port authority

---

<sup>5</sup> BAH. CONST. §104(2) LRO 1/2006.

<sup>6</sup> The Bahamas Ministry of Tourism. “The Commonwealth of The Bahamas.” Available at <http://www.bahamas.com/government>.

<sup>7</sup> Anaya, James S. “Maya Aboriginal Land and Resource Rights and the Conflict Over Logging in Southern Belize.” 1 Yale Hum. Rts. & Dev. L.J. 17, 20 (1998).

<sup>8</sup> The Bahamas National Trust Act, Chapter 391, § 3 (1959). Available at [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1959/1959-0021/TheBahamasNationalTrustAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1959/1959-0021/TheBahamasNationalTrustAct_1.pdf).

<sup>9</sup> *Id.* at § 4(1).

<sup>10</sup> *Id.* at §14.

<sup>11</sup> *Id.* at § 15.

<sup>12</sup> *Id.* at § 16.

<sup>13</sup> *Id.* at § 24.

<sup>14</sup> *Id.* at §24(n).

<sup>15</sup> *Id.* at §24(q).

<sup>16</sup> Merchant Shipping Act, Chapter 268 (1976). Available at [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1986/1986-0010/FisheriesResourcesJurisdictionandConservationRegulations\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1986/1986-0010/FisheriesResourcesJurisdictionandConservationRegulations_1.pdf).

<sup>17</sup> *Id.* at § 263(1).

have the power to do all things necessary to remove or refloat a vessel that has run aground.<sup>18</sup> The Act also provides for a limited liability in certain incidents.<sup>19</sup>

3) Merchant Shipping (Oil Pollution) Act

The Merchant Shipping (Oil Pollution) Act of 1976 provides civil liability for oil pollution by merchant ships in navigable waters.<sup>20</sup> The Act makes the discharge of oil from a vessel into Bahamian waters an offense,<sup>21</sup> but provides several defenses.<sup>22</sup>

4) Merchant Shipping (Maritime Claims Limitation of Liability) Act

In 1989 the Merchant Shipping (Maritime claims Limitation of Liability) Act was passed to make amendments to the law relating to the carriage by sea and liability of shipowners and salvors.<sup>23</sup> The Act provides several types of claims that are subject to a limitation of liability.<sup>24</sup>

5) Fisheries Resources (Jurisdiction and Conservation) Act

Parliament passed the Fisheries Resources (Jurisdiction and Conservation) Act in 1977, which implemented a conservation and management plan for Bahamian fishery resources and established the exclusive fishery zone.<sup>25</sup> Under the Act the Minister can declare any area of the exclusive fishery zone to be a protected area.<sup>26</sup> Declarations for protected areas are made by order and may prohibit fishing.<sup>27</sup> Any person who breaches the Minister's order is subject to a fine of \$5,000, six months imprisonment, or both.<sup>28</sup>

6) Fisheries Resources (Jurisdiction and Conservation) Regulations

The first Fisheries Resources (Jurisdiction and Conservation) Regulations were passed by Parliament in 1986 and subsequently amended.<sup>29</sup> These Regulations provide specific limitations and fishing device restrictions.

---

<sup>18</sup> *Id.* at §§ 230-231.

<sup>19</sup> *Id.* at Part VII, §§ 249-254.

<sup>20</sup> Merchant Shipping (Oil Pollution) Act, Chapter 275 (1976). Available at <http://faolex.fao.org/docs/pdf/bha39080a.pdf>.

<sup>21</sup> *Id.* at § 5.

<sup>22</sup> *Id.* at §§ 7-8. Defenses include: discharge for the purpose of securing the safety of any vessel or preventing damage to any vessel or cargo; discharge as a consequence of damage to the vessel and reasonable steps were taken as soon as practicable; and reasonable care. *Id.*

<sup>23</sup> Merchant Shipping Act (Maritime Claims Limitation of Liability) Act, Chapter 281 (1989). Available at <http://faolex.fao.org/docs/pdf/bha112709.pdf>.

<sup>24</sup> *Id.*

<sup>25</sup> Fisheries Resources (Jurisdiction and Conservation) Act, Chapter 244 §§ 1-24 (1977). Available at [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1977/1977-0013/FisheriesResourcesJurisdictionandConservationAct\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/PRINCIPAL/1977/1977-0013/FisheriesResourcesJurisdictionandConservationAct_1.pdf).

<sup>26</sup> *Id.* at § 13(1).

<sup>27</sup> *Id.* at § 13(2).

<sup>28</sup> *Id.* at §§ 13(3) and 21(2).

<sup>29</sup> Fisheries Resources (Jurisdiction and Conservation) Regulations, Chapter 244 (1986). Available at [http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1986/1986-0010/FisheriesResourcesJurisdictionandConservationRegulations\\_1.pdf](http://laws.bahamas.gov.bs/cms/images/LEGISLATION/SUBORDINATE/1986/1986-0010/FisheriesResourcesJurisdictionandConservationRegulations_1.pdf). The Regulations were amended in 1988, 1993, 1995, 1997, 2003, 2005, 2006, 2007, 2008, and 2009.

Currently, the Bahamas does not have a specific statute addressing vessel grounding liability or damage assessment. However, the Bahamas could use common law torts to address vessel grounding incidents. Common law liability for vessel groundings may be based on a variety of torts, such as, 1) negligence, 2) private nuisance, 3) public nuisance, 4) strict liability for ultrahazardous or abnormally dangerous activities, or 5) trespass.

## Vessel Grounding Law of Commonwealth Countries

### Caribbean Commonwealth Countries

The Bahamas location in the Caribbean and its landscape makes it practical to first examine how other Caribbean Commonwealth countries address vessel groundings in their law.

#### Belize

The Belize Barrier Reef is the largest barrier reef in the northern hemisphere; it is made up of several important habitats and is home to various endangered species.<sup>30</sup> This landscape increases the risk of vessel groundings and amplifies the value of the natural resources that are at risk. The Belize Environmental Protection (Amendment) Act No. 5 of 2009 makes damage to the Belize Barrier Reef a criminal offence with strict fines imposed.<sup>31</sup>

In January of 2009 the M/S *Westerhaven* ran aground on the Belize Barrier Reef. Liability was conceded under the common law wrongful navigation and negligence claims.<sup>32</sup> The Supreme Court of Belize was then faced with quantifying damages. The court determined that damages were not limited by the Convention on Limitation of Liability for Maritime Claims of 1976.<sup>33</sup> Although the Convention applied to the incident, the claim was not subject to the limitation of liabilities because the nature of the subject matter, the Belize Barrier Reef, was not

---

<sup>30</sup> United Nations Educational, Scientific, and Cultural Organization. "Belize Barrier Reef System." World Heritage Convention. Available at <http://whc.unesco.org/en/list/764>.

<sup>31</sup> *Belize v. MS Westerhaven Schiffahrts et. al.*, (2009) No. 45/2009 (Belize) ¶ 133. Amendment 12. "Section 29 of the principal Act is hereby amended as follows: ... (3) Every person who causes or permits any damage to the Belize Barrier Reef System or any significant coral formation commits an offence and shall be liable on summary conviction to a fine of not less than five thousand dollars and not exceeding twenty five thousand dollars per square meter of damage." Environmental Protection (Amendment) Act, 2009. 25 April 2009.

<sup>32</sup> *Westerhaven* at ¶ 18.

<sup>33</sup> *Id.* at ¶ 94. Note this defense has also been asserted in other Caribbean commonwealth countries. For example, *Parsifal III*, a 178-foot superyacht, grounded in the British Virgin Islands (B.V.I.) in January 2013, releasing an estimated 15 to 30 tonnes of lead shot. The B.V.I. Attorney General's Chambers estimate the damages to be \$1.5 million. The defendants asserted the VI Merchant Shipping Act to limit liability to only \$250,000 of damage. The B.V.I. High Court is scheduled to hear more of the case on June 10, 2014. Voorhis, Eric. "Lawyers Argue Over Superyacht Grounding." The B.V.I. Beacon. 1 Mar. 2014. Available at [http://www.bvibeacon.com/1/index.php?option=com\\_content&view=article&id=4612%3Alawyers-argue-over-superyacht-grounding&catid=1540&Itemid=475](http://www.bvibeacon.com/1/index.php?option=com_content&view=article&id=4612%3Alawyers-argue-over-superyacht-grounding&catid=1540&Itemid=475).

covered by the Convention.<sup>34</sup> In quantifying damages, the court stated that there is “no universally accepted protocol of set of procedures that is used globally to determine an appropriate claim for damages to coral reefs caused by vessel groundings.”<sup>35</sup> The court also rejected the Habitat Equivalency Analysis, which is the methodology used in the United States to assess value damages. Instead, the court awarded damages of \$2,000 per square meter, totaling \$11,570,000,<sup>36</sup> reasoning “this sum to be fair and appropriate.”<sup>37</sup> This case illustrates the importance of having an established natural resource damage assessment methodology.

## Cayman Islands

Cayman Islands law does not directly address vessel groundings, though it does impose liability for any commercial vessel that damages coral reef. The Marine Conservation Law 2004 regulation revision provides: “Whoever anchors any vessel exceeding twenty feet in length or a commercial vessel, or allows any of such vessels to be anchored, in such a manner that damage is caused to the coral by an anchor, chain or any similar contrivance, is guilty of an offence.”<sup>38</sup> Significantly, this statute recognizes the severity of damage that can result from simply anchoring a vessel on coral reef.

## Jamaica

The Jamaica Beach Control Act was amended in 2004 to allow the Natural Resources Conservation Authority to file a claim for damages to “any natural resources situated on the floor of the sea,”<sup>39</sup> which encompasses a variety of habitats that may be injured by a vessel grounding event. The court can require rehabilitation to remedy the damage caused<sup>40</sup> or it can require payment of monetary damages for “any reasonably foreseeable loss in the economic value of the natural resource to the public.”<sup>41</sup> Despite this strong statutory authority, vessel grounding incidents in Jamaica are still often prosecuted through common law solutions, such as negligence and nuisance.

In 2001 a Cambodian fishing vessel, M/V Neolla #7, ran aground on a reef at Rackham’s Cay, Jamaica in Kingston Harbour.<sup>42</sup> The grounding damaged 192.4 square meters of coral

---

<sup>34</sup> Westerhaven at ¶ 76.

<sup>35</sup> *Id.* at ¶ 126.

<sup>36</sup> *Id.* at ¶ 142.

<sup>37</sup> *Id.* at ¶ 141.

<sup>38</sup> Marine Conservation Law, C.I. Marine Consvr 9(1) (2004 Revision) (Cayman Is.).

<sup>39</sup> Beach Control Act of 1956 § 19(1)(d) (2004) (Jam.).

<sup>40</sup> *Id.* at § 19(2)(d)

<sup>41</sup> *Id.* at § 19(2)(e). The ‘economic value’ includes: “(a) income from sales of goods and services provided by marine resources; (b) the value of marine resources used for subsistence; (c) the value of ecological functions and services provided by marine resources; (d) the value of potential uses of marine resources and biological assets; and (e) the value to the public derived from the existence of the resource, independent of the value of any existing or potential use of the resource.” *Id.* at § 19(3)(a)-(e).

<sup>42</sup> *Natural Resources Conservation Authority v. Owners and Persons Interested in the Ship M/V Neolla #7* (2013) JMSC Civ. 62 (Admiralty) Claim No. A00003/2001, draft judgment, ¶ 6.

reef.<sup>43</sup> The Natural Resources Conservation Authority prosecuted for negligent navigation and the court awarded \$346,300 for damages.<sup>44</sup> The Supreme Court of Judicature of Jamaica held that the Neolla #7 breached its duty of competent navigation within Kingston Harbour.<sup>45</sup> Several case studies from the United States,<sup>46</sup> Maldives, Australia, and Tanzania were used to determine natural resource damage assessment.<sup>47</sup> The court accepted the ‘cost of restoration’ approach for assessing damages in order to rehabilitate the area to its pre-grounding state.<sup>48</sup>

## Great Britain

Since the Bahamas is a commonwealth, it traditionally looks to law of Great Britain in areas where its own law is not fully developed. However, in the case of vessel groundings, the law of Great Britain is probably less relevant than other commonwealth countries because of the great difference in landscape.

Great Britain led an early movement towards developing an international agreement to assess natural resource damages, but based liability on common law negligence. The movement was initiated after the 1967 Torrey Canyon grounding in the English Channel.<sup>49</sup> The Torrey Canyon was a 120,000-ton oil tanker traveling from Kuwait to Milford Haven when it struck aground on Pollard Rock in England due to negligence.<sup>50</sup> The Royal Air Force and Royal Navy decided to bomb and sink the vessel because removal was impossible. The vessel released approximately 119,000 tons of oil into the ocean, pollution 50 miles of beaches and killing thousands of animals.<sup>51</sup> The result of the Torrey Canyon incident was the international Convention on Civil Liability for Oil Pollution Damage of 1969,<sup>52</sup> which was followed by the 1971 International Convention on the Establishment of an International Fund for Oil Pollution Damage<sup>53</sup> to provide a mechanism to collect reasonable costs for rehabilitation after in future incidents of oil pollution.<sup>54</sup>

---

<sup>43</sup> *Id.* at ¶ 12.

<sup>44</sup> *Id.* at ¶ 80.

<sup>45</sup> *Id.* at ¶ 26.

<sup>46</sup> The case studies included an examination of the M/V Elpis grounding in the Florida Keys, which is discussed below.

<sup>47</sup> *Id.* at ¶ 69-73. Note that none of the case studies relied upon were from the Caribbean Sea.

<sup>48</sup> *Id.* at ¶ 78.

<sup>49</sup> Lee, Eric S. “Waning Conventions: Remedying Natural Resource Damages Caused by Vessel-Source Oil Pollution Under the Existing Regimes and the Need to Reconvene.” 35 Tul. Mar. L.J. 293, 296 (2010).

<sup>50</sup> *Id.* See also, Emergency Response Division, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration. “Torrey Canyon.” Incident News. Available at: <http://incidentnews.noaa.gov/incident/6201>.

<sup>51</sup> Lee, *supra* 23 at 296.

<sup>52</sup> *Id.* This statute is a narrower approach than that of the United States, covering loss or damage caused outside of the ship and resulting in discharge of oil. Also, costs are limited to reasonable measures for reinstatement to pre-grounding that are actually or will actually be done. *Id.* at 297.

<sup>53</sup> *Id.* at 298. The 1971 Fund provides additional funds to cover clean up costs and damages that exceed the ship owner’s liability. Force, Robert, Martin Daves and Joshua S. Force. “Deepwater Horizon: Removal Costs, Civil Damages, Crimes, Civil Penalties, and State Remedies in Oil Spill Cases.” 85 Tul. L. Rev. 889,892 (2011).

<sup>54</sup> *Id.* at 297.



## Vessel Grounding Law of the United States

The United States has developed extensive laws to govern vessel groundings liability and natural resource damage assessment. Given the similar habitats and close proximity of the United States to the Bahamas, just fifty miles off of the coast of Florida,<sup>55</sup> it is relevant to consider these laws for comparison.

### Federal Statutes

Similar to Great Britain, the United States federal law began first addressed damages for vessel groundings after a grounding that resulted in a serious oil spill. The 1989 Exxon Valdez spill was the worst oil spill in U.S. waters until the Deepwater Horizon spill in 2010. The Exxon Valdez oil tanker ran aground on the Bligh Reef in Prince William Sound, Alaska, resulting in an oil spill of approximately 35,000 metric tons.<sup>56</sup> The United States criminally prosecuted Exxon Corporation and Exxon Shipping, which pled guilty of violating several statutes for the grounding and oil spill.<sup>57</sup> The United States and the state of Alaska also sued for maritime torts. These suits resulted in consent decrees, in which Exxon agreed to pay \$900 million over ten years for environmental damage.<sup>58</sup> The federal government responded to the Exxon Valdez oil spill disaster by enacting the comprehensive Oil Pollution Act of 1990, which expanded the federal government's ability to respond to oil spills and created the Oil Spill Liability Trust Fund.<sup>59</sup>

Natural resource damage assessment in the United States varies depending on the result of the vessel grounding and which federal statute is used for liability. Often, the National Oceanic and Atmospheric Administration (NOAA) is responsible as a trustee for damage assessment and restoration planning, under which the Damage Assessment, Remediation, and Restoration Program (DARRP) works with other agencies and the community to respond and assess injuries.<sup>60</sup>

---

<sup>55</sup> The Bahamas Ministry of Tourism. "The Islands of the Bahamas." Available at <http://www.bahamas.com/proximity>.

<sup>56</sup> Exxon Valdez Oil Spill Trustee Council. "Questions and Answers." Available at <http://www.evostc.state.ak.us/index.cfm?FA=facts.QA>.

<sup>57</sup> *In re the Exxon Valdez*, 296 F. Supp.2d. 1071, 1079 (D. Alaska 2004) (2nd remand on punitive damages), vacated by *In re: The Exxon Valdez*, Ninth Circuit Court of Appeals Cause No. 04-35182 (12/22/06). Exxon Corporation pled guilty to violations of the Migratory Bird Act and Exxon Shipping pled guilty to violations of the Clean Water Act, Refuse Act, and Migratory Bird Act.

<sup>58</sup> *Id.* at 1078 (citing, *United States v. Exxon Corp.*, No. A91-0082-CV (Clerk's Docket No. 46 at 7-8), and *Alaska v. Exxon Corp.*, No. A91-0083-CV (Clerk's Docket No. 26 at 7-8)).

<sup>59</sup> U.S. Environmental Protection Agency. "Oil Pollution Act Overview." Available at: <http://www.epa.gov/oem/content/lawsregs/opaover.htm>.

<sup>60</sup> National Oceanic and Atmospheric Administration. "Damage Assessment, Remediation, and Restoration Program." U.S. Department of Commerce. (2012) Available at: [http://www.darrp.noaa.gov/about/pdf/DARRP\\_FactSheet.pdf](http://www.darrp.noaa.gov/about/pdf/DARRP_FactSheet.pdf).

Liability for vessel groundings may be based on provisions from several federal statutes, including:

- 1) Abandoned Shipwreck Act; 43 U.S.C. § 2101
- 2) Clean Water Act of 1977; 33 U.S.C. §1251
- 3) Coastal Zone Management Act; 16 U.S.C. 1451
- 4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980; 42 U.S.C. § 103
- 5) Coral Reef Conservation Act; 16 U.S.C. § 6401
- 6) Federal Water Pollution Control Act; 33 U.S.C. § 1251
- 7) Magnuson-Stevens Fishery Conservation and Management Act; 16 U.S.C. 1801
- 8) National Environmental Policy Act of 1969; 42 U.S.C. § 4321
- 9) National Marine Sanctuaries Act; 16 U.S.C. § 1431
- 10) National Park Organic Act; 16 U.S.C. 1
- 11) National Wildlife Refuge System Administration Act; 16 U.S.C. 668dd-ee
- 12) Oil Pollution Act of 1990; 33 U.S.C. § 40
- 13) Refuse Act; 33 U.S.C. § 407
- 14) The Marine Protection, Research, and Sanctuaries Act; 33 U.S.C. § 1401

There are several examples of vessel groundings in National Marine Sanctuaries which were settled prior to complete litigation through consent decrees and settlement agreements. The National Marine Sanctuaries Act provides that in the event any person “destroys, causes the loss of, or injures any sanctuary resource” Secretary of Commerce is authorized to undertake response actions, assess natural resource damages, and commence a civil action to recover response costs and damages.<sup>61</sup> The Florida Board of Trustees also has the authority to collect for damages to natural resources associated with the lands under navigable waters belonging to the state of Florida,<sup>62</sup> thus the Board of Trustees typically joins actions brought by the United States for groundings in Florida.<sup>63</sup>

The following list provides a summary of several settlements resulting from vessel groundings in National Marine Sanctuaries in Florida.<sup>64</sup>

- 1) *M/V Wellwood* (1986)<sup>65</sup>

---

<sup>61</sup>National Marine Sanctuaries Act § 1443, 16 USC §1431 (2000).

<sup>62</sup> Fla. Stat. § 253.001 and 253.03 (2009).

<sup>63</sup> Fla. Stat. § 253.04(1). “The Board of Trustees of the Internal Improvement Trust Fund may police; protect; conserve; improve; and prevent trespass, damage, or depredation upon the lands and the products thereof... The board may bring in the name of the board all suits in ejectment, suits for damage, and suits in trespass which in the judgment of the board may be necessary to the full protection and conservation of such lands, or it may take such other action or do such other things as may in its judgment be necessary for the full protection and conservation of such lands; and the state may join with the board in any action or suit, or take part in any proceeding, when it may deem necessary...” *Id.*

<sup>64</sup> For a full list of federal natural resource consent decrees, see Office of General Counsel. “Natural Resource Consent Decrees and Settlements.” National Oceanic and Atmospheric Administration. Available at <http://www.gc.noaa.gov/natural-office1.html>.

The M/V Wellwood grounded in Key Largo National Marine Sanctuary in 1984, resulting in at least seventy percent loss of live coral in an area of 1.282 square meters, including 644 square meters of fractured reef framework.<sup>65</sup> The owner agreed to pay \$6,275,000 over a period of fifteen years.

2) *M/V Alec Owen Maitland* (1991)<sup>67</sup>

The M/V Alec Owen Maitland ran aground in the Key Largo National Marine Sanctuary in October 1989. The defendants agreed to pay \$1,450,000.

3) *M/V Elpis* (1991)<sup>68</sup>

The M/V Elpis ran aground in Key Largo National Marine Sanctuary in November 1989. The grounding destroyed 3,000 square meters of living corals and 878 square meters of coral reef framework.<sup>69</sup> The defendants agreed to pay \$2,375,000.

4) *Golden Lady* (1998)<sup>70</sup>

The Golden Lady, a commercial shrimping vessel, grounded in the Florida Keys National Marine Sanctuary (FKNMS) in February 1997. The grounding injured 97.41 square meters of sanctuary resources within the reef crest environment, including 20.71 square meters of coral. The owner agreed to pay \$54,717.67 for response, assessment, restoration, and monitoring costs.

5) *M/V OAXACA* (1999)<sup>71</sup>

The M/V OAXACA (known as Contship Houston) ran aground in the FKNMS in February 1997. The grounding resulted in damage to several thousand square feet of coral reef. The vessel owner agreed to reimburse the U.S. Coast Guard \$53,907.35 and NOAA \$135,038 and the Florida Board of Trustees \$11,011 for response and damage assessment. The vessel owner was also fined by NOAA \$30,000 for administrative penalties and by the Florida Board of Trustees \$3,334.99 for further damage assessment. Additional past costs were fined for \$112,531.40 along with an additional \$1,400,000 for a future monitoring plan.

6) *Androw* (2008)<sup>72</sup>

---

<sup>65</sup> *In re M/V Wellwood*, No. 84-1888-CIV-ATKINS (S.D.Fla. 1986). Available at <http://www.gc.noaa.gov/gc-cd/well-cd.pdf>.

<sup>66</sup> Hudson, J.H. and R. Diaz. "Damage Survey and Restoration of M/V Wellwood Grounding Site, Molasses Reef, Key Largo National Marine Sanctuary, Florida." Proceedings of the 6<sup>th</sup> Annual International Coral Reef Symposium, Australia, 1988. Available at [http://www.aoml.noaa.gov/general/lib/CREWS/mlrf\\_25.pdf](http://www.aoml.noaa.gov/general/lib/CREWS/mlrf_25.pdf).

<sup>67</sup> *In re M/V Alec Owen Maitland*, No. 90-10081 (King) consolidated with No. 90-0125 (King) (S.D. Fla. 1991). Available at <http://www.gc.noaa.gov/gc-cd/alec.pdf>.

<sup>68</sup> *In re M/V Elpis*, No. 90-10011-CIV-JLK (S.D.Fla. 1991). Available at <http://www.gc.noaa.gov/gc-cd/elpis-cd.pdf>.

<sup>69</sup> Hudson, J.H., et al. "M/V Elpis Coral Reef Restoration Monitoring Report, Monitoring Events 2004-2007, Florida Keys National Marine Sanctuary, Monroe County, Florida." Marine Sanctuaries Conservation Series NMSP-08-03. U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Sanctuary Program (2008). Available at <http://sanctuaries.noaa.gov/science/conservation/pdfs/elpis.pdf>.

<sup>70</sup> Golden Lady Sanctuary Resource Administrative Settlement Agreement (1998). Available at <http://www.gc.noaa.gov/gc-cd/lady.pdf>.

<sup>71</sup> *United States v. Atlas Shipping, Ltd.*, No. 99-10061-CIV-PAINE (S.D.Fla. 1999). Available at <http://www.gc.noaa.gov/gc-cd/atl-cd1.pdf>.

<sup>72</sup> *United States v. Losado*, 4:07-cv-10027-JLK (S.D.Fla. 2008). Available at <http://www.gc.noaa.gov/gc-cd/cd-androw.pdf>.

The Androw ran aground in the FKNMS in March 2003, resulting in injury to sea grass. The defendant agreed to pay \$5,000 for response costs and damages and agreed not to participate in any commercial or recreational fishery within the Sanctuary for five years.

7) *DL6236X* (2009)<sup>73</sup>

The DL6236X ran aground in sea grass in June 2005 in the FKNMS, injuring 64.931 square meters of sea grass. The vessel owner agreed to pay \$48,000 within 20 days of signature of settlement agreement to be used to reimburse response and damage assessment costs, implement primary restoration of the injured resources, implement compensatory restoration, and pay for associated monitoring, oversight, and other related costs.

8) *Easy Going* (2009)<sup>74</sup>

In July 2005, the Easy Going grounded in the FKNMS and injured 410.836 square meters of sea grass. The vessel owner agreed to perform seventy hours of community service related to marine life, its habitats, and/or the sanctuary and was prohibited from participating in any commercial or recreational fishery within the FKNMS for five years after the settlement.

9) *Mar Vida* (2009)<sup>75</sup>

In March 2006 the Mar Vida ran aground in the FKNMS and injured 160.5 square meters of live coral. The vessel owner agreed to perform 100 hours of community service related to marine life, its habitats, and/or the sanctuary.

## Florida

In addition to joining federal actions, the state of Florida can also initiate suits in certain instances of vessel groundings. The Florida Coral Reef Protection Act (CRPA) designated the Florida Department of Environmental Protection (DEP) as trustee for coral reef resources in its waters.<sup>76</sup> The CRPA applies to coral reefs within the sovereign submerged lands off the coasts of Broward, Martin, Miami-Dade, Monroe, and Palm Beach counties.<sup>77</sup> Under the CRPA vessels that run aground on coral reefs are liable for damages and possible civil penalties.<sup>78</sup> The statute has a recklessness standard of liability that requires responsible parties that “knew or should have known [the] vessel has run aground, struck, or otherwise damaged coral reef” to notify the DEP and cooperate in removal and damage assessment.<sup>79</sup> The CRPA provides for damages

---

<sup>73</sup> DL6236X Natural Resource Damage and Restoration Settlement Agreement and Release (2009). Available at [http://www.gc.noaa.gov/gc-cd/121509-DL6236X\\_settlement.pdf](http://www.gc.noaa.gov/gc-cd/121509-DL6236X_settlement.pdf).

<sup>74</sup> “Easy Going” Natural Resource Damage and Restoration Settlement Agreement and Release (2009). Available at [http://www.gc.noaa.gov/gc-cd/092809-easygoing\\_sa.pdf](http://www.gc.noaa.gov/gc-cd/092809-easygoing_sa.pdf).

<sup>75</sup> “Mar Vida” Natural Resource Damage and Restoration Settlement Agreement and Release (2009). Available at [http://www.gc.noaa.gov/gc-cd/082409-mar\\_vida\\_sa.pdf](http://www.gc.noaa.gov/gc-cd/082409-mar_vida_sa.pdf).

<sup>76</sup> Fla. Stat. § 403.93345(4) (2010).

<sup>77</sup> *Id.* at § 403.93345(2).

<sup>78</sup> *Id.* at §403.93345(5) and (6) (2010).

<sup>79</sup> *Id.* at § 403.93345(5).

according schedule based on the size of the damage and the number of offenses.<sup>80</sup> Damages recovered are deposited into the Ecosystem Management and Restoration Trust Fund, which must be used for particular coral reef restoration objectives.<sup>81</sup>

Additional civil penalties can be imposed by the court through Florida Water Resources Act of 1972<sup>82</sup> and the Florida Air and Water Pollution Control Act<sup>83</sup> for up to \$10,000 per day for each day of violation. Natural resource damage assessment can vary in Florida, though there are some established methodologies. For example, the Southeast Florida Coral Reef Initiative developed a methodology for assessing and restoring damaged coral reef in the area.<sup>84</sup>

In 2011 when a recreational sailboat ran aground in John D. MacArthur Beach State Park in North Palm Beach, Florida the CRPA was utilized to collect damages for restoration.<sup>85</sup> The sailboat damaged hard bottom and 16.34 square meters of coral reef within the park

---

<sup>80</sup> *Id.* at § 403.93345(8) (a). “For any anchoring of a vessel on a coral reef or for any other damage to a coral reef totaling less than or equal to an area of 1 square meter, \$150, provided that a responsible party who has anchored a recreational vessel as defined in s. 327.02 which is lawfully registered or exempt from registration pursuant to chapter 328 is issued, at least once, a warning letter in lieu of penalty; with aggravating circumstances, an additional \$150; occurring within a state park or aquatic preserve, an additional \$150. (b) For damage totaling more than an area of 1 square meter but less than or equal to an area of 10 square meters, \$300 per square meter; with aggravating circumstances, an additional \$300 per square meter; occurring within a state park or aquatic preserve, an additional \$300 per square meter. (c) For damage exceeding an area of 10 square meters, \$1,000 per square meter; with aggravating circumstances, an additional \$1,000 per square meter; occurring within a state park or aquatic preserve, an additional \$1,000 per square meter. (d) For a second violation, the total penalty may be doubled. (e) For a third violation, the total penalty may be tripled. (f) For any violation after a third violation, the total penalty may be quadrupled. (g) The total of penalties levied may not exceed \$250,000 per occurrence.” *Id.*

<sup>81</sup> *Id.* at § 403.93345(11). “(a) To provide funds to the department for reasonable costs incurred in obtaining payment of the damages for injury to, or destruction of, coral reefs, including administrative costs and costs of experts and consultants. Such funds may be provided in advance of recovery of damages. (b) To pay for restoration or rehabilitation of the injured or destroyed coral reefs or other natural resources by a state agency or through a contract to any qualified person. (c) To pay for alternative projects selected by the department. Any such project shall be selected on the basis of its anticipated benefits to the residents of this state who used the injured or destroyed coral reefs or other natural resources or will benefit from the alternative project. (d) All claims for trust fund reimbursements under paragraph (a) must be made within 90 days after payment of damages is made to the state. (e) Each private recipient of fund disbursements shall be required to agree in advance that its accounts and records of expenditures of such moneys are subject to audit at any time by appropriate state officials and to submit a final written report describing such expenditures within 90 days after the funds have been expended. (f) When payments are made to a state agency from the fund for expenses compensable under this subsection, such expenditures shall be considered as being for extraordinary expenses, and no agency appropriation shall be reduced by any amount as a result of such reimbursement.” *Id.* at § 403.93345(11)(a)-(f).

<sup>82</sup> Fla. Stat. § 373.129 (1972).

<sup>83</sup> Fla. Stat. § 403.141.

<sup>84</sup> See, “Rapid Response And Restoration For Coral Reef Injuries In Southeast Florida: Guidelines And Recommendations.” Southeast Florida Coral Reef Initiative (2007). Available at: [http://www.dep.state.fl.us/coastal/programs/coral/reports/MICCI/MICCI\\_Project2\\_Guidelines.pdf](http://www.dep.state.fl.us/coastal/programs/coral/reports/MICCI/MICCI_Project2_Guidelines.pdf)

<sup>85</sup> *State of Florida Dept. of Environmental Protection v. J.R. Ventures, Ltd.*, 2011 WL 115586265 (Fla. Cir. Ct. 2011).

boundaries.<sup>86</sup> Civil penalties were authorized through the Florida Air and Water Pollution Control Act<sup>87</sup> for the resultant pollution and damages were authorized through the CRPA.<sup>88</sup> The court awarded \$32,680 for damages along with other civil penalties.

## Hawaii

Hawaiian law does not have a statute solely addressing vessel groundings. However, Hawaii statutes require that grounded vessels are removed at the owner or operator's expense.<sup>89</sup> Damage to state or private property caused by a grounded vessel is also deemed the sole responsibility of the vessel's owner or operator.<sup>90</sup> Hawaii also has specific regulations that govern marine protected areas. For example, it is unlawful "to engage in any activity, including anchoring of a vessel that can or does result in damaging or destroying coral" within the Northwestern Hawaiian Islands Marine Refuge.<sup>91</sup>

Some cases of vessel groundings in Hawaii are settled instead of fully litigated. For example, in February 2005 the M/V Cape Flattery grounded on coral reef near Barbers Point Harbor, Oahu, Hawaii and resulted in injury to 19.5 acres of coral.<sup>92</sup> The United States, Hawaii, and the defendants agreed to a settlement of \$7,500,000 for assessment of damages and restoration.<sup>93</sup>

## U.S. Virgin Islands

The U.S. Virgin Islands (U.S.V.I.) does not have laws to specifically address vessel groundings. However, there is a permit system for mooring and anchoring to address small-scale damage to coral reefs. Permits are required for all vessels and houseboats intending to moor or anchor in a designated area.<sup>94</sup> Failure to obtain a permit or anchor in designated areas

---

<sup>86</sup> *Id.*

<sup>87</sup> Fla. Stat. § 403.141(1) (2000). "Whoever commits a violation specified in s. 403.161(1) is liable to the state for any damage caused to the air, waters, or property, including animal, plant, or aquatic life, of the state and for reasonable costs and expenses of the state in tracing the source of the discharge, in controlling and abating the source and the pollutants, and in restoring the air, waters, and property, including animal, plant, and aquatic life, of the state to their former condition, and furthermore is subject to the judicial imposition of a civil penalty for each offense in an amount of not more than \$10,000 per offense. However, the court may receive evidence in mitigation. Each day during any portion of which such violation occurs constitutes a separate offense. Nothing herein shall give the department the right to bring an action on behalf of any private person." *Id.*

<sup>88</sup> Fla. Stat. § 403.93345(8).

<sup>89</sup> Haw. Rev. Stat. §200-47.5(a).

<sup>90</sup> *Id.*

<sup>91</sup> HAR § 13-60.5-4(5).

<sup>92</sup> *United States v. Cape Flattery Ltd. et. al.*, No. C 12-00693 JMS-BMK at 102 (D. Haw. 2013).

<sup>93</sup> *Id.*

<sup>94</sup> V.I. CODE ANN. Tit. 25 § 405 (2013).

may result in suspension of the permit, is liable for any resulting damages if vessel is sunken or wrecked.<sup>95</sup> Mooring and anchoring are restricted near fragile natural systems.

## Puerto Rico

The U.S. Commonwealth of Puerto Rico has recognized an elevated protection for coral reefs as natural resources in their waters.<sup>96</sup> The Department of Natural and Environmental Resources of Puerto Rico (DNER) manages Natural and Marine Reserves in their waters and is the designated trustee for these resources.<sup>97</sup> The Law for the Protection, Conservation, and Management of Puerto Rico Coral Reefs gives the Secretary of the Department of Natural and Environmental Resources the authority to impose administrative fines of \$500 to \$10,000 per infringement; such as damage or destruction of coral reef and anchor or stop a vessel outside of the anchoring buoys.<sup>98</sup> The Secretary can also collect damages to repair damage caused by a violation of the Act and file injunction to prevent violation of the Act.<sup>99</sup> The administrative fines are deposited into the Fund for the Protection, Conservation, and Management of Puerto Rico Coral Reefs along with donations and permit fees for scientific studies of coral reefs.<sup>100</sup>

In March 1973, the S.S. *Zoe Colocotroni*, an oil tanker, ran aground on a reef off of the coast of Puerto Rico.<sup>101</sup> After being grounded for ten minutes with unsuccessful attempts to get free, the captain ordered the crew to lighten the ship by emptying crude oil into the sea.<sup>102</sup> The result was an oil spill of more than 5,000 tons, or 1.5 million gallons, of crude oil into the water and nearby mangroves.<sup>103</sup> The court determined that the proper standard for determining damages was the “cost reasonably to be incurred by the sovereign or its designated agency to restore or rehabilitate the environment in the affected area to its pre-existing condition, or as close thereto as is feasible without grossly disproportionate

---

<sup>95</sup> *Id.* at § 409(c). “Any owner of a sunken or wrecked vessel or houseboat in the designated mooring or anchoring areas who fails to comply with the provisions of this chapter shall be liable for damage caused by the vessel or houseboat as well as any other penalty provided by law, and the Department may dispose of the vessel or houseboat of any owner in noncompliance.” *Id.*

<sup>96</sup> Law for the Protection, Conservation, and Management of Puerto Rico Coral Reefs. Law 147 of 15 July 1999, article 2. Available at <http://www.oslpr.org/download/es/1999/147c1466.pdf>.

<sup>97</sup> Lilyestrom, Craig. “Puerto Rico’s DNER and NOAA to Initiate Emergency Restoration of Coral Reef Damaged by Grounding of Oil Tanker.” Department of Natural and Environmental Resources, Marine Resources Division. May 2006. Available at [http://www.marineincidents.com/pr/margara/pdf/FINAL%20For\\_Immediate\\_Release\\_may15\\_DRAFT.pdf](http://www.marineincidents.com/pr/margara/pdf/FINAL%20For_Immediate_Release_may15_DRAFT.pdf).

<sup>98</sup> Law for the Protection, Conservation, and Management of Puerto Rico Coral Reefs, Law 147 of 15 July 1999, article 9.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at article 8.

<sup>101</sup> *Puerto Rico v. S.S. Zoe Colocotroni*. 628 F.2d 652 (1st Cir. 1980). *See also*, Anderson, Charles B. “Damage to Natural Resources and the Costs of Restoration.” 72 Tul. L. Rev. 417, 434 (1997).

<sup>102</sup> *Puerto Rico v. S.S. Zoe Colocotroni* at 656.

<sup>103</sup> *Id.*



expenditures.”<sup>104</sup> The court rejected the replacement value of \$5,536,583 for destroyed organisms but approved the restoration and replacement costs of \$7,735,863.<sup>105</sup>

Similar to other jurisdictions, vessel groundings in Puerto Rico are also settled for restoration damages. For example, in 1994 the T/B Morris J. Berman ran aground off of the coast of Puerto Rico, causing the barge to erupt and discharge 800,000 gallons of fuel into the surrounding waters.<sup>106</sup> During the vessel removal process an estimated additional 85,000 gallons were released and up to 200,000 gallons of oil sank with the barge.<sup>107</sup> Liability was conceded under the Oil Pollution Act and a settlement was reached in 2000 between the defendants, the federal government, and the Commonwealth of Puerto Rico.<sup>108</sup> The defendants paid \$9,479,003 for restoration and \$286,614 for monitoring and implementation of the restoration project.<sup>109</sup>

## Vessel Grounding Law of the Federated States of Micronesia

The Federated States of Micronesia (F.S.M.) is made up of over 600 islands throughout the western Pacific Ocean.<sup>110</sup> Several methodologies are used in F.S.M. for natural resource damage assessment, including: commodity value, which is the sale of the components of the damaged area; tourist value, which is based on what visitors spend to visit the site; and replacement value, which is the cost of replacing the damaged coral.<sup>111</sup>

The Supreme Court of the Federated States of Micronesia has decided several vessel groundings cases liability and damages based on maritime torts. The following list provides a few examples:

1) *Pohnpei v KSVI No 3* (Pon. 2001).<sup>112</sup>

The KSVI No. 3 grounded near Pohnpei State in April 1997, resulting in x. The court determined that Pohnpei State, not Kitti municipality, is the legal owner of the submerged lands and living resources upon which the KSVI No. 3 grounded and was entitled to damages. The court defined this ownership as public land intended to benefit the public.<sup>113</sup>

---

<sup>104</sup> *Id.* at 675.

<sup>105</sup> *Id.* at 677.

<sup>106</sup> Tetra Tech, Inc. “Draft Restoration Plan / Environmental Assessment for Morris J. Berman Oil Spill.” National Oceanic and Atmospheric Administration and Puerto Rico Department of Natural and Environmental Resources. (2006). Available at <http://www.gc.noaa.gov/gc-rp/bermandrafttrpea.pdf>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> Legal Information System of the Federated States of Micronesia. “About the FSM National Government.” Available at <http://fsmlaw.org/fsm/>.

<sup>111</sup> See *People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3*, 10 FSM Intrm. 337 (Yap 2001). Available at <http://www.paclii.org/fm/cases/FMSC/2001/24.html>.

<sup>112</sup> *Pohnpei v KSVI No 3*, 10 FSM Intrm. 53 (Pon. 2001). Available at <http://www.paclii.org/fm/cases/FMSC/2001/58.html>.

<sup>113</sup> *Id.* Note, the damages were determined at a later hearing.



- 2) *People of Satawal ex rel. Ramoloilug v. Mina Maru No. 3* (Yap 2001).<sup>114</sup>  
The Mina Maru No. 3 grounded in April 1998 near West Fayu, resulting in 3,375 square meters of damaged reef. In a suit for maritime negligence and nuisance, the court first granted summary judgment on liability and then determined damages of \$1,025,000 for reasonable compensation and the cost of clean-up plus the cost of the legal action.<sup>115</sup>
- 3) *People of Rull ex rel. Ruepong v. M/V Kyowa Violet* (Yap 2006).<sup>116</sup>  
The Kyowa Violet ran aground in December 2002 entering Colonia Harbor, resulting in damage to 1,436 square meters of the reef followed by an oil spill resulting from a gash in the ship's hull affecting the entire lagoon, including 60,000 square meters of mangroves. Three traditional chiefs brought a class action suit for maritime negligence and nuisance as representatives of the coastal municipalities. The court awarded the class \$2,950,638 for damaged reef, oiled mangroves, and lost fisheries and access to swim and bath.
- 4) *People of Weloy ex rel. Pong v. M/V CEC Ace* (Yap 2007).<sup>117</sup>  
The M/V Cec Ace grounded into the Colonia Harbor Reef in November 2005, resulting in damage to 392 square meters of reef. The plaintiffs filed a class action, alleging 1) maritime negligence, 2) infliction of serious emotional distress, 3) unseaworthiness of vessel, 4) trespass, 5) nuisance (public and private), and 6) punitive damages. The court recognized the class certification for all of those who owned the resources by tradition, except for the infliction of emotional distress claim. The case was later settled for \$15,000.<sup>118</sup>

## Conclusions and Recommendations

### Application of Comparative Law to the Bahamas

As earlier described, the Bahamas does not have any laws that specific address vessel grounding liability or damage assessment. While the existing common law tort system can be used to address vessel grounding incidents,<sup>119</sup> a statute would ensure parties can be held liable and that sufficient damages can be collected to clean-up and restore natural resources after a vessel grounding incident.

---

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *People of Rull ex rel. Ruepong v. M/V Kyowa Violet*, 14 FSM

Intrm. 403 (Yap 2006). Available at <http://www.paclii.org/fm/cases/FMSC/2006/53.html>.

<sup>117</sup> *People of Weloy ex rel. Pong v. M/V CEC Ace*, 15 FSM Intrm. 151 (Yap 2007). Available at <http://www.paclii.org/fm/cases/FMSC/2007/28.html>.

<sup>118</sup> *People of Weloy v. M/V Cec Ace*, 15 FSM Intrm. 444 (Yap 2007). Available at <http://www.fsmlaw.org/fsm/decisions/vol15/15FSMIntrm.444-446.htm>.

<sup>119</sup> Note that some countries examined in this comparison still utilized common law to address vessel grounding incidents, despite having an applicable statute.

One possibility for the Bahamas to address vessel grounding liability and damage assessment would be for the Bahamas National Trust (BNT) to implement regulations. However, the BNT's jurisdiction may be limited to areas they govern and vessel groundings could occur outside of that jurisdiction. Another possibility would be for the Bahamas to enact a statute addressing vessel groundings generally, and possibly appoint the BNT or the Bahamas Maritime Authority as a trustee with the authority to make delegation agreements among other agencies.

## Suggested Statutory Elements

### 1) Trustee

To best utilize human resources it may make more sense to assign the responsibility of Trustee to an existing agency with the capacity to conduct maritime operations, to the extent such an agency exists.

### 2) Scope

For a statute to thoroughly address vessel grounding incidents in the Bahamas, it should focus on activities, rather than the resource that may be injured. Natural resources can be damaged from large impacts, but also from small incidents of anchoring. Also, several types of natural resources are at risk from vessel grounding incidents. A statute should have a broad focus, for example, the Jamaica statute addresses "any natural resources situated in the floor of the sea."<sup>120</sup>

### 3) Liability

While common law maritime torts typically only lend liability to a negligence standard,<sup>121</sup> a statute can provide a stricter level of liability for vessel grounding incidents. Jamaica's Beach Control Act also has this standard of liability.<sup>122</sup> The use of a strict liability alleviates the burden of having to prove that the responsible party violated a standard of care, as in a negligence standard. An alternative to strict liability or negligence is a recklessness standard of liability, for example Florida holds a party liable if they "knew or should have known that their vessel has run aground..."<sup>123</sup>

### 4) Assessment of Damages

Natural resource damage assessment is a complex process, thus it is important to have a methodology for efficient and effective assessment when a vessel grounding incident occurs. Beyond a damage assessment methodology, it is also essential for a statute to clarify what damages can be collected for.

For example, under the Jamaica Beach Control Act damages can be collected for payment of loss in 'economic value,' which is defined as: income from sales of goods/services provided by marine resources; value of marine resources used for

---

<sup>120</sup> Beach Control Act of 1956 § 19(1)(d).

<sup>121</sup> Typical torts such as negligence, nuisance, or wrongful navigation only hold the defendant to a negligent standard. However, in some cases strict liability for ultrahazardous or abnormally dangerous activities may be applicable.

<sup>122</sup> Fla. Stat. § § 403.93345(5).

<sup>123</sup> *Id.* at § 403.93345(5)

subsistence; value of ecological functions/services provided by marine resources; value of potential uses and biological assets; and the value of existence (extrinsic value).<sup>124</sup>

Florida statutes provide that damages can be collected for: compensation for restoring reef and value lost or value of reef if can't be restored; cost of damage assessment; cost of activities to prevent further damage to reef; reasonable cost of monitoring reef for at least ten years if damage more than one square meter; and the cost of enforcement actions.<sup>125</sup>

#### 5) Fines and Penalties

Fines for damage to natural resources resulting from vessel grounding incidents are useful deterrents in addition to payment of damages. Florida law provides an example of a gradient scale for civil penalties based on the size of the damage and the number of offenses, with a total cap of \$250,000 per incident.<sup>126</sup> Note, a limitation on liability may or may not be applicable from the Merchant Shipping Act of 1976 and any other international agreements to which the country may be a party.<sup>127</sup>

#### 6) Delegation Agreements

Delegation agreements provide a mechanism for other existing agencies to enforce and implement vessel grounding provisions. For example, BNT could be a party to such an agreement in order to implement all or portions of the statute within the national parks under its jurisdiction.

#### 7) Notification and Removal Requirements

When a ship runs aground environmental impacts, such as oil pollution, can increase exponentially within a matter of hours. Ships that run aground should be required to notify the Trustee as soon as possible, with a maximum 24 hour limit from the time of the grounding, before additional fines and penalties are assessed. Salvage companies and others in the response chain should also be required to notify the Trustee of any grounding of which they are made aware. A 24 hour hotline could prove helpful.

Removal of a grounded vessel can often cause additional harm and environmental impacts. Thus, after notification the designated agency should retain supervisory authority for the vessel's removal and for the execution of a damage assessment. It is also important to note that the Merchant Shipping Act provides specific instructions for the appointment of a receiver for wrecks and removal of a wreck.<sup>128</sup>

#### 8) Conservation Fund

The creation of a Conservation Fund, in which the damages and fines assessed would be placed, to be administered by the Trustee could help to ensure that any assessed fines are utilized for the enumerated purposes. Funds may also be needed to

---

<sup>124</sup> Beach Control Act of 1956 § 19(3)(a)-(e).

<sup>125</sup> Fla. Stat. § 403.93345(6)(a)-(e).

<sup>126</sup> *Id.* at § 403.93345(8)(a)-(g).

<sup>127</sup> The M/S *Westerhaven* case described above provides an example where the defendants conceded to liability but asserted that damages were limited by the Convention on Limitation of Liability for Maritime Claims of 1976. The Supreme Court of Belize held that the convention did not apply to these circumstances, thus damages were not limited. *Belize v. MS Westerhaven Schiffahrts et. al.*, (2009) No. 45/2009 (Belize).

<sup>128</sup> Merchant Shipping Act, Chapter 268 Part VI.

address vessel removal and clean-up from groundings and associated damages from perpetrators who have no assets.