



**MARITIME  
AUTHORITY OF  
JAMAICA**



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# **Legal Issues relating to the enforcement of the Fisheries Act, 2018**

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Maritime Authority of Jamaica**

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# 1. Maritime Authority of Jamaica Functions



1. Administer the  
Registration of Ships



2. Regulate the  
Certification of  
Seafarers



3. Regulate Safety of  
Shipping –  
Construction &  
Navigation



# 1. Maritime Authority of Jamaica

## Functions



4. Inspect ships for maritime safety, security, prevention of marine pollution, crew welfare



5. Establish maritime training & safety standards



6. Conduct marine casualty investigations

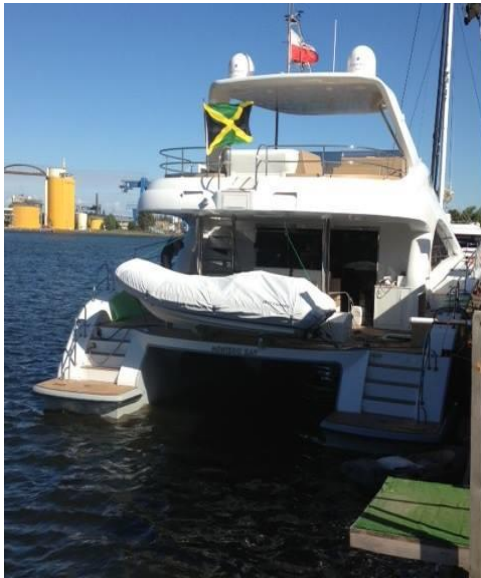


**Vessel Types : Container Ships, Passenger Ships, Bulk Carriers , OSV**





## 2. Mega Yacht Registry





# Maritime activities in Jamaica

- **International Shipping** -container ships, bulk cargo ships, cruise ships
- **Local trade** ( cabotage ) - tugs, bunker barges, LNG carriers, **commercial fishing**
- **Watersports** - dive boats, catamarans, glass bottom boats, Personal Watercraft (PWC), motorized, non motorized vessels
- **Recreational** - yachts , power boats, sports fishing vessels, PWC
- **Artisanal fishing**



# Fisheries Act, 2018

## Relevant enactments ( section 2 Fisheries Act)

- (a) Aquaculture, Inland and Marine Products and By-Products (Inspection and Licensing) Act;
- (b) Beach Control Act;
- (c) Endangered Species (Protection, Conservation and Regulation of Trade) Act;
- (d) Shipping Act;**
- (e) Exclusive Economic Zone Act;**
- (f) Natural Resources Conservation Authority Act;
- (g) Wildlife Protection Act;
- (h) Maritime Areas Act;**
- (i) Morant and Pedro Cays Act;** and
- (j) Any other enactment that the Minister may, by order, declare to be a relevant enactment for the purposes of this Act.



# Maritime Law v Fisheries Law

- The laws relating to Fisheries cannot be equated with maritime laws governing local and international shipping however fishing vessels share characteristics in common with other vessels and ships.
- The court in the exercise of its jurisdiction over fishing vessels may be required to apply maritime law and admiralty law principles in relation to:
  - nationality of the vessel,
  - ownership and registration
  - enforcement of marine mortgages
  - collisions
  - Crew wage claims,
  - maritime salvage etc.





# Maritime Law v Fisheries Law

- *R. v Ulybel Enterprises Ltd.* [2001] 2 SCR 867
- The case involved the seizure of the fishing vessel *Kristina Logos* pursuant to the Canadian Fisheries Act for illegally fishing in the NAFO fishing zone without a Canadian fishing licence.
- The Canadian fishing licence entitled the vessel to fish in the zone provided it was a foreign fishing vessel. The vessel was provisionally registered in Panama but had not yet been deleted from the Canadian register of ships and was deemed under the law to be a Canadian registered vessel and therefore in breach of the Fisheries Act.



# Maritime Law v Fisheries Law

- ***R. v. Ulybel Enterprises Ltd.***

*The admiralty provisions of the Federal Courts Act and the provisions of the Fisheries Act can and should be read as a consistent, harmonious scheme for the regulation of maritime matters. Fishing vessels and their use are at the heart of the activities governed by each regime, and the law in one area will inevitably exert an influence on the law in the other.*

*For example, it is a likely scenario that many fishing vessels are mortgaged and must be active and producing income in order to discharge the mortgage. A seizure of such a vessel under the Fisheries Act can result in a lengthy pre-trial detention. If an owner is unable to obtain the return of the vessel by posting security, by taking the vessel out of the working ocean, it is likely that a period of detention that curtailed the income producing activities of the vessel would precipitate a civil claim against the vessel in a court of admiralty jurisdiction ....”.*

*Iaccobucci J.*



# Maritime Law v Fisheries Law

## Concepts of maritime law to be considered

- The notion of a ship as having a nationality
- Legal owner v registered owner
- Bareboat / Demise charterer as registered owner
- Salvage - voluntary saving of maritime property at sea



# Maritime Law v Fisheries Law

## Concepts of maritime law to be considered

- Limitation of liability for maritime claims - exception to the general rule of *restitutio in integrum*. LLMC Protocol 96 incorporated in the Shipping Act, 1998
- Ship owner entitlement to limit liability for environmental damage. CLC, 1992 Bunkers, 2001.
- Salvage - voluntary saving of maritime property at sea
- The action in rem and the arrest of ships
- Maritime liens – crew wages

# MV EVER GIVEN

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**Maritime law cases can involve multiple jurisdictions and parties**



- **Flag -**
- **Crew -**
- **Owner –**
- **Charterer -**
- **Ship management company –**
- **Classification Society -**
- **Insurer-**
- **Locus-**
- **Salvage company**

**Panama**

**Indian**

**Japanese** Shoei Kisen Kaisha.

**Taiwanese** Evergreen Corp

**German –** Bernhard Schulte

**American .** ABS

**Great Britain** UK Pand I Club

**Egyptian waters**

**Dutch**





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# Jurisdiction over Fishing vessels

- **Fishing vessel:**
- Any vessel which is used for, equipped to be used for, or of a type normally used for fishing or any related activity.



# Jurisdiction over Fishing vessels

- **Related activity:**

(a) As it relates to fishing, activities including –

(i) the trans-shipping of fish to or from any vessel or conveyance;

(ii) the landing of fish from any vessel or conveyance;

(iii) the storing or transporting of fish taken from the fisheries waters up to the time it is first landed;

(iv) the storing, packaging or processing of fish

**(v) the refueling or supplying of any fishing vessel or conveyance**

(vi) the performing of other activities in support of fishing

(vii) attempting or preparing to do any of the acts referred to in subparagraphs (i) to (vi).

Nb. A bunkering vessel or vessel transporting crew would therefore fall within the definition of fishing vessel



# Jurisdiction over Fishing vessels

- **Fishing vessel:**
  - Any vessel which is used for, equipped to be used for, or of a type normally used for fishing or any related activity.
- **Vessel:**
  - Has the same meaning assigned to it under the *Shipping Act* and includes a fishing vessel
- Is a Fishing vessel a ship ?



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# Ship v Vessel

- A ship is defined under section 2 of the Shipping Act, 1998 as including "any description of vessel used in navigation."
- Establishing the navigability of a vessel is important in determining a vessel's character as a ship.



# Ship v Vessel

*R v Goodwin [2005] 1 Lloyd's Rep 432.*

- Collision involving a Yamaha Waverunner and another “jet ski” .
- Appellant was charged under the S.58 of the UK MSA which creates an offence where a master of a ship causes serious injury to a person.
- The court held in this case that the term “used in navigation” was restricted to vessels which are used to make ordered progression over the water from one place to another with an intended destination.
- The Waverunner was held not to be a ship as it was not designed for ordered travel or navigation but for having fun on water.





# Ship v Vessel

All ships are vessels but not all vessels are ships .

## Why is the distinction important ?

- Registration
- Mortgage registration
- Limitation of Liability for maritime claims
- Employment of crew
- Surveys and Certificates
- Salvage Law



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# Ship v Vessel

## Why is the distinction important ?

- **Arrest** – only ships can be arrested to secure a maritime claim
- **Limitation Periods**
- 2 years - claims for damage or loss to a ship, personal injury, death of persons on that ship, salvage.



## Jurisdiction over Fishing vessels: Registration

- In considering applications for a licence, authorization or permit to engage in fishing the vessel is required to register under the Shipping Act and be seaworthy – Fisheries Act, Section 28(2)(b).
- Registration is an attribute of national sovereignty whereby a country can determine the conditions for the grant of nationality to a ship. Prior to the Shipping Act, 1998 there was no concept of a Jamaican ship. The UK 1894 Merchant Shipping Act which was repealed by the Shipping Act only recognised British Ships.
- The Shipping Act sets out the conditions for the grant of nationality to a ship in Part IV of the Act.



## Registration under the Shipping Act , 1998

- **Registration is compulsory**
- All ships must be registered unless they are licensed or exempt from registration or licensing under the Act. Shipping Act, Section 17.
- The failure of a master of a vessel wholly owned by a person qualified to own a Jamaican ship to produce the certificate of registry on demand by an inspector or proper officer is a breach of the Act. (Section 101) .
- The vessel may be detained until the certificate is produced.



## Ownership of a Jamaican ship

Who can own a Jamaican ship ?

The Shipping Act restricts the ownership of Jamaican ships to:

- Citizens
- Jamaican companies,
- foreign maritime entities( entities recognised in a foreign jurisdiction as being entitled to own ships) and;
- Partnerships.

Shipping Act, Section 20





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## Registration of Ships

There are five separate Registers of ships namely:

- Ships
- Ships under construction
- Provisionally registered ships
- Fishing vessels
- **Bareboat chartered ships**
- Pleasure craft



# Registration of Ships

- **Bareboat charter Registration**
- Bareboat charter registration allows for a ship which is registered in Country A for private law purposes ( ownership and mortgage registration) to be registered in Country B for public law purposes (safety, manning, environment protection, welfare of seafarers etc),
- A ship can only fly one flag at a time and during the bareboat charter registration in Country B the registration in Country A is frozen. The ship will only fly the flag of country B.



## Bareboat charter

- The features of a demise charter/ bareboat charter were set out in the judgement of Evans LJ in *The Giuseppe di Vittorio*:
- *What then is the demise charter? Its hallmarks, as it seems to me, are that the legal owner gives the charterer sufficient of the rights of possession and control which enable the transaction to be regarded as a letting – a lease, or demise, in real property terms – of the ship. Closely allied to this is the fact that the charterer becomes the employer of the master and crew. Both aspects are combined in the common description of a ‘bareboat’ lease or hire arrangement.*

*The Giuseppe di Vittorio* (1998) 1, Lloyd’s Rep. 136

- In a bareboat charter arrangement the possession and control of the vessel passes from the owner to the bareboat charterer who determines who employs the master and crew. The bareboat charterer can apply and become the registered owner of a Jamaican ship.



# Jurisdiction over Fishing vessels: Registration

- Jamaican ships have rights and privileges which include the right to conduct commercial activities in Jamaican waters.
- Only Jamaican ships can engage in local trade in Jamaican waters - Shipping Act Section 15(2).
- **Only Jamaican ships can engage in commercial fishing activities in Jamaican waters**
- Section 15(2) is subject to any international agreement in force for Jamaica
- Jamaican ships must have a name, port of registry and official number



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CV 85C

CFS PARADERO  
MONTEGO BAY  
IMO 9309999

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## Unlawfully Assuming the Character of a Jamaican ship

- The national flag may only be flown on a Jamaican ship - Shipping Act, Section 103
- Where a person unlawfully uses the Jamaican flag or assumes the Jamaican national character for the purpose of making the ship appear to be a Jamaican ship, the ship shall be subject to forfeiture. - Shipping Act, Section 106(1).
- The Burden of proof of the right to use the Jamaican flag and assume the Jamaican national character shall lie on the person using and assuming the same - Shipping Act, Section 106(2),



## Unlawfully Assuming the Character of a Jamaican ship

- Using or permitting any person to use the Jamaican ship for the purpose of making the ship appear to be a Jamaican ship.

Penalty - summary conviction in a Parish Court. Fine of JD 500,000.00 or imprisonment for five years or to both such fine and imprisonment. Shipping Act, Section 107.

- Concealing Jamaican character or assuming foreign character –  
Penalty - ship is liable to forfeiture Shipping Act, Section 108(1).

- Master or owner who commits an offence under Section 108(1).

Penalty - summary conviction in a Parish Court. Fine of JD 350,000.00 or imprisonment for two years or to both such fine and imprisonment. Shipping Act, Section 108(2).



# Jurisdiction over Fishing vessels

- **Local fishing vessel – Section 2 Fisheries Act**
  - (a) Wholly owned by one or more persons who are citizens of Jamaica or ordinarily residents of Jamaica
  - (b) Wholly owned by a company incorporated under the laws of Jamaica
  - (c) Manned by a majority of officers and crew that are citizens of Jamaica or ordinarily residents of Jamaica; or
  - (d) Not owned by a company under demised.

The registration of a vessel as a Jamaican ship does not *per se* entitle the vessel to operate as a Local fishing vessel.



# Jurisdiction over Fishing vessels

- **Foreign Ship**
- A ship which is not a Jamaican ship. - Shipping Act, Section 2
- **Foreign fishing vessel:**
- A vessel which is registered or licensed to engage in fishing or any related activity in a State other than Jamaica. – Fisheries Act Section 2.



## Jurisdiction over Jamaica's maritime area

- Another attribute of national sovereignty in the context of fisheries management is the right to determine the maritime boundaries of the State.
- In enforcing the Fisheries Act, 2018 it is important to understand the maritime laws governing the sea as depending on where a vessel is located a different legal regime may exist.



## Jurisdiction over Jamaica's maritime area

- The legislative framework for managing fisheries established under the Fisheries Act, 2018 and the relevant enactments incorporate the principles of UNCLOS in so far as it relates the rights of the Government of Jamaica as a Coastal State and Flag State in the various maritime zones over which Jamaica has jurisdiction.



# **Jurisdiction over Jamaica's maritime area**

## **Flag State Jurisdiction**

Flag States are obliged to exercise jurisdiction over ships flying their flag, irrespective of the maritime zone where the ships may operate.

The Jamaican courts will have jurisdiction over Jamaican fishing vessels where ever they are in the world including on the High Seas.

## **Coastal State Jurisdiction**

Coastal State jurisdiction involves the exercise of jurisdiction over foreign vessels operating in a State's waters.

The existence of maritime zones determines the nature of the jurisdiction which the Courts will have over these vessels.



# Jurisdiction over Jamaica's maritime area

## Port State Jurisdiction

When a foreign fishing vessel is voluntarily in Jamaica's internal waters (harbours) Jamaica as the coastal State may seek to exert an aspect of "Port state jurisdiction".





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## Jurisdiction over Jamaica's maritime area

There are six maritime zones which are relevant to the fisheries management:

- Internal Waters
- Archipelagic Waters
- Territorial Sea
- Contiguous Zone
- Exclusive Economic Zone
- High Seas



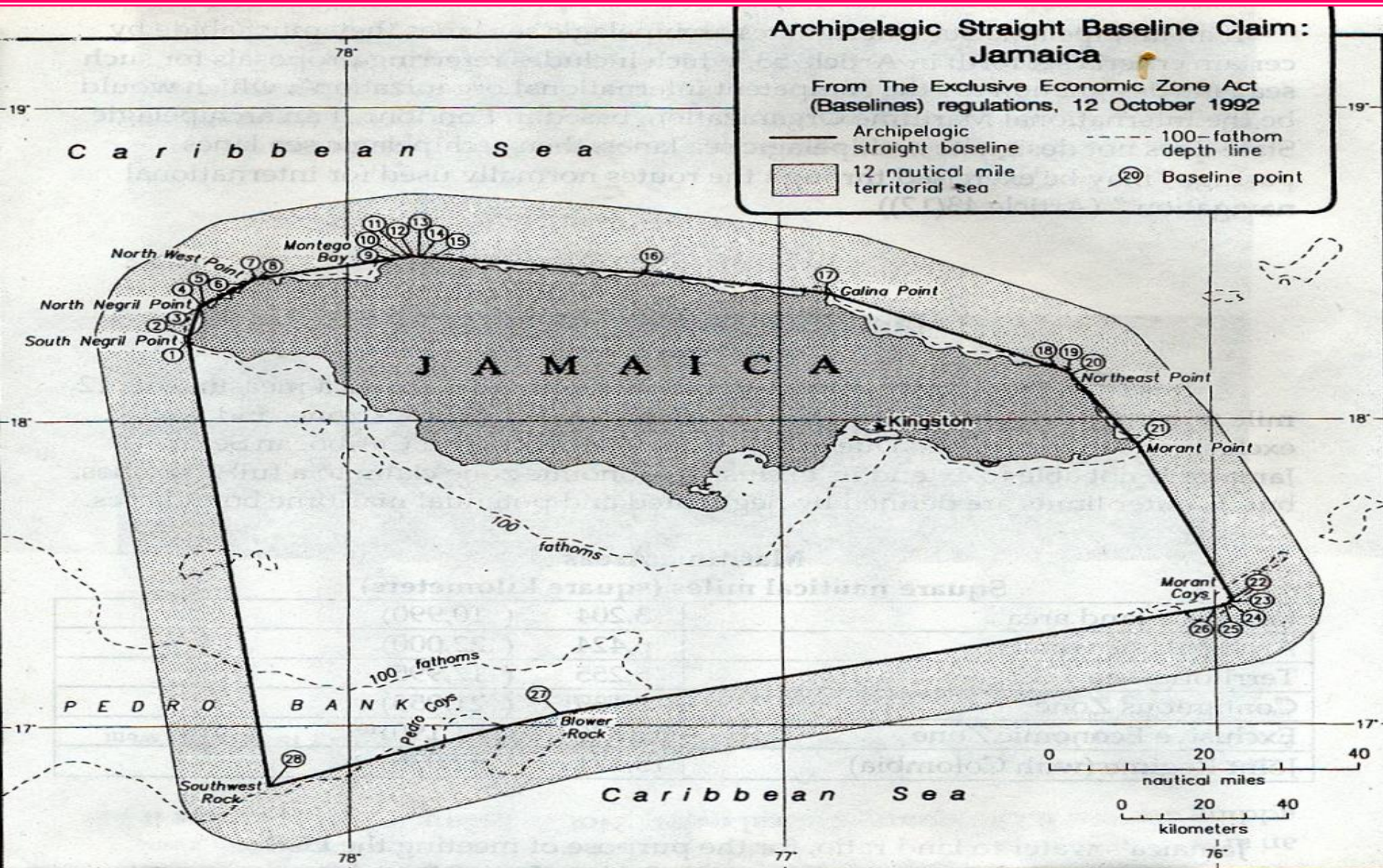
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## Jurisdiction over Jamaica's maritime area

Jamaica's ability to exercise jurisdiction up to 200 nautical miles is based on the incorporation of the UNCLOS provisions in the Maritime Areas Act, 1996 and the Exclusive Economic Zone Act, 1991.

# JAMAICAN WATERS (25x area of the land mass)





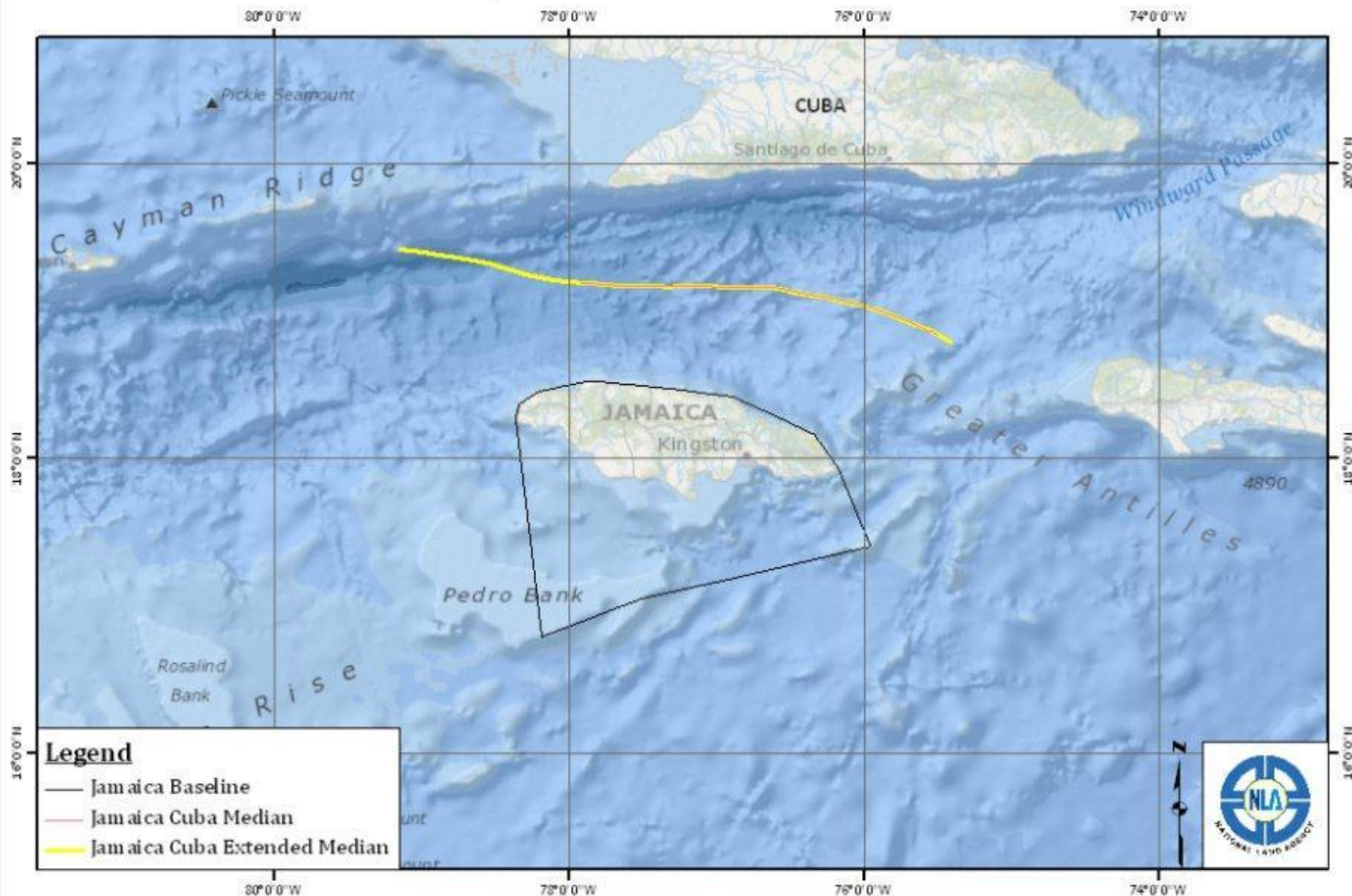
# Jurisdiction over Jamaica's maritime area

Jamaica is an archipelagic State for the purposes of the UNCLOS and has drawn archipelagic baselines in line with Article 47 of the Convention.

- Because of Jamaica's geographic location in the Caribbean delimitation negotiations were required with 6 neighbouring states:
- Nicaragua, Honduras, Colombia, the Cayman Islands(UK), Cuba and Haiti.
- 
- Delimitation agreements have been negotiated with Columbia and Cuba .



# Jamaica Cuba Medians



0 20 40 80 120 160 200  
Nautical Miles

Prepared by National Land Agency, 23 1/2 Charles Street, Kingston  
Basemap: ESRI's ArcGIS Online Ocean Basemap

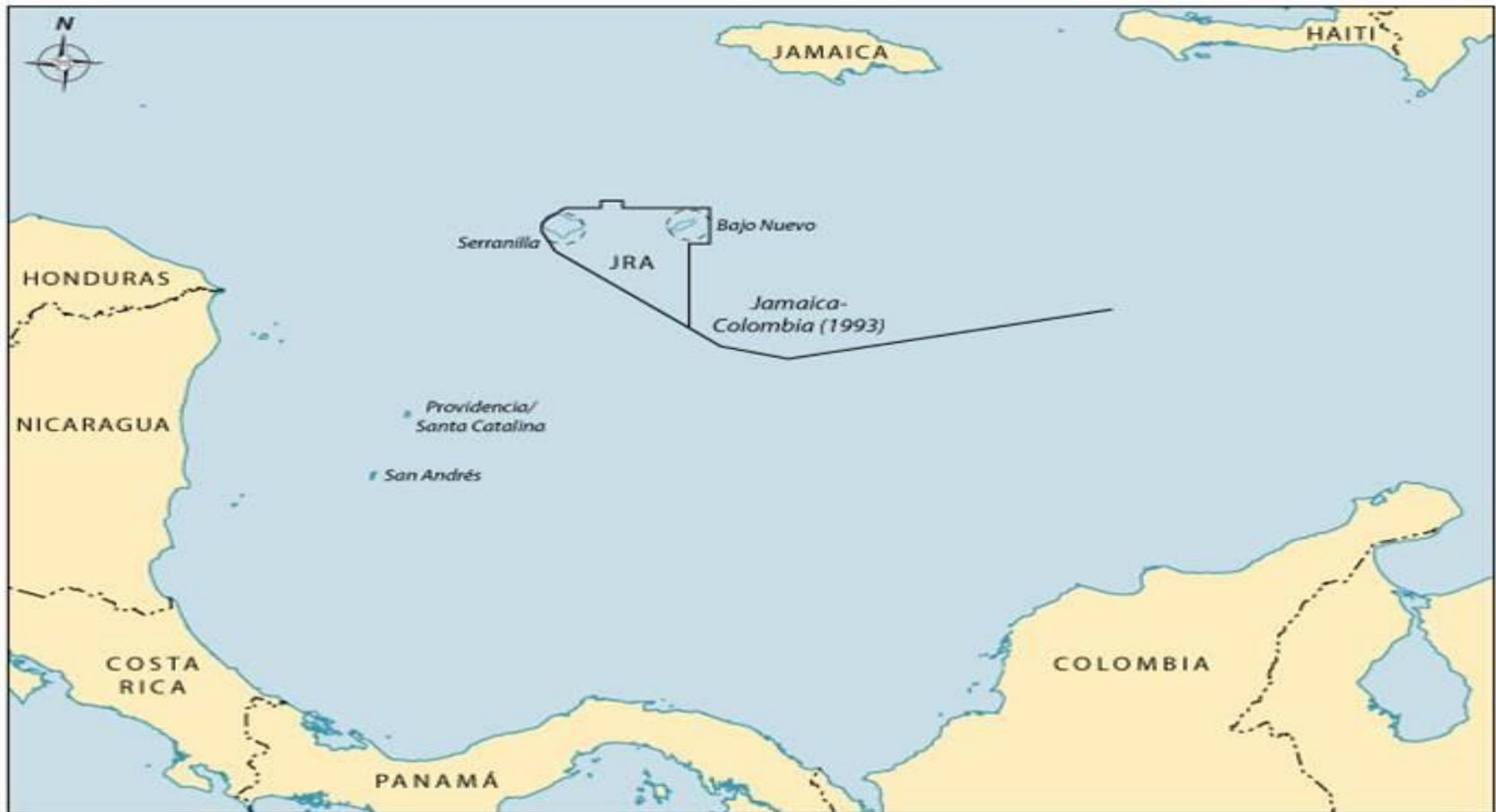


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# JOINT REGIME AREA





# Fisheries Waters

- **Internal Waters**
- Internal waters are located on the landward side of the baseline of the territorial sea
- Internal Waters would incorporate the harbours of Jamaica.
- Internal waters are to be distinguished from Inland waters the latter which refers to rivers, ponds and other freshwater areas.



# Fisheries Waters

- **Territorial Sea –**
- The Territorial Sea extends 12 nautical miles from the Archipelagic baselines
- Ships of all States have the right of innocent passage through the Territorial Sea. Maritime Areas Act, Section 13 .
- Passage must be continuous, expeditious and “innocent” .





# Fisheries Waters

- **Territorial Sea –**
- **Criminal jurisdiction on board a foreign ship.**
- The criminal jurisdiction should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following circumstances:
  - (a) if the consequences of the crime extend to the coastal State;
  - (b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
  - (c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
  - (d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.



# Fisheries Waters

- **Territorial Sea –**
- **Criminal jurisdiction on board a foreign ship.**
- The passage of a foreign vessel shall be deemed to be prejudicial to the peace, good order or security of Jamaican i.e., not innocent if while the vessel is in the territorial sea or archipelagic waters, engages in the activities set out in Section 18 of the Maritime Areas Act.
- Section 18(1)(h)- “*any fishing activities*”.



# Fisheries Waters

- **Contiguous Zone 24 NM**
- The Contiguous Zone extends 12 nautical miles from the Archipelagic baselines.
- Jamaica has limited rights as a coastal State to assert jurisdiction over foreign ships in this zone save to prevent or punish infringement of its customs, fiscal immigration or sanitary laws. Maritime Areas Act, Section 19.



# Fisheries Waters

- **Exclusive Economic Zone**
- The EEZ extends 200 nautical miles from the Archipelagic baselines.
- In the EEZ Jamaica has sovereign rights ( not sovereignty ) for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds.
- Although UNCLOS and by extension the Maritime Areas Act establishes that Jamaica has jurisdiction over its EEZ for purposes relating to economic exploitation and environmental protection, this does not extend to criminal matters on board foreign ships.
- The Fisheries Act regulates fishing activities in the EEZ in keeping with the jurisdiction vested under the Maritime Areas Act.



## Enforcement of Fisheries laws in the EEZ

- The M/V “Virginia G”
- An oil tanker flying the flag of Panama, supplied fuel to commercial fishing vessels in the EEZ of Guinea-Bissau. The M/V “Virginia G” was arrested by the authorities of Guinea-Bissau for breaches of its fisheries laws by carrying out “fishing related activities.
- The Judges at ITLOS unanimously held that the bunkering of fishing vessels in the EEZ was an activity related to fishing that could be regulated by the Coastal State.

ITLOS Case 19, 2014.



# High Seas

- **The High Seas are the areas of waters beyond the jurisdiction of a State.**
- Having regard to the rights of neighbouring States to establish EEZs there are only pockets of high seas in the Wider Caribbean Region.
- Issues of Hot Pursuit would therefore not likely arise.
- Jamaica as a flag State can regulate Jamaican fishing vessels on the high seas.
- Article 116 of UNCLOS states that all States' fishermen have the right to fish on the high seas.
- Offences on the High Seas - Piracy



## Jurisdiction of the Parish Court

- The Judicature (Parish Court) Act, 1928
- Section 267 sets out the “seaward” jurisdiction of the court.
- The provision states *inter alia* that “..nothing shall be taken to confer jurisdiction extending beyond the outer limits of the Territorial Sea”.
- Does the Parish Court have the jurisdiction to hear criminal matters involving breaches of the Fisheries Act which take place beyond the Territorial Sea, without a provision in the Judicature (Parish Court) Act expressly extending the courts jurisdiction to the EEZ ?



## Enforcement of Fisheries Act in the EEZ

- Section 101 Fisheries Act - *A person who commits an offence under this Act, for which no penalty is specifically provided, is liable, on summary conviction in a Parish Court, to a fine not exceeding three million dollars, or to imprisonment for a term not exceeding twelve months.*
- Article 73 (3) UNCLOS - penalties for violations of fisheries laws in the EEZ may, in the absence of a specific agreement between the coastal State and the flag State, not include imprisonment or any other form of corporal punishment.
- Can a penalty of imprisonment be imposed under the Fisheries Act where the offence takes place in Fisheries Waters beyond the 12nm Territorial Sea i.e., in the EEZ ?





## Enforcement of Fisheries Act in the EEZ

- **Notification of Enforcement Action**
- Article 73 (4) UNCLOS also obliges the coastal State to promptly notify the flag State in case of any arrest or detention in the EEZ and possible penalties imposed.



## Fishermen's Claims for Pure Economic Loss

- In the wake of a pollution incident which results in the temporary closure of the fishery, fishermen would have claims for pure economic loss.
- Fishermen would have suffered the loss of fishing time or the loss of the opportunity to fish.
- Fish are *res nullius* – owned by no one until caught.
- Common law remedies: nuisance, negligence may not provide an adequate remedy.
- Esso Petroleum Company Limited v Southport Corporation (the Inverpool) [1956] AC. 218, HL.



## Claims for Pure Economic Loss

- **International Convention on Civil Liability for Oil Pollution Damage, 1992**
- **International Convention on the Establishment of a Fund for Compensation for Oil Pollution Damage, 1992.**
- Strict liability for oil pollution damage.
- Compulsory insurance on the part of the ship owner.
- Scope of the Conventions extend to pollution damage in the EEZ
- **Claims for pure economic loss can be made against the International Oil Pollution Compensation Fund ( IOPC Fund) established under the FUND Convention.**
- Claims for damage to the environment can be made against the IOPC Fund



## Claims for Pure Economic Loss

### **Landcatch Ltd. v International Oil Pollution Compensation Fund. [1999] 2 Lloyd's Rep. 316**

Held – There must be a reasonable degree of proximity between the contamination and the loss or damage suffered by the claimant.

The Plaintiff's business (producing smolt and selling to salmon farmers) was not directly dependent on the sea which had been polluted.

It was noted that a claim by a fisherman whose income was generated by the fishing in specific waters polluted by oil was admissible even though it was a case of pure economic loss as activity of fishing was directly affected by the contamination.

A person who engaged in a “related activity” under the Fishing Act for example a supplier of fuel and nets to fishermen would be deemed to have suffered a loss that was *indirectly* caused by the contamination.



## Claims for Pure Economic Loss

Jamaica has acceded to the Civil Liability Convention 1992 and the FUND Convention, 1992.

The Conventions are being incorporated into legislation.



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# THANK YOU

