

## PART 10

# LEGAL ASPECTS AND REGULATIONS

### SUMMARY

- The objective of Sabah Parks is to preserve areas of significant geographical, geological, biological or historical interest for the benefit, education and enjoyment of the people of Sabah.
- State Parks are normally established on State land. The Semporna Islands Park will be a special case because it will include State Land, land with Native Titles and land claimed under Customary Rights.
- The Semporna Islands Park should be established immediately, with the title for all areas of the land and sea that indisputably belong to the State being vested in the name of the Board of Trustees of Sabah Parks. Concurrently, a special commission or working group should be established specifically to look into unresolved land claims.
- The high percentage of non-Malaysian citizens living in the proposed park should not be seen as an obstacle. The questions of citizenship can be addressed later, but in the meantime, it is important to establish the park and introduce management strategies for resource use and other activities. This Management Plan is based on the assumption that the population will remain about the same for the foreseeable future.
- The nomadic Bajau Laut have a unique lifestyle and have been using the area for hundreds of years. They should be allowed into some parts of the park, where they will be required to comply with all regulations concerning resource use.
- Zoning is seen as the simplest and most effective way of achieving the objectives for the park. Four main zones are recommended. The Pelagic Use/Buffer Zone will surround all the islands, while the General Use Zone is mainly in the more populated western part. Both these zones allow for a variety of sustainable use activities. The Sanctuary Zone is a no-take, limited use zone which includes the lagoon and outer reefs together with the forested areas. A small percentage of the park is Preservation Zone, which is no-take and no-entry, except for limited monitoring and research.
- A permit will be required for entry into the Park, and for all activities and developments. Permits will be designed to cover different uses (e.g. permit for entry; permit for fishing; permit for installation of tourism facility etc). The permit system will enable Sabah Parks to regulate activities and impose standards. It also provides a way of keeping detailed records of resource use and other activities in the park. Such records are vital for monitoring and management.
- All activities and developments will be subject to an impact assessment. A key feature of the process is that it identifies all relevant issues, assesses the costs and benefits, applies solutions *before* problems occur, and monitors suggested mitigation measures. Guidelines for the assessment are provided.

## 10.1. SABAH PARKS: OBJECTIVES, FUNCTIONS AND LEGISLATION

Sabah Parks is a statutory body under the Ministry of Tourism Development, Environment, Science and Technology, and is administered by the Sabah Parks Board of Trustees.

The Parks system started with the National Parks Ordinance N<sup>o</sup>. 5, 1962. This Ordinance was later replaced by the National Parks Enactment N<sup>o</sup> 13, 1977, which in turn was repealed and replaced by the Parks Enactment N<sup>o</sup> 6 of 1984, which is still in force today.

Under this enactment, the location and extent of each park is clearly delineated, and a land title for each park for a period of nine hundred and ninety-nine years is vested in the name of the Board of Trustees of the Sabah Parks. The objectives, functions and powers of Sabah Parks are as follows:

### Objectives

- To preserve areas which contain significant geographical, geological, biological or historical features as national heritage for the benefit, education and enjoyment of the people of Sabah.

### Functions and powers

The Parks Enactment specifies that the Board has the following functions and powers:

- To initiate, co-ordinate and control the activities in all Parks in Sabah.
- To recommend to the government the methods, measures and policies to be adopted to facilitate Parks development, and where approved by the government, to carry out/assist in the implementation of such recommendations.
- To provide and maintain adequate and efficient services and facilities at all Parks constituted under the Provisions of the Enactment.
- To promote the use, improvement and development of the Parks.
- To take such steps as are necessary to ensure the security and preservation of the Parks in their natural state.
- To reserve or set aside any portion of the Park as breeding places for animals and as nurseries for vegetation.
- To provide such accommodation, amenities, facilities and services as are likely to attract visitors to the Parks and are not prejudicial to the proper care, control and management of the area.
- To levy fees or to collect dues from persons utilizing the accommodations, amenities, facilities or services provided under this enactment.

## 10.2 COMBINING STATE AND PRIVATE LAND IN THE PARK

### 10.2.1. Introduction

Bodgaya Island was gazetted as the Bodgaya Forest Reserve in September 1933 (Section 28 of the Land Ordinance 1930) but this declaration was later revoked in July 1977 (Section 22(1) of the Forest Enactment 1968) as a preliminary to establishing a national park. Boheydulang was a Bird Sanctuary for over 40 years, from 1933 until 1978. Their legal land status is that of state land at present.

The Parks Enactment N<sup>o</sup> 6 of 1984, Section 3, on the power to constitute parks, reads ‘The Yang di-Pertua Negeri (Governor) may, with the advice of the Minister, by notification in the Gazette, declare his intention to constitute any State land as a park’. The means by which private land might be included in a State Park is not mentioned, but importantly, this option is not specifically excluded.

The Semporna Islands Park will be a special case because it will include State Land, land with Native Titles and land claimed under Customary Rights. The situation is complicated by the fact that there are a number of unresolved land claims, so it is not yet certain who owns what.

Some of these claims originate from many years ago, when people first came to the islands. Where pioneering settlers opened up a piece of land and cultivated it, they could subsequently claim Customary Rights on that land. The process of land application is a long one, and the final decision is made by the State.

Some of those claiming Customary Rights no longer live on the islands, and neither they nor their parents have done so for many years, so their claims may not be valid. However, it is possible that some were re-settled on the mainland against their wishes, for example to provide land for the Japanese Pearl Farm.

All these difficult legal issues have to be addressed, and it is recommended that a special commission or working group is established specifically to do this, at the same time as the park proposal is being processed. The District Office, Department of Lands and Surveys, Sabah Parks, community leaders and other interested parties should be represented on the working group.

### 10.2.2. Leases

Approximately 600 ha of the Bodgaya lagoon and a section of land on Boheydulang may be leased by the State government to an independent company (South Sea Pearls) for the development of a pearl culture operation. The lease has not yet been signed (12-2000).

## 10.2.2. Current ownership

### *Marine areas*

All reefs, seabed, lagoon and other marine areas belong to the State.

### *Land*

#### a) State owned:

Bodgaya, Boheydulang, Tetagan	entire land area
Sebangkat	45 of the 51 ha

#### b) Under Native Title

Selakan	36 Titles (no disputes)
Mantabuan	One Title granted for entire island: 5 other claimants exist

#### c) Native Title claims pending

Sebangkat	One claim for approximately 6 ha
Maiga	Six claims covering all the island
Pu Sibuan	32 claims covering all the island

## 10.2.4. Recommended procedure for establishing the park

- The title for all areas of the land and sea that indisputably belong to the State should be vested in the name of the Board of Trustees of Sabah Parks for a period of nine hundred and ninety-nine years.
- Land currently under Native Title will remain as such. The rights of Native Title holders will be the same as those in the State as a whole, and land owners will have to comply with State and District-level regulations regarding building, land use, waste disposal and so on. However, it is recommended additional measures and guidelines are drawn up to reflect the special status of these islands as being within a State Park.
- Land currently in dispute cannot be vested in Sabah Parks until the claims have been resolved. This should be done as quickly as possible, but the existence of unsettled claims should not allow the process of gazetting the park to be slowed up.
- If a claim is ultimately rejected, the area in question can be added to the land vested in Sabah Parks. On the other hand, if the claim proves to be legitimate, the area will be designated as land under Native Title (see above).
- Native Title holders can be given the option to relinquish their Land Title in favour of Sabah Parks. This process would require compensation being provided and applications would have to be considered on a case-by-case basis.

### **10.3. LEGITIMACY OF CURRENT ‘RESIDENTS’ AND IMPLICATIONS FOR MANAGEMENT**

Apart from the land ownership issue, another challenge is to make the park operational even though a high percentage of people living in the proposed park are non-Malaysian citizens (data from census carried out by Sabah Parks 11/99 revealed that only 18% of the 2061 ‘residents’ have identity cards).

Some of the current ‘residents’ consider themselves transient and expect to be moved, or may prefer to go to the mainland (this has happened through government schemes in the past). However, others have lived in the area for many years, consider it their home, contribute to Sabah’s economy (for example through the seaweed culturing enterprises), and want to stay. It will be up to the State Government, rather than Sabah Parks, to resolve these issues, but there would be no great difficulty in absorbing most of the current population into the park – provided that regulations are adhered to.

The Bajau Laut should be considered a special case because they are an indigenous people with a unique wandering lifestyle who have been using the area for hundreds of years. Their lack of official citizenship should not be seen as a reason for excluding them from the park. However, it is important to maintain a status quo. Those who have consistently used the area could be allowed to continue to do so, but measures should be taken to ensure that the park does not become a magnet for the many others who might be attracted to the area.

This will necessitate research being carried out to identify the Bajau Laut families who are consistent visitors. It may be possible to enlist the help of settled Bajau and Suluk in this process. Long standing Bajau Laut who have visited the area repeatedly for many years could be provided with some form of photo-identity for themselves and their boats.

Including the non-Malaysian element of the population into the Management Plan does not endorse or legitimise their presence within the area, but is a way of dealing with the existing situation. It is the only practical way of ensuring that all activities are compatible with the conservation and other objectives for the park.

The process of deciding who can remain in the park may take many years, and in the meantime, there is an urgent need to establish the park and introduce management strategies for resource use and other activities. This management plan is therefore based on the assumption that the current population will probably remain much as it is, at least for the next few years.

## 10.4. ZONING SCHEME

The zoning scheme presented here (Figure 92) is seen as the simplest and most appropriate way of achieving the objectives for the park. The zones should be part of the legal framework for the Park, but there should be a clause to allow for changes if they are deemed necessary.

Reviews of the effectiveness of the zoning scheme should be carried out on a regular basis, and any problems or needs dealt with by making adjustments to the boundaries and regulations as appropriate.

Four zones are recommended to achieve the two overall objectives of conservation and sustainable use (for more details, see Parts 7, 8 and 9). The proposed Zoning Scheme is shown in Figure 92.

The Pelagic Use/Buffer Zone will surround all the islands, and the General Use Zone is mainly in the western part. Both these zones allow for a variety of sustainable use activities, including gardening, mariculture and fishing under permit.

The Sanctuary Zone is a no-take, limited use zone which includes the lagoon and outer reefs together with the forested areas. A small percentage of the park is Preservation Zone, which is no-take and no-entry, except for limited monitoring and research. Finally, provision should be made for the establishment of Special Management Subzones which could be established to address specific needs if they arose.

### 10.4.1. Pelagic Use/Buffer Zone

#### **Primary aim**

To allow for responsible use of the open water areas of the park, and also to provide a buffer between the more sensitive central zones and the surrounding unprotected area outside the park boundary.

#### **Selection criteria**

Open water, offshore areas, coming no closer than 500 metres to the reef rim.

#### **Location**

As explained above, the zone surrounds the other park zones.

#### **Principal regulations**

This zone is open to fishermen and visitors. Capture of pelagic species using long lines and lift nets is allowed under permit, as is the passage of boats up to a certain size.

### 10.4.2. General Use Zone

#### Primary aim

To allow for sustainable extractive and non-extractive use of marine and terrestrial segments of the park.

#### Selection criteria

Areas of reef and land that are already established for traditional use and are considered reasonably resilient.

#### Location

All of the Sebangkat-Selakan-Maiga reef complex and islands; the Bodgaya outer reef and the western end of the Southern Reef Rim. Also, land on Boheydulang and Bodgaya occupied by legitimate settlers and under traditional cultivation.

#### Principal regulations

- Legitimate park residents will be allowed to harvest natural resources under permit, using accepted methods and gears.
- Non-extractive activities such as cultivation, mariculture and recreation will be allowed under permit, provided the impact assessment is satisfactory.

### 10.4.3. Sanctuary Zone

#### Primary aim

To protect biodiversity and conserve the park's natural resources while allowing for limited, non-extractive activities.

#### Selection criteria

Areas of ecological importance that support a significant proportion of the park's marine and terrestrial habitats and species. The marine areas are also potentially rich 'source sites' for fish and other reef organisms.

#### Location

- Mantabuan Reef, Mantabuan Bank and Kapikan Reef.
- Bodgaya Lagoon and a sector of the Southern Rim Reef to include Dead End Channel.
- Church Reef and Sibuan Reef.

The boundary of the zone will, at each location, be 500 m from the outer reef edge, so as to incorporate the entire reef from the shore (or reef top in the case of Mantabuan Bank Reef) to the deep slope.

#### Principal regulations

- This is a no-take, limited use zone.
- No form of fishing, harvesting or removal of any natural resources (dead or alive) is permitted, with the exception of species (e.g. crown-of-thorns starfish) that might be posing an environmental threat.
- A limited amount of recreation will be allowed under permit, provided the impact assessment is satisfactory.

#### 10.4.4. Preservation Zone

**Primary aim**

To preserve areas of the park in their natural state, undisturbed by human activities.

**Selection criteria**

Sensitive areas of high conservation value.

**Location**

- Eastern end of lagoon ribbon reef and adjacent Bodgaya lagoon fringing reef, including the two patch reefs between the ribbon and fringing reef
- Northern end of Mantabuan reef
- West side of Mantabuan Bank

**Principal regulations**

These are no-take, no-visit areas, except for limited research conducted under permit.

#### 10.4.5. Special Management Sub-zone

**Primary aim**

To manage designated sites for specific purposes other than those described above.

**Selection criteria**

Areas requiring special management not covered by the provisions of the main zones.

**Location**

These areas would be selected if and when the need arose.

**Principal regulations**

Appropriate regulations would be introduced depending on the reason for introducing the sub-zone (e.g. protection of a particular sensitive location, breeding area etc).



## 10.5. PARK REGULATIONS

### **‘Residency’ and access**

- a) Current residents will be allowed access to all parts of the park, with the exception of the Preservation Zone.
- b) Further immigration into the park will not be permitted.
- c) Nomadic Bajau Laut will be allowed access to all parts of the park, under permit, with the exception of the Preservation Zone.
- d) Visitors will be allowed access to all parts of the park, with the exception of the Preservation Zone. They will be required to obtain an entrance permit and pay a fee, and a limit will be placed on the total number of visitors who can be in particular zones of the park at any given time.

### **Extractive use of resources**

- e) Harvesting of natural resources will be allowed only in the Pelagic Use/Buffer Zone (marine) and General Use (marine and terrestrial) Zones. Regulations will apply regarding the methods and type of gear that can be used.
- f) Certain species will be protected throughout the park, and may not be used or disturbed in any zone.
- g) A permit will be required for all harvesting activities, and for marine resource use, boats will also require a permit.
- h) For marine resource use, hook and line will be permitted, with a permit, and consideration will be given to other traditional fishing gear such as lures, traps, and nets in very limited numbers at certain locations.
- i) Trawling and use of explosives or poisons will not be permitted in the park.
- j) Use of hookah or SCUBA gear for fishing or collecting marine organisms will not be permitted anywhere within the park.
- k) Records of the harvest of both marine and terrestrial species and use of other resources (e.g. water) will be collected for management purposes.
- l) There will be an option to introduce quotas on certain species if this is considered necessary.
- m) There will be an option to close certain areas (e.g. spawning aggregation sites) for specified periods (e.g. the breeding season).
- n) Visitors will not be permitted to take or disturb any natural resources (dead or alive) in any area of the park.

## Activities

- o) Mariculture will be restricted to certain areas and species, and can be carried out only under permit, following an impact assessment.
- p) Cultivation and gathering of fruit will be allowed under permit in specified areas already used for this purpose, and will be subject to an impact assessment.
- q) Tourism activities will be restricted to specified areas and types of activity, and can be carried out only under permit, following an impact assessment.
- r) Anchoring of boats is prohibited except on designated mooring buoys or jetties. The size and number of boats allowed at each of these mooring sites will be restricted.
- s) Fish feeding will be prohibited except at one or two selected and carefully monitored sites.

## Buildings and infrastructure

- t) Facilities or structures relating to park development (e.g. shelters, trails, accommodation, park centre, pontoons) will be allowed only in certain localities and plans will be subject to an impact assessment before any construction commences.
- u) Environmental and other effects of the installation and its use will be monitored continually, and alterations made if there are unacceptable impacts.

## Permits

- v) A permit will be required for fishing, mariculture, cultivation and other activities in the park. Conditions will be applied to the permit, and it will be non-transferable and renewable annually.
- w) Permits will be required for the installation and operation of structures or facilities in the park associated with recreation, navigation, education, research or for any other purpose.
- x) Tourist boats and visitors will be required to obtain an entry permit and pay a daily entrance fee. A limit will be placed on the total number of boats and visitors that can be in particular zones of the park at any given time.
- y) A permit will be required to conduct research in the park. Application for a permit will require submission of a research proposal to Sabah Parks in a set format.
- z) In all cases, permits will be issued only if Sabah Parks is satisfied that no unacceptable environmental impacts will occur as a result of the use of the area for the purpose for which permission is requested.

## 10.6. IMPACT ASSESSMENTS

Implementation of the Management Plan for the Semporna Islands Park will involve a series of actions including provision of facilities and development of alternative livelihood opportunities. The legal provisions for the park should include an obligation to assess all proposed activities and developments before a decision is made about implementation.

Impact assessment is a powerful tool which, if properly used, should be of great benefit in the management of the Semporna Islands Park. Key features include identification of all relevant issues relating to activities and developments, assessment of costs and benefits and application of solutions *before* problems occur.

Impact assessment needs to be carried out during and after the event, as well as before. In other words, it is not just a one-off exercise, but a continual process of monitoring that provides information for managers. If the impact assessment suggests an unacceptably high level of impacts, then the activity or development should be modified or stopped.

Both short-term and long-term impacts, negative and positive, have to be assessed, and it is important to consider impacts over the whole spectrum - environmental, social, cultural and economic. The assessment process should be applied to all activities, including those such as cultivation that are already in existence. Every aspect of the activity has to be assessed, for example, seaweed cultivation may have an impact not only at the site where it is grown, but where it is dried and packed.

The questions that have to be answered during an impact assessment will vary according to the activity or development in question, but the following checklist provides an outline of the type of information that is needed.

---

### **BASIC CHECKLIST OF INFORMATION NEEDED FOR IMPACT ASSESSMENT**

---

#### **1. Description of activity or proposed development**

- 1.1. Type of activity or facility
- 1.2. Location and size of area affected
- 1.3. Design features
- 1.4. Source of materials
- 1.5. Services and infrastructure
- 1.6. Operational details and maintenance
- 1.7. Previous experience and credentials of developer or operator

#### **2. Description of the site**

- 2.1. Physical environment
- 2.2. Biological features
- 2.3. Cultural/social features

### 3. Economic profile of the activity or development

- 3.1. Market demands and estimated visitor use
- 3.2. Establishment and operational costs
- 3.3. Potential revenues
- 3.4. Employment opportunities

### 4. Description of potential impacts and proposed mitigation measures

#### **Need to:**

- assess impacts both during installation and during operation
- include both on-site and 'downstream' or secondary effects
- take into account combined as well as individual effects
- assess severity of the impact (e.g. none/negligible; minor; moderate; significant)
- provide detailed mitigation measures

*Examples of impacts (not necessarily in order of importance) are:*

#### **4.1. Environmental**

- Effects on habitats and ecology? (e.g. damage to forest, seagrass beds, coral reefs).
- Effects on ecosystem function? (e.g. cycling of nutrients; balance between trophic levels)
- Direct or indirect impacts on species? (e.g. their abundance, population status, behaviour patterns, reproduction etc).
- Interference with watershed? (e.g. increased or decreased capacity to absorb rainfall; alteration in flow of streams).
- Effects on coastal processes and water circulation? (e.g. sand deposition and erosion; beach stability).
- Effects on water quality? (e.g. pollution of groundwater or coastal water; turbidity).
- Effects on sedimentation in coastal environment?
- Effects on aesthetic qualities of islands or reefs?
- Noise?
- Litter and other wastes?

#### **4.2. Social/cultural**

- Effects on local communities? (benefits, conflicts?)

#### **4.3. Economic**

- Effects on other economic activities in the park?
- Contribution to finances of park?
- Effects on income of local people?