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# BRUNEI BAY: A POTENTIAL TRANSBOUNDARY MARINE PROTECTED AREA?

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## INTRODUCTION

Brunei Bay is a semi-enclosed water body in West Malaysia, Sabah and Sarawak. The bay is circled by two distinct jurisdictions; Malaysia and Brunei. It is encircled by small islands with Labuan Island on its northwest, and swamps makes up the northern part. Most of the bay's estuaries are covered by mudflats and sandflats and extensive mangrove vegetation, although a large fragment of the mangrove in Sarawak area has disappeared due to the growing woodchip industry (Mustafa & Saleh, 2007). The mangrove area is known to be the nursery ground for shrimps while some certain areas were converted into shrimp farms and agricultural land. Recognising Brunei Bay area as critical grazing site for dugong and turtles, due to the abundance of seagrass, a mechanism of protection for the widely known under represented vegetation needs to be constructed (Walton *et al.*, 2014).

Though both countries are signatories for a number of multilateral environmental agreements (MEAs), evidences of pollution are widespread, signalling that the instruments are underutilised. The definition of a Transboundary Marine Protected Area (TBMPA) varies greatly. The International Union for Conservation of Nature (IUCN) generally defines protected area as "a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values".

Marine protected areas have different interpretations and designs depending on which international convention or instrument is being used. The Convention of Biological Diversity (CBD), RAMSAR Convention, World Heritage Convention, *inter alia*, provided different structures and types of marine protected areas, which will all be discussed later. Additionally, regional agreements also provide templates for protected areas designation.

Hence, the international and regional instruments are the options for the designation of a transboundary marine protected area. Apart from the templates, both Brunei and Malaysia are parties to majorities of MEAs. Therefore, parties are either legally bound to the international agreements, or at least are required to exhibit commitment to the respective MEAs. Therefore, when it comes to Brunei Bay, the area is shared by two states and any protection framework must be bilateral.

### **Malaysia and Brunei: Existing Governance**

Malaysia is a federal country where the Federal Constitution, the highest law of the land, confers most of important powers in the hand of Federal government. Malaysian legislative system is divided into; the Federal and States. As provided by Article 76(1), the powers to legislate most matters fall under the Federal list, while matters regarding land, rivers, forest, local government, and town and country-planning, are listed under the State List as stated in the 9th Schedule.

Sabah and Sarawak are awarded a higher degree of jurisdictional power as compared to states in Peninsular Malaysia. As listed in Article 95(B)(a), supplemental List IIA, both Sabah and Sarawak are granted powers in agricultural and forestry. As per Article 9(c), the Federal government controls marine fishing and fisheries except for turtles. Sarawak accede control of marine (but not estuarine) fishing, beyond the 12 nautical mile of the State coast, to the Federal jurisdiction. Sabah, on the other hand, maintains control over marine fish in concurrence with the Federal government (Pomeroy *et al.*, 2015). Therefore, the jurisdiction on marine parks falls under the scrutiny of the state laws, listed in Table 1.

This chapter will discuss the current biodiversity governance structure of Brunei and Malaysia from the aspect of policy, law and administration.

### **Policy**

Federal policies on the environment for both states are as follows:

- A. Malaysia
  - i. National Policy on the Biodiversity (NPBD)

The NPBD policy paper recognises the Government's role, domestically and internationally, to drive conservation efforts with active participation and inputs from