

## **Regulatory Framework relating to the theft of beach sand**

Prepared by the Jamaica Environment Trust

This paper discusses the applicable laws and penalties relating to the theft of sea sand, with reference to the July 2008 sand theft from Coral Spring, Trelawny, as well as the responsibilities of relevant governmental bodies.

### **Theft**

1. Under the **Larceny Act** of 1942, any person who steals anything belonging to another person with the intention of permanently depriving him of such belonging has committed an offence. Sand like any other property can be stolen and any person who steals sand from a beach belonging to another person<sup>1</sup> is guilty of committing simple larceny (a felony) and is liable on conviction, to imprisonment with hard labour for up to five years.<sup>2</sup> Anyone who receives the sand knowing it to be stolen will be guilty of an offence (felony) and if convicted can be imprisoned with hard labour for up to 10 years.<sup>3</sup>
2. Any complaint of theft should be lodged with the police whose function it is to investigate such matters, gather evidence and arrest any person/s suspected of committing this offence.

### **Environmental Laws**

3. Notwithstanding whether the person/s responsible for removing the beach sand owned the property from which it was removed or not, there are laws which regulate this kind of activity. Jamaica has various environmental laws, which regulate human activities that impact natural resources, most of which include penalties for breaches.

### **Mines and Geology Division: *The Quarries Control Act, 1984***

4. As the name suggests, the **Quarries Control Act** of 1984, which is administered by the Mines and Geology Division of the Ministry of Mining and Telecommunications, regulates quarries. This is not to be confused with ‘mining’, which is governed by the Mining Act and expressly does not apply to the excavation of sand.<sup>4</sup> Quarries are defined in the Act as ‘any place (not being a mine as defined in the Mining Act) where quarry material or quarry mineral has been removed or is being removed, whether by excavation or otherwise, to supply material for construction purposes, other than dimension stones for the

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<sup>1</sup> The foreshore of a beach (the sandy area between the low and high tide mark) is vested (owned) in the Government while the dry area of the beach can be privately owned.

<sup>2</sup> Section 5 of the Larceny Act, 1942

<sup>3</sup> Section 46 of the Larceny Act, 1942

<sup>4</sup> Section 2 of the Mining Act gives the same meaning to ‘minerals’ as that in the Minerals (Vesting) Act, 1947 which in turn expressly states in Section 2 of the latter Act that the interpretation of minerals does not include ‘sand’.

construction industry.’<sup>5</sup> The Act expressly states that sea sand is considered ‘quarry material’<sup>6</sup> therefore any person who removes sea sand from any place **to be used for construction purposes** can be considered to be operating a quarry for the purposes of the Act.

5. A licence is required from the Minister of Mining in order to operate a quarry<sup>7</sup> and unless the Minister allows, no licence will be granted to any person to operate a quarry outside of a quarry zone.<sup>8</sup> Therefore, any person who wishes to excavate sea sand **to be used for construction purposes** must obtain a licence. Any person authorized by the Commissioner of Mines can enter any premises to inspect and examine premises being quarried or where information relating to the operation or quarried material is being stored.<sup>9</sup> Members of the Security Forces have the authority to search, seize and detain without a warrant, any conveyance or machinery that has been used to operate an illegal quarry.<sup>10</sup>

#### **Offences and penalties under the Quarries Control Act**

6. Any person who excavates sea sand to be used for construction purposes without obtaining a licence commits an offence and can be convicted in the Residents Magistrate’s Court. Any person who is convicted of this offence for the first time is liable to payment of a fine of up to \$30,000 or imprisonment for up to 12 months or to both such fine and imprisonment.<sup>11</sup> Second or subsequent convictions for this offence attract a penalty of up to \$50,000 and imprisonment for up to one year, and in default of payment, to imprisonment for an additional term of up to one year.<sup>12</sup> If the offence continues (whether or not without interruption) after conviction, the penalty is a fine of up to \$10,000 for each day that the offence continues after conviction or to imprisonment for up to two years.<sup>13</sup>
7. In addition to any fine or imprisonment, the court can order that quarry material be forfeited to the Government<sup>14</sup> or order that the fine be used to rehabilitate the illegally operated quarry.<sup>15</sup>
8. The Act provides the Commissioner of Mines and other persons authorized by him (e.g. officers of the Mines and Geology Division) with the authority to investigate quarries in addition to premises where quarry material such as sea sand is stored. These investigative powers include the right to enter the premises or land, make inquiries, inspect and examine the quarry material, carry out an audit and examination of records and other documents and seize such

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<sup>5</sup> Section 2 of the Quarries Control Act, 1984

<sup>7</sup> Section 5(1) of the Quarries Control Act, 1984

<sup>8</sup> Section 5(2) of the Quarries Control Act, 1984

<sup>9</sup> Section 20(1) of the Quarries Control Act, 1984

<sup>10</sup> Section 20A(1) of the Quarries Control Act, 1984

<sup>11</sup> Section 5(3)(a) of the Quarries Control Act, 1984

<sup>12</sup> Section 5(3)(b) of the Quarries Control Act, 1984

<sup>13</sup> Section 5(3)(c) of the Quarries Control Act, 1984

<sup>14</sup> Section 5(4) of the Quarries Control Act, 1984

<sup>15</sup> Section 5(5) of the Quarries Control Act, 1984

information.<sup>16</sup> Members of the Security Forces can also search premises without a warrant where they have reasonable cause to suspect that any conveyance or machinery was used to commit an offence under the Act and can seize and detain such conveyance or machinery.<sup>17</sup>

### **Obstacles to conviction**

9. The difficulty with convicting persons under this legislation is that this offence is concerned with the operation of illegal quarries to supply material **for construction purposes**. Sea sand contains salt and iron impurities that may cause the corrosion of steel reinforcements. Sea sand, which is cheaper to excavate and use, can be used for construction, provided it is washed thoroughly to remove the salt and provided it is graded properly.<sup>18</sup> Convicting persons of operating an illegal sea sand quarry may depend on the interpretation of the meaning of “construction purposes.” For example, if the sand were used for nourishing a beach, could that be considered ‘construction purposes’ and would a licence under this Act be required?
10. Once the illegally removed sand is located, proof will need to be obtained that the sand was in fact taken from the beach (illegal quarry). In the absence of witness statements, scientific testing would need to be undertaken to verify the source of the sand.

### **The Natural Resources Conservation Authority: *The Beach Control Act, 1956 and Natural Resources Conservation Authority Act, 1991***

11. The **Beach Control Act** of 1956 regulates the use of Jamaica’s beaches. This Act is administered by the Natural Resources Conservation Authority (NRCA) which, in turn, relies on the National Environment and Planning Agency (NEPA) to carry out its functions. The foreshore and floor of the sea is vested in (owned by) the Government.<sup>19</sup> Any person who wishes to encroach on or use the foreshore or floor of the sea, as in the case of removing sand from the foreshore, must first obtain a licence from the NRCA.<sup>20</sup>

### **Offences and penalties under the Beach Control Act**

12. If anyone fails to obtain a licence they can be convicted in the Resident Magistrates Court and face imprisonment with or without hard labour for up to 12 months, or a fine of up to \$500,000. If such person defaults on payment of any such fine, they are liable to imprisonment with or without hard labour for up to 12 months, or to both such imprisonment and fine.<sup>21</sup>

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<sup>16</sup> Section 20(1) -20(7) of Quarries Control Act, 1984

<sup>17</sup> Section 20A of the Quarries Control Act, 1984

<sup>18</sup> <http://www.brudirect.com/DailyInfo/News/Archive/Jan08/110108/nite08.htm>

<sup>19</sup> Section 3 of the Beach Control Act, 1956

<sup>20</sup> Section 5(1) of the Beach Control Act, 1956

<sup>21</sup> Section 5(2) of the Beach Control Act, 1956

13. The Beach Control Act even specifies penal sanctions for employees of companies who knowingly participate in this offence. Where a company is guilty of encroaching on or using the foreshore or floor of the sea without a licence, every director, manager, agent and officer of the company in this Jamaica who is knowingly a party to the act is also liable as described above.<sup>22</sup> So if a company were found responsible for removing beach sand without a licence, every employee who knowingly participates can be found criminally liable.
14. The Beach Control Act has very detailed provisions concerning the NRCA's ability to take enforcement action. If it is discovered that someone has removed sand from the foreshore or floor of the sea without a licence or otherwise breached the Act and caused damage to any natural resource located on the floor of the sea, NRCA can obtain the following orders:<sup>23</sup>
  - Prohibiting the person from using the foreshore or floor of the sea without, or in breach of a licence;
  - Requiring the person to carry out, within a specified period, a rehabilitation of the foreshore or floor of the sea so as to remedy any damage caused by such person; or
  - In the case of damage to a natural resource, requiring the person to pay to the Authority damages to be determined by the Court, which may take into account any reasonably foreseeable loss in the economic value of the natural resource to the public.<sup>24</sup>
15. These orders may be obtained in addition to the prosecution described above. In determining whether an order should be granted the Court may take into account the following:
  - The level of harm caused to the public interest in regard to fishing, bathing, recreation or the protection of the environment, as a result of the person's use of, or encroachment on, the foreshore or floor of the sea
  - The need to restrain continuation or repetition of the harmful activity.<sup>25</sup>

#### **Obstacles to conviction under the Beach Control Act**

16. This Act only deals with activities affecting the foreshore and floor of the sea. If the removal of beach sand took place outside this area (on the privately owned part of the beach, for example), then this Act would not apply. Another difficulty is proving that the sand was taken from the foreshore of any particular beach.

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<sup>22</sup> Section 5(3) of the Beach Control Act, 1956

<sup>23</sup> Section 19(1)(a) of the Beach Control Act, 1956

<sup>24</sup> According to the Act, "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.

<sup>25</sup> Section 19(4) of the Beach Control Act

17. The **Natural Resources Conservation Authority Act** of 1991 is Jamaica’s main environmental statute. It regulates activities (development and otherwise), which may have a harmful effect on the environment and is administered by NRCA through NEPA.
18. Under this Act, the NRCA has very wide powers to protect the natural environment and resources. The NRCA is given a general mandate to **“take such steps as are necessary for the effective management of the physical environment of Jamaica so as to ensure the conservation, protection and proper use of its natural resources.”**<sup>26</sup> Another of NRCA’s functions is to manage declared protected areas.<sup>27</sup> In performing these functions, NRCA can **“do anything or enter into any arrangement which, in the opinion of the Authority, is necessary to ensure the proper performance of its functions.”**<sup>28</sup> The area from which the sand was stolen is near to Coral Springs, which was designated a protected area by the NRCA in 1998.<sup>29</sup> The precise boundaries of the protected area with regard to the affected beach need to be established. If the affected beach is within the protected area, the NRCA/NEPA are responsible for managing this area. In the event that the theft occurred in a protected area, the above provisions support the view that the NRCA is the responsible agency and should be involved in the investigation of the theft of beach sand.

#### **Offences and Penalties under the NRCA Act**

19. Similar to the Beach Control Act, under this Act, the NRCA can take enforcement action in order to protect natural resources and ensure that the offenders rectify the effect of the removal of sand by restoring the beach from which the sand was taken. The difference is that the scope given to the NRCA under this Act is wider than that given to the authority under the Beach Control Act, which primarily governs activities on the foreshore and floor of the sea.
20. The NRCA can serve an enforcement notice on any person where it appears to the Authority that the activities of an under taking in any area are such as to pose a serious threat to the natural resources or to public health. The notice shall specify the offending activity and require the person to take steps specified in the notice within a specified period to ameliorate the effect of the activity and, where appropriate, to restore the natural resources to its condition before the activity took place.<sup>30</sup>
21. It is submitted that the removal of beach sand, in particular in large quantities, is a threat to natural resources. NRCA, on identifying the offender, would be entitled to take action by serving an enforcement notice on such person/s.

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<sup>26</sup> Section 4(1)(a) of the NRCA Act

<sup>27</sup> Section 4(1)(c) of the NRCA Act

<sup>28</sup> Section 4(2)(h) of the NRCA Act

<sup>29</sup> See the Natural Resources Conservation (Coral Spring-Mountain Spring Protected Area) Order, 1998

<sup>30</sup> Section 18(1) of the NRCA Act

22. Failure to comply with an enforcement notice is an offence. Persons convicted of this offence are liable to payment of a fine of up to \$50,000 or to imprisonment for up to two years or to both such fine and imprisonment. If the person defaults in the payment of a fine then they can be imprisoned for up to one year and if the offence continues, such person is liable to a further fine of up to \$3,000 for each day the offence continues after conviction.<sup>31</sup>

#### **Obstacles to conviction**

23. An enforcement notice must first be served on the offender before the person can be prosecuted. The offender would be given a specified time period in the notice with which to comply. In addition, the offender can appeal the service of an enforcement notice<sup>32</sup> to the NRCA Tribunal. All of these could result in delaying prosecution.
24. The enforcement notice is to be served on the “persons who have carried out or is carrying out the activity.” Therefore it does not appear that the NRCA has jurisdiction to serve an enforcement notice on the person/s who received the stolen sand, unless such person has participated in the removal of the sand.

#### **The use of sand by coastal hotels**

25. It is likely that the sand removed from the beach in the Coral Springs case was not intended for construction purposes, but instead was used to supply sand for the nourishment of beaches.<sup>33</sup> If this is the case, it is worthwhile to consider the framework under which hotel developments along the coastline receive sand.
26. Hotel developments over 12 rooms require an environmental permit from the NRCA under section 9 of the NRCA Act.<sup>34</sup> Invariably, NRCA will prescribe conditions in the environmental permit. Large-scale hotel developments are usually required as a condition in their permit, to implement an Environmental Monitoring Programme (EMP). EMPs may require the developers to verify the sourcing of materials and ensure that such earth materials are supplied from approved quarries.<sup>35</sup> Failure to undertake this verification may be construed as a breach of the conditions of the permit and the EMP.
27. NRCA is entitled to revoke or suspend a permit where the Permittee has breached any of the conditions therein.<sup>36</sup> Before doing so, the NRCA must first serve the Permittee with a notice specifying the breach and requiring him to remedy it within a specified time period.<sup>37</sup>

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<sup>31</sup> Section 18(4) of the NRCA Act

<sup>32</sup> Section 18(2) of the NRCA Act. See also section 34 of the NRCA Act.

<sup>33</sup> “Hotel on Sand”, Sunday Herald, July 20<sup>th</sup>, 2008. <http://www.sunheraldja.com/article/show/1239>

<sup>34</sup> See: Natural Resources (Prescribes Areas) (Prohibition of Categories of Enterprises, Construction and Development) (Amendment) Order, 2003

<sup>35</sup> Bahia Principe Resort- Environmental Monitoring Programme, pg. 3 para 2.5.1

<sup>36</sup> Section 11(1) of the NRCA Act

<sup>37</sup> Section 11(2) of the NRCA Act

28. Therefore, although no environmental laws deal expressly with the matter of *receiving* sand from an illegal quarry, the permitting framework for coastal hotel developments may address this issue to the extent that such developments are required to obtain sand from approved quarries.

### **Conclusion**

29. The Jamaica Constabulary Force is required to investigate crimes, including the theft of property and beach sand is no exception. The NRCA has the authority to investigate the illegal removal of beach sand (i.e. unlicensed removal) under the Beach Control Act only if such removal is from the foreshore and floor of the sea. Under the NRCA Act, however, NRCA has full jurisdiction having regard to their powers to protect all natural resources. They also have several enforcement options available such as prosecuting the offender/s, applying to Court for orders to obtain damages and require rehabilitation measures be implemented (under the Beach Control Act, when appropriate) and serving an enforcement notice on the offender requiring them to take steps to ameliorate the effect of the activity (NRCA Act). The Commissioner of Mines and by extension authorized personnel of the Mines and Geology Division have significant investigative powers relating to the storage of sea sand. However, it is arguable the extent to which offenders can be prosecuted under the Quarries Control Act by virtue of the limitations in the legislation (i.e. the Act regulates quarries which are concerned with material used for construction purposes.)

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