

M O N T S E R R A T

**CONSERVATION AND ENVIRONMENTAL
MANAGEMENT ACT 2014**

No. 17 of 2014

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I ASSENT

(Sgd.) Adrian Davis
Governor

DATE: 18.8.14

M O N T S E R R A T
No. 17 of 2014

AN ACT TO PROVIDE FOR THE ADMINISTRATION, CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY, NATURAL RESOURCES AND THE NATURAL HERITAGE OF MONTSERRAT; THE DESIGNATION AND MANAGEMENT OF PROTECTED AREAS, POLLUTION CONTROL; THE REGULATION OF ACTIVITIES; THE INCORPORATION OF INTERNATIONAL OBLIGATIONS WITH RESPECT TO THE ENVIRONMENT INTO NATIONAL LAW; AND RELATED MATTERS.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the Authority of the same as follows—

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PART I—PRELIMINARY

1. Short title and commencement

- (1) This Act may be cited as the **Conservation and Environmental Management Act, 2014**.
- (2) This Act shall come into force on the day fixed by the Governor acting on the advice of Cabinet by Order.
- (3) Despite subsection (2), a different day may be fixed for section 93(1)(b) to come into force.

2. Interpretation

In this Act—

“**activity**” means an event that has or may have an adverse effect on human health or the environment and includes a process, project, construction, operation, dismantling, abandonment of physical works or any other event in the natural surroundings or landscape including those involving the extraction of natural resources or an activity listed in Schedule 1;

“**agro-forestry**” means the growing of timber or other forest produce in combination with either the growing of crops or the rearing of livestock or both;

“**authorised officer**” means an officer designated as such under section 13;

“**biological diversity**” means the variability among living organisms from all sources including, among other things, terrestrial, marine and

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other aquatic ecosystems and the ecological complexes of which they are part; and includes diversity within species, between species and of ecosystems;

“body corporate” includes a firm, business, company, enterprise, trust, unincorporated association, joint venture or partnership;

“buffer zone” means an intermediate area which performs the function of mitigating the direct impacts of an activity on a protected area or the impact of an activity on the surrounding environment;

“Chief Fisheries Officer” means the Chief Fisheries Officer appointed under the Fisheries Act (Cap. 9:01);

“Certificate” means a Certificate of Environmental Approval;

“closed season” means a period during which the capturing, hunting, wounding, killing, picking, cutting, taking or destroying of a partially protected species is prohibited;

“competent body” means a person designated by the Governor acting on the advice of Cabinet with responsibility for management of a protected area under section 39(2);

“conservation area” means a protected area managed mainly for conservation and includes an area of Crown or private land or water or both land and water subject to active intervention by the Department or competent body for management purposes so as to ensure the

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maintenance of habitats and to meet the requirements of specific species;

“Council” means the National Conservation and Environmental Advisory Council established by section 6;

“Crown lands” means all lands vested in the Government whether by forfeiture, escheat, purchase or exchange, and all unclaimed land;

“cultural heritage” includes—

- (a) monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;
- (b) groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science; and
- (c) sites: works of man or the combined works of nature and of man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological points of view;

“Department” means the Department of Environment;

“derivatives” means parts of a specimen, whether processed by man or not;

“Director” means the Director of Environment appointed under section 10(1);

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“domesticated or cultivated species” means species in which the evolutionary process has been influenced by humans to meet their needs and includes species that have been genetically modified or bioengineered;

“ecosystem” means a dynamic complex of plant, animal and micro-organism communities interacting as a functional unit within their physical (natural and non-natural) environment;

“effect” includes direct and indirect, secondary, cumulative, short, medium and long term, permanent, temporary, positive, negative and synergistic effects;

“endemic species” are species of fauna and flora, or their populations, whose distribution is restricted to Montserrat;

“environment” means the components of the earth, including—

- (a) air, land and water (freshwater and marine areas being the territorial waters of Montserrat);
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms; and
- (d) the interacting natural systems that include components referred to in paragraphs (a) to (c);

“environmental audit” means a systematic evaluation of environmental information about an organisation or premises to verify whether and

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to what extent it conforms to specified audit criteria;

“environmental impact assessment” means an examination, analysis and assessment of activities with a view to ensuring environmentally sound and sustainable development;

“environmental requirement” means a person’s requirement to—

- (a) apply for and obtain a permit required under this Act;
- (b) comply with terms and conditions in a permit issued under this Act;
- (c) apply for and obtain a Certificate;
- (d) comply with the terms and conditions in a Certificate;
- (e) comply with a request to prepare a secondary environmental impact assessment;
- (f) comply with permitting requirements established for the hunting or possession of a partially protected species of fauna;
- (g) comply with permitting requirements established for the harvesting or possession of a partially protected species of flora;
- (h) comply with the terms and conditions set out in a stop notice;
- (i) comply with a rule, regulation or management plan established for a protected area;

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- (j) comply with the terms and conditions set out in an environmental restoration order;
- (k) comply with terms and conditions of permission granted by the Director for scientific research and the educational use of species of fauna and flora and associated ecosystem;
- (l) apply for and receive permission for the conduct of scientific research;
- (m) comply with a management plan prepared under section 39 or buffer zone management plan prepared under section 43;
- (n) comply with the procedures for the registration of sources from which a substance, thing or manmade phenomenon, which in a specified quantity, concentration or condition, falls within a prescribed range, is released into the environment;
- (o) comply with standards, procedures or permitting requirements established for the release of pollutants into the environment;
- (p) comply with procedures and standards with respect to the periodic or continual monitoring of pollution or releases of pollutants or conditions as required under this Act;
- (q) comply with performance standards for home and garden appliances;
- (r) notify the Principal Environmental Health Officer of an intention to handle a non-hazardous waste not contemplated by the

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compulsory standards for disposal of municipal waste;

- (s) comply with guidelines, standards, procedures or permitting requirements established for hazardous substances;
- (t) comply with guidelines, standards, procedures or permitting requirements established for waste;
- (u) comply with standards established for municipal waste;
- (v) comply with regulations made under this Act;
- (w) provide in a timely manner complete and accurate information in a required submission to or communication with the Director or in response to an inspection or request for information by the Director; and
- (x) comply with conditions, procedures, payment of fees payable under this Act;

“fauna” means a species included in the animal kingdom whether native, or naturalised, but does not include man;

“flora” means all plant life, especially the naturally occurring or indigenous plant life;

“forest” means land at least ten percent stocked by trees of a size or formerly having such tree cover and not currently built up or developed for agricultural use;

“forest produce” includes—

- (a) timber, firewood, charcoal, bark and extracts of bark;

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- (b) latex, gums, resins, flowers, fruit, seeds, nuts, leaves, fibres, turpentine, spices, tan-stuffs, dye-stuffs, moulds, fungi, drugs, fodder and thatching material derived from wild- growing trees or plants;
- (c) wild-grown trees and plants (dead or alive) and all parts and produce of the trees and plants, bamboo and other grasses; and
- (d) water from run-off and springs;

“governmental entity” means a—

- (a) department of government;
- (b) statutory body; and
- (c) other enterprise or institution which, in whole or in part, is publicly funded or owned by the government;

“habitat” means the place or type of site where an organism or population naturally occurs;

“handling” in relation to a hazardous substance or waste means the manufacturing, importing, exporting, transferring, processing, treating, packaging, storing, transporting, using, re-using, recycling, collecting, disposing or other related activities;

“harvest” means to pick, cut, take or destroy, and any attempt to do, or the giving of assistance in doing any of these things;

“hazardous substance” means a substance which by reason of its chemical or physical properties, and based on technical, scientific and medical evidence, is determined to cause, or likely to

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cause through its handling, harm to human health or the environment;

“heritage site” means a protected area managed mainly for the conservation of specific natural or cultural features and includes an area of Crown land or private land or water, or both land and water, containing one or more specific natural or cultural heritage or both features which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance;

“home and garden appliances” include but is not limited to electricity generators, refrigeration equipment, water-pumps, air-conditioning units, security alarms, brush-cutters and lawn-mowers;

“hunt” means to kill, wound, pursue, capture, take, trap, injure, shoot at, wilfully disturb or molest, and any attempt to do, or the giving of assistance in doing any of these things;

“migratory species” means the entire population or a geographically separate part of the population of a species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries;

“Minister” means the Minister with responsibility for the environment;

“modification” with respect to an activity means a change or alteration that may or may not result

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in a significant adverse effect on the environment;

“Montserrat National Trust” means the membership organisation incorporated by the Montserrat National Trust Act (Cap. 12. 02);

“Montserrat Utilities Limited” means the company incorporated under the Companies Act;

“multilateral environmental agreement” means an agreement between three or more States governing the management of aspects of natural resources or the environment;

“municipal waste” means waste generated by a household, including a single or multifamily residence, and includes waste generated from other premises to the extent that the waste is essentially the same in composition as to the waste normally generated by a household and is collected and disposed of with other municipal solid waste as part of the normal municipal solid waste collection services;

“national park” means a protected area managed mainly for ecosystem protection and recreation and includes an area of Crown or private land or water or both land and water designated to —

- (a) protect the ecological integrity of one or more ecosystems for present and future generations;
- (b) exclude exploitation or occupation inimical to the purposes of designation of the area; and
- (c) provide a foundation for spiritual, scientific, educational and recreational

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opportunities, all of which must be environmentally and culturally compatible;

“natural heritage” includes—

- (a) natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic, scientific or recreational point of view;
- (b) geological and physiological formations and areas which constitute the habitat of threatened species of animals and plants of outstanding universal value; and
- (c) natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty;

“NEIS” means the National Environmental Information System established in accordance with section 15;

“NEMS” means the National Environmental Management Strategy prepared under section 14;

“non-hazardous” means waste not designated as hazardous under this Act;

“non-natural person” means a person other than an individual;

“Notice” means a written Notice of violation issued under section 64;

“PAS Plan” means the Protected Areas Systems Plan established under section 34;

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“Physical Planning Act” means the Physical Planning Act (Cap. 8.03);

“Public Finance (Management and Accountability) Act” means the Public Finance (Management and Accountability) Act 2008 (No. 7 of 2008);

“open season” means a period during which the capturing, hunting, wounding, killing or destroying of a partially protected species of fauna is permitted;

“partially protected fauna” means species of fauna designated as such under section 26;

“partially protected flora” means species of flora designated as such under section 27;

“Permanent Secretary” means the Permanent Secretary of the Ministry to which responsibility for the environment is assigned;

“person” includes an individual or a firm, business, company, enterprise, body corporate, trust, unincorporated association, partnership or governmental entity however constituted;

“Planning and Development Authority” means the Planning and Development Authority established under section 3 of the Physical Planning Act;

“pollutant” means a substance, thing or man-made phenomenon (including energy, noise, light, vibration, electro-magnetic or ionizing radiation, odour or temperature variation) designated as a pollutant under this Act;

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“pollution” includes the release or deposit of a pollutant or waste onto land or into the air or water, including the sea, so as to cause a direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of a part of the environment and which based on technical, scientific or medical evidence is likely to cause harm to human health, whether physical or psychological, or the environment;

“premises” means a location within the environment, and a facility, development, vehicle, vessel, including marine vessel, or natural or manmade structure at such location from or on which pollutants may be released into the environment or where wastes or hazardous substances may be handled;

“prescribed” means prescribed by regulations made under this Act;

“proponent” includes a person proposing or executing an activity or the applicant for a Certificate for an activity;

“protected area” means a geographically defined area which is designated under sections 33 and 35(1);

“protected fauna” means species of fauna designated as such under section 24;

“protected flora” means species of flora designated as under section 25;

“protected forest area” means a protected area managed for the conservation of forests and includes an

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area of Crown or private land or water or both
land and water designated for—

- (a) the prevention of deforestation and soil erosion;
- (b) the prevention of wastage of timber resources;
- (c) securing the proper management of land upon which trees are growing and which is not under permanent agricultural cultivation;
- (d) the maintenance of water supplies;
- (e) the preservation of health;
- (f) the sustained yield of timber or other forest produce;
- (g) the storage and collection of water for human consumption and other purposes;
- (h) the protection of wildlife and flora;
- (i) recreation and scenic beauty; and
- (j) scientific research;

“public officer” has the same meaning assigned to it under section 107(1) of the Montserrat Constitution Order, 2010;

“release” means to spill, discharge, dispose of, spray, inject, inoculate, abandon, deposit, leak, seep, pour, emit, empty, throw, dump, place, drain, pump or exhaust a pollutant from any premises;

“scientific research” means the use of rigorous, systematic, and objective methodologies to obtain reliable and valid knowledge, which includes basic research, applied research, and

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evaluation research in which the rationale, design, and interpretation are developed in accordance with the following principles—

- (a) development of a logical, evidence-based chain of reasoning;
- (b) methods appropriate to the questions posed;
- (c) observational or experimental designs and instruments that provide reliable and findings capable of being generalized;
- (d) data and analysis adequate to support findings;
- (e) explication of procedures and results clearly and in detail, including specification of the population to which the findings can be generalized;
- (f) adherence to professional norms of peer review;
- (g) dissemination of findings to contribute to scientific knowledge; and
- (h) access to data for reanalysis, replication, and the opportunity to build on findings;

“significant” means, with respect to an environmental effect, an adverse effect that occurs or could occur as a result of any of the following—

- (a) the magnitude of the effect;
- (b) the geographic extent of the effect;
- (c) the duration of the effect;
- (d) the frequency of the effect;
- (e) the degree of reversibility of the effect;
- (f) the possibility of occurrence of the effect;

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“**special fund**” means the special fund established under the Public Finance (Management and Accountability) Act for the purpose of environmental management.

“**specimen**” means a species of fauna or flora, whether alive or dead, a shell, skin, plumage, nest, eggs, part or derivative, and includes goods which from an accompanying document, the packaging, mark or label or from other circumstances appear to be parts or derivatives of fauna or flora;

“**St. George’s Declaration**” means the St. George’s Declaration of Principles for Environmental Sustainability in the Organisation of Eastern Caribbean States signed by the Organisation of Eastern Caribbean States Ministers responsible for the Environment at St. George’s, Grenada in April 2001;

“**statutory body**” means an organisation or agency authorised by an Act to construct and maintain public roads, drains or other infrastructure works, or carry on an undertaking for the supply of electricity, water, telecommunications services or other public utility;

“**strict nature reserve**” means a protected area managed mainly for scientific purposes and includes an area of Crown or private land or water or both land and water possessing some outstanding or representative ecosystems, geological or physiological features or species, available

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primarily for scientific research or environmental monitoring;

“sustainable use” means the use of natural resources in a way and at a rate that does not lead to the long term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations;

“temporary protected area” means the designation of a protected area for the immediate protection of species of fauna and flora or a geographically defined area and includes an area of Crown or private land or water or both land and water designated in the national interest;

“threatened species” means species or subspecies of fauna and flora, or their populations—

(a) that are likely to become endangered within the foreseeable future throughout all or part of their range if the factors causing numerical decline or habitat degradation continue to operate; or

(b) that are rare because they are usually localised within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially or actually subject to decline and possible endangerment or extinction;

“Tribunal” means the Physical Planning and Environmental (Appeals) Tribunal appointed under the Physical Planning Act (Cap. 08.03);

“vehicle” means a form of conveyance or transportation—

(a) from which pollutants may be released; or

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(b) used for or in connection with the handling of wastes or hazardous substances;

“waste” includes hazardous or non-hazardous material discarded or intended to be discarded whether or not capable of further use and which constitutes rubbish, slime tailings, effluent, sewage, garbage, refuse, scrap, discarded articles, bottles, cans or any other waste products of any kind and includes any substances whether gaseous, liquid or solid that—

(a) is foreign to or in excess of the natural constituents of the environment; or

(b) affects the natural, physical, chemical or biological quality of the environment;

“watershed management area” means a protected area for the management of watersheds, soil and water resources and includes an area of Crown or private land or water, or both land and water, designated to—

(a) establish controls to prevent or limit sedimentation, pollution or erosion in order to maintain a clean and reliable supply of water for domestic, industrial and commercial use or hydroelectricity production;

(b) establish controls to maintain the soil or water resources in a productive state for agricultural development and the productivity or stability of surrounding areas;

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- (c) manage an area that is in a dangerous or unstable state above or below roadsides, along stream or river banks, or near residential or industrial areas; and
- (d) manage, control and protect the water resources of the area that are in a polluted condition which may be injurious to human health, animals or plants;

“wetlands” means areas of herbaceous or mangrove swamp and land covered by water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres.

3. Purpose

The purpose of this Act is to provide for—

- (a) the allocation and coordination of administrative responsibilities for conservation and environmental management within Montserrat;
- (b) the conservation and sustainable use of biological diversity, natural resources and the natural heritage of Montserrat;
- (c) the prevention and mitigation of pollution of the environment for the purposes of protecting human health and maintaining the quality of the environment;
- (d) the implementation of obligations to which Montserrat is subject under multilateral environmental agreements by facilitating their incorporation into national law; and

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(e) the provision of stable, adequate, secure and sustainable funding to finance the management of the environment in Montserrat.

4. Principles

- (1) The principles in this section apply in Montserrat to the actions of all persons and—
- (a) serve as the general framework within which environmental conservation and management strategies and plans must be formulated;
 - (b) serve as guidelines which a governmental entity must consider and follow when exercising a function which results in or is likely to result in adverse environmental effects; and
 - (c) guide the interpretation, administration and implementation of this Act and any other enactment concerned with the protection or management of the environment.
- (2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.
- (3) Development must be socially, environmentally and economically sustainable.
- (4) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people within that environment by pursuing the selection of the best practicable environmental option.
- (5) Environmental justice must be pursued so that adverse environmental effects shall not be distributed in a manner as to unfairly discriminate against a person, particularly, vulnerable and disadvantaged persons.

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- (6) The participation of all persons in environmental governance must be promoted and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
- (7) The social, economic and environmental effects of activities, including disadvantages and benefits, must be considered, assessed and evaluated and decisions must be appropriate in the light of such consideration and assessment.
- (8) Global and international responsibilities relating to the environment must be discharged in the national interest.
- (9) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be borne for by those responsible for harming the environment.
- (10) If there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (11) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

**PART 2—ADMINISTRATION: ESTABLISHMENT AND
ROLE OF THE NATIONAL CONSERVATION AND
ENVIRONMENTAL ADVISORY COUNCIL AND THE
DEPARTMENT OF ENVIRONMENT**

5. Powers and duties of the Minister

It is the duty of the Minister under this Act to—

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- (a) collaborate with the other Ministers to secure consistency and continuity in the implementation of this Act and any other enactment related to the conservation and management of the environment, natural resources and sustainable development;
- (b) protect and promote the interests of Montserrat with respect to the application of multilateral environmental agreements to Montserrat and ensure that Montserrat meets its international obligations with respect to the environment;
- (c) facilitate the enactment of and promotion of policy, strategies, guidelines, standards, objectives and regulations for the protection and management of the environment so as to ensure the integration of environmental concerns into national decision-making at all levels; and
- (d) encourage and facilitate the participation of private persons, communities, civil society organisations and other key stakeholders in environmental management.

6. Establishment of the Council

- (1) The National Conservation and Environmental Advisory Council is established.
- (2) The Council, established by subsection (1), consists of—
 - (a) the following public officers, as ex officio members—
 - (i) the Permanent Secretary, who is the Chairperson;
 - (ii) the Director of Environment;
 - (iii) the Director of Agriculture;
 - (iv) the Chief Physical Planner;
 - (v) the Director of Public Works;

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- (vi) the Director of Disaster Management Coordination Agency;
 - (vii) the Principal Environmental Health Officer; and
 - (viii) the Director Policy and Planning of the Office of the Premier;
- (b) the Director of Tourism;
 - (c) the Managing Director of Montserrat Utilities Limited;
 - (d) a representative of the Montserrat National Trust, nominated by the Montserrat National Trust and appointed by the Governor;
 - (e) four persons appointed by the Governor acting on the advice of Cabinet from civil society organisations or the private sector, who have knowledge or experience with respect to matters relevant to the functions of the Council; and
 - (f) a recording secretary assigned from the Department by the Permanent Secretary after consultation with the Deputy Governor.
- (3) The members of the Council appointed under subsection (2)(c) and (d) may be appointed for a period of three years and are eligible for reappointment.
 - (4) The Governor shall, by Notice, publish in the *Gazette* the names of the members of the Council appointed under subsection 2(c) and (d).
 - (5) The members of the Council, other than public officers, shall hold office on conditions with respect to remuneration and allowances that the Governor acting on the advice of Cabinet may determine.
 - (6) The validity of proceedings of the Council is not affected by a vacancy in its membership or by a defect in the appointment of any of its members.

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- (7) The Council may appoint, from among its members, Committees of a general or special nature to carry out any of its functions which in the opinion of the Council would be better managed by means of Committees.
- (8) The Council or a Committee of the Council may co-opt a person to assist it in dealing with a matter, if it is satisfied that the person's qualifications or experience may help the Council or a Committee of the Council
- (9) A person co-opted under subsection (8) is entitled to take part in the deliberations of the Council or a Committee of the Council regarding the matter for which he is co-opted, but may not vote and must take no part in any other proceedings of the Council or a Committee of the Council.
- (10) The Council shall meet at least twice in every calendar year, and may regulate its own procedure.
- (11) All expenses incurred by the Council in the discharge of its functions, unless otherwise provided for, are to be defrayed from special fund.

7. Functions of the Council

- (1) The Council shall perform the functions and duties imposed on it by this Act and any other duty consistent with those functions as the Minister may direct.
- (2) Without prejudice to the generality of subsection (1), the functions of the Council are to—
 - (a) advise on, review and assist in the formulation and development of policy, strategies, guidelines, standards, objectives and regulations for the protection and management of the environment; and
 - (b) advise, assist and make recommendations to the Minister on matters relating to the implementation of any policy, regulations, programmes, strategies, plans or standards made under this Act.

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8. Standing Committees of the Council

- (1) Without limiting the generality of section 6(7), the Council shall appoint the following standing committees—
 - (a) Forestry, Wildlife and Protected Areas Standing Committee, comprising—
 - (i) the Director;
 - (ii) the Director of Agriculture;
 - (iii) the Director of Tourism;
 - (iv) the Chief Fisheries Officer;
 - (v) a representative of the Montserrat National Trust; and
 - (vi) the Chief Forest Officer; and
 - (b) Pollution Control Standing Committee, comprising—
 - (i) the Director;
 - (ii) the Chief Physical Planner; and
 - (iii) the Principal Environmental Health Officer.
- (2) A standing committee shall meet as necessary to perform its function under section 9.
- (3) The Director shall serve as Chairperson to the Standing Committees and shall assign a person from the Department to be the recording secretary after consultation with the Deputy Governor.

9. Functions of the Committee

The functions of a standing committee are—

- (a) To advise the Council on matters pertaining to policy, strategies, guidelines, standards, objectives and regulations for the protection and management of the environment;

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- (b) to review and revise policy, strategies, guidelines, standards, objectives and regulations for the protection and management of the environment and transmitting these to the Council; and
- (c) to advise the Council on a specific environmental matters that may be referred to the Standing Committees by the Council.

10. The Director of Environment

The Director of Environment is a public officer and shall perform the functions and duties imposed by this Act including any other duties consistent with those functions as the Permanent Secretary may direct.

11. Functions and powers of the Director of Environment

The functions and powers of the Director are to—

- (a) execute the responsibilities arising from or in connection with the administration and implementation of this Act;
- (b) investigate and monitor the state of the environment and collaborate with other persons or bodies carrying out similar surveys or investigations;
- (c) compile, analyse and disseminate environmental data and information;
- (d) provide information to the public about the quality and use of the environment;
- (e) prepare periodic or other reports that the Government is required to produce under a multilateral environmental agreement to which Montserrat is a party or, where responsibility for preparing the reports is delegated or assigned to another entity under sections 12 and 39 ensuring that the reports are prepared;
- (f) promote the sustainable use of biological diversity;

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- (g) manage or co-ordinate the management of protected areas;
- (h) promote the sustainable use of forests, and conservation of soil and watersheds;
- (i) prevent and control environmental pollution;
- (j) support the activities of the Principal Environmental Health Officer in the management and regulation of waste;
- (k) manage and regulate the environmental effect of activities in collaboration with the Physical Planning Unit and any other governmental entity as it sees fit;
- (l) formulate, monitor and enforce environmental regulations and standards;
- (m) formulate policies, strategies and guidelines for the protection and management of the environment;
- (n) undertake enforcement procedures for breaches of environmental requirements;
- (o) institute proceedings against persons for the contravention of this Act; and
- (p) undertake anything incidental or conducive to the performance of any of the foregoing functions or to this Act.

12. Signature and delegation of Director

- (1) The Director has the authority to sign on behalf of the Department all documentation required in the performance of the Director's functions under this Act.
- (2) Unless otherwise provided, the Director may, by instrument in writing and subject to conditions, directions, reservations or restrictions as he or she thinks fit, delegate to any other public officer a power or duty conferred or imposed by this Act on the Director, other than this power of delegation.

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13. Implementation and enforcement of this Act

- (1) The Deputy Governor may designate a public officer, as an authorised officer, in order to implement and enforce this Act.
- (2) In addition to persons designated under subsection (1), the Director and any other personnel of the Department as the Director may designate in writing, the Chief Fisheries Officer, a police officer, a member of the defence force, an agricultural officer, a forest ranger, an environment officer, a litter warden, a customs officer, a public health inspector and a building inspector are ex officio authorised officers.
- (3) Despite the designation of a person as an authorised officer under subsection (1) and (2), that person shall require the approval of his supervisor and the Director where it is reasonably possible to obtain that approval before the exercise of the duties of an authorised officer.

PART 3—ENVIRONMENTAL MANAGEMENT

14. National Environmental Management Strategy

- (1) The Director shall prepare a National Environmental Management Strategy.
- (2) A NEMS prepared in accordance with subsection (1) shall include—
 - (a) a description of the environment in Montserrat;
 - (b) an analysis of environmental issues of national significance; and
 - (c) the environmental management strategies, to be prescribed to address the issues set out in paragraph (b).
- (3) In preparing a NEMS, the Director shall seek and consider comments from stakeholders including

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governmental entities, civil society, non-governmental organisations and members of the public.

- (4) The Director shall submit the draft NEMS to the Council for review and the Council may revise the draft NEMS.
- (5) The Council shall, on completion of its review of the draft NEMS, submit it to the Minister, who shall submit it to Cabinet for approval.
- (6) After its approval by Cabinet, the Director shall publish the NEMS in the *Gazette*.
- (7) The Director shall review and revise the NEMS not less than three years or more than five years after its approval.
- (8) Despite subsection (7), the Minister may instruct the Director to conduct a review of the NEMS at any time he sees fit.

15. National Environmental Information System

- (1) The Director shall establish and maintain a National Environmental Information System.
- (2) The Director shall place information in the NEIS including—
 - (a) all documents relevant to the application for a grant of a Certificate including the completed application, further information, comments and representations received, the Certificate and monitoring reports in accordance with Part 4;
 - (b) stewardship reports prepared under section 16;
 - (c) monitoring data acquired under this Act;
 - (d) permits and registration certificates issued under this Act;
 - (e) policies, plans, guidelines, strategies and reports made under the Act;
 - (f) registers of information made under the Act;

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- (g) multilateral environmental agreements, conventions, international treaties in the field of the environment; and
 - (h) notice of violations, administrative orders and other enforcement proceedings undertaken by the Director under this Act.
- (3) The information in the NEIS may be kept in documentary form or in an electronic data and retrieval system, or partly in documentary form and partly in an electronic data and retrieval system, as the Director thinks fit.
- (4) The Director may make any information contained in the NEIS available to a person on payment of a fee based on the actual costs of providing the information.
- (5) The fees collected under subsection (4) shall be paid into the special fund.
- (6) A person having a direct and private interest in a document listed in subsection (2), may make an application in the prescribed form that the information contained in the document is confidential business information or a trade secret and should be omitted from the NEIS.
- (7) The Director may reject the claim under subsection (6) for the reason that—
 - (a) the person has not disclosed the basis for the claim;
 - (b) the basis for the claim which is disclosed is invalid; or
 - (c) the public interest in disclosing the information clearly outweighs any prejudice to the person having the direct and private interest.
- (8) Where a claim for confidentiality is rejected by the Director under subsection (7), the applicant may appeal the decision to the Tribunal.

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- (9) A document made available in the NEIS shall not be subject to a claim of copyright except where a prior claim of copyright had been vested in that document.

16. Annual stewardship report

- (1) The Director shall prepare and submit annually to the Minister a stewardship report which shall include—
- (a) a description of the environmental management activities undertaken by the Department during the period under review;
 - (b) an assessment of the effectiveness of co-ordination between governmental entities; and
 - (c) a list of any other reports prepared under this Act by the Department or any other entity during the period under review.
- (2) The Minister shall cause a copy of the stewardship report to be laid in the Legislative Assembly.
- (3) The Director shall make the stewardship report available for sale to the public at the prescribed fee.
- (4) The Director may request information from another governmental entity for the purpose of preparing the stewardship report.

**PART 4—CERTIFICATE OF ENVIRONMENTAL
APPROVAL**

17. Certificate of environmental approval

- (1) A person being the proponent of an activity shall before commencing, proceeding with, carrying out, executing or conducting an activity or any modification of an existing activity specified in Schedule 1 obtain a Certificate issued by the Director.
- (2) Where the Director concludes, based on scientific and technical evidence, that an existing activity within a buffer zone is likely to cause significant adverse effects

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on a protected area, the Director may require the proponent to apply for a Certificate.

- (3) A person who is required to apply for a Certificate in accordance with subsection (2) may appeal the exercise of the Director's discretion to the Tribunal.
- (4) An application made under this section for a Certificate shall be in the prescribed form.
- (5) The Director, in considering an application under this section, may ask for further information.
- (6) A person who engages in an activity without obtaining a Certificate under this section is guilty of a breach of an environmental requirement.

18. Issue of Certificate

- (1) The Director may, after considering all relevant matters including the application for a Certificate, further information, comments or representations received, issue the Certificate on terms and conditions as may be appropriate including the requirement to undertake mitigation measures necessary to facilitate sustainable development and sound environmental management.
- (2) Where the Director refuses to issue a Certificate, he shall provide written reasons for the refusal to the applicant.
- (3) An applicant may appeal to the Tribunal the decision of the Director to refuse issuance of a Certificate or to issue a Certificate with conditions.

19. Monitoring compliance

The Director shall monitor the performance of an activity to ensure compliance with the conditions in the Certificate and to confirm that the performance of the activity is consistent with—

- (a) the description provided in the application for a Certificate; and

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(b) the information provided in the application, or further information.

20. Requirement for further information or an environmental impact assessment

- (1) Where the Director is satisfied that an activity poses an environmental threat which could not have been reasonably foreseen at the time of the issuance of the Certificate or the information or data given by the holder in support of the application for a Certificate was false, inaccurate or intended to mislead, he may—

 - (a)* direct the holder of the Certificate to submit further information or data; or
 - (b)* recommend to the Planning and Development Authority that the holder of the Certificate be required to submit an environmental impact assessment.
- (2) The Planning and Development Authority may direct the holder of the Certificate to submit an environmental impact assessment in accordance with section 18 of the Physical Planning Act.
- (3) The holder of a Certificate who is required to submit further information, data or an environmental impact assessment shall do so at his own expense.
- (4) Upon receipt of information under this section the Director may—

 - (a)* revoke, suspend or amend the Certificate with new terms and conditions; and
 - (b)* require the holder of the Certificate to submit an environmental management plan under section 60.
- (5) A person who fails, neglects or refuses to comply with the directions of the Director issued under subsection (1) is guilty of a breach of an environmental requirement.

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- (6) A person may appeal to the Tribunal where the Director revokes, suspends or amends a Certificate under subsection (4).

21. Approvals from other governmental entities

- (1) If the approval of any other governmental entity is required under an enactment with respect to an activity requiring a Certificate under section 17, the issue of a Certificate shall not affect the requirement to obtain that approval before the activity may proceed.
- (2) In any instance where the Director determines that a Certificate is required no other governmental entity shall, in granting a permit, or other documentary authorisation with respect to the activity permit the commencement of the activity until a Certificate has been issued by the Director.

PART 5—CONSERVATION OF BIOLOGICAL DIVERSITY

22. National Strategy for the Conservation of Biological Diversity

- (1) The Director shall prepare and submit to the Council for review, a National Strategy for the Conservation of Biological Diversity in accordance with the overall policy of the NEMS and the St. Georges Declaration.
- (2) The Director shall deposit a copy of the National Strategy for the Conservation of Biological Diversity in the NEIS.
- (3) The Director may amend the National Strategy for the Conservation of Biological Diversity as he deems necessary.

23. Identification and monitoring

- (1) The Director shall identify the components of biological diversity important for its conservation and sustainable use, including—

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- (a) ecosystems and habitats containing high diversity, or large numbers of endemic, endangered or threatened species, or which are required by migratory species, or are of social, economic, cultural or scientific importance, or are representative, unique or associated with key evolutionary or other biological processes;
 - (b) species or communities which are endangered or threatened, or wild relatives of domesticated or cultivated species, or are of medicinal, agricultural or other economic value, or of social, scientific or cultural importance, or of importance for research into the conservation and sustainable use of biological diversity, such as indicator species; and
 - (c) described genomes and genes of social, scientific or economic importance.
- (2) The Director shall monitor, through sampling, tagging and other techniques, the components of biological diversity identified under subsection (1), paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use.
- (3) The Director must identify processes and categories of activities that are likely to have significant adverse effects on the conservation and sustainable use of biological diversity and monitor their effects.
- (4) Where the Director concludes, based on scientific and technical evidence, that an activity is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, the Director may, in the exercise of his discretion under section 17(2), require the proponent to apply for a Certificate.
- (5) The Director shall maintain and organise data derived from the identification and monitoring activities carried out under this section and shall make that data available in the NEIS.

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24. Protected fauna

- (1) The species of fauna specified in Schedule 2 are designated as protected species.
- (2) The designation of a species of fish or other marine life as protected shall be done in consultation with the Chief Fisheries Officer and the Council.
- (3) It is an offence for a person to—
 - (a) wilfully hunt or attempt to hunt a protected species of fauna;
 - (b) knowingly disturb a protected fauna during the period of breeding, incubation, aestivation or migration or take, remove, damage, destroy or have possession of a nest or egg of a protected fauna;
 - (c) expose for sale, or knowingly have in his possession, a protected fauna or any part of the fauna, taken or killed in Montserrat; or
 - (d) export or attempt to export a specimen of a protected species of fauna without a permit issued by the Director under section 31.
- (4) In case where proceedings are brought under subsection (3)(c) it is presumed that the protected species of fauna to which the charge relates was taken or killed in Montserrat; until the contrary is proved, the onus of proof lies on the defendant.

25. Protected flora

- (1) The species of flora specified in Schedule 2 are designated as protected species.
- (2) It is an offence for a person to—
 - (a) harvest or attempt to harvest a protected species of flora;

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- (b) expose for sale, or knowingly have in his possession, a protected flora or a specimen of protected flora, alive or dead taken or destroyed in Montserrat; or
 - (c) export or attempt to export a specimen of a protected species of flora, alive or dead, taken or destroyed without a permit issued by the Director under section 31.
- (3) In case where proceedings are brought under subsection (2)(b), it is presumed that the protected species of flora to which the charge relates was taken or destroyed in Montserrat; until the contrary is proved, the onus of proof lies on the defendant.

26. Partially protected fauna

- (1) The species of fauna specified in Schedule 3 are designated as partially protected species which may be hunted or possessed during the open season.
- (2) The Governor acting on the advice of Cabinet shall designate the open season during which partially protected species may be hunted or possessed in accordance with this Act.
- (3) No person shall hunt or possess a partially protected species of fauna unless that person is in possession of a permit from the Director.
- (4) A person who hunts or possesses a partially protected species of fauna without a permit is in breach of an environmental requirement.
- (5) The Director may issue a permit under this section subject to terms and conditions which he considers necessary.
- (6) An applicant may appeal the decision of the Director to refuse to issue a permit or to issue a permit with conditions, to the Tribunal.
- (7) The designation of a species of fish or other marine life as partially protected under this section is done in

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consultation with the Chief Fisheries Officer and the Council.

27. Partially protected flora

- (1) Subject to subsection (2), the species of flora specified in Schedule 3 are designated as partially protected species which may be harvested or possessed.
- (2) No person shall harvest or possess a partially protected species of flora unless that person is in possession of a permit from the Director.
- (3) A person who harvests or possesses partially protected species of flora without a permit is in breach of an environmental requirement.
- (4) The Director may issue a permit under this section subject to terms and conditions which he considers necessary.
- (5) Where the Director has refused to issue a permit or decided to issue a permit with conditions, the applicant may appeal the decision to the Tribunal.

28. Unprotected species of fauna and flora

- (1) The Director may, where he reasonably believes that an unprotected species is being threatened by the act or omission of a person that is contrary to the public interest and to the principles set out in section 4, issue a stop notice to that person.
- (2) A person who has been served with a stop notice shall, within fourteen days of the date of receipt of the stop notice, make representations to the Director regarding the matters specified in the stop notice.
- (3) Where a matter specified in the stop notice may be satisfactorily explained or otherwise resolved between the person and the Director, the Director may—
 - (a) cancel the stop notice; or

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(b) enter into a consent agreement with that person, allowing the actions of the person to continue subject to terms and conditions as deemed appropriate in accordance with this Act.

- (4) Where a person fails to obey a stop notice, the Director may direct an authorised officer or a person to take any action as may be reasonably necessary to impound, hunt, harvest or possess unprotected species of fauna and flora, including feral or loose livestock, found on Crown lands, protected area or private lands.
- (5) A person found to be responsible for the control of an unprotected species impounded, hunted, harvested or possessed under subsection (4) is liable for the actual costs incurred by an authorised officer or person in impounding, hunting, harvesting or possessing the unprotected species.
- (6) Where the Director is unable to identify the person responsible for the control of an unprotected species and which has been impounded, hunted, harvested or possessed under subsection (4) by a person other than an authorised officer, the Director shall pay to that person the prescribed fee.

29. Actions against protected and partially protected species of fauna and flora

- (1) Where a protected or partially protected species of fauna or flora is alleged to be causing damage to crops or private property, the owner or occupier of that property, or any other person at their request or direction, may make a report to the Director who shall immediately take any action as may be reasonably necessary, including the granting of a permit to hunt, harvest or possess the protected or partially protected species of fauna and flora.
- (2) In the event of an emergency, national crisis or health crisis the Director may take action as necessary to remedy a problem that may arise with respect to

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protected or partially protected species of fauna and flora including action which may be contrary to this Act.

- (3) The Director, in taking any action that may be reasonably necessary under subsections (1) and (2), shall seek to conserve and protect the species of fauna and flora.
- (4) Protected species and partially protected species of fauna and flora killed or destroyed under subsection (1) is the property of the Crown and shall be disposed of as authorised by the Director.

30. Preservation order

- (1) The Governor acting on the advice of Cabinet may make an order for the preservation of a particular species of fauna or flora on the information of the Director that it is in the national interest to do so.
- (2) Before an order is made under subsection (1), the Director shall prepare a draft which shall serve as a proposal for the preservation of the species of plant or individual specified.
- (3) A proposal under this section shall—
 - (a) specify the location of the individual of fauna or flora;
 - (b) be served on the owner or occupier of the land to which the proposal relates and on a person whose interests are likely to be affected by the enforcement of the proposal; and
 - (c) invite representations from the public to be made with respect to the proposal within twenty eight days.
- (4) After considering representations made with respect to the proposal the Director may withdraw the proposal or forward it along with a summary of the representations received to the Governor for consideration under subsection (1).

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- (5) A copy of the preservation order shall be served on the owner or occupier of the land to which the order relates.

PART 6—TRADE OF SPECIMENS

31. Permit required for trade

- (1) No person shall import, export, re-export or possess a specimen or attempt to import, export, re-export or possess a specimen unless that person is in possession of a permit issued by the Director.
- (2) The Director may issue a permit under this section subject to terms and conditions which he considers necessary.
- (3) An applicant may appeal the decision of the Director to refuse to issue a permit or to issue a permit with conditions, to the Tribunal.
- (4) The Director shall collaborate with the Comptroller of Customs in order to implement and enforce this section.
- (5) A person who breaches subsection (1) is guilty of a breach of an environmental requirement.
- (6) For the avoidance of doubt, where there are other enactments applicable to the importation, exportation, re-exportation or possession of a specimen, a person seeking to import, export, re-export or possess a specimen is required to fulfil the requirements under those enactments.

32. Permission required for scientific research

- (1) A person wishing to engage in—
- (a) scientific research;
- (b) photographing and collecting information for financial gain; or

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(c) collecting information for the purpose of preparing a documentary, promoting tourism and preparing education and research material;

of the fauna, flora and associated ecosystems within Montserrat, must apply in writing to the Director, for permission to do so.

- (2) Despite sections 24, 25, 26 and 27, the Director may grant permission for scientific research which involves the hunting, harvesting or possessing of specimens of individuals of protected, partially protected or unprotected species or any part of the specimen of individual, dead or alive.
- (3) A person applying for permission to carry out scientific research shall submit to the Director a plan for the proposed research, including a research protocol, and any information as the Director may require.
- (4) Permission granted under this section may be limited to one entry or may cover a specified period of time.
- (5) Permission to undertake scientific research may be granted only to a person who can satisfy the Director that he or she—
 - (a) has the scientific competence to undertake the research, as assured by a recognised learned society or institution of higher learning; and
 - (b) has access to or a guarantee of sufficient funds to undertake the research in a satisfactory manner.
- (6) The Director may attach terms, conditions and limitations to permission granted under this section, as the Director considers appropriate in the public interest.
- (7) Without prejudice to the generality of subsection (6), the Director may attach to permission granted under this section for bio-prospecting operations terms, conditions and limitations concerning the ownership of intellectual property and sharing of financial returns from the commercialisation of products derived from the

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biological diversity of Montserrat as the Director considers appropriate in the public interest.

- (8) No person shall proceed with an activity under subsection (1) without first receiving the permission of the Director under this section despite the approval of any other governmental entity.
- (9) A person who proceeds with an activity under subsection (1) without first receiving the permission of the Director is in breach of an environmental requirement.
- (10) An applicant may appeal the decision of the Director to refuse to issue a permit or to issue a permit with conditions, to the Tribunal, within twenty eight days from receipt of notice of the decision.

PART 7—PROTECTED AREAS

33. Protected areas

The areas listed in Schedule 4 are designated as protected areas.

34. Preparation of Protected Areas Systems Plan

- (1) The Director shall prepare a draft Protected Areas Systems Plan for the establishment of a system of protected areas which—
 - (a) is consistent with the NEMS; and
 - (b) takes into consideration the National Physical Development Plan prepared in accordance with section 5 of the Physical Planning Act.
- (2) Without limiting the generality of subsection (1), the PAS Plan shall include—
 - (a) a statement of national policy with respect to the establishment of national parks and other protected areas;

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- (b) an assessment of the status of biological diversity and the natural and cultural resources of Montserrat, including—

 - (i) ecosystems, including forests, wetlands and marine areas;
 - (ii) fauna and flora, particularly endemic, endangered, threatened and rare species;
 - (iii) soil and water resources;
 - (iv) watersheds; and
 - (v) archaeological and historical sites;
 - (c) proposals for a system of protected areas to ensure the protection, conservation, development and management of the natural and cultural heritage of Montserrat; and
 - (d) maps and descriptive matter as may be necessary to illustrate the proposals made in it with a degree of detail as is appropriate.
- (3) In preparing the PAS Plan, the Director shall seek and consider comments from persons including persons having an interest in a matter for which proposals may be made in the PAS Plan.
- (4) The Director shall submit the draft PAS Plan to the Council for review.
- (5) The Council shall forward the draft PAS Plan to the Forestry, Wildlife, and Protected Areas Standing Committee for its input.
- (6) The Council may amend the draft PAS Plan as it considers appropriate, after which the Council shall submit the draft PAS Plan to the Minister.
- (7) The Minister shall submit the draft PAS Plan to the Governor, who, acting on the advice of Cabinet, may approve it.

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- (8) The PAS Plan made under this section shall be published in the Gazette and shall come into force on the date of publication.
- (9) The Director may at any time carry out a review of the approved PAS Plan and submit a report on that review, including proposals for its amendment to the Council.
- (10) Amendments proposed under subsection (9) shall follow the procedure set out in subsections (5) to (8) for the approval of a draft PAS Plan.
- (11) Despite subsection (9) the Minister may instruct the Director to review the PAS Plan.
- (12) The designation, conservation, development, management and use of a protected area shall, as far as is reasonably possible, be consistent with the PAS Plan.

35. Designation of protected area

- (1) Subject to section 36, the Governor acting on the advice of Cabinet may, after the approval of the PAS Plan and in order to conserve biodiversity and the natural and cultural heritage of Montserrat and to encourage ecologically sound and sustainable use, understanding and enjoyment of these areas, designate any land or marine area, or any combined land and marine area to be included in Schedule 4, as protected areas in the following categories—
 - (a) Strict Nature Reserve;
 - (b) National Park;
 - (c) Conservation Area;
 - (d) Heritage Site;
 - (e) Watershed Management Area;
 - (f) Protected Forest Area; and
 - (g) Temporary Protected Area.

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- (2) Without limiting the generality of subsection (1), protected areas shall be established in order to conserve, maintain and restore, in particular—
- (a) representative types of ecosystems of adequate size to ensure their long term viability and to maintain biological and genetic diversity;
 - (b) habitats and ecosystems critical to the survival of endemic, endangered or threatened, protected, partially protected or rare species of fauna and flora;
 - (c) the productivity of ecosystems and natural resources that provide economic or social benefits and on which the welfare of local inhabitants is dependant;
 - (d) areas of special scientific, educational, cultural, historic, archaeological, recreational, aesthetic or economic value; and
 - (e) representative types of ecosystems and individuals of fauna and flora which are part of the natural and cultural heritage of Montserrat and of scientific, educational, historic, archaeological, recreational, aesthetic, or economic value.

36. Notice of intention to designate a protected area

Before an area is designated as a protected area under section 35(1), the Director shall publish a notice of intention to designate the protected area and submit the notice for public comment by stakeholders including governmental entities, private land owners, nongovernmental organisations and the public in accordance with this Act.

37. Temporary protected area

- (1) Despite section 36, where it appears to the Director expedient in the national interest to protect a species of fauna or flora or the habitat of a species of fauna or flora or a geographically defined area, the Director, after

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consultation with the Council, shall designate an area to be a temporary protected area.

- (2) An order for the designation of a temporary protected area is valid for a period of 180 days from its publication.

38. Demarcation of boundaries

- (1) The Director shall, within two years of the designation of a protected area, have the protected area surveyed and a map of the protected area deposited with the Chief Surveyor.
- (2) The Chief Surveyor shall make the map of the protected area deposited with him under subsection (1), available to the public for inspection.
- (3) The Director shall have the boundaries of each protected area marked and defined making them clearly visible at all times.

39. Responsibility for management of protected areas

- (1) Despite subsection (2), the Director is responsible for overseeing the administration and monitoring of protected areas.
- (2) The Governor acting on the advice of Cabinet may, by order, designate a competent body with the responsibility for the management and control of a protected area, and the competent body may include the Montserrat National Trust, or any other duly constituted non-governmental organisation with an interest in conservation and with the competence to manage a protected area.
- (3) The responsibilities delegated to a competent body designated under subsection (2) may include the powers and duties to—
 - (a) prepare and implement the management plan for the protected area, approved in accordance with subsection (4), and make recommendations with

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- respect to the modification of the approved management plan;
- (b)* make recommendations to the Council with respect to the allocation of human, material and financial resources necessary for the proper management of the protected area;
 - (c)* advise the Council with respect to a variation of the boundaries, or change in the categorisation of the protected area, that appears necessary or expedient to better meet the purposes for which the protected area was established; and
 - (d)* undertake any other functions as may be assigned to it by the Council.
- (4)** The Director or a competent body shall prepare a management plan for each protected area in accordance with this Act and submit the management plan to the Council for review and approval by the Minister.
 - (5)** In the preparation of a management plan the Director or a competent body shall submit the management plan for public comment from persons, including but not limited to occupiers and private land owners within a protected area, non-governmental organisations and governmental entities in accordance with this Act.
 - (6)** The Director or a competent body shall implement the approved management plan for the protected area under its control.
 - (7)** Where a competent body is designated with responsibility for the management of a protected area, that competent body shall report to the Director when required and act on the directions of the Director in the exercise of its powers and duties.
 - (8)** Despite subsection (6), the Director is responsible for the monitoring and enforcement of management plans for protected areas.

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- (9) Where the Director believes that a competent body is acting contrary to its powers and duties under this Part, the Director may advise the Council and the Council may recommend to the Governor that the designation of the competent body be revoked.
- (10) The Governor acting on the advice of Cabinet, may, on receiving a recommendation under subsection (9), revoke the designation of the competent body.

40. Private land in protected areas

- (1) The owner of any land within a protected area who complies with the management plan for that protected area is entitled to a remission of property tax payable in respect of that land, in addition to any other incentive as the Governor acting on the advice of Cabinet may grant for that purpose.
- (2) The owner of private land within a protected area is not liable except where the owner has been negligent, for personal injury, loss of life or property sustained by a person using a public road, right of way, footpath over that land, or by a user of the protected area entering on the private land with the permission of, or under a licence granted by, the body on which responsibility for the management of the protected area is conferred by or under this Act or a governmental entity, whether the permission or licence is granted gratuitously or on payment of a fee.
- (3) If the Governor acting on the advice of Cabinet determines that, having regard to the category of the protected area and the purposes for which it has been designated, it is necessary or desirable that the Crown should acquire any private land within the protected area, or any rights over or interest in the private land, the Crown may acquire the land or a right over or interest in the land, either by agreement with the owner of the land or compulsorily in accordance with the Land Acquisition

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Act, as being land needed for a public purpose within the meaning of that Act.

- (4) In a case where the Crown acquires private land under subsection (3), the landowner may, by mutual agreement, be compensated wholly or in part by exchange of land with the Crown, instead of compensation in money.
- (5) For the avoidance of doubt it is declared that a landowner may donate, exchange, transfer or otherwise dedicate any land or interest in land to the Crown for use as a protected area.

41. Vesting of Crown land in protected areas in trustees

- (1) The Governor acting on the advice of Cabinet may vest Crown land within a protected area in the competent body to which responsibility for the management of that area is delegated under section 39, by order published in the *Gazette*.
- (2) A competent body in which Crown land within a protected area is vested under subsection (1) holds that land in trust for the benefit of the people of Montserrat and shall take necessary measures for the proper control and management of that land to prevent any waste or damage or injury to that land.

42. Agreement to manage private land as protected area

- (1) Despite anything to the contrary, the Minister may, with the approval of the Governor acting on the advice of Cabinet, enter into a co-management agreement with the owner of private land within a protected area for the management and control of that land as a protected area.
- (2) Land which is the subject of a co-management agreement under subsection (1) shall be placed under the control of the Director or a competent body for the purpose of managing and maintaining the specific purpose for which the protected area was established.

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- (3) A co-management agreement made under subsection (1) shall be in writing and signed by the owner of the land or by a person having authority to sign on behalf of the owner and by the Minister on behalf of the Government, and shall contain—
- (a) a description of the land including a description of its boundaries;
 - (b) the reason for designation of the land as a protected area; and
 - (c) measures designed to further the specific purposes for which the protected area was established.

43. Activities in buffer zones

- (1) The Director, in consultation with the competent body with responsibility for the management of a protected area, may establish a buffer zone adjacent to a protected area.
- (2) Where a buffer zone is established under subsection (1), the Director or the competent body under the direction of the Director shall prepare a buffer zone management plan for the management of activities in the buffer zone.
- (3) The draft buffer zone management plan prepared under subsection (2) shall before it is finalized be submitted for public comment from persons, including occupiers and private land owners, within the buffer zone, non-governmental organisations and governmental entities.
- (4) The Director or the competent body shall collaborate with the Chief Physical Planner, the Director of Agriculture and other governmental entities to ensure that activities permitted or carried out in a buffer zone are compatible with achieving the purposes of the protected area.
- (5) The competent body, where appropriate, shall also collaborate with the Director to ensure that activities

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permitted or carried out in a buffer zone are compatible with achieving the purposes of the protected area.

- (6) The Director may enter into a co-management agreement with a lawful occupier or private land owner with regard to the activities being undertaken within the buffer zone.
- (7) Where an activity within a buffer zone is not listed in Schedule 1, the Director, in the exercise of his discretion under section 17(2), may require the person to obtain a Certificate under section 17.

44. Restrictions on disposal of Crown land in protected areas

- (1) Except where the Governor acting on the advice of Cabinet considers it expedient in the national interest or to further the purposes for which the protected area was designated, no Crown land in a protected area may be granted, sold or otherwise disposed of and no person may be permitted to occupy Crown land in a protected area.
- (2) The Governor acting on the advice of Cabinet may lease Crown land or building in a protected area for the purpose of providing a public amenity, in accordance with the approved management plan for that protected area.
- (3) Despite anything to the contrary in any other enactment, no right, title or interest in, to or over Crown land in a protected area may be acquired by a person by prescription.

45. Restrictions on development in protected areas

The Planning and Development Authority shall not approve or give permission for the development of Crown or private land within a protected area, under the Physical Planning Act, unless the applicant holds a Certificate under section 17 with regard to the development.

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46. Operations by governmental entities in protected areas

- (1) A governmental entity may continue to operate, manage and maintain any existing work or undertaking situated in a protected area which has been authorised by an enactment before the commencement of this Act.
- (2) A governmental entity may continue to exercise its statutory duties, powers and functions in a protected area but in the exercise of those duties, powers and functions it shall comply with any directions given by the Director or the competent body, for the purposes of conserving and managing the protected area.

47. Management plan for protected forest areas consistent with PAS Plan and NEMS

A management plan developed for a protected forest area shall be in accordance with sustainable tropical forestry principles, guidelines and practices and consistent with the PAS Plan and the NEMS.

48. Felling, extraction or removal of timber from protected areas

- (1) The Director may, as part of a management plan for a protected area, issue a permit to fell, extract or remove timber or other forest produce from a protected area, subject to terms and conditions.
- (2) A permit granted under subsection (1) is valid for the period stated therein and is not transferable except with the written permission of the Director.
- (3) A person who fells, extracts or removes timber from a protected area without a permit is in breach of an environmental requirement.
- (4) An applicant may appeal the decision of the Director to refuse to issue a permit or to issue a permit with conditions, to the Tribunal.

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PART 8—FORESTS AND FIRES

49. Forestry operations

- (1) The Director shall manage forests on unallocated Crown lands outside of protected areas as a permanent forest estate, in accordance with sustainable tropical forestry principles, guidelines and practices.
- (2) The Director may issue a permit to fell, extract or remove timber or other forest produce from unallocated Crown lands outside of a protected area subject to terms and conditions.
- (3) A permit granted under subsection (2) is valid for the period stated therein and is transferable only with the written permission of the Director.
- (4) A person who fells, extracts or removes timber from unallocated Crown lands without a permit is in breach of an environmental requirement.
- (5) An applicant may appeal the decision of the Director to refuse to issue a permit or to issue a permit with conditions, to the Tribunal.

50. Silviculture, agro-forestry and tree planting

- (1) The Director shall promote the practice of silviculture.
- (2) The Director shall, in collaboration with the Director of Agriculture, on marginal lands owned or leased by the Crown for agriculture which are outside of protected areas and are not better suited for grazing or cultivation, promote the practice of agro-forestry.
- (3) The Director may plant and maintain trees in public places.

51. Forested private lands

- (1) The Governor, acting on the advice of Cabinet, may make regulations and grant incentives to the owners of forested private lands outside of protected areas for the

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purpose of ensuring that those lands are managed in accordance with sustainable tropical forestry principles, guidelines and practices.

- (2) The Minister may, with the approval of the Governor acting on the advice of Cabinet, enter into agreements with the owners of forested private lands outside of protected areas for the management and control of the forests on those lands by the Director.

52. Fire prevention

- (1) The Director, in collaboration with the Chief Fire Officer, shall implement measures to prevent and suppress the occurrence of fires in all forested areas or protected areas.
- (2) No person shall engage in the production of charcoal in a forested area or protected area except in accordance with a permit issued by the Director.
- (3) No person shall start a fire in a forested area or protected area except in accordance with a permit issued by the Chief Fire Officer.
- (4) The Chief Fire Officer shall not issue a permit under this section without prior consultation with the Director.
- (5) A person who starts a fire in a forested area or protected area without a permit issued in accordance with subsections (2) or (3) is in breach of an environmental requirement.
- (6) Where the Director or the Chief Fire Officer has refused to issue a permit or decided to issue a permit with conditions, the applicant may appeal the decision to the Tribunal.

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PART 9—POLLUTION CONTROL

53. Registration of releases of pollutant

- (1) A person who intends to release a pollutant from any premises in a quantity or concentration or condition which falls beyond a prescribed range shall register with the Director.
- (2) The Director shall issue a registration certificate to a person required to register under subsection (1) with any term and condition as the Director deems fit.
- (3) A person who fails to register with the Director under subsection (1) is in breach of an environmental requirement.
- (4) An applicant may appeal the decision of the Director to refuse to issue a certificate or to issue a certificate with conditions, to the Tribunal.

54. Pollution permits

- (1) Despite any enactment to the contrary, at the expiration of 180 days from the designation of a pollutant, no person may release that pollutant from any premises without first applying to the Director for a permit.
- (2) The Director may issue a permit, with or without conditions, authorising the release of a pollutant from any premises.
- (3) A person who releases a pollutant from any premises without having a permit under subsection (1) is in breach of an environmental requirement.
- (4) An applicant may appeal the decision of the Director to refuse to issue a permit or to issue a permit with conditions, to the Tribunal.

55. Director to monitor compliance

The Director shall monitor the performance of a person to ensure compliance with a permit issued under this Part

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and to confirm that the performance complies with the information and description provided in the application for the permit.

56. Performance standards

- (1) The Governor acting on the advice of Cabinet may prescribe performance standards with respect to the generation and release into the environment of pollutants from home and garden appliances.
- (2) A period of one year or any other time as the Governor acting on the advice of Cabinet may direct, shall be allowed between the introduction of the standards and their enforcement to accommodate the upgrading or depreciation and replacement of existing machines and equipment.
- (3) A person who imports into Montserrat a machine or equipment that does not comply with the prescribed performance standards is in breach of an environmental requirement.

**PART 10—SPILLS, ACCIDENTAL RELEASES AND
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57. Spills and accidental releases

- (1) The Director may require a person who owns or controls any premises on which a pollutant or hazardous substance or hazardous waste is handled, to prepare a contingency plan to deal with a spill or accidental release of that pollutant or hazardous substance or hazardous waste.
- (2) A contingency plan prepared under subsection (1) shall set out the counter measures to be adopted in the event of a spill or accidental release of a pollutant or hazardous substance or hazardous waste and the steps to be taken to clean-up the environment afterwards

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- (3) A person who prepares a plan under subsection (1), shall submit it to the Principal Environmental Health Officer.
- (4) The Principal Environmental Health Officer may approve a plan after consultation on it with the Director, the Director of the Disaster Management Coordination Agency and any other persons as the Principal Environmental Health Officer thinks fit.
- (5) When a spill or accidental release of a pollutant or hazardous substance or hazardous waste occurs, the person who owns or controls the premises on which the incident takes place must as soon as is reasonably practicable—
 - (a) notify the Director, the Principal Environmental Health Officer and the Director of Disaster Management of the incident;
 - (b) implement the approved contingency plan; and
 - (c) take measures as are necessary or expedient to minimise any resulting threat to human health or the environment.
- (6) After a spill or accidental release of a pollutant or hazardous substance or hazardous waste, the Principal Environmental Health Officer may undertake emergency response measures as he thinks necessary or expedient to protect human health and the environment, either directly or by coordinating the activities of governmental entities and non-governmental organisations or by employing contractors.
- (7) Where the Principal Environmental Health Officer acts under subsection (6) he may recover the actual costs of so doing under section 67(1)(c) from the person who owns or controls the premises from where the spill or accidental release of a pollutant or hazardous substance or hazardous waste originated.

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58. Environmental restoration order

- (1) Subject to any other provisions of this Act, the Director may issue and serve on a person in respect of a matter relating to the management of the environment an order under this Part referred to as an environmental restoration order.
- (2) An environmental restoration order issued under subsection (1) shall—
 - (a) require the person on whom it is served to restore the environment as near as it can to the state in which it was before the taking of the action which is the subject of the order;
 - (b) prevent the person on whom it is served from taking any action which would or is reasonably likely to cause harm to the environment; and
 - (c) award compensation to a person whose environment, property or livelihood has been harmed by the action which is the subject of the order.
- (3) An environmental restoration order may contain terms and conditions and impose obligations on the persons on whom it is served which, in the opinion of the Director, enable implementation of the order.
- (4) If a person served with an environmental restoration order fails to comply with the terms and conditions of the Order, the Director may undertake all actions stipulated in the environmental restoration order.
- (5) Where the Director acts in accordance with subsection (4) he may recover from the person under section 67(1)(e) all actual costs incurred by the Director or a government entity or private person to restore the environment.
- (6) A person who has been served with an environmental restoration order may appeal to the Tribunal.

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PART 11—ENVIRONMENTAL AUDIT AND MONITORING

59. Environmental auditing

The Governor acting on the advice of Cabinet may by Regulations—

- (a) establish or adopt appropriate standards and procedures for the carrying out of an environmental audit;
- (b) set out the circumstances in or under which an environmental audit shall be carried out on any premises;
- (c) set out the qualifications of persons by whom an environmental audit may be carried out; and
- (d) establish the measures that the Director may take with respect to the findings of an environmental audit.

60. Environmental management plan

- (1) Despite the requirement to apply for and obtain a Certificate under section 17 the Director may require a person to submit for approval an environmental management plan to manage the environmental impacts of a new or existing activity.
- (2) An environmental management plan shall be consistent with the principles set out in section 4.
- (3) A copy of the approved environmental management plan prepared in accordance with subsection (1) shall form part of the NEIS.

61. Environmental monitoring

- (1) The Director may, after consultation with the relevant standing committee established under section 8(1) and other governmental entities, monitor—

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- (a) environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; or
 - (b) the operation of any activity with a view to determining its immediate and long-term effects on the environment.
- (2) The Director may undertake compliance monitoring and enforcement of an environmental appraisal, environmental impact assessment or environmental management plan.

62. Powers of entry, search and seizure

- (1) Subject to section 13(3), an authorised officer may at any reasonable time, with the permission of the owner or occupier of the premises, enter those premises for the purpose of monitoring the effects on the environment of an activity carried out or to effect compliance with a provision or requirement of this Act.
- (2) A person authorised under subsection (1) to enter any premises shall produce evidence of his authority to the owner or occupier of the premises before entering.
- (3) If the Director, has reason to believe that a contravention of the Act has occurred or is about to occur, and the circumstances are such that seeking permission to enter, in accordance with subsection (1) would defeat the purpose for which entry is sought, the Director may apply to a magistrate for a warrant authorising an authorised officer to enter those premises.
- (4) In the course of any entry under this section, an authorised officer may—
 - (a) carry out any inspection;
 - (b) survey or seize any equipment or article being used in the commission of an offence or breach of an environmental requirement;
 - (c) review and copy any documents or other records;

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- (d) take photographs or other audio or visual recordings; and
- (e) take samples of air, water, soil or other material found on or in the premises.

63. Sampling and testing

- (1) When a sample is taken pursuant to section 62(4), the person taking the sample shall—
 - (a) notify the person in charge of the premises from which the sample was obtained of his intention to submit the sample for analysis or examination;
 - (b) divide the quantity into three parts, causing each part to be marked and sealed in a manner as the nature of the sample permits;
 - (c) deliver one of the parts to the person in charge of the premises from which the sample was obtained;
 - (d) retain one of the parts for future comparison or verification; and
 - (e) submit the third part for analysis or examination as soon as may be practicable.
- (2) A sample taken in accordance with subsection (1) shall be submitted to a scientific laboratory designated under section 79 for analysis or examination in accordance with internationally accepted forensic procedures.

PART 12—ADMINISTRATIVE PROCEEDINGS

64. Notice of violation

- (1) Where the Director believes that a person is in violation of an environmental requirement, the Director shall serve a Notice of the violation on that person which shall include—
 - (a) details of the violation of the environmental requirement;

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- (b)* an invitation to the person to make representations to the Director concerning the matters specified in the notice within a specified time; and
 - (c)* any other matter as the Director believes is necessary for the protection of the environment.
- (2)** Where a matter specified in the Notice is satisfactorily explained or resolved between the person and the Director within twenty eight days of service of the Notice—
 - (a)* the Director may dismiss the matters specified in the Notice; or
 - (b)* an agreed resolution may be reduced to writing into a consent agreement which may include an administrative civil assessment.
- (3)** The Director may where reasonably necessary extend time for the resolution of a Notice as contemplated by subsection (2).

65. Issue of administrative order

The Director may issue an administrative order where the person—

- (a)* fails to make representations to the Director within the time specified in the Notice; or
- (b)* is unable to resolve with the Director all matters specified in the Notice.

66. Administrative order

- (1)** An administrative order issued by the Director shall, where appropriate—
 - (a)* specify details of the violation of the environmental requirement;
 - (b)* direct the person to immediately cease and desist from the violation or specify a date for coming into compliance;

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- (c) direct the person to immediately remedy an environmental condition or damage to the environment arising out of the violation or specify a date by which remedial activity shall be completed;
 - (d) direct the person to undertake an investigation regarding any environmental circumstances or conditions within that person's responsibility or control, including a release of a pollutant into the environment or the handling of any hazardous substance or waste;
 - (e) direct the person to perform any monitoring or recordkeeping activities;
 - (f) include a proposed administrative civil assessment made by the Director; and
 - (g) direct a person to comply with any other requirement under this Act.
- (2) A person served with an administrative order may elect to negotiate a consent agreement with the Director or appeal the administrative order within twenty eight days of the date of service of the administrative order.
- (3) Where a person served with an administrative order under subsection (1) fails to appeal that order or to negotiate a consent agreement under subsection (2), the administrative order shall be deemed final and conclusive.
- (4) In the event a person served with an administrative order is engaged in negotiation of a consent agreement and the twenty eight day period stipulated in subsection (2) is about to expire, that person at least two days before the date of expiration, may apply to the Director for an extension of time to facilitate further negotiations to arrive at a consent agreement, and the Director may extend time for a further period not exceeding twenty one days.

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- (5) Despite subsection (3), where a person served with an administrative order is unable to reach a consent agreement with the Director before the expiry of the twenty eight day period contemplated by subsection (2) or the extension period granted under subsection (4), that person has a right to appeal the administrative order to the Tribunal within fourteen days of the date of expiration of that period.
- (6) Where a person served with an administrative order fails to appeal the administrative order in accordance with subsection (5), the administrative order shall be deemed final and conclusive.

67. Administrative civil assessment

- (1) The Director or the Tribunal may make an administrative civil assessment of—
 - (a) compensation for actual costs incurred by the Director to respond to environmental conditions or other circumstances arising out of a violation referenced in an administrative order or a notice;
 - (b) compensation for damages to the environment associated with public lands or holdings which arise out of a violation referenced in an administrative order or a notice;
 - (c) compensation for actual costs incurred by the Director in responding to a spill or accidental release of a pollutant or hazardous substance or hazardous waste;
 - (d) compensation to be paid by a person served with an environmental restoration order to another person whose environment, property or livelihood has been harmed by the action which is the subject of the order;
 - (e) compensation for actual costs incurred by the Director or a government entity or private person to restore the environment after the failure of a person

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- served with an environmental restoration order to comply with its terms and conditions;
- (f) compensation for actual costs incurred by an authorised officer on behalf of the Director or person in seizing, removing, impounding or hunting unprotected species on Crown lands, protected area or any other private land;
 - (g) damages for an economic benefit or amount saved by a person through failure to comply with applicable environmental requirements;
 - (h) damages for losses suffered by a third party; and
 - (i) damages for the failure of a person to comply with environmental requirements, in an amount determined under subsections (2) and (3).
- (2) In determining the amount of any damages to be assessed under subsections (1)(g), (h) and (i), the Director or the Tribunal shall take into account—
- (a) the nature, circumstances, extent and gravity of the violation;
 - (b) any history of prior violations; and
 - (c) the degree of wilfulness or culpability in committing the violation and any good faith efforts to co-operate with the Director.
- (3) The total amount of damages under subsection (1)(i), shall not exceed—
- (a) for an individual, \$3,000 for each violation and, in the case of a continuing or recurrent violation, \$500 per day for each instance until the violation is remedied or abated; or
 - (b) for a person other than an individual, \$5,000 for each violation and, in the case of a continuing or recurrent violation, \$750 per day for each instance until the violation is remedied or abated.

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68. Application for determination of administrative civil assessment

- (1) Where an administrative order or consent agreement contains a proposed administrative civil assessment and the person receiving the administrative order or negotiating the consent agreement has agreed to all the terms of the administrative order or the consent agreement but for a proposed administrative civil assessment, the Tribunal shall, on the application of the Director or the person subject to the administrative order or party to the consent agreement, determine the amount of the assessment.
- (2) An application for the determination of an administrative civil assessment under subsection (1) shall be made within fourteen days from the date all the terms of the administrative order or consent agreement were agreed between the parties.

69. Other actions by the Director

Whenever the Director reasonably believes that a person is currently in violation of an environmental requirement, or is engaged in an activity which is likely to result in a violation of an environmental requirement, the Director may in addition to, or instead of, other actions authorised under this Act—

- (a) seek a restraining order or other injunctive or equitable relief to prohibit the continued violation of an environmental requirement or prevent the activity which may likely lead to a violation of an environmental requirement;
- (b) seek an order for the closure of any premises or a prohibition against the continuation of an activity in order to halt or prevent a violation of an environmental requirement; or
- (c) pursue any other remedy which may be provided by law.

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PART 13—PRIVATE CIVIL ACTIONS

70. Private civil actions

- (1) Where a person believes that there is a violation of an environmental requirement, that person must give notice of the violation to the Director within ninety days of the claimed violation first occurring.
- (2) Despite subsection (1), a person may apply to the Tribunal for an order to extend time to give notice of a violation of an environmental requirement to the Director after ninety days of the violation first occurring where it was not reasonable for the person to have actual or presumed knowledge of the violation within ninety days of the claimed violation first occurring.
- (3) The Director may commence enforcement action under sections 64 to 69 within sixty days of the Director receiving a notice of the violation under subsections (1) or (2).
- (4) Where the Director has failed to commence enforcement action under sections 64 to 69 within sixty days of the Director receiving a notice of the violation under subsection (1) or (2), the person giving notice of a violation may initiate a civil action against the person responsible for the violation before the Tribunal within twenty eight days of the expiration of the sixty day notice period.
- (5) A person filing a civil action in accordance with subsection (4) shall within seven days of filing the civil action before the Tribunal serve the civil action on the Director, the Attorney General and the person responsible for the violation.
- (6) The Director is entitled to commence enforcement action under sections 64 to 69 within twenty eight days of service of a civil action in accordance with subsection (5).

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- (7) Where the Director has elected to commence enforcement action within the twenty eight day period in accordance with subsection (6), notice of the commencement of enforcement action shall be filed with the Tribunal.
- (8) No civil action shall be heard or determined by the Tribunal until the expiration of twenty eight days from the service of the civil action on the Director in accordance with subsection (4) except where the Director has notified the Tribunal before the expiration of the twenty eight day period that he or she does not intend to file a notice of commencement of enforcement action under subsection (7).
- (9) Where the Director has acted in accordance with subsection (7), a civil action filed by a person shall be discontinued and the Tribunal may at its discretion make an order as to costs against the Director at the hearing for discontinuance of the civil action.
- (10) For the purposes of this section, an individual or group of individuals expressing a general interest in the environment or a specific concern with respect to the claimed violation of any of the specified environmental requirements is deemed to have standing to bring a civil action under subsection (4).
- (11) In a civil action brought under this section, the burden of proof is on the person filing the civil action.
- (12) In an action under this section, the Attorney General or the Director may intervene at any time as a matter of right.
- (13) Despite anything to the contrary, where there is a threat of serious or irreversible damage to human health or the environment resulting from a claimed violation of any of the specified environmental requirements, a person may seek special leave of the Tribunal to institute and expedite a civil action brought under subsection (4) and

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dispense with any of the time requirements stipulated in this section.

**PART 14— PHYSICAL PLANNING AND
ENVIRONMENTAL (APPEALS) TRIBUNAL**

71. Composition of Tribunal

- (1) All appeals, applications, civil actions, claims or other proceedings arising under this Act shall lie as of right in the Physical Planning and Environmental (Appeals) Tribunal appointed under section 56 of the Physical Planning Act.
- (2) In the sitting of the Tribunal to hear and determine an appeal, application, civil action, claim or other proceeding arising under this Act the Tribunal shall comprise the Chairman and two other members of the Tribunal having experience in environmental matters.
- (3) The decision of the Tribunal shall be that of the majority of the members present, but the opinion of the Chairman shall prevail on a matter arising in the course of any proceedings which, in his opinion is a question of law.
- (4) A member of the Tribunal including the Chairman who has a direct interest in a matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.
- (5) Where a member cannot take part in proceedings under subsection (4), the Governor acting on the advice of Cabinet shall appoint a person with the requisite qualifications to act instead of the member.

72. Jurisdiction of the Tribunal

- (1) The Tribunal has jurisdiction to hear and determine—
 - (a) a civil action brought by persons under section 70;
 - (b) an application to enforce the terms and conditions of a consent agreement or administrative order which

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has been deemed final and conclusive and where a person subject to a consent agreement or administrative order has refused to comply with the terms and conditions;

- (c) an appeal of an administrative civil assessment proposed by the Director except administrative civil assessments determined under section 66(3) and (6);
- (d) an application for the approval and enforcement of an administrative civil assessment contained in an administrative order or consent agreement;
- (e) an appeal of the requirement to apply for and obtain a permit which is in the discretion of the Director under this Act;
- (f) an application to extend time to give notice of a violation of a specified environmental requirement under section 70(2);
- (g) an appeal of the imposition of a condition, limitation or restriction in a permit under this Act;
- (h) an appeal of a decision to grant or refuse a permit under this Act;
- (i) an appeal of a decision to transfer or refuse to transfer a permit under this Act;
- (j) an appeal of the revocation or suspension of a permit under this Act;
- (k) an appeal of the variation of a permit or refusal to vary a permit under this Act;
- (l) an appeal of a decision to renew a permit or to refuse to renew a permit under this Act;
- (m) an appeal of the imposition of an environmental restoration order under section 58;
- (n) an appeal of the issuance of a stop notice by the Director under section 28;

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- (o)* an appeal of the acceptance or refusal of a claim for confidentiality made under section 15; and
 - (p)* an appeal with respect to any administrative decision made or action taken by the Director under this Act.
- (2)** Except where specifically provided under this Act, an appeal, application, civil action, claim or other proceeding contemplated by subsection (1), may be brought by a person personally aggrieved or where a person has a sufficient interest.
- (3)** Despite subsection (2), the Tribunal may allow an appeal, application, civil action, claim or other proceeding where it is satisfied that the matter is justifiable in the public interest whether or not the party has a sufficient interest in the matter.

73. Powers of the Tribunal

On an appeal, application, civil action, claim or other proceeding being brought before the Tribunal, the Tribunal, where appropriate, may—

- (a)* dismiss it;
- (b)* allow it and make an order as it considers just and as the circumstances warrant;
- (c)* issue an administrative civil assessment;
- (d)* award damages payable by a party other than the Director;
- (e)* issue a restraining order or grant any other injunctive or equitable relief as may be required in the circumstances; or
- (f)* make an order as to costs including an order as to costs in favour of a person bringing a civil action where the civil action has been discontinued because of the decision of the Director to initiate enforcement proceedings under sections 64 to 69.

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74. Procedure of Tribunal

- (1) The Tribunal shall sit at a time and in a place as it may appoint.
- (2) The Tribunal may, subject to the approval of the Governor acting on the advice of Cabinet, make rules governing the carrying on of its business and the practice and procedure and the cost of proceedings before the Tribunal.
- (3) The proceedings of the Tribunal shall be open to the public except where the Tribunal, for good cause, otherwise directs.
- (4) A person may appear before the Tribunal in person or may be represented by an attorney at law.
- (5) The Tribunal shall encourage and promote alternative dispute resolution, being a mechanism for resolving disputes other than by way of litigation.
- (6) Where in any proceedings before the Tribunal a person so conducts himself that had he been in proceedings before the High Court, he would have been held in contempt, the Tribunal may make application to the High Court for an order of committal.
- (7) The Tribunal, with respect to—
 - (a) the attendance and examination of witnesses;
 - (b) the production and inspection of documents;
 - (c) the entry on and inspection of property;
 - (d) the enforcement of its decisions and judgements; and
 - (e) other matters necessary or proper for the due exercise of its jurisdiction,has all powers, rights and privileges as are vested in the High Court.

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- (8) Unless rules made under subsection (2) otherwise provide, the Chairman shall determine the procedure to be followed in any proceeding before the Tribunal.
- (9) All proceedings before the Tribunal shall be initiated in writing using the forms prescribed by the Tribunal.
- (10) Except for section 70, a person shall initiate all proceedings arising before the Tribunal within forty five days from when the grounds for the proceedings first arose.
- (11) Despite subsection (10), any proceeding before the Tribunal may be institute out of time if the Tribunal is satisfied that there was reasonable cause for the delay and that the proceeding was filed without unreasonable delay.
- (12) The decision of the Tribunal on a question of fact and the amount of an administrative civil assessment under sections 66 and 68 is final.
- (13) Despite subsection (12), an appeal shall lie on a question of law to the Court of Appeal on entry of a final judgment by the Tribunal.
- (14) In actions involving the Director, there is a presumption of regularity with regard to findings of fact by the Director, and the findings shall not be reversed unless the party to the action affirmatively demonstrates that on a balance of probabilities that there is no evidence supporting the findings of fact.

PART 15—OFFENCES

75. Penalty for breach of regulations

Regulations made under this Act may prescribe specific offences and a person who commits a summary offence is liable to a fine of \$1,000 and, if the offence is a continuing offence, to a further fine of \$50 for each day during which the offence continues or three months' imprisonment or to both.

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76. Offence for protected species

- (1) A person who contravenes section 24(3) commits a summary offence and is liable to—
- (a) a fine of \$5,000 or six months' imprisonment or both; or
 - (b) a fine of \$10,000 or one year imprisonment or both, for a second or further offence.
- (2) A person who contravenes section 25(2) commits a summary offence and is liable to—
- (a) a fine of \$5,000 or three months' imprisonment or both; or
 - (b) a fine of \$10,000 or six months' imprisonment or both, for a second or further offence.

77. Obstruction of an authorised officer

A person who obstructs an authorised officer acting in the exercise of his power under section 62 commits a summary offence and is liable to—

- (a) a fine of \$3,000 or three months' imprisonment or both; or
- (b) a fine of \$5,000 or six months' imprisonment or both, for a second or further offence.

78. Criminal offence for knowing or reckless endangerment

- (1) A person who, through the release or handling of a pollutant or hazardous substance or waste, or the arrangement for another person through a contract or other agreement to release or handle a pollutant or hazardous substance or waste, knowingly or recklessly endangers human life or health or the environment, commits an indictable offence, and is liable to—
- (a) a fine of \$25,000 or one year imprisonment or both; or

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- (b) a fine of \$50,000 or two years' imprisonment of or both, for a second or further offence.
- (2) A person who knowingly or recklessly undertakes or conspires to allow an activity in a protected area which may have an adverse impact on the fauna or flora in that protected area commits an indictable offence and is liable to—
- (a) a fine of \$10,000 or six months' imprisonment or both; or
- (b) a fine of \$25,000 or one year imprisonment or both, for a second or further offence.
- (3) A complaint for an offence under this section shall be made within three years from the time when an action giving rise to the offence is first discovered by the Director.
- (4) For the purposes of this section, “**endangerment of human life or health**” means placing one or more persons in danger of death or serious bodily injury, including unconsciousness, extreme pain, or physical or mental impairment.
- (5) An action under this section may be in addition to any action taken by the Director under this Part.

79. Scientific evidence

- (1) The Governor acting on the advice of Cabinet shall by order appoint at least one scientific laboratory, in Montserrat or abroad, as a designated scientific laboratory for the purposes of this Act.
- (2) A certificate signed by the person in charge of a designated scientific laboratory appointed under subsection (1), stating that an object or substance has been analysed or examined and stating the results of the analysis or examination, is admissible in any proceeding under this Act as sufficient evidence of the matters in the

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certificate and of the correctness of the results of the analysis or examination.

- (3) A certificate shall not be admitted into evidence under subsection (2) in any proceedings for an offence under this Act unless the opposing party to the action has been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings.
- (4) In any proceedings for an offence under this Act, the defendant cannot adduce evidence in rebuttal of a certificate issued by a designated scientific laboratory in relation to a matter of which the certificate is evidence unless, within fourteen days after a copy of the certificate being given to the defendant in accordance with subsection (3), or such further time as the court may allow, the defendant gives to the prosecutor notice in writing of the intention to adduce the rebuttal evidence.

80. Penalties under the Act not substituted for others

- (1) Nothing in this Act shall be construed to prevent anyone being prosecuted for an act or omission that constitutes an offence or breach of an environmental requirement under this Act, or from being liable under another enactment to a higher punishment or penalty than is provided by this Act, provided that no one shall be punished twice for the same offence or breach of environmental requirement.
- (2) The Director shall not undertake any criminal proceedings for the prosecution of a person under this Act without the prior approval of the Director of Public Prosecutions.

81. Administrative and criminal actions

For the avoidance of doubt, any criminal proceedings initiated under this Part may be in addition to any other action taken by the Director under this Act.

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**PART 16—LIABILITY OF PUBLIC AND PRIVATE
OFFICIALS**

82. Liability of officials

Where a breach of an environmental requirement or commission of an offence under this Act has been committed by a non-natural person, an individual who at the time was a director, manager, supervisor, partner or other similar responsible officer of that non-natural person or who was purporting to act in that capacity, may together with the non-natural person be found liable for the breach or offence, if, having regard to the nature of his functions in that capacity, the resources within his control or discretion, and his reasonable ability to prevent the violation—

- (a) the violation was committed with his direct consent or connivance; or
- (b) he or she, with knowledge, did not exercise reasonable diligence to prevent the commission of the violation.

PART 17—MISCELLANEOUS

83. Funding for environmental management

Funding for environmental management shall be provided under the special fund established under the Public Finance (Management and Accountability) Act for that purpose.

84. Regulations

- (1) The Governor acting on the advice of Cabinet may make regulations for giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the Governor acting on the advice of Cabinet may make regulations for—
 - (a) the payment of fees payable under this Act;

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- (b) the payment of any compensation payable to persons other than the Crown under this Act and the manner of applying for the compensation;
- (c) the designation, management and enforcement of activities that require a Certificate of environmental approval;
- (d) the designation, protection, management and control of protected species of fauna and flora;
- (e) the designation, protection, management and control of partially protected species of fauna and flora;
- (f) the designation, protection, management, use and control of protected areas;
- (g) the protection of unprotected species of fauna and flora;
- (h) the regulation of trade in and the transit, import, export or re-export of specimens of fauna and flora;
- (i) the designation, management and control of protected and unprotected species of fish and other marine life;
- (j) the issue, grant, administration and enforcement of permits to fell, extract or remove timber or other forest produce;
- (k) harvesting of timber or other forest produce from forested private lands outside of protected areas;
- (l) the designation of pollutants and criteria, procedures and protocols for measuring and monitoring pollutants;
- (m) the issue, grant, administration and enforcement of permits for the release of pollutants;
- (n) the designation and registration of existing sources that release any substance, thing or manmade phenomenon;

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- (o) prescribing performance standards and management of home and garden appliances;
 - (p) the issue, grant, administration and enforcement of environmental restoration orders;
 - (q) the conduct and reporting of environmental audits;
 - (r) compliance monitoring and enforcement of an environmental appraisal, environmental impact assessment or environmental management plan;
 - (s) the implementation of any multilateral environmental agreement relating to any matter governed by this Act to which Montserrat may be a party;
 - (t) the provision of anything required to give effect to this Act.
- (3) Regulations made under this Act may prescribe specific offences in accordance with section 75.
- (4) Regulations made under this Act shall consider the principles set out in section 4 and the overall intent of this Act.

85. Amendment of Schedules

The Governor acting on the advice of Cabinet may, by Order, amend a Schedule.

86. Fees

- (1) The Governor acting on the advice of Cabinet may by Order prescribe fees to be paid under this Act.
- (2) Fees payable under this Act are to be paid into the special fund.

87. Forms

Except where otherwise provided for in this Act, the Director shall prescribe by rules the form of an

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application, notice or other document required to be made, issued or served under this Act.

88. Service of documents

- (1) Service on the Director of a document shall be effected by delivering or by sending it by registered post addressed to the Director, at the office of the Director.
- (2) Subject to this section, any document required or authorised to be served or which is made under this Act, may be served either—
 - (a) in the case of a natural person—
 - (i) by delivering it directly to the person on whom it is to be served;
 - (ii) in a case where an address for service has been provided by the person on whom it is to be served, by delivering it or sending it by registered mail to that person at that address; or
 - (iii) by any means of substituted service as are recognised or authorised by the Rules of Court; and
 - (b) in the case of a non-natural person, by serving it in accordance with the process for effecting service on the person in accordance with the laws of Montserrat.
- (3) Where the document is required or authorised to be served on a person as having an interest in land, and the name of that person cannot be ascertained after reasonable enquiry, or as an owner or occupier of the premises, the document is deemed to be duly served if, being addressed to “**the owner**” or “**the occupier**” of the specified premises, it is—
 - (a) delivered or sent to the premises by registered mail and is not returned to the sender; or

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(b) affixed conspicuously to some building or fixed object on those premises.

- (4) Where a document to be served must be served on more than one person, the fact that it was not duly served on any of those persons does not invalidate any action or other proceedings against any other of those persons.

89. Intervention by the Attorney General

- (1) The Attorney General has the power to intervene in any proceedings before the Tribunal as the official representative of the Government.
- (2) Where the Director is a party in a case in which the Attorney General intervenes as authorised in subsection (1), the Director may continue to be represented by his own counsel.

90. Ethical standards and prohibitions

- (1) If a representative of the Department, including the Director, employee of the Department or authorised officer, directly or indirectly demands or accepts a fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, from a person on account of anything done or to be done (or omitted or to be omitted) by the representative in any way relating to his office or employment, or if a representative attempts to make a collusive agreement to neglect his duty or to conceal or connive at any act whereby a provision of the Act or any other enactment may be evaded or violated, that representative commits a summary offence and is liable to a fine of \$5,000 and six months' imprisonment.
- (2) A person who offers or provides to a representative of the Department, including the Director, employee of the Department or authorised officer, any fee, perquisite, bribe, gratuity, recompense or reward, whether pecuniary or otherwise, on account of anything done or to be done, omitted or to be omitted, by the representative in any way relating to his office or employment, or attempts to make

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a collusive agreement for the representative to neglect his duty or to conceal or connive at any act whereby a provision of this Act or any other enactment may be evaded or violated, commits a summary offence and is liable to a fine of \$5,000 and six months' imprisonment.

91. Acts done in good faith

A person who is authorised by or under this Act to carry out a function or exercise a power or perform a duty shall not be held personally liable in a court for or in respect of an act, or matter done or omitted to be done in good faith in the exercise or discharge of that function, power or duty.

92. Reservation of civil remedies

Nothing in this Act takes away or interferes with the right of the Crown or any other person to sue for and recover, at common law or otherwise, compensation for or in respect of damage or injury caused by an offence or breach of an environmental requirement under this Act.

93. Repeals, savings and amendments

- (1) The following Acts are repealed—
 - (a) the Forestry, Wildlife, National Parks and Protected Areas Act (Cap.12.03); and
 - (b) the Endangered Animals and Plants Act (Cap. 12.01).
- (2) In so far as anything done under the Forestry, Wildlife, National Parks and Protected Areas Act (Cap.12.03) and the Endangered Animals and Plants Act (Cap. 12.01), could have been done under this Act, it is not invalidated by the repeal but has effect as if done under this Act.
- (3) Where an enactment or document refers expressly or by implication to the Forestry, Wildlife, National Parks and Protected Areas Act (Cap.12.03) or the Endangered Animals and Plants Act (Cap. 12.01), the reference shall

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be construed, except where the context otherwise requires, as a reference to the corresponding provision of this Act.

- (4) Every proceeding in respect of breaches of the Forestry, Wildlife, National Parks and Protected Areas Act (Cap.12.03) or the Endangered Animals and Plants Act (Cap. 12.01) or offences committed against either Act may be continued and completed—
- (a) if the proceeding has been partly or wholly heard, as if those Acts were still in force; and
 - (b) in all other cases, as if the proceeding had been commenced under this Act.
- (5) The Acts mentioned in the first column of Schedule 5 are amended to the extent set out in the third column.

94. Application of Customs (Control and Management) Act

Section 31 is an assigned matter within the meaning of section 2 of the Customs (Control and Management) Act Cap. 17.05).

95. Act binds the Crown

This Act binds the Crown.

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SCHEDULE 1

(Section 17)

**ACTIVITIES REQUIRING A CERTIFICATE OF
ENVIRONMENTAL APPROVAL**

No.	Activity	Definition
1.	Development in a designated protected area as specified in Schedule 4 of the Conservation and Environmental Management Act.	Development on crown or private land within a protected area.
2.	Development in an area of natural, scientific (life or earth science) or cultural significance.	Activities in an area containing landscapes, wildlife or features of cultural or heritage importance that would be threatened by unregulated development.
3.	Storage, transport and disposal of soil.	a. The establishment, modification, expansion, decommissioning or abandonment (inclusive of associated works) of soil storage areas exceeding 100 cubic yards; b. Movement of soil exceeding thirty cubic yards for the purpose of

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No.	Activity	Definition
		filling; c. Movement of soil from one location to another for disposal.
4.	Timber cultivation, felling and extraction of logs.	a. The establishment of a timber plantation of more than 1 acre or the expansion of an existing plantation by more than two acres; b. Logging or extraction (inclusive of associated works) of timber in a timber plantation or forested area exceeding 2.5 acres during a five year period; c. The establishment, modification, decommissioning or abandonment of a sawmill.
5.	Coastal or offshore construction or modification.	The establishment, modification, expansion, decommissioning or abandonment (inclusive of associated works) of— a. beach and dune works; b. ponded pastures for aquaculture and mariculture;

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No.	Activity	Definition
		c. Moorings; d. artificial reefs or other offshore structures; and e. cutting or modification of coastal or marine areas.
6.	Mining of beach sand.	The removal, (inclusive of associated works) of: a. beach sand in quantities greater than sixty cubic yards in a thirty day period; b. sand from beaches known to be nesting sites of marine turtles.
7.	Clearing, excavation, grading or land filling.	a. The clearing, excavation, grading or land filling of an area of more than ½ acre in a buffer zone; b. The clearing, excavation, grading or land filling of an area containing distinctive landscapes or wildlife inclusive of land outside designated protected areas that would be threatened by unregulated development; c. The clearing, excavation, grading or land filling of any area with a slope gradient of ≥20%.

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No.	Activity	Definition
8.	Poultry, pig, cattle or other animal husbandry and production.	<p>The establishment, modification, expansion, decommissioning or abandonment (inclusive of associated works) and other activities (including disposal of waste) of—</p> <ul style="list-style-type: none"> a. a poultry, cattle, pig or other livestock farm in a buffer zone; b. a facility for the hatching, breeding or slaughtering of poultry, cattle, pig or other livestock in a buffer zone.
9.	Establishment and maintenance of infrastructure for land transportation.	<ul style="list-style-type: none"> a. The clearing, removal, trimming of vegetation and excavation of verge works adjacent to designated protected areas and buffer zones; b. The alteration of land or vegetation established for mitigation against erosion.
10.	Establishment and maintenance of utilities for water, electricity, sewage and telecommunications.	<ul style="list-style-type: none"> a. The establishment of cables, ducts, pipes, trenches, poles, substations, switches, fences and other associated works in protected areas, buffer zones, ghauts or on steep

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No.	Activity	Definition
		slopes; b. The clearing of land or the removal or trimming of vegetation; trees, brush and branches from utility installations in a buffer zone or areas containing landscapes and, wildlife or features of cultural or heritage and aesthetic importance that would be threatened by unregulated activity.

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SCHEDULE 2

(Sections 24 and 25)

PROTECTED SPECIES

Part I—Fauna

Local Name	Common Name	Scientific Name	Status
<i>Amphibians</i>			
Mountain Chicken	Mountain Chicken	<i>Leptodactylus fallax</i>	Critically endangered
Baby crapaud	Tree frog	<i>Eleutherodactylus johnstonei</i>	Common widespread
<i>Reptiles</i>			
Green/Tree Lizard	Anole	<i>Anolis lividus</i>	Endemic
Snake	Black snake	<i>Alsophis antillensis manselli</i>	Endemic
Coffin Borer	Blind snake (Tropical Worm Snake)	<i>Typhlops monastus geotomus</i>	Widespread regional endemic
Legless Lizard	Galliwasp	<i>Diploglossus montisserrati</i>	Critically endangered
Gecko	Dwarf Gecko	<i>Sphaerodactylus fantasticus</i>	Restricted Range

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Local Name	Common Name	Scientific Name	Status
		<i>ligniservulus</i>	
Woodslave	Giant Woodslave Turnip Tail	<i>Thecadactylus rapicauda</i>	Widespread common
Ground lizard	Ground lizard	<i>Ameiva pluvianotata pluvianotata</i>	Endemic
Skink	Slipperyback Skink	<i>Mabuya mabouya mabouya</i>	Common in Caribbean
<i>Birds</i>			
Blackbird	Ani, Smooth-billed	<i>Crotophaga ani</i>	Common resident
Yellow Breast	Bananaquit	<i>Coereba flaveola</i>	Common resident
Booby	Booby, Brown	<i>Sula leucogaster</i>	Common visitor
White Booby	Booby, Red-footed	<i>Sula sula</i>	Common visitor
Robin	Bullfinch, Lesser Antillean	<i>Loxigilla noctis</i>	Common resident
Coo-coo	Cuckoo, Mangrove	<i>Coccyzus minor</i>	Uncommon resident
Cattle Bird	Egret, Cattle	<i>Bubulcus ibis</i>	Common resident
White Gaulin	Egret, Snowy	<i>Egretta thula</i>	Uncommon visitor
Pee-whistler	Elaenia, Caribbean	<i>Elaenia martinica</i>	Uncommon

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Local Name	Common Name	Scientific Name	Status
			resident
Euphonia	Euphonia, Antillean	<i>Euphonia musica</i>	Uncommon resident
Man o' War	Frigatebird, Magnificent	<i>Fregata magnificens</i>	Common resident
Tyer Bird	Grackle, Carib	<i>Quiscalus lugubris</i>	Uncommon resident
Chipsa, Chitty Bird	Grassquit, Black-faced	<i>Tiaris bicolor</i>	Common resident
Ground Dove	Ground-dove, Common	<i>Columbina passerina</i>	Common resident
n.a.	Gulls	Family Laridae	Resident
n.a.	Terns	Family <i>Sternidae</i>	Resident
Little Gaulin, Bagga	Heron, Green-backed	<i>Butorides virescens</i>	Common resident
Crab Gaulin	Heron, Yellow-crowned Night	<i>Nyctanassa violacea</i>	Common resident
Sparrow	Hummingbird, Antillean Crested	<i>Orthorhynchus cristatus</i>	Common resident
Dr. Carcoo	Hummingbird, Green-throated Carib	<i>Eulampis holosericeus</i>	Common resident
Dr. Carcoo	Hummingbird, Purple-throated Carib	<i>Eulampis jugularis</i>	Restricted range
Killy Hawk	Kestrel, American	<i>Falco sparverius</i>	Common resident

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Local Name	Common Name	Scientific Name	Status
Swallow	Martin, Caribbean	<i>Progne dominicensis</i>	Common resident
Coot	Moorhen, Common	<i>Gallinula chloropus</i>	Uncommon resident
Nighthawk	Nighthawk, Lesser Antillean	<i>Chordeiles gundlachii</i>	Uncommon resident
Brown Noddy	Noddy, Brown	<i>Anous stolidus</i>	Uncommon resident
Oriole	Oriole, Montserrat	<i>Icterus oberi</i>	Critically endangered
Pelican	Pelican, Brown	<i>Pelecanus occidentalis</i>	Common resident
Partridge	Quail-dove, Bridled	<i>Geotrygon mystacea</i>	Uncommon resident
Rainy Bird	Swallow, Barn	<i>Hirundo rustica</i>	Uncommon resident
Trush	Thrasher, Scaly-breasted	<i>Margarops fuscus</i>	Common resident
Tannia Bird	Thrush, Forest	<i>Cichlherminia lherminieri</i>	Vulnerable
Trembling Trush	Trembler, Brown	<i>Cinclocerthia ruficauda</i>	Uncommon resident
Tropic	Tropicbird, Red-billed	<i>Phaethon aethereus</i>	Common visitor
Black-whiskered Vireo	Vireo, Black-whiskered	<i>Vireo altiloquus</i>	Common visitor

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Local Name	Common Name	Scientific Name	Status
Yellow Bird	Warbler, Yellow	<i>Dendroica petechia</i>	Restricted range
n.a.	Blackbirds, Migratory	Family Emberizidae	Migrant
Bobolink	Bobolink	<i>Dolichonyx oryzivorus</i>	Migrant
Indigo Bunting	Bunting, Indigo	<i>Passerina cyanea</i>	Migrant
Coot	Coot, Caribbean	<i>Fulica caribaea</i>	Migrant
n.a.	Ducks, Migratory	Family Anatidae	Migrant
Dunlin	Dunlin	<i>Calidris alpina</i>	Migrant
White Gaurin	Egret, Great	<i>Ardea alba</i>	Migrant
Gaurin	Egret, Reddish	<i>Egretta rufescens</i>	Migrant
n.a.	Falcons, Migratory	Family Falconidae	Migrant
Lesser Antillean Flycatcher	Flycatcher, Lesser Antillean	<i>Myiarchus oberi</i>	Migrant
Duck	Grebe, Least	<i>Tachybaptus dominicus</i>	Migrant
Duck	Grebe, Pied-billed	<i>Podilymbus podiceps</i>	Migrant
n.a.	Hawks, Migratory	Family Accipitridae	Migrant
Grey Gaurin	Heron, Great Blue	<i>Ardea herodias</i>	Migrant

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Local Name	Common Name	Scientific Name	Status
Grey Heron	Heron, Grey	<i>Ardea cinerea</i>	Migrant
Blue Gaulin	Heron, Little Blue	<i>Egretta caerulea</i>	Migrant
Tricoloured Heron	Heron, Tricoloured	<i>Egretta tricolor</i>	Migrant
Kingfisher	Kingfisher, Belted	<i>Ceryle alcyon</i>	Migrant
n.a.	Ospreys, Migratory	Family Pandionidae	Migrant
Oven Bird	Oven Bird	<i>Seiurus aurocapillus</i>	Migrant
Northern Pintail	Pintail, Northern	<i>Anas acuta</i>	Migrant
n.a.	Plovers, etc., Migratory	Family Charadriidae	Migrant
American Redstart	Redstart, American	<i>Setophaga ruticilla</i>	Migrant
Sanderling	Sanderling	<i>Calidris alba</i>	Migrant
n.a.	Sandpipers, etc., Migratory	Family Scolopacidae	Migrant
Lesser Scaup	Scaup, Lesser	<i>Aythya affinis</i>	Migrant
Audubon's Shearwater	Shearwater, Audubon's	<i>Puffinus lherminieri</i>	Migrant
Common Snipe	Snipe, Common	<i>Gallinago gallinago</i>	Migrant
Rail	Sora	<i>Porzana carolina</i>	Migrant

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Local Name	Common Name	Scientific Name	Status
Doctor Bird	Stilt, Black-necked	<i>Himantopus mexicanus</i>	Migrant
n.a.	Swallows, Migratory	Family Hirundinidae	Migrant
n.a.	Swifts, Migratory	Family Apodidae	Migrant
n.a.	Tanagers, Migratory	Family Emberizidae	Migrant
Ruddy Turnstone	Turnstone, Ruddy	<i>Arenaria interpres</i>	Migrant
Red-eyed Vireo	Vireo, Red-eyed	<i>Vireo olivaceus</i>	Migrant
Louisiana Waterthrush	Waterthrush, Louisiana	<i>Seiurus motacilla</i>	Migrant
Cedar Waxwing	Waxwing, Cedar	<i>Bombycilla cedrorum</i>	Migrant
n.a.	Wood Warblers, Migratory	Family Emberizidae	Migrant
Loggerhead, Chewpit Willy	Kingbird, Grey	<i>Tyrannus dominicensis</i>	Common resident
<i>Mammals</i>			
Bat	Brazilian free-tailed bat	<i>Tadarida brasiliensis antillarum</i>	Restricted range
Bat	Jamaican fruit bat/ Common fruit bat	<i>Artibeus jamaicensis</i>	Common resident

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Local Name	Common Name	Scientific Name	Status
		<i>jamaicensis</i>	
Bat	Fisherman bat/ Bulldog bat	<i>Noctilio leporinus</i>	Uncommon resident
Bat	Funnel-eared bat	<i>Natalus stramineus stramineus</i>	Restricted range
Bat	Long-tongued bat	<i>Monophyllus plethodon luciae</i>	Common resident
Bat	Pig-faced fruit bat/ Lesser Antillean fruit bat/	<i>Brachyphylla cavernerum cavernerum</i>	Common resident
Bat	Tree bat	<i>Ardops nichollsi montserratensis</i>	Common resident
Bat	Velvety house bat/ Velvety free-tailed bat	<i>Molossus molossus debilis</i>	Common resident
Bat	White-lined bat	<i>Chiroderma improvisum</i>	Uncommon resident
Bat	Yellow-shouldered bat	<i>Sturnira thomasi vulcanensis</i>	Uncommon resident/ restricted range

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Part II—Flora

Common Name	Scientific Name	Family Name
None	<i>Justicia eustachiana</i>	Acanthaceae
Century Plant, Maypole, Dagger	<i>Agave dussiana</i> <i>synonym</i> <i>montserratensis</i>	Agavaceae
Century Plant, Dagger	<i>Agave karatto</i>	Agavaceae
Female Karata, Dagger	<i>Furcraea tuberosa</i>	Agavaceae
White Elder	<i>Schefflera attenuata</i>	Araliaceae
None	<i>Marsdenia macroglossa</i>	Apocynaceae
Black Mangrove	<i>Avicennia germinans</i>	Avicenniaceae
Begonia, Mountain Manna	<i>Begonia retusa</i>	Begoniaceae
None	<i>Cordia reticulata</i>	Boraginaceae
None	<i>Aechmea smithiorum</i>	Bromeliaceae
None	<i>Glomeropitcairnia penduliflora</i>	Bromeliaceae
None	<i>Tillandsia antillana</i>	Bromeliaceae

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Common Name	Scientific Name	Family Name
None	<i>Werauhia guadelupensis</i>	Bromeliaceae
White Mangrove	<i>Laguncularia racemosa</i>	Combretaceae
None	<i>Chromolaena dussii</i>	Asteraceae
None	<i>Eupatorium integrifolium</i>	Asteraceae
None	<i>Eupatorium trigonocarpum</i>	Asteraceae
None	<i>Mikania latifolia</i>	Asteraceae
Tree Fern	<i>Cyathea muricata</i>	Cyatheaceae
Tree Fern	<i>Cyathea grandifolia</i>	Cyatheaceae
None	<i>Asplundia insignis</i>	Cyclanthaceae
Burrwood	<i>Sloanea dentata</i>	Elaeocarpaceae
Burrwood, Bullet Tree, Ironwood	<i>Sloanea massoni</i>	Elaeocarpaceae
Bitter Bark, Iron Bark	<i>Phyllanthus mimosoides</i>	Phyllanthaceae
Poison Tree, Bird Lime	<i>Sapium caribaeum</i>	Euphorbiaceae

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Common Name	Scientific Name	Family Name
Measle Bush	<i>Xylosma serratum</i>	Salicaceae
Wild Frangipani	<i>Gesneria ventricosa</i>	Gesneriaceae
Heliconia, Wild Banana	<i>Heliconia bihai</i>	Heliconiaceae
Heliconia, Lobster Claw	<i>Heliconia caribaea</i>	Heliconiaceae
Fern	<i>Hymenophyllum hirsutum var. gratum</i>	Hymenophyllaceae
None	<i>Nectandra dominicana</i>	Lauraceae
None	<i>Ocotea martinicensis</i>	Lauraceae
Sweetwood	<i>Persea urbaniana</i>	Lauraceae
None	<i>Galactia rubra</i>	Leguminosae-pap
None	<i>Lobelia digitalifolia</i>	Campanulaceae
None	<i>Wercklea tulipiflora</i>	Malvaceae
None	<i>Marcgravia umbellata</i>	Marcgraviaceae
Aralie Rose	<i>Blakea pulverulenta</i>	Melastomataceae
None	<i>Charianthus nodosus</i>	Melastomataceae

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Common Name	Scientific Name	Family Name
Wassard	<i>Charianthus purpureus</i>	Melastomataceae
Wild Hogwood	<i>Clidemia umbrosa</i>	Melastomataceae
None	<i>Henriettea lateriflora</i>	Melastomataceae
None	<i>Miconia coriacea</i>	Melastomataceae
None	<i>Miconia cornifolia</i>	Melastomataceae
None	<i>Miconia globuliflora</i> <i>var. dominicae</i>	Melastomataceae
None	<i>Miconia globuliflora</i> <i>var. globuliflora</i>	Melastomataceae
Candle Wood	<i>Miconia striata</i>	Melastomataceae
None	<i>Tibouchina ornata</i>	Melastomataceae
None	<i>Passiflora rotundifolia</i>	Passifloraceae
Red Rock Balsam	<i>Peperomia myrtifolia</i>	Piperaceae
Tree Balsam	<i>Peperomia trifolia</i>	Piperaceae
None	<i>Piper dussii</i>	Piperaceae
Climbing Fern	<i>Blechnum binervatum</i>	Blechnaceae

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Common Name	Scientific Name	Family Name
Fern	<i>Blechnum ryanii</i>	Blechnaceae
Fern	<i>Elaphoglossum impressum</i>	Lomariopsidaceae
Fern	<i>Ctenitis meridionalis</i>	Dryopteridaceae
Maiden Fern	<i>Thelypteris clypeolutata</i>	Thelypteridaceae
Fern	<i>Grammitis eggersii</i>	Grammitidaceae
Red Mangrove	<i>Rhizophora mangle</i>	Rhizophoraceae
None	<i>Psychotria urbaniana</i>	Rubiaceae
None	<i>Spermacoce berteriana</i>	Rubiaceae
None	<i>Paullinia vespertilio</i>	Sapindaceae
Mahoe	<i>Sterculia caribaea</i>	Sterculiaceae
Crump Wood	<i>Styrax glaber</i>	Styracaceae
Mountain Mahogany, Pigeonberry	<i>Freziera undulata</i>	Theaceae
None	<i>Ternstroemia elliptica</i>	Theaceae

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SCHEDULE 3

(Sections 26 and 27)

PARTIALLY PROTECTED SPECIES

Part I—Fauna

Local Name	Common Name	Scientific Name	Status
<i>Crustaceans</i>			
Crab	Land crab, Blue	<i>Gegarcinus ruricola</i>	Common
Crab	Land crab, White	<i>Gardisoma guanahumi</i>	Restricted range
Soldier crab	Soldier crab	<i>Coenobita clypeatus</i>	Common
<i>Reptiles</i>			
Guana	Iguana	<i>Iguana iguana</i>	Common widespread
Woodslave	Common slave	<i>Hemidactylus mabouia</i>	Common widespread
<i>Birds</i>			
Mountain Dove	Dove, Zenaida	<i>Zenaida aurita</i>	Common resident
Mountain	Pigeon, Scaly-	<i>Columba</i>	Common resident

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Local Name	Common Name	Scientific Name	Status
Pigeon	naped	<i>squamosa</i>	
Trush	Thrasher, Pearly-eyed	<i>Margarops fuscatus</i>	Common resident/restricted range
<i>Mammals</i>			
Mountain rabbit, Wild rabbit	Agouti	<i>Dasyprocta antillensis</i>	Common

Part II—Flora

Common Name	Scientific Name	Family Name
Puerto Rico Cinnamon, Ant Wood	<i>Licaria salicifolia</i>	Lauraceae
Red Cedar, Spanish Cedar	<i>Cedrela odorata</i>	Meliaceae
West Indian Mahogany	<i>Swietenia mahagoni</i>	Meliaceae
Big Leaf or Honduras Mahogany	<i>Swietenia macrophylla</i>	Meliaceae

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Common Name	Scientific Name	Family Name
White Cedar	<i>Tabebuia pallida</i>	Bignoniaceae
Hairy-Lip Epidendrum	<i>Coilostylis ciliaris</i>	Orchidaceae
Montserrat Epidendrum	<i>Epidendrum montserratense</i>	Orchidaceae
Pale Flowered Epidendrum	<i>Epidendrum pallidiflorum</i>	Orchidaceae
Umbelled or Different Epidendrum	<i>Epidendrum difforme</i>	Orchidaceae
Pine Cone Epidendrum	<i>Epidendrum strobiliferum</i>	Orchidaceae
Umbrella Epidendrum	<i>Epidendrum umbellatum</i>	Orchidaceae
The Extremely High Oncidium	<i>Oncidium altissimum</i>	Orchidaceae
Yellow Dancing Lady	<i>Oncidium urophyllum</i>	Orchidaceae
Overtop Palm, Moca Palm	<i>Syagrus amara</i>	Arecaceae
Pribby	<i>Rondeletia</i>	Rubiaceae

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Common Name	Scientific Name	Family Name
	<i>buxifolia</i>	
Lignum vitae	<i>Guaiacum officinale</i>	Zygophyllaceae

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SCHEDULE 5

(Section 93)

CONSEQUENTIAL AMENDMENTS

ENACTMENT	AMENDMENT NO.	AMENDMENT
Physical Planning Act (Cap.8:03)	1	In section 3(1), by inserting the following immediately after paragraph (c)— “(cc) Director of the Environment;”
	2	Section 34 is repealed.
	3	In section 56(1)— (a) by deleting “Physical Planning (Appeals) Tribunal” and substituting Physical Planning (Appeals) and Environmental Tribunal”; and (b) “five” is substituted for “three”.

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	4	In section 56(2) — (a) “and” is deleted the first time it appears; and (b) “and two persons having experience in environmental management matters” is inserted after “building and planning matters”.
	5	In section 56(4), “which has been appointed under this Act” is inserted after “Tribunal”.
	6	In section 56(5) “Except as expressly provided in this Act or any other enactment,” is inserted before “The Tribunal”.
	7	Insert section 57A as follows— “Determination of matters arising under other legislation 57A. If any other enactment prescribes for the hearing and determination by the Tribunal of matters arising under that enactment, the conduct of the proceedings, composition, jurisdiction and powers of the Tribunal

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		are in accordance with that enactment.”
	8	In section 58(1), “under this Act” is inserted after “Where an appeal is submitted to the Tribunal”.
	9	In section 58(2), “an appeal shall be determined” is deleted and “an appeal made pursuant to this Act shall be determined” is substituted.
Agriculture Act (Cap.9:08)	1	<p>In section 2, the definitions of “Authority” and “Commissioner” are deleted and the following definitions are substituted, in the correct alphabetical order—</p> <p style="padding-left: 40px;">“Council” means the National Conservation and Environmental Advisory Council established by the Conservation and Environmental Management Act;</p> <p style="padding-left: 40px;">“Director” means the Director of Agriculture;</p> <p style="padding-left: 40px;">“Tribunal” means the Physical Planning and Environmental (Appeals) Tribunal established by the</p>

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		Physical Planning Act.”.
	2	“Agricultural Lands Commissioner” and “Commissioner” are deleted and wherever they appear in the Act and “Director” is substituted.
	3	In section 6— (a) “Authority” is deleted wherever it appears in subsection (2) and “Council” is substituted; and (b) subsection (3) is deleted.
	4	In section 10, “Tribunal” is substituted for “Authority” wherever it appears.
	5	Sections 11 and 12 are repealed.
	6	Section 13 is repealed and the following is substituted— “Appeals 13. (1) A person aggrieved by a decision of the Director under this Act may appeal to the Tribunal against that decision. (2) Part VII of the Physical Planning Act applies, with any modifications

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		necessary, to appeals to the Tribunal under this Act.”
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(Sgd.) Teresina Bodkin
SPEAKER

Passed the Legislative Assembly this 22nd day of July, 2014.

(Sgd.) Judith Baker
CLERK OF THE LEGISLATIVE ASSEMBLY