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**Technical Assistance for the Development of Frameworks aimed at
Enhancing Environmental Management**

*Regional and Country Issues-
Grenada, Saint Lucia, St. Kitts and Nevis and Montserrat*

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Acronyms

CANARI	Caribbean Natural Resources Institute
CARICOM	Caribbean Community
Cartagena Convention	Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region
CBD	United Nations Convention on Biodiversity
CCCCC	Caribbean Community Climate Change Centre
CCORAL	Caribbean Climate Online Risk and Adaptation Tool
CDEMA	Caribbean Disaster Emergency Management Agency
CEC	Certificate of Environmental Clearance
CEMA	Conservation and Environmental Management Act
CEP	Caribbean Environment Programme under the United Nations Environment Programme
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
ECLAC	UN Economic Commission for Latin America and the Caribbean
EIA	Environmental Impact Assessment
EMB	Environmental Management Bill
EU	European Union
FAO	Food and Agriculture Organisation of the United Nations
GCCA	European Union-funded Global Climate Change Alliance Programme
GDP	Global Domestic Product
GHG	Greenhouse Gas
GOSL	Government of Saint Lucia
IPCC	Intergovernmental Panel on Climate Change
IUCN	International Union for Conservation of Nature
NDCs	Nationally Determined Contributions to the reduction of greenhouse gas emissions under the UNFCCC Paris Agreement

OECS	Organisation of Eastern Caribbean States
PA	Protected Area
Ramsar Convention	International Convention on Wetlands
SAMOA Pathway	Small Island Developing States Accelerated Modalities of Action Pathway
SDGs	Sustainable Development Goals
SIDS	Small Island Developing State
SPAW	Protocol Concerning Specially Protected Areas and Wildlife under the Cartagena Convention
UNCCD	United Nations Convention to Combat Desertification
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNISDR	United Nations International Strategy for Disaster Reduction

1. INTRODUCTION

This Issues Paper is the 2nd deliverable under the Organisation of Eastern Caribbean States (OECS) Global Climate Change Alliance (GCCA) Project on *Technical Assistance for the Development of Frameworks aimed at Enhancing Environmental Management*. It is one component of the overall European Union (EU) funded OECS GCCA programme which has been branded as *iLAND Resilience - Promoting a Climate of Change*. The overall *iLAND Resilience* programme objective is to contribute to the implementation of the OECS St. George’s Declaration of Principles for Environmental Sustainability, namely the protection and sustained productivity of the OECS countries’ natural resources.

This project provides technical assistance for the development of institutional frameworks towards improved environmental management in four OECS Member States. The specific Member States are Grenada, Montserrat, St. Kitts and Nevis and Saint Lucia and the targeted policies and legislation speak to environmental management including climate change and forest management aspects.

The general approach to achieve the above is a parallel four country process including desktop research, interviews with focal government agencies, in country consultations and legislative and policy drafting. A key emphasis will be on civil society engagement in the policy development process as emphasised by CANARI co-financing to this initiative through the CANARI European Union (EU) grant funded project on “*Civil society and small and micro enterprise innovation for marine and coastal conservation in the Caribbean*”.

The inception meeting for the project was held on the 17th of February 2017 and the project is expected to last eighteen months.

After discussions with the country focal points during the inception phase, CANARI was requested to produce the following deliverables.

Table 1: Summary of key project deliverables

Country	Deliverable
Grenada	National Forest Policy and Strategic Plan
	Revised Environmental Management Act 2014
	Revised Protected Area, Forest and Wildlife Act and supporting Regulations
	Climate Change Adaptation Bill*
Montserrat	Regulations in support of the Conservation and Environmental Management Act 2014
	Action Plan and implementation budget in support of the Conservation and Environmental Management Act 2014 in Montserrat
Saint Lucia	Revised Environmental Management Bill 2014 and supporting Draft Pollution Regulations
	Climate Change Bill
St. Kitts and Nevis	National Climate Change Strategy**

* The CANARI Team recommends that a Climate Change Bill, including adaptation and mitigation, be drafted instead of a Climate Change Adaptation Bill for Grenada.

** The CANARI Team also recommends a targeted National Climate Change Adaptation Strategy be developed for St. Kitts and Nevis instead of the National Climate Change Strategy.

2. PURPOSE AND METHODOLOGY

2.1 Purpose

This Issues Paper is a synthesis of major concerns relevant to the existing national laws, policies, plans and multilateral environmental agreements in the four project countries to inform development of the deliverables. It outlines key priorities, needs, opportunities and challenges and is meant to serve as the basis for further discussion and analysis during in-country consultations. These consultations will then inform the final design of the relevant legislative and policy frameworks.

Given inter-country geographic, socio-economic and political similarities, plus the fact that this initiative is nested within the regional OECS iLAND Resilience Programme, this Issues Paper presents both regional and national perspectives. It starts with an overview of common regional and international issues then focuses on country and deliverable specific issues in later chapters.

The Issues Paper is written in laypersons language with a view to facilitate the engagement of a broad range of stakeholders, given that stakeholder input is the most critical element of this policy development process. Too often, stakeholders, especially civil society stakeholders, are not provided with enough opportunity to contribute and participate effectively in policy decision making. This then results in weak policies, strategies and laws which are not supported, implemented or enforced. It is hoped that through the wide and deep consultation and participation in this policy development initiative there will be greater buy-in, support and uptake of the policies, strategies and legislation produced.

2.2 Methodology

CANARI initially did a comprehensive desk review of relevant national policy frameworks provided by the countries and the OECS Commission. International and regional frameworks were also reviewed as national commitments are shaped by these. Reference legislation from other countries and international environmental framework trends were also reviewed. In this Issues Paper, frameworks are considered to include:

- formal agreements that countries sign on to and thereby commit to implementation (for example international conventions and associated protocols);
- formal policies and agreements adopted by groups of which countries are part and thereby countries commit to implementation (e.g. regional and sub-regional declarations and policies);
- strategies or plans that identify priorities for implementation (e.g. outcomes of international or regional processes); and
- national policies, laws and associated regulations.

CANARI also conducted targeted preliminary interviews with key stakeholders to understand the context and key issues for development of the required deliverables (policies, laws, regulations, plans, etc.). These stakeholders included the relevant government departments and civil society stakeholders. Discussions were held via telephone and online (email exchanges and skype calls). In-person consultations were also utilised (e.g. meetings in Grenada during attendance at the OECS Fourth Council of Environmental Ministers in April 2017). Key regional and international organisations were also targeted for interviews to get a better sense of regional trends and synergistic initiatives which may inform or enhance the development of the national level policies. This, of course, included the OECS Commission as well as organisations like the Food and Agricultural Organisation of the United Nations (FAO).

Given that the iLAND Resilience Programme has both a climate and a land management focus, these aspects were explored in the analysis used. For example, regional climate screening tools such as the Caribbean

Community Climate Change Centre's Caribbean Climate Online Risk and Adaptation tool (CCORAL) were utilised to inform preliminary recommendations. Further, given CANARI's participatory approach and focus on civil society participation in policy formulation, this civil society lens was also used in the analysis. This is especially important given that CANARI is bringing co-financing to this initiative to facilitate civil society participation through the EU grant funded project on "Civil society and small and micro enterprise innovation for marine and coastal conservation in the Caribbean".

3. REGIONAL AND INTERNATIONAL CONTEXT

This GCCA project seeks to improve the environmental framework of four countries: Grenada, Saint Lucia, and St. Christopher (St. Kitts) and Nevis and Montserrat. As noted in Chapter 2, given country similarities, the issue paper deliverable to address “concerns relevant to the existing national laws, policies, plans and multilateral environmental agreements in the four project countries to inform development of the deliverables” will be primarily conducted using a regional approach as outlined below.

It is noted that all countries, except Montserrat, are independent states with the latter being an overseas British Territory. They are all full members of the OECS. All countries are Small Island Developing States (SIDS), with comparable geography, history and resulting socio-economic conditions. For instance, all the islands are volcanic in nature with a central mountain range and steep topography. There are similar terrestrial and coastal ecosystems across the islands with some similarity in species composition yet a substantial degree of endemism. Settlement and infrastructure are largely concentrated in the coastal areas. The islands have all had a history of European colonization, including a legacy of mono-cultural agricultural cultivation. Currently all are English speaking states and follow the British Westminster system of Government.

Given the focus on tourism and general low economic diversity, the OECS target countries have faced limited economic growth since the global economic recession of 2008 which has led to a deep regional recession. Against this backdrop the countries have also had to cope with several natural disasters leading to further economic stress. The regional dependence on external food markets and fuel imports further increases the region’s economic vulnerability. Montserrat presents has a more unique economic situation associated with volcanic eruptions in the recent past and its status as a British Territory. In particular, it is heavily dependent on European aid packages which are further linked to public sector development and construction on the island.

Economic reliance on tourism and agriculture means that all the islands are heavily dependent on natural resources. They are therefore highly vulnerable to factors which impact these natural resources and share similar environmental concerns. Critical environmental issues include deforestation, soil erosion, biodiversity loss, land degradation and coastal pollution. These are coupled with expanding populations and limited land space. Climate variability and change are also concerns given ensuing effects such as temperature increase, sea level rise, decreasing rainfall and altered rainfall patterns. Given this, there have been several initiatives geared towards addressing the impacts of climate change, including the iLAND Resilience programme which this project falls under. Of note, is a quick climate screening exercise conducted by CANARI countries which indicated that climate change is key aspect to be factored into the respective policies, strategies and legislation under development. This analysis was done using the CCCC online CCORAL tool¹, focusing including both the general screening exercise and a detailed vulnerability assessment for technical users.

Given the similar environmental threats, history, socio economic conditions and geographic parameters, this section of the Issues Paper attempts to provide an overview of the regional and international frameworks with a view to capturing relevant aspects to subsequently inform the national deliverables for each country. This approach is further justified by the fact that countries’ legislative frameworks are shaped heavily by regional model policies and legislation as well as commitments under international conventions and frameworks. Equally,

¹ <http://ccoral.caribbeanclimate.bz/>

the countries' frameworks serve as the vehicle for the implementation of the international conventions and frameworks. The follow tables summarise the major environmental international and regional frameworks that focal countries ascribe to:

Table 2: Summary of major international environmental agreements and frameworks to which focal countries are signatories

International convention/ framework	Summary	Implications for project deliverables
UN Framework Convention on Climate Change (UNFCCC)	<p>Caribbean climate challenges include sea level rise, decreasing precipitation, increased intensity of hurricanes and overall higher temperatures. Signatories to UNFCCC have committed to working towards stabilising greenhouse gas concentrations towards minimising impacts to the climate system. More recently Caribbean nations have contributed significantly to drafting of the Paris Agreement at the UNFCCC Conference of Parties in 2015 (COP 21). The Paris agreement subsequently came into force in November 2016. Of critical importance to the region is the fact the Paris agreement specifically recognises the needs of SIDS and provides support for attempts to cap global temperature increase at 1.5°C. Key agreements under the UNFCCC include:</p> <ul style="list-style-type: none"> • The Kyoto Protocol which proposes binding targets for the reduction of greenhouse gas emissions • The Cancun Agreements which address the long-term challenge of climate change over time and encourages countries to take concrete action to speed up the global response. The related Cancun Adaptation Framework seeks to enhance action on adaptation and the development of national adaptation plans. Other aspects of the Cancun Agreements address mitigation, financial, technology and 	<p>The Green Climate Fund associated with the UNFCCC is an important funding source for all Caribbean countries including the four target countries in this initiative and the other OECS countries. This was emphasised during the recent Green Climate Fund Structured dialogue during the 4th Meeting of the Council of Ministers of Environmental Sustainability (COMES) of the OECS in Grenada from April 27 to 28, 2017. Caribbean countries are also keen to utilise the Warsaw International Mechanism for Loss and Damage² to realise its third function of enhancing action and support, including finance, to address the regional impacts on climate change being experienced and that are anticipated. This heavy emphasis on funding should be factored into any climate related deliverable under this initiative.</p>

² The Warsaw International Mechanism for Loss and Damage has three functions:

1. enhancing knowledge and understanding of comprehensive risk management approaches to address loss and damage associated with the adverse effects of climate change, including slow onset impacts;
2. strengthening dialogue, coordination, coherence and synergies among relevant stakeholders; and
3. enhancing action and support, including finance, technology and capacity-building, to address loss and damage associated with the adverse effects of climate change.

	<p>capacity building support.</p> <ul style="list-style-type: none"> • The Paris Agreement promotes ambitious efforts to mitigate climate change and adapt to its impacts and addresses appropriate financial flows, a new technology framework and an enhanced capacity building framework to support action. The Agreement also provides for enhanced transparency of action and support through a more robust transparency framework. 	
Convention on Biodiversity (CBD)	<p>The CBD focuses on the conservation of global biodiversity including the sustainable use of its components and the equitable sharing of benefits arising from biodiversity resources. Country National Biodiversity Strategies and Action Plans (NBSAPs) under the convention address the mobilisation of financial resources, research, the regularisation and consolidation of legislation, public awareness, and use of traditional knowledge. Country reports to the Convention are framed against Aichi Targets. One of the 20 Aichi targets for example aims that by 2010 “the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and that degradation and fragmentation is significantly reduced.”</p> <p>The CBD also has ‘Strategic Plan for Biodiversity 2011-2020’ to guide countries’ focus on mainstreaming biodiversity conservation into different economic sectors. Civil society rights and equity in using and sharing are addressed in the CBD’s Nagoya Protocol. In a similar vein the Mo’otz Kuxtal Voluntary Guidelines are geared towards Prior Informed Consent of indigenous peoples and local communities for using their traditional knowledge.</p>	<p>These aspects will be factored into the development of project deliverables, especially the forestry related documents and the wider environmental management deliverables.</p> <p>The attention to indigenous rights is noteworthy and where possible and appropriate will be referenced in the production of the deliverables.</p>
Convention to Combat Desertification and Land Degradation (UNCCD)	<p>Countries share similar issues related to land degradation including deforestation, overgrazing and soil erosion leading to high rates of surface runoff of sediment laden water. Under UNCCD, Caribbean countries have developed their National Action Plans to address these issues, reinforced by national policies and legislation (including forest policies).</p>	<p>Like the CBD, UNCCD commitments should be factored into project deliverables.</p>

International Convention on Wetlands (Ramsar)	The Ramsar Convention on Wetlands designates wetlands of international importance across the region. Under this convention countries are mandated to safeguard these ecosystems and this will be reflected in project deliverables.	Mangroves are already key issues in the forestry related deliverables. Given the obligations under Ramsar- further strengthening of these areas may be needed.
Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	CITES attempts to control the international movement of plants and animals towards improved biodiversity protection. A key aspect is the development, enactment and enforcement of supporting legislation and regulations.	Implications for the project deliverables are similar to those under the CBD and UNCCD with greatest implications for forestry related deliverables. Grenada's forest policy and strategic plan, for instance, may need to ensure significant attention to mangrove management and wildlife management.
Sustainable Development Goals (SDGs)	This is the international framework replacing the Millennium Development Goals. Established in 2015, the SDGs consist of 17 goals articulated through 169 indicators, to serve as "a plan of action for people, planet and prosperity." Specific goals address natural ecosystems and climate change and environmental management and climate change also are mainstreamed into other goals. Consideration of goals and targets relevant to each country will be reflected in project deliverables.	The implementation of the SDGS can be facilitated by national level policies.
Small Island Developing States Accelerated Modalities of Action (SAMOA pathway)	The SAMOA pathway is the outcome and plan of action emanating from the 3 rd Conference of Small Island Developing States, including Caribbean States. It builds on previous SIDS outcomes such as the Barbados Programme of Action from 1994.	The SAMOA pathway recognises the special circumstances and vulnerabilities of SIDS and emphasises actions for climate change and marine resource management issues which will be addressed in the project deliverables.

Table 3: Summary of major regional environmental frameworks to which focal countries are signatories

Grouping/ organisation	Organisation information	Relevant policies guidelines and frameworks	Implications for project deliverables
<p>Organisation of Eastern Caribbean States (OECS)</p>	<p>The OECS is "<i>an institutional forum to discuss and facilitate constitutional, political and economic changes which would be necessary for the successful participation of Member States in the regional and global economies.</i>"</p> <p>Focuses on cooperation, unity and solidarity amongst six independent countries, three overseas territories and one French department in the Eastern Caribbean.</p> <p>Promotes joint positions and harmonised approaches with regards to the environment and other sectors.</p>	<p>The OECS has developed model policies and regional strategies pertinent to environmental issues. A key framework is the St. George's Declaration of Principles of Environmental Sustainability in the OECS (2001) and the OECS Environmental Management Strategy. The <i>St. George's Declaration</i> is an agreement that was grounded on the belief by its members (of the Organisation of Eastern Caribbean States), that environmental resources must be effectively managed at all levels (locally, regionally and internationally), for sustainable social and economic development to be achieved.</p> <p>Principle 11 of the Declaration suggests that for sustainable productivity to be achieved, its the OECS Member States ought to manage "terrestrial, marine and atmospheric resources, organisms and ecosystems,"³ whilst not hampering the integrity of such natural and ecological processes. The agreement also makes provisions for environmental impact assessments to be conducted for making decisions on development activities. Principle 8 of the St. George's Declaration addresses the causes and impacts of climate change, and a number of other topics related to energy efficiency, renewable energy and disaster risk reduction are included in its outcomes and targets.</p> <p>These two documents constitute the overarching framework outlining the OECS environmental approaches. At the recent meeting of the Fourth Council of Environmental Ministers in April 2017 it was noted that there are plans to revise the existing Strategy.</p> <p>More sector specific environmental guidelines include the Model Water Policy and the OECS Land Policy Guidelines. There is also a Biodiversity Conservation and Sustainable Use Bill, which is a final draft stage. It is intended as a model bill to be adapted and adopted at the</p>	<p>Deliverables will be developed ensuring they are aligned with the regional frameworks.</p> <p>The model OECS documents have already used in the development of OECS country Environmental Management Acts and will be further utilised as needed.</p> <p>Some of the newer bills e.g. the OECS draft Biodiversity Conservation and Sustainable Use Bill will be important revising forestry related legislation.</p>

³ Government of Grenada. (2007). *Road Map toward Integrated Water Resources Management Planning for Grenada*. Prepared by Caribbean Environmental Health Institute and GEF-funded Integrating Watershed and Coastal Areas Management Project. Castries, Saint Lucia.

		national level. The OECS has also produced a Model Environmental Management Act which has been used by several Member States.	
Caribbean Community (CARICOM)	Intergovernmental organisation focusing on economic integration and regional cooperation. Decision making is executed through the Ministerial body of the Council for Trade and Economic Development (COTED). Regional environmental projects are either managed through the Secretariat based in Guyana or through several CARICOM technical agencies.	Relevant environmental frameworks administered by the CARICOM Secretariat or technical agencies include: <ul style="list-style-type: none"> • CARICOM Regional Framework for Achieving Development Resilient to Climate Change and its Implementation Plan (administered by the Caribbean Community Climate Change Centre CCCCC) • CARICOM Energy Policy • Caribbean Comprehensive Disaster Management Strategy • Common Fisheries Policy The CARICOM Common Natural Resources Policy Framework and CARICOM Biodiversity Strategy are currently in development.	Deliverables will be aligned with provisions under the various CARICOM Frameworks.
UN-Environment-Caribbean Environment Programme (CEP)	The Caribbean Environment Programme (CEP) was established in 1986. It is administered by a Regional Coordinating Unit. The CEP is geared towards regional cooperation within the Caribbean Sea towards sustainable development of the region.	The CEP Regional Coordinating Unit administers the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention). This is the umbrella agreement protecting the Caribbean marine environment. The Cartagena Convention protocols are also important for biodiversity protection namely: the Protocol Concerning Pollution from Land-Based Sources and Activities, the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) and the Oil Spill protocol. The Regional Coordinating Unit through SPAW also coordinates activities and develops synergies with work under international conventions like the CBD and CITES.	As with the CARICOM frameworks this wider framework is also under consideration in the development of project outputs.

4. MONTSERRAT

4.1 Introduction



Fig. 2: Map of Montserrat (Source: World Atlas)

Montserrat is a British Overseas Territory. It is approximately 102 km² in size with a population of 5,267. The low population is in part due to the eruption of the Soufriere Hills volcano in the 1990s which drastically altered the southern part of the island and led to the migration of 8000 persons out of Montserrat. As a result of the Soufriere Hills volcanic eruptions, approximately 60% of the island is considered unsuitable for commercial, industrial or residential activities. A significant proportion of Montserrat's forests, coasts and coral reefs have also been affected by volcanic activity. There is significant pressure on the remaining available land and resources for multiple, competing uses.

Despite all the challenges outlined above the conservation and sustainable management of the environment and natural resources remains of critical importance to Montserrat.

In 2014, the Government of Montserrat enacted the Conservation and Environmental Management Act (CEMA) as the framework legislation addressing environmental conservation and management. This legislation is intended to link to and support broader national and regional priorities. As a member of the OECS, Montserrat is signatory to the St. George's Declaration of Principles for Environmental Sustainability. Principles 10 to 13 of the St. George's Declaration address pollution, sustainable resource use and the protection of biological diversity and cultural and natural heritage. Montserrat also developed a national Sustainable Development Plan 2008-2020. One of the plan's strategic goals is ensuring effective environmental management and disaster mitigation.

Against this backdrop, Montserrat has requested technical assistance in drafting regulations for the Conservation and Environmental Management Act (CEMA) and an Action Plan to support implementation. The first section below summarises key issues related to the CEMA and highlights some key issues and questions to be investigated during consultations. The key issues are based on desk review and observations including from the Environmental Law Institute's Sustainable Fisheries & Coastal Zoning in Montserrat Report⁴ and the OECS'

⁴ Environmental Law Institute. (2015). *Sustainable Fisheries & Coastal Zoning in Montserrat. Legal and Institutional Assessment of Authorities and Approaches*. Washington, DC. Available at <http://waittstitute.org/wp-content/uploads/2016/08/Sustainable-Fisheries-Coastal-Zoning-Montserrat-Legal-Framework.pdf>

Montserrat Land Policy Issues Paper⁵. The information contained in these following two sections are also used to propose a tentative action plan in support of the CEMA.

4.2 Deliverable: Regulations for implementation of CEMA

Montserrat enacted CEMA in 2014 as the framework environmental legislation to address the following:

1. Allocation and coordination of administrative responsibilities for conservation and environmental management in Montserrat.
2. Conservation and sustainable use of biological diversity, natural resources and the natural heritage of Montserrat.
3. Prevention and mitigation of pollution of the environment for the purposes of protecting human health and maintaining the quality of the environment.
4. Implementation of obligations to which Montserrat is subject under MEAs by facilitating their incorporation into national law.
5. Provision of stable, adequate, secure and sustainable funding to finance the management of the environment in Montserrat.

Article 84 of the Conservation and Environmental Management Act (CEMA) 2014 grants the Governor, acting on the advice of Cabinet, the power to make regulations for CEMA. The Article then specifies the areas open for such regulation:

- (a) the payment of fees payable under this Act;
- (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;

⁵ Greenaway, F. (2013). *Montserrat Land Policy Issues Paper*. Prepared for the OECS Social and Sustainable Development Division, Castries, Saint Lucia.

- (n) the designation and registration of existing sources that release any substance, thing or manmade phenomenon;
- (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.

Note: Subsection (t) is a catch-all category that authorises the drafting and adoption of any regulations required to implement CEMA.

(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.

The Government of Montserrat has already prioritised areas of CEMA for Regulation. These areas have draft Regulations and are the following:

1. Certificate of Environmental Approval Regulations, 2010
2. Protected Areas, Forests and Fires Regulations, 2010
3. Flora and Fauna Regulations, 2010
4. Release of Substances and Pollutants Regulations, 2010
5. Noise Pollutions Regulations, 2010
6. Fees Regulations, 2010

These six sets of detailed Regulations were drafted in 2010 but not adopted. The following sections provide an overview of key general issues relevant to implementation of CEMA and initial suggestions for the fees regulations, protected area and Certificate of Environmental Approval regulations. Other regulations will be addressed as needed following in country discussions and consultation.

4.2.1 Institutional arrangements for implementation

CEMA identifies a variety of individuals and entities that are responsible for implementation of the law. The Minister with responsibility for the environment—currently, the Ministry of Agriculture, Trade, Housing, Lands and Environment (MATHLE), which is also responsible for fisheries and development planning—bears ultimate responsibility for implementing the Act. The Director of Environment is responsible for implementing most provisions in the Act on behalf of the Minister.

CEMA also provides for a National Conservation and Environmental Advisory Council which is to serve an advisory role and be made up of eight *ex officio* members and seven other members. Council is to meet at least twice a year and advise, assist, and make recommendations to the Minister regarding environmental and conservation policies. The Council, by law, is to maintain two standing committees, the Forestry, Wildlife and Protected Areas Standing Committee and the Pollution Control Standing Committee.

Given the above, one of the issues to be explored during national consultation is why the Council and committees have not been created and what role stakeholders envision them playing in implementing the new regulations.

4.2.2 Information management

CEMA requires the creation of a National Environmental Information System. This system must be open to the public and include the following information:

- a. All applications and supporting documentation for Certificates
- b. Stewardship reports (submitted annually by the Director to the Minister, who must lay it before the Assembly and include a description of the environmental management activities undertaken by the Department during the period under review; an assessment of the effectiveness of co-ordination between governmental entities; and a list of any other reports prepared under this Act by the Department or any other entity during the period under review)
- a. Monitoring data acquired under this Act
- b. Permits and registration certificates issued under this Act
- c. Policies, plans, guidelines, strategies and reports made under the Act
- d. Registers of information made under the Act
- e. Multilateral environmental agreements, conventions, international treaties in the field of the environment
- f. Notice of violations, administrative orders and other enforcement proceedings undertaken by the Director under this Act

The National Environmental Information System has not yet been created but information is captured and stored for the permitting system, including electronic copies of applications and permits that can be made available on request. **One area to explore is what other types of information are currently housed by different stakeholders and available to regulatory agencies and the public. A specific consideration is the potential role of a geographic information system (GIS) to capture, store, analyse, manage, present and make available to the public, spatial data.**

It is also noted that both CEMA and the Regulations require minimal reporting. This may be appropriate due to staffing levels but it will need to be determined whether this is intentional and appropriate.

An area not covered in CEMA or the Regulations is concessions and concession agreements. Concessions are granted by the Minister on the advice of the Department of Environment under other legislation. **However, concessions and concession agreements are revenue generating possibilities so could be included in the information system. Regional cooperation is not mentioned and could also be explored.**

4.2.3 Certificates of Environmental Approval

CEMA requires a Certificate before conducting certain activities that may harm the environment. The Act's First Schedule specifies a list of activities for which a Certificate is required. These include:

- development in a Protected Area;
- development in an area of natural, scientific (life or earth science) or cultural significance;
- storage, transport and disposal of soil;
- timber cultivation;
- felling and extraction of logs;
- coastal or offshore construction or modification;
- mining of beach sand;
- clearing, excavation, grading or land filling in certain situations;
- poultry, pig, cattle or other animal husbandry and production;
- establishment and maintenance of infrastructure for land transportation;

- establishment and maintenance of utilities for water, electricity, sewage and telecommunications.

Although categories are provided, the elements requiring a Certificate are not specifically defined in CEMA, and some (e.g., areas of “natural, scientific [life or earth science] or cultural significance”) will require further delineation in regulations and/or effective use of discretion if they are to be effectively and consistently implemented.

CEMA authorises the Governor on the advice of Cabinet to create regulations providing standards and procedures for environmental auditing, when they may be carried out, and the action that the Director can take based on the results.

Certificates are currently being issued in the absence of regulations but need to be further reviewed and formalised. CEMA itself spells out the Certificate process to a substantial degree. Applications for Certificates must follow a prescribed form, and the Director of the Environment can ask for further information where needed. The Director may approve, reject, or approve with terms and conditions, which may include “the requirement to undertake mitigation measures necessary to facilitate sustainable development and sound environmental management.” Rejections or acceptances with conditions can be appealed to the Tribunal established under the Physical Planning Act. The Director must monitor the performance of any approved activity for compliance with the Certificate.

Under some circumstances, proponents may be required to meet additional environmental impact assessment (EIA) requirements. Specifically, if after issuance of a Certificate the Director determines that an activity is posing an environmental threat that could not reasonably have been foreseen—or that the Certificate was issued on the basis of false or misleading information—the Director can either require that the Certificate-holder submit additional information or recommend to the Planning and Development Authority that the holder be required to submit an EIA, at the proponent’s expense, under section 18 of the Physical Planning Act (a separate process from issuance of a Certificate). Based on this new information, the Director can revoke, suspend, or amend the Certificate, subject to appeal, or may require submission of an environmental management plan.

CEMA authorises the Director to require project proponents to develop and submit for approval an environmental management plan to manage the environmental impacts of a new or existing activity. This authority is in addition to the Certificate requirement, and CEMA does not make it enforceable by law. However, if incorporated into a permit or Certificate, an environmental management plan or auditing and monitoring requirements could be converted into a form enforceable in court or by the Tribunal.

4.2.4 Protected Areas

Part 7 of CEMA creates a protected areas system, and its categories parallel IUCN’s categories of protected areas as follows:

Strict Nature Reserve: Article 35 of CEMA lists strict nature reserve as its first protected area category. IUCN defines Strict Nature Reserves in Category Ia) as strictly protected areas set aside to protect biodiversity and also possibly geological/geomorphical features, where human visitation, use and impacts are strictly controlled and limited to ensure protection of the conservation values. Such protected areas can serve as indispensable reference areas for scientific research and monitoring.

National Park: Article 35 of CEMA lists national parks as the second category of protected areas. IUCN Category II protected areas are large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible, spiritual, scientific, educational, recreational, and visitor opportunities.

Heritage Site: Article 35 of CEMA lists heritage sites, which can be considered as a subset of IUCN’s natural monument Category III protected areas, which are set aside to protect a specific natural monument, which can be

a landform, sea mount, submarine cavern, geological feature such as a cave or even a living feature such as an ancient grove. They are generally quite small protected areas and often have high visitor value. Heritage sites also fall under the 1972 World Heritage Convention that links the concepts of nature conservation and the preservation of cultural properties. The Convention recognises the way in which people interact with nature, and the fundamental need to preserve the balance between the two.

Watershed management areas and protected forest areas: These are most closely aligned with IUCN Category VI protected area with sustainable use of natural resources. Category VI protected areas conserve ecosystems and habitats together with associated cultural values and traditional natural resource management systems. They are generally large, with most of the area in a natural condition, where a proportion is under sustainable natural resource management and where low-level non-industrial use of natural resources compatible with nature conservation is seen as one of the main aims of the area. According to Protected Planet,⁶ the one protected area in Montserrat falls into IUCN's category VI.

Article 35 of CEMA also creates a temporary protected area which, according to Article 37, the Director in consultation with the Council, may designate for a period of 180 days.

CEMA describes the purposes of the protected area system as the following:

1. To maintain biological and genetic diversity
2. To protect habitats and ecosystems critical to the survival of endemic, endangered or threatened fauna and flora,
3. To protect the productivity of ecosystems and natural resources that provide economic and social benefits to the local population,
4. To protect areas of special scientific, educational, cultural, historic, archaeological, recreational, aesthetic or economic value.

The Director is responsible for overseeing the administration of protected areas but the Governor, on advice of Cabinet, may designate to a competent body (such as the Montserrat National Trust) the management authority of a protected area. Management authority for a protected area includes the responsibility to prepare and implement a management plan that includes a recommendation for human, material and financial resources. The draft management plan must be submitted for public comment.

Owners of private property located within a protected area who comply with the management plan, are entitled to remission of property taxes. Except when the owners are negligent, they are not liable for injury or loss of life by a person entering their property. The management authority may enter into a co-management agreement with the owner of private land in a protected area.

The Planning and Development Authority may not grant permission to develop Crown or private land within a protected area unless the developer has a Certificate of Environmental Approval (CEA).

Currently, Montserrat has designated a single protected area, the Centre Hills Forest Protected Area. One area to explore is whether other protected areas have been earmarked for designation, including marine protected areas, so they can be taken into account under the new regulations.

4.2.5 Enforcement and prosecution

CEMA includes provisions for law enforcement that supplement the Police Act and Penal Code. These provisions provide the bases for "authorised officers" to enforce the Act. An extensive list of possible authorised officers

⁶ UNEP – World Conservation and Monitoring Centre. (2017). *Protected Area Profile for Montserrat from the World Database of Protected Areas*. Cambridge, UK. Available at <http://www.wdpa.org/country/MSR>

under CEMA is provided. CEMA provides authorised officers with limited powers, including the power to enter premises during business hours, with a warrant or with permission, to monitor effects on the environment or “effect compliance” and to search that premises and seize items used in commission of an offence.

CEMA also provides an extensive set of tools for enforcement against violations once detected. When the Director believes that a person is in violation of an environmental requirement, he or she can serve a Notice of Violation (NOV) on that person, detailing the violation and inviting a response within a specified time, or seek equitable relief in the form of an injunction or restraining order or an order to close a premises or otherwise halt an activity. If a NOV is issued and the matter is resolved within 28 days (or a later time, where reasonably necessary), the Director can dismiss the matter or an agreed resolution can be set out in a consent agreement that may include an administrative civil assessment. Where there is no resolution, the Director can issue an Administrative Order specifying the details of the violation, directing the person to take actions by a set date (cease and desist, remedy environmental damage date, investigate and monitor), and proposing a civil assessment amount. The person can accept, negotiate for a consent agreement within 28 days, or appeal the order, or the amount of proposed civil settlement (accepting the consent agreement).

CEMA also provides a “private attorney general” clause allowing private citizens to enforce CEMA violations under certain conditions. A person (which may include a group with a general interest in the environment) must notify the Director within 90 days after the violation first occurs, and if the Director does not commence enforcement action within 60 days, that person may initiate a civil action before the Tribunal against the alleged violator during the next 28 days. The action must be served on the Director and Attorney general, and the Director can thereafter take over the claim by commencing enforcement action within 28 days. Appeals and civil actions under CEMA are heard by the Physical Planning and Environmental (Appeals) Tribunal.

The Tribunal is a non-judicial dispute resolution mechanism, established by section 56 of the Physical Planning Act, with jurisdiction over “[a]ll appeals, applications, civil actions, claims or other proceedings arising under” CEMA. CEMA provides for an extensive list of claims that can be referred to the Tribunal, ranging from civil claims brought by the public to appeals of permit denial or conditions. The Attorney General may intervene in any proceedings before the Tribunal on behalf of the government, although the Director may continue to be represented by separate counsel in such instances. The Tribunal has been established, but does not have permanent members. Due to conflicts of interest arising from the small size of the island, members will be appointed on a case-by-case basis. The Tribunal regulates its own procedures, but appeals must be based on oral representations, and CEMA claims must be decided by a majority, except that the opinion of the Chairman will take precedence on questions of law.

The Tribunal, when deciding CEMA claims, has all the powers, rights, and privileges as the High Court regarding attendance of witnesses, production of documents, entry on property, enforcement of judgments, and other matters. In deciding a claim, the Tribunal has the power under CEMA to:

- dismiss a claim;
- allow a claim and make orders to decide it;
- issue administrative civil assessments;
- award damages payable by a party other than the Director;
- issue restraining orders and other equitable relief; and
- make orders as to costs.

Administrative civil assessments, in turn, can include:

- compensation for actual costs incurred by the Director for:
 - o responding to a violation,
 - o responding to a spill or accidental release of a pollutant or hazardous material,
 - o restoring the environment after failure to comply with an environmental restoration order, or
 - o seizing, removing, hunting, or impounding unprotected species on crown lands, protected areas, or private land;
- compensation for damage to the environment associated with public lands arising out of a violation;

- compensation to be paid to a person (other than the government) who was harmed by an action resulting in issuance of an environmental restoration order;
- damages for an economic benefit or amount saved by non-compliance;
- damages for losses by a third party; and
- damages for failure to comply, in an amount up to \$3000 plus \$500 per day for an individual and \$5000 plus \$750 per day for another entity, with the specific amount to be based on the nature extent, and gravity of the violation, history of prior violations, willfulness and good faith efforts.

Once decided by the Tribunal, a party can appeal from the decision to the Court of Appeal regarding matters of law. However, matters of fact and amounts of civil assessments are final and cannot be appealed absent a showing that there is no evidence supporting a finding of fact.

CEMA also provides for criminal penalties for breach of select provisions of the Act and of any regulations. These criminal penalties are in addition to the civil administrative assessments discussed previously and of civil judicial remedies. Violation of any regulation issued under CEMA may result in a fine of up to \$1000 plus \$50 per day for continuing violations and/or to imprisonment for up to three months. Specific violations for protected species, hazardous waste, and obstruction have substantial listed criminal penalties, but most violations of the act do not have listed criminal penalties.

Regulations will be required to guide activities for enforcement and prosecution by authorised officers, the Director and the Tribunal.

4.2.6 Special Fund

CEMA contains financial provisions to provide “stable, adequate, secure and sustainable funding to finance the management of the environment in Montserrat.” The chief mechanism to ensure sustainable funding is a special fund to be created under the Public Finance (Management and Accountability) Act. While the Act calls for establishment of this special fund, it leaves its establishment and regulation to the Public Finance Act.

CEMA provides that all fees payable under the Act by regulation or order, including those for access to the National Environmental Information System, must be paid into the special fund (once it is established). **The government has draft regulations setting forth fees for permits, Certificates, access to documents, and confidentiality claims made under the Act. No other funding streams are required by law to be directed into the special fund. Likewise, the Act provides limited direction on the use of the special fund, providing only that it is to defray all expenses incurred by the advisory council.**

The Public Finance Act provides that special funds “do not form part of the consolidated fund” however there is always a temptation to not fund the separate fund. As a result, once established the funds designated for inclusion in the special fund are to be maintained separately, in accordance both with CEMA and regulations issued by the Governor on the advice of Cabinet as directed by the Public Finance Act. The structure of the fund is distinct from that provided in an earlier draft of CEMA, which would have created an “Environmental Trust Fund” managed by an independent, quasi-governmental Environmental Trust analogous to the Montserrat National Trust. This structure, which is desired by some stakeholders, is distinguished from the fund set out in CEMA primarily because the government retains control over disposition of fund assets under the current system.

The status of Fund establishment, including its separation from the consolidated fund, will need to be discussed to inform whether regulations drafted under this project need to address the establishment and operation of the Special Fund.

4.3 Outline of Proposed Certificate of Environmental Approval Regulations, Fees Regulations, Protected area Regulations

4.3.1 Environmental Impact Assessments & Certificate of Environmental Approval Regulations, 2010

Environmental impact assessment (EIA) is arguably the most important area of environmental law because it seeks to address environmental impacts before they occur; EIAs are preventative. In the long run, EIAs are a tremendous cost savings device because it is far more economical to mitigate before a project begins and prevent environmental damage than to have to pay for re-builds, dislocation, pollution clean-up or shutting down an activity after project completion.

These Regulations will be evaluated based on the following EIA principles. The EIA process is inherently procedural, establishing a process whereby environmental considerations are incorporated into development decisions. EIAs are also informational, requiring the gathering of information about potential environmental impacts to inform decision-making, and to elicit information on alternatives that are less damaging to the environment. Finally, EIAs enhance the principle of public participation and transparent decision-making.

4.3.1.1 Climate Change and EIAs

Climate change is a critical issue for small island developing economies like Montserrat, and is directly related to sustainable development because the environmental degradation climate change brings, negatively impacts housing, jobs, and livelihoods. Climate change also impacts security because it threatens food production and water supplies and impacts health because rising temperatures and changes in precipitation and altered coastlines affect the presence and spread of diseases. Climate change impacts equity because it especially affects the livelihood of the poorest and diminishes the ability of future generations to meet their basic needs.

EIAs can assist governments in addressing issues of climate change if designed to do so. EIAs already evaluate the environmental and social consequences of proposed activities but they can also help formulate appropriate mitigation and resilient adaptation measures to reduce and manage the negative effects of climate change and enhance any positive effects.

The International Association for Impact Assessment (IAIA) has developed international best practice principles for climate change in environmental impact assessments.⁷ Although IAIA focuses on the production of greenhouse gases (GHG), the impacts of climate change may be more immediately relevant to Montserrat. These include accelerated sea level rise, longer, more intense heat waves, less rainfall, reduced fresh water supply and loss of fishing stock.

Montserrat's draft CEC Regulations do not incorporate many of these principles or climate change impacts thus these will be issues to be investigated and incorporated as needed.

⁷ International Association for Impact Assessment [IAIA]. (2012). Climate Change in Impact Assessment: International Best Practice Principles. IAIA statement on climate change and impact assessment. *Special Publication Series No. 8*. IAIA, Fargo, ND. Available at <http://www.iaia.org/uploads/pdf/SP8.pdf>

The Regulations address the way the Certificate of Environmental Approval (CEA) is obtained, challenged, appealed and implemented. The First Schedule of the CEMA, "Activities Requiring a Certificate of Environmental Approval," creates "designated activities" where CEAs are required.

CEAs are separate from Environmental Impact Assessments (EIA). Many of the smaller countries in CARICOM place EIAs in the laws and ministries regulating land use. However, the recent trend in the Caribbean has been to invest EIA functions in a new and distinct environmental agency created by separate legislation. The grant of an environmental permit or clearance signifies the approval of the activity solely in terms of the environmental impact and does not in any way negate the need to obtain planning permission. Regardless of where the authority for EIAs is placed, planning and EIAs are intricately interwoven.

EIAs in Montserrat are governed by the Physical Planning Act and constitute a separate approval process than the CEA. The roles of EIAs vs CEA will be investigated to ensure that all projects which should fall into one or both of those categories, are addressed.

The sixteen development proposals listed under the Third Schedule of the Physical Planning Act that require EIAs, appears under inclusive but could be reviewed to ensure that potential future development activities are considered.

Although other Commonwealth Caribbean islands have larger populations and a more developed and complex economies than Montserrat, Montserrat need not wait until possible future activities develop in Montserrat before including them in the law. Consideration of development activities in other Caribbean islands could be a useful exercise.

Article 4 of the draft Regulations describes the public consultation process that must take place before revocation, variation or addition of a "designated activity." This process includes Notice of Intent, public submission of written comments, public access to information, public hearings under certain circumstances, and appropriate time periods for each.

Article 3 of the draft Regulations gives authority to the Department, after public consultations, on the advice of the Council, to propose to the Minister for consideration by the Governor in Council, to revoke, vary or add, "designated activities" listed under the First Schedule. The draft Regulations then describe the application process for a CEA. The application requires such information as the location, purpose and objectives of the proposed activity and a description of the site and the areas likely to be affected by the proposed activity. Operational details such as the size, scale and description of the activity as well as the throughput, land space and the types of processes and equipment involved. Information about resources used are also required, such as the type, quantity and of input materials and any by-products including waste produced. **One area not included in the list are emergency contingency plans. This area is vital to show that plans, including costs borne by the applicant, are made in advance.**

The application process describes the deadlines as well as what the Department must do. The latter includes notifying the applicant whether the activity requires a certificate, an EIA or both. Where the Department informs an applicant that an EIA is needed, the applicant has twenty-eight (28) days to prepare a draft Term of Reference (TOR) after consulting with the Department, relevant agencies, non-governmental organisations (NGOs) and members of the public on the proposed draft TOR. Applicants must submit a report of the consultations with relevant agencies, NGOs and other members of the public of the draft TOR and submit a report responding to comments received by relevant agencies, governmental entities, NGOs and other members of the public on the draft TOR. This latter requirement is critical to the public participation element of environmental decision-making. The draft TOR must include a description of the proposed activity, the reason for the activity, the requirements for the preparation of the EIA, and a program of public consultation to explain and receive comments on the activity including but not limited to disadvantages, advantages, impacts, effects, monitoring programs, mitigation measures as provided in the EIA. The Department may where appropriate require the draft TOR be forwarded to external experts for review. Where there is sufficient public interest the Department may conduct a public hearing for discussing the draft TOR and receiving comments before issuance of the Final TOR. Within 18 days of submission, the Director must approve the draft TOR with any amendments that it deems necessary after an assessment of the comments received. The applicant must prepare an EIA for an activity in

compliance with the Final TOR. The applicant must prepare the EIA according to the minimum statutory standards. Upon submission of the EIA report, the Department must examine the EIA report to determine whether it complies with the items specified in the Final TOR and the Regulation.

The phrase “sufficient public interest” has been utilised several times in the legislation. More specific wording may be needed.

The Regulation requires public consultation. After receiving the EIA Report, the Department must maintain an administrative record regarding the proposed activity available to the public at one or more locations; and publish a notice in one newspaper with island wide circulation for a period of at least two (2) weeks and announce for a period of one week on at least one local radio station. The content of these public notices must include a general description of the matter under consideration, the location where the administrative record is maintained, the length of the public comment period which shall be no less than thirty days; and the location where comments are to be sent. The administrative record required on file must include a written description of the activity, the major environmental issues of the activity under consideration by the Department, and copies of documents or other supporting materials which the Department relies upon in determining the application. At the end of the written public comment period, the Department may, where there is sufficient public interest, conduct a public hearing where it shall receive any additional comments before making a determination. The Department may identify an external expert for reviewing information submitted by a proponent in support of an application for a Certificate. External experts shall have experience in the preparation of an EIA and the type of activity which is the subject matter of the application. The costs of the external expert are borne by the applicant. The Director shall notify the applicant in writing of its determination with respect to a CEA. A determination with respect to a Certificate includes specified information, but particularly the mitigation measures that the applicant is required to undertake, a condition that if the activity for which the Certificate is granted has not commenced within three years after the effective date, the Certificate shall cease to have any validity, and a reminder to the proponent of his right of appeal to the Tribunal against a decision to grant a Certificate with conditions.

The Department may require a second EIA. Where a holder of a Certificate is required to submit a Secondary EIA after the issue of a Certificate, the Department must prepare and submit to the applicant a Secondary TOR.

The holder of a Certificate must act to achieve compliance with the Certificate. The Regulation requires the holder to furnish the Department with any information that may vary, suspend, revoke or renew the Certificate and report any instance of anticipated non-compliance. The Regulation establishes the procedures for changing, varying, and amending the Certificate. No Certificate is assignable or transferable to any person with the consent of the Director. A Certificate can be revoked or suspended and any decision can be appealed to the Tribunal established under CEMA.

The Department must maintain a Register of Certificates open to the public for inspection. The Register must include a variety of documents, including the application for a Certificate, terms of reference, EIA Reports, mitigation measures, refusals to issue a Certificate, and variations, revocations and suspensions of Certificates. An applicant may seek approval to omit from the Register any trade secret or confidential business information.

Article 30, the last article, states that it is an offence to contravene any provision of the Regulation or Certificate, however it does not state what type of offence or the appropriate prosecutorial or remedial action for such a contravention.

4.3.2 Fees Regulations, 2010

These draft Regulations seeks to establish the appropriate fees in Eastern Caribbean dollars for application, variation, transfer, and renewal of permits and Certificates. Setting fees at the appropriate level is important to any permitting and Certificate scheme.

A key issue to be used in determining the appropriate fee for most permits and Certificates is the actual costs to issue one permit, for each type listed. Another factor is if the work involved and the cost to issue one permit the same, regardless if it is commercial, residential, or another type of use. If so, perhaps one should expect the same fee regardless of the kind of use for the same type of permit. Actual costs can include all or some of the following, and may include more:

- cost of forms plus copies
- cost of keeping zoning permit files
- cost of paying the zoning administrator
- cost of mileage to make inspections (paid to the zoning administrator)
- cost of meetings (mileage and per diem)
- cost of office space
- cost for consultant (engineer, planner or other professional) review
- legal costs (paid to a lawyer)
- costs of publishing, mailing, etc. the notices of applications, meetings, hearings
- administrative and overhead costs
- some funds set aside for a legal defense/prosecution fund

Once the full cost of issuing each type of permit and Certificate is known, then a policy decision needs to be made⁸.

Setting the appropriate fee for a pollution release permit involves more factors because the fee structure should arguably also serve as a disincentive for releasing pollution as well as an attempt to implement the polluter pays principle, or “internalising externalities.” The government can set the price directly through a pollution tax, or set it indirectly through a cap-and-trade system. A pollution tax is based on the amount of pollution generated. A cap-and-trade approach sets an upper limit on the amount a given business or other organisation may produce but which allows further capacity to be bought from other organisations that have not used their full allowance

Montserrat may not have sufficient number of polluters to create a cap and trade market so the pollution tax may be the only viable option.

4.3.3 Protected Areas, Forests and Fires Regulations, 2010

The draft Regulations outline the process for designation and provide specific mechanisms for stakeholder review and input into the process. The draft Regulations indicate that for a particular area to be proposed as a protected area (PA), the Director must prepare a Statement of Intent to Designate. The content of this statement is specified in the Regulations.

A notice of the Statement of Intent must be published in local newspapers along with a request for written comments from the public. At the end of the written public comment period, the Department “may where there is sufficient public interest conduct a public hearing” where it will receive additional comments. After considering relevant information, the Department advises the Council of its recommendation for the designated PA. The Council advises the Minister who advises the Governor in Council. PAs can be changed and revoked but the

⁸ One recommended approach for deciding how to allocate costs for the permit is as follows: 1) if the application and review primarily benefits the person buying the permit(s), then only the applicant should have to pay for the permit and the costs determined should be the cost for each permit; 2) if the application and review benefits everyone in the territory then the cost of the permit(s) should be paid by everyone and there should not be a fee, or the fee should be zero dollars (\$0). The cost of administering the permit system should be paid for by the general fund; and 3) if the application and review benefits everyone in the municipality and has a particular benefit for the person buying the permit, then the cost of permit(s) should be shared between everyone (general fund) and the person buying the permit(s). In this case, the proposed fee schedule should reflect what percent of the cost should be part of the permit fee, and what percent should be covered by the general fund.

process likewise requires an opportunity for public written comment and, if there is sufficient interest, a public hearing. The approval process is the same as for designating a PA.

The draft Regulations also outline the information to be included in a PA management plan, including information on the relevant policy framework, goals, zoning, activities to be regulated or prohibited, costs, procedures for public participation, sharing of benefits with private landowners and local residents, creation of economic opportunities in adjacent lands, capacity building, awareness raising and knowledge exchange, monitoring, and co-management arrangements.

The draft Regulations also allow for the creation of buffer zones around PAs and guidelines for the control of activities in buffer zones are to be included in management plans. This process also requires the opportunity for the public to submit written comments on the proposal before the Department finalises its buffer zone management plan.

Where the draft Regulations are less clear and can be improved is regarding extraction of timber and charcoal. They require an application process for felling, extracting or removing timber (extraction is not distinguished from removing) but provides no guidance on how the Department is to decide when, how much and where, timber can be removed. Also, the Regulations create an application process for charcoal permits and fire permits but does not offer guidance to the decision makers regarding when, how much and where such permits should be awarded. Amending, transferring, renewing, revocation, and suspension of permits is addressed. Permit decisions by the Department can be appealed to the Tribunal. These issues will require discussion during consultations.

4.4 Deliverable: Action Plan and Implementation Budget

To further the impact of the CEMA, the Government of Montserrat through this initiative is developing an Action Plan to implement CEMA. The Action Plan will identify specific actions that must be undertaken to achieve the objectives and mechanisms outlined in the law. The relevant lead and supporting stakeholders responsible for executing these actions, including those mandated by the law, will be identified. The Action Plan will also serve as a basis to determine the budgetary requirements associated with conservation and environmental management in Montserrat. The sections below outline key issues and proposes a preliminary structure and content for the action plan, for consideration by national stakeholders.

The Action Plan should be aligned with Montserrat's Sustainable Development Plan 2008-2020, specifically strategic goal #3 on environmental management and disaster mitigation. The key strategies and actions for environmental management outlined under this strategic goal are to:

- develop efficient and effective governance structures for environmental management and disaster mitigation, including legislation, policies and regulations;
- reduce risks and losses to all forms of hazards by integration of environmental management and disaster mitigation strategies in development planning;
- develop and implement strategies and plans to conserve biodiversity and other natural resources;
- develop the capacity of key agencies, including strengthening technical, administrative and institutional capacity of the organisations responsible for leading the implementation and enforcement of environmental management legislation, policies and plans;
- develop and implement environmental health programmes, including integrated waste management systems and associated legislation and standards to reduce the impact of waste on ecosystems;
- develop measures to adapt to climate change;
- protect and conserve historical sites and cultural heritage; and
- promote public education and action.

4.4.1 Priority actions and challenges for implementation

CEMA specifies institutional arrangements and activities relating to nine key areas which should be included in the Action Plan. Issues and challenges for each of these are identified in the table below for discussion with stakeholders to inform the final plan. It is likely that during consultations that stakeholders may suggest other aspects for inclusion in the Action Plan.

Table 6: Key issues and challenges related to the Action Plan for CEMA

Priority area	Intent	Issue and challenges
Establishment and role of the NCEAC and Department of the Environment	CEMA seeks to establish a clear governance arrangement for implementation of the law and its supporting regulations. The Director of the Environment, and the Department of the Environment, are responsible for implementing the main provisions in the Act on behalf of the Minister responsible for the environment (currently in the Ministry of Agriculture, Trade, Housing, Lands and Environment (MATHLE)). CEMA also provides for a National Conservation and Environmental Advisory Council (NCEAC) which serves to advise the Minister on conservation and environmental management policies.	<ul style="list-style-type: none"> • Lack of capacity within the Department of Environment to lead, coordinate and provide ongoing administrative support to the NCEAC and two standing committees, Forestry, Wildlife and Protected Areas Standing Committee and the Pollution Control Standing Committee. • Ensuring that there is adequate and timely allocation of funding in annual budget for Department of Environment to support the NCEAC and two standing committees. • Lack of a comprehensive capacity needs assessment to guide the development of programme to build capacity, including technical and organisational capacity, within the Department of Environment to effectively plan for and implement conservation and environmental management in Montserrat.
Environmental Management	CEMA contains several components to centralise and coordinate national regulations, policies and strategies related to environmental management. The key components include development of a National Environmental Management Strategy and a National Environmental Information System for information management and sharing relevant to the activities of the Department of the Environment, including documents related to applications for Certificates of Environmental Approval, monitoring data, permits, notices of violation, and multi-	<ul style="list-style-type: none"> • Lack of reliable data, and ongoing research and monitoring systems, to inform and guide planning and development of NEMS. • Where data generation is taking place, there is limited dissemination of this information within and across agencies to support effective, joint environmental decision-making and action. • Lack of infrastructure and operational procedures and systems to support information management and sharing within government agencies, and to potentially feed into a NEIS. • Mechanism is unclear for directing fees generated from NEIS into a special fund, and ensuring these are allocated to maintain the NEIS over the long term, under CEMA.

	lateral agreements.	
Certificate of Environmental Approval	CEMA mandates that a Certificate of Environmental Approval be obtained before conducting certain activities that may lead to environmental degradation or loss. Schedule 1 specifies a list of activities for which a Certificate is required.	<ul style="list-style-type: none"> • EIAs in Montserrat are governed under the Physical Planning Act and require a separate approval process than the Certificate of Environmental Approval. It is important to ensure that there are no major conflicts or gaps in these two approval processes, and to ensure effective coordination between the Department of Environment and Planning and Development Authority that oversees the EIAs. • Lack of capacity, including human resources, information systems and operational procedures, within the Department of Environment to administer and monitor compliance under the Certificate of Environmental Approval.
Conservation of biological diversity	One of the key purposes of CEMA is to enable the conservation and sustainable use of biological diversity, natural resources and the natural heritage of Montserrat. It identifies a number of components to enable conservation, including development of a national strategy, a research and monitoring programme and a system of protected areas.	<ul style="list-style-type: none"> • There is increasing pressure for available lands to be used for agricultural, commercial and residential purposes, as about 60% of island is deemed unsafe due to the active Soufriere Hills Volcano. The limited land available needs to be effectively managed for conservation and sustainable use of resources. • There will be need for a significant level of engagement and coordination with private landowners for designation and management of protected areas, protected species and buffer zones as about 80% of land in Montserrat is privately owned. • The long-term health and viability of Montserrat's forest and marine ecosystems is being threatened by the rising population of invasive species, including pigs and rats. • Ongoing risks to Montserrat's forest and marine ecosystems due to natural hazards, including hurricanes, storm surges, severe drought and volcanic eruptions. Approximately 60% of forest ecosystems and a significant proportion of coral reefs have been destroyed by volcanic activity. • Lack of baseline data, and ongoing research and monitoring systems, to inform and guide conservation planning, policies and regulations.
Forests and fires	CEMA provides for the effective management and use of forests on Crown lands, which are not within protected areas, based on the principles and practices of sustainable tropical forestry.	<ul style="list-style-type: none"> • Unregulated development and squatting on Crown lands due to increasing pressure for available lands as about 60% of island is deemed unsafe due to the active Soufriere Hills Volcano. • The long-term health and viability of Montserrat's forest ecosystems is being threatened by the rising population of invasive species, including pigs and rats. • Ongoing risks to Montserrat's forest ecosystems due to natural hazards. Approximately 60% of forest ecosystems have been destroyed by volcanic activity

		<p>in Soufriere Hills.</p> <ul style="list-style-type: none"> • Lack of baseline data, and ongoing research and monitoring systems, to inform and guide sustainable forest management. • While a fire permitting system is in place there is perhaps need for a public education programme to raise awareness of the causes of forest fires and actively engage private landowners and civil society organisations in reducing forest fires and acquiring fire permits as needed. • Limited capacity, including human resources, equipment and finances, to effectively manage forest estates and address key threats from forest fires, invasive species and squatting.
Pollution control	<p>One of the key purposes of CEMA is the prevention and mitigation of pollution to protect human health and maintain the quality of natural ecosystems in Montserrat. It proposes a suite of tools, including pollution permits, performance standards and monitoring of compliance, for pollution control.</p>	<ul style="list-style-type: none"> • Lack of capacity, including human resources, information systems and operational procedures, within the Department of Environment to administer registration certificates and permits for pollution and monitor compliance • Lack of capacity, including human resources, technologies and finances, to effectively monitor, mitigate and coordinate emergency response to a spill or accidental release of pollutants or hazardous waste in the Department of Environment and Disaster Management Coordination Agency. • There is a need to ensure coordination with disaster management agencies and integration of disaster management into pollution prevention and response measures by the Department of Environment.
Environmental auditing and monitoring	<p>CEMA authorises the Governor on the advice of Cabinet to create regulations providing standards and procedures for environmental auditing and monitoring, when these activities may be necessary, and the action that the Director of Environment can take based on the results.</p>	<ul style="list-style-type: none"> • Lack of capacity, including human resources, information systems and operational procedures, to administer environmental audits and monitor compliance within the Department of Environment.
Enforcement and prosecution of offences	<p>CEMA sets out a uniform enforcement and penalty structure for environmental offences, including provisions for “authorised officers” to enforce the Act and criminal penalties for breach of select provisions of the Act and of any regulations. Specific violations for protected species, hazardous waste, and</p>	<ul style="list-style-type: none"> • CEMA provides authorised officers with limited powers to monitor impacts on the environment and ensure compliance with regulations, and it is unclear whether these powers are effective. • Lack of capacity, including human resources, information systems and operational procedures, to administer permits and certificates and monitor compliance with regulations within the Department of Environment and other relevant agencies. • CEMA provides that all fees be paid into a special

	<p>obstruction of authorised officers have substantial listed criminal penalties.</p> <p>Appeals and civil actions under CEMA are overseen by the Physical Planning and Environmental (Appeals) Tribunal. The Tribunal is a non-judicial dispute resolution mechanism, established under the Physical Planning Act. CEMA provides for an extensive list of claims that can be referred to the Tribunal, ranging from civil claims brought by the public to appeals of permit denial or conditions.</p>	<p>fund, but offers limited direction on the use of the special fund to defray costs incurred by the Department of Environment and other key partners to administer and implement the Act. Currently, fees are paid into consolidated fund and there is a recurrent budget for the Department.</p>
Special Fund	<p>A Special Fund is to be created under the Public Finance (Management and Accountability) Act to provide for sustainable financing for conservation and environmental management in Montserrat. CEMA provides that all fees payable under the Act by regulation or administrative order, including those for access to the NEIS, certificates and permits, must be paid into the Special Fund. The government retains control over allocation of fund assets.</p>	<ul style="list-style-type: none"> • The Public Finance Act provides that special funds “do not form part of the consolidated fund,” however, there is always a temptation to not fund the Special Fund. • CEMA provides limited direction on the use of the Special Fund, except that it is to be used to cover all expenses incurred by the NEAC. • Lack of buy-in and support for the current structure, which is distinct from that provided in an earlier draft of CEMA, which would have created an “Environmental Trust Fund” managed by an independent, quasi-governmental Environmental Trust. This latter structure was supported by a number of stakeholders.

The Action Plan, which will cover the period 2018-2030, will further identify specific actions to address each of these areas in the short, medium and long term. These timeframes will be defined as follows:

- Short-term: 1-3 years
- Medium-term: 4-10 years
- Long-term: 10+ years

4.4.2 Implementation budget

Costing of the short, medium and long-term actions outlined in the Action Plan will be conducted. Funds will be allocated through a combination of:

- direct budget support to the Department of Environment and other key partner agencies;
- project support for implementation of initiatives to deliver specific results; and
- extra-budgetary support through a separate special fund.

This special fund is to be created under the Public Finance (Management and Accountability) Act to provide for sustainable financing for conservation and environmental management in Montserrat. CEMA provides that all

fees payable under the Act by regulation or administrative order, including those for access to the NEIS, certificates and permits, must be paid into the special fund. No other funding streams are required by law to be directed into the special fund. Any funds designated for inclusion in the special fund are to be maintained separately, in accordance both with CEMA and regulations issued by the Governor on the advice of Cabinet as directed by the Public Finance Act.

CEMA provides limited direction on the use of the special fund, except that it is to be used to cover all expenses incurred by the NEAC. It is recommended that the special fund also be used to cover the administrative costs for the NEIS, Certificate of Environmental Approval, pollution permits and registration certificates where possible.

As an Overseas Territory, Montserrat is restricted in its funding options compared to other independent SIDS. However, additional instruments to fund implementation of the Action Plan will be explored and used where feasible. These financial instruments may include grants, concessional and non-concessional loans, and equity investments.

4-4-3 Monitoring, evaluation and review of Action Plan

It is proposed that the Action Plan be reviewed annually by the NCEAC to monitor its progress and updated where necessary. The review should align with the annual review process established under Montserrat's Sustainable Development Plan to take advantage of opportunities to harmonise related or mutually supporting activities.

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