

DARWIN INITIATIVE

**MONTSERRAT
CENTRE HILLS PROJECT**

**MONTSERRAT
CONSERVATION AND
ENVIRONMENTAL MANAGEMENT
BILL**

(Final Draft)

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MONTSERRAT

Bill No. – of -----

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MONTSERRAT

CONSERVATION AND ENVIRONMENTAL MANAGEMENT ACT

Act No. – of [2007]

AN ACT to provide for the administration, conservation and sustainable use of biological diversity and the natural heritage of Montserrat, the designation and management of protected areas, pollution control, the incorporation of international obligations with respect to the environment into national law, the establishment of an environmental fund and related matters.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and by the authority of the same as follows:

PART I

PRELIMINARY

Citation

1. (1) This Act may be cited as the Conservation and Environmental Management Act.

(2) This Act comes into force on the day fixed by the Governor by Order in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires:

“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 pursuant to section 9;

“biological diversity” means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; and includes diversity within species, between species and of ecosystems;

“Board” means the Board of Trustees of the Fund established by section 64;

“buffer zone” means an intermediate area surrounding a protected area, which performs the function of mitigating the direct impacts of activities in the circumambient area on the protected area;

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

“Council” means the National Environment and Conservation Council established by section 5;

“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;
- (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;

“designation order” means an order designating an area as a protected area pursuant to section 25;

“Director” means the Director of Environment appointed pursuant to section 7(1);

“domesticated or cultivated species” means species in which the evolutionary process has been influenced by humans to meet their needs;

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

“endangered species” means species or subspecies of fauna and flora, or their populations, that are in danger of extinction throughout all or part of their range and whose survival is unlikely if the factors jeopardizing them continue to operate;

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“endemic species” are species or subspecies 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;
- (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, facility or site to verify whether and to what extent it conforms to specified audit criteria;

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

“forest produce” includes -

- (a) timber, firewood, charcoal, bark and extracts of bark;
- (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; and
- (c) wild-growing trees and plants (dead or alive) and all parts and produce of such trees and plants, bamboo and other grasses;

“Fund” means the Environmental Trust Fund established by section 63;

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

“hazardous substance” means any substance designated as a hazardous substance pursuant to section 55(1);

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

“livestock” includes cattle, sheep, goats, swine, poultry and horses;

“migratory species” means the entire population or any geographically separate part of the population of any 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 to whom responsibility for the environment is assigned, except where specifically provided otherwise;

“Montserrat National Trust” means the membership organisation incorporated by the Montserrat National Trust Act;

“Montserrat Utilities Limited” means the statutory corporation established by the Utilities Act;

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

“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 or scientific point of view;
- (b) geological and physiological formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation;
- (c) natural sites or precisely delineated natural areas of outstanding universal value from the point of view of science, conservation or natural beauty;

“partially protected species” means species designated as such pursuant to section 21;

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

“pollutant” means any substance, thing or man-made phenomenon (including energy, noise, vibration, electro-magnetic or ionizing radiation, odour or temperature variation) designated as a pollutant pursuant to section 42(2);

“pollution” includes the release or deposit of any pollutant or waste onto land or into the air or water, including the sea, so as to cause any direct or indirect alteration of the physical, thermal, chemical, biological or radioactive properties of any part of the environment or to cause harm to human health or affect the quality of the environment;

“protected area” means a geographically defined area which is designated pursuant to section 25 to achieve specific conservation objectives;

“protected species” means a species or subspecies of flora or fauna, or their populations, protected pursuant to section 17;

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

“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 or degradation of the natural heritage, thereby maintaining its potential to meet the needs and aspirations of present and future generations;

“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 localized within restricted geographical areas or habitats or are thinly scattered over a more extensive range and which are potentially are actually subject to decline and possible endangerment or extinction;

“Tribunal” means the Physical Planning and Environmental (Appeals) Tribunal appointed pursuant to section 56 of the Physical Planning Act;

“waste” includes any solid, semi-solid, liquid or gaseous refuse, residue or scrap material or unwanted surplus matter produced on any premises and not intended to be put to any further use on those premises;

“watershed management area” means an area declared as such pursuant to section 38;

“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.

Purposes

3. The purposes of this Act are 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 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
- (e) the provision of stable, adequate, secure and sustainable funding to finance the management of the environment in Montserrat.

PART II

ADMINISTRATION

Powers and duties of the Minister

4. (1) It is the duty of the Minister under this Act to:
- (a) coordinate with the other Ministers collectively responsible for the government of Montserrat to secure consistency and continuity in the implementation of this Act and any other written laws 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) develop and promote national environmental policy so as to ensure the integration of environmental concerns into national decision-making at all levels;
 - (d) oversee the execution of environmental policy and the administration of this Act by the officers to whom responsibility for its administration is assigned; and
 - (e) encourage and facilitate the participation of private persons, communities and civil society organisations in environmental management.

(2) The Minister may give policy directions of a general character to the Council with respect to the performance of its functions and the Council must give effect to every such direction.

Establishment of the Council

5. (1) A National Environment and Conservation Council is hereby established to advise the Minister and the Department on any matter on which the Minister or the Director may require advice.

(2) The Council established by subsection (1) consists of:

- (a) the Permanent Secretary, as Chairperson;
- (b) the following public officers, as *ex officio* members:
 - (i) The Director of Environment
 - (ii) The Director of Agriculture;
 - (iii) The Chief Fisheries Officer;
 - (iv) The Chief Physical Planner;
 - (v) The Director of Public Works;
 - (vi) The Director of Disaster Preparedness and Response;
 - (vii) The Director of Tourism;
 - (viii) The Principal Environmental Health Officer; and
 - (ix) The Chief Surveyor;
- (c) the Manager of [Montserrat Utilities Limited];
- (d) a representative of the Montserrat National Trust, nominated by the Montserrat National Trust;
- (e) a representative of the Landowners Association, nominated by the Landowners Association;
- (f) two other persons appointed by the Governor in Council from civil society organizations or the private sector having knowledge or experience with respect to matters relevant to the functions of the Council; and
- (g) an Executive Secretary appointed by the Governor after consultation with the Public Service Commission.

(3) The members of the Council appointed under subsections (2)(d)(e) and (f) may be appointed for a period of three years but are eligible for reappointment.

(4) The appointment of any member of the Council under subsections 2(d)(e)(f) and (g) must be notified in the *Gazette*.

(5) The members of the Council, other than public officers, hold office on such conditions with respect to remuneration and allowances as the Governor in Council may determine.

(6) The validity of any proceedings of the Council is not affected by any vacancy in its membership or by any defect in the appointment of any of its members.

(7) The Council may appoint from amongst 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 such committees.

(8) The Council may co-opt any person to assist it in dealing with any matter, if it is satisfied that the person's qualifications or experience are likely to help the Council, and any person so co-opted is entitled to take part in the deliberations of the Council regarding that matter, but may not vote and must take no part in any other proceedings of the Council.

(9) The Council must meet as often at such times and places and on such days as are necessary or expedient for transacting its business, provided always that it meets at least four times in every calendar year, and may regulate its own procedure.

(10) All expenses incurred by the Council in the discharge of its functions, unless otherwise provided for, are to be defrayed from the Fund.

Functions of the Council

6. (1) The Council must perform the functions and duties imposed on it by this Act and such other duties consistent with those functions as the Minister may from time to time direct.

(2) Without prejudice to the generality of subsection (1), the functions of the Council are to:

- (a) advise the Minister with respect to the formulation of environmental policy and undertake programmes and projects to implement the environmental policy of the Government;
- (b) coordinate and facilitate the integration of the work of Ministries, departments of Government, statutory authorities and non-governmental organisations to achieve the purposes of this Act;
- (c) serve as the national authority for the purposes of administration of any multilateral environmental agreement having the force of law in Montserrat pursuant to section 61(1); and

- (d) advise the Director and the Principal Environmental Health Officer and otherwise facilitate the implementation of this Act.

(3) The Council must nominate a group of persons or body to serve as a Scientific Council for any purposes for which a scientific authority is required by any multilateral environmental agreement having the force of law in Montserrat pursuant to section 61(1).

Functions of the Director of Environment

7. (1) The Governor, after consultation with the Public Service Commission, must appoint a Director of Environment to perform the functions and duties imposed on the Director by this Act, and such other duties consistent with those functions as the Permanent Secretary may from time to time direct.

(2) Without limiting the generality of subsection (1), except as otherwise provided in this Act, the functions of the Director are to:

- (a) execute the responsibilities arising from or in connection with the administration of this Act;
- (b) monitor the state of the environment and compile, analyse and disseminate environmental data and information;
- (c) prepare such periodic or other reports that the Government is required to produce under any multilateral environmental agreement to which Montserrat is a party or, where responsibility for preparing such reports is delegated or assigned to another entity pursuant to section 8(1) or 62(2), ensuring that such reports are prepared;
- (d) conserve biological diversity and manage protected areas and watershed management areas;
- (e) prosecute offenders for the contravention of the provisions of this Act; and
- (f) discharge of any other functions and duties that may be assigned to the Director under this Act or any other law.

(3) In the discharge of his or her functions under this Act, the Director must act under the general directions of the Permanent Secretary.

(4) Unless otherwise provided, all permits, statutory notices and other documents authorised to be issued under this Act must be signed by the Director or by an officer to whom this duty is delegated pursuant to section 8(1).

(5) The Director must not undertake any proceedings for the prosecution of any person under this Act without the prior approval of the Attorney General.

Delegation of powers

8. (1) The Director may by instrument in writing and subject to such conditions, directions, reservations or restrictions as he or she thinks fit, delegate to any other public officer any power or duty conferred or imposed by this Act on the Director, other than this power of delegation.

(2) Anything done by a delegate pursuant to a power or duty delegated under this section has the same force and effect as if it had been done by the Director.

Implementation and enforcement of the Act

9. (1) In order to implement and enforce this Act, the Governor in Council may:

- (a) after consultation with the organisations which are affected, designate personnel from other Ministries and statutory authorities as authorised officers, who may be co-opted by the Director from time to time to time, as is necessary or expedient;
- (b) employ consultants, experts and advisors from national, regional or international organisations; and
- (c) utilise the services of individuals, voluntary organisations, community groups from the business and non-governmental sector.

(2) In addition to persons designated pursuant to subsection (1)(a), every police officer, member of the defence force, agricultural officer, fisheries officer, public health inspector and building inspector is *ex officio* an authorised officer for the purposes of enforcing this Act.

PART III

ENVIRONMENTAL MANAGEMENT

National Environmental Management Strategy

10. (1) The Director must prepare and submit to the Council, not later than six months after the commencement of this Act or such other time as the Minister may direct, a National Environmental Management Strategy (hereinafter referred to as “NEMS”).

(2) A NEMS prepared in accordance with subsection (1) must include as a minimum a description of the environment in Montserrat, an analysis of environmental issues of national significance and the environmental management strategies prescribed at the national level to address these issues.

(3) When the Director has prepared a draft NEMS, the Director must submit it to the Council for review and transmission to the Minister.

(4) After making such revisions to the draft NEMS as it considers appropriate, the Council must submit the NEMS to the Minister for approval by the Governor in Council.

(5) Not less than three years or more than five years after the approval of a NEMS pursuant to subsection (4), the Director must review and revise the NEMS.

Environmental monitoring

11. (1) The Director must coordinate the activities of all Ministries, departments of Government and statutory authorities in relation to:

- (a) the continuous or periodic collection, collation and analysis of data concerning the state of the terrestrial and marine environment, including but not limited to air and water quality; and
- (b) the continuous or periodic sampling and analysis of effluents, emissions and discharges into the environment.

(2) The Director must assist the Chief Physical Planner with respect to the review of any environmental impact assessment submitted with respect to any development specified in the Third Schedule to the Physical Planning Act and the subsequent monitoring of the environmental impacts of any such development for which conditional permission has been granted under that Act.

(3) For the purpose of enforcing any of the provisions of this Act or any other law, the Director may require any person to carry out at their own expense such environmental monitoring activities as are specified by the Director and to submit such environmental monitoring reports as may be required by the Director from time to time.

National Environmental Information System

12. (1) The Director must establish and maintain a National Environmental Information System (hereinafter referred to as “NEIS”).

(2) 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.

(3) The Director must make any information in the NEIS available to any person who wants access to that information, on payment of a reasonable charge for such information having regard to the costs of its collection, collation, analysis, storage and retrieval.

State of the Environment Report

13. (1) No later than four months after the end of every calendar year, the Director must submit to the Minister a report including:

- (a) an assessment of the state of the environment, with particular reference to any significant events or changes occurring during the year under review;
- (b) a description of the environmental management activities undertaken by the Ministry during the year under review;
- (c) an assessment of the effectiveness of co-ordination between the Ministry responsible for the environment and other Ministries, departments of Government, statutory authorities and other bodies having environmental management functions; and
- (d) a list of any other reports prepared under this Act by the Director or any other entity during the year under review, including but not limited to reports prepared in accordance with section 62(2).

(2) If the Director requests any information from another Ministry, department of Government, statutory authority or other body having environmental management functions for the purpose of preparing the report required under subsection (1), that body must provide the information requested within the time specified by the Director, not being less than 28 calendar days after the date on which the request is made.

(3) The Minister must cause a copy of every such annual report to be laid in the Legislative Council and made available for sale to the public at a reasonable price.

Environmental Management Standards

14. (1) The Director must promote the adoption and implementation at the national level of the environmental management standards promulgated by the International Standards Organisation and, in particular, must lend assistance to the relevant authority with regard to certification and auditing procedures.

(2) In consultation with other Ministries, departments of Government and statutory authorities, the Director must develop a programme to ensure that all Ministries, departments of Government and statutory authorities and Government-owned or controlled corporations attain and adhere to national environmental management standards.

PART IV

CONSERVATION OF BIOLOGICAL DIVERSITY

National Conservation Strategy

15. As soon as may be practicable after the commencement of this Act, the Director must develop a national strategy, plans and programmes for the conservation of biological diversity.

Identification and monitoring

16. (1) The Director must identify the components of biological diversity important for its conservation and sustainable use, including:

- (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 cultivate 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 must monitor, through sampling and other techniques, the components of biological diversity identified pursuant to 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 have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity and monitor their effects.

(4) The Director must maintain and organise, by any means, data derived from the identification and monitoring activities carried out pursuant to this section.

Protection of wildlife

17. (1) Wild animals, whether resident, migratory or transient, endemic, indigenous or introduced, are the property of the Crown, and may not be hunted, taken or possessed, except at such times and in such manner as may be provided in this Act or Regulations made hereunder.

(2) Every living organism found in Montserrat, of a species other than the human species or a domesticated or cultivated species or a species specified in the First or Second Schedule, is protected.

(2) Any person who-

- (a) wilfully hunts, picks, collects, cuts, or takes any individual of a protected species, by any method, or attempts to do any such thing or has possession of any individual of a protected species;
- (b) disturbs any individual of a protected animal during the period of breeding, incubation, estivation or migration or takes, removes, damages, destroys or has possession of any nest or egg of a protected animal;
- (c) exposes for sale, or knowingly has in possession, any individual of a protected species or any part of such an individual, alive or dead, taken or killed in Montserrat after the commencement of this Act; or
- (d) exports or attempts to export any protected animal or the shell, skin or plumage of any protected animal, taken or killed in, or the nest or eggs of any such animal, or any protected plant or the flower, fruit or seed or other part of any protected plant, alive or dead, taken or killed in Montserrat after the commencement of this Act;

is liable on summary conviction to a fine of [...] dollars and imprisonment for three months for a first offence or to a fine of [...] dollars or imprisonment for six months for a second or further offence.

(3) In any case where proceedings are brought under subsection (2)(c) or (2)(d), it is presumed that the protected animal or plant or thing to which the charge relates was killed or taken in Montserrat after the commencement of this Act, until the contrary is proved, the onus of proving which lies on the defendant.

(4) Where any protected wildlife is alleged to be causing damage to crops or other private property, the owner or occupier of the property may make a report to the

Director, who must expeditiously take such action as may be reasonably necessary to remedy the problem, including killing and disposing of the said wildlife.

Threatened and endangered species

18. (1) The species of living organisms specified in the Third Schedule are designated as threatened or endangered species.

(2) Any person who-

- (a) wilfully kills, wounds, pursues, or captures or molests any threatened or endangered animal or wilfully picks, collects, cuts, or takes any threatened or endangered plant, by any method, or attempts to do any such thing, or has possession of any threatened or endangered animal or plant;
- (b) disturbs any threatened or endangered animal during the period of breeding, incubation, estivation or migration or takes, removes, damages, destroys or has possession of any nest or egg of a threatened or endangered animal;
- (c) exposes for sale, or knowingly has in possession, any threatened or endangered animal or plant or any part of such animal or plant, taken or killed in Montserrat after the commencement of this Act; or
- (d) exports or attempts to export the shell, skin or plumage of any threatened or endangered animal, wounded or killed in, or the nest or eggs of any such animal or any threatened or endangered plant taken from Montserrat after the commencement of this Act;

is liable on conviction on indictment to a fine of [.....] dollars and imprisonment for twelve months for a first offence or to a fine of [.....] dollars or imprisonment for three years for a second or further offence.

(3) In any case where proceedings are brought under subsection (2)(c) or (2)(d), it is presumed that the protected animal or plant or thing to which the charge relates was killed or taken in Montserrat after the commencement of this Act, until the contrary is proved, the onus of proving which lies on the defendant.

(4) The Governor in Council may from time to time amend the Third Schedule by way of Order laid before the Legislative Council and published in the *Gazette*.

Permission for scientific research

19. (1) Any person wishing to engage in any scientific or research operation with respect to any protected, threatened or endangered species in

Montserrat, or in any protected area, must apply to the Director for permission in writing to do so.

(2) Notwithstanding the provisions of sections 17 and 18, the Director may grant permission for such a scientific or research operation which involves the taking of specimens of individuals of protected, threatened or endangered species, or any part of any such individual, dead or alive.

(3) A person applying for permission to carry out a scientific or research operation of this type must furnish the Director with a plan for the proposed operation, including a research protocol, and such other information as the Director may reasonably require in order to make a decision.

(4) Permission to undertake scientific or research operations may be granted only to a person who can satisfy the Director that he or she:

- (a) has access to or a guarantee of sufficient funds to undertake the operations in a satisfactory manner; and
- (b) has the scientific competence to undertake the operations, as assured by any recognised learned society or institution of higher learning.

(5) The Director may attach such terms, conditions and limitations to permission granted under this section, including a requirement that the data and results of the scientific or other research operations are shared with the Government of Montserrat, as the Director considers appropriate in the public interest.

(6) Without prejudice to the generality of subsection (5), for the avoidance of doubt it is declared that the Director may attach to permission granted under this section for bio-prospecting operations such terms, conditions and limitations concerning the ownership of intellectual property and sharing of financial returns from the commercialisation of products derived from endemic species as Director considers appropriate in the public interest.

(7) Where permission to undertake scientific or research operations is refused or granted subject to conditions and limitations by the Director, the applicant may, within 28 days from receipt of notice of the decision, appeal in writing against the decision to the Tribunal, setting out the grounds on which the appeal is made.

Conservation of ecosystems and habitats

20. In order to protect the ecosystems and natural habitats necessary to maintain the viability of populations of protected, threatened and endangered species in their natural surroundings, the Director must:

- (a) identify land or marine areas, or combined land and marine areas, to be designated as protected areas in accordance with the provisions of Part V of this Act or declared as marine reserves or protected areas in accordance with the provisions of Part V of the Fisheries Act;
- (b) in collaboration with the Chief Physical Planner, the Director of Agriculture and other relevant persons and authorities, develop strategies to promote environmentally sound and sustainable development in areas adjacent to protected areas, with a view to furthering the protection of the critical ecosystems and habitats; and
- (c) develop programmes for the rehabilitation or restoration of degraded ecosystems.

Partially Protected Species

21. (1) The species of animals specified in the First Schedule are designated as partially protected species which, subject to the provisions of the regulations made under subsection (2), may be hunted and killed.

(2) The Governor in Council may make regulations with respect to the hunting of partially protected species and any such regulations may prescribe for:

- (a) the issue of hunting licences;
- (b) the terms and conditions to which such licences are subject, including the numbers, age and sex of any game animal which may be hunted;
- (c) the declaration of a closed season during which the hunting of game animals is prohibited;
- (d) the areas within Montserrat within which hunting is permitted;
- (e) the methods by which game animals may be hunted, captured or killed;
- (f) the times of day or night during which game animals may be hunted;
- (g) the sale or purchase of the meat of game animals;
- (h) the information that must be recorded by a licensed hunter and returned to the Director; and
- (i) offences and penalties.

(3) Without limiting the generality of subsection (2), Regulations made under this section may prescribe specific offences under this Act and provide that any person who commits such an offence is liable:

- (a) on summary conviction to a fine of not more than [...] dollars and imprisonment for [.....] months; or
- (b) on conviction on indictment to a fine of not more than [...] dollars and imprisonment for [...] years.

(4) For the avoidance of doubt it is declared that the provisions of this section do not apply to the catching or harvesting of species of marine flora or fauna which is authorised or regulated by or under the Fisheries Act.

Unprotected Species

22. (1) The species of animals and plants specified in the Second Schedule are designated as species that are not protected.

(2) The Governor in Council may from time to time amend the Second Schedule by way of Order laid before the Legislative Council and published in the *Gazette*.

(3) The owner or occupier of any land, or any other person at their request or direction, may, without any licence, permit or authorisation under this Act, at any time destroy any individual of an unprotected species on that land.

PART V

PROTECTED AREAS

Establishment of protected areas

23. (1) The government of Montserrat must establish protected areas in order to conserve biodiversity and the natural and cultural heritage of Montserrat and encourage ecologically sound and sustainable use, understanding and enjoyment of these areas, in accordance with the objectives and characteristics of each of them.

(2) Without limiting the generality of subsection (1), protected areas must 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 their associated ecosystems critical to the survival of endemic, endangered or threatened species of flora or fauna;

- (c) the productivity of ecosystems and natural resources that provide economic or social benefits and upon which the welfare of local inhabitants is dependant; and
- (d) areas of special scientific, educational, historic, archaeological, recreational, aesthetic or economic value.

National Parks and Protected Areas Plan

24. (1) As soon as may be practicable after the commencement of this Act, the Director must prepare a draft National Parks and Protected Areas Plan (hereinafter referred to as “NPPA Plan”), for the establishment of a system of protected areas.

(2) Without limiting the generality of subsection (1), the NPPA Plan must include:

- (a) a statement of national policy with respect to the establishment of National Parks and other protected areas;
- (b) an assessment of the status of biological diversity and the natural and cultural resources of Montserrat, including:
 - (i) ecosystems, including forests and wetlands;
 - (ii) flora and fauna, particularly endemic, endangered and threatened species;
 - (iii) soil and water resources; and
 - (iv) archaeological and historical sites;
- (c) proposals for a system of National Parks and other protected areas to ensure the protection, conservation, development and management of the natural and cultural heritage of Montserrat; and
- (d) such maps and descriptive matter as may be necessary to illustrate the proposals made in it with such degree of detail as is appropriate.

(3) In the course of preparing the draft NPPA Plan the Director must take reasonable steps to consult with any agency of the government of Montserrat and any non-governmental organisation which has an interest in any matter for which proposals may be made in the plan.

(4) The NPPA Plan must be in conformity with the approved Physical Development Plan prepared under the provisions of the Physical Planning Act.

(5) When the Director has prepared a draft NPPA Plan, the Director must submit it to the Council.

(6) After making such revisions to the draft NPPA Plan as it considers appropriate, the Council must submit the draft NPPA Plan to the Minister for approval by the Governor in Council.

(7) When the NPPA Plan is approved by the Governor in Council, notice of the approval of the NPPA Plan must be published in the *Gazette* and the Ministry must make copies of an approved plan available for inspection at its office and for sale to the public at a reasonable price.

(8) At any time which is expedient the Director may carry out a review of an approved NPPA Plan and submit to the Council a report on that review, together with proposals for any alterations or additions to the NPPA plan which appear to be appropriate.

(9) The provisions of this Act with respect to the preparation and approval of a NPPA Plan apply, with any modifications necessary, to any proposal for any alterations or additions to an approved plan made under this section.

(10) Except where the Governor in Council considers it inexpedient, anything done in relation to the designation, conservation, development, management and use of protected areas under this Act or any other written law must be in accordance with the approved NPPA Plan.

Designation of protected areas

25. (1) Subject to section 26, the Governor in Council may, at any time before or after the approval of the NPPA Plan, designate any land or marine area, or any combined land and marine area, as a protected area of one of the categories set out in the Fourth Schedule, for any of the broad purposes set out therein, by order published in the *Gazette*.

(2) In the exercise of the power conferred by subsection (1), the Governor in Council must act on the advice of the Council.

(3) In the formulation of a proposal for the designation of a particular area as a protected area, for the consideration by the Council and submission to the Minister for approval by the Governor in Council, the Director must:

- (a) provide a justification for establishment of the area and the category of protection proposed, including an evaluation of the advantages and disadvantages of establishing the site;
- (b) take into account the socio-economic impact of the designation of the area on the local human population, in particular traditional users of the natural resources in the area proposed for declaration;

- (c) describe the factors determining the boundaries of the area proposed for declaration; and
- (d) consider and make recommendations with respect to any steps and compensatory measures that may need to be taken as a result of designation of the area as a protected area.

(4) A designation order must include a legal description of the area to be protected giving particulars of the size and boundaries of the area, as shown wherever practicable on an accurate map or survey plan, and must state the categorisation of the protected area so designated.

(5) A designation order must be laid in the Legislative Council and published in the *Gazette*.

Notice of intention to designate a protected area

26. (1) Before any area is designated as a protected area pursuant to section 25, the Director must publish a notice of intention to designate the protected area in the *Gazette* and give such other publicity to that notice as may be suitable to bring it to the attention of the public in general and persons whose rights or interests may be affected by the designation of the area in particular.

(2) A notice of intention published pursuant to subsection (1) must be published at least three months before the related designation order and must:

- (a) specify the situation and limits of the area which is proposed to be designated as a protected area;
- (b) invite any person who lawfully enjoys any right within the specified area, or who has any direct or indirect interest in the designation of the specified area, to submit their claim of right, or make objections or representations with respect to the proposal, to the Council in writing; and
- (c) prescribe a date and a place for hearing any claims of right and objections or representations relating to the designation of the specified area as a protected area, if any.

(3) If any claims or objections are received within the prescribed period, the Council must appoint a suitably qualified independent person to conduct the hearing on behalf of the Governor in Council.

(4) Before deciding whether the specified area should be designated as a protected area, with or without modifications, the Governor in Council must take into consideration any claims of right and objections and representations made at the

hearing, together with the report and recommendations of the independent person who conducted the hearing.

Private land in protected areas

27. (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 any property tax payable in respect of the land that is included in the protected area, in addition to such other incentives as the Governor in Council may grant for that purpose.

(2) The owner of private land within a protected area is not liable for any personal injury sustained by any person using a public road or footpath over such land, or by any user of the protected area entering upon any such 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 any agency of the Government of Montserrat, whether such permission or licence is granted gratuitous or on payment of a fee or charge.

(3) If the Governor in Council determines that, having regard to the category of the protected area and the purposes for which it has been designated as a protected area, it is necessary or desirable that the Crown should acquire any private land within the protected area, or any rights over or interest in such private land, the Crown may acquire the land or any right over or interest in the land, either by agreement with the owner of the land or compulsorily in accordance with the provisions of the Land Acquisition Act, as being land needed for a public purpose within the meaning of that Act.

(4) In any case where the Crown acquires private land by agreement or compulsorily pursuant to subsection (3), the landowner may be compensated wholly or in part by mutual agreement by exchange of land with the Crown, in lieu of compensation in money.

(5) For the avoidance of doubt it is declared that any landowner may donate, exchange, transfer or otherwise dedicate any land or interest in land to the Crown under this Act for any protected area.

Demarcation of boundaries

28. (1) Within two years of the designation of a protected area, the Director must cause the boundaries of the area to be surveyed and cause a map of each protected area to be prepared and deposited in the Chief Surveyor's office, where it must be made available to the public for inspection.

(2) The Director must cause the boundaries of each protected area to be so marked and defined as to be clearly visible at all times.

Responsibility for management of protected areas

29. (1) The Council is responsible for overseeing the administration of protected areas established under this Act, in accordance with the provisions of this part.

(2) Subject to subsection (3), the Director is responsible for the management of protected areas and may make and enforce Rules approved by the Governor in Council for the management and control of activities within any protected area under the jurisdiction of the Ministry.

(3) The Governor in Council may, by order published in the *Gazette*:

- (a) designate a competent body and delegate responsibility for the management of any protected area established pursuant to this Act to that body; and
- (b) specify the particular protected area to be managed by the competent body and the extent of the powers and functions delegated to it.

(4) Without limiting the generality of subsection (3), the Governor in Council may delegate responsibility for the management of any protected area to the Montserrat National Trust, or any other duly constituted non-governmental organisation with an interest in conservation and the competence to manage a protected area.

(5) Where there is no appropriate body to which the Governor in Council can delegate responsibility for the management of a protected area, the Council may promote the formation of such a body.

(6) The Director must, where practicable, provide to any competent body designated pursuant to subsection (3) such assistance as may be reasonably necessary for the performance of its functions.

(7) The responsibilities delegated to a competent body designated pursuant to subsection (3) may include the powers and duties to:

- (a) make and enforce Rules approved by the Governor-in-Council for the management and control of activities within the protected area under its jurisdiction;
- (b) prepare and implement the management plan for the protected area, approved in accordance with section 31(4), and make recommendations from time to time with respect to the modification of the approved management plan, as appropriate;

- (c) 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;
- (d) advise the Council with respect to any 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
- (e) undertake any other functions as may be assigned to it, from time to time, by the Council.

Vesting of Crown land in protected areas in trustees

30. (1) The Governor may vest any Crown land within a protected area in the competent body to which responsibility for the management of that area is delegated pursuant to section 29(3), by order in the *Gazette*.

(2) Any competent body in which Crown land within a protected area is vested pursuant to subsection (1) holds that land in trust for the benefit of the people of Montserrat and must take such measures as are necessary for the proper control and management of that land to prevent any waste or damage or injury to that land.

Management Plans

31. (1) A management plan, designed to further the specific purposes for which the area is established and guide any activities that may be prohibited or permitted in the area, must be prepared for each protected area established under this Act, on the basis of the best available scientific and other relevant information.

(2) To the extent feasible, every management plan for a protected area must contain the following information:

- (a) the long term goals of the protected area and the associated conservation, restoration, research, educational and recreational objectives of the area to meet these goals;
- (b) an analysis of existing and potential conflicts arising in relation to the use of the area by the owners of private lands in the area and persons resident in communities in the locality who are traditional users of the area;
- (c) the measures to be adopted for the management of the area, including guidelines for the control of activities in buffer zones;
- (d) if appropriate, the measures to be adopted for sharing the benefits of protection of the area with the owners of private lands in the area and

persons resident in communities in the locality who may be affected by the protection of the area, including assistance to and the training of such persons;

- (e) the programmes to be adopted for interpretation of the area, public awareness and education, to enhance the appreciation and understanding of users and the general public of the objectives of protection of the area;
- (f) a description of the manner and time within which various management measures will be undertaken, including the kinds of activities that will be regulated or prohibited within the area;
- (g) an estimate of the projected capital and recurrent costs of implementing the management plan and an analysis of funding strategies for defraying these expenses; and
- (h) a monitoring plan, including objective verifiable indicators for the determination of the effectiveness of management strategies.

(3) The management plan must be prepared by the Director or the competent body to which responsibility for the management of the protected area is delegated pursuant to section 29(3).

(4) At least once in every ten years after the date on which a management plan is approved, it must be reviewed and, if appropriate having regard to new information and changes in circumstances, the plan must be revised accordingly.

(5) Every management plan for a protected area and every revision to that management plan must be approved by the Council.

Protection measures

32. (1) The Director or the competent body which is responsible for the management of a protected area, as the case may be, must make and enforce such Rules as are necessary or expedient to achieve the objectives for which the protected area was established.

(2) Without limiting the generality of subsection (1), Rules made under this section may include, as appropriate, measures to regulate or prohibit:

- (a) activities that may result in the destruction of or damage to endemic, endangered or threatened species of flora or fauna or their parts or products;
- (b) the introduction of non-indigenous species;

- (c) activities that may cause or result in soil erosion or the denudation or degradation of the environment in the area;
- (d) activities that may result in the destruction of or damage to the cultural heritage, including archaeological activity or the removal or damage of any object which may be considered as an archaeological object;
- (e) the discarding of litter and the disposal or escape of wastes, pollutants or other substances that may have adverse impacts on the protected area or endanger persons using the area;
- (f) tourist or recreational activities, including the imposition of concession and user fees in connection with the conduct of business activities in and the entry of persons into the area;
- (g) any other activities which are not compatible with the objectives for which the protected area was established.

(3) Rules made under this section must be approved by the Governor in Council, published in the *Gazette* and given such other publicity as may be suitable to bring them to the attention of the public in general and users of the area in particular.

Activities in buffer zones

33. The Director or the competent body which is responsible for the management of a protected area, as the case may be, must collaborate with the Chief Physical Planner, the Director of Agriculture and other relevant persons and authorities to ensure that activities permitted or carried out in a buffer zone are compatible with achieving the purposes of the protected area.

Revocation and variation of designation orders

34. (1) For the avoidance of doubt, it is declared that the Governor in Council may, by order published in the *Gazette*, revoke or vary the designation of a protected area and a variation may include an amendment to the boundary or a change in the classification of the protected area.

(2) In a making a recommendation for the revocation or variation of any designation order, for approval by the Council and submission to the Governor in Council, the Director must include:

- (a) a justification for de-classifying the protected area or part thereof;
- (b) an assessment of the impact of de-classifying the specified area on the ecosystems, species, and local communities likely to be affected by the de-classification;

- (c) a description of any mitigation measures that may need to be taken as a result of de-classifying the specified area;
- (d) an account of the steps taken to solicit comments from the public and, if responsibility for the management of the area has been delegated to a competent body, that body; and
- (e) a compilation of the comments received, if any.

(3) The provisions of section 26 with respect to notice of intention to designate a protected area apply, with any modifications necessary, to any proposal to revoke or vary the designation of a protected area made under this section.

Restrictions on disposal of Crown land in protected areas

35. (1) Except where the Governor in Council 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 any land in a protected area.

(2) The Governor in Council may lease any Crown land or building in a protected area for the purpose of providing any public amenity, in accordance with the approved management plan for that area.

(3) Notwithstanding anything to the contrary in any other law, no right, title or interest in, to or over any Crown land in a protected area may be acquired by any person by prescription.

Restrictions on development in protected areas

36. (1) After the coming into force of this Act, no outline approval or permission for the development of Crown or private land within a protected area must be granted by the Planning and Development Authority pursuant to the Physical Planning Act, without the prior written consent of the Director or the competent body which is responsible for the management of a protected area, as the case may be, and if such consent is not granted, any such permission is null and void *ab initio*.

(2) The Director or the competent body which is responsible for the management of a protected area, as the case may be, may not refuse to grant consent pursuant to subsection (1) for a proposed development on private land in a protected area except where this is necessary in order to give effect to the approved management plan for the area.

(3) Notwithstanding anything to the contrary in the Physical Planning Act, every application for development permission in respect of the development of land within

a protected area must be accompanied by an environmental impact assessment of the proposed development.

(4) If it appears to the Director or the competent body responsible for the management of a protected area that any unauthorised development has been or is being carried out in a protected area, without prejudice to any other powers under this Act, the Director or the competent body responsible for the management of a protected area, as the case may be, may request the Planning and Development Authority to serve a notice of compliance pursuant to the Physical Planning Act.

Operations by statutory undertakers in protected areas

37. (1) Any statutory undertaker may continue to operate, manage and maintain any existing work or undertaking authorised by any Act, which is in existence before the coming into force of this Act, situated in a protected area.

(2) Notwithstanding the provisions of any other written law, after the coming into force of this Act, any statutory undertaker proposing to construct any new work or undertaking authorised by any Act, or extending any existing work or undertaking within an area designated as a protected area, must obtain the prior approval of the Council for the proposed work or undertaking.

(3) After the coming into force of this Act, a statutory undertaker may continue to exercise its statutory duties, powers and functions in any protected area but in the exercise of those duties, powers and functions it must comply with any directions given by the Director or the competent body which is responsible for the management of a protected area, as the case may be, for the purposes of conserving and managing the protected area.

PART VI

WATERSHED MANAGEMENT

Watershed Management Areas

38. (1) Where the Director is satisfied that special measures for the conservation of soil and the protection of water resources in any area are required in the public interest, on any of the grounds specified in subsection (2) or for any other purpose, the Director may recommend to the Council that the area be declared as a watershed management area.

(2) Without limiting the generality of subsection (1), the grounds on which a watershed management area may be declared include that:

- (a) the area requires conservation practices and management 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) the area requires conservation practices and management controls in order to maintain the soil or water resources in a productive state for agricultural development and the productivity or stability of surrounding areas;
- (c) the area is in a dangerous or unstable state above roadsides, along stream or river banks, or near residential or industrial areas; or
- (d) the water resources of the area are in a polluted condition which may be injurious to human health, animals or plants.

(3) On the recommendation of the Council, submitted through the Minister, the Governor in Council may by Order in the *Gazette* defining the area, declare any area as a watershed management area to which the provisions of this section apply.

(4) An Order declaring an area to be watershed management area must include:

- (a) a general description of the area and its boundaries; and
- (b) a general statement of the grounds on which or purposes for which the area has been declared.

(5) Within six months of the area being designated as a watershed management area, the Director, in collaboration with the Director of Agriculture, must prepare a watershed management plan for the area containing:

- (a) a general description of the natural resource features of the area and an assessment of conservation problems in the area;
- (b) a description of land tenure in the area, including the general distribution and parcel sizes of unalienated Crown land, lands leased from the Crown and private lands in the area;
- (c) an identification of the most critical areas for priority management attention and general management requirements; and
- (d) the recommended timeframe from implementing the management plan and human, financial and material resource requirements.

(6) Where the Director is of the opinion that interim measures are necessary to protect a watershed management area, the Director may serve a notice upon any

person to abate any activity in which that person is engaged which is damaging the area.

(7) A person who fails to comply with a notice served under subsection (6) commits an offence and is liable on summary conviction to a fine of [\$5000].

(8) Where the Director is of the opinion that any owner or occupier of agricultural land within a watershed management area is failing to fulfil their statutory responsibility to manage and farm the land so as to prevent erosion and the ruination of the soil, the Director may give notice to the Director of Agriculture that the owner or occupier of the land should be placed under a supervision order pursuant to the Agriculture Act.

(9) Where the grounds for declaring an area as a watershed management area no longer exist, the Governor in Council may by order in the *Gazette* revoke or vary the declaration and a variation may include an amendment to the boundary or a change in the measures to be taken for the conservation of the area.

Forestry Operations

39. (1) The Director must manage the 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) Subject to subsection (1), the Director may issue permits to fell, extract or remove timber or other forest produce from the Crown's forest estate, subject to such terms and conditions as the Director thinks fit.

(3) A permit granted pursuant to subsection (2) is valid for such period as is stated therein and is transferable only with the written permission of the Director.

(4) The Governor in Council may grant incentives to the owner of forested private land for the purpose of ensuring that it is managed in accordance with sustainable tropical forestry principles, guidelines and practices.

(5) The Crown may, with the approval of the Governor in Council, enter into agreements with the owners of forested private land for the management and control of the forests on such land by the Director.

(6) The Director, in collaboration with the Director of Agriculture, must promote the practice of silviculture and agro-forestry on marginal lands leased by the Crown for agriculture and which are not better suited for grazing or cultivation.

(7) The Director must plant and maintain trees in public places.

Fire prevention

40. (1) The Director, in collaboration with the Chief Fire Officer, must implement measures to prevent and suppress the occurrence of fires in forested areas, protected areas and watershed management areas.

(2) No person must engage in the production of charcoal in a forested area except in accordance with a permit issued by the Chief Fire Officer.

(3) No person must start a fire in a protected area, a watershed management area or a forested area except in accordance with a permit issued by the Chief Fire Officer.

(4) The Chief Fire Officer must not issue a permit under this section without the concurrence of the Director.

(5) A permit issued under this section is transferable only with the written permission of the Chief Fire Officer.

PART VII

POLLUTION CONTROL

Responsibility for pollution control

41. (1) The Minister responsible for health must perform the functions and duties and exercise the powers imposed or conferred on the Minister by this Part of the Act and all references in this Part to “the Minister” must be construed accordingly.

(2) Except as the Minister may otherwise direct, the Principal Environmental Health Officer must discharge the functions conferred on the Minister by this Act, and in so doing is deemed to be acting under the authority of the Minister.

(3) Unless otherwise provided, all permits, statutory notices and other documents authorised to be issued under this Part must be signed by the Principal Environmental Health Officer or by an officer to whom this duty is delegated by the Principal Environmental Health Officer by instrument in writing.

(4) The provisions of section 81 apply, with any modifications necessary, to the prosecution by the Principal Environmental Health Officer of any person under this Part.

Pollution Control Regulations

42. (1) The Governor in Council may by Regulations prescribe for matters required or permitted to be prescribed under this Part and make such other provision as is necessary or convenient for giving effect to this Part.

(2) Without prejudice to the generality of subsection (1), the Governor in Council must by such Regulations designate as a pollutant any substance, thing or man-made phenomenon which, in a specified quantity or concentration or condition, is likely to cause harm to human health or affect the quality of the environment.

(3) Regulations made under this section must be published in the *Gazette* and come into force on the date of publication.

Registration of existing sources of pollution

43. (1) On the coming into force of Regulations made under section 42, any person who carries on an existing activity or process that may cause or result in the production of a pollutant, on a continuous or intermittent basis, must give notice of that fact to the Principal Environmental Health Officer as soon thereafter as prescribed by the Regulations.

(2) After the coming into force of Regulations made under section 42, any person who proposes to commence any activity or process that may cause or result in the production of a pollutant, on a continuous or intermittent basis, must give notice of that fact to the Principal Environmental Health Officer forthwith.

(3) The Principal Environmental Health Officer must compile a register of sources of pollution, which must be open to inspection by the public at its office during ordinary business hours, on payment of the prescribed search fee, if any.

Pollution standards

44. (1) The Governor in Council may by Regulations prescribe different standards for the deposit, release or escape of pollutants on or into land, water or the air or within different geographical areas.

(2) Notwithstanding any law to the contrary, after the commencement of this Act, no person may deposit or release or allow the escape of pollutants into the environment in a quantity or concentration or condition in excess of the prescribed pollution standard applicable to the receiving environment, without a pollution permit issued by the Principal Environmental Health Officer under and in accordance with this Act.

(3) For the avoidance of doubt, it is declared that the release of a hazardous substance into the environment is absolutely prohibited.

Time to be allowed for compliance

45. If, on the coming into force of any Regulations made under this Part, any person is engaged in any existing activity or process that, on a continuous or intermittent basis, causes or results in the deposit or release of any pollutant into the environment in excess of the prescribed standard, the Principal Environmental Health Officer must allow that person a reasonable time to upgrade their plant or equipment to comply with the prescribed standard.

Liability for historical pollution

46. (1) If any part of the environment is found to have been polluted in breach of the provisions of any law in force before the coming into force of this Act, the Principal Environmental Health Officer may, by notice served on that person, require any person who the Principal Environmental Health Officer finds to have been solely or partly responsible for causing or allowing that pollution to take place, to take such measures to clean up or rehabilitate the environment as are specified in the notice.

(2) When the Principal Environmental Health Officer finds that more than one person was responsible for such pollution, liability for undertaking the clean up or rehabilitation measures required pursuant to subsection (1) must be shared between those persons on a *pro rata* basis.

(3) If any person fails or refuses to comply with a requirement imposed by the Principal Environmental Health Officer pursuant to subsection (1), within the period of time allowed for compliance specified in the notice, the Principal Environmental Health Officer may undertake the necessary clean up or rehabilitation measures, either directly or by employing contractors, and may recover the costs of so doing, or a proportional contribution to those costs, from that person as a civil debt in a court of competent jurisdiction.

(4) A person who the Principal Environmental Health Officer has found to be solely or partly responsible for pollution under this section may appeal against that finding to the High Court no later than 28 clear days after the date of service of the notice given under subsection (1).

Pollution permits

47. (1) The Principal Environmental Health Officer may by permit authorise the deposit or release of a pollutant on or into land, water or the air in quantities or concentrations in excess of the prescribed standard, subject to such conditions as the Principal Environmental Health Officer thinks fit, including the payment of such fees and charges as may be prescribed.

(2) In deciding whether to grant a permit pursuant to subsection (1), the Principal Environmental Health Officer may adopt and take into account ambient environmental standards and the cumulative impact on those standards of the grant of any pollution permit.

(3) The Principal Environmental Health Officer must compile and maintain a register of pollution permits that is open to inspection by the public at the office of the Ministry during ordinary business hours, on payment of the prescribed search fee, if any, and must provide members of the public with copies of entries in the register on payment of the cost of making copies.

Applications for pollution permits

48. (1) Any person who releases or proposes to release any pollutant into the environment in an amount or concentration or conditions in excess of the allowable standard must apply to the Principal Environmental Health Officer for a pollution permit in the manner prescribed by the Regulations.

(2) The Principal Environmental Health Officer may at any time give notice to a person who has failed to apply voluntarily for a pollution permit, requiring that person to immediately cease polluting the environment and to make an application for a pollution permit within 10 days of the date of service of the notice.

(3) An application for a pollution permit must be submitted to the Principal Environmental Health Officer at least 90 days before the date on which the applicant proposes to commence releasing any pollutant into the environment.

(4) An application for a pollution permit must be made in the prescribed form and must be accompanied by:

- (a) in the case of a point-source of pollution, such plans and other particulars as are necessary to describe the premises or plant or equipment from which the pollutant is to be released into the environment, identifying the point of release or, in the case of mobile plant and equipment the place at which it will be in operation;
- (b) in the case of a non-point source of pollution, such plans and other particulars as are necessary to describe the location and extent of the land or water on or over which the pollutant is to be released into the environment;
- (c) in any case where the pollutant to be released will result from a process or activity, a general description of that process or activity;
- (d) in any case where any other statutory consent is required for undertaking that process or activity, proof that the required consent has been obtained;

- (e) any proposals for the reduction, re-use, recycling or treatment of noise, wastes, effluents and emissions generated by that process or activity; and
- (f) particulars of the type, volume and rate of release of the pollutant into the environment.

(5) Every application submitted to the Principal Environmental Health Officer under this section must be accompanied by proof of payment of the application fee and proof of publication of the notice of intention to apply for a pollution permit publicised in accordance with section 49.

(6) If the information supplied by the applicant in support of the application is inadequate for the purposes of evaluating an application, the Principal Environmental Health Officer may in writing request the applicant to provide such other information as is reasonably required for evaluating the application and, in the event that such supplementary information is requested, the application will be treated for the purposes of section 50(1) as having been received on the date when the supplementary information is received by the Principal Environmental Health Officer.

(7) The applicant may identify any of the information provided to the Principal Environmental Health Officer in connection with an application as a trade secret or confidential business information and, if in the opinion of the Principal Environmental Health Officer the applicant has shown a reasonable basis for this claim, the Principal Environmental Health Officer must not release or disclose any such information to any other person.

(8) If the Principal Environmental Health Officer rejects a claim that information provided in connection with an application is a trade secret or confidential business information, the applicant may appeal in writing against that decision to the Tribunal within 21 days of the date of the decision, setting out the grounds upon which the appeal is made.

(9) When the Principal Environmental Health Officer rejects a claim that information provided in connection with an application is a trade secret or confidential business information, the Principal Environmental Health Officer must not release or disclose any such information to any other person until the time allowed for appealing to the Tribunal pursuant to subsection (8) has elapsed, without an appeal having been made, or the appeal has been determined.

Publicity for applications

49. (1) At least 14 days prior to making an application for a pollution permit, the applicant must give such publicity to his or her intention to make that application as may be suitable to bring it to the attention of the public in general and persons whose rights or interests may be affected by the grant of a pollution permit in particular:

- (a) stating:
- (i) the name of the applicant;
 - (ii) the location of the premises from which the pollutant is to be released;
 - (iii) the general nature of the process to be conducted on the premises giving rise to the pollution;
 - (iv) the pollutant to be released; and
 - (v) the receiving environmental medium into which the pollutant is to be released; and
- (b) advising members of the public of their right to make objections in writing against the application in accordance with subsection (2).

(2) When a notice has been publicised in accordance with subsection (1), any member of the public whose interests are likely to be affected by the grant of a pollution permit may, within 14 days of the date of application, make an objection in writing to the Principal Environmental Health Officer against the application, stating:

- (a) his or her name and address;
- (b) his or her interest in the matter; and
- (c) the nature and grounds of his or her objection to the application.

Determination of applications

50. (1) Within 60 days of receiving an application for a pollution permit, the Principal Environmental Health Officer must consider the application and either:

- (a) grant a pollution permit to the applicant, either unconditionally or subject to such conditions as it thinks fit; or
- (b) notify the applicant in writing that the application is refused, giving its reasons for refusal.

(2) In considering an application for a pollution permit or the renewal or transfer of a pollution permit, the Principal Environmental Health Officer must have regard to:

- (a) the applicable environmental quality standards, if any;

- (b) the background concentration of pollutants in the environment;
- (c) the desirability of preserving the quality of the environment at the existing level or restoring the quality of the environment to a higher level;
- (d) the desirability of ensuring that the best practicable available treatment or control of substances released into the environment is employed;
- (e) the combined effects of the proposed release of a pollutant into the environment and other existing releases into the environment; and
- (f) the desirability of making provision for future releases of pollutants into the environment.

(3) In considering an application for a pollution permit the Principal Environmental Health Officer must also consider any objection made in accordance with section 49(2) and may consult such other governmental organisations and persons as appears necessary for assessing the merits of the application and any objection to it.

(4) Where an application for a pollution permit or the renewal or transfer of a pollution permit is refused or granted subject to conditions by the Principal Environmental Health Officer, the applicant may, within 28 days from receipt of notice of the decision, appeal in writing against that decision to the Tribunal, setting out the grounds upon which the appeal is made.

Term of pollution permits

51. (1) Subject to the provisions of this Part with respect to the suspension, modification, revocation and surrender of pollution permits, a pollution permit continues in force for the period specified therein and for any period for which the permit is renewed under subsection (2).

(2) The Principal Environmental Health Officer may, on application of the permit holder made not later than 30 days before the expiry thereof, renew a pollution permit for a period not exceeding the period for which it was originally granted, but, when renewing a pollution permit, the Principal Environmental Health Officer may vary, delete or add to the conditions contained therein.

Transfer of pollution permits

52. (1) A pollution permit granted under this Part is not transferable by the permit holder to any other person without the prior consent in writing of the Principal Environmental Health Officer.

(2) Where a pollution permit has been transferred in breach of the provisions of subsection (1), the Principal Environmental Health Officer may suspend the permit until the requisite consent is granted.

(3) If, having regard to all the circumstances, the Principal Environmental Health Officer decides not to grant consent for the transfer of a pollution permit, the Principal Environmental Health Officer may revoke the permit pursuant to section 53(3)(c).

Modification, suspension, revocation and surrender of pollution permits

53. (1) If it appears to the Principal Environmental Health Officer that it is expedient, having regard to a change in circumstances, including but not limited to changes in environmental conditions or pollution control technology, that any pollution permit should be modified, the Principal Environmental Health Officer may by notice in writing served on the permit holder modify the permit to the extent that he or she thinks fit.

(2) A person who has incurred expenditure in carrying out work rendered abortive by the modification of a pollution permit under subsection (1), or has otherwise suffered loss or damage directly attributable to such modification, is entitled to adequate compensation from the Crown in respect of that expenditure, loss or damage.

(3) The Principal Environmental Health Officer may, by notice in writing served on the permit holder, suspend or revoke a pollution permit where the permit holder:

- (a) fails to pay any amount payable under this Act or the pollution permit;
- (b) fails to fulfil any of the conditions of the pollution permit; or
- (c) does not comply with the provisions of this Act or any regulations made hereunder or any other written law.

(4) Where the Principal Environmental Health Officer is satisfied that any such default may result in irremediable damage to or irreversible degradation of the environment, the Principal Environmental Health Officer may suspend the pollution permit forthwith, for a period not exceeding 60 days.

(5) The Principal Environmental Health Officer must not revoke a pollution permit on the ground of any such default unless the Principal Environmental Health Officer has:

- (a) by notice served on the permit holder, given not less than 30 days notice of intention to cancel the pollution permit on that ground;

- (b) in the notice, specified a reasonable date before which the permit holder may submit in writing any representation which the permit holder wishes the Principal Environmental Health Officer to consider; and
- (c) taken into account -
 - (i) any action taken by the permit holder to remedy such default or, where the default cannot be remedied, any action taken by the permit holder to prevent the recurrence of similar defaults; and
 - (ii) any representation submitted to the Principal Environmental Health Officer by the permit holder pursuant to paragraph (b).

(6) Where the Principal Environmental Health Officer decides to modify, suspend or revoke a pollution permit, the permit holder may, within 28 days from service of the notice of modification, suspension or revocation, as the case may be, appeal in writing against that decision to the Tribunal, setting out the grounds upon which the appeal is made.

(7) At any time when a pollution permit is in force, the permit holder may, by giving to the Principal Environmental Health Officer one month's prior notice in writing, surrender it, and upon surrender of the permit by the permit holder the Principal Environmental Health Officer must cancel it by instrument in writing.

(8) On the revocation or surrender of a pollution permit, the rights of the permit holder cease, but the cancellation of the pollution permit does not affect any liability incurred by the permit holder before the revocation or surrender and any legal proceedings that might have been commenced or continued against the permit holder may be commenced or continued, notwithstanding the revocation or surrender of the pollution permit, as if it had not been cancelled.

Pollution charges

54. (1) The holder of a pollution permit is liable for the payment of pollution charges with respect to the release of any pollutant into the environment.

(2) In the case of each pollution permit, the following pollution charges are payable, in the amount prescribed by the Regulations:

- (a) a pollution permit fee for every year during which the permit is in force, based on the costs to the Principal Environmental Health Officer of supervising permits granted to different categories of permit holders, paid annually in advance 15 days prior to the start of the year to which it relates; and

(b) a pollution levy, calculated on the basis of the amount of each pollutant released into the environment measured as specified by the Principal Environmental Health Officer, paid quarterly in arrears within 15 days after the end of the quarter to which the payment relates.

(3) All revenues from pollution charges are payable into the Fund.

(4) If the Principal Environmental Health Officer is satisfied that, while a pollution permit is in force, the permit holder has expended money on scientific research or on new plant or equipment designed or intended to reduce the release of pollutants into the environment, the Principal Environmental Health Officer may allow the permit holder to offset part or all of the costs of such expenditure against the amount of the pollution levy payable.

(5) When the Principal Environmental Health Officer rejects a claim for an offset allowance made pursuant to subsection (4), reasons must be given in writing for the decision, and the permit holder may appeal within 28 days of the date of the decision to the Tribunal in writing, setting out the grounds of appeal.

Hazardous substances

55. (1) The Governor in Council may by Regulations:

(a) designate specific substances as hazardous substances; and

(b) prescribe procedures for the safe storage, handling, use and disposal of such substances.

(2) Upon the coming into force of Regulations made under this section, any person who is engaged in carrying on an existing activity or process, or who proposes to commence and carry on an activity or process that involves the storage, handling, use or disposal of any hazardous substance must apply to the Principal Environmental Health Officer for a permit to do so.

(3) Any permit granted by the Principal Environmental Health Officer pursuant to subsection (2) may be granted subject to such terms and conditions as the Principal Environmental Health Officer thinks fit.

(4) The Principal Environmental Health Officer must compile and maintain a register of hazardous substance permits that is open to inspection by the public at the office of the Ministry during ordinary business hours, on payment of the prescribed search fee, if any, and must provide members of the public with copies of entries in the register, on payment of the cost of making copies.

Waste Management

56. (1) The Governor in Council may by Regulation establish appropriate standards and procedures for the handling of wastes (including the collection, transportation, temporary storage and transfer of wastes), the re-use and re-cycling of wastes, the treatment of wastes and the disposal of wastes into the environment, including separate provisions with respect to any wastes designated in the Regulations as hazardous wastes.

(2) Regulations made under subsection (1) may provide for:

(a) the grant by the Principal Environmental Health Officer of:

- (i) permits authorising any person to carry on activities relating to the handling of wastes, subject to such terms and conditions as the Principal Environmental Health Officer thinks fit;
- (ii) licences authorising the operation of any facility for the recycling or treatment of wastes or the disposal of wastes into the environment, including landfill or incineration operations, subject to such terms and conditions as the Principal Environmental Health Officer thinks fit;

(b) the clean-up of existing waste disposal sites, the monitoring of waste disposal operations and the aftercare of closed landfill sites; and

(c) the regulation or prohibition of:

- (i) the import or export of wastes;
- (ii) the disposal into the environment of any wastes suitable for reuse or recycling;
- (iii) any specific method of waste disposal; or
- (iv) the development of contaminated land.

(3) The Governor in Council may by order provide for the operation of compulsory deposit-refund schemes to promote the reuse or recycling of wastes.

Transboundary movement of wastes and hazardous substances

57. (1) Subject to the [Customs Act], no person must import into or land and unload in Montserrat, or load for export or export from Montserrat, any waste or hazardous substance, or any product or substance derived from any such waste or hazardous

substance, without approval granted by the Principal Environmental Health Officer in accordance with this section.

(2) An application for such approval shall be submitted to the Principal Environmental Health Officer in such form, giving such particulars and supported by such evidence as the Principal Environmental Health Officer determines, accompanied by the prescribed fee.

(3) The Principal Environmental Health Officer may refuse to grant such approval where, in the Principal Environmental Health Officer's opinion, this is reasonably required for the purpose of preventing any risk of pollution of the environment or harm to human health arising from any waste or hazardous substance being imported or exported.

(4) The Principal Environmental Health Officer may grant any such approval, subject to such terms and conditions as the Principal Environmental Health Officer thinks fit, in relation to individual consignments or a series of consignments to the same person, but not in relation to consignments or classes of consignments generally.

Spills and accidental releases

58. (1) The Principal Environmental Health Officer may require any person who owns or controls any premises, vehicle or vessel on which any pollutant or hazardous substance is stored, used or transported, to prepare a contingency plan to deal with any spill or accidental release of that pollutant or hazardous substance.

(2) Any contingency plan prepared pursuant to subsection (1) must set out the counter-measures to be adopted in the event of a spill or accidental release of the pollutant or hazardous substance and the steps to be taken to clean-up the environment afterwards and must be submitted to the Principal Environmental Health Officer for approval, with or without amendments, after consultation with the Director of Environment, the Director of Disaster Preparedness and Response and such other persons as the Principal Environmental Health Officer thinks fit.

(3) When any spill or accidental release of a pollutant or hazardous substance occurs, the person who owns or controls the premises, vehicle or vessel on which the incident takes place must immediately notify the Principal Environmental Health Officer, the Director of Environment and the Director of Disaster Preparedness and Response of the incident, implement the approved contingency plan, if any, and take and take such other measures as are necessary or expedient to minimize any resulting threat to human health or the environment.

(4) If, after investigating the incident, it appears to the Principal Environmental Health Officer that such action is necessary, the Ministry may undertake such emergency response measures as the Principal Environmental Health Officer thinks

necessary or expedient to protect human health and the environment, either directly or by coordinating the activities of the competent governmental and non-governmental organisations or by employing contractors, and may recover the costs of so doing from the person who owns or controls the premises, vehicle or vessel concerned, as a civil debt in the court of competent jurisdiction.

Environmental Auditing

59. The Governor in Council may by Regulations establish or adopt appropriate standards and procedures for the carrying out of environmental audits and set out the circumstances in or under which environmental audits must be carried out on any premises, the qualifications of persons by whom such audits may be carried out, and the measures that the Principal Environmental Health Officer may take with respect to the findings of such audits.

Performance standards

60. (1) The Governor in Council may by Regulations prescribe performance standards with respect to the generation and release into the environment of pollutants from mobile or immobile machines and equipment, including but not limited to automobiles, construction plant and equipment and home and garden appliances.

(2) In this section, the expression “home and garden appliances” includes but is not limited to electricity generators, refrigeration equipment, water-pumps, air-conditioning units, security alarms, brush-cutters and lawn-mowers.

(3) In Regulations made under this section a reasonable period of time must be allowed between the introduction of the standards and their enforcement to accommodate the upgrading or depreciation and replacement of existing machines and equipment.

(4) Upon the coming into force of Regulations made under this section, the importation into Montserrat of any machine or equipment that does not comply with the prescribed performance standards is prohibited.

PART VIII

MULTILATERAL ENVIRONMENTAL AGREEMENTS

Incorporation of international obligations into national law

61. (1) The multilateral environmental agreements specified in the Fifth Schedule have the force of law in Montserrat.

(2) The Governor in Council may make Regulations for the purpose of meeting Montserrat's obligations under any of the multilateral environmental agreements specified in the Fifth Schedule.

(3) Without limiting the generality of subsection (2), Regulations made under this section may prescribe specific offences under this Act and provide that any person who commits such an offence is liable:

(c) on summary conviction to a fine of not more than [...] dollars and imprisonment for [.....months]; or

(d) on conviction on indictment to a fine of not more than [...] dollars and imprisonment for [...] years.

(4) The Governor in Council may from time to time amend the Fifth Schedule by way of order subject to affirmative resolution of the Legislative Council and published in the *Gazette*.

Implementation of agreements

62. (1) Unless provision to the contrary is made by Regulations made under section 61(2), the Council functions as the national agency for the implementation of the multilateral environmental agreements specified in the Fifth Schedule.

(2) The Director must designate persons to issue certificates or permits, to prepare reports and to carry out any other duties or exercise any other powers required for the implementation of Montserrat's obligations under the multilateral environmental agreements specified in the Fifth Schedule.

PART IX

ENVIRONMENTAL TRUST FUND

Establishment and purposes of the Fund

63. (1) There is hereby established a fund called the Environmental Trust Fund which is vested in the Board.

(2) The purpose of the Fund is to provide stable, adequate, secure and sustainable funding to finance the management of the environment in Montserrat.

Board of Trustees of the Fund

64. (1) The Governor must appoint a Board of Trustees for the Fund, consisting of five members, as follows:

- (a) a Chairperson, appointed by the Governor acting in his or her own deliberate judgement from amongst outstanding persons with qualifications and experience in financial management, having an interest in the environment;
- (b) two persons appointed by the Governor after consultation with the Montserrat National Trust, who are representative of:
 - (i) local, regional or international environmental non-governmental organisations which are active in Montserrat; or
 - (ii) regional or international donor or lending organisations which provide resources to the Fund; and
- (c) the Financial Secretary and the Director of Environment, as representatives of the Government of Montserrat.

(2) The Chairperson and other members of the Board hold office for such period, not exceeding three years in the first instance, under such terms and conditions of service as the Governor may fix in the instrument of appointment, but are eligible for reappointment.

(3) A member of the Board may at any time resign from office by giving notice in writing to the Governor, but a member who is absent without leave for three consecutive meetings of the Board is deemed to have resigned from office.

(4) A member of the Board may be removed from office at any time if he or she is declared bankrupt or for disability, neglect of duty or misconduct, proved to the satisfaction of the Governor.

(5) The appointment of any member of the Board and the termination of office of any member, whether by death, resignation, removal, lapse of time or otherwise, must be published in the *Gazette*.

Status, functions and powers of the Board

65. (1) The Board is a body corporate, with perpetual succession and a common seal, and is capable of acquiring, holding and disposing of real and personal property, and of suing and being sued, and of doing and suffering all things that bodies corporate may lawfully do and suffer.

(2) The functions of the Board are to -

- (a) collect all revenue payable into the Fund or ensure that such revenue is collected promptly and efficiently and paid over into the Fund;

- (b) allocate monies amongst beneficiaries of the Fund for purposes which are eligible for funding in accordance with the provisions of the Sixth Schedule;
- (c) ensure that monies disbursed to beneficiaries of the Fund are utilised properly and efficiently for the purposes for which they have been allocated;
- (d) generally manage the Fund in accordance with the provisions of this Act and any other laws in force; and
- (e) perform any other function consistent with its functions under this Act that the Governor may direct.

Meetings of the Board

66. (1) The Board must meet at least once in each quarter of the calendar year, at such times and in such places as the Board considers necessary or expedient for the efficient performance of its functions.

(2) The Chairperson may at any time call a special meeting of the Board and must call such a meeting within seven days of the receipt of a request for a special meeting addressed to the Chairperson and signed by any three members of the Board.

(3) A quorum for an ordinary or special meeting of the Board consists of any three members, but if a member is disqualified from taking part in the deliberations and decision of the Board in respect of any matter pursuant to subsection (6), the attendance of that member must be disregarded for the purposes of constituting a quorum for deliberation on and deciding that matter.

(4) If for any reason the Chairperson is unable to preside at a meeting of the Board, the members present may elect another member to preside over that meeting.

(5) Decisions of the Board must be adopted by a majority of the votes of the members present, but in the case of an equality of votes on any matter, the person presiding at the meeting has a second or casting vote in respect of that matter.

(6) A member of the Board must at the commencement of a meeting inform the Chairperson of any matter on the agenda for the meeting in which he or she has, directly or indirectly, personally or by his or her spouse or domestic partner, parent, child, brother or sister, business associate, company or organisation, any pecuniary or business interest, and that member must vacate the meeting room upon the relevant matter coming up for discussion and decision, and the fact that the member who has such an interest has left the room must be noted in the minutes of the meeting.

(7) The validity of any proceedings of the Board is not affected by any vacancy in its membership or by any defect in the appointment of any of its members.

(8) The Board may co-opt any person to assist it in dealing with any matter, if it is satisfied that the person has qualifications and experience that are likely to help the Board, and any person so co-opted is entitled to take part in the proceedings of the Board regarding that matter, but may not vote and must take no part in any other proceedings of the Board.

(9) Minutes in proper form of every meeting of the Board must be kept by the Corporate Secretary, confirmed by the members at the next subsequent meeting of the Board and signed by the Chairperson and Corporate Secretary once confirmed.

(10) Subject to subsection (11), a decision of the Board is valid even though a meeting of the Board was not convened, if -

(a) proper notice of the proposed decision was given to all the members of the Board; and

(b) the decision is assented to by letter, telegram, facsimile, electronic mail transmission or similar means, by a majority of the members of the Board.

(11) If any member has assented to a decision of the Board made under subsection (10) by telegram, facsimile, electronic mail transmission or similar means, the member's assent must be subsequently authenticated by his or her signature, as soon as may be practicable.

(12) Subject to the foregoing, the Board may regulate its own procedure.

Staff of the Board

67. (1) The Board may employ at such remuneration and on such other terms and conditions as it thinks fit, including the payment of pensions, gratuities or other like benefits by reference to their service, such officers and employees as the Board considers necessary for the purposes of carrying out its functions.

(2) The Board must employ a suitably qualified person to perform the duties of Corporate Secretary to the Board.

Resources of the Fund

68. The resources of the Fund consist of:

(a) such amounts as may be appropriated annually or for special purposes by Parliament for the use and operations of the Fund;

- (b) such sums as may be collected pursuant to this Act or any other written law which provides for the imposition and collection of a tax, charge or fee payable into the Fund;
- (c) such amounts as may be provided to the Fund by foreign states, or regional or international organisations or lending agencies, to further the objects and purposes of this Act;
- (d) such monies earned or accruing from any investment made pursuant to section 70; and
- (e) any other sums or amounts to which the Fund may make a lawful claim.

Use of Fund monies

69. (1) Subject to subsection (2), the Board is authorised to utilise any monies standing to the credit of the Fund to defray:

- (a) all the expenditure incurred by the Council in carrying out its functions;
- (b) all the expenses incurred by the Board in carrying out its functions under this Act, including the remuneration of members and staff of the Board;
- (c) all the expenditure incurred by the Board with respect to grants to beneficiaries for the purposes set out in the Sixth Schedule; and
- (d) all other liabilities properly incurred by the Board.

(2) Contributions to the Fund may be designated for specific purposes or made subject to specific conditions, in which case such contributions must be preserved and utilised solely for the designated purpose.

Investment of Fund Monies

70. All monies comprised in the Fund not required immediately to defray the expenses and liabilities provided for by section 69 may be invested by the Board from time to time in securities approved generally by the Governor in Council.

Exemption from taxes

71. The Fund and the Board are exempt from the payment of any stamp duty, customs duty, value added tax, motor vehicle tax, fee, charge assessment, levy, impost or other tax whatsoever, on any income, expenditure or asset of the Fund or the Board.

Rules for operating the Fund

72. For the purpose of regulating and controlling the operation of the Fund, the Board may make Rules with respect to:

- (a) the bank into which revenues of the Fund are to be paid and the designation of any such bank account;
- (b) the method to be adopted in making payments out of the Fund; and
- (c) generally as to matters necessary for the proper keeping and control of the Fund.

Accounts and audit

73. (1) The Board must keep proper accounts and records with respect to the Fund, in accordance with generally accepted accounting practices, of all monies received and expended and record the matters in respect of which such sums were received and expended.

(2) The accounts of the Fund must be audited annually by independent auditors appointed by the Board, with the approval of the Governor in Council.

(3) The members and staff of the Board must grant to any auditor appointed to audit the accounts of the Fund access to all books, documents, cash and securities of the Fund and must give to the auditor on request all such information as may be within their knowledge in relation to the operations of the Fund.

(4) An auditor appointed under this section has the power to summon and examine all persons whom the auditor thinks fit to examine for the purposes of obtaining information in connection with the examination and audit of the accounts of the Fund and respecting all other matters and things whatever necessary for the due performance of the functions vested in the auditor.

(5) Any person summoned pursuant to subsection (4) who, without reasonable excuse, does not obey the summons is liable on summary conviction to a fine of [.....] dollars, or, in default of payment, to imprisonment for one month.

Annual reports

74. (1) The financial year of the Fund is January to December.

(2) Not later than three months after the end of each financial year, the Board must submit to the Governor a report containing:

- (a) a written statement on the activities of the Board throughout the preceding financial year; and
 - (b) the auditor's report on the accounts of the Fund audited in accordance with section 49.
- (3) The Governor must cause a copy of every such annual report of the Board to be laid in the Legislative Council.

PART X

MISCELLANEOUS

Administrative Appeals

75. (1) Where provision is made by this Act for an appeal against an administrative decision, every such appeal must be made to the Tribunal established by section 56 of the Physical Planning Act.

(2) The provisions of Part VII of the Physical Planning Act apply, with any modifications necessary, to appeals to the Tribunal under this Act.

Powers of entry, search and seizure

76. (1) An authorised officer may at any reasonable time enter any premises or into any vehicle or on to any vessel for the purposes of carrying out any provision or requirement of this Act or any Regulations made under this Act.

(2) A person authorised under subsection (1) to enter any premises must, if so required by the owner or occupier of the premises, produce evidence of his or her authority before entering, and is not entitled to admission as of right to any premises which is occupied, unless twenty-four hours notice of intended entry is given to the occupier.

(3) If the Director or the Principal Public Health Officer, as the case may be, has reason to believe that a contravention of the provisions of the Act or any Regulations made under this Act has occurred or is about to occur, and the circumstances are such that giving notice of the intended entry would defeat the purpose for which entry is sought, any authorised officer may enter any premises under a warrant issued by a Magistrate.

(4) In the course of any entry under this section, the authorised officer may carry out any inspection or survey, seize any equipment or article being used in the commission of an offence, review and copy any documents or other records, take

photographs or other audio or visual recordings, and take samples of air, water, soil or other material found on or in the premises, vehicle or vessel.

(5) Any person who obstructs an authorised officer acting in the exercise of his or her power under this section is liable on summary conviction a fine of [.....] dollars and [.....] months imprisonment.

Sampling and testing

77. (1) When a sample is taken pursuant to section 76(4), the person taking the sample must:

- (a) notify the person in charge of the premises, vehicle or vessel from which the sample was obtained of his or her 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 such manner as the nature of the sample permits;
- (c) deliver one of the parts to the person in charge of the premises, vehicle or vessel 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) Every sample taken in accordance with subsection (1) must be submitted to a designated scientific laboratory for analysis or examination in accordance with accepted forensic procedures.

Scientific Evidence

78. (1) The Governor in Council must 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 certificate and of the correctness of the results of the analysis or examination.

(3) A certificate must not be admitted into evidence under subsection (2) in a proceeding for an offence under this Act unless the defendant 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 against this Act, the defendant cannot adduce evidence in rebuttal of a certificate issued by a designated scientific laboratory in relation to any matter of which the certificate is evidence unless, within 14 days after a copy of the certificate is 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 such rebuttal evidence.

Service of documents

79. (1) Subject to the provisions of this section, any notice or other document required or authorised to be served under this Act, or under any regulation, order, direction or other instrument in writing 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; or
 - (ii) in a case where an address for service has been furnished 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 such means of substituted service as are recognised or authorised by the Rules of Court; and
- (b) in the case of a body corporate, by serving it in accordance with the process for effecting service on a company incorporated under the Companies Act.

(2) Where the Notice or other document is required or authorised to be served on any person as having an interest in any land, and the name of that person cannot be ascertained after reasonable enquiry, or as an owner or occupier of the premises, the Notice or other 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
- (b) affixed conspicuously to some building or fixed object on those premises.

(3) Where a notice or other document to be served under this Act 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.

Offences

80. (1) No person must contravene any provision of this Act or of any regulations or orders, or the terms and conditions of any permit or other documentary authorisation granted or agreement made, under this Act.

(2) Unless a different or other penalty or punishment is specifically prescribed, a person who contravenes subsection (1) is guilty of an offence against this Act and is liable on summary conviction to:

- (a) a fine of [...] dollars and imprisonment for [...] months imprisonment for a first offence; or
- (b) to a fine of [...] dollars or imprisonment for [...] months for a second or further offence; and
- (c) in the case of a continuing offence, to a further penalty of [...] dollars for each day during which the offence continues.

(3) In addition to any penalty which the court may impose pursuant to subsection (2), the court may also order a person convicted of an offence under this Act to:

- (a) remedy any environmental condition or damage to the environment arising out of the offence and specify a date by or before which such remedial activities must be completed; and
- (b) pay compensation to the Crown for any economic benefit gained or any amount of money saved by them as a result of contravention of this Act.

(4) For the avoidance of doubt it is declared that all fines and compensation payable to the Crown with respect to the commission of offences under this Act are payable into the Consolidated Fund.

Prosecution of offences

81. (1) The Director or any other authorised officer may summon before the courts and prosecute any person reasonably suspected of the commission of any offence against this Act, whether punishable on summary conviction or indictment.

(2) For the avoidance of doubt, it is declared that the power conferred on the Director and authorised officers by subsection (1) is in addition to and not in substitution for any power conferred by law on the Attorney General.

(3) In the conduct of any proceedings pursuant to subsection (1), the Director or authorised officer may be assisted or represented by an Attorney-at-Law.

Private party actions

82. (1) Any person who is aggrieved by a violation of this Act may, with the leave of the court, institute proceedings in a court of competent jurisdiction against any other person who he or she reasonably suspects is responsible for that violation.

(2) The court may grant leave to institute proceedings pursuant to subsection (1) to any person or group of persons who has a specific interest in the claimed violation of the Act or any other person or group of persons who can satisfy the court that the proceedings are justifiable in the public interest.

(3) In any proceedings brought under this section, the burden of proof is on the person who institutes the proceedings.

(4) In the event that the court awards costs to the person against whom the proceedings are brought, the person who instituted the proceedings is liable for payment of the costs awarded.

(5) The Attorney General may intervene in any proceedings instituted by any person under this section, as of right.

Liability of company officers

83. (1) When an act or omission that is offence under this Act or any Regulations made under this Act has been committed by a company incorporated under the Companies Act, any individual who was at the material time a director or officer of that company may be found personally liable for that offence, in addition to or in substitution for any liability to which the company is subject, if that act or omission was done with his or her knowledge, consent or acquiescence, or if he or she did not exercise reasonable diligence to prevent the commission of that offence.

(2) In any proceedings against a director or officer of a company pursuant to subsection (1), the onus of proving that the offence was committed without his or her knowledge, consent or acquiescence or despite the exercise of reasonable diligence on his or her part is on the accused.

Reservation of civil remedies

84. 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 under this Act.

Penalties under the Act not substituted for others

85. Nothing in this Act must be construed to prevent anyone being prosecuted under any other law for an act or omission that constitutes an offence under this Act or Regulations made under this Act, or from being liable under that other law to a higher punishment or penalty than is provided by this Act, provided that no one must be punished twice for the same offence.

Regulations

86. (1) The Governor in Council may make regulations, subject to negative resolution, for giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Governor in Council may make regulations for:

- (a) the form of any application, notice or other document required to be made, issued or served under this Act;
- (b) the payment of fees or any other charges payable under this Act;
- (c) the payment of any compensation payable to persons other than the Crown under this Act and the manner of applying for such compensation;
- (d) the amendment of the Schedules to this Act; and
- (e) prescribing any thing required by this Act to be prescribed.

(3) Any regulations made under this Act may prescribe specific offences and provide that any person who commits such an offence is liable:

- (a) on summary conviction to a fine of not more than [...] and, if the offence is a continuing offence, to a further fine of [...] for each day during which the offence continues, and to imprisonment for [...] months; or
- (b) on conviction on indictment to a fine of not more than [...] and, if the offence is a continuing offence, to a further fine of [...] for each day during which the offence continues, and to imprisonment for [...] months.

(4) Any Regulations made under this Act must be published in the *Gazette* and come into force on the date of publication.

Fees and charges

87. Any fees payable with respect to any application made or permit or other documentary authorisation granted or other charges payable pursuant to this Act or the Regulations are to be paid into the Fund.

Acts done in good faith

88. No person authorised by or under this Act to carry out any function or exercise any power or perform any duty may be held personally liable in any court for or in respect of any act or matter done, or omitted to be done, in good faith in the exercise or discharge of that function or power or duty.

Repeals, savings and amendments

89. (1) The Forestry, Wildlife, National Parks and Protected Areas Act, the Convention on Migratory Species of Wild Animals Act and the Endangered Animals and Plants Act are hereby repealed.

(2) Notwithstanding the repeal of the Forestry, Wildlife, National Parks and Protected Areas Act, the Forest Reserve Order, the Protected Forest Order, the Wildlife Reserve Order, and the Conservation Area Order, made under that Act continue to have effect on the coming into force of this Act, until revoked or amended by an order made pursuant to section 34 of this Act, and anything done or omitted after the repeal of the Forestry, Wildlife, National Parks and Protected Areas Act which would have constituted an offence if that Act had remained in force constitutes an offence under that Act and is punishable accordingly.

(2) In so far as anything done under the Forestry, Wildlife, National Parks and Protected Areas Act and the Endangered Animals and Plants Act, could have been done under a corresponding provision of this Act or Regulations made under this Act, it is not invalidated by the repeal but has effect as if done under that provision.

(3) Where any written law or document refers expressly or by implication to the Forestry, Wildlife, National Parks and Protected Areas Act, the reference must 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 Forestry, Wildlife, National Parks and Protected Areas or offences committed against the Act may be continued and completed:

(a) if the proceeding has been partly or wholly heard, as if the former Act were still in force; and

(b) in all other cases, as if the proceeding had been commenced under this Act.

(3) The provisions of the Acts mentioned in the first column of the Seventh Schedule are amended in the manner or repealed to the extent set out in the second column.

Act binds the Crown

90. This Act binds the Crown.

SCHEDULES

FIRST SCHEDULE

PARTIALLY PROTECTED SPECIES

[List of animals that may be hunted, subject to the Regulations]

SECOND SCHEDULE

UNPROTECTED SPECIES

[List of animals and plants that may be eradicated]

THIRD SCHEDULE

THREATENED AND ENDANGERED SPECIES

Part I

Threatened Species

[List of animals and plants that are threatened]

Part II

Endangered Species

[List of animals and plants that are endangered]

FOURTH SCHEDULE

CATEGORIES OF PROTECTED AREAS

Category		Definition
I	Strict Nature Reserve	Protected area managed mainly for scientific purposes: An area of Crown and/or private land or water or both land and water possessing some outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring.
II	National Park	Protected area managed mainly for ecosystem protection and recreation: An area of Crown and/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, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.
III	Conservation Area	Protected area managed mainly for conservation through management intervention: An area of Crown and/or private land or water or both land and water subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or meet the requirements of specific species.
IV	Heritage Site	Protected area managed mainly for the conservation of specific natural or cultural features: An area of Crown and/or private land or water or both land and water containing one or more specific natural and/or cultural heritage feature which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.

FIFTH SCHEDULE

MULTILATERAL ENVIRONMENTAL AGREEMENTS

1. The Convention on the International Trade in Endangered Species of Wild Fauna and Flora (1973)
2. The Convention on the Conservation of Migratory Species of Wild Animals (1979).

SIXTH SCHEDULE

PURPOSES FOR WHICH TRUST FUNDS MAY BE GRANTED

1. The Board may from the Fund issue grants to agencies of the Government of Montserrat or to non-governmental organisations, including but not limited to non-profit organisations, for the purposes of:

- (a) Training, including:
 - (i) on or off the job training for professional, technical and other permanent or temporary staff of agencies of the Government of Montserrat engaged in conservation and environmental management activities;
 - (ii) training for members or employees of non-governmental organisations and community groups engaged in conservation and environmental management activities;
 - (iii) formal post-secondary training and education of [nationals] of Montserrat in areas related to the objects and purposes of this Act at institutions of higher learning outside of Montserrat; and
 - (iv) the development of in-country professional and technical training capability at institutions of higher learning within Montserrat.
- (b) Environmental Education and Awareness Activities, including:
 - (i) environmental education and awareness projects and programmes carried out directly in schools and communities within Montserrat; and
 - (ii) environmental education and awareness campaigns carried out indirectly by means of television and radio programmes, posters and leaflets, newspapers, the internet and other media.
- (c) Policy Studies, Consultations and Workshops related to the objects and purposes of this Act.
- (d) Research, including:
 - (i) resource inventories and assessments;
 - (ii) environmental monitoring programmes;
 - (iii) other scientific investigations;

- (iv) socio-economic studies; and
- (v) ecotourism market research.
- (e) Natural and Heritage Conservation Planning, including:
 - (i) the preparation of protected area management plans; and
 - (ii) the preparation of other environmental management and conservation programmes and projects.
- (f) Institutional Support, including:
 - (i) infrastructure, capital equipment and other non-recurrent expenses of agencies of the Government of Montserrat;
 - (ii) infrastructure, capital equipment and non-recurrent expenses of non-governmental organisations;
 - (iii) recurrent expenses of non-governmental organisations, other than salaries and wages of permanent staff.
- (g) Evaluation of Environmental Management Activities, including the evaluation of projects funded by grants from the Fund.
- (h) Technical Assistance in relation to all the foregoing purposes.

2. Monies from the Fund may not be used to finance:

- (a) Salaries and wages for established staff of agencies of the Government of Montserrat.
- (b) Other recurrent expenses of agencies of the Government of Montserrat.
- (c) Salaries and wages of permanent staff of non-governmental organisations.

SEVENTH SCHEDULE

CONSEQUENTIAL AMENDMENTS

ENACTMENT	AMENDMENTS	
Physical Planning Act,	1	Section 34 is repealed.

Montserrat Conservation and Environmental Management Bill 2007

Cap.8:03	2	In section 56(1) the words “and Environmental” are inserted between the words “Physical Planning” and the words “(Appeals) Tribunal”.
	3	In section 56(2) the words “physical planning and environmental” are substituted for the words “building and planning” before the word “matters”.
<u>Fisheries Act, Cap.9:01</u>	1	In section 2, the following definition is inserted in the correct alphabetical order: “Council” means the National Environment and Conservation Council established by the Conservation and Environmental Management Act; “Fund” means the Environmental Trust Fund established by the Conservation and Environmental Management Act;
	2	The term “Council” is substituted for the term “Committee” wherever it appears in the Act.
	3	Sections 3 and 4 and sections 59 to 65 inclusive are repealed.
	4	In section 66, the words “Fisheries Deposit Account” are deleted and the word “Fund” is substituted.
<u>Agriculture Act, Cap.9:08</u>	1	In section 2, the definitions of the terms “Authority” and “Commissioner” are deleted and the following definitions are inserted, in the correct alphabetical order: “Council” means the National Environment and Conservation Council established by the Conservation and Environmental Management Act; “Director” means the Director of Agriculture; “Tribunal” means the Physical Planning and Environmental (Appeals) Tribunal established by the Physical Planning Act.
	2	The word “Director” is substituted for the words “Agricultural Lands Commissioner” and the word “Commissioner” wherever they appear in the Act.
	3	In section 6, the word “Council” is substituted for the word “Authority” wherever it appears in subsection (2) and subsection (3) is deleted.
	4	In section 10, the word “Tribunal” is substituted for the word “Authority” wherever it appears.

Montserrat Conservation and Environmental Management Bill 2007

	5	Sections 11 and 12 are repealed.
	6	Section 13 is deleted and the following provision is substituted: “ 13. (1) Any person aggrieved by a decision of the Director under this Act may appeal to the Tribunal against that decision. (2) The provisions of Part VII of the Physical Planning Act apply, with any modifications necessary, to appeals to the Tribunal under this Act.”