

PROTECTED AREAS SYSTEM PLAN

LEGAL FRAMEWORK

FINAL REPORT

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LIST OF ABBREVIATIONS

BJCMN	Blue and John Crow Mountains National Park
CDB	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species.
EFJ	Environmental Foundation of Jamaica
GOJ	Government of Jamaica
IUCN	World Conservation Union International Union for the Conservation of Nature
JCDT	Jamaica Conservation and Development Trust
IMO	International Maritime Organization
LME	Local Management Entity
NEPA	National Environment and Planning Agency
NRCA	Natural Resources Conservation Authority
NCRPS	Negril Coral Reef Preservation Society
RAMSAR	Convention on Wetlands of International Importance Especially as Waterfowl Habitats
SPAW	Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean.
UDC	Urban Development Corporation
UNCLOS	Law of the Sea Convention
USAID	United States Agency for International Development
WTO	World Trade Organization

TABLE OF CONTENTS

1.0	Background	3
2.0	Protected Areas System Categories	6
3.0	Profiles of Existing Protected Areas	8
4.0	Establishing Protected Areas	15
5.0	Policies Affecting Protected Areas	17
6.0	Institutional Framework For Protected Areas Management	24
7.0	Existing Legislation Related to Protected Areas	28
8.0	Pending Legislation Relating to Protected Areas	43
9.0	Protected Areas: Implementing International Agreements	48
10.0	Key Legal Issues Affecting Protected Areas	63
11.0	Incentives for Voluntary Conservation	69
12.0	Summary and Recommendations	75
	Bibliography	82
Appendix 1:	International/Regional Agreements to which Jamaica is a party	84
Appendix 2:	List of persons interviewed	85
Appendix 3:	Government and Other Agencies	87
Appendix 4:	Model Delegation Agreements	90
Appendix 5:	Declared Protected Areas	99

1.0 BACKGROUND

The principle of protection of natural areas was addressed at an early date in various Acts, including the Morant and Pedro Cays Act (1904); Forest Act (1937), the Wild Life Protection Act (1945); Beach Control Act (1956); and the Watershed Protection Act (1963).

The National Physical Plan (1970-1990) stated the need for: “an integrated regional system of a wide range of parks, recreational and conservation areas reflecting Jamaica’s social needs and natural environment”. The subsequent National Physical Plan (1978-1998) recommended that national parks be legally designated and priority areas selected for implementation.

A Provisional National Parks Committee was established under the Forest Department in 1970 for further identification of areas suitable for National Parks and to initiate their development. In 1972 the Committee continued to operate under the then Ministry of Mining and Natural Resources and, from it, emerged the National Parks Branch of the NRCD which was established in 1975.

Since 1976 several policy documents and proposals for park development have been prepared: the John Crow Mountains and Blue Mountains (1972); Portland Bight and Ridge (Cotterell et al. 1983); Canoe Valley (Harvey, 1986); Black River Lower Morass (NRCD, 1984); Negril (1984); Palisadoes and Port Royal Cays (Cotterell, 1980); and Cockpit Country (Cotterell, 1979). Two marine parks were declared under the Beach Control Act: Ocho Rios (1966) and Montego Bay (1973). The Jamaica National Heritage Trust Act (1985) provides for the declaration of protected national heritage sites and national monuments and many sites have been designated under this Act.

A major impetus to the development of protected areas was the USAID PARC project in 1989. Later during the 1990’s three significant steps were undertaken.

First, the NRCA Act of 1991 clearly gave this agency leadership responsibility for the establishment, coordination and management of a national protected areas system. Second, two pilot parks were established: Montego Bay Marine Park (1992) and Blue and John Crow Mountains National Park (1993), supported by the USAID-funded Protected Areas Resource Conservation (PARC) project, linked to this was a “Debt for Nature” exchange whereby the Jamaica National Parks Trust Fund was capitalized at \$J12.3 million dollars (1992) to help finance the emerging system. Third, in November, 1997, Cabinet approved the Policy for Jamaica’s System of Protected Areas, signifying consensus within the Government and the Jamaican population that the time was right to move ahead with a Protected Areas System This action recognized protected areas as a key component of the nation’s development strategy.

Furthermore, since 1990 NGOs and community groups lobbied government for protection of key areas and to take direct action to raise funds, inventory resources, evaluate boundaries, increase public awareness and, in many other ways, lay the

groundwork for additions to the system. Government continues to build the system by declaring additional areas, delegating management authority through partnerships with NGOs, and working on needed amendments to the NRCA Act.

This paper covers protected areas under the NRCA Act; forest reserves and other protected areas under the Forest Act, fish sanctuaries under the Fishing Industry Act and protected national heritage sites etc. under the Jamaica National Heritage Trust Act.

There has also been significant progress in the legislative and policy structure affecting protected areas since 1990. The following subsidiary legislation has been passed under the NRCA Act directly dealing with protected areas:

- Natural Resources Conservation (Ocho Rios Marine Park Protected Area) Order, 1999, PRR 78 of 1999.
- Natural Resources Conservation (Portland Bight-Protected Area) Order, 1999, PRR 38 of 1999.
- Natural Resources (Coral Spring Mountain Spring Protected Area) Order, 1998, PRR 54 of 1998.
- Natural Resources Conservation (Negril Marine Park) (Declaration) Order, 1998, PRR 12 of 1998.
- Natural Resources (Blue and John Crow Mountains National Park (User Fees) Regulations, 2003 PRR 59c of 2003.
- Natural Resources Conservation (Marine Parks) Regulations, 1992.
- Natural Resources (National Parks) Regulations, 1993.
- Natural Resources Conservation (Mason River Protected Area) Order, 2002
- Natural Resources Conservation (Negril Environmental Protection Area) (Declaration) Order 1977
- Natural Resources Conservation (Palisadoes – Port Royal Protected Area) Order, 1998
- Natural Resources Conservation (Marine Parks) (Amendment) Regulations, 2003, (PRR 70I of 2003).
- Natural Resources (National Parks) (Amendment) Regulations, 2003 (PRR 70H of 2003).

The Forest Act and Forest Regulations have also had significant impact on protected areas management. There are many declared forest reserves and other areas are currently under consideration to be declared as forest reserves.

There are still however, some major legislative issues to be resolved. The legislative framework for protected areas as envisaged in the White Paper on Protected Areas has not yet been enacted. While there have been many policies affecting protected areas there has been little legislative implementation. A key issue is the need to standardize and recognize the legislative overlaps in the NRCA Act, the Forest Act and Forest Regulations, and the Fishing Industry Act affecting protected areas.

There have also been changes in the institutional framework since the 1990's. The Natural Resources Conservation Authority has been replaced by an entity known as the National Environment and Planning Agency (NEPA), a merger between NRCA and the Town Planning Department and the Land Development and Utilization Commission. The Forestry Department has been revamped and its capacity substantially improved. The Fisheries Division is in the process of being restructured and retooled, and it is likely to play a more significant role in marine protected areas management.

JCDT was delegated the management of the Blue and John Crow Mountain National Park, and the Montego Bay Marine Parks Trust the management of the Montego Bay Marine Park, in 1996. Currently JCDT has an existing delegation instrument in respect of Blue and John Crow Mountains National Park, Negril Coral Reef Preservation Society in respect of Negril Marine Park and the Caribbean Coastal Area Foundation in respect of the Portland Bight Protected Area. A delegation instrument is proposed for UDC with respect to lands owned by UDC in the Portland Bight Protected. Area. A new delegation instrument needs to be formalized for the Montego Bay Marine Park.

There has also been a major development in the utilization of various legal mechanisms in the management of protected areas. NRCA has delegation agreements with three NGOs. Forestry Department has a co-management agreement with JCDT in respect of the Blue Mountain National Park. The Commissioner of Lands has leased lands (Blue & John Crown Mountains) to the NRCA and NRCA has in turn executed a sublease to JCDT.

Jamaica National Heritage Trust utilizes a wide range of legal instruments in dealing with its various historic sites. These include leases (eg. Mason River with Institute of Jamaica, Firefly leased to Chris Blackwell); Management agreement eg. Agreement with a community group to manage Rio Nuevo; memorandum of understanding regarding Downtown Kingston restoration; co-management Agreement for Palisadoes Protected area (in development) with various parties including UDC, NEPA, JDF.

The passage of the NRCA Act (1991) gave a clear mandate to the NRCA to lead efforts to conserve and protect the country's environment, as well as the power to establish the necessary control mechanisms (policies, standards, regulations). The Forest Act (1996) brought this legislation for crucial resources up-to-date, broadening the traditional scope of forest management to include conservation of the island's natural biodiversity, watershed protection and tourism. The pending NEPA Act and the Fisheries Act should complete for the time being the legislative structure for protected areas though additional regulations will be needed particularly in regard to protected areas under section 5 (1) (b) of the NRCA Act.

2.0 PROTECTED AREAS SYSTEM CATEGORIES

A. Existing Policy Framework

Protected areas established under the authority of NRCA make up the core of Jamaica's protected areas system. Among areas authorized in the Natural Resources Conservation Authority Act of 1991 are National and Marine Parks, Protected Areas, and Environmental Protection Areas. The national system also encompasses areas established under other legislation such as the Wild Life Protection Act (Game Sanctuaries, Game Reserves), the Fishing Industry Act (Fish Sanctuaries), the Forest Act (Forest Reserves), the Beach Control Act (Protected Areas), and the Jamaica National Heritage Trust Act (National Monuments, Protected National Heritage Sites).

Six categories of protected areas were approved in the National Protected Areas System Policy. These categories guide the development of an overall system that is comprehensive, logical, understandable, compatible with international protected area categories, and consistent with categories provided for in existing law. The order does not signify importance, as each category has different objectives.

2.1 National Nature Reserve/Wilderness Area (Equivalent to IUCN Category I)

These are lands or waters with unique biodiversity or other ecological values which require strict protection. Primary uses are for biodiversity/ecological protection, scientific research, and education. Restricted ecotourism may be appropriate as a secondary use.

2.2 National Park/Marine Park (Equivalent to IUCN Category II)

Parks may be natural areas with major biodiversity, environmental and tourism values. These lands and waters usually require intensive management, restraints on use and often controls on tourism development. Primary uses include biodiversity and ecological protection, tourism, recreation, scientific research, and education.

2.3 Natural Landmark/Natural Monument (Equivalent to IUCN Category III)

Sites, areas or features of exceptional natural, historical, cultural or aesthetic significance. Primary uses: preservation of natural and/or cultural values with compatible research, education, public access and public recreation.

2.4 Habitat/Species Management Area (Equivalent to IUCN Category IV)

Areas of land and/or sea managed mainly for conservation through management intervention to ensure the maintenance of habitats of specific species.

2.5 National Protected Landscape, or Seascape (Equivalent to IUCN Category V)

Protected landscapes are areas of land (often with coast and sea) where the interaction of people and nature over time has produced a distinct character with significant cultural, aesthetic, and ecological value. This category also includes areas with outstanding scenic or other natural values important for outdoor recreation. Lands in this category may be public or private. Primary uses may vary but include recreation and tourism, combined with protecting the area's quality by preventing incompatible development or use.

2.6 Managed Resource Protected Area (Equivalent to IUCN Category VI)

These are lands and waters with important natural resource and environmental values. They are managed primarily for sustainable consumptive uses of natural resources (e.g. forestry, fishing, water supply), combined with environmental conservation. Secondary uses include tourism, recreation and education.

B. Existing Law

The NRCA Act only refers to four categories of protected areas: National Parks, Marine Parks, Protected Areas and Environmental Protection Areas. Protected Areas and Environmental Protection Areas are not defined.

C. Proposal

It has also been suggested that the overarching category of Protected Areas should be the National Protected Area within which there would be three types:

- a. Marine Park
- b. National Park (terrestrial)
- c. Integrated Marine & terrestrial zones within these areas can be designated (a) nature reserve (b) habitat species/management area etc.

3.0 PROFILES OF EXISTING PROTECTED AREAS

There are a wide range of areas that are protected under various Acts. These include forest reserves and forest management areas under the Forest Act, National parks and protected areas under the NRCA Act, heritage sites under the Jamaica National Heritage Trust Act and fish sanctuaries under the Fishing Act.

The areas falling under the NRCA Act are dealt with under 3.1; these under the Jamaica National Heritage Trust Act are reviewed at 3.2; forest reserves and forest management areas are considered under 3.3 and the Fishing Industry Act are dealt with at 3.10.

3.1 Areas under NEPA

Montego Bay Marine Park	Negril Marine Park	Ocho Rios Marine Park	Blue & John Crow Mountains National Park
Area under the control of government	Area under the control of government	Area under the control of the government	Crown lands: forest reserve
Palisadoes – Port Royal Protected area	Coral Spring Mountain Spring	Portland Bight Protected Area	Negril Environmental Protection Area
Some private lands	Mainly private lands	Land area – some private lands and crown lands	Some private lands

3.1.1 Montego Bay Marine Park

The Montego Bay Marine Park (MBMP) was the first Marine Park designated in Jamaica under the NRCA Act. It was also the first where management authority was delegated by the NRCA to a local entity, the Montego Bay Marine Park Trust (1996). The park borders Jamaica’s second largest urban area and major arrival port for visitors by air and cruise ship. It includes the Bogue Islands Fish Sanctuary (established 1979). The park is part of a significant local fishing industry, a growing tourism industry (750,000 visitors annually to Montego Bay, yielding 33% of Jamaica’s tourism revenues), a major port, and playground for a vibrant regional center. It is at the mouth of the Montego River.

The Park was created in response to the deterioration of the marine environment. Montego Bay was Jamaica’s fastest growing city for many years. This unprecedented growth, while providing new jobs in tourism, construction, and manufacturing, attracted citizens from rural areas. Poor sanitation and inadequate water and waste collection systems impacted the marine environment. As far back as the 1970s, local divers and fishermen began to notice changes, in particular less and smaller fish. One response was the establishment of a marine “protected area” in 1974, under authority of the Beach Control Act. This remained a “paper park” however, due to lack of funding and a viable management structure. Still, divers, businesses, and residents continued to lobby for action. The Marine Park Action Committee, formed in 1986 by the Minister of Tourism, identified Montego Bay as a top priority. In 1989, the GOJ-USAID Protected Areas Resource Conservation (PARC) project was launched to establish pilot National Parks in

Jamaica. Montego Bay Marine Park was one of its five components, and was formally declared three years later.

3.1.2 Negril Marine Park

Until the 1960s Negril was a remote community of farmers and fishers, only accessible by boat. It had crystal clear waters and healthy reefs. Installation of basic infrastructure (electricity and roads) changed all that, and today Negril is the third largest tourism center in the country. From the onset, however, the importance of protecting the marine environment was recognized. And as far back as 1960 the establishment of a Negril Marine Park was recommended. However, for over 30 years no definitive action was taken and tourism development continued to transform the area. Signs of environmental degradation, especially the marine environment, became more evident. In 1989, a group of largely local scuba divers formed the Negril Coral Reef Preservation Society (NCRPS). It quickly grew to include fishers and members of the tourism and business communities.

The path to realizing the long held dream of a Marine Park took nearly ten years of environmental education, fundraising, lobbying, scientific research, monitoring, and planning. Key steps included the establishment of the Negril Area Environmental Protection Trust (NEPT) in 1994, a local umbrella NGO representing all stakeholders, and the preparation of a watershed based Environmental Protection Plan (1995), which documented stakeholder consensus for the creation of a Marine Park. It also resulted in the Negril and Green Island Watershed Areas being declared Jamaica's first Environmental Protection Area authorized by the NRCA Act.

In 1995, the NCRPS received funding from the European Union to move ahead with park start-up activities. A management plan was prepared, rangers and other core staff hired and trained, headquarters facilities established, and boats and other equipment secured. Discussions with stakeholders resulted in the establishment of management zones and a buoy marking system. The Negril Marine Park was formally declared by the Minister of the Environment in March, 1998.

Management programmes focus on relieving negative impacts such as pollution, over-fishing, environmentally unfriendly agricultural practices, and conflicts and potential accidents through effective implementation of the Marine Park zones. This is accomplished through regular patrols by rangers, an extensive education and awareness programme, and routine monitoring of water quality, reefs, and activities within the park.

3.1.3 Blue and John Crow Mountains National Park

The Blue and John Crow Mountains National Park was created out of Crown land which had been designated a Forest Reserve in 1954. The intent was to confer even greater protection to the valuable natural resources of this area. These include:

- high biological diversity, of global significance, with 7 distinct forest types, and a range of climate and vegetation from tropical to near temperate
- water supply, with 10 of Jamaica's 26 watershed management units originating in the Park, contributing to the quantity and quality of water for over a million people in four parishes,
- critical habitat for numerous unique and endangered plants and animals, including the Giant Swallowtail butterfly (*Papilio homerus*), the Jamaican hutia or coney (*Geocapromys brownii*), the Jamaican blackbird (*Nesopasar nigerrimus*), as well as endemic plants and animals yet to be identified and studied,
- recreational and tourism attractions, including the highest point in Jamaica (Blue Mountain peak, 2,256m (7,401ft), trails, waterfalls, caves, gardens for picnicking, scenic vistas, cabins, etc., serving an estimated 15,000 visitors annually, and
- resources for the rural population surrounding the Park, who traditionally depended on it for food, water, fuelwood, building materials, and medicinal herbs.

Historically, these lands have received some protection due to their steep, rugged topography, high elevation, poor access, and public ownership. It is estimated that 40% of the land within the Park is natural and undisturbed. Still, by the late 1980s, there was a greater awareness of the threats to this area (farming and forestry activities within and adjacent to Forest Reserves) and of the importance of its unique biological diversity to the world. Consequently, when the USAID-funded Protected Area Resources Conservation (PARC) project was implemented in 1989 to establish pilot National Parks, the Blue and John Crow Mountains were determined to be the highest priority for a terrestrial park.

3.1.4 Palisadoes-Port Royal Protected Area

The Palisadoes tombolo (sand spit) and the surrounding waters, cays and reefs include significant natural and cultural resources readily accessible to the country's major population center. These include:

- the "sunken city" which is that portion of Port Royal Town submerged during a 1692 earthquake, as well as over 300 sunken vessels in the area, recreation sites and attractions including Lime Cay, 7 public beaches, protected waters for boating, diving and other watersports activities, a scenic drive, and historic buildings,
- the tombolo itself, a partially natural/partially man-made land bridge to the airport and Port Royal Town, creating the protected waters of Kingston Harbour,

- fisheries resources which help support the more than 2000 registered fishermen in the Kingston Harbour area, and
- Port Royal Town, a world class historic site, one of three sites in Jamaica put forward by JNHT for listing as a World Cultural Heritage Site (with Seville and Spanish Town).

Port Royal mangroves and cays had been recognized as critical to fisheries management since the 1950s. They were declared a “protected area” under the Beach Control Act in 1967 (without any subsequent management). After the passage of the National Heritage Trust Act in 1985, numerous historic buildings were added to the National Register.

Recognizing its responsibility to lead efforts at protection and sustainable use of the area, the NRCA launched a planning study in 1997. Numerous community and stakeholder consultations, workshops, and discussions were held over a two year period. The resulting Environmental Policy Framework (EPF) documented consensus for the establishment of a Protected Area. Following declaration, the NRCA prepared a Management Plan for the Start-up Phase, 1999-2001.

Among the priorities that were identified during the start-up phase were: improving enforcement through more visible NRCA presence, delegating management authority to a Local Management Entity, developing a means of financing operations and management, formalizing key management partnerships (NRCA and Fisheries Division, Jamaica (National Heritage Trust, and TPDCo),

3.1.5 Coral Spring/Mountain Spring Protected Area

In Jamaica, only a small percentage of the once abundant dry limestone forest has escaped degradation. In the south, there are extensive undisturbed sections in Hellshire Hills and Portland Ridge area. The largest remaining intact dry limestone forest along the northern coastline is 166 hectares east of Falmouth in Trelawny. This area is referred to as Coral Spring/Mountain Spring. While both are categorized as “dry limestone forest”, differences in rainfall make each area quite distinct. Both are included in the National Protected Areas System.

The unique ecological values of the Coral Spring/Mountain Spring forest were noted in the reconnaissance surveys and EIA for the North Coast Highway Project. Its protection was a pre-condition for implementation of the project. While the area needs more detailed species inventories and ecological studies, preliminary field assessments reveal the following: thirty species of common higher plants; less than 5% of the trees have been cut, suggesting that little human disturbance has taken place; a very diverse bird community.

This protected area has significant potential to support nature based tourism activities including bird watching, nature study, hiking, and small eco-lodge development. There

are good views from the central ridge. Its diversity and undisturbed condition make it extremely valuable for scientific research and education, and as a “gene bank”. It may be possible to sustainably harvest some products from the forest such as medicinal plants, thatch, and cuttings, seeds or seedlings.

3.1.6 Portland Bight Protected Area

Portland Bight, Jamaica’s largest protected area was declared on Earth Day, April 22, 1999. It consists of 520 km² of land (4.7% of Jamaica’s land area) and 1,356 km² of marine area (48% of Jamaica’s island shelf). Although it has a low population density (50,000 people), it has a full suite of stakeholders: commercial, artisanal, residential and industrial. Industries within the PBPA include sugar estates, a bauxite-alumina plant, a coffee factory, a paper factory, a feed mill, two power plants, a shrimp hatchery, and two major ports importing oil and grain and exporting alumina. Many of the mostly poor local residents are dependent on the natural resource base (fishing, forest products, farming). Resource values of the area include: Extensive dry limestone forest (210 square km., 41% of land area), Habitat for rare and endangered wildlife, the largest continuous stands of mangroves left in Jamaica, 82 km² of wetlands, 20 near-shore cays and islands, and the most productive fishery in Jamaica (resulting from the combination of mangroves, seagrass, and coral reefs).

The importance of the natural resources of Portland Bight were identified by the JCDT System Plan for Parks and Protected Areas in the early 1990s. Efforts to protect Portland Bight began with the South Coast Conservation Foundation, which conducted baseline surveys and early community activities. The Caribbean Coastal Area Management (C-CAM) Foundation inherited this work in 1997 and lobbied for its declaration. Management responsibility has been delegated to C-CAM based on its “Management Plan for Portland Bight Protected Area 1999-2004.

3.1.7 Ocho Rios Marine Park

Ocho Rios has long considered itself to be home to Jamaica’s first “Marine Park,” since the marine area from Ocho Rios Bay to White River was declared a “protected area” under authority of the Beach Control Act in 1966. Unfortunately, it remained a “paper park” for over 30 years, without financing, staffing, or infrastructure.

Meanwhile, the growth that has made Ocho Rios the second largest tourism centre in the country continued, contributing to significant stresses on both terrestrial and marine ecosystems. In response to this, a small group of concerned citizens joined together in 1991 to form Friends of the Sea. Their mission was to “do something” to stop the destruction that they were witnessing at sea and along the coast of St. Ann. Their main objective was to establish a Marine Park in Ocho Rios.

A key step in realizing this dream was the declaration of the Ocho Rios Marine Park under authority of the NRCA Act in August, 1999. The boundaries include the marine

area, from Frankfort Point, east of Ocho Rios to Mammee Bay to the west, and extending seaward to the 1000 metre depth contour line (approximately 8 km. from shoreline). The valuable resources within this area warranting protection include: Coral reef ecosystem, Fish nursery and habitat, Beaches and shorelines.

3.2 Heritage Sites under JNHT

A wide range of sites are dealt with by the Jamaica National Heritage Trust Act. They include buildings of architectural or historic interest (eg. Halse Hall Great House, Clarendon; Tryall Great House and Ruins of Sugar Works, Hanover; Headquarters House, Duke Street; Marlborough Great House, Spur Tree, Manchester; DeMontevin Lodge, Port Antonio, Portland; Cherry Gardens Great House, St. Andrew. Churches, Cemeteries or Tombs eg. St. Peter Church, Alley, Clarendon, Christ Church Anglican, Port Antonio, Portland; St. Andrew Parish Church, Hagley Park Road, St. Andrew; Our Lady of Perpetual Help Church, St. Ann. Natural sites eg. Milk River Spa; Hope Botanical Gardens, Old Hope Road, St. Andrew; Rockfort Mineral Bath and Spa, Kingston, Bath Fountain Spa, St. Thomas; Black River Spa, St. Elizabeth, Lover's Leap, St. Elizabeth. Forts and Naval Monuments: Fort Charlotte, Lucea, Hanover, Fort Charles, Port Royal; Savanna La Mar Fort, Historic sites: Blenheim (Hanover), Liberty Hall, King Street, Kingston; Sevilla La Nueva. Roxborough, Castle Plantation, Manchester, 33 Market Street, St. Ann's Bay, Port Henderson; Rio Nuevo Battle site, Port Royal and Palisadoes). Underwater cultural heritage eg. Pedro Bank. Historic areas include: Public buildings forming the square at Spanish Town.

3.3 Forest Reserves etc.

There are a large number of forest reserves (i.e. gazetted Forest Reserves). They range in size from Cockpit Country (22, 327.3 (ha)) to areas as small as New Ground (5.99 (ha)). Forest Reserves can be found in Hanover, Westmoreland, St. James, St. Elizabeth, Trelawny, Manchester, St. Ann, Clarendon, St. Catherine, St. Mary, St. Andrew, Portland and St. Thomas.

By way of illustration some of the forest reserves are as follows: For Hanover, the forest reserves are: Blenheim, Content, Georges Plain Mountain, Raglan Mountain. For Westmoreland: Bog, Burnt Savannah, Deans Valley, Dolphin Head, Goneva Mountain, Petersville, Quasheba Mountain, Spring Garden and Camp Savannah. In St. James Chatsworth, Chesterfield, Fyffe and Rankine, Garlands, Jericho, Windsor Lodge and Belfont. In St. Elizabeth: Bogue, Cooks Bottom, Lovers Leap, Ruthven, Shuna and Springvale. For Trelawny, Allsides, Baron Hill, Belmont, Bottom Hampden, Cockpit Country, Discovery, Hyde.

More recently approval was given for 53.42 hectares of land to be declared a forest reserve. An advertisement was placed in the relevant local publication in February 2004 to notify the public of the landowner's application for declaration.

Crown Lands Managed by Forest Department

Apart from gazetted Forest Reserves there are also crown lands which are managed as by the Forest Department. Some of these are under consideration to be declared as forest reserves. Some of the Crown lands managed by the Forest Department include Folly Road Office, Serge Island, Kenilworth, Muirhead, Retirement, Burnt Ground, Canaan Mountain, and Montego Valley.

Forest Management Areas

During 2003/2004 the Department processed two applications from landowners for portions of their properties to be declared forest management areas, namely: 444.7 hectares in St. Catherine and 364.2 hectares in Westmoreland.

3.4 Fish Sanctuaries

Almost every commercial fish species has well-defined nursery areas and these generally are (known to have the following characteristics:

These areas are usually shallow, protected embayments which offer shelter and food for juveniles and spawning adults occasionally. It was for the preceding reasons that a number of coastal areas were chosen as fish nurseries. It is vital that some such areas be set aside and protected in the form of fish sanctuaries as without them the constant human encroachment on mangrove areas and the development of coastal areas for new housing, shipping facilities and other usage is resulting in the continuing loss of several important coastal zones known to function as nurseries. Without these areas, fish stocks, will under present conditions, steadily decline to a point beyond which they may be unable to recover.

Bogue Lagoon in St. James has been declared a fish sanctuary under the Fishing Industry Act.

4.0 ESTABLISHING PROTECTED AREAS

By January 2000, Jamaica had 7 designated areas within the NRCA Act, with work underway for inclusion of an additional four. Over 170 areas have been suggested as candidates for the system. It is of interest to compare Jamaica's emerging system with those for other countries in the region. Note that Costa Rica has 10.5% of its land within protected areas. It is widely regarded as having one of the best protected areas systems in the world, and a leader in eco-tourism development centered largely around these areas.

Any group, community, NGO or private entity, the NEPA, other government agencies, individuals may initiate establishment of a new protected area. The NEPA has two tools which assist it in planning for new protected areas. One is the System Plan drafted by the JCDT in 1992 which represents the most comprehensive evaluation of areas in Jamaica to be considered for protection. The second is the preparation of an Environmental Policy Framework (EPF). An EPF is a statement of policy and environmental priorities for a large area, typically a Parish or watershed. An EPF typically evaluates the interest and feasibility for establishing protected areas within a study area. EPFs have been prepared for Palisadoes-Port Royal (1997), leading to the declaration of that area, and Black River (1998).

4.1 Community Participation

Planning a protected area needs to take sufficient time to ensure that community and stakeholders understand the implications and support the establishment of the protected area.

4.2 Feasibility:

The feasibility assessment is typically made by a NEPA lead planning team. It examines boundaries, land ownership, land and resource use, local management potential and cost. Particular attention is paid to these latter two factors. Since the NEPA has limited capacity for managing protected areas, it is critical that a local organization or group has both the interest and capacity for eventually assuming some or all management responsibilities. Similarly, if management and operations costs for the area cannot be met with realistic projections of revenues and expenditures, declaration at this time may be questionable. It is the responsibility of technical staff at the NEPA to review an area's feasibility assessment, and recommend an action to the NEPA Board. It may recommend that some other form of protection may be more appropriate, that more community support is needed, or that declaration should be postponed until a suitable LME comes forward.

4.3 Delegation

Ideally, the LME has participated in the preparation of the Management and Operations plans, and is ready to be delegated management responsibility once the area is declared. In some cases, declaration may be postponed until LME is ready; in others, the NRCA will assume start-up or interim management responsibilities until delegation can be accomplished.

5.0 POLICIES AFFECTING PROTECTED AREAS

Policies	Status
Beach Policy	Draft (not approved by Cabinet)
Watershed Policy	Final Draft
Coral Reef Protection & Preservation Policy	Draft (not approved by cabinet)
Mangrove & Coastal Wetlands Policy	Draft (not approved by cabinet)
National Policy on the Conservation of Seagrass	Draft (not approved by Cabinet)
Mariculture	Draft (not approved by Cabinet)
Policy for Jamaica's System of Protected Areas	Approved by Cabinet
National Biodiversity Strategy and Action Plan JANEAP	Approved by Cabinet
National Land Policy Jamaica Land Use Policy Forest Policy	Approved by Cabinet
National Forest Management Plan	Approved by Cabinet

5.1 Beach Policy

The Beach Policy is contained in Green Paper No. 2/97 entitled “*Towards A Beach Policy for Jamaica*”.

Among the goals of the Policy are-

- 1) to protect wildlife, specific reference being made to the protection of turtle and crocodile nesting sites during the nesting season; (NRCA is committed to ensuring the development of management plans for the protection of wildlife on offshore cays);
- 2) to ensure that coastal properties, including cays, are not leased or sold unless key management agencies are satisfied that suitable management plans are in place in respect of those properties.

The proposed scheme of protected areas provides a suitable regime which may be applied to beaches and coastal areas, including cays, to achieve conservation goals.

5.2 Watershed Policy

A revised draft of the Policy was prepared in September, 2004. Its main objective as stated in paragraph 3.1 is “The overall goal of the Policy is to promote the integrated

watershed management, protection, conservation and development of land and water resources in watersheds for their sustainable use and for the benefit of the nation as a whole". In order to achieve this objective, the Policy proposes, among other things, that a survey of the physico-geographical and socio-economic conditions of the major watersheds should be undertaken. Critical areas should be identified for priority attention and planning would be carried out and appropriate treatment given, according to the condition of the watersheds concerned.

The proposed categories of protected areas could be important conservation tools in this process. Watershed lands could be declared protected areas in whichever of the proposed categories is appropriate, having regard to the specific conservation requirements of those lands and the level of human activity which they can safely accommodate without undermining the conservation objectives.

In preparing the management plan for any protected area, the agencies involved should ensure that the Watershed Policy and any surveys, plans or programmes which are developed under it are taken into account and that appropriate provision is made for a co-ordinated and integrated approach to the management of watersheds in protected areas.

5.3 Coral Reef Protection and Preservation Policy

A draft of the Policy was released in October 1997. It identifies both the ecological and socio-economic functions of coral reefs, including their value as wildlife habitat and centres of biological diversity. Coral reefs are also critical as support for many species of commercially important fish. They have economic value as tourist attractions and provide the opportunity for study and research in relation to plants and animals in their natural surroundings. Jamaica's coral reefs have suffered serious degradation and destruction by natural occurrences like hurricanes and by human exploitation.

The objective of the Policy is to ensure the conservation of coral reefs in order to sustain their ecological and sociological functions. Towards this end, the Policy establishes goals to be achieved, including the reduction of the activities which are inimical to the health of coral reefs and the control of development in the coastal zone.

The establishment and management of protected areas is one of the strategies which the Policy indicates will be pursued to attain the articulated goals. The proposed protected areas regime (IUCN classification) provides an appropriate mechanism for the protection of coral reefs. In fact, section 5 of the NRCA Act permits the declaration of marine parks (a protected area falling under Category II of the IUCN classification). The proposed regulations and the management plans which will apply to each category of protected areas should contain provisions to strengthen the protective regime for coral reefs.

5.4 Mangrove and Coastal Wetlands Protection Policy

The substance of the Policy is contained in a document entitled "*Draft Mangrove and Coastal Wetlands Protection Draft Policy and Regulation*" published in October 1997.

The Policy aims to promote the management of coastal wetlands to ensure that the many benefits they provide are sustained. The Policy identifies several functions of wetlands, among them, shoreline protection, flood protection, and their operating as sediment traps and as wildlife habitat and nursery. Wetlands are also valuable for tourism and agricultural purposes.

The policy sets the following five goals in support of the overall aim of sustainable use of wetlands:

- (i) Establish the guidelines by which wetlands can be developed in order to ensure their continued existence;
- (ii) Bring to an end all activities carried on in wetlands which cause damage to these resources;
- (iii) Maintain the natural diversity of the animals and plants found in wetlands;
- (iv) Maintain the functions and values of Jamaica's wetland resources;
- (v) Integrate wetland functions in planning and development of other resource sectors such as agriculture, forestry, fisheries, ecotourism, and waste management;

In pursuing the goals of the mangrove and coastal wetlands protection policy, government will be guided by the following principles: (a) Wetlands are an important part of Jamaica's coastal resources and their preservation is a key component of coastal area management; (b) Wetlands protection can only be achieved by the combined and coordinated efforts of individuals, organizations, and communities having an interest in these areas; (c) Improved public awareness of the vital functions of wetlands is necessary to ensure conservation of wetlands.

Over the years, wetlands in Jamaica have been progressively compromised by pollution, over-exploitation, the draining and filling of land for agricultural and residential purposes, fires and inadequate flood control. One of the goals of the Policy is to reduce or eliminate those activities which have a deleterious effect on animal or plant life in wetlands. The conferment of specific protective status on wetlands is one of the strategies to be used to achieve this goal. The Policy indicates that all mangrove and coastal wetlands in Jamaica may be accorded protective status.

5.5 National Policy for the Conservation of Seagrass (1996)

This draft policy recognizes the value of seagrass to marine ecosystems and seeks to regulate and guide the issue of licences or permits for activities such as dredging, disposal of dredged soil, beach development and effluent disposal, which directly or indirectly affect seagrass communities.

5.6 Mariculture Draft Policy

This Draft Policy sees mariculture as an opportunity to provide a sustainable supplement or an alternative to marine capture fishery. The need for an alternative arises due to the fact that uncontrolled harvesting of fish, pollution, and the destruction of mangroves and coastal wetlands has severely depleted shellfish stocks, especially the mangrove oyster. The policy therefore aims to support and encourage the managed use of Jamaica's marine resources, to raise the output of marine food products for domestic consumption and for export, and to generate local employment in communities that have traditionally relied on the sea for economic sustainability. The policy is consistent with government's development objectives, and is expected to be carried out within the framework of an integrated coastal zone management plan for Jamaica.

5.7 Policy for Jamaica's System of Protected Areas

National protected area policy was initially outlined in Green Paper #1/95, Towards a National System of Parks and Protected Areas, released in December, 1995. This was followed by public meetings in all parishes and discussions with government, donor, and NGO representatives. Copies of the green paper were made available to libraries, Parish Councils, and other Government offices. The green paper was revised and submitted to Parliament and Cabinet. Upon their approval in November, 1997, it became official policy, and was distributed as the White Paper Policy for Jamaica's System of Protected Areas.

The six goals which define the vision for Jamaica's System of Protected Areas are:

Economic Development – expand and diversify Jamaica's natural resource base economy;

Environmental Conservation – Conserve Jamaica's heritage as represented by its biodiversity, scenic landscapes, and cultural resources;

Sustainable Resource Use – Protect ecological systems which provide goods and services;

Recreation and Public Education – Provide recreational and educational opportunities to improve the quality of life for all Jamaicans and visitors.

Public Participation and Local Responsibility – Promote local interest, commitment, and support for protected areas;

Financial Sustainability – achieve and maintain financial sustainability for the protected areas system.

5.8 National Biodiversity Strategy and Action Plan

Jamaica has one important policy statement related to biological resources: the Policy for Jamaica's System of Protected Areas (see (CEP Protected Areas chapter). The National Biodiversity Strategy and Action Plan (NBSAP) acts as the country's policy on biodiversity. The NBSAP is required under Article 69 of the 1992 Convention on Biological Diversity, (CBD) signed by governments at the UN Conference on Environment and Development (UNCED) in Rio de Janeiro, Brazil. The objectives of the CBD are conservation of the world's biodiversity, sustainable use of its components, and fair and equitable sharing of its benefits.

Jamaica formally ratified this Convention on January 6, 1995. Preparation of its NBSAP began in late 1998, with a draft document (policy "Green Paper") ready for national consultations by mid 2000. Following this, it was revised and adopted by Cabinet.

5.9 Jamaica National Environmental Action Plan

The first Jamaica National Environmental Action Plan (JaNEAP) was prepared by the GOJ in 1995. The Plan highlights the major environmental problems facing the country, as well as emphasising and establishing the necessary corrective measures to be undertaken by various Government agencies, ministries and non-governmental organisations.

The Action Plan recognises that there are increasing threats to Jamaica's biological resources due to habitat degradation, pollution and unsustainable levels of utilisation. It states specific actions that have been and will be undertaken by Government and the private sector towards the development and management of a system of protected areas and sustainable use of biological resources.

The Sustainable Development Planning and Policy section of the JaNEAP focuses on integrated watershed system, forest, marine and terrestrial resources, and the economic sectors such as agriculture, industry, mining, and tourism.

The JANEAP is updated every three years and status reports are prepared annually. Three Status Reports have been prepared and JaNEAP 1995 has now been updated to JaNEAP 1999- 2002.

5.10 National Land Policy 1996

The comprehensive National Land Policy was developed after an assessment of the physical resource and socio-economic needs of the country. This assessment underscored the need for a more complete understanding and appreciation of the finite nature of land resources and advocacy for its sustainable use.

This Policy establishes the framework for the planning, management and development of Jamaica's resources. It takes into consideration that Jamaica, including the foreshore, territorial waters and exclusive economic zone is a finite resource and a national asset. This asset must be used for sustainable development of the island.

5.11 Forest Policy, 2001 (updated Forest Land Use Policy, 1996)

The Forest Policy was completed in March of 2001 and approved by Cabinet in July of that year. The preceding Policy dealing with forest issues, the Forest Land Use Policy of 1996 was revised as a result of the realisation that it needed to be updated to fall inline with the tenets of the National Forest Management and Conservation Plan of 2001. The Forest Policy attempts to ensure the sustainable management of the island's forests by concentrating on certain priority areas namely the conservation and protection of forest areas, the sustainable management of the island's forest lands and by extension its watershed areas. It goes further to outline the strategies and tools required for implementation as well as incorporating the state run agencies whose mandates include forestland management. This list included but was not limited to the Forestry Department, the National Environment and Planning Agency, the Commissioner of Lands, the Water Resources Authority and the Rural Agricultural Development Authority. The Policy recognised that planning and monitoring of the sector is a necessity and concludes that this can best be achieved through the implementation of the National Forest Management and Conservation Plan.

5.12 National Forest Management and Conservation Plan (NFMCP)

The NFMCP was approved by Cabinet in March 2001. Though similar in some respects to the Forest Policy, the NFMCP sought to provide a more detailed outline of all facets of forestry in Jamaica. The Plan was divided into three sections; the first part provide a background to Jamaica's forestry sector examining land use and ownership issues, the forestry productive sector, and the various forest management constraints that affect the functioning of the Forestry Department. Part Two addressed the forest values to society, while Part Three dealt with the strategies for implementation of the NFMCP. Implementation of the plan will require the involvement of the public in general and more specifically the communities bordering the forested areas, forest research, forest protection and forest production.

5.13 Jamaica Water Sector Policy: Strategies & Action Plans

The Water Sector Policy provides that the allocation and management of water resources will be guided by the following core principles:

- i) ensuring integrated and informed management of the country's water resources-development of water resources will not be done sectorally;

- ii) ensuring water for public supply will receive priority in the allocation of resources;
- iii) ensuring water is used as efficiently as possible; including promotion of conservation. Where possible, the conjunctive use of surface and groundwater will be implemented. Demand management must be implemented;
- iv) ensuring implementation of measures to restore and enhance the quality and quantity of usable water to protect the aquifers, watersheds and other sources of water. The following shall be the specific focus of strategies designed for water pollution prevention and control:
 - maintenance of ecosystem integrity; through the protection of aquatic resources from negative impacts caused by development and natural processes;
 - protection of public health against disease vectors and from pathogens;
 - ensuring sustainable water use and ecosystem protection on a long-term basis; and
 - implementing the *polluter pays* principle.

The focus of the policy will also be on developing mechanisms to ensure compliance, including public education, incentives and sanctions

6.0 INSTITUTIONAL FRAMEWORK FOR PROTECTED AREAS MANAGEMENT

Managing Jamaica's Protected Areas System entails a broad variety of functions, from policy formulation to fundraising to on-the-ground management. The various participants have different roles and responsibilities for these functions in the overall operation of the system. While ultimate responsibility for the system is, by law, with the NRCA, partnerships with other public sector agencies and institutions are necessary as well as delegation of responsibilities to NGOs, local groups whenever possible.

6.1 The Natural Resources Conservation Authority (NRCA/NEPA)

The Natural Resources Conservation Authority was established by the NRCA Act in 1991 as the successor to the Natural Resources Conservation Department. One of its mandates is to "manage such national parks, marine parks, protected areas, and public recreational facilities as may be prescribed."

NRCA responsibilities related to the Protected Areas system include:

- providing the policy framework, procedures, and guidelines for all aspects of establishing, planning, managing and financing protected areas,
- stimulating and coordinating the participation of other Government agencies, NGOs, and private organizations in establishing and managing the system,
- approving management, operations and financial plans and evaluating the performance of the entity delegated management authority for an area,
- setting up and participating on planning teams to determine feasibility candidate areas for addition to the system, as well as reviewing management plans,
- managing those areas where no local or other management capability exist,
- expanding its own capacity to meet its responsibilities as the system develops,
- coordinating and guiding research activities, information system development, and environmental monitoring within the protected area system,
- developing regulations to support management efforts, and working to ensure compliance, and
- promoting public awareness and support, especially in local communities within or near protected areas

The NEPA (under the Town and Country Planning Act) through its various land use planning and development review functions, can guide development and address the potential negative impacts of proposed development on protected areas.

Some of the policies and the regulations are set out in the Manual for Development. The Manual provides guidelines to all those in the government and private sectors involved in planning, development and project design.

The Manual outlines various policies that could affect protected areas including:

- a. Where areas of unique terrain, flora or fauna exist, such areas can be declared National Parks, and large-scale development or urbanization prohibited.
- b. A developer may be required to preserve, within a subdivision development, natural features such as large trees and groves, water courses, waterfalls and protected watersheds. The inclusion of seaside parks in coastal developments may also be deemed necessary where there are areas of scenic beauty, recreational or ecological value deserving of conservation.
- c. The plan for any coastal development should ensure that special areas are left for fishing beaches and for good bathing beaches with access from the public thoroughfare.
- d. Advertisements should be avoided in conservation areas, and no building, structure, wall or fence approved which obscures the view of any area of scenic beauty. No continuous wall or building should be allowed which blocks views of the sea. Hotels should also blend in with surroundings, and have the minimum effect on the environment.
- e. Alteration of wetland areas for development purposes should not be undertaken as such changes destroy or significantly impair basic wetlands functions. If such development is allowed, however, a thorough ecological study is required prior to any development.
- f. Development not specifically designated as a harbour or industrial site is to be set back from the high water mark.

6.2 Forestry Department

Many of the mandates of the Forestry Department, outlined in the Forest Act of 1996, correlate closely with those of the NRCA. These include declaring Forest Reserves, “protected areas” and Forest Management areas; preparing management and conservation plans; protecting watersheds; providing recreational facilities; protecting biological diversity, and enforcing compliance to laws and regulations. Forest Reserves comprise all of the Blue and John Crow Mountains National Park, a significant part of the Portland Bight Protected Area, and a number of candidate areas for addition to the system

(Cockpit Country, Dolphin Head). Thus it is clear that partnerships between the NRCA and the Forestry Department are necessary to avoid conflicts and duplication of effort. A Cooperative Agreement was signed by the NRCA, JCDT and the Forestry Department regarding management of the BJCMNP.

6.3 Fisheries Division

Fisheries Division interfaces with the Protected Area system in three important ways. First, through management of designated Fish Sanctuaries located within or near protected areas such as the Bogue Lagoons Fish Sanctuary within Montego Bay Marine Park. Second, FD technical experience in fisheries management provides important guidance to marine protected area managers setting up replenishment zones and regulating fishing activities. Thirdly, Fisheries Division helps fishermen participate as effective stakeholders in marine protected area planning and management activities, such as with the Portland Bight Fisheries Management Council (the establishment of this Council was in fact facilitated by the Caribbean Coastal Area Management Foundation). Fisheries Division is a key partner in five of Jamaica's first seven Protected Areas, and in three of the four priority additions to the system. Protected Areas such as fish sanctuaries were declared before “protected areas” under the NRCA Act.

6.4 Jamaica National Heritage Trust (JNHT)

The JNHT has broadly defined responsibilities for protecting both Jamaica’s cultural and natural heritage. This includes sites representing manmade or natural objects, as well as any “species of plant and animal life.” Many buildings, landmarks, and sites on JNHT’s National Historic Register are located within existing Protected Areas. The most historically impressive of such sites (Port Royal Town) are within the Palisadoes-Port Royal Protected Area, where significant cultural and natural resources exist side-by-side. The heritage site designation utilizes the same boundaries as that of the protected area declared under the NRCA Act. Here JNHT and NRCA clearly have shared responsibilities and interests.

Jamaica National Heritage Trust has a number of leases with private institutions. These include a lease of Mason River Field Station and Liberty Hall to the Institute of Jamaica, lease of Firefly to Chris Blackwell, management agreement with Rio Nuevo Battle Site Association, a community group to manage Rio Nuevo. Co-management agreements are also being developed for the Palisadoes – Port Royal Protected Area. The other parties to such co-management agreement would include: UDC, NEPA, JDF Coast Guard, Morgan's Harbour etc.

6.5 Partnerships with Other Govt. Agencies & Institutions

While many Government agencies and public institutions have a role to play in the protected area system, the following, because of their mandates and jurisdictions are seen as key partners for protected areas management.

Parish Councils

National protected area policy calls for Parish Councils to play an increasingly active role in the identification, establishment and management of protected areas and parish-wide protected area planning. As Parish Councils become more effective at providing community services and expanding their levels of responsibility, they could be delegated management authority for a protected area, either solely, or in partnership with other community-based organizations.

National Lands Agency

The National Land Agency has four main areas: Titles Division, Estate Management Division (Commissioner of Lands), Surveys and Mapping and Land Valuation.

The National Land Agency is of central importance for the planning and management of protected areas and the majority of GOJ's land holding is held by the Commissioner of Lands. The National Lands Agency also has considerable experience in land and estate management.

The main functions of the Commissioner of Lands are: requesting the valuation of land and buildings for purchase or lease by government; negotiating purchase or lease of land and buildings on behalf of the government; acquiring land and buildings under the Land Acquisition Act; maintaining records of lands purchased, rented or leased by government; Maintaining custody of all documents relating to the purchase, sale and lease of land and buildings on behalf of the government.

6.6 Partnerships with Non Government Organizations & the Private Sector

One of the most important lessons learned from managing protected areas around the globe is the importance of stakeholder participation, local benefits, and sense of community ownership. Related to this is the new concept of "co-management," meaning the sharing of authority, responsibility, and benefits between government and local communities. Through co-management, each player (national and local government, NGO and CBO, as well as business interests) has something to contribute, as well as something to gain. While a co-management approach requires significantly more time and resources spent in coordination and working towards agreements, it promises greater long term success and a more equitable sharing of benefits. The co-management approach is being implemented in the Portland Bight Protected Area.

The key national non-government partners include NCRPS, Jamaica Conservation and Development Trust, Caribbean Coastal Area Management Foundation, Friends of the Sea, Southern Trelawny Environmental Association.

7.0 EXISTING AND PENDING LEGISLATION RELATED TO PROTECTED AREAS

NRCA ACT	
National Parks (s5(1)(a))	
Marine Parks (s5(1)(c))	
Protected areas (s5(1)(b))	
Environmental Protection Area (s33)	
FOREST ACT	
Forest Reserve (s.5)	
Forest Management Area (s.7)	
FISHING INDUSTRY ACT	
Fish Sanctuaries (s.18)	
Wildlife Protection Act	
Game Sanctuaries (s. 3)	
JAMAICA NATIONAL HERITAGE TRUST ACT	
(s13)	
Institutions	Statutes
NRCA	NRCA Act
	National Park Regulations
	Marine Park Regulations
	Wildlife Protection Act
	Beach Control Act
	Watersheds
	Protection Act
Forest Department	Forest Act
	Forest Regulations
Fisheries Division	Fishing Industry Act
	Fisheries Regulations
Jamaica National Heritage Trust	Jamaica National Heritage Trust Act

A large number of national legislation apply to protected areas. Similarly there are disparate institutions responsible for protected areas management. The legal framework for protected areas is fragmented inconsistent and in some aspects incomplete. The process of distilling this wide array of legislative instruments into a coherent framework still has to be done. A major step in this direction will be the enactment of a NEPA Act. However there will still be a need to integrate the proposed NEPA Act with other legislation such as the Forest Act, the Fishing Industry Act and the Jamaica National Heritage Trust Act.

This section on legislation is divided into two areas: First, key legislative instruments that directly govern protected areas and secondly other legislation that have some bearing on

protected areas. This section also examines proposed legislation that will have an impact on protected areas.

A. Key Legislation

7.1 Natural Resources Conservation Authority Act (1991)

The Natural Resources Conservation Authority Act established a statutory body to “provide for the management, conservation, and protection of the natural resources of Jamaica”. The Act also empowers NRCA to establish policies, promulgate regulations and standards, and develop and implement strategies to achieve this goal. NRCA is by virtue of the Act the primary agency for environmental management in Jamaica.

The NRCA Act establishes the legislative framework for a system of national protected areas. The Act also allocates responsibility for overall development, management and enforcement of protected areas policy to NRCA. By section 5 of the Act the Minister is authorized to designate national parks, protected areas, and marine parks, and to arrange for the management of these areas.

7.2 Natural Resources Conservation (Blue and John Crow Mountains National Park) (Declaration) Order (1993) and the Natural Resources National Parks Regulations.

The Order establishes the Blue and John Crow Mountain National Park while the regulations govern activities within all national parks. Included in the regulations are provisions pertaining to the control of animals, littering, pollution of lakes and streams, use of poisons, disorderly behaviour. The Act also provides for the designation of camping areas, restrictions on the use of fires, commercial activities, mining and research, etc. Zoning, monitoring and enforcement are also addressed.

7.3 Natural Resources (Montego Bay Marine Park) Order (1992) and Natural Resources Conservation (Marine Parks) Regulations (1992)

These regulations were enacted pursuant to Section 38 of the Natural Resources Conservation Authority Act. The object of the Order is to establish a marine protected area, primarily for the purpose of conserving the natural resources within the area. The regulations apply to all marine protected areas in which the following activities are prohibited; extraction or mining of minerals, the destruction, injury defacing, removing, digging, harmfully removing or disturbing any sand, gravel, minerals, corals, sea fans, shells, shell fish, or other marine invertebrate, seaweeds, grasses, soil rock, artifacts, stones or other materials. No person shall use, sell or otherwise dispose of the aforementioned knowing it to have been unlawfully removed from a marine park. The regulations also prohibit the discharge or deposit of any refuse, oily liquids, or wastes, acids or other

deleterious chemicals or toxic or polluting substances of any kind which may be injurious to plant or animal life. In or on waters of a marine park, fishing without express permission is prohibited. With respect to fishing, the Authority is vested with a discretion to declare specified areas of a marine park to be no fishing zones, or where fishing is allowed, to specify the kind of fish which may be caught or the kind of fish in respect of which fishing is prohibited, or may establish individual quotas and fishing equipment that may be used. The Authority also has discretion to zone a marine park.

7.4 Natural Resources (Blue and John Crow Mountains National Park (User Fees) Regulations (2003))

Under the Natural Resources Conservation (Blue and John Crow Mountains National Park) (User Fees) Regulations, 2002 (PRR 59C of 2003) a person shall not enter the recreational area of the Park unless he holds a valid pass. The fees for entry into the recreational areas are set out in the Schedule. The Park Manager is required under regulation 6 to establish an account in which the fees are to be deposited. In addition within three months after the end of each calendar year the Park Manager is required to present an audited report on the account to NRCA.

7.5 Forest Act (1996)

This Act sets out the role and function of the Forestry Department and the Conservator of Forests.

The Forest Act (1996) provides a broad mandate for the Forestry Department, recognizing the importance of preserving forests intact for biodiversity, watershed protection and ecotourism in addition to meeting the country's needs for timber and related forest products on a sustainable basis.

The Act vests responsibility in the Conservator of Forests for developing and maintaining an inventory of forests and lands suitable for the development of forests. The Forestry Department is required to make an assessment of forestry lands to determine their potential for maintaining and enhancing biodiversity. Provisions have been made in the Act for the controlled utilisation of forest resources in a rational manner.

Jamaica has over 150 gazetted forest reserves. Under the Act private lands may be acquired for declaration as forest reserves. One of the purposes of forest reserves is to protect and conserve endemic flora and fauna.

The Act calls for the creation of forest management plans, which stipulate the allowable annual cut where appropriate, conservation and protection measures and the roles of other Government departments. The purpose of forest management plans is to ensure the protection and conservation of forests, soil, water, wildlife, and forest products.

Under the Forest Act, the functions of the Forestry Department include “protection and preservation of watersheds in forest reserves, protected areas and forest management areas “(s. 4 (n)). This may overlap with the functions given to NRCA under the Watershed Protection Act. The Act sets out the mechanism for declaring forest reserves and also the purpose of forest reserves. Three significant provisions are included in the Forest Act: powers of compulsory acquisition (Section 9); notice of proposed declaration of forest reserve (Section 10) and interim protection measures for forest reserves (Section 11).

Under section 20 the Conservator of Forests may establish recreational sites in forest reserves or forest management areas. Recreational facilities include parks (as defined) roads and trails, camp grounds, picnic sites and other approved facilities.

By Section 25 where the owner of private land in a forest protected area or forest management area or declared forest reserve, complies with appropriate regulations or direction such an owner will be entitled to remission of property tax.

The Act repealed the Forest Act and the Bark of Trees (Sale Prevention) Act. Transitional provisions were included (section 40) to preserve “permits, licences, agreements or other authorizations” issued under the Forest Act (1937).

7.6 Forest Regulations (2001)

When adopted, the new Forest Management Plans enables the Forestry Department to carry out its mandated functions as elaborated in the Forest Act, 1996. Among other things, the Regulations include the following matters:

- Approval and distribution of Forest Management Plans as well as specifying content;
- Permitted uses of roads within forest reserves and penalties for non-compliance;
- Burning permits and fire restrictions within forest reserves;
- Trespass by cattle and people;
- Conditions surrounding timber extraction from forest reserves, including the requirement for permits to transport power saws, sawmill licences and permits, records to be kept by licences, right of seizure and search, and authority of Forestry Department officers to request information;
- Illegal removal of produce from forest reserves or protected areas;
- Protection of wildlife;
- Establishment of community catchment areas;
- Conditions for leasing of forest reserve lands and;
- Development and management of forest reserves for recreation sites.

Under the Regulations the Minister may provide incentives to encourage private forestry, including provision of technical advice, provision of tree seedlings at special rates, duty-free concessions for inputs and remission of property taxes. At present all these incentives are currently being offered except remission of property taxes which is yet to be applied for.

7.7 Fishing Industry Act (1975)

The taking and catching of fish are regulated by the Fishing Industry Act. A licence is required to catch fish utilising one of the prescribed methods under the Act.

The Act provides for the protection of fish through the designation of fish sanctuaries and the declaration of open and closed fishing seasons (for conch and lobster). Two Fish Sanctuaries have been declared under this Act.

Regulations have been created for the management of the conch fishery. For the lobster fishery, the Act stipulates the size of lobsters to be caught and mesh size for nets. The fines under this Act are extremely low ranging from one hundred to one thousand Jamaican dollars.

7.8 Fishing Industry Regulations (1976)

The Fishing Industry Regulations regulates application for licence to fish as well as application to register and licence fishing vessel.

7.9 Beach Control Act (1956)

The Beach Control Act regulates rights to the foreshore and the floor of the sea in Jamaican waters. Provisions contained in the Act govern commercial and recreational activities; the control and management of development on the beach through licensing provisions and the protection of the marine ecosystem. Marine protected areas may be declared under the Act to:

- Control the disposal of rubbish or other waste matter;
- Control dredging or disturbance in any way of the floor of the sea;
- Prevent or control the destruction or removal of sea fans and sedentary marine animals; and
- Control the searching for or removal of any treasure or artifact from the floor of the sea.

This Beach Control Act is limited in its mandate to govern development and commercial activities on the foreshore and floor of the sea, and does not appropriately address larger issues of the proper management of the coastal zone and marine resources.

The Beach Control Act is administered by NRCA and gives authority to control the use and exploitation of the floor of the sea and associated waters. Provisions which directly relate to biological resources are those which allow for the creation of marine protected areas, and control the removal of products from the sea floor. The collection of black coral is regulated under this Act and other marine organisms could be similarly protected.

Several regulations and orders have been gazetted under the Beach Control Act. These include: the Beach Control Act Regulations of 1978, which address hotels, commercial and public recreational beaches, regulate beach activities and the care of beaches, and outline the rights of licence; and the Beach Control (Protected Area, Montego Bay) Order, and the Beach Control (Protected Area, Ocho Rios) Order, which declare the Montego Bay and Ocho Rios marine areas as protected areas. It is to be noted that the boundaries of the Montego Bay Marine Park and the Ocho Rios Marine Park are different from the areas previously declared as protected areas under the Beach Control Act.

7.10 Jamaica National Heritage Trust Act (1985)

The key functions of the Jamaica National Heritage Trust as established under the Jamaica National Heritage Trust Act are to:

- (a) promote the preservation of national monuments and designated protected national heritage.
- (b) carry out such development as it considers necessary for the preservation of any national monument or anything designated as protected national heritage.

Under the Act the Trust may declare any structure to be a national monument. The trust is also required to publish annual lists of all declared national monuments. Where a structure is declared as a national monument the Trust shall notify the Registrar of Titles of any registered titles known to the Trust to be affected by the declaration as a national monument. In addition, the Trust may under the Act designate any place name, thing or any species of animal or plant life or any place or object as a national heritage. Where the owner of a declared national monument or designated protected national heritage suffers loss as a result of the declaration or designation, the owner shall be entitled to receive appropriate compensation for the loss suffered. An owner of a national monument or protected national heritage cannot remove, demolish or alter without the prior written approval of the Trust. The Act empowers the Trust to accept gifts, or bequests of protected national heritage or national monuments.

The Minister is authorized under the Act to serve a preservation notice in cases where a declared national monument is in danger of destruction or removal. The person affected by the preservation notice may claim compensation for any loss suffered by the imposition of the preservation notice.

The Trust is also empowered to prepare and conform a preservation scheme for any area comprised in or adjacent to the site of the national monument. Within the preservation

scheme the Trust would have planning control functions over the construction of buildings, the felling of trees, or excavation.

7.11 Wild Life Protection Act (1945)

The Wild Life Protection Act is the only statute in Jamaica that specifically protects designated species of animals and regulates hunting in Jamaica. The main provision that ensures the protection of animals is found in Section 6 of the Act, which makes it a criminal offence for any person to be in possession of any protected animal, or part thereof. A person may be liable on summary conviction to a fine of one hundred thousand dollars.

The Wild Life Protection Act, continues to be central to conservation and sustainable use of Jamaica's biological resources. Key provisions relate to: (a) protected species are listed with provisions making it an offense to have in one's possession the whole or any part of a listed animal, living or dead, (b) game sanctuaries & reserves may be declared with provisions for preventing hunting, egg collection or possession of guns or weapons, (c) hunting activities controlled (seasons, permitted species, limits, licenses, etc.), (d) fishing in rivers controlled through types of gear permitted, (e) pollution of rivers which may kill fish not permitted, (f) use of dynamite or other explosive substances banned in fishing activities, and (g) authorization of game wardens (honorary, volunteer positions) to assist in enforcement and compliance activities related to the Act

The Wild Life Protection Act is being amended to more effectively deal with conservation and sustainable use of the full range of biological resources, including plants. Schedules of protected species will be updated, terms and definitions clarified, and provisions added relative to scientific research, access to and transfer of genetic materials, and control of invasive species.

The Act also regulates the hunting of game birds and provides for the declaration of game sanctuaries and game reserves in which no hunting is allowed. The First Schedule of the Act declares all Forest Reserves as Game Reserves.

Specific provisions are also in place for the protection of fish and the protection of turtles including the taking of turtle eggs.

7.12 Morant and Pedro Cays Act (1907)

This Act controls access to, and exploitation of, the Morant and Pedro Cays and their resources, especially turtles and the eggs of the "Booby" terns. The Act prohibits fishing at the banks and allows for regulation of harvesting of marine resources. The proposed Fisheries Bill seeks to repeal this Act.

7.13 Watershed Protection Act (1965)

The Watershed Protection Act provides a framework for the management of watersheds in Jamaica. There are 26 watershed management units declared under the Act. The Act governs the entire island of Jamaica and makes provisions for the intervention of the Government in regulating uses of private land including the clearing of land and implementing appropriate agricultural practices. There are also provisions for intervention through assisted improvement agreements whereby improvement works can be carried out on land to protect watersheds.

Under section 6 of the Watersheds Protection Act, the controls and restrictions imposed by section 5 in respect of a watershed protection area prevail over the provisions of any other enactment. In theory this would mean that where an order is made under section 5, such an order would, for example, prevail over the provisions of the Forest Act.

No regulations have ever been prepared under this Act and therefore voluntary compliance and training have been the only measures available to ensure appropriate management practices in watersheds in Jamaica. Proposed amendments to the Watershed Protection Act have been completed to remedy the deficiencies in the Act, as there is currently no legal framework for appropriate soil conservation and land use management measures that can be implemented.

7.14 Natural Resources (Prescribed Areas) (Prohibition of Categories of Enterprise, Construction Development) Order (1996)

The island of Jamaica and the Territorial Sea of Jamaica have been declared a Prescribed Area. No person can undertake in any prescribed area any enterprise, construction or development of a prescribed description or category except under and in accordance with a permit.

Natural Resources Conservation (Permits and Licences) Regulations, 1996 requires permits in order to undertake any enterprise, construction or development of a prescribed description or category in a prescribed area. A licence may contain such terms and conditions as the Authority thinks appropriate.

Both the Order and the regulations were passed pursuant to Section 9 of the NRCA Act. The Order provides that the entire island of Jamaica is a prescribed area and lists specified categories of enterprise, construction or development that require a permit and for which Environmental Impact Assessments may be required. Those relating directly to the conservation of marine resources include; port and harbour developments, and modification, clearance or reclamation of wetlands. Sewage effluent is addressed separately under the Act and provides in Section 12, that no person shall discharge on or cause or permit the entry into water, on the ground or into the ground any sewage, trade effluent or any poisonous, noxious or polluting matter. However, certain activities are exempt from this section. These include discharges, which are in accordance with good agricultural practices, discharges permitted in an emergency in order to avoid a greater

danger to the public or discharges from domestic waste effected by means of absorption or soakaway pits or other prescribed waste disposal systems.

B. Other Legislation relating to Protected Areas

7.15 Town and Country Planning Act (1948)

The objective of this Act is to ensure the orderly development of land. This is achieved through Development Orders which are legal documents used by the planning authorities to *inter-alia* provide for protection of amenities and conservation and development of the resources of the prescribed area. Development Orders are the main means of control of land use in Jamaica.

Development Orders may be made under the Town and Country Planning Act. The Development Order will make provision for the matters mentioned in the Second Schedule. Among the matters included in the Second Schedule are the provisions for amenities. These include reservations of lands as open spaces, reservation of lands for Fame and bird sanctuaries and for the protection of marine life. Also included are reservations for the protection of forest, woods, trees etc.

At present the entire island is not covered by Development Orders. Existing orders are not updated regularly. In areas covered by a Development Order planning permission is required from the local authority or from the Town and Country Planning Authority if the area is “called in” or if the development does not conform to the zoning in the Development Order eg. change of use, retention of use, outline application, determination and petrol stations. In considering development applications the planning authorities take into account the Development Order and other material consideration.

Substantial amendments were made to the Town and Country Planning Act in 1999 to provide for effective enforcement. The required changes to provide a more comprehensive control over planning in Jamaica will be incorporated into the NEPA Act.

The Act also provides for the making of Tree Preservation Orders (Section 25) whereby a local authority may seek to preserve trees or woodlands in their area and prohibit wilful damage or destruction of trees, or require the replanting of trees. The Act provides for notification of, designation, and the right to submit objections to the declaration of such an Order including provisions for compensation. These Orders are not widely used.

7.16 Local Improvements Act (1914)

Requires that anyone wishing to subdivide land for building, lease, sale or other purpose must provide the local planning authority with a plan for approval.

7.17 Land Development and Utilization Act (1966)

Under the Land Development and Utilization Act, a Commissioner is appointed. There are two key areas of responsibility for the Commissioner. First, to ensure that occupiers of agricultural units fulfil their responsibilities. Secondly, to ensure that agricultural land is properly developed and utilized.

Under the Act “agricultural land” means lands used for agriculture or designated as agricultural land. “Agriculture” is defined by the Act to include horticulture, fruit growing, seed growing, forestry, dairy farming and livestock breeding and to the use of land as grazing land, pasture land, market gardens and nursery gardens.

7.18 Endangered Species (Protection, Conservation, and Regulation or Trade Act (2000)

The Endangered Species (Protection, Conservation and Regulation of Trade Act helps Jamaica comply with its international trade obligations under CITES and strengthens government’s ability to protect and manage endangered species within the country. In addition to its three schedules which correlate directly with the annexes of CITES, a fourth schedule was added to help protect endangered indigenous species through domestic trade controls. Listed in Schedule Four are 12 mammals, all birds (except game birds and alien species listed in the Second Schedule), 27 reptiles and amphibians, one fish, 10 invertebrate animals, and 204 plant species. Under the Endangered Species (Protection, Conservation and Regulation of Trade) (Designation of Management Authority) Order, 2000 (PRR 24 of 2000), NRCA was designated the Management Authority for the purposes of the Act. The Endangered Species (Protection, Conservation and Regulation for Trade) Act, 2000 (PRR 28 of 2000) make provisions for applications for permits and licences to import, export or re-export plant or animals specimens.

The Endangered Species (Protection Conservation and Regulation of Trade) (Establishment of National Export Quota) (Conch Strombus Gigas) Regulations, 2000 (PRR 29 of 2000) specifies the National Export Quota for Conch. The Endangered Species (Protection, Conservation and Regulation of Trade) (Conch, Strombus Gigas) Regulations, 2000 deals with the issue of permit or certificate to import, export or re-export conch (Strombus Gigas).

7.19 Exclusive Economic Zone Act (1991)

The Exclusive Economic Zone Act seeks to preserve and protect the marine environment and to prevent and control marine pollution. Within the Exclusive Economic Zone the Crown has sovereign rights regarding exploration, exploitation, conservation, protection and management of all natural resources of the waters over the seabed and sub-soil. In addition within the Exclusive Economic Zone, the Crown has jurisdiction in respect of the authorization, regulation and control of scientific research and the recovery of archaeological or historical objects. The Crown also has jurisdiction regarding the

preservation and protection of the marine environment and the prevention control of marine pollution.

7.20 Maritime Areas Act (1996)

The Maritime Act repealed the Territorial Seas Act, which originally established for Jamaica a 12-mile territorial sea. The Maritime Act declares Jamaica to be an archipelagic state and merely defines the various maritime zones. The Act however may be defined as a framework within which the Minister may, subject to his regulatory powers under Section 28, create more substantive provisions to carry out the true intent of the Act. There is no provision that currently specifically addresses the conservation of marine resources, though the regulatory provisions provide that the Minister may make regulations for the preservation and protection of the marine environment and the prevention and control of marine pollution; and the conservation of living resources in the internal waters, archipelagic waters, territorial sea, contiguous zone and continental shelf.

7.21 Harbours Act (1976)

The Harbours Act provides for the declaration of the harbours in Jamaica, and the appointment of a harbour master with general authority to regulate the safe movement of vessels within the harbour limits and to maintain aids to navigation. The Act makes the discharge of noxious matter from vessels into the harbour a criminal offence. The Harbours Act authorizes the Port Authority to declare, establish or alter the boundaries of harbours. The Port Authority has ultimate management responsibility for all harbours in the island.

7.22 Shipping Act (1998)

This Act serves to make better provision in respect of the regulation of merchant shipping, and in respect of the registration of ships, the employment and certification of seafarers, the safety of shipping, to significantly consolidate the law in relation to shipping and to make provision for connected matters. Regulations pertaining to ship source oil pollution are being prepared. The Act establishes the Maritime Authority with responsibility *inter alia* inspecting ships for the purpose of marine pollution prevention and makes provisions for the incorporation of international conventions on the prevention of pollution of the marine environment.

7.23 Port Authority Act (1972)

The Port Authority Act is responsible under the Act for the development and regulation of port facilities which include structures for the safe navigation, berthing and loading and offloading of cargo. Dredging, construction and reclamation of coastal land are activities carried out by the Port Authority pursuant to its statutory functions.

This Act establishes a Marine Board to make rules for the regulation and control of harbours and ship channels. It prohibits the discharge of rubbish, earth, stone, ballast, mud oil mixtures with oil or its residues, as well as the removal of stones and gravel from reefs, shoals, or cays. The designation of an area as a harbour requires designation of ship anchoring zones and the appointment of a designated Harbour Master authorized to control all sources of sewage, pollution, oil discharge, chemical releases, garbage disposal, etc. to the harbour from all land-based and ship-based sources. Shore reception facilities for ship-based garbage and sewage treatment should be provided under his supervision before any marinas are approved.

7.24 Pesticides Act

The Pesticides Act is responsible for the control of importation, use, and disposal of pesticides. Regulations related to agricultural developments (use of fertilizers, herbicides, pesticides, etc.) in areas adjacent to marine ecosystems, wetlands, and rivers need to be enforced by provision of lists of banned and approved chemicals as decided by the Pesticide Control Unit of the Ministry of Health, the Government Chemist, and the NRCA/NEPA, backed by analysis of groundwater, springs, and rivers in affected areas.

7.25 Office of Disaster Preparedness and Emergency Management Act (1998).

This Act established the Office of Disaster Preparedness and Emergency Management (ODPEM) to develop and implement policies and programs to achieve and maintain an appropriate state of national and sectoral preparedness for coping with emergency situations. Under the Act disaster is defined to mean the occurrence or threat of occurrence of an event caused by an act of God or otherwise, which results or threatens to result in *inter alia*, damage to property, damage to the environment on a scale which requires emergency intervention by the state. Disaster preparedness includes an activity undertaken in anticipation of a disaster, hazard or other emergency situation. Though this Act is very general in its application, the Office of Disaster Preparedness and Emergency Management in conjunction with the Natural Resources Conservation Authority has formulated guidelines for disaster relief and response. Jamaica is a member of the Caribbean Island Oil Pollution Preparedness Response and Co-operation Plan. This is a tiered response procedure designed to assist island states and territories within the region with oil pollution incidents that are beyond their capacities.

7.26 Urban Development Act (1968)

Established UDC with authority to acquire, manage, or dispose of land within or outside of designated UDC areas, and to act as the sole -planning - authority within its designated areas. Also develops domestic water supplies and Wastewater treatment facilities.

Although the UDC is its own Planning Authority within its designated areas, it is still subject to the NRCA Act (see sections 8 and 30 of the NRCA Act).

7.27 Mining Act (1947)

The Mining Act regulates mining activities in Jamaica and establishes that the rights to minerals belong to the Crown. Licences to extract minerals from Jamaica are granted by the Mines and Geology Division. Under the Act and its associated Regulations, the holder of a mining lease is required to restore all mined lands to at least the level of agricultural or pastoral productivity or of suitability for afforestation, which existed before mining. However, the penalties for non-compliance are low and this has affected the performances of mining licensees.

Under Section 9 of the Mining Act, the Minister by Gazette may declare an area, for which there is no existing licence or mining lease, to be closed to prospecting and mining. Such areas or sections of the area may be re-opened by Gazette, with terms and conditions related to prospecting or mining.

7.28 Quarries Control Act (1983)

The Act provides for the establishment of a Quarries Advisory Committee (Section 6) to designate quarrying zones and to license operators. It makes provisions for written notices to be served on persons operating quarries if the operation is detrimental to the fauna and flora of the neighbourhood (Section 29). Where illegal quarrying activities exist the Court may order that any fine imposed under the Act may be directed towards the rehabilitation of the illegally operated quarry. The Quarries Control Act was amended in 1994.

7.29 Water Resources Authority Act (1995)

The Water Resources Authority Act was enacted to regulate and manage the abstraction and allocation of water resources through the establishment of the Water Resources Authority. The Act also governs the preservation of water quality and the conservation of such resources. The Authority is required to gather data on the quantity and quality of water in above ground and underground resources. A Master Plan, as required under the Act, has been developed to allow the proper management of such resources. It evaluates and recommends how Jamaica should use its water resources. A licensing system is in place to govern the allocation of water resources.

7.30 Country Fires Act (1942)

The Country Fires Act prohibits setting fire to crop (includes trees, woods or underwood). In addition the Act prohibits the setting of fires during the night or unattended. A permit is required in order to set fire to trash. Under section 10 of the Act where there is proof that any crop or trash on any land was on fire there is a presumption that the fire was set by or with the consent of the occupiers. Section 14 empowers any officer or sub-officer of Police, any Forest Officer or Agricultural Warden to enter land to extinguish the fire.

7.31 Crown Property (Vesting) Act

By virtue of section 4 of the Crown Property (Vesting) Act government lands other than lands acquired by the Minister of Housing under the Housing Act, are vested in the Commissioner of Lands who, by virtue of section 3 is a corporation sole with the “power to acquire, hold, and dispose of land and other property”.

The main functions of the Commissioner of Lands are valuing land and buildings for purchase or lease by government, negotiating purchase or lease of land and buildings on behalf of government; acquiring land and building under the Land Acquisition Act.

7.32 Land Acquisition Act (1947)

The Land Acquisition Act facilitates the acquisition of land by government for public purposes. Under section 5 wherever it appears to the Minister that any land is needed for a public purpose a declaration is required. No declaration shall be made unless the compensation to be awarded for such land is to be paid out of: (1) the Consolidated Fund or loan funds of Government; (b) the funds of any Parish Council or KSAC or NWC. The declaration has to be published in the Gazette stating: (1) the parish where the land is situated, (2) the particular purpose for which it is needed; (3) details of plan (if available). The Commissioner of Lands is authorized under the Act to value the land and to negotiate for purchase by private treaty. Where no agreement can be reached to sell the land by private treaty then the Commissioner shall serve notice on all persons interested. By section 11 the Commissioner is authorized to hold an enquiry into the objections to acquisition, the value of the land and the claims of the various interested persons. Section 14 of the Act sets out the procedure to determine compensation. Where any person is dissatisfied with the award by the Commissioner an application for review can be made to the Supreme Court.

7.33 Public Health Act (1985)

The Public Health Act allows for the establishment of local Boards to regulate activities carried out in private or public buildings or properties where such activities are injurious to public health.

7.34 Petroleum Act (1979)

The Petroleum Act, gives the PCJ exclusive right to explore and develop petroleum resources in an orderly and rational manner while ensuring that the exploration and development process minimizes adverse effects on the environment. The Minister of Mining, Energy, and Tourism may make regulations for the prevention of pollution and the undertaking of remedial action in respect to any pollution which occurs, as well as the protection of fishing, navigation and other activities in the area in which petroleum operations occur. In accordance with the Act, the Minister may extend the functions of the PCJ to include development of other energy sources in Jamaica, including coastal peat resources.

C. THE JAMAICAN CONSTITUTION

The Constitution protects property rights and establishes the principles on the ownership of property in Jamaica. The legal status of owned property applies to the ownership of flora, fauna in Jamaica. The proprietor owns all flora on his property and if he catches wildlife on his property (subject to the Wild Life Protection Act) then he owns these wild animals.

The Constitution prohibits the taking of property by compulsory acquisition. However, it provides exceptions including taking possession of property to prevent activities injurious to the health of animals and plants and, where necessary, for carrying out an investigation for the conservation of natural resources.

D. NRCA GUIDELINES

NRCA Guidelines for Environmental Impact Assessment (1998)

Section 10 of the NRCA Act gives the NRCA the discretion to request of any applicant for a permit or a licence under Section 9 of the Act, an Environmental Impact Assessment. To facilitate the process the NRCA developed guidelines for conducting EIA's which includes a definition of an EIA, the EIA process, reporting and review procedures.

NRCA Guidelines for Development in the Coastal Zone in Jamaica (1998)

This document serves as a guide for actions to be taken and the relevant agencies to be consulted for development in the coastal zone. It gives an idea of potential environmental impacts resulting from certain development activities and guides mitigation measures; and reviews the requirements for permits, licenses and environmental impact assessments.

NRCA Guidelines for the Planning and Execution of Coastal and Estuarine Dredging Works and Disposal of Dredge Materials

These guidelines provide information on the permitting process and the engineering and environmental aspects of projects involving capital works dredging and maintenance dredging.

NRCA Guidelines Pertaining to Marinas and Small Craft Harbours

These guidelines focus on the environmental aspects of marinas and small craft harbours and are aimed at those responsible for site selection, the design, construction and operation of marinas. The objectives are to enable the establishment of berthing areas for small craft while preserving coastal resources and beauty.

8.0 PENDING LEGISLATION

There are a number of pending Acts which will, when enacted, have a significant impact on the legislative framework for protected areas. There are also pending regulations which will be essential to complete the gap in the regulatory framework for protected areas and environmental protection areas under the NRCA Act.

- **The National Environment and Planning Agency Act (NEPA Act)**

The National Environment and Planning Agency Act (NEPA Act) is just being developed and drafting instructions are being prepared.

The proposed NEPA Act will deal with a wide range of matters including EIAs, Protected Areas, locus standi for third parties, the role of the public in enforcement. The existing power of delegation under the NRCA Act would continue into the NEPA Act.

It is intended that the NEPA Act will create an agency, the National Environment and Planning Agency which will be headed by a Chief Executive Officer who will be a corporation sole. The Act would also establish the National Environment Planning Authority whose central role would be to make decisions on applications coming before the Agency.

The NEPA Act would repeal several Acts and incorporate these into the NEPA Act. This will provide a major opportunity to modernize, integrate and harmonize various statutes dealing with environment and planning. The NEPA Act would repeal and incorporate the following Acts into the NEPA Act: NRCA Act, Beach Control Act, Watersheds Protection Act, Wildlife Protection Act, Town and Country Planning Act, Local Improvements Act, and the Land Development and Utilization Act. In addition three other Acts would be amended. These include: The Housing Act (to ensure that the jurisdiction conferred by NEPA Act are recognized in terms of the need for relevant approvals); Endangered Species (Conservation and Regulation of Trade) Act (to change references from NRCA to relevant authority under the NEPA Act); Ozone Act (to amend to reflect reference to NRCA to the reference to appropriate authority under NEPA Act.). It is expected that transitional provisions would be included in the NEPA Act to preserve existing regulations under the various Acts being incorporated into the NEPA Act. The NEPA Act will be a major legislative exercise and the opportunity should be taken to amend all relevant Acts where necessary.

- **Wildlife and Protected Areas Act**

The proposed Wildlife and Protection Areas Act will conform to the requirements of the SPAW Protocol. The SPAW Protocol contains three annexes. Annex I has strict requirements for prohibition of destruction or disturbance of plant species which are exploited in Annex I or which are found in Jamaica. Annex II fauna is similar to annex I as there is no exploitation of any of these species in Jamaica, it contains crocodiles and

iguanas, and some amphibians in Jamaica which will be protected under Jamaican law and Annex III allows utilization of species on a sustainable basis once a management structure is in place which is to be included within the provisions of the Act.

The Wildlife and Protected Areas Act (or the NEPA Act) is expected to incorporate the concept of biodiversity into Jamaican Law, introduce provisions governing access to genetic resources, protection of endangered, threatened, endemic plant and animal, bird and fish species, regulate the introduction, control and eradication of invasive species and require the registration of animal and plant, bird and fish attractions and persons who wish to collect these species. The legislation is to consolidate the protection of habitats and species through the incorporation of new provisions governing protected areas in the NRCA Act.

The Act will repeal sections 5, 33, 38(h), (j), (l) and (m) of the NRCA Act. The requirement for the Minister to designate protected areas in Jamaica will be placed in the Wildlife and Protected Areas Act (or the NEPA Act) and in the Schedules to this Act will be included categories, objectives, zoning, user fees, and procedures for entering into management agreements. The power to make regulations will be incorporated into this Act which is equivalent of section 38 of the NRCA Act. It is also proposed that section 7 of the Beach Control Act be included in the Wildlife and Protected Areas Act (or the NEPA Act) to allow for the declaration of protected areas for the purposes specified in the Beach Control Act under the Act. The creation of buffer zones around protected areas will also be included within the Act.

The Wildlife and Protected Areas Act (or the NEPA Act) will also include a provision requiring the Authority to develop or have developed a national plan for the coordinated management of all protected areas in Jamaica. The plan would identify mechanisms to ensure their ecological integrity and co-management principles that will ensure consistency.

The Act would allow persons to take gifts of land within a protected area to the Authority and for the Authority to accept such gifts. The Authority would be empowered to acquire lands by negotiation, sale or lease where necessary in the public interest to promote conservation. However whether these roles would be a matter for the Agency or the Authority has still to be settled.

The Act would also empower the Authority to negotiate voluntary conservation agreement. Again whether this would be a role for the Agency or the Authority is still to be finally resolved. Conservation agreements whose primary object is to enhance the conservation of biodiversity. These agreements may relate to private or public land, or to marine areas or protected animals, birds, fish or plants.

Under the Act the Minister on the recommendation of NRCA would be empowered to amend the boundaries of a protected area. The Act would also allow the Authority to recommend to the Minister the establishment of buffer zones adjacent, around or near protected areas.

The Act would provide for the issue of a bioprospecting permit in order to obtain access to genetic resources in Jamaica.

A wide range of incentives are specified in the proposed Wildlife and Protected Areas Act (to be incorporated in the NEPA Act). These are as follows. First, a property tax credit of 50% property tax where the property is managed under a conservation agreement. Secondly, a tax credit of up to 80% for expenditures furthering the conservation or recovery of protected areas where land is privately owned. The credit will be applied against income tax or GCT. Thirdly, deferment or exemption of estate duty for any portion of the property that directly constitutes to the conservation or recovery of an endangered species so long as the property is used or occupied by an endangered species or designated as part of a protected area.

It is understood that the provisions set out above will now be incorporated into the NEPA Act and they will not form part of a separate Act.

- **Environmental Protection Regulations**

Section 33 of the NRCA Act authorizes the establishment of regulations within designated Environmental Protection Area. The following is a summary of the powers, functions, and activities proposed. 1997 draft Natural Resources (Negril Environmental Protection Area) Regulations.

- An annual report on the State of the Negril Environment prepared by the NRCA/NEPA (or its delegated entity) and submitted to the Minister for presentation to Parliament.
- Acquisition and maintenance of land and interests to support protection of natural resources within the EPA.
- Environmental Protection Plan contents, requirements for its preparation and public review, monitoring, and revision.
- Formation, powers and responsibilities of an Environmental Protection Management and Advisory Council to implement the Environmental Protection Plan.
- Functions of Local Management Entities to manage specific National Parks and other Protected Areas within the Environmental Protection Area e.g. NCRPS manages the Negril Marine Park.
- Environmental Protection Ranger, appointment and functions.
- Zoning powers in order to provide effective management of the area.
- Review by local Environmental Protection Management and Advisory Council of NRCA Permit and Licence applications within the Environmental Protection Area.
- Environmental Impact Assessments.

- **Portland Bight Protected Area Regulations**

Drafting instructions were prepared for the Natural Resources (Managed Resource Protection Area) Regulations (generic) and the Portland Bight Protected Area Regulations (specific). It was proposed that there would be two sets of Regulations governing Portland Bight Area. First, the generic Regulations would apply to all managed protected areas that are declared under the NRCA Act. The generic Regulations would establish a system for management, planning, community and enforcement mechanism.

Secondly, the specific regulations were designed to govern individual concerns or management issues that apply specifically to a prescribed area of land. These specific Regulations are entitled The Portland Bight Protected Area Regulations, The draft Portland Bight Protected Area Regulations contain provisions on the permitting of various activities including the use of chain saws; charcoal burning, conducting research, fishing and the creation of offences for the destruction of various natural resources. The Regulations also require the creation of a Protected Area Management Plan by the Local Management Entity. The Natural Resources (Managed Resource Protected Area) Regulations (generic) have not yet been prepared. The Regulations relating to protected areas are of central importance because there is no general regulatory framework for protected areas. For example although Coral Spring Mountain Spring Protected Area has been declared there is no regulatory framework for this protected area.

- **Fisheries Act**

The proposed Fisheries Act would repeal both the Fishing Industry Act and the Morant and Pedro Cays Act and make consequential amendments to the Exclusive Economic Zone Act.

The proposed Fisheries Act would make provisions relating to (a) the designation of fishery management areas; (b) the need for making regulations for safety while at sea. In addition, the proposed Fisheries Act would deal with the following:

- (a) the question of licensing for all aspects of the fishing industry including the licensing of fisheries, fishing vessels and sports fishing vessels.
- (b) The issue of marine scientific research.
- (c) The importation of quotas for specific fisheries.
- (d) The provision for the seizure and forfeiture of fish, fishing gear, equipment and fishing vessels for offences under the Act.

Under section 30 the Minister may declare any area specified in the Order to be a fish sanctuary. The objective of declaring an area a fish sanctuary is not specified (compare the Forest Act regarding forest reserves). Under section 30 (2) any person who fishes or attempts to fish in a fish sanctuary commits an offence. There is no requirement for the Minister to consult with NEPA before declaring a fish sanctuary.

Section 43 allows the Minister to declare a fish management area for such species of fish as are specified in the Order. The purposes of a fish management area are spelt out in section 43(2) and include: (a) protecting and conserving fisheries in the designated area; providing marine recreational areas. The possibility of an overlap of section 43 with section 5 of the NRCA Act (re marine parks and other protected areas) exists and consultative mechanisms would seem necessary).

The Fisheries Bill addresses fishery management plans, declaration of fishery management areas around the island .and the establishment and operation of aquaculture facilities. It will also include provisions for conservation and management measures and licensing of all fishing activities to ensure enforcement of the controls. This Bill is currently being reviewed.

- **Conservation Easements Act (Draft)**

The draft Act would create conservation easements. A conservation easement under the draft Act would be an agreement entered into between an owner and eligible body, for an indefinite period to run with the land, that-

- a) grants rights and privileges to the easement holder and the owner's land that relate to the purposes for which the conservation easement is granted;
- b) imposes obligations, either positive or negative on the owner or the easement holder, or both, respecting the owner's land that relate to the purposes for which the conservation easement is granted.
- c) is made for the purpose of protecting, resolving or enhancing land eg. where land contains natural ecosystems etc.

It is proposed that the conservation easement would be submitted for registration within 30 days from the date of the agreement.

Under discussion is the question whether a conservation easement would be exempt from transfer tax and property tax under the Transfer Tax Act and the Property Tax Act respectively. Many areas of the draft Act are still under review.

9. PROTECTED AREAS: IMPLEMENTING INTERNATIONAL AGREEMENTS

There are a wide range of relevant international conventions to be considered in this section. Of critical importance to protected areas are the SPAW Protocol, the Ramsar Convention, CITES Convention, Cartagena Convention and the Convention on Biological Diversity.

The Role of International Law Generally

International law is much different from domestic law. Domestic law describes the rights and obligations of persons and their relationship to each other and the government. Domestic legal systems almost always include general methods for enforcing laws and adjudicating disputes.

International laws set out the powers and obligations of nations. Usually only nations, not individuals, may seek enforcement of the laws. Though there is an International Court of Justice, unlike a domestic court, it has no authority to force parties to appear before it or to abide by its decisions. Often international law is established through mutual agreements or treaties, and individual treaties may spell out specific means of enforcement or resolution of disputes. These dispute resolution mechanisms may be open only to nations party to the agreement and not to their citizens in their own right.

Sometimes international accords are not intended to be directly enforceable. Nations will sometimes sign non-binding statements of policy or principle. These may serve as a step towards future treaties, as policy guides for international organizations, or as persuasive references in policy debates involving the signing governments. Violations of the principles, however, have no defined consequences.

Nevertheless, both binding and non-binding international law may make itself felt in domestic situations. A nation may pass domestic laws to implement a treaty or international standard of behaviour. Or, a nation may simply conform its actions to the course of international law without specific new domestic laws. For example, a country might render promised technical assistance to another without needing a change of domestic law to comply. Accords may occasionally make themselves felt through non-governmental action. For example, non-governmental organizations (NGOs) around the world have embraced the Forest Principles signed at the 1992 Rio "Earth Summit". Even industry groups have adopted codes of practice reflecting the Forest Principles.

Under Jamaican law a treaty does not become law in Jamaica until local (i.e. Jamaican) legislation is passed to implement the treaty. Thus even though the Government of Jamaica may have ratified a treaty such a treaty cannot be enforced in Jamaica unless there is Jamaican legislation implementing the treaty.

Examples of Implementation	
Convention on Biological Diversity	No implementing legislation
CITES	Endangered Species (Protection, Conservation & Regulation of Trade) Act
Ramsar	No implementing Legislation
UNCLOS	Exclusive Economic Zone Act Maritime Areas Act

A. Multilateral Environment Agreements

9.1 The Convention on Biological Diversity

Threats to biological diversity have increased almost everywhere in the world during recent decades, mainly as a result of the destruction of natural habitats. Requirements for the conservation of biodiversity have therefore developed far beyond what was envisaged when the first conservation conventions were concluded.

The Convention defines biological diversity as “the variability among living organisms from all sources ...; this includes diversity within species, between species, and of ecosystems.” That means biological diversity encompasses the genetic variation to be found within a single kind of plant or animal; the variety of different kinds of plants and animals in a given place and their relative abundance; and the variety of natural aggregations of plants and animals, such as temperate pine forests, temperate oak forests, temperate forests dominated by mixes of particular species, the many distinct kinds of tropical forests, various grasslands, and so forth.

The Convention’s objectives are to help conserve biological diversity, to promote sustainable use of its elements; and to ensure fair participation in the benefits that may derive from the utilization of genetic resources. The agreement sets out an international consensus on these issues and thereby creates a legal framework that will contribute to the preservation of biological diversity.

Consistent with basic international law, the Convention reiterates that States have the sovereign right to exploit their natural resources pursuant to their own environmental policies, but with the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. Article 4 states that the requirements of the Convention apply not just within a State’s borders, but also to all actions under the State’s control, inside or outside of the State’s physical jurisdiction and regardless of where their effects are felt.

The Convention requires each signing State to formulate management plans and national strategies for the conservation and sustainable use of biological diversity or to adapt the existing strategies for this same purpose, and integrate the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programs, and policies.

As part of a global approach to conservation, the Convention on Biological Diversity accordingly places far greater emphasis upon the conservation of ecosystems than upon the protection of species as such. Under Article 6 dealing with *in-situ* Conservation, Parties are required, as far as possible and as appropriate, to: establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; develop, where necessary, guidelines for the selection, establishment and management of protected areas and areas where special measures need to be taken to conserve biological diversity; promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in their natural surroundings; promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas; and rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, *inter alia*, through the development and implementation of plans or other management strategies.

The Convention contains no obligation for Parties to protect the areas which are most important for the conservation of biological diversity. Annex I to the Convention only provides guidance for area selection in the form of an indicative list of components of biological diversity important for its conservation and sustainable use.

The conservation of ecosystems is also promoted through general obligations for the identification and monitoring of important components of biological diversity (Article 7). Parties are required to identify processes and categories of activities which may have significant adverse impacts on the conservation and sustainable use of biological diversity. Environmental impact assessment obligations are set out in Article 14.

9.2 Convention on International Trade in Endangered Species, Washington, 1973, (CITES)

CITES controls trade in endangered and threatened species. The species are listed in three appendices to the Convention. Species in Appendix I are threatened with extinction. CITES permits no commercial trade in these species or products made from them, and requires both export and import permits for non-commercial trade. Appendix II species are threatened with extinction and require trade controls for their protection. Trade in these requires an export permit, which the country may issue only if such trade is consistent with the survival of the species. Appendix III species are listed subject to export controls in specific countries. Import of an Appendix III species or derivative product requires a certificate of origin; if the species or product is from a country limiting exports, the importer must also have a permit from the country of origin. The Appendix I and II lists can be amended by a two-thirds vote of the parties to the Convention.

CITES, which has over 125 Parties, seeks to ensure that international trade in animal and plant species, defined as including subspecies and populations, is sustainable. In periodic Conferences of the Parties, CITES Parties identify species that are, or may be threatened by trade, listing them on Appendix I to CITES. They also identify species that may become threatened unless trade is regulated, listing them on Appendix II. These determinations are made based on biological criteria and evidence concerning the species' status and threats to their survival. Specimens of listed species can be traded only with permits from the country of export; Appendix I species must also have prior permits from the country of import. Commercial trade is forbidden for species listed on Appendix I. While not banned, it is strictly regulated for species on Appendix II, and Parties are to monitor trade impacts and adjust regulation as needed. A number of marine species are listed under CITES. For example, all species of the order Cetacea (whales and dolphins) and all species of sea turtles are listed under either Appendix I or Appendix II. A number of species of coral are also listed under CITES.

CITES became effective in Jamaica since June 22, 1977. In respect of Appendix I which lists species threatened with extinction, where there is strict regulation of trade (3 endemic Jamaican species listed, the Giant Swallowtail Butterfly, Jamaican Iguana, and Jamaican Boa). Appendix II lists species which may become threatened unless trade subject to strict regulation (4 endemic Jamaican species listed, the Black-billed and Yellow-billed parrots, Jamaican mango and streamertail hummingbirds). Appendix III is for species listed by any party which are subject to trade regulation within its jurisdiction (no species listed by GOJ). The NRCA has been designated the Management Authority for CITES, guided by an advisory body (Scientific Authority). The Endangered Species (Protection, Conservation and Regulation of Trade) Act was enacted to implement the provision of the CITES Convention.

9.3 Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Ramsar, 1971 (Ramsar Convention)

Ramsar, which has been in force since 1975 aims to stem the progressive encroachment on and loss of wetlands, now and in the future. While Ramsar focuses on wetlands that are important for migratory waterfowl, it recognizes the overall values of wetlands, including their fundamental ecological functions and their economic, cultural, scientific and recreational value. Ramsar defines wetlands broadly to include freshwater, brackish and saltwater marshes, including marine waters up to six meters deep at low tide, and any deeper marine waters contained within the wetland area, as well as adjacent islands and coastal areas.

Ramsar Parties are to designate at least one national wetland of international importance when signing the Convention or when depositing its instrument of ratification or accession; many Parties have designated more than one. Designation of these areas should be an element of the process of identifying priority components of biodiversity under Article of the Convention (see Part II, Action Item 6). Under Ramsar, Parties are also required to establish wetlands nature reserves and cooperate in the exchange of information for wetlands management. Ramsar also requires Parties to assess the impacts

of any changes in use on identified wetland sites. Finally, Ramsar requires Parties to take responsibility for conservation, management and wise use of migratory stocks of waterfowl.

The Convention referred to as Ramsar was ratified by Jamaica on February 7, 1998 (World Wetlands Day). The Convention provides a framework for international cooperation for conservation of wetland habitats. As part of this agreement, Jamaica designated the Black River Lower Morass as a Ramsar site in 1998.

9.4 The Framework Convention on Climate Change, Rio de Janeiro, 1992 (FCCC)

The FCCC, which entered into force in 1994, has been ratified by 157 countries. It addresses the release into the atmosphere of substances that contribute to the “greenhouse effect,” where gases trap some of the heat radiated from the Earth’s surface within the lower atmosphere, causing global temperatures to rise. The rise in anthropogenic emissions of greenhouse gases is expected to cause increases in temperature, and indeed may already be causing such increases. This in turn changes the pattern of heat distribution on the Earth’s surface, alters ocean circulation patterns and causes sea-level rise. The Framework Convention on Climate Change recognizes that no one State can solve this problem alone, but that every State has the responsibility to control its own contribution to the global problem and cooperate with other States in trying to prevent and reduce damage. The first Conference of Parties (COP) of the FCCC in Berlin, in 1995, produced the “Berlin Mandate,” in which the FCCC Parties agreed to begin efforts to strengthen the commitments made in the FCCC through the adoption of a protocol or other legal instrument that will set quantified objectives for emission limits and reductions, and will cover necessary implementing policies and measures.

9.5 United Nations Convention on the Law of the Sea, Montego Bay, 1992 (UNCLOS)

The United Nations Convention on the Law of the Sea (UNCLOS) establishes numerous rights and obligations for conservation of marine living resources and protection of the marine environment that complement the CBD’s objectives and obligations. Agenda 21 declares that UNCLOS “provides the legal basis upon which to pursue the protection and sustainable development of the marine and coastal environment and its resources”.

UNCLOS was opened for signature in 1982 but did not come into force until November 16, 1994, because of a controversial part of the Convention that deals with deep seabed mining (Part XI). This problem was addressed through the negotiation of the 1994 Part XI agreement, which adopted a modified regime for these mineral resources found on the seabed in the high seas. Over 100 nations have ratified UNCLOS, many more have signed it and indicated their intention to ratify it shortly, and many nations either have or are in the process of accepting the Part XI Agreement.

UNCLOS provides that coastal States have exclusive jurisdiction for various matters over designated zones of the oceans along their coasts, including coastal zones. At the same

time, coastal States are obligated under Articles 192 and 61.2 to conserve and manage the living marine resources under their jurisdiction. States also have obligations to protect the marine environment and conserve its living resources beyond areas of national jurisdiction. For example, the freedom to fish on the high seas is limited by the requirements of UNCLOS that States cooperate to conserve and manage living resources of the high seas. UNCLOS also provides that States are to prevent, reduce and control pollution of the marine environment. In addition, States are obligated to share monitoring and assessment information and also to collaborate at the international level to undertake additional studies and research concerning the marine environment.

Several recent international efforts build on principles articulated in UNCLOS. These include (1) the UN Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks (1995); (2) the UNEP Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (1995); and (3) the FAO Code of Conduct for Responsible Fisheries (1995).

9.6 Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (World Heritage Convention)

The World Heritage Convention, which has been in force since 1972, has the objective of creating international support for the protection and maintenance of sites demonstrating outstanding cultural and natural heritage of universal value. It provides for identification and protection of such sites under international law and encourages public and official attention to the value and the need to preserve such sites. Each of the 146 Parties to the World Heritage Convention assumes an obligation to identify, protect, conserve and transmit to future generations its unique cultural and natural heritage. In addition, the World Heritage Commission selects sites nominated by Parties to be placed on the World Heritage List. The criteria for selecting sites were revised in 1994 to provide for identification of sites that are the most important and significant natural habitats for *in situ* conservation of biological diversity. The World Heritage Convention provides for identification of World Heritage Sites within the “territory” of its Parties. Thus, while Parties may nominate Sites within their internal and territorial waters, it is unclear whether Sites can be identified within Parties’ EEZs.

The World Heritage Convention was ahead of its time in setting up a multilateral fund, the World Heritage Fund, to finance protection of World Heritage Sites in developing country Parties. However, the amount of funding contributed by developed countries has been minimal, generally amounting to between US\$ 2 and 3 million per year.

As of June, 2002, 10 properties were listed in the Caribbean (7 cultural and 3 natural). Jamaica indicated acceptance to this Convention in 1983 but has not yet ratified it, nor nominated sites for listings. Cockpit Country is a prime candidate for natural heritage site listing; Port Royal, Seville, and Spanish Town for cultural heritage site listing.

9.7 The Global Treaty on Migratory Species: The Bonn Convention of (1979)

The Convention on the Conservation of Migratory Species of Wild Animals was adopted in Bonn, Germany, on 23 June 1979. The Convention defines migratory species as those which cyclically and periodically cross one or more jurisdictional boundaries. The definition therefore includes marine species which migrate between adjacent EEZs or between an area under the jurisdiction of a coastal State and the high seas. In the latter case, States exploiting a migratory species on the high seas are considered by the Convention to be Range States of the species concerned. The definition excludes species which are found exclusively in the high seas.

Parties must prohibit the taking of animals listed in Appendix I, whether or not such species are also listed on Appendix II and are covered by agreements concluded under the Convention for their conservation and management. Exceptions may be made in certain cases, such as for scientific purposes or for the needs of traditional subsistence hunting, provided that they are precise as to content, limited in space and time and do not operate to the disadvantage of the species concerned (Article III-5).

Parties should also endeavour to conserve and, where feasible, restore the important habitats of Appendix I species; to prevent, remove, compensate for or minimise the adverse effects of activities or obstacles that seriously impede or prevent migration; and finally to prevent, reduce or control factors which endanger or are likely to endanger these species, including strictly controlling the introduction of exotic species and controlling, limiting or eliminating those exotic species which have already been introduced (Article III-4). Jamaica is not a party to the Bonn Convention.

9.8 International Convention for the Prevention of Pollution from Ships (MARPOL), 1973-1978

Pollution from ships poses a great danger to marine biodiversity. Highly productive estuaries and other coastal areas are particularly at risk from discharges. The 1973 MARPOL Convention and its 1978 Protocol aim to protect the marine environment by eliminating intentional discharges of oil and other harmful substances and minimizing accidental discharges of such substances by vessels sailing under flags of State Parties. Parties to the Convention opt to abide by one or more of the five annexes that deal with various substances and cargo loads: Annex I (oil); II (noxious liquids carried in bulk); III (packaged substances); IV (sewage); V (garbage and plastics). MARPOL also provides for designation of “Special Areas” of enclosed or semi-enclosed seas, based on ecological and traffic conditions, in which discharges are especially restricted. The IMO has developed guidelines for identifying special areas. A new annex to MARPOL is under development regulating the discharge of ballast water for the purpose of preventing alien species introductions.

9.9 The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, London, 1972 (London Convention)

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter, also known as the London Convention, was adopted in 1972 and entered into force in 1975. The disposal of wastes at sea can have severe impacts on marine biodiversity. The London Convention is designed to control the dumping of waste in the sea, and to encourage the formation of regional agreements to supplement the Convention. It requires States to limit the disposal at sea of such substances as radioactive materials, biological and chemical warfare agents, persistent plastics, heavy metals and toxic organics. Importantly, the Convention applies to activities of vessels flying flags of State Parties beyond national jurisdiction.

UNCLOS Article 210.6 indicates that States are required to implement the London Convention's pollution reduction and prevention requirements because they qualify as globally applicable ocean dumping requirements.

9.10 Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean (SPAW Protocol)

The Cartagena Convention was drafted in 1983, with Jamaica signing in 1990, but has not yet formally ratified. This regional convention encourages the establishment of protected areas to conserve rare and fragile ecosystems occupied by vulnerable species, as well the protection of endangered species and sustainable use of wildlife. While the emphasis is on the marine environment, it does include provision for protection of terrestrial species such as the Jamaican Iguana and Amazona parrots.

Jamaica signed the SPAW Protocol under the Cartagena Convention on January 18, 1990 in Kingston, Jamaica, but has yet to ratify it. Jamaica has however made a commitment to ratify the Protocol.

9.11 Protocol concerning pollution from Land-based sources and activities, Oranjestad, Aruba (1999)

The protocol sets out a framework for cooperation. It establishes a list of land-based sources and activities and their associated contaminants of greatest concern to the marine environment of the Wider Caribbean. It also outlines and establishes the process for developing regional standards and practices for the prevention, reduction and control of those sources and activities identified. It establishes specific regional effluent limitations for domestic wastewater (sewage) and requires Parties to develop specific plans, programs and other measures for the prevention, reduction and control of agricultural non-point sources. Jamaica is not a party to the Protocol.

9.12 Vienna Convention for the Protection of the Ozone Layer, Vienna (1985)

The Convention mandates that Parties take appropriate measures to protect human health and the environment against the adverse effects of human activities, which modify the ozone layer. Jamaica is a party to this Convention.

9.13 Protocol on Substances that Deplete the Ozone Layer, (Montreal Protocol) (1987)

The Montreal Protocol aims to protect the ozone layer by taking measures to control global emissions of ozone, depleting substances. It does so by binding Parties to phased reductions in production and use of substances that are known to deplete the ozone layer, leading to phaseouts for most such chemicals. Developing countries can receive a ten-year grace period from reduction obligations. The Protocol also restricts trade in ozone depleting chemicals and provides for the exchange of information and technology relating to substitutes for ozone-depleting substances.

Ozone depletion can have serious consequences for marine biodiversity. Parties must coordinate their efforts in order to address this global threat.

9.14 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Basel (1989)

The Convention regulates the transboundary movements of hazardous wastes and obligates States to ensure that such wastes are managed and disposed of in an environmentally sound manner. The Convention seeks to control the transboundary movement of hazardous wastes, monitor and prevent illegal traffic, provide assistance for the environmentally sound management of hazardous wastes, promote co-operation between Parties and develop technical guidelines for the management of hazardous wastes. Jamaica is not a party to the Convention but has signed a bilateral agreement with France concerning the transboundary movement of hazardous waste.

9.15 International Convention on Oil Pollution Preparedness, Response and Co-operation, (1990)

This Convention requires that all Parties take appropriate measures to prepare for and respond to an oil pollution incident and cooperate and provide advisory services, technical support and equipment. Jamaica is a party to the Convention.

9.16 United Nations Framework Convention on Climate Change, New York (1992)

The main objective of this Convention is to stabilize the level of greenhouse gases in the atmosphere, to avoid triggering rapid climate change. By signing it each party pledged to work for the reduction of greenhouse gas emissions, the protection of greenhouse gas sinks and reservoirs, and the mitigation of any effects of climate change. Each country

has to make national inventories of its emissions of those greenhouse gases not regulated under the Montreal Protocol (which governs chlorofluorocarbons and related chemicals affecting the stratospheric ozone layer).

Although the Climate Change Convention is not aimed directly at the protection and conservation of forests, it has implications for forest conservation. Forest plants absorb carbon dioxide, a major industrial emission and greenhouse gas, in the process of photosynthesis. The carbon dioxide is incorporated into the structure of the forest plants, notably into wood, and remains there as long as the plants remain intact. Forests are therefore carbon dioxide reservoirs; growing forests are carbon dioxide sinks. Forest fires and forest clearing are sources of greenhouse gases.

Also, forest ecosystems are potentially sensitive to climate change. For example, if a normally wet, forested area becomes dry because of a decrease in precipitation or increase in temperature, then many of the trees, other plants, and animals in that forest will either die or be unable to reproduce vigorously enough to maintain their populations.

9.17 Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto (1997)

The Protocol seeks to reduce the emissions of greenhouse gases. It sets specific targets for emissions reductions by developed countries. It also identifies various sectors in which actions should be considered when developing national programs to combat climate change, including energy, transport, industry, agriculture, forestry and waste management. Jamaica is a party to the Protocol.

9.18 World Trade Organization Agreement

The Trade-Related Intellectual Property subagreement (TRIPs) to the WTO Agreement calls for parties to adopt a wide range of intellectual property right (IPR) regimes, including patents, plant breeders rights, and trade secrets. Developing country parties are allowed a grace period, longest for the least developed countries, for implementing new IPR legislation. TRIPs does not make explicit reference to the rights of indigenous and local communities, although it does allow parties to develop *sui generis* (novel) plant variety protection, which some have interpreted as providing an opportunity to recognize rights to traditional knowledge.

9.19 United Nations Convention to Combat Desertification in those Countries experiencing Serious Drought and/or Desertification, Particularly in Africa, Paris (1994)

The Convention aims to promote effective action through innovative local programs and support of international partnerships. The Convention requires the implementation of national and regional action programs, which should emphasize popular participation, and the creation of an enabling environment designed to reverse land degradation. Jamaica became a party to the Convention by accession on 12 November 1997.

9.20 Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (Western Hemisphere Convention)

This multilateral convention was signed in Washington D.C, on November 20, 1940. Its main objectives are the preservation and protection of flora and fauna, as well as protection of significant natural areas, parks, and cultural and scenic sites. It calls on the signing nations to establish protected areas, adopt laws for the protection of flora and fauna, protect migratory birds, prohibit taking of species of special concern, regulate trade in protected species, and cooperate to promote the objectives of the treaty. The treaty has also been an influence behind a series of Organization of American States-sponsored conferences, meetings, and resolutions related to the environment.

B. Non Binding International Arrangements

9.21 Agenda 21, Rio de Janeiro, (1992)

Agenda 21 is a program of action for sustainable development that was adopted at the UN Conference on Environment and Development in June 1992. While this instrument lacks the force of binding international law, the signature of this text carries with it a strong political obligation to ensure its full implementation. Moreover, the consensus achieved in Agenda 21 already has spurred the conclusion of a number of international initiatives, such as the adoption in 1995 of the UN Agreement on Straddling and Highly Migratory Fish Stocks and the 1994 Conference on the Sustainable Development of Small Island Developing States. Agenda 21 provides additional evidence of the international community's broad support for the tasks to be undertaken pursuant to the Convention.

Agenda 21 contains several chapters that bear on Jamaica's forests. Chapters two through eight deal with social and economic dimensions of sustainable development, including issues like fighting poverty. Chapter 10 deals with planning and management of land resources. Chapter 13 deals with fragile mountain systems. Chapter 14 deals with rural agriculture and development. Chapter 15 addresses conservation of biological diversity. Chapter 18 deals with the protection of freshwater sources. Chapter 26 deals with the role of indigenous communities.

Chapter 11 identifies four broad program areas for future national and international efforts. The first is sustaining the multiple roles and functions of all types of forests. This area includes promoting national holistic forest policies created with local-level participation, including that of women and minorities. The second program area is forest rehabilitation and reforestation. The third is full use and valuation of forest goods and services. And the fourth is strengthening capacities for assessment and monitoring of forest activities.

Two chapters of Agenda 21 are particularly relevant to the protection of biodiversity: Chapter 15 on the conservation of biodiversity; and Chapter 17 on the protection of the

oceans, including open, enclosed and semi-enclosed seas, and coastal areas, including the protection, rational use and development of their living resources. Of the two chapters, Chapter 17 provides the broadest support for actions to protect marine biodiversity and promote sustainable use. For example, Chapter 17 specifically calls for coastal States to undertake measures to maintain biological diversity and productivity of marine species under the national jurisdiction.

9.22 Forest Principles

The 1992 Rio U.N. Conference on Environment and Development (UNCED) produced two non-binding declarations directly relevant to forests. One was a set of non-binding principles on forests, generally called the Forest Principles. The other was Agenda 21, UNCED's outline of future international environmental protection and sustainable development actions.

The Forest Principles call themselves "a first global consensus on forests." They restate some of what has been said before in other instruments about natural resources generally: that states have a sovereign right to control their own resources, including their forests, and that developed countries should support the forest conservation efforts of developing countries.

The Forest Principles also include statements more specifically addressed to modern forest development issues. Principle 5(a) recognizes the need to support the rights of indigenous peoples and other forest dwellers. Several parts of the principles recognize the contribution forests make to rural economies and lifestyles and how their conservation is tied to issues of poverty and development. Other parts recognize the need to preserve the biological diversity and other non-commodity values inherent in many forests.

9.23 United Nations Conference on the Sustainable Development of Small Island Developing States, Bridgetown, (1994)

The United Nations Conference on the Sustainable Development of Small Island Developing States was held in Barbados in May 1994. The participants to the UN Conference on Environment and Development (the Earth Summit) had recognized the particular needs of these countries and their dependence on marine and coastal resources, as well as the threats they faced due to climate change and sea-level rise. Consequently, Chapter 17 of Agenda 21 specifically called for the convening of this Conference. Its objectives were to examine the nature and special vulnerabilities of these States and to define a number of specific actions and policies relating to environmental and development planning to be undertaken by these States, with help from the international community. After more than a year of negotiations, the Parties adopted the Barbados Programme of Action for the Sustainable Development of Small Island Developing States.

This Programme includes a number of measures that the small island States can take to manage sustainably their marine and coastal resources, and also calls on developed States and the international community to provide them with financial and technical assistance to achieve this goal. The Programme of Action adopts a holistic approach, and reviews comprehensively each of the essential aspects of the sustainable development of small island developing States. The marine dimension of these islands is clearly emphasized and specific chapters of the Programme deal, *inter alia*, with climate change and sea-level rise, coastal and marine resources, tourism resources, bio-diversity resources and regional institutions and technical cooperation. The adoption of an integrated coastal area management approach is clearly identified as a required condition for the sustainable development of the island States, particularly to mitigate impacts of sea-level rise.

9.24 UNEP Conference on Protection of the Marine Environment from Land-Based Activities, Washington, (1995)

UNCLOS requires States to address land-based sources of marine pollution, which is a principal threat to marine and coastal biodiversity. Recognizing that specific implementation of this general obligation is complex and demands significant resources, the international community affirmed in Agenda 21 the need to implement their obligations to protect coastal and marine environments against land-based sources of pollution.

At the Washington Intergovernmental Meeting on Protection of the Marine Environment from Land Based Activities (October 23-November 5, 1995), governments adopted a Global Programme of Action to prevent, reduce and control marine pollution from land-based activities. The Programme focuses on providing practical guidance on how to identify problems and priorities and implement sustained action with respect to nine specific source categories of land-based pollution; it discusses national, regional and international strategies for mobilizing human, institutional and financial resources; and it recommends approaches to managing land-based pollution for each source category.

The Programme of Action also calls on States to negotiate and implement a legally binding instrument to address, where appropriate, the issue of production and consumption of persistent organic instruments (POPs). This elaboration of more specific strategies on reducing land-based sources of marine pollution enables States to begin devising and implementing national management regimes which should ultimately form a major part of the actions needed to protect marine biodiversity.

9.25 UN Agreement on Straddling and Highly Migratory Fish Stocks, New York, 1995, and FAO Code of Conduct for Responsible Fisheries, Rome, (1995)

The Straddling Stocks Agreement seeks to fill some gaps in the UNCLOS framework with regard to the “long-term conservation and sustainable use of straddling fish stocks and highly migratory stocks through effective implementation of the relevant provisions of the Law of the Sea Convention. It is based on the concept (the so called” biological

unity of the stocks”) that while some stocks straddle EEZs and the high seas, they nevertheless need to be managed throughout their range.

The Straddling Stocks Agreement articulates three conservation principles which build upon and strengthen the conservation requirements of UNCLOS: the precautionary approach, protection of biodiversity in the marine environment, and sustainable use of fisheries resources. The FAO Code of Conduct, which is non-binding, applies UNCLOS-consistent conservation and sustainability requirements to fisheries for all stocks in all areas of the seas.

9.26 UNESCO’s Man and Biosphere (MAB) Programme

A small number of international organisations have undertaken specific programmes for the establishment and conservation of protected areas. The only one of these which has a worldwide coverage is the Biosphere Reserve network which was developed under UNESCO’s Man and Biosphere (MAB) programme. As there is no treaty or any legally binding obligations governing the network, designations of biosphere reserves are made on a purely voluntary basis. Proposed designations by individual States must, however, be approved by the MAB Coordination Council. Unsuitable areas may therefore be refused. However, there are no criteria that require some degree of legal protection to be accorded to an area before it can be listed, nor is there any legal obligation to protect an area once it has been listed. Notwithstanding, there is a strong moral obligation to do so, in view of the prestige of the network and its major scientific importance. In 1992, there were 313 biosphere reserves located in 76 different countries.

Unlike sites on the World Heritage List which must each be of exceptional value, biosphere reserves are selected because they are representative of different types of ecosystems. Their purpose is the conservation of these ecosystems and the species they contain, scientific research, monitoring, education and training. In addition, biosphere reserves must be integrated into their social, economic and cultural environment and for that purpose local populations should be involved as much as possible in their conservation and management.

Biosphere reserves must be zoned, with a core area devoted to strict protection and a buffer zone in which human activities may only be authorised to the extent that they are compatible with the conservation objectives of the area. Around the buffer zone, there must be a transition zone where specific cooperative links with the local populations should be developed and maintained.

The result is that there are considerable differences between the legal status of the reserves included in the network. These range from the strict protection usually given by national park legislation to no protection at all, where a designated area does not fall into any of the categories defined by the law.

C. BILATERAL CONVENTIONS

- Maritime Delimitation Treaty between Jamaica and the Republic of Colombia, 12 November 1993

The treaty delimits the continental shelves and exclusive economic zones of Jamaica and Colombia. It also establishes within a certain sector of those maritime areas, a “Joint Regime Area” for the purpose of joint management, control, exploration and exploitation of the living and non-living resources therein, protection and preservation of the marine environment, conservation of living resources.

- Agreement between the Government of Jamaica and the Government of the Republic of Cuba on the Delimitation of the Maritime Boundary between the two States, 18 February 1994.

The treaty delimits the continental shelves and exclusive economic zones of Jamaica and Cuba. It also allows for co-operation in the development and implementation of programmes in navigational safety, search and rescue, hydrographic surveys, scientific research, and preservation and protection of the marine environment.

10.0 KEY LEGAL ISSUES AFFECTING PROTECTED AREAS

10.1 Definitions

There is need for clarification of the term “protected area” both as to nomenclature and meaning. In modern literature on the environment the term refers to the classification of protected areas developed by the International Union for Conservation of Nature and Natural Resources (IUCN). Each class of protected area has its peculiar characteristics and management objectives.

In many policy documents “protected areas” has been used in a much larger sense to mean, apparently, any site which is subject to a protective regime. This usage is reflected in the Policy document on Protected Areas where reference is made to protected areas under the Forest Act, the Morant and Pedro Cays and several other laws. Clearly protected areas should also include heritage and fishing sites.

The Beach Control Act (section 7) provides for the declaration, by Ministerial Order, of a part of the foreshore and the floor of the seas as a protected area. Section 23 of the Forest Act confers power on the Minister to declare any Crown land to be a “protected area” if it appears to him desirable for a number of purposes specified in the subsection. Under subsection 23 (2) of that Act private lands may also be so declared at the request of the owner. The purposes for which an area may be declared a “protected area” under these Acts do not correspond to the management objectives of any of the IUCN categories of protected areas.

The IUCN classification, although it has its own terminology for each category is primarily concerned with the management of sites according with each category of protected area having a primary conservation purpose. It would be sufficient, therefore, if an area subject to a protective regime under current Jamaican law were being managed in a manner which is consistent with the philosophy and management objectives of a particular IUCN category without the area having an IUCN nomenclature.

10.2 The Existing Statutory Basis for National Parks and Marine Parks

Among the functions of the Natural Resources Conservation Authority (NRCA) under the NRCA Act is the duty to manage such national parks and marine parks as may be prescribed: section 4(c). By virtue of the Interpretation Act, “prescribed” means prescribed by the Act or subsidiary legislation made under it. In exercising this function NRCA is empowered to carry out or cause to be carried out, in relation to prescribed national parks and marine parks, such improvements as it thinks fit, and to provide for the zoning of the parks and the licensing of persons who carry on business there.

National parks and marine parks are designated as such by Ministerial order on the recommendation of NRCA after consultation with the Jamaica National Heritage Trust: section 5(1). (note that the Act does not require consultation with other relevant agencies such as the Fisheries Division or the Forestry Department).

A national park is to be maintained for the benefit of the public: section 5(1) (a). There is no indication in the Act of the objective of the protective regime from an environmental standpoint, eg. on account of its biodiversity , or for species or habitat protection.

National Parks are defined under the NRCA Act as “any area of land to be maintained for the benefit of the public”. Protected areas are defined as “any area of land or water in which may be preserved any object (whether animate or inanimate) or unusual combination of elements of the natural environment that is of aesthetic, educational, historical or scientific interest”. A Marine Park is defined as “any area of land lying under tidal water and adjacent to such land or any area of water”.

Regulations were passed in 1992 to govern the management of Marine Parks under the Natural Resources (Marine Parks) Regulations and in 1993 the Natural Resources (National Parks) Regulations were promulgated. These regulations were amended in 2003.

10.3 The Jamaica National Park Trust Fund

The Jamaica National Park Trust Fund (JNPTF) was established in January 1991 and capitalized with the proceeds of Jamaica’s first debt-for-nature swap. The Fund is managed primarily as an endowment and pays its expenses through investment income, its principal remaining untouched. It was envisaged that JNPTF would be a major vehicle for channeling funds for the park system, whether these funds be public or private. To this end, JNPTF allows for donations to be tied to specific projects, parks or geographical areas.

When the system was originally conceived, it was anticipated that JNPTF would be the primary source of financial support to the parks, covering some but not all their operating expenses. It was expected that the parks would, in turn, individually generate funds from other sources such as user fees and other mechanisms to supplement the resources allocated by JNPTF or NRCA.

The responsibility for overall policy formulation and guidance of JNPTF’s operations rests with a Board of Directors comprising representatives from NRCA, the Planning Institute of Jamaica, the Private Sector Organization of Jamaica, the Montego Bay Marine Park Trust, three members named by the Jamaica Conservation and Development Trust (JCDDT), an NGO, and a private individual. The structure and future of the JNPTF is currently under review.

10.4 Delegation under section 6 of the NRCA Act

Under section 6 of the NRCA Act, NRCA may delegate any of its functions under this Act (other than the power to make regulations) to any member, officer or agent of the

Authority. The delegation is restricted to powers under the NRCA Act and would not extend to NRCA's powers under the Beach Control Act, the Wildlife Protection Act and the Watersheds Protection Act. The delegation can only be made to three categories of persons: (a) a member (i.e. a member of the NRCA Board [see section 2]) (b) an officer (i.e. a person employed by NRCA, and (c) agent. Agency is the fiduciary relationship that exists between two persons, one of whom expressly or impliedly consents that the other should act on his behalf. The person on whose behalf the act or acts are to be done is called the principal. The one who is to act is called the agent. Any person other than the principal and the agent may be referred to as a third party: Bowstead on Agency (15th ed). In essence the acts of the agent bind the principal once those acts are done within the scope of the agency. In general an agent is only entitled to remuneration for services as agent if either the express or implied term of agency contract, if any, so provide. In broad terms and subject to clear exceptions, every agent has a right against his principal to be reimbursed all expenses and to be indemnified against all losses and liabilities incurred by him in the execution of his authority. There is no right to reimbursement and indemnity: (1) in respect of an unauthorized act by agent which is not ratified by the principal; (2) in consequence of the negligence, default, insolvency a breach of duty by the agent; (3) in respect of unlawful act by the principal.

In respect of the powers to delegate under section 6 this is clearly linked to NRCA's powers under section 4(1) (c) and 4 (2) (c). Under section 4 (1) (c) NRCA is authorized to manage such national parks, protected areas and public recreational areas as may be prescribed. A protected area as defined by section 2 means an area designated as such pursuant to section 5 (1) (b). It would therefore appear that NRCA's functions under section 4 (1) (c) only relate to areas specified under section 5 and may not apply to section 33. Under section 33 the Minister may declare an area to be an environmental protection area and for NRCA to prepare an environmental protection plan for Ministerial approval. Section 33 is a stand alone provision and does not require that any management functions be performed by NRCA within the environmental protection area nor are any functions assigned to NRCA under section 33 though conceivably this could be done by way of the environmental protection plan.

Section 6 needs four types of revisions. First, the power to delegate should be subject to Ministerial approval. Secondly, the power to delegate should be more transparent and there should be public notice of the intention to delegate and provision for the public to object. Thirdly, the delegation should be to any member or officer of the Authority or any person approved by the Authority. Under the Interpretation Act person includes both natural persons and corporations. Fourthly, section 6 should make it clear that the power to delegate includes any functions of the NRCA under the NRCA Act or any functions under any other Act.

10.5 Declaring Protected Areas over existing private lands

Under the NRCA Act the Blue and John Crow Mountains National Park was declared in an area which was an existing forest reserve (Crown land). The Montego Bay Marine Park is located in an area controlled by the Crown. In respect of Negril Environmental

Protection Area, the Portland Bight Protected Area and the Coral Spring – Mountain Spring Protected Area are both located in areas where there are some private lands. The NRCA Act is silent on the issue of including private lands in a protected area declaration. Certainly the National Parks Regulations appear to assume that national parks are being located in Crown Lands.

By contrast this issue is dealt with more comprehensively under the Forest Act. Under section 5 of the Forest Act, the Minister may declare to be a forest reserve, (a) any Crown lands or (b) any private land if the owner makes a written application for such a declaration. By section 7 the Minister may by order declare to be a forest management area: (a) any Crown lands not in a forest reserve; (b) any private lands, if he is satisfied that the use of the land should be controlled in the protection of the national interest. The proposed Conservation Easement Act when enacted would bring private landowners into conservation.

10.6 Guidelines for Management Arrangements with Private Landowners

In 2001, Cabinet approved the National Forest Management and Conservation Plan with a commitment to “protecting, managing and restoring the resource”. Subsequently, in 2003, Cabinet approved the White Paper, National Strategy and Action Plan for Biological Diversity in Jamaica to “encourage private landowners to protect their properties” and calling for “a policy on economic incentives” to fulfill Jamaica’s international commitment to develop “incentives for the conservation and sustainable use of components of biological diversity”.

The question of the rights of private landowners and the role of private conservation within the protected area system is of critical importance. More needs to be done to bring the private landowners and the agricultural, tourism, marine and water sectors into the protected areas management process as active partners, while preserving their rights as private citizens, businesses and landowners.

10.7 Defining the Processes for Resolving Public – Private and inter-jurisdictional conflicts

The NBSAP maintains the creation of Memoranda of Understanding between agencies of government and possibly other entities for the purpose of defining the relationship of parties in the management of biodiversity.

The development of Memoranda of Understanding between Public and Private agencies would be a useful mechanism for resolving public – private conflicts. The Memoranda of Understanding would seek to identify the key issues between the parties and specify methods of resolving the disputes. This would be very useful where the disputes concerned conflicts between private land owners and protected areas. Disputes could also arise between local communities and protected areas. There would best be managed at a local level and the managers of the affected protected areas would take a lead in establishing conflict resolution mechanisms.

Another area of potential dispute would be inter-jurisdictional conflicts between Government agencies. Again this can be dealt with by Memoranda of Understanding. An example is the Memoranda of Understanding executed in 2004 between the Water Resources Authority, NEPA, Ministry of Health and ODPEM regarding water quality. In the absence of a Memoranda of Understanding inter-jurisdictional conflicts between Government agencies could be settled at meeting between the agency heads or inter-ministerial meeting or in the last resort resolved at the Cabinet level.

10.8 Enforcement of Protected Areas Legislation

Enforcement within the protected areas remains a difficult problem primarily because of the need for financial and human resources.

A fundamental problem that needs to be overcome is the common attitude that government land is not owned by anyone and that its resources are available to whoever can get them. The easy option is to avoid conflict by maintaining a laissez-faire policy, but it must be recognized that the best interests of society, particularly the rural poor, are not well served by allowing unregulated destruction of forest ecosystems to continue. For example, Jamaica had to spend millions of dollars to repair environmental damage caused by destruction of natural ecosystems in the aftermath of the flood rains from 1986 onwards. While a few individuals may benefit, the nation as a whole suffers.

Enforcement also appears to be a matter that will continue to remain a matter for GOJ agencies such as NEPA, Forestry Department, Fisheries Division and the Jamaica National Heritage Trust.

NEPA has a Legal and Enforcement Division and thus in an effective position to institute proceedings for violations of the various Acts falling under NEPA's jurisdiction. Similarly, the Forest Department has a programme for the enforcement of the Forest Act.

Where there has been delegation to NGO's (e.g. in Montego Bay and Blue and John Crow Mountains) there has been a tendency for the NGO's responsible for such delegation to focus on community work and monitoring rather than strict enforcement.

This is due in part to shortage of both financial and human resources. It is also due to the perception by some NGO's that there are difficulties in both being the enforcer and the community facilitator. There is a tendency now for enforcement in most of the protected areas to be done by the police and other governmental agencies rather than by the NGO's responsible for managing the protected areas.

In the Montego Bay Marine Park effective enforcement remains a major concern, especially as it relates to spearfishing. Uniformed Rangers if appointed have powers of arrest, two patrol boats and radio communication, and carry out daily patrols. Rangers are trained in seamanship, scuba diving, search & rescue, hazardous material handling, disaster preparedness and lifesaving. Their duties include spot checks of vessels operating

in the Park, as well as monitoring to prevent damage from anchored vessels. This was a major problem in the absence of mooring buoys which are being installed as a matter of urgency.

The fishery in Montego Bay has now almost collapsed because of over-fishing despite the presence of the Montego Bay Marine Park whose enforcement efforts have had very little effect over the eleven years of its existence. Local fishers who once actively opposed the initiatives to manage the marine resources are now seeking the Park's assistance to develop sustainable management practices as well as alternative livelihoods. Rapid Rural Appraisal results confirm that the White House fishermen are accustomed to "change" as their economic stability gets threatened and some do have alternative means of income so paradoxically local fishers who once actively opposed the initiatives to manage the marine resources are now seeking the Park's assistance to develop sustainable management practices as well as alternative livelihood.

Key matters affecting effective enforcement:

1. shortage of financial resources
2. low levels of fines
3. delays in court hearings
4. inadequate monitoring (linked to shortage of human resources)

There would be a need for collaboration between NEPA, Forestry, Fisheries and the Jamaica National Heritage Trust in regard to enforcement. This could include joint meetings and training sessions. In addition there should be consistency between the various Acts for similar offences.

11.0 INCENTIVES FOR VOLUNTARY CONSERVATION

A. Comparative Survey

- 11.1 Necessary as they may often be, regulatory measures are not sufficient in themselves to preserve the natural environment. There are political limits on the extent to which the State can control land-use. In addition, statutory controls cannot oblige a landowner to manage a particular site in a specific way, except in rare cases. Voluntary conservation measures are therefore an essential complement to the direct conservation role of the State.

It should accordingly be incumbent upon the State to assist private landowners to preserve natural areas. There are many ways in which this can be achieved. These include the elimination of legal obstacles to conservation and of financial and fiscal incentives for the destruction of the natural environment, the development of legal tools to facilitate voluntary conservation, the payment of subsidies, the grant of tax incentives and the provision of advisory conservation services.

A distinction must, however, be made between individual landowners, to whom certain incentives must be provided to encourage them to conserve nature on their land, and conservation NGOs which are in need of assistance from the State to purchase, preserve and manage land for conservation.

11.2 Conservation by Individual Landowners or Occupiers

Voluntary conservation may result from a unilateral decision on the part of a landowner or occupier, or from a contract concluded between a Government agency (or a private body) and the landowner or occupier. In both cases, the provision of financial incentives may assist in the decision to conserve.

Incentives and Disincentives

Voluntary conservation may also be encouraged by various systems of financial incentives or disincentives, whether or not there has been any kind of formal or informal unilateral commitment.

The first aspect consists of the removal of incentives to destroy the natural environment. Such incentives may include unduly high land taxes on land which is not farmed, special tax reductions for the cultivation of undeveloped land and the grant of subsidies for the same purposes. Cultivation of underdeveloped land would also include cultivation of land by means of forestry.

In many countries, the tax system still heavily favours the development of agriculture. Unfarmed arable land is often taxed at a high level as a deliberate incentive to encourage landowners to develop it. A common method is to tax the land as if it were producing agricultural crops. There is consequently no incentive

to conserve these lands, as even extensive agriculture or stock-raising would be unprofitable after these taxes have been paid.

11.3 Contracts

a. Leases

Leases are often used as a substitute to acquisition. In the United Kingdom, for instance, many national nature reserves have been established on land leased by English Nature or its sister bodies. NGOs also frequently lease land from private and sometimes public landowners. However, this form of land tenure cannot guarantee long-term conservation of the areas concerned, as leases are generally concluded for relatively short periods of time and may not be renewed if the landlord wishes to use the land for other purposes. When this happens, past conservation efforts will often have been in vain. Nevertheless, it is often possible to conclude long term leases, for instance for a duration of 99 years.

Leases may also be a convenient method for a Government agency or landowning NGO to contract with another person for the management of land held for conservation. The method has the advantage that the tenant pays rent to the owner. This provides a useful income to the agency or organisation concerned, which would otherwise often have to pay labour to perform essential management tasks. However, it is important that the terms of the lease impose strict conditions on the tenant so that farming practices are compatible with conservation requirements. This means that rents will frequently be set at a lower level than would be the case if farming practices were unrestricted.

b. Easement or Servitudes

The purpose of the institution from its very origin in Roman law was to confer a benefit on one piece of land, called the dominant tenement, by imposing a restriction or an obligation upon the adjoining parcel of land, called the servient tenement. Easements may be negative, in the sense that there are some things which cannot be done on the servient tenement, such as the construction of a building that would obstruct the view from the dominant tenement. Easements may also be positive where they allow certain things to be done on the servient tenement to the benefit of the dominant tenement. Examples would be the extraction of water or the establishment of a right of way. As a general rule, however, an easement cannot require the owner of a servient tenement to carry out any positive measures to the benefit of the dominant tenement.

The value of this institution for conservation is limited for several reasons. An easement contract can only be concluded between two landowners. The dominant and servient tenements must be contiguous, or at least very close to each other.

The restrictions imposed on the servient tenement must provide a benefit to the dominant tenement.

In a relatively small number of jurisdictions, legislation has been enacted, usually very recently, to encourage the use of easements for conservation by means of eliminating these obstacles. This is generally achieved by removing the need for a dominant tenement. For example, the Countryside Act of 1968 in the (United Kingdom). In addition a large number of American States, perhaps more than forty, have enacted legislation allowing the creation of “conservation easements” in respect of which the contiguity requirement has been dropped.

Easements are, in principle, enforceable in the courts at the suit of their holders. This obviously implies that the beneficiaries are able to monitor the sites on which they hold easements, as well as to bring the matter to court where damage occurs or is imminent as a result of the landowner violating the terms of the easement. If the site has already been damaged, the court should order its restoration or, when this is not possible, provide for the payment of monetary damages to the easement holder.

1. Carbon Sequestration

Carbon sequestration is another potential source of funds already successfully utilised by some Latin American and Caribbean countries. Under the Clean Development Mechanism (CDM) of the Kyoto Protocol to the United Nations Framework Convention on Climate Change, countries can get credit for reducing carbon emissions or from absorbing carbon from other countries under a Joint Implementation project. These projects provide an opportunity for obtaining long-term financing for forestry development and conservation.

Deforestation in tropical countries contributes about 20 per cent of the annual global emissions of carbon dioxide and a reduction in Jamaica's rate of deforestation could have far-reaching environmental as well as financial benefits.

The Ministry of Land and Environment is the Designated National Authority for CDM, and is working with Forestry Department and other partners on the possibility of reforestation and afforestation projects under the CDM.

11.4 Management Agreements

Management agreements are contracts between a public authority (or a conservation organisation) and an owner or occupier of land, under the terms of which the latter undertakes to manage his or her land in a specified way in return for regular payments or, more rarely, a lumpsum paid once and for all.

Management agreements usually provide for both negative and positive obligations. For example, an owner may agree not to drain a wetland, plough a natural meadow or use fertilizers or pesticides and also to mow the grass after a certain date, to remove woody vegetation but only by certain means, or to have the area grazed by cattle in an extensive way. The payments made under these agreements may be considered both as compensation for profits foregone and as remuneration for activities carried out in the public interest.

From the legal point of view, management agreements belong to two main categories. Some run with the land and are binding upon successors in title. They should therefore be considered as easements to which a number of positive obligations may be added. The other category encompasses purely personal contracts concluded with individual landowners, generally for a specified period of time. These expire at the end of that period unless they are renewed, or when the owner dies or sells the property.

Legislation exists in a number of countries to give statutory validity to management agreements eg. Conservation, Forests and Lands Act, 1987 (Victoria, Australia). National Parks and Wildlife Act, 1974 (NSW, Australia).

11.5 Assistance to Conservation NGOs for the Acquisition, Preservation and Management of Land

NGOs which have acquired land for conservation are, like any other landowners, entitled to any particular benefit that may be available for the conservation of private lands. However, unlike most private landholders, they are in a peculiar situation in that it is not their will to conserve which must be encouraged by appropriate incentives but rather their legal and financial ability to do so. Nevertheless, since NGOs should be considered as performing a public service, often at a considerable cost for themselves, it would seem only fair that they be able to benefit from some assistance from the State.

Private reserves are generally owned by NGOs. However, the rights of these organisations to preserve the land they have acquired for conservation against trespassers are no different from those of any other private landowners. In addition, private reserves, like any other land, may be the subject of compulsory purchase orders should any Government agency need that land for its own development purposes.

These flaws can be remedied by special legislation conferring a legal status on private reserves.

11.6 Tax Exemptions and Subsidies

A number of statutory provisions can be established for tax exemptions and subsidies including:

- a) Exempting charities, including conservation organisations, from property taxes for the land they hold or use for public purposes.
- b) Deductibility from taxable income of gifts made to government agencies or NGO for conservation purposes.

A. Incentives Under Existing Jamaican Laws

11.7 Forest Act

There are three incentives that have been promulgated under the Forest Act and Forest Regulations:

- (a) Section 25 of the Forest Act (remission of taxes)
- (b) Regulation 49 of the Forest Regulations (certification as a forest grower)
- (c) Regulation 52 of the Forestry Regulation

Under the Forest Regulations the Minister may promote reforestation and sustainable forest development projects on private land using incentives schemes on the recommendation of the Conservator of Forests. These schemes include the provision of technical advice; the availability of tree seedlings at special rates; the encouragement of privately run seedling nurseries to support the forest sector as a whole; duty free concessions at the level applicable to the agricultural section and remission of property tax under Section 25 of the Act.

The Forest Act, 1996, contains provisions for granting incentives for forestry activities. In this connection section 25 of the Forest Act provides:

- “25. It; and for long as, the owner of private land in a protected area or a forest management area declared forest reserve complies with the regulations or decisions under this Act in relation to that land -
- (a) he shall in each financial year, an application to the Conservator, be granted a certificate to that effect; and
 - (b) be entitled to remission of property tax in respect of that land in that financial year”.

While section 25 of the Forest Act contains useful provisions, the precise framework for its operation needs to be clearly set out, it would apply only to three categories of land: (a) protected area, (b) forest management area, (c) forest reserve. It is understood that some of these areas have not yet been declared. In addition the applicant for remission of property tax must comply with the regulations or directions in regard to the land.

11.8 Relief under the Income Tax Act

Under section 36 d (1) of the Income Tax Act any person engaged (or who proposes to engage) in a prescribed agricultural activity may be granted tax relief in respect of such activity. In order to obtain relief the Minister of Agriculture would have to designate the person (both individuals and companies are eligible) as an approved farmer. By section 36 d (7) an approved farmer may set off any loss incurred in connection with a prescribed agricultural activity against profits or gains arising from any other trade, business, profession, employment or vocation carried out by him. Forestry has been designated a prescribed agricultural activity pursuant to section 36 d (14). Qualifying agricultural activities including horticulture, the growing of food crops and tobacco, seed growing, livestock breeding, fishing or fish farm and the growing of trees for timber.

11.9 General Consumption Tax (GCT)

Under the General Consumption Tax Act, 1991 and the General Consumption Tax Regulations, 1991, the following items are zero-rated:

“Planting materials including cereal and seeds in their natural state, dormant flower bulbs, corns, roots and tubers, nursery stock which the Commissioner is satisfied is intended for commercial purposes. Vegetable plants and live trees which the Commissioner is satisfied are intended for commercial purposes”.

12.0 SUMMARY AND RECOMMENDATIONS

12.1 Enact A New Protected Areas Act/or incorporate as part of new NEPA Act

A new Act should be drafted to comprehensively deal with all of the key issues affecting protected areas. This could be a stand alone legislation or could be incorporated into the proposed NEPA Act. The provisions to be incorporated in this section of the NEPA Act should be based on the existing provisions of the draft Wildlife and Protected Areas Act.

Among the matters to be included would be:

- Definition of protected areas
- Specify the procedure for declaring protected areas; e.g.
 - a. public notification of an intention to declare an area a protected area;
 - b. public hearings prior to declaring as a protected area;
 - c. declaration of protected area by the Minister in consultation with all relevant GOJ agencies;
- New legislation on protected areas should implement the various international agreements to which Jamaica is a party and also meeting the objectives of other GOJ policies affecting protected areas.
- Consideration should be given to streamlining the use of the word 'protected areas' in the NRCA Act, the Forest Act and the Beach Control Act.
- New Regulations should be promulgated for all protected areas.
- In drafting the new legislation consideration should be given to the introduction of the following categories of protected areas, (based on the IUCN -International Union for Conservation of Nature and Natural Resources):
 - 1) Nature Reserve/Wilderness Areas;
 - 2) Natural Monument/ Natural Landmarks;
 - 3) Habitat/Species Management Areas;
 - 4) National Protected Landscapes or Seascapes;
 - 5) Managed Resource Protected Areas.

a. Definitions

Term referring to the different categories of protected areas should be defined in the Act. A national park is a natural area of land or sea, or both, managed mainly for the conservation of the ecological integrity of ecosystems. The corresponding IUCN classification is Category II.

Consideration would have to be given as to whether the distinction (not made in the IUCN literature) between a national park and marine park should be maintained in the Act.

A nature reserve/wilderness area is an area with lands or waters with unique biodiversity - both flora and fauna - or other ecological values which require strict protection. The area is managed primarily for ecological protection, scientific research and environmental monitoring.

A natural monument/natural landmark area should be defined as an area whose natural features reflect such unique and outstanding characteristics having special scenic, scientific, educational and recreational importance as to warrant special protection.

A habitat/species management area is an area of land or sea or a combination of both, which is managed mainly for conservation purposes. Management is by means of various interventions aimed at ensuring the maintenance of habitats of specific species. The corresponding IUCN category is Category IV.

A protected landscape/seascape should be defined as an area or land, often with coast and sea, where the interaction of people and nature over time has produced a distinct character with significant cultural, aesthetic and ecological value.

The purpose of the designation is to safeguard the integrity of this traditional interaction, so as to protect and maintain the evolution of the area.

A managed resource protected area should be defined as lands or waters with important natural resource and environmental values. They are managed primarily for sustainable consumptive use of natural resources, combined with environmental conservation. The corresponding IUCN classification is Category VI.

The term “protected area” should be defined in the Act to mean any of the areas mentioned above.

Protected Landscape/Seascape – protected area managed mainly for landscape/seascape conservation or recreation

Area of land, with coast or sea as appropriate, where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological

and/or cultural value, and often with high biodiversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evaluation of such an area. (added from Recommendations of the Protected Areas Consultant).

Managed Resource Protected Area – protected area managed mainly for the sustainable use of natural resources

Area containing predominantly unmodified natural systems, managed to ensure long-term protection and maintenance of biological diversity, while also providing a sustainable flow of natural products and services to meet community needs (added from the Recommendations from the Protected Areas Consultant).

Sustainable Development Reserves – Area designated to apply sustainable development principles through the incorporation of commercial and urban zones and protected areas.

Area under statutory mandate to holistically apply principles of sustainable development by incorporating various zones of economic and social development as well as numerous types of protected areas to entirely offset the negative externalities of industrial and commercial development. (added from Recommendations from the Protected Areas Consultant).

The issue of definitions will be the subject of further consultations once the Report of the Protected Areas Consultant has been submitted. These consultations would also have to deal with the proposals dealt with at page 7 (paragraph c). The ongoing issue as to whether the category of Managed Resource Protected Area (MRPA) would also have to be considered in these consultations.

b. Delegation of Management Functions

NRCA has power to delegate functions under section 6 of the Act. Provision should be included in directing NEPA not to delegate management functions in respect of protected areas to any entity unless it is satisfied that the delegate satisfies certain requirements. (1) all consultations have been held with the public and relevant GOJ agencies; (2) the entity receiving the delegation should satisfy specific requirements. The delegation process should be transparent.

The appropriate government agency should take the lead in setting up the appropriate consultative mechanism but should do this in close cooperation with NGOs and relevant local communities.

c. Forfeiture

The Act should empower the court to forfeit any objects or devices taken, used or involved in the commission of an offence in respect of which a person has been convicted. These may include cultural objects, natural fauna and flora, non-mechanical or

mechanical means of conveyance such as motor vehicles boats or aircraft. The NRCA should be empowered to dispose of the forfeited items and where items are seized but the person charged does not appear after a period (to be designated) the items should be forfeited to the Crown and disposed of as NEPA sees fit.

d. Acquisition of Land

Include a provision to authorize NEPA to acquire lands where such lands are needed for a protected area. The acquisition would be in accordance with the Land Acquisition Act.

e. Procedure for declaring a protected area.

The procedure for declaring a protected area should be as follows:

- Ascertain whether the proposed protected area is adequately covered under existing arrangements eg. if an area is proposed as say a nature reserve are there other existing protected area declarations under other laws affecting this area.
- Prior to any declaration ascertain the ownership of lands within the proposed protected area.
- Consult with major private owners within the area proposed to be declared a protected area.
- Review the application of all relevant laws, Regulations and policies that are relevant to the proposed protected area.
- Consult with the National Land Agency as to the status of Crown lands within the protected area.
- Assess the financial implications of the management of the areas a protected area.
- Assess the ecological importance of the area.
- Determination of the level of management that the protected area will require.
- Determine the appropriate methodology for bringing private lands within the protected area. This could include: lease, acquisition under the Land Acquisition Act, conservation easements (where and when possible); consent of the owner.

- Publish in a newspaper and in the Gazette the intention to declare an area a protected area.
- Hold public meetings within and outside the proposed area to discuss the proposed declaration as a protected area.
- Ascertain whether the proposed protected area is already adequately covered under existing arrangements.
- Finalize Memoranda of Understanding between all affected GOJ agencies having direct interest in the proposed protected area.

It would be desirable that the above procedure apply to all relevant acts which include provisions for declaring protected areas.

- f. Consultation with all other relevant government agencies/Ministries that have jurisdiction in the area before the protected area is declared. Currently NRCA is required to consult the Jamaica National Heritage Trust – this should be extended to consulting the Minister responsible for forestry and fisheries. Similarly, the Forest Act should be amended to provide that before a forest reserve is declared NRCA/NEPA should be consulted. A similar provision should be included in the Fishing Industry Act regarding the declaration of fish sanctuaries and for designations under the Jamaica National Heritage Trust Act where these are located in existing protected areas.
- g. It is important to establish a legal framework with owners of lands where land is brought within the protected areas framework. This should be done before land is declared to be a protected area.

Where the land to be declared is Crown land then the Commissioner of Lands and other GOJ agencies having an interest in the land should approve of the declaration. In addition, where management of the protected area is being delegated to an NGO all affected GOJ agencies should sign a memorandum of understanding prior to the delegation.

Where land to be declared as a protected area is private land then three options would be available. First, written agreements with the owners of the private land to bring the land under a national park or protected area. Secondly, when the legislation is in place consideration could be given to the creation of conservation easements. Finally, where the lands have to be compulsorily acquired then this would be done in accordance with Land Acquisition Act (NRCA Act does not confer any power to acquire lands compulsorily).

- h. Legislation regarding protected areas should have comprehensive provision to (a) declare; (b) reduce or add to the declared area. In addition provisions should be

included to compensate private land owners where land is reduced from a higher to a lesser use (cf. the Town and Country Planning Act).

- i. The provisions of sections 9, 10 and 11 of the Forest Act should be included *mutatis mutandis* (with the necessary changes) to the new NEPA Act.
- j. Many of the Acts dealing with protected areas and many related acts have a number of gaps and overlaps in terms of areas and responsibilities. For instance, both the Forest Act and Natural Resources Conservation Authority Act have stipulations for managing “Protected Area” but the clear distinctions between them and the jurisdictions of each are to be defined and agreed upon (cf. National Forest Management and Conservation Plan 2001, where at page 16 there is a call for legislative harmonization between NRCA Act and Forest Act). The same is true of the lands in the declared watershed and the rural areas under RADA’s jurisdiction, with respect to the responsibility for soil conservation work in watersheds. In view of these legislative gaps and jurisdictions with parallel or contending powers, the legislative mandates for each agency should be more sharply defined.
- k. Co-management Agreements

Protection and conservation of Jamaica’s protected areas will be most effectively achieved through co-management agreements between the GOJ agencies and other entities.

- l. Transitional Provisions

The Wildlife and Protected Areas Act (or the NEPA Act) should contain provisions whereby (a) existing regulations made under the NRCA Act are preserved until repealed; (b) existing delegations made under the NRCA Act are kept in force for the duration of such delegation.

12.2 Development Orders

The preparation of Development Orders under the existing Town and Country Planning Act should take into consideration proposed and existing protected areas. There should be extensive consultations between the persons responsible for preparing the Development Orders and the relevant GOJ agencies responsible for protected areas and as well as NGOs and local communities.

In the drafting of the NEPA Act the language of “conservation areas” in the existing Town and Country Planning Act should be made consistent with the statutory provisions (and especially definitions) applicable to protected areas.

12.3 UDC Act

The NEPA Act should include a specific provision making it clear that the provisions of the Urban Development Corporation Act are subject to the NEPA Act in matters relating to the environment.

12.4 Heritage Sites and Fish Sanctuaries and Forest Reserves

Consideration should be given to amending the Jamaica National Heritage Trust Act and the Fisheries Act so as to ensure that the statutory provisions relating to the declaration of heritage sites etc. or fish sanctuaries are consistent with the procedures set out in 12.1 at (page 78) in regard to the declaration of protected areas.

The existing provisions of the Forest Act should also be reviewed to ensure consistency between the existing provisions and these agreed for the declaration of protected areas.

12.5 Management of Protected Areas

A number of different approaches can be taken to the management of protected areas. These could include:

- (a) Delegation agreements
- (b) Co-management agreements
- (c) Management contract
- (d) Leases

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APPENDIX 1
INTERNATIONAL/REGIONAL AGREEMENTS TO
WHICH JAMAICA IS A PARTY*

Instrument	Status
International Plant Protection Convention, Rome, 1951	Accession: 24 November, 1969
United Nations Convention on the Law of the Sea, Montego Bay, 1982	Ratification: 21 March, 1983
Convention Concerning the Protection of the World Cultural and Natural Heritage, Paris, 1983	Acceptance: 14 June, 1983
Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Cartagena de Indies, 1983	Ratification: 1 May, 1987
Protocol Concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region	Entry into Force: 1 May, 1987
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (as amended), London, Mexico City, Moscow (Washington), 1972	Ratification: 22 March, 1991
International Convention on the Prevention of Pollution from Ships, London, 1973	Ratification: 13 June, 1991
Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, London, 1973	Ratification: 13 June, 1991
London Amendment to the Montreal Protocol on Substances that Deplete the Ozone layer, London	Ratification: 31 March, 1993
Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985	Accession: 31 March, 1993 Entry into Force: 29 June, 1993
Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal, 1989	Instrument of Accession Deposited: 6 January, 1995 Effective: 5 April, 1995
United Nations Framework Convention on Climate Change, New York, 1992	Instrument of Accession Deposited: 6 January, 1995 Entry into Force: 5 April, 1995
Convention on Biological Diversity, Rio de Janeiro, 1992	Instrument of Accession Deposited: 6 January, 1995 Entry into Force: 5 April, 1995
Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)	Accession: 7 November, 1977 Entry into force: 4 February, 1998
The Copenhagen Amendment to the Montreal Protocol on Ozone Depleting Substances.	Accession: 7 November, 1997 Entry into Force: 4 February, 1998
Convention on Wetlands of International Importance especially as Waterfowl Habitats (RAMSAR Convention)	Accession: 7 October, 1997 Entry into Force: 7 February, 1998
Convention to Combat Desertification	Accession: 12 November, 1997 Entry into Force: 16 March, 1998

*Source: Ministry of Land and Environment, 1999

APPENDIX 2
LIST OF PERSONS INTERVIEWED

Joy Alexander, Director Integrated Planning & Environment Division, NEPA
Shakira Azan, Biodiversity Branch, NEPA
Bernard Blue, Protected Areas Branch, NEPA
Samantha Cowan, Friends of the Sea
Carla Gordon, Protected Areas Branch, NEPA
Christine Sutherland, Protected Areas Branch, NEPA
Elizabeth Steer, Commissioner of Lands and Chief Executive Officer, National Lands Agency

Hugh Dixon, South East Trelawny Environmental Association
Andre Kong, Fisheries Division
Laleta Davis-Mattis, Senior Legal Counsel, NEPA
Donovan Gooden, MBMP
Sean Green, Integrated Watershed & Coastal Zone Branch, NEPA
Lisa Grant, Legal Officer/Director of Heritage, Jamaica National Heritage Trust
Paula Hurlock, Dolphin Head Trust
Peter Baker, Property Services Manager, National Land Agency
Derrick Gayles, EFJ
Donovan Hayden, National Land Agency
Marilyn Headley, Conservator of Forests
Peter Espeut, Executive Director, Caribbean Coastal Area Management
Susanne Lyon, Executive Director, Jamaica National Heritage Trust
Alex Lanigan, Friends of the Sea
John McFarlane, EFJ
Simone McCulloch, Planning Branch, NEPA
Marsha Mason, Protected Areas Branch, NEPA
Brenda Miller, Legal Services Branch, NEPA
June Masters, Fisheries Division

Susan Otuokon, Executive Director, Jamaica Conservation and Development Trust

Theodore Rhone, Enforcement Branch, NEPA

Andrew Ross, MBMP

Wellington Taylor, Jamaica Conservation and Development Trust

Winsome Townsend, Director, Policies, Programmes and Projects Coordination Division,
NEPA

Ann Sutton, The Nature Conservancy

Yvette Strong, Biodiversity Branch, NEPA

Brian Zane, Montego Bay Marine Park

Christopher Whyne, NEST

APPENDIX 3

GOVERNMENT AND OTHER AGENCIES

Agency	Coastal-Related Mandate, Function and/or Activity
Airports Authority of Jamaica (AAJ)	Management of Norman Manley and Donald Sangster International Airports.
Attorney General's Department (AGD)	Preparation of legal instruments
Civil Aviation Authority (CAA)	Regulation and control of airports, development guidelines in the vicinity of airports.
Chief Parliamentary Counsel (CPC)	Review of documentation
Council on Ocean and Coastal Zone Management (COCZM)	Define national policy, promote co-ordination of administrative and operational functions, ensure compliance with enacted treaties and protocols.
Environmental Control Division (ECD)	Water quality monitoring and testing.
Fisheries Division (FD)	Fisheries management
Forestry Department (FD)	Watershed management
Jamaica Constabulary Force (JCF)	Enforcement of law and order
Jamaica Fire Brigade (JFB)	Control of fires (including forest fires)
Jamaican National Heritage Trust (JNNHT)	Buildings, landmarks and artifacts of historical or archaeological importance.
Jamaica Tourist Board (JTB)	Recreational areas/cruise ship terminals
Marine and Aviation Affairs Department (MAAD) in the Ministry of Foreign Affairs	Co-ordination of the development of marine and aviation policy
Maritime Authority of Jamaica (MAJ)	Marine transportation regulatory agency
Mines and Geological Division (MGD)	Regulation of mining and quarrying
Ministry of Land and the Environment (MLE)	Policy related to environmental matters and land use
Ministry of National Security and Justice (MNSJ)	Policy on matters of national justice
National Water Commission (NWC)	Treatment of water for domestic supply, treatment of wastewater and sewage.
Office of Disaster Preparedness and Emergency Management (ODPEM)	Natural hazards contingency planning, disaster response and recovery.
Office of the Harbour Master (OHM)	Regulation and safety of shipping in harbours and ports
Petroleum Corporation of Jamaica (PCJ)	Petroleum shipments
Planning Institute of Jamaica (PIOJ)	Initiation and co-ordination of planning for economic, financial, social, cultural and physical development
Port Authority of Jamaica (PAJ)	Management of ports and port operations
Scientific Research Council (SRC)	Pure and applied research

Agency	Coastal-Related Mandate, Function and/or Activities
Shipping Association of Jamaica (SAJ)	Provision of skilled labour to shipping industry operations and management of relevant parts of the industry
Tourism Product Development Company Ltd. (TPDCo.)	Standards and regulation of tourism product
Urban Development Corporation (UDC)	Development and planning
Water Resources Authority (WRA)	Ground water quality and extraction
Ministry of Tourism and Sports	Tourism policy and planning

RELEVANT ORGANIZATIONS IN CIVIL SOCIETY

Organization	Mandate
Bluefields Peoples' Community Association (BPCA)	Community based activities and initiatives, including environmental projects
Caribbean Coastal Area Management (C-CAM)	Management of the Portland Bight Protected Area
Environmental Foundation of Jamaica (EFJ)	Management of debt-relief fund for protecting the environment
Friends of the Sea (FOTS)	Education, awareness and conservation of ocean resources
Jamaica Conservation and Development Trust (JCDDT)	National Parks Trust Fund, Blue and John Crow Mountains National Park
Jamaica Environment Trust (JET)	Environmental awareness particularly in schools
Jamaica Institute of Environmental Professionals (JIEP)	Accreditation of environmental professionals and monitoring of performance standards
Jamaica National Parks Trust Fund (JNPTF)	Raising and managing long-term funding support for the system of national parks
Montego Bay Marine Park Trust (MBMPT)	Management of the Montego Bay Marine Park
National Environmental Societies Trust (NEST)	Umbrella organization for environmental NGO's
Negril Area Environmental Protection Trust (NEPT)	Management of the Negril Marine Park
Portland Environment Protection Agency (PEPA)	Raising awareness of environmental issues
St. Ann Environmental Protection Agency (STAEPA)	Education and raising awareness of environmental issues
St. Thomas Environmental Protection Association (STEPA)	Protection of the St. Thomas environment.

Port Royal Marine Lab
Caribbean Agriculture Research Development Institute University of Technology

Non-governmental Organisations/Community-based Organisations

Bird Life Jamaica
Bluefields Peoples' Community Association
Buff Bay Development Action Committee
Caribbean Coastal Area Management Foundation
Dolphin Head Trust
Friends of the Sea
Jamaica Conservation and Development Trust
Jamaica Environment Trust
Jamaica Horticultural Society
Jamaican Iguana Research and Conservation Group
Jamaica National Parks Trust Fund
Jamaica Protected Areas Network
Jamaica Sport Shooting Federation
Montego Bay Marine Park Trust
National Arboretum Foundation
National Environmental Societies Trust
Natural History Society of Jamaica
Negril Area Environmental Protection Trust
Negril Coral Reef Preservation Society
Orchid Society of Jamaica
Portland Environment Protection Association
Southern Trelawny Environment Protection Agency
St. Ann Environment Protection Association
St. Elizabeth Environment Protection Association
St. Thomas Environment Protection Association
Windsor Research Centre

Private Sector/Other Organisations

Institute of Architects
Jamaica Hotel and Tourism Association
Master Builders Association
Private Sector Organisation of Jamaica
St. Elizabeth Homecoming

International Organisations

American Zoo Association -Lizard Advisory Group
Caribbean Planning for the Adaptation to Global Climate Change
CARICOM Fisheries Resources Assessment and Management Programme
International Institute for Co-operation in Agriculture
The World Conservation Union (IUCN)
United Nations Development Programme
United Nations Environment Programme/Regional Coordinating Unit

APPENDIX 4: MODEL DELEGATION AGREEMENTS

THE NATURAL RESOURCES CONSERVATION AUTHORITY ACT (1991) DELEGATION INSTRUMENT

PARTIES

THE NATURAL RESOURCES CONSERVATION AUTHORITY whose address for service within the jurisdiction of the courts of Jamaica is 10 Caledonia Avenue, Kingston 5, in the parish of St. Andrew (hereinafter referred to as the “Authority”).

_____ a company limited in guarantee not having a share capital with registered offices at _____

PREAMBLE

WHEREAS Section 6 of the Natural Resources Conservation Authority Act 1991 (hereinafter referred to as “the Act”) provides that the Authority may delegate any of its functions under the Act (other than the power to make regulations) to any member, officer or agent of the Authority;

AND WHEREAS the Authority is desirous of delegating to [] as its agent the functions and obligations set out herein on the terms and conditions so specified;

NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:-

GRANT

1.0 The Authority hereby appoints [] as an agent of the Authority in accordance with this agreement and pursuant to section 6 of the Act delegates to [] the functions and obligations specified herein subject to the terms and conditions so specified.

2.0 The instrument of delegation shall be for a term of [] years and may be renewed at the option of the Authority by notice in writing with the consent of [] in accordance with Clause 10.3.

3.0 THE OBLIGATIONS OF 'THE AUTHORITY

The Authority shall:

3.1 Assist [] in performing its obligations and functions described herein by providing a requisite sum as a management fee to be determined by the Parties to this agreement.

- 3.2 Put in place such user fee regulations as may be necessary to assist in the costs associated with management of the National Park/Marine Park Protected Area, and to revise such fees from time to time as is needed to achieve the goals of the Park.
- 3.3 As far as is practicable to do so co-operate with [] in its efforts to perform the functions and obligations stated herein including but not limited to providing technical, enforcement and legal assistance except where it is not practicable to do so.
- 3.4 Use its best efforts to provide [] with research assistance and information of which the Authority is possessed, which it may require in its efforts to carry out the functions and obligations described herein.
- 3.5 Monitor the progress of the implementation of the National Park/Marine Park Protected Area Management Plan and assist in achieving the objectives of such plan and its revisions.
- 3.6 Along with [] enter into necessary co-operative agreements with persons and organisations and individuals for the effective management of the National Park/Marine Park Protected Area according to the provisions of the National Park/Marine Park Protected Area Management Plan.
- 3.7 Assist [] in training its staff with the skills necessary to achieve the goals of the National Park/Marine Park Protected Area Management Plan as agreed between the parties.
- 3.8 Authorize JCDC to collect on its behalf as its agent, in a manner to be agreed upon user fees payable by users of the National Park/Marine Park Protected Area and any such other fees as the Authority and [] may agree should be collected.
- 3.9 Remit to [] as its agent user fees and such other fees collected by the Authority, as the parties may agree. The User fees generated shall be used to cover the operational expenses of the Park.
- 3.10 All user-fees collected and such other fees remitted to [] shall be retained by the [] in a special account, to be specially reported on, and shall be used to manage the National Park/Marine Park Protected Area in accordance with the National Park/Marine Park Protected Area Management Plan and this agreement.
- 3.11 Use its best efforts to obtain duty-free status and GCT-free status for any equipment or service imported or purchased in connection with the management of the National Park/Marine Park Protected Area, provided that the procurement of such equipment of service is first approved by the Authority.

- 3.12 Identify and assign a senior member of staff who shall be the official liaison between the Authority and [], who will monitor the performance of [] within the National Park/Marine Park Protected Area and who will co-ordinate the fulfillment of the obligations of the Authority under this delegation instrument and the co-management agreement with the Forestry Department.
- 3.13 Consult the [] on approvals for permits and development applications, including analysis of environmental impact assessments, and allow representations to be made to the Authority by [] before finally approving or determining such matter if the activity for which the permit or approval is sought falls within the National Park/Marine Park Protected Area or will significantly impact the National Park/Marine Park Protected Area.
- 3.14 Assist in the appointment of the National Park/Marine Park Protected Area Rangers and the Protected Area Manager selected by [] to become Special District Constables.
- 3.15 Provide guidelines on the standards for management of the National Park/Marine Park Protected Area including safety, disaster preparedness, preparation of management and operation plans.

4. THE OBLIGATIONS AND FUNCTIONS OF []

[] **shall:**

- 4.1 Develop an annual operation plan prior to the month of October of each year that details all the activities that [] plans to carry out in the Park each year. This operation plan shall contain a budget for such activities to be conducted by [], which shall be reviewed by the Authority to assess a management fee to be paid yearly. The Operation plan shall include information on activities that will be carried out in relation to staffing, financing, maintenance and improvement of facilities, infrastructure, programs and projects on the following areas, protection and conservation, enforcement, traditional and concurrent uses, recreation and tourism, education, public relations development and administration. The Plan shall be submitted three months from the date of signature of this agreement.
- 4.2 Prepare and submit a National Park/Marine Park Protected Area Management Plan within [] months of the date of this delegation agreement and take such steps as are necessary for the effective management of the National Park/Marine Park Protected Area in keeping with the provisions of the National Park/Marine Park Protected Area Management and any other legislation so as to ensure the conservation, protection and sustainable use of its natural resources.

- 4.3 Develop, implement and monitor plans and programmes relating to the management of the National Park/Marine Park Protected Area according to the National Park/Marine Park Protected Area Management Plan.
- 4.4 In consultation with the Authority revise the National Park/Marine Park Protected Area Management Plan where so required and where the parties intend to renew the delegation instrument in accordance with section 10.
- 4.5 Promote public awareness of the ecological systems and natural resources of the National Park/Marine Park Protected Area and the importance of their sustainable use to the social and economic life of Jamaica.
- 4.6 Consult and advise the Authority on matters of general policy relating to the management, development, conservation and care of the environment within the National Park/Marine Park Protected Area.
- 4.7 Provide all relevant information to the Authority in good time when it is consulted concerning applications for permits and development permission.
- 4.8 Permit the Authority to conduct financial and operational audits of its activities within the National Park/Marine Park Protected Area after giving seven days (7) notice,
- 4.9 Perform such other functions in the National Park/Marine Park Protected Area as may be assigned to it by the Authority from time to time by mutual consent.
- 4.10 Maintain in good order and repair all buildings and other facilities for which it has responsibility.
- 4.11 Put in place insurance, employee, property and public liability policies as approved by the Authority to cover equipment, buildings, employees, agents and visitors within the recreational areas of the Protected Area and submit such policies to the Authority on an annual basis. Where any claim or suit is made against [] it shall report such to the Authority immediately.
- 4.12 Promptly advise the Authority of any litigation brought against [] in respect of the management of the _____
- 4.13 Submit to the Authority, bi-annual reports specifying the progress or setbacks in accomplishing the goals of the National Park/Marine Park Protected Area Management Plan.
- 4.14 Promptly advise the Authority of any financial difficulties in the operation of _____

- 4.15 Monitor compliance with the National Park/Marine Park Protected Area Regulations and any other laws governing the protection of the environment and report on infractions, record official complaints and conduct such enforcement action where authorized.
- 4.16 Report to the Authority all environmental incidents and breaches within the National Park/Marine Park Protected Area of the NRCA Act and its Regulations, the Wild Life Protection Act and its Regulations, and the Watershed Protection Act and its Regulations and any other Act under which the Authority exercises jurisdiction, within twenty-four hours (24) of such breaches coming to the attention of [], its employees, servants or agents, unless it is not practicable to do so.
- 4.17 [] shall report to the Authority any changes in its Memorandum or Articles of Association.
- 4.18 [] shall report to the Authority on steps taken to involve the community in the planning or management process of the protected area.
- 4.19 [] shall advise the Authority on the compliance of its management, operations and financial plans with NRCA protected areas guidelines.
- 4.20 [] agrees to comply with any monitoring or compliance programme that the Authority may put in place in respect of monitoring compliance with this Delegation Instrument.
- 4.21 [] shall cooperate with all public agencies having an interest in the protected area, including but not restricted to Ministry of Agriculture, Town Planning Department.

5. IMPLEMENTATION

- 5.1 In performing the obligations and functions specified in Clause 4, [] may with the written consent of the Authority:
- 5.1.1 Construct buildings and other facilities for administration, education, enforcement and recreation, according to the National Park/Marine Park Protected Area Management Plan.
- 5.1.2 Investigate the effect on the environment of the National Park/Marine Park Protected Area of any activity that causes or might cause pollution or might involve waste management or disposal or damage to flora or fauna or might involve dangers to public health.

- 5.1.3 Make recommendations to the Authority on the zoning of areas within the National Park/Marine Park Protected Area in order to provide for the effective management of the area, and to advise on regulations or rules with respect to the purposes for which the resources in each zone may be used.
- 5.2 In performing the obligations and functions specified in Clause 4, [] shall:
- 5.2.1 Procure the requisite facilities and equipment to carry out the functions herein described.
- 5.2.2 Undertake studies in relation to the National Park/Marine Park Protected Area and in collaboration with the Authority to encourage and promote research into the use of techniques for the management of pollution and the conservation of natural resources and sustainable development.
- 5.2.3 Recommend that an Environmental Impact Assessment be undertaken for any activity or undertaking or development to be carried out or that is being carried out within or nearby the National Park/Marine Park Protected Area, if it is in the opinion of [] that such activity is or is likely to have an adverse effect on the environment and public health.
- 5.2.4 Conduct seminars and training programs, gather and disseminate information relating to environmental matters.
- 5.2.5 Formulate and design projects aimed at ensuring the sustainable use of the natural resources within the National Park/Marine Park Protected Area and the environment in general with 30 days notice to the Authority, and to operate and publicize such projects pursuant to the agreed operation plan.
- 5.2.6 Provide pertinent information to and to inform the public in respect of all aspects of the quality of the environment generally and specifically of the quality of the environment within the National Park/Marine Park Protected Area.
- 5.2.7 Perform the functions listed in Section 4 of this agreement in accordance with the National Park/Marine Park Protected Area Management Plan, as well as the Act and the Regulations made thereunder.
- 5.2.8 Employ and supervise adequately trained staff who are competent and qualified as necessary for the proper carrying out of the functions for which they were hired.

6. SUB-DELEGATION

- 6.1 The Authority shall not assign or delegate any of the specified functions or obligations contained herein within the National Park/Marine Park Protected Area without the prior consent in writing of []. This consent shall not unreasonably be withheld. Where a delegation is made by the Authority such delegation agreement shall be negotiated in association with [].
- 6.2 [] shall not delegate any of its obligations contained within this delegation instrument without the written consent of the Authority. This consent shall not be unreasonably withheld. Where a delegation is made by [] such delegation agreement shall be negotiated in association with Authority.

7. INDEMNIFICATION

- 7.1 The Authority shall indemnify and shall keep indemnified [] against any loss, damage or liability, whether criminal or civil suffered, arising out of or relating to the Authority's default in the carrying out of its obligations under this agreement.
- 7.2 [] shall indemnify and shall keep indemnified the Authority against any and all costs, claims and expenses, loss, damage or liability whether criminal or civil suffered, which may be incurred by the Authority arising out of, or relating to the carrying out of anyone or more or all of the functions described herein due to the negligence of [], its employees and agents, or to a breach of this agreement.

8. REPORTING

[] shall:

- 8.1 A soon as may be practicable before the 1st day of October in each year, submit to the Authority for consideration, its estimates of revenue and expenditure in respect of the period commencing on the 1st day of April in the following year and ending on the 31st day of March of the subsequent year, and shall during that year, submit to the Authority for approval any estimate for further expenditure as may become necessary.
- 8.2 Keep accounts and other records in relation to its business, receipts, expenditure and investments and shall prepare annually a statement of accounts in a form satisfactory to the Authority.
- 8.3 Provide annual audited financial statements to the Authority within three (3) months of the end of each financial year of the activities within the National Park/Marine Park Protected Area.

9. TERMINATION

- 9.1 This agreement shall terminate at the end of the term.
- 9.2 Either party may terminate this agreement by six (6) months notice in writing to the registered office of the other party for a fundamental breach of this agreement.
- 9.3 [] may, after consultation with the Authority, terminate this agreement provided a minimum of six (6) months notice is given to the Authority and public notice is given by placing such notice in a daily newspaper widely circulating in the island.

10. RENEWAL

- 10.1 Should for any reason either party does not wish to renew the instrument of delegation, this should be conveyed in writing to the other party not less than twelve (12) months before the expiry of the current agreement.
- 10.2 At the end of three years, the two parties shall begin discussions towards the renewal of the National Park/Marine Park Protected Area Management Plan. [] is to submit to the Authority for its approval a draft of a new Plan for a period of five-years. This plan should be reviewed by the Authority and comments submitted in writing within six months of the review of the management plan.
- 10.3 At the end of nine years after the commencement of this agreement, the two parties shall begin discussions towards the renewal of the instrument of delegation. The Authority is to submit to [] in writing at that time any wishes it may have concerning the delegation agreement. All negotiations should be complete at least six (6) months before the expiry of this instrument of delegation.

11. MISCELLANEOUS

- 11.1 In the event that any provision of this agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality.
- 11.2 This agreement is capable of amendment by both Parties in writing at any time during its term.

12. SUPERSEDES PRIOR AGREEMENT

This agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled at the commencement date but without prejudice to any rights that have already accrued to either of the parties. However if any

APPENDIX 5

NATIONAL ENVIRONMENT AND PLANNING AGENCY PROTECTED AREAS DECLARED UNDER THE NATURAL RESOURCES CONSERVATION AUTHORITY, BEACH CONTROL AND WILDLIFE PROTECTION ACTS

PROTECTED AREA	DECLARATION DATE	ACT
Montego Bay Marine Park	June 5, 1992	NRCA
Blue and John Crow Mountains National Park	February 26, 1993	NRCA
Negril Environmental Protection Area	November 28, 1997	NRCA
Negril Marine Park	March 4, 1998	NRCA
Palisadoes/Port Royal Protected Area	September 18, 1998	NRCA
Coral Spring – Mountain Spring Protected Area	September 18, 1998	NRCA
Portland Bight Protected Area	April 22, 1999	NRCA
Ocho Rios Marine Park	August 16, 1999	NRCA
Mason River Protected Area	November 14, 2002	NRCA
Ocho Rios Protected Area	April 7, 1966	BCA
Port Royal Protected Area	May 8, 1976	BCA
Bogues Estate Game Reserve	January 9, 1964	WLPA
Kingston and St. Andrew Game Reserve	April 15, 1971	WLPA
Knapdale Game Reserve	January 1963	WLPA
Reigate Game Reserve	June 6, 1968	WLPA
Stanmore Hill Game Reserve	July 19, 1968	WLPA
Alligator Pond, Gut River and Canoe Valley, Manchester, Game Reserve	August 22, 1997	WLPA
Amity Hall, St. Catherine, Game Reserve	August 22, 1997 amended August 26, 1999	WLPA
Bogue Lagoon Creek, St. James, Game Reserve	August 22, 1997	WLPA
Glistening Waters, Trelawny, Game Reserve	August 22, 1997	WLPA
Great Morass, Holland Bay, St. Thomas, Game Reserve	August 22, 1997	WLPA
Lower Morass, Holland Bay, St. Thomas, Game Reserve	August 22, 1997 amended in 1998	WLPA
Great Morass, Negril, Westmoreland and Hanover, Game Reserve	August 22, 1997	WLPA
The Great Morass, Parrottee, St. Elizabeth, Game Reserve	August 22, 1997	WLPA
Upper Morass, Black River, St. Elizabeth, Game Reserve	August 22, 1997	WLPA
Cabarita Point, St. Catherine, Game Reserve	August 21, 1997	WLPA
Long Island, Clarendon, Game Reserve	August 21, 1998	WLPA
Mason River Savanna, Clarendon, Game Reserve	August 21, 1998	WLPA
West Harbour-Peake Bay, Clarendon, Game Reserve	August 21, 1997 amended August 21, 1998 and July 29, 1999	

BCA - Beach Control Act
 NRCA – Natural Resources Conservation Authority
 WLPA – Wild Life Protection Act