



# Sustainable Fisheries & Coastal Zoning in Montserrat

Legal & Institutional Assessment of Authorities &  
Approaches

ENVIRONMENTAL LAW INSTITUTE

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## Abbreviations

Authority	Planning and Development Authority
BHM	Blue Halo Montserrat
CARICOM	Caribbean Community
CCCFP	Caribbean Community Common Fisheries Policy
CEMA	Conservation and Environmental Management Act of 2014
CEP	Caribbean Environment Programme
Certificate	Certificate of Environmental Approval
CFO	Chief Fisheries Officer
CITES	Convention on International Trade in Endangered Species
Council	National Advisory Council
CRFM	Caribbean Regional Fisheries Mechanism
Development Plan	National Physical Development Plan
DFID	Department for International Development within FCO
DPP	Director of Public Prosecutions
ECROP	Eastern Caribbean Regional Ocean Policy
ECSC	Eastern Caribbean Supreme Court
EEZ	Exclusive economic zone
EIA	Environmental Impact Assessment
FCO	Foreign and Commonwealth Office of the UK
LFMA	Local fisheries management area
MATHLE	Ministry of Agriculture, Trade, Housing Lands and Environment
MNT	Montserrat National Trust
NEMS	National Environmental Monitoring Strategy
NOV	Notice of Violation
OECS	Organisation of Eastern Caribbean States
PAS	Protected Areas System
RMPS	Royal Montserrat Police Service
Tribunal	Physical Planning and Environmental (Appeals) Tribunal
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea



## Executive summary

In February 2015, the Government of Montserrat and the Waitt Institute signed a memorandum of understanding to launch Blue Halo Montserrat, a comprehensive ocean and coastal management project with a goal of sustainable management of Montserrat's ocean and coastal waters. BHM seeks to develop a Montserrat Sustainable Ocean Policy that will ensure long-term health of Montserrat's waters through ocean zoning, protected areas, and fisheries reforms. This Report provides a strong legal foundation for Blue Halo Montserrat by exploring how existing legal authorities contribute to ocean management in Montserrat and how they can be used to support the Montserrat Sustainable Ocean Policy.

A wide range of laws and policies govern use of the ocean in Montserrat, ranging from sector-specific authorities such as the Fisheries Act to very broad legislation—most notably, the Conservation and Environmental Management Act of 2014 (CEMA), which addresses issues from protected areas to maritime pollution. Similarly, while some statutes like CEMA are modern, others are dated and in some cases, such as offshore renewable energy, do not yet exist. After providing an overview on Montserrat's legal system, this Report reviews the applicable laws, regulations, and policies that are most relevant, with a particular focus on fisheries and coastal zoning. These laws can be split into 10 categories:

- Fisheries;
- Protected Areas;
- Planning and Land Use;
- Maritime and Shipping;
- Protected Species;
- Forestry;
- Pollution, Dumping, and Accidents; and
- Mining and Offshore Industry.

Within each of these areas, one or more laws set out who is responsible for management and how these authorities operate in law—and, where known, in practice. A few of the key authorities and institutions are listed in Table . The report characterizes each relevant legal authority to provide a solid foundation on their contents and implementation.

# 1 Introduction

## 1.1 Purpose of report

This Report is an evaluation of Montserrat's laws and institutions to support the design and implementation of a comprehensive ocean zoning and management system in the country as part of the Blue Halo Initiative.<sup>1</sup>

The Report identifies existing authorities to achieve a comprehensive ocean zoning system in the waters surrounding Montserrat, evaluates potential options for ocean planning and management implementation, and provides recommendations for ways to develop a comprehensive ocean management system for Montserrat. The Report recognizes that comprehensive ocean management should build from the existing legal system, take pragmatic steps given anticipated capacity and funding, and provide effective incentives and requirements to ensure compliance and long-term sustainability of ocean resources.

## 1.2 Overview of Blue Halo Montserrat

The Blue Halo Montserrat (BHM) is an effort to develop comprehensive management of Montserrat's marine environment, including fish sanctuaries, with a special focus on fisheries management.

The BHM planning process is organized around seven principles:

1. Plan with the goal of sustainable, profitable, and enjoyable use of ocean resources over the long-term – for next year and for future generations.
2. Plan with a focus on increasing fisheries' catches, and preserving traditional uses of ocean areas.
3. Plan with the premise that a zoning plan well supported by the community will result in higher voluntary compliance.
4. Plan with consideration of maximizing ease of enforcement, including gear-based management and design of zone boundaries based on known landmarks, where possible.
5. Plan with an understanding of the necessity for strong legal support for enforcement, including prosecuting and penalizing infractions.
6. Plan with an aim of long-term financial independence and viability of implementation.
7. Plan with an understanding that revisions and adjustments may be needed over time to maximize effectiveness.

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<sup>1</sup> This Report is provided for informational and educational purposes only and does not constitute legal advice. It is intended, but not promised or guaranteed, to be current, complete, or up-to-date. Transmission of this report is not intended to create, and the receipt does not constitute, an attorney-client relationship between the Environmental Law Institute and any other entity.



Development of Blue Halo Montserrat is ongoing in collaboration with the Government of Montserrat and local stakeholders. BHM is focused on developing a new system for ocean zoning and fisheries management in Montserrat's ocean waters.

### 1.3 Description of ocean zoning

Comprehensive ocean management can be achieved with the development and implementation of marine spatial planning and ocean zoning. Marine spatial planning is a public process that organizes human activity in marine areas in time and space in order to meet environmental, economic, and social objectives.<sup>2</sup> This planning process can result in ocean zoning—a regulatory and enforceable approach to achieve and implement a marine spatial plan. Effective ocean zoning requires users to understand the legal context and authorities governing both planning and implementation. Key considerations in Montserrat include:

- the governmental bodies with legal authority to develop, implement, and enforce an ocean zoning plan, including relevant sector-specific activities (e.g., fisheries, shipping, recreation, aquaculture), and how those authorities interact;
- opportunities and constraints associated with different ocean zoning authorities, and where new authorities may be needed;
- the processes required to carry out ocean zoning in Montserrat (e.g., public approval requirements); and
- the utility of existing marine designations (e.g., national parks, Marine Reserves, etc.) as elements of a comprehensive zoning plan.

The legal framework is also important for understanding financial aspects of ocean zoning. In Montserrat, key legal issues include:

- the authorities governing collection (and use) of revenues from ocean users through existing and new sources, such as park entry fees, lease payments, fines for violations of the law, environmental injury funds, and other fees and penalties;
- the institutions that have the legal authority to receive public and private funds in order to develop and implement an ocean zoning plan; and
- Montserrat's authority to use these funds for development and implementation of a comprehensive plan.

This Report addresses each of these issues and is a legal resource that the Montserrat government and other stakeholders can use as a guide when developing and approving ocean zoning plans and processes. It may also serve as important guidance for other nations in the Caribbean beyond Montserrat when evaluating their own legal authority for marine spatial planning, ocean zoning, and fisheries management.

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<sup>2</sup> Ehler, Charles, and Fanny Douvère. *Marine Spatial Planning: a step-by-step approach toward ecosystem-based management*. Intergovernmental Oceanographic Commission and Man and the Biosphere Programme. IOC Manual and Guides No. 53, ICAM Dossier No. 6. Paris: UNESCO. 2009 (English).



## 1.4 Summary of report contents

This Report provides an overview of the Montserrat legal system. It then introduces the substantive and procedural laws governing the marine environment in Montserrat, including planning authority, fishery authority, protected areas authorities, financing authorities, and other substantive and procedural legal authorities. With this background, this study identifies policy options for advancing ocean zoning and management in Montserrat.

## 2 Overview

This section summarizes the history and structure of the government of Montserrat. In addition, it describes the relationship between Montserrat and the United Kingdom (UK) and provides an overview of ocean jurisdiction.

### 2.1 Geography

Montserrat is a small island nation in the Lesser Antilles of the Eastern Caribbean. Montserrat includes 102 km<sup>2</sup> of land area, 40 km of coastline, and a 7,587 km<sup>2</sup> exclusive economic zone (EEZ).<sup>3</sup> Montserrat is formed from three volcanoes—Soufriere Hills, Centre Hills, and Silver Hill, the first of which is active. The terrain of Montserrat is generally steep, and the ocean depth increases quickly from the shoreline. As a result, the continental shelf area is just 168 km<sup>2</sup>.<sup>4</sup>

Montserrat has suffered repeated natural disasters during its history, including earthquakes, hurricanes, and volcanic activity. Recent disasters include Hurricane Hugo, which decimated the island in 1989, and, most notably, active and continuing volcanism beginning in 1995. Pyroclastic activity killed 19 people on June 25, 1997, and Plymouth—the capital and only major town on the island, as well as the only protected harbour—was destroyed in August 1997.

Most residents left Montserrat to live elsewhere at the height of the volcanic activity, but many have since returned. Nonetheless, since volcanic activity began, the human population on the island has declined from 11,900 in 1990<sup>5</sup> to 4,922 people as of the 2011 census (25% of whom were immigrants from other Caribbean nations).<sup>6</sup>

Due to the ongoing seismic and volcanic activity, substantial areas of the island and marine environment were designated as exclusion zones where access was prohibited or restricted. The volcano has been quiet since 2010 and now presents the lowest risk since monitoring began.<sup>7</sup> As a result, restrictions on entry into parts of the exclusion zone have been eased, and occupation and/or daytime entry are now allowed in certain areas (Figure 1).<sup>8</sup> However, more than half of the

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<sup>3</sup> CIA, *The World Factbook: Montserrat*, at [www.cia.gov/library/publications/the-world-factbook/geos/mh.html](http://www.cia.gov/library/publications/the-world-factbook/geos/mh.html) (last visited June 11, 2015); The Sea Around Us, *Catch by Taxon in the Waters of Montserrat (UK)*, at [www.seaaroundus.org/data/#/eez/500](http://www.seaaroundus.org/data/#/eez/500) (last visited June 11, 2015).

<sup>4</sup> *Id.* Continental shelf in this context refers to the scientific terminology and not the legal definition of a continental shelf for purposes of boundary delimitation.

<sup>5</sup> Donald Harmon Akenson, *IF THE IRISH RULED THE WORLD: MONTSEERRAT 1630-1730* 176 (1997).

<sup>6</sup> UK Foreign and Commonwealth Office, *The Overseas Territories: Security, Success, and Sustainability* 106 (2012).

<sup>7</sup> See UK, Foreign Travel Advice: Montserrat, at <https://www.gov.uk/foreign-travel-advice/montserrat/natural-disasters>, citing Montserrat Volcano Observatory, Hazard Level, at <http://www.mvo.ms>.

<sup>8</sup> See Emergency Powers (Unsafe Areas) Order 2014, S.R.O. 43 of 2014.

island will likely remain uninhabitable for an extended period,<sup>9</sup> and the Montserrat Volcano Observatory continues to monitor the volcano for signs of increased danger.

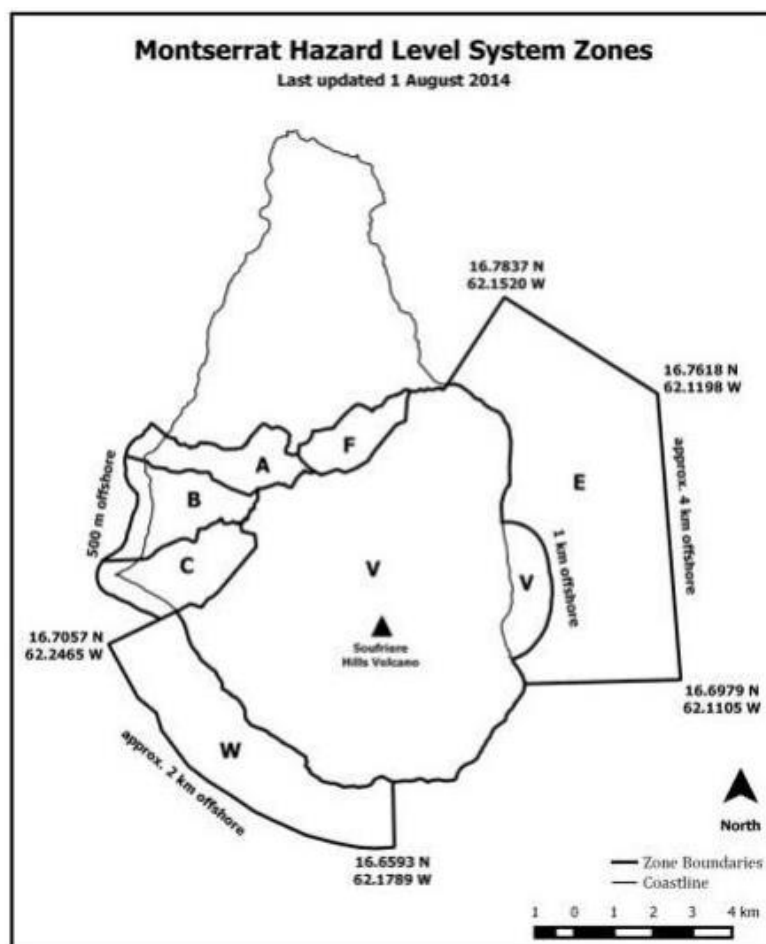


Figure 1. Map of Montserrat, showing exclusion zones as of August, 2014<sup>10</sup>

## 2.2 History

Montserrat has been under British rule virtually continuously since it was first settled by a group of Irish settlers in 1632.<sup>11</sup> Montserrat has seen substantial transformation in its governance since initial settlement. In the beginning, it was occupied on a neo-feudal basis in which settlers were tenants subject to rule by a Governor appointed by a patent-holder (initially, the first earl Carlisle)

<sup>9</sup> Report of the 19<sup>th</sup> Scientific Advisory Committee on Montserrat Volcanic Activity, Assessment of the Hazards and Risks Associated with the Soufriere Hills Volcano, Montserrat (2014), available at [http://www.mvo.ms/pub/SAC\\_Reports/SAC19-Summary\\_Report.pdf](http://www.mvo.ms/pub/SAC_Reports/SAC19-Summary_Report.pdf).

<sup>10</sup> Emergency Powers (Unsafe Areas) Order 2014, Schedule 1. Zones A and B are now open to overnight use. Personal communication 4/28/15.

<sup>11</sup> Krysta Ryzewski and John F. Cherry, *Struggles of a Sugar Society: Surveying Plantation-Era Montserrat, 1650-1850*, Int'l J. Hist. Archaeology, DOI 10.1007/s10761-015-0292-7 (online: 2015). As reported by Christopher Columbus and confirmed by early settlers, the island lacked permanent native settlements; however, the Carib Indians did periodically use the island and raided its settlers after colonization. In addition, the French occupied Montserrat from 1782-84. Akenson, *supra* note 5.

who in turn owed the rents from the settlement to the crown. The system was reformed in 1663 to create a colonial system where the Governor of the Leeward Islands was directly answerable to the crown and was represented by a deputy governor on each island.<sup>12</sup> At the same time, landholdings were converted from tenancy to freehold, and landowners were thereafter obliged to pay taxes to the crown (via the governor), rather than rents to the patent-holder.<sup>13</sup> While a local council had existed during the neo-feudal era, representative government formally arrived in Montserrat in 1668 through creation of a bicameral parliament (a Council appointed by the Lords of Trade and Plantations in England, plus an elected Assembly) under the deputy governor. Local government authority was limited, however, as local laws could not take effect without approval by the British government.<sup>14</sup> The structure of colonial administration changed over time but generally maintained a local executive and bicameral council system under a colonial governor located elsewhere.<sup>15</sup>

The colonial economy was initially based on tobacco and indigo, produced on a mixture of large and small landholdings operated by planters, small-scale freehold or tenant farmers, indentured servants, free labourers, and transported criminals (the majority of whom were Irish).<sup>16,17</sup> While slower than its neighbours to transition to a slave economy, sugar production and the use of imported West African slaves increased and became the predominant economic driver for the island in the late 1600s and early 1700s.<sup>18</sup> The European population drastically declined with the rise of slave labour and consolidation of landholdings, to just 444 residents by 1810-11.<sup>19</sup> The sugar industry peaked between 1725 and 1775, with a slave population of nearly 10,000 persons, before decline due competition with sugar beets and, subsequently, emancipation of slaves in 1834.<sup>20</sup> Montserrat's economy collapsed in the 1840s, as trade between Montserrat and the UK ceased entirely during 1849.<sup>21</sup>

While sugar remained an important crop until the twentieth century, the economy began to diversify. In the 1850s, Joseph Sturge, a Quaker abolitionist, financed work to demonstrate the

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<sup>12</sup> Governance of Barbados was separated from the other Leeward Islands in 1671. Akenson, *supra* note 5, at 83.

<sup>13</sup> *Id.* at 76-82.

<sup>14</sup> Akenson, *supra* note 5.

<sup>15</sup> *Id.*

<sup>16</sup> Ryzewski and Cherry (2015).

<sup>17</sup> *Id.* Montserrat today draws on this heritage, styling itself the "Emerald Isle of the Caribbean" and producing a tartan. These connections were created in the modern era for marketing purposes, however, and do not reflect an ongoing connection with Ireland. Ryzewski and Cherry (2015). However, the celebration of St. Patrick's day also commemorates the 1768 St. Patrick's day uprising by slave and free communities against the plantation system. Ryzewski and Cherry (2015). While the British government viewed the Irish population with suspicion (justified by jacqueries and their support for French invasions), the Irish were participants in both the colonial governance of Montserrat and in the slave system. Akenson, *supra* note 5. There are some lasting indications of the island's Irish heritage, however, including Irish surnames and place names. *Id.* at 176-180.

<sup>18</sup> Akenson, *supra* note 5.

<sup>19</sup> Akenson, *supra* note 5, at 155.

<sup>20</sup> Ryzewski and Cherry (2015). Montserrat not only transitioned to cotton production in the late 1700s but also became a net exporter of slaves after 1780. *Id.*

<sup>21</sup> Ryzewski and Cherry (2015). Compounding its economic woes, Montserrat also faced a smallpox epidemic and 10-month drought in 1849. *Id.*

viability of wage labour on Montserrat.<sup>22</sup> The Montserrat Company carried out Sturge's ideas on acquired sugar plantations and successfully converted them to lime production, exporting juice, oil, and fruit to Britain.<sup>23</sup> This industry was successful until the lime industry was destroyed by disease, natural disasters, and wartime limitations; subsequently, the island's economy shifted to production of "sea island" cotton and then, following World War II, to tourism.<sup>24</sup> Tourism is primarily conducted on a small scale and is focused on bird watching, diving, and other recreational activities (e.g., historic sites, museum).<sup>25</sup>

The colonial period<sup>26</sup> in Montserrat ended in 1958, when the island entered the short-lived West Indies Federation.<sup>27</sup> Unlike most of its neighbours, however, Montserrat did not declare its independence in the years following the dissolution of the Federation in 1962,<sup>28</sup> and it remains a British Overseas Territory to this day.

The volcanic eruptions in 1997 destroyed Montserrat's economy, and today the domestic economy is based on government services, small-scale tourism, and other small-scale commercial sources.<sup>29</sup> The tax burden ranges from 20-25% of the gross domestic product.<sup>30</sup> Also, the UK government, through the Department for International Development (DFID) within the Foreign and Commonwealth Office (FCO), contributes approximately £20 million (EC\$100 million) annually to the Montserrat government—about 60% of Montserrat's total budget.<sup>31</sup> Approximately 45% of the amount provided by the UK government is directed towards recurring expenses (i.e., annual budget). The remainder of UK support is directed to capital expenses for redevelopment, which have included development of a new capital town and port at Little Bay and Carr's Bay, airport, road works, public health, geothermal energy, and other projects.<sup>32</sup> Brades is the *de facto* capital and centre of commerce on the island until the government centre at Little Bay is completed. As the historic harbour of Plymouth is now unavailable due to volcanic activity, the one exposed harbour

<sup>22</sup> Alex Tyrell, *A Business of Philanthropy: The Montserrat Company 1856-1961*, 38 J. CARIBBEAN HIST. 184, 197-99 (2004) (noting a benefits provided by the company, including steady employment at a fair wage; sale or leasing of land to the community; provision of communications, electricity, and other amenities; and donating space for a park); *but see* Howard Fergus, *Montserrat's Days of Lime and Cotton*, 28(3) CARIBBEAN Q. 10, 16 (1982) (suggesting that advertised smallholdings were provision lands and a relic of slavery rather than an innovation).

<sup>23</sup> Ryzewski and Cherry (2015); Tyrell, *supra* note 22.

<sup>24</sup> Tyrell, *supra* note 22, at 192-95; Fergus, *supra* note 22, at 14-16.

<sup>25</sup> Government of Montserrat, *Tourism Development Plan 2012-2022 (Incorporating TDP3 and 5-year Business Plan) (Draft Final Report)* (2012), available at <http://www.gov.ms/wp-content/uploads/2012/06/Draft-Final-Report-6-July-2012.pdf>.

<sup>26</sup> The structure of Montserrat's colonial government shifted several times prior to 1871, when it was included in the British Federal Colony of the Leeward Islands. Leeward Islands Act, 1871, 34 & 35 Vict., c. 107 (Eng.). The Federal Colony was retained until 1956, when it was dissolved in anticipation of the Federation.

<sup>27</sup> British Caribbean Federation Act, 1956, c. 65; West Indies (Federation) Order, (1957) SI 1957/1364.

<sup>28</sup> West Indies Act, 1962, 10 & 11 Eliz. 2, c. 19 (Eng.).

<sup>29</sup> *Id.*

<sup>30</sup> CARICOM, *Survey of the Caribbean Tax System* (2004), available at [http://www.caricom.org/jsp/community/cota/general\\_assembly/18cota-caricom-tax-system-survey.pdf](http://www.caricom.org/jsp/community/cota/general_assembly/18cota-caricom-tax-system-survey.pdf)

<sup>31</sup> Independent Commission for Aid Impact, *DFID's Support to Montserrat: Terms of Reference* (2013), available at <http://icai.independent.gov.uk/wp-content/uploads/2013/07/TOR-DFIDs-Support-to-Montserrat.pdf>.

<sup>32</sup> *Id.* at 4.

in Little Bay is Montserrat's only accessible harbourage. Little Bay services barge traffic from the Dominican and other moderate and smaller-sized vessels.

## 2.3 Montserrat government overview

The basis for Montserrat's government is set out in its Constitution, which establishes its relationship with the UK, the functions of its executive, legislative, and judicial branches, and protects fundamental rights and liberties. Based on this authority, the Montserrat Assembly enacts primary legislation that is further elaborated by Government ministries through regulations, orders, and other secondary legislation. As a common law nation, Montserrat's judicial system interprets these laws in deciding criminal and civil cases.

### 2.3.1 Relationship with the United Kingdom and the British Crown

Montserrat is an internally self-governing British Overseas Territory with independent authority to develop laws and policies and manage its domestic resources, including fisheries management and marine zoning, subject to UK oversight. The relationship between the Overseas Territories and the UK and the Crown is complex. Montserrat, like all Overseas Territories, is constitutionally separate from the UK.<sup>33</sup> Similarly, the government of Montserrat is separate from the government of the UK.<sup>34</sup> Instead, it is described as a "partnership" with mutual benefits and responsibilities, based on the decision of each Territory to "choose to remain British".<sup>35</sup> The British Queen is the head of state of the Overseas Territories and is represented by a Governor on Montserrat.<sup>36</sup>

Sources of law on Montserrat include: primary legislation enacted by Montserrat's Legislative Assembly (which makes up the largest body of law applicable to Montserrat); secondary legislation (regulations and orders) promulgated by the government of Montserrat under authority provided by primary legislation; certain legislation enacted by United Kingdom Act of Parliament; secondary legislation pursuant to an enabling provision in a UK law in the form of Orders in Council made by Her Majesty on advice of the Privy Council<sup>37</sup>; common law and rules of equity of England; and judicial decisions.<sup>38</sup> Most UK laws do not apply to Montserrat; rather, the only UK laws that apply are those laws enacted by UK Act of Parliament with the express purpose of applying to Montserrat or, in rare instances, by necessary intendment.<sup>39</sup> UK Acts of Parliament that extend to all territories include, for example, the West Indies Act 1962, British Nationality Act 1981 and the British Overseas Territories Act 2002.<sup>40</sup> Such laws may authorize the Queen to issue Orders in Council to

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<sup>33</sup> IAN HENDRY & SUSAN DICKSON, *BRITISH OVERSEAS TERRITORY LAW* at 33 (2011).

<sup>34</sup> HENDRY & DICKSON, *supra* note 33 at 37.

<sup>35</sup> UK Foreign and Commonwealth Office, *The Overseas Territories: Security, Success, and Sustainability* 11 (2012).

<sup>36</sup> HENDRY & DICKSON, *supra* note 33 at 37.

<sup>37</sup> See House of Commons, *Delegated Legislation* (2011), available at <http://www.parliament.uk/documents/commons-information-office/Brief-Guides/Delegated-Legislation.pdf> (discussing Orders in Council and other forms of Statutory Instruments).

<sup>38</sup> *Id.* at 189-207 [33]

<sup>39</sup> *Id.* at 38. [33]

<sup>40</sup> *Id.* at 189. [33]

provide Overseas Territories with authority to develop subordinate legislation, establish constitutions for the Territories, or implement international obligations.<sup>41</sup>

The terms of the relationship between the UK and Montserrat are established by Montserrat's constitution, which protects individual rights and sets out the structure of government. Enacted as an Order in Council under the West Indies Act of 1962, the constitution was most recently revised in 2010.<sup>42</sup> Montserrat is self-governing with respect to all services other than those provided by the UK and subject to its obligations to the UK, which include maintaining the rule of law, public services, and reduction of reliance on budgetary support over time.<sup>43</sup> The UK's reciprocal "fundamental responsibility and objective" in its relationship with all its territories is to ensure "security and good governance"<sup>44</sup>—including:

- defence and security;
- economic (budgetary) assistance;
- technical support;
- foreign relations; and
- "reputational benefits".<sup>45</sup>

In the case of Montserrat in particular, the UK FCO notably provides substantial financial support, as noted previously, and is supporting establishment of delimitation lines for Montserrat's territorial waters as part of its management of foreign relations.<sup>46</sup> The terms of the UK's support for Montserrat also can extend to financial or technical support for specific projects focused on "good governance" related to sustainable development, including integrated management related to resources such as fisheries.<sup>47</sup> The UK FCO in noting its role in supporting investment and trade has stated that "[t]he UK government believes that there are opportunities for British business in the Territories, for example in hydrocarbons, fisheries, sustainable energy and tourism sectors."<sup>48</sup>

### 2.3.2 Executive authority

Montserrat's government is a unicameral parliamentary democracy in which Her Majesty the Queen is the head of state and executive authority, as represented in Montserrat by a Governor.<sup>49</sup> The Constitution and laws indicate when the Governor may act independently or on the advice of the Montserrat Cabinet.<sup>50</sup> The Governor appoints a Deputy Governor,<sup>51</sup> Premier, Deputy Premier,

<sup>41</sup> HENDRY & DICKSON, *supra* note 33 at 190.

<sup>42</sup> The Montserrat Constitution Order, (2010) SI 2010/2474 [*hereinafter* Montserrat Constitution].

<sup>43</sup> UK Foreign and Commonwealth Office, *The Overseas Territories: Security, Success, and Sustainability* 14 (2012).

<sup>44</sup> *Id.* at 13.

<sup>45</sup> *Id.* at 14.

<sup>46</sup> Personal communication, on file with authors.

<sup>47</sup> *See generally* UK Foreign and Commonwealth Office, *supra* note 43.

<sup>48</sup> UK Foreign and Commonwealth Office, *supra* note 43.

<sup>49</sup> Montserrat Constitution §§ 22, 31.

<sup>50</sup> *Id.* at § 26.

<sup>51</sup> Montserrat Constitution at § 24. Approval of a Secretary of State is needed for this appointment, and the Deputy Governor must be Montserratian. The Constitution does not indicate which Secretary of State is responsible, but the likely authority is the Secretary of State for Foreign and Commonwealth Affairs, who



Cabinet, and Leader of the Opposition.<sup>52</sup> She also appoints Ministers and charges them with responsibilities.<sup>53</sup>

The Governor may “make grants and dispositions of land or immovable property” or interests in such property “that are vested in Her Majesty for the purposes of the Government”.<sup>54</sup> Section 39 of the Constitution provides that the Governor, acting in her discretion, is responsible for defence, external affairs, regulation of international financial services, policing, and functions related to the public service; however, the Governor generally must consult the Cabinet before exercising these functions in a non-trivial manner.<sup>55</sup>

The Constitution provides for a National Advisory Council (Council), which includes the Governor, Premier, one other Minister, the Attorney-General, Financial Secretary, and Leader of the Opposition.<sup>56</sup> The purpose of the Council is to make recommendations to or to advise the Governor on certain matters subject to Section 39 (excluding regulation of financial services) and during public emergencies.<sup>57</sup> With the prior approval of the UK Foreign Secretary, the Governor may delegate responsibility for these matters to the Premier or to a Minister, and the Constitution provides that the Governor “shall . . . delegate to a Minister responsibility for the conduct within Caribbean regional organizations . . . affecting” Montserrat.<sup>58</sup>

The Cabinet “shall have the general direction and control of the government of Montserrat”.<sup>59</sup> The Cabinet consists of the Premier, three other Ministers from among the nine elected members of the Legislative Assembly (who are appointed on the advice of the Premier), and two ex-officio members—the Attorney-General and Financial Secretary.<sup>60</sup> The Deputy Governor can attend cabinet meetings but cannot vote,<sup>61</sup> and the Governor is directed to attend and preside at these meetings when possible but also does not vote.<sup>62</sup> Only the Governor can call Cabinet meetings, but must do so upon request by the Premier. The quorum for Cabinet meetings is three, at least two of whom must be Ministers.<sup>63</sup> In practice, the Governor plays an important role in setting the agenda

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leads the FCO. The deputy’s powers include appointment and management of public officers. The Deputy Governor is responsible for appointment of public officers, *id.* at § 24, subject to advice from the Public Service Commission, *id.* at § 83, and regulations made by the Governor (which cannot affect offices in the police service). *Id.* at § 84. Certain appointments, including the Police Commissioner and Financial Secretary, are vested in the Governor. *Id.* at § 85.

<sup>52</sup> Montserrat Constitution at §§ 33, 61.

<sup>53</sup> *Id.* at § 38.

<sup>54</sup> *Id.* at § 27.

<sup>55</sup> *Id.* at § 39.

<sup>56</sup> *Id.* at § 45.

<sup>57</sup> *Id.*

<sup>58</sup> Montserrat Constitution at § 39.

<sup>59</sup> *Id.* at §§ 32-33.

<sup>60</sup> Montserrat Constitution at § 32.

<sup>61</sup> *Id.* at § 32.

<sup>62</sup> *Id.* at § 42. The Constitution does not indicate whether the Governor may vote in Cabinet; however, the person presiding at a meeting of the Legislative Assembly cannot vote unless required to break a tie. *Id.* at § 66. The Cabinet may function in the same manner.

<sup>63</sup> *Id.* at § 42.

for Cabinet meetings and thus in determining what issues are considered and acted upon by the Government of Montserrat.<sup>64</sup>

### 2.3.3 Legislative Authority

The Cabinet is answerable to the Legislative Assembly, which along with Her Majesty is the legislative authority of Montserrat.<sup>65</sup> The Assembly has nine elected members and two ex-officio members (the Attorney-General and Financial Secretary).<sup>66</sup> Six members plus the person presiding are required to comprise a quorum.<sup>67</sup> The members of the Assembly elect a Speaker of the Assembly and Deputy Speaker from among the elected Assembly members who are not part of the Cabinet.<sup>68</sup> The Speaker presides in the Assembly<sup>69</sup> and must set at least one session of the Assembly each year.<sup>70</sup> All assembly votes are decided by majority<sup>71</sup> in accordance with Assembly procedures, which are set out in Standing Orders (internal procedures of the Legislature).<sup>72</sup>

The Assembly is required to establish at least two Standing Committees to monitor the conduct of the business of government being carried out by the Ministers.<sup>73</sup> One of the Standing Committees must be called the Public Accounts Committee and be responsible for “monitoring the public accounts”.<sup>74</sup> At least one of these committees must be presided over by an opposition member, and both must consist of members who are not members of the Cabinet.<sup>75</sup> These committees function in an oversight role and must report to the Assembly at least annually.<sup>76</sup>

While in session, the Assembly can enact bills into law.<sup>77</sup> Any member of the Assembly can introduce a bill, motion, or petition for debate and disposition.<sup>78</sup> However, Cabinet approval is needed for the Assembly to proceed on a bill, motion, or petition that would “dispose of or charge any public revenue or public funds or alter any disposition of them or charge on them or impose, alter or repeal any rate, tax or duty”.<sup>79</sup> A bill does not become law until either the Governor or Her Majesty, through the UK Foreign Secretary, has first assented to it on behalf of the Crown.<sup>80</sup> The Governor must reserve some bills for assent by Her Majesty, including any bill that appears to the Governor: (i) inconsistent any international obligation of the UK; (ii) likely to prejudice the Royal prerogative, the efficiency of the judiciary, or affect the matters set out in section 39 of the

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<sup>64</sup> Personal Communication with Richard Aspin, Communications Director for the Governor.

<sup>65</sup> Montserrat Constitution at § 47.

<sup>66</sup> *Id.* at § 48.

<sup>67</sup> *Id.* at § 65.

<sup>68</sup> Montserrat Constitution at § 59.

<sup>69</sup> *Id.* at § 60.

<sup>70</sup> *Id.* at § 58.

<sup>71</sup> *Id.* at § 66.

<sup>72</sup> *Id.* at § 72.

<sup>73</sup> Montserrat Constitution at § 63.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> Montserrat Constitution at § 71.

<sup>78</sup> *Id.* at § 70.

<sup>79</sup> *Id.* at § 70.

<sup>80</sup> *Id.* at § 74. Assent by the Foreign Secretary must be signified by the Governor through publication of a proclamation in the *Gazette*. *Id.*

Constitution; or (iii) repugnant to or inconsistent with the Constitution.<sup>81</sup> Unless otherwise established, laws come into force upon assent (or in the case of assent by Her Majesty through the Foreign Secretary, upon publication of a proclamation of assent).<sup>82</sup> Her Majesty through the Foreign Secretary can also overrule the Governor and disallow a law,<sup>83</sup> and each law must include specific mandatory language in order to comply with the Constitution.<sup>84</sup> All laws predating the Constitution remain in force “with such modifications, adaptations, qualifications and exceptions” as required to conform to constitutional requirements.<sup>85</sup>

Assembly members serve until dissolution of the Assembly, which can occur at any time through the Governor acting after consultation with the Premier. Unless dissolved sooner, the Governor must dissolve the Assembly, and thereby trigger a general election, five years after the date of first sitting of an Assembly.<sup>86</sup> General elections occur between 21 days and 3 months after the Assembly is dissolved.<sup>87</sup>

### 2.3.4 Legal System

The legal system is composed of law enforcement personnel, who detect violations of the law and file charges and complaints against violators, government attorneys who prosecute the cases arising from complaints, and courts that hear and decide criminal and civil cases. Legal processes are subject to constitutional protections for fundamental individual rights, including protection from arbitrary arrest or detention;<sup>88</sup> search of a person or property without consent except as “reasonably justifiable in a democratic society”;<sup>89</sup> and compulsory deprivation of property without compensation, other than property taken as a consequence of a breach of the law.<sup>90</sup> The Criminal Procedure Code<sup>91</sup> sets out the procedures by which the legal system operates within these limitations while other statutes, most notably the Penal Code,<sup>92</sup> identify violations and penalties. See Figure 2 for key entities and processes.

#### 2.3.4.1 Law Enforcement

Law enforcement in Montserrat is primarily conducted by the Royal Montserrat Police Service (RMPS), which has authority to enforce all the laws in force in Montserrat through powers provided

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Montserrat Constitution at § 76.

<sup>84</sup> *Id.* at § 75 (“Be it enacted by The Queen’s Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Montserrat, and by the authority of the same as follows:–”).

<sup>85</sup> *Id.* at § 117.

<sup>86</sup> *Id.* at § 67.

<sup>87</sup> *Id.* at § 69.

<sup>88</sup> Montserrat Constitution at § 6. Cases where arrest and detention are allowed include those involving a sentence or order by a court and reasonable suspicion of a criminal offense. *Id.*

<sup>89</sup> *Id.* at § 9. Other broad search authorization applies in the interests of defence, public safety or order, town or country planning, mineral resource development, or other property development or utilization in the public benefit, among others. *Id.*

<sup>90</sup> *Id.* at § 17.

<sup>91</sup> Criminal Procedure (No. 2) Code, CAP 4.01 (rev. 2013). This Code replaces and repeals the former Criminal Procedure Code. *Id.* at § 342.

<sup>92</sup> Penal Code, CAP 4.02 (rev. 2013). The Penal Code does not replace common law offences or offences set out in other laws. *Id.* at § 2. However, offences cannot be charged under both the Penal Code and another law. *Id.*

in the Police Act.<sup>93</sup> The Service includes four divisions, including patrol and beats; marine; criminal; and immigration.<sup>94</sup> The marine division conducts a variety of missions ranging from safety at sea to drug interdiction. Neither fisheries enforcement nor conservation/species protection are listed as a priority.<sup>95</sup> The Commissioner of Police commands the RMPS, which includes “Gazetted” police officers (who are justices of the peace),<sup>96</sup> subordinate police officers,<sup>97</sup> and special and local constables.<sup>98</sup> All police are appointed by the Governor.<sup>99</sup> RMPS officers can make arrests with a warrant or without a warrant if they have a “reasonable ground” to believe that the person has committed an arrestable offence<sup>100</sup> (as well as in certain other circumstances).<sup>101</sup>

Arrestable offenses under the Penal Code include those for which the penalty is fixed by law or for which a person may be sentenced to a term of imprisonment of 5 years or longer,<sup>102</sup> and other laws provide additional warrantless arrest powers. Notably, as discussed further below, the Fisheries Act authorizes officers to arrest any person without a warrant provided the officer has reason to believe that the person has violated the Fisheries Act.<sup>103</sup> Thus, for example, a warrant is required to arrest a person for violating the Penal Code prohibition on the use of explosives to kill fish, which carries a maximum fine of \$250 or three months imprisonment,<sup>104</sup> but no warrant would be required to arrest a person for the same offense under the Fisheries Act.<sup>105</sup>

In addition to making arrests, RMPS officers can stop, search, and detain a vessel or other conveyance with a “reason to suspect” that the conveyance contains items that were unlawfully obtained.<sup>106</sup> Additional search powers are provided by other laws, including the Fisheries Act. And

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<sup>93</sup> Police Act, CAP 10.01 (rev. 2013). Before 2011, the Service was known as the Police Force. Police (Amendment) Act, No. 11 of 2011, at § 4 (introducing “Service” as a replacement for “Force”).

<sup>94</sup> RMPS, “Home”, at <http://police.gov.ms> (last visited June 23, 2015).

<sup>95</sup> RMPS, “Marine”, at <http://police.gov.ms/departments-beat-7-patrol/core-policing/marine/> (last visited June 23, 2015).

<sup>96</sup> Gazetted Police Officers include the Commissioner, Deputy Commissioner, two Superintendents of Police, and all Inspectors. Police Act, *supra* note 93, at §§ 2, 6, 22.

<sup>97</sup> Subordinate police officers include Sergeants and Corporals. Police Act, *supra* note 93, at § 2.

<sup>98</sup> Police Act, *supra* note 93, at §§ 6, 11, Local Constables Act, CAP 10.01 [related legislation] (Rev. 2013). All police officers are automatically constables, and constables have the same powers, authorities, immunities, duties and responsibilities as officers. Police Act, *supra* note 93, at § 57 (special constables); Local Constables Act, *supra* at § 8 (providing equal powers and immunities (but not authorities, duties, or responsibilities) to local constables as those enjoyed by other constables).

<sup>99</sup> Montserrat Constitution § 39(d); Police Act, *supra* note 93, at § 12(2); Local Constables Act, *supra* note 98, at § 4. While other police do not require consultation, the Commissioner must be appointed by the Governor after consultation with the Premier. Montserrat Constitution § 85(4); Police Act, *supra* note 93, at § 12(1).

<sup>100</sup> The Police Act indicates that arrest without a warrant is available in the case of felonies. Police Act, *supra* note 93, at § 23. However, all distinctions between felonies and misdemeanors have been abolished. Penal Code at § 329. The Penal Act resolves this apparent distinction by defining arrestable offences. *Id.* at §§ 332-33.

<sup>101</sup> Police Act, *supra* note 93, at §§ 23, 24(b).

<sup>102</sup> Penal Code at §§ 332-333. A list of offenses subject to summary arrest is included in Schedule I.

<sup>103</sup> Fisheries Act, CAP 9.01 (rev. 2013), at § 47.

<sup>104</sup> Penal code at § 315; Schedule I.

<sup>105</sup> While this activity is not expressly prohibited by the Fisheries Act, a fishing licence issued under the Act is likely to include this prohibition.

<sup>106</sup> Police Act at § 23(d).

officers can summon persons reasonably suspected of committing an offence before a magistrate and charge them or file a criminal complaint.<sup>107</sup>

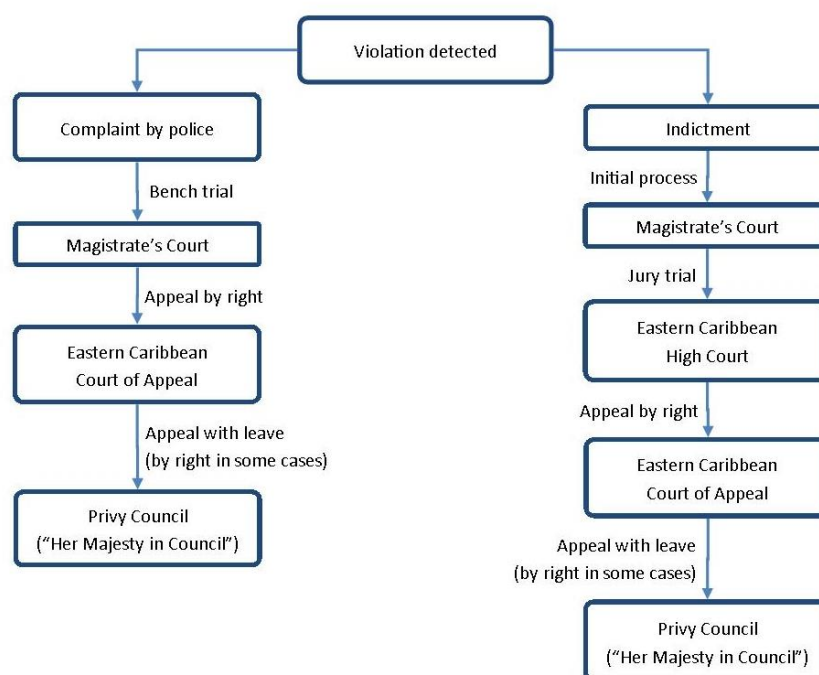


Figure 2. Montserrat criminal prosecution process.

Montserrat law creates additional law enforcement entities with limited authority to enforce specific laws. These include customs officers, members of the defence force,<sup>108</sup> agricultural officers, forest rangers, environment officers, public health and building inspectors, and “authorized officers” designated under the Fisheries Act or Conservation and Environmental Management Act.<sup>109</sup> The authorities of these officers are described in the specific laws providing for their designation and are described where relevant in this report, including in sections 3.3 and 4.6.

<sup>107</sup> Police Act at § 23(e) [police]; Criminal Procedure (No. 2) Code, *supra* note xxx, at § 24-26.

<sup>108</sup> As the UK is responsible for the security and defence of Montserrat, the island does not maintain an active, independent naval force or coast guard. However, Montserrat has a volunteer defence force that is embodied in time of need but otherwise serves a largely ceremonial role. Defence Force Act, CAP. 10.07 (rev. 2013). In addition, UK warships from the Royal Fleet Auxiliary visit Montserrat periodically. *See* Transcript of UK Secretary of State for DFID [Rt. Hon. Andrew Mitchell, UK DFID Secretary of State] as edited and aired on Radio Montserrat, February 11, 2011, *available at* <http://www.themontserratreporter.com/transcript-of-uk-secretary-of-state-for-dfid>; “RFA Wave Ruler to visit Montserrat,” mniAlive (July 5, 2011), at <http://www.mnialive.com/articles/rfa-wave-ruler-to-visit-montserrat>; “RFA Argus ship visits Montserrat,” Montserrat Reporter (Sept. 28, 2012), at <http://www.themontserratreporter.com/rfa-argus-ship-visits-montserrat/>; “RFA Wave Knight Macmillan coffee morning,” (Jan. 10, 2013), at <http://www.royalnavy.mod.uk/news-and-latest-activity/news/2013/october/01/131001-rfa-wave-knight-macmillan>. These UK naval resources may be authorized to assist in law enforcement activities when present.

<sup>109</sup> Conservation and Environmental Management Act, No. 17 of 2014, at § 13 [hereinafter *CEMA*] (designating listed types of officers as *ex officio* authorised officers for the purpose of enforcing the act); Fisheries Act, CAP 09.01, at § 46 (rev. 2013).

### 2.3.4.2 Prosecution

The Attorney General and Director of Public Prosecutions (DPP) are responsible for legal services on behalf of the government in civil and criminal cases, respectively.<sup>110</sup> Both are appointed by the Governor after consultation with the Chief Justice.<sup>111</sup> The Attorney General is responsible for civil litigation and sits on the Cabinet and in the Legislative Assembly, where he plays an active role in the drafting and review of legislation.<sup>112</sup> The Director of Public Prosecutions is responsible for prosecuting criminal cases on behalf of the government, and trials other than summary conviction require an indictment by the DPP after a sufficiency hearing in the High Court.<sup>113</sup> No action by the DPP is required to initiate summary trial in the Magistrate's Court, and the DPP may by written notice authorise police officers or other public officers conduct such prosecutions subject to the DPP's direction.<sup>114</sup> In addition, some statutes allow private individuals to prosecute offences or file civil claims on behalf of the government, if the government declines to prosecute.<sup>115</sup>

### 2.3.4.3 Courts

Montserrat's court system includes four levels: the Magistrate's Court,<sup>116</sup> the Eastern Caribbean Supreme Court (ECSC) High Court and Court of Appeals,<sup>117</sup> and Her Majesty in Council (the "Privy Council"). The Criminal Procedure Code establishes the jurisdiction of the courts and procedures for criminal trials.<sup>118</sup> Among other duties, magistrates receive charges and complaints;<sup>119</sup> issue warrants; try criminal cases subject to summary conviction (most cases); and conduct preliminary process in cases under indictment.<sup>120</sup> Magistrates also have specific authority to hear and decide

<sup>110</sup> Montserrat Constitution § 46. The Attorney General will perform the responsibilities of the Public Prosecutor if the latter post is vacant. *Id.*

<sup>111</sup> Montserrat Constitution § 85(2).

<sup>112</sup> Montserrat Constitution §§ 32, 48.

<sup>113</sup> Criminal Procedure (No. 2) Code at §§ 15, 69-87.

<sup>114</sup> *Id.* at § 15.

<sup>115</sup> Criminal Procedure (No. 2) Code at §§ 12, 98; Conservation and Environmental Management Act, No. 17 of 2014, at § 70.

<sup>116</sup> Magistrate's Court Act, CAP. 2.02 § 3 (Rev. 2002) [*hereinafter* Magistrate's Court Act]. Prior to enactment of the Magistrate's Court Act, Magistrates executed powers pursuant to the Magistrate's Code of Procedure Act. The Magistrate's Court was created by statute pursuant to the Constitution, which allows for the creation of courts and tribunals subordinate to the ECSP. Montserrat Constitution at § 81.

<sup>117</sup> The Supreme Court Order, as amended and adopted by the Constitution, is the basis for ECSP jurisdiction. Montserrat Constitution at § 80; West Indies Associated States Supreme Court Order 1967, S.I. 223/1967 UK; Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 2000, S.I. 3060/2000 UK; Anguilla, Montserrat and Virgin Islands (Supreme Court) Order 1983, SI 1108/1983 UK. The Supreme Court Act establishes how the ECSP functions in Montserrat's legal system, including by re-designating the former Supreme Court as the current ECSP High Court and establishing the jurisdiction of the ECSP High Court and Court of Appeals. Supreme Court Act, CAP. 2.01 (Rev. 2013), at §§ 3, 6-8, 28-30.

<sup>118</sup> Criminal Procedure (No. 2) Code, at §§ 7-8 (rev. 2013), *citing* Magistrate's Court Act, *supra* note 116, at §§ 22-23 (rev. 2013); Supreme Court Act, §§ 6-7.

<sup>119</sup> Fees are required for filings and other actions before the Magistrate's Court, except for complaints by police officers. The Governor in Council may direct by order that no fees are payable by "a public officer acting in performance of his duty" or any person acting on behalf of any statutory board or public body. Magistrate's Court Act at § 149. However, no such order is included with the supplemental and subsidiary legislation to the Act.

<sup>120</sup> Magistrate's Court Act, *supra* note 116, at § 22; Criminal Procedure (No. 2) Code at § 312 (amending § 22 of Magistrate's Court Act).

cases on summary conviction arising from violations committed in or on any vessel within territorial waters.<sup>121</sup> The High Court tries criminal cases under indictment.<sup>122</sup> Accused persons have the constitutional right to a jury trial in criminal cases before the High Court, but bench trials may be used.<sup>123</sup> Judgments of a Magistrate or High Court in any criminal matter can be appealed to the ECSC Court of Appeal.<sup>124</sup> Final appeals from the Court of Appeal to the Privy Council are possible as of right in certain matters, or with leave in others.<sup>125</sup>

Courts can impose any penalty provided by law and can select penalties up to the statutory maximum provided in law.<sup>126</sup> Under the Penal Code, penalties may include imprisonment, fine, compensation to injured parties, security to ensure good behaviour, probation, forfeitures, and other punishments provided by law.<sup>127</sup> Where no maximum is specified, magistrates can impose fines up to 6 months or a fine of \$5,000.<sup>128</sup> The High Court is not subject to a maximum in such cases, but fine amounts cannot be excessive.<sup>129</sup> In addition, both the Magistrate's Court and High Court may order seizure of property obtained by an offence, the proceeds of which are paid into the consolidated fund unless claimed by their rightful owner,<sup>130</sup> and may require payment of litigation costs.<sup>131</sup> All fees, fines, penalties, forfeiture proceeds, and other moneys paid to the Magistrate's Court must be paid into the Consolidated Fund except where otherwise expressly provided by an enactment.<sup>132</sup>

Some relevant laws provide for dispute resolution outside of the judicial system. Notably, the Physical Planning Act creates, and the Conservation and Environmental Management Act adopts, a Physical Planning and Environmental (Appeals) Tribunal (Tribunal) charged with deciding a

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<sup>121</sup> Magistrate's Court Act, *supra* note 116, at § 23.

<sup>122</sup> Criminal Procedure (No. 2) Code at § 8, *citing* Supreme Court Act at §§ 6-7; Criminal Procedure Code at §§ 49-52.

<sup>123</sup> Montserrat Constitution at § 7. There is no right to a jury trial before the Magistrate's Court; however, the accused can elect to be tried by the High Court in cases involving potential incarceration for more than 6 months. Criminal Procedure (No. 2) Code at § 60.

<sup>124</sup> Magistrate's Court Act at § 107, Criminal Procedure Code at § 242. Civil matters can also be appealed, Magistrate's Court Act at § 108 *et seq.* However, these cases are beyond the scope of this report and are not considered further here. Supreme Court Act at § 38.

<sup>125</sup> Montserrat (Appeals to Privy Council) Order 1967, S.I. 233/1967 UK.

<sup>126</sup> Criminal Procedure (No. 2) Code at § 185 (High Court). Criminal Procedure Code at § 230 (Magistrate's Court); *see also* Criminal Procedure Code at § 314 (repealing Magistrate's Court Act at § 28). The Magistrate can impose a fine up to \$1000 in lieu of a term of imprisonment, even if a statute does not allow for fines, in cases of first offence. *Id.*

<sup>127</sup> Penal Code § 23. The Penal Code allows a "person liable to imprisonment" to be sentenced to pay a fine instead of or in addition to being imprisoned; imprisonment will occur according to the Prison Act or Community Service Orders Act, except that a court can suspend a sentence to imprisonment for less than two years for certain offences prescribed by order. *Id.* at § 24.

<sup>128</sup> *Id.* at § 230. This cap on penalties does not restrict the authority of the Magistrate to impose higher penalties where authorized by law. *Id.*

<sup>129</sup> *Id.* at § 25. Where no punishment at all is specified, the default is up to two years' imprisonment and/or with a fine. *Id.* at § 32.

<sup>130</sup> Criminal Procedure Code (No. 2) at § 48.

<sup>131</sup> *Id.* at §§ 185, 233, 261, 313.

<sup>132</sup> Magistrate's Court Act at § 150. The disposition of fines and other financial penalties is not provided in laws governing sentencing by the High Court.



variety of claims and appeals under those statutes.<sup>133</sup> This Tribunal is discussed in more detail below in section 3.3.

### 2.3.5 Regional engagement

While Montserrat is not eligible to be a member of many international organizations because of its status as a British Overseas Territory, Montserrat's Constitution directs the Governor to delegate to a Minister responsibility for conducting external affairs with Caribbean regional organisations.<sup>134</sup> Under this authority, Montserrat is a participant in several regional intergovernmental bodies, and it is represented in international and other regional fora by the UK.

Montserrat's full memberships in regional organisations include:

- Organisation of Eastern Caribbean States (OECS)
- Caribbean Community (CARICOM)
- Caribbean Regional Fisheries Mechanism (CRFM)
- Caribbean Environment Programme (CEP)
- Association of the Overseas Countries and Territories of the European Union

The United Kingdom, on behalf of Montserrat and the rest of the UK, is a member of the following organisations:

- Western Central Atlantic Fisheries Commission
- Convention on Biological Diversity<sup>135</sup>
- International Coral Reef Initiative

Neither Montserrat nor the UK is a member of the following organisations and initiatives:

- Organization of American States
- Association of Caribbean States
- UNESCO IOC Subcommission for the Caribbean Sea and Adjacent Regions
- Caribbean Challenge Initiative

Montserrat is currently actively engaging with the regional community on several important initiatives. These include revision of Montserrat's territorial sea and maritime boundaries conducted by the UK government on behalf of Montserrat;<sup>136</sup> implementation of the Eastern

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<sup>133</sup> Physical Planning Act, CAP. 8:03, at § 56; Conservation and Environmental Management Act, No. 17 of 2004, at § 71.

<sup>134</sup> Montserrat Constitution § 39(4)

<sup>135</sup> Montserrat and UK membership in the Global Island Partnership (GLISPA) is unclear. However, OCTA has attended GLISPA meetings in the past.

<sup>136</sup> Personal communication with Alwyn Ponteen (Feb. 24, 2015); *see also* Chris Carleton, *Maritime Delimitation in Complex Island Situations: A Case Study on the Caribbean Sea*, Presentation to the Harte Research Institute for Gulf of Mexico Studies, Texas A&M University (reviewing Montserrat boundary status and proposals)

Caribbean Regional Ocean Policy (ECROP) developed through the OECS,<sup>137</sup> by developing a national ocean policy through the Fisheries Division;<sup>138</sup> and fisheries data collection and management as recommended by the CRFM and provided for in the Caribbean Community Common Fisheries Policy (CCCFP).<sup>139</sup>

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<sup>137</sup> OECS, *Eastern Caribbean Regional Ocean Policy* (2013), available at <http://ecmrp.info/wp-content/uploads/2015/04/ecrop-reformat.compressed.pdf>.

<sup>138</sup> Alwyn Ponteen, *Montserrat National Fisheries Report* (2014) (on file with authors).

<sup>139</sup> Fisheries Division, *Guidelines for Improving Montserrat's Fisheries Data Management and Information Collection (Version 1)* (2014); Agreement establishing the Caribbean Community Common Fisheries Policy, as approved at the Fourth Meeting of the Ministerial Council (2011), at Art. 11.

### 3 Cross-cutting legal frameworks and issues

#### 3.1 Public Finance

Montserrat's public finance system is established in the Public Finance (Management and Accountability) Act and regulations.<sup>140</sup> Under these laws, the Minister of Finance is charged with developing and implementing macroeconomic and fiscal policy and ensuring the adequate supervision and control of public moneys.<sup>141</sup> The Financial Secretary is responsible to the Minister for the effective implementation of the Act, including for internal audits,<sup>142</sup> and the Accountant General is responsible for compiling public accounts and for the custody and safety of public money, as well as other resources of the government.<sup>143</sup> The Auditor General, appointed under the Constitution, is responsible for annual audits of public accounts.<sup>144</sup>

The Act creates several types of funds for the deposit and maintenance of public moneys, all of which are subject to requirements on budgeting, expenditures, reporting and auditing, and other matters. These funds include:

- the *Consolidated Fund*, which contains all moneys that are not payable by law into another fund or for retention by a department to defray the expenses of that department;<sup>145</sup>
- the *Development Fund*, which can be used only for development projects and includes moneys appropriated for that fund by the legislature, loans raised for the fund by the government, and “any grant for a development purpose” by a government, agency, or regional or international organisation; and<sup>146</sup>
- *Special Funds*, which are created and managed for a specific (often commercial) purpose by regulations issued by the Governor acting on the advice of the Cabinet;<sup>147</sup> and
- *Trust Funds*, which may be created by regulations issued by the Governor acting on the advice of the Cabinet and administered based on the terms of the trust instrument.<sup>148</sup>

Of these options, special funds and trust funds are the most relevant to the BHM goal of planning for long-term financial support for ocean and coastal management, because they are maintained separately from other public moneys and can be expended only for certain purposes. Special and

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<sup>140</sup> Public Finance (Management and Accountability) Act, CAP 17:07 (rev. 2013) [hereinafter *Public Finance Act*]; Public Finance (Management and Accountability) Regulations – Section 58, S.R.O. 35/2009 [hereinafter *Public Finance Regulations*]. Other subsidiary legislation relating to procurement and forms are beyond the scope of this report.

<sup>141</sup> Public Finance Act at §§ 3, 5. Public Finance Regulations § 9.

<sup>142</sup> Public Finance Act at §§ 7, 10. Public Finance Regulations § 11.

<sup>143</sup> Public Finance Act at § 8. Public Finance Regulations at § 12.

<sup>144</sup> Montserrat Constitution at § 101; Public Finance (Management and Accountability) Act at §§ 2, 41-42.

<sup>145</sup> Public Finance (Management and Accountability) Act § 12; Public Finance (Management and Accountability) Regulations § 4.

<sup>146</sup> Public Finance (Management and Accountability) Act § 13; Public Finance Regulations at §§ 33-34.

<sup>147</sup> Public Finance Act at § 14. Creation of a special fund requires the accounting officer to define the purposes of which the fund is created and an accounting on its balance sheet of all assets and liabilities transferred into the fund. Public Finance Regulations at § 50.

<sup>148</sup> *Id.* § 14; Public Finance Regulations at § 51.

trust funds may be set up environmental or conservation purposes, as illustrated by several laws calling for creation of such funds. These directed funds include a special fund under the Conservation and Environmental Management Act (CEMA)<sup>149</sup> and a special fund under the Fisheries Act.<sup>150</sup> However, neither fund has been established to date (see sections 3.3.4 and 4.7 for further discussion of CEMA and fisheries special funds, respectively). In addition, the Montserrat National Trust is long-standing trust fund that predates the current public finance legislation by decades and operates to support conservation of Montserrat's natural resources.

Expenditures from special funds or trust funds can occur only under the authority of a warrant signed by the Minister and addressed to the accounting officer responsible for the fund (who must be identified in the regulation establishing the fund and may be in another ministry).<sup>151</sup> Unlike the consolidated fund, special funds can be expended without prior legislative authorisation through an Appropriations Act<sup>152</sup>. However, a warrant can be issued in any fiscal year only if a budget for that year has been laid before the Assembly.<sup>153</sup> The Minister may also issue a warrant for temporary advances from the Consolidated Fund into a special or trust fund, but the advanced amounts must be repaid during that fiscal year.<sup>154</sup> The Governor can dissolve a special or trust fund by regulation "on the advice of the Cabinet on the recommendation of the Minister," provided that the Minister finds that the moneys are exhausted and there is no provision for further payments into the fund or that dissolution is in the public interest.<sup>155</sup>

The Public Finance Act also applies to fiscal management of statutory bodies. Statutory bodies include all corporations, funds, boards, and other similar entities established by an act of the legislature and fully or "substantially" funded by public funds and accountable to the Assembly.<sup>156</sup> Statutory bodies submit annual budgets to the responsible minister for approval and must be audited annually.<sup>157</sup>

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<sup>149</sup> Act No. 17 of 2014, at § 83 ("Funding for environmental management shall be provided under the special fund established under the Public Finance (Management and Accountability) Act for that purpose").

<sup>150</sup> Fisheries Act, CAP 9.01 (rev. 2013), at § 59.

<sup>151</sup> Public Finance Act at § 14(4); *see also id.* at § 14(8) (noting process to wind up funds where the accounting officer is not the Financial Secretary). The duties of accounting officers are set forth at section 13 of the Public Finance Regulations. Although special types of warrants are available for expenditures from the consolidated fund, special and trust funds are limited to general warrants. *See* Public Finance Act at § 27; Public Finance Regulations at §§ 73-74 (authorising imprest warrants for a public officer to make for small expenditures from the Consolidated Fund); Public Finance Act at § 28 (authorising departmental warrants whereby an accounting officer may authorise appropriated expenditures by departmental officers).

<sup>152</sup> Public Finance Regulations at § 50.

<sup>153</sup> Public Finance Act at § 14(5).

<sup>154</sup> *Id.* at § 16.

<sup>155</sup> *Id.* at § 14(7).

<sup>156</sup> *Id.* at § 2. The key determinant of whether an entity receives public funds is likely to be whether it receives direct payments from a government entity or raises funds on its own for which the government may be liable in case of default. *Id.*

<sup>157</sup> *Id.* at § 45. This applies to any "public body" receiving more than half of its income from public funds. *Id.*

### 3.2 Ocean jurisdiction

Montserrat currently claims a three-mile territorial sea. In addition, it claims a 200-nautical mile fisheries limit, measured from the low-water mark of the coast.<sup>158</sup> However, for areas where Montserrat is closer than 400 nm to another nation, the Fisheries Proclamation states that the boundary is a “medium line” between claims or other line agreed to by Her Majesty and the relevant country or territory.<sup>159</sup> The UK and France have established a boundary between Montserrat and Guadeloupe by treaty.<sup>160</sup> In addition, the Claim to Montserrat’s Continental Shelf Proclamation provides that “the rights of a coastal state to the seabed, subsoil and their resources” are vested “in the Crown in the right of the Government of Montserrat.”<sup>161</sup> In some cases, as for the Port Authority (see section 7), the Crown has vested control in some maritime areas of the seabed and shore in quasi-governmental or private entities.

Unless otherwise expressly stated, any law enacted by Montserrat applies to the whole of Montserrat, including its marine environment.<sup>162</sup> This includes enactments applicable to exploiting, conserving, and managing living or non-living natural resources and those involving harvest of sedentary organisms and non-living resources on the continental shelf.<sup>163</sup>

Montserrat’s maritime boundaries differ from those possible based what is authorized by the United Nations Convention on the Law of the Sea (UNCLOS), which the UK has ratified and is viewed as a codification of customary international law. Under UNCLOS, Montserrat can claim a 12-nautical mile territorial sea and further extend its EEZ to the 200-nautical mile boundary in the absence of intersecting maritime boundaries.<sup>164</sup> In addition, Montserrat can claim a 200-mile continental shelf, which comprises the seabed and subsoil “throughout the natural prolongation of [the coastal state’s] land territory to the outer edge of the continental margin” with the potential to extend its shelf to 350 nautical miles in certain instances.<sup>165</sup> In instances where boundaries intersect, as is the case in Montserrat, UNCLOS provides a process for determining boundary delimitation.<sup>166</sup>

Maritime boundary delimitation is particularly important in Montserrat, whose maritime boundaries intersect with Antigua and Barbuda, St. Kitts and Nevis, Guadeloupe (a French Island), and Aves Island (a Venezuelan island or rock—an important and contested designation) (See Caribbean Boundary Map).

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<sup>158</sup> Fisheries Limit Proclamation, S.R.O. 4/1983 & S.R.O. 27/1983 at § 1.

<sup>159</sup> *Id.* at § 1.

<sup>160</sup> Agreement on maritime delimitation between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Guadeloupe and Montserrat (June 27, 1996), available at

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/FRA-GBR1996GM.PDF>.

<sup>161</sup> Claim to Montserrat’s Continental Shelf Proclamation, S.R.O. 2/1986 at § 1.

<sup>162</sup> Interpretation Act at § 5.

<sup>163</sup> Interpretation Act at § 5. Montserrat law appears not to define either “exclusive economic zone” or “continental shelf.” Presumably these terms will be interpreted in accordance with UK law and the United Nations Convention on the Law of the Sea, as discussed in this section.

<sup>164</sup> UNCLOS, 1833 UNTS 3; 21 ILM 1261 (1982), at art. 3, 57.

<sup>165</sup> *Id.* at art. 76.

<sup>166</sup> *Id.* at Part XV.

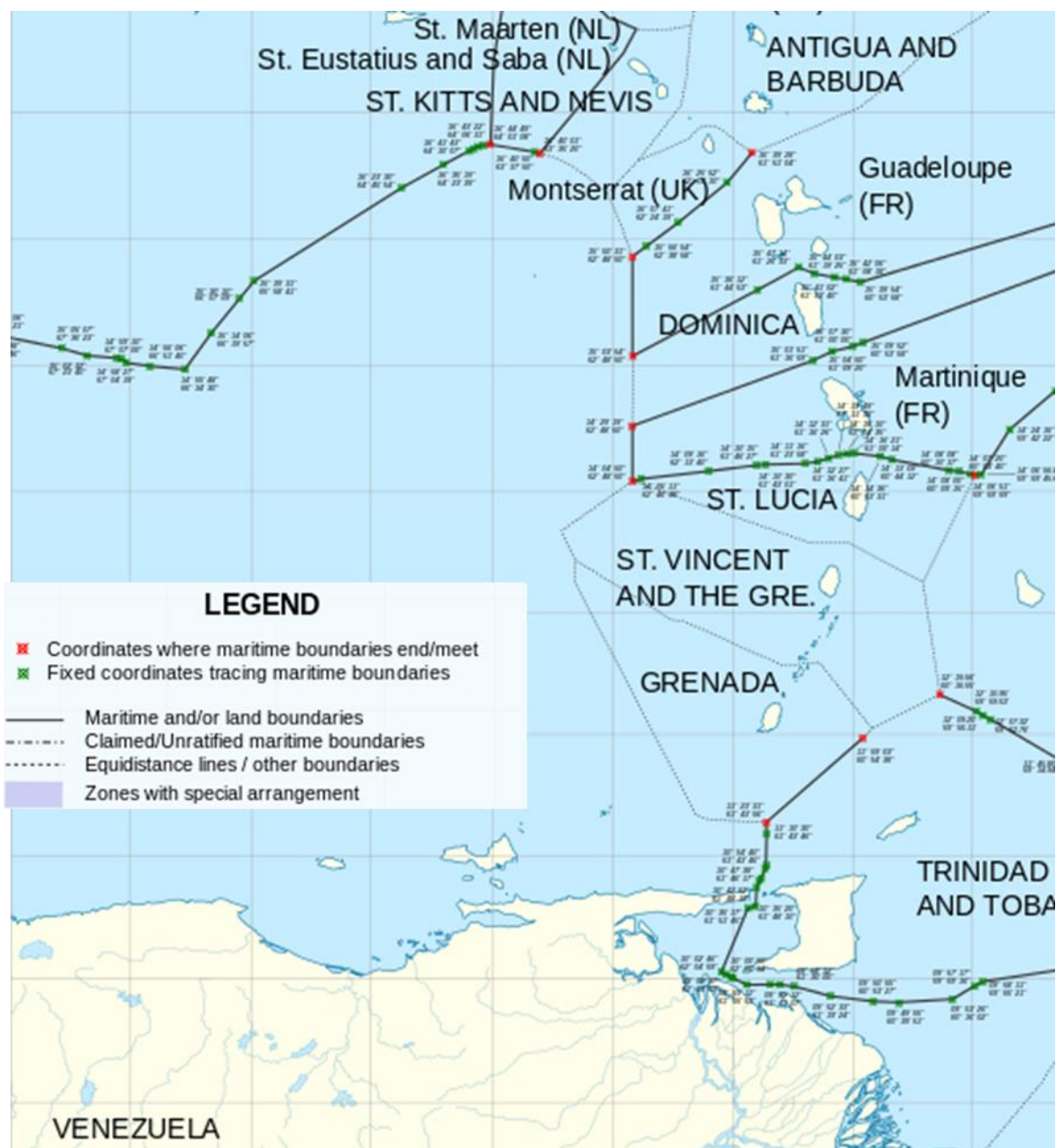


Figure 3. Caribbean Boundary Map

Resolution of maritime boundaries in the Caribbean is a major regional goal in the OECS. The 2013 ECROP, discussed previously,<sup>167</sup> seeks to “[s]ecure access to resources” by “formaliz[ing] maritime boundaries in order to secure[,] exercise and protect their rights and jurisdiction over marine areas and resources.”<sup>168</sup> To achieve this goal, the ECROP Three-Year Strategic Plan calls for the re-establishment of the OECS Maritime Boundary Delimitation Task Force as well as reviewing and revising negotiating briefs. Furthermore, it calls upon States to establish or re-establish national

<sup>167</sup> OECS, ECROP, *supra* note 137, at 56 (2013).

<sup>168</sup> *Id.* at 56.

committees for boundary delimitation and take additional steps to enable negotiation and ultimately boundary delimitation.<sup>169</sup> These efforts have borne fruit, as demonstrated by an agreement on a boundary between St. Kitts and Nevis and the Netherlands (Sint Eustatius).<sup>170</sup> The UK FCO is responsible for any such boundary delimitation agreement between Montserrat and another jurisdiction. As noted previously, boundary delimitation negotiations are ongoing to resolve the boundaries between Montserrat and Antigua & Barbuda and between Montserrat and St. Kitts & Nevis.

### 3.3 Conservation and Environmental Management Act

In 2014, Montserrat enacted CEMA to serve as comprehensive legislation addressing a wide range of environment, conservation, and natural resource management issues.<sup>171</sup> CEMA requires development of a national environmental management strategy, provides that certain activities require a Certificate of Environmental Approval (Certificate) before they can proceed, sets out a uniform enforcement and penalty structure for environmental offences, and provides substantive law governing biodiversity conservation and trade; protected areas; forests; and pollution control. While the discussion of substantive law on each of these topics is considered separately below, they share substantial administrative features, including use of common entities for advice, appeals, and enforcement. This section reviews these overarching components of the Act.

CEMA identifies a variety of individuals and entities that are responsible for implementation of the law. The Minister with responsibility for the environment—currently, the Ministry of Agriculture, Trade, Housing, Lands and Environment (MATHLE), which is also responsible for fisheries and development planning—bears ultimate responsibility for implementing the Act.<sup>172</sup> The Director of Environment (Director, unless otherwise indicated by context) is responsible for implementing most provisions in the Act on behalf of the Minister.<sup>173</sup>

CEMA provides for a National Conservation and Environmental Advisory Council which is to serve an advisory role and be made up of eight *ex officio* members and seven other members.<sup>174</sup> The

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<sup>169</sup> *Id.* at 63.

<sup>170</sup> See IBRU Centre for Borders Research, “St Kitts & Nevis announces maritime boundary agreement with The Netherlands” (Nov. 25, 2014), at [https://www.dur.ac.uk/ibru/news/boundary\\_news/?itemno=22987](https://www.dur.ac.uk/ibru/news/boundary_news/?itemno=22987).

<sup>171</sup> Act 17 of 2014. CEMA repeals two prior statutes previously relevant to marine conservation in Montserrat, including the Forestry, Wildlife, National Parks and Protected Areas Act and Endangered Plants and Animals Act. CEMA at § 93. Actions previously taken under these statutes were retained, however, unless inconsistent with CEMA. Specifically, “in so far as anything done under the [Parks Act] . . . could have been done under [CEMA], it is not invalidated by the repeal but has effect as if done under [CEMA].” *Id.* In addition, only the former repeal has taken effect to date, so the Endangered Plants and Animals Act remains in force at this time. Conservation and Environmental Management Act 2014 (Commencement) Order, S.R.O. 67 of 2014, at § 3.

<sup>172</sup> CEMA § 5.

<sup>173</sup> CEMA § 10.

<sup>174</sup> CEMA §§ 6-9. *Ex officio* members include the Permanent Secretary of MATHLE, the Director of Environment, Director of Agriculture, Chief Physical Planner, Director of Public Works, Director of the Disaster Management Coordination Agency, Principal Environmental Health Officer, and Director of Policy and Planning of the Office of the Premier. Other members, who are not public officers, include the Director of Tourism, Managing Director of Montserrat Utilities Limited, a representative of the Montserrat National Trust, four persons appointed by the Governor with advice of the Cabinet representing civil society organisations or the private sector, and a recording secretary assigned from the Department of Environment.



Council has not been created to date, but once established will meet at least twice a year and advise, assist, and make recommendations to the Minister regarding environmental and conservation policies.<sup>175</sup> The Council, by law, is to maintain several standing committees, including the Forestry, Wildlife and Protected Areas Standing Committee<sup>176</sup> and the Pollution Control Standing Committee.<sup>177</sup> Like the Council itself, no committees have been created to date.

### 3.3.1 National Environmental Management

CEMA contains several components to centralize and organize the nation's environmental policy. The Director must prepare a National Environmental Management Strategy (NEMS) to guide the country's environmental policy.<sup>178</sup> The NEMS is to be developed through a public process, including stakeholder input and Council review prior to approval by Cabinet, and to be reviewed every 3-5 years.<sup>179</sup> This process is intended to link to and support broader national and regional planning priorities, notably including the national Sustainable Development Plan<sup>180</sup> and the OECS St. George's Declaration of Principles for Environmental Sustainability<sup>181</sup>. In addition, the Director must set up and maintain a National Environmental Information System that contains documents relevant to the activities of the Department, such as those related to applications for Certificates of Environmental Approval, monitoring data, permits, and notices of violation.<sup>182</sup> The Information System has not been created to date and will require identification of a GIS platform,<sup>183</sup> additional staff, and resources for maintaining the system over time; currently, all information is maintained in hard copy. Third, the Director must submit an annual report to the Minister, who must lay it before the Assembly.<sup>184</sup>

### 3.3.2 Certificates of Environmental Approval

CEMA requires a Certificate before conducting certain activities that may harm the environment.<sup>185</sup> The Act specifies a list of activities for which a Certificate is required, including specifically for construction in the ocean (

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<sup>175</sup> CEMA, § 7.

<sup>176</sup> CEMA, § 8. Members of this committee include the Director of Environment, Director of Agriculture, Director of Tourism, Chief Fisheries Officer, a representative of the Montserrat National Trust, and the Chief Forest Officer.

<sup>177</sup> *Id.* Members of this standing committee include the Director of Environment, Chief Physical Planner, and Principal Environmental Health Officer.

<sup>178</sup> CEMA § 14.

<sup>179</sup> *Id.*

<sup>180</sup> Montserrat Ministry of Economic Development and Trade, Sustainable Development Plan 2008-2020 (2010).

<sup>181</sup> OECS, St. George's Declaration of Principles for Environmental Sustainability in the OECS (rev. 2006)

<sup>182</sup> CEMA § 15.

<sup>183</sup> While the Physical Planning Unit maintains GIS resources, these are not available to the Department of Environment. Reducing bureaucratic barriers to integration of GIS services across jurisdictional lines could substantially improve the operation of CEMA, especially with regard to its intersections with the planning process, as described in section 6.

<sup>184</sup> CEMA § 16.

<sup>185</sup> CEMA § 17. Undertaking action without a Certificate where one is required constitutes a violation. *Id.*

Table ).<sup>186</sup> The elements requiring a Certificate are not specifically defined in CEMA, and some (e.g., areas with “distinctive landscapes or wildlife”) will require effective use of discretion and/or further delineation in regulations if they are to be effectively and consistently implemented.

No Certificates have been required or issued to date due to the absence of regulations; however, work is ongoing to consider Certificates through development of a Memorandum of Understanding between the Department of Environment and Physical Planning Unit. CEMA itself spells out the Certificate process to a substantial degree, however. Applications for Certificates must follow a prescribed form, and the Director of the Environment can ask for further information where needed.<sup>187</sup> The Director may approve, reject, or approve with terms and conditions, which may include “the requirement to undertake mitigation measures necessary to facilitate sustainable development and sound environmental management.”<sup>188</sup> Rejections or acceptances with conditions can be appealed to the Tribunal established under the Physical Planning Act, discussed below.<sup>189</sup> The Director must monitor the performance of any approved activity for compliance with the Certificate.<sup>190</sup>

Under some circumstances, proponents may be required to meet additional environmental impact assessment requirements. Specifically, if after issuance of a Certificate the Director determines that an activity is posing an environmental threat that could not reasonably have been foreseen—or that the Certificate was issued on the basis of false or misleading information—the Director can either require that the Certificate-holder submit additional information or recommend to the Planning and Development Authority that the holder be required to submit an environmental impact assessment (EIA), at the proponent’s expense, under section 18 of the Physical Planning Act (a separate process from issuance of a Certificate).<sup>191</sup> Based on this new information, the Director can revoke, suspend, or amend the Certificate, subject to appeal, or may require submission of an environmental management plan.<sup>192</sup>

CEMA authorises the Director to require project proponents to develop and submit for approval an environmental management plan to manage the environmental impacts of a new or existing activity. This authority is in addition to the Certificate requirement,<sup>193</sup> and CEMA does not make it enforceable by law. However, if incorporated into a permit or Certificate, an environmental management plan or auditing and monitoring requirements<sup>194</sup> could be converted into a form enforceable in court or by the Tribunal.

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<sup>186</sup> *Id.* §§ 17(1), Schedule 1.

<sup>187</sup> CEMA § 17.

<sup>188</sup> CEMA § 18.

<sup>189</sup> *Id.*

<sup>190</sup> CEMA § 19. A Certificate is in addition to and does not replace any other government approval that may be required. CEMA at §§ 20, 21.

<sup>191</sup> CEMA at § 20.

<sup>192</sup> *Id.* Other than this provision, CEMA provides no explicit mechanism for certificate revocation, amendment, or renewal; however, certificate terms may include such provisions in some or all cases.

<sup>193</sup> CEMA at § 60.

<sup>194</sup> CEMA authorises the Governor on the advice of Cabinet to create regulations providing standards and procedures for environmental auditing, when they may be carried out, and the action that the Director can take based on the results. CEMA at § 59.

Table 1. Activities requiring a Certificate pursuant to schedule 1 of CEMA.

Activity	Definition
<b>Development in a protected area</b>	Development on crown or private land within a protected area
<b>Development in an area of natural, scientific (life or earth science) or cultural significance</b>	Activity in an area containing landscapes, wildlife or features of cultural or heritage importance and threatened by unregulated development
<b>Storage, transport and disposal of soil</b>	<ul style="list-style-type: none"> <li>• Establish, modify, expand, decommission or abandon (and associated works) soil storage areas &gt;100 cubic yards</li> <li>• Move soil &gt;30 cubic yards for the purpose of filling</li> <li>• Move soil from one location to another for disposal</li> </ul>
<b>Timber cultivation, felling and extraction of logs.</b>	<ul style="list-style-type: none"> <li>• Establish a timber plantation &gt; 1 acre or expand existing plantation by &gt;2 acres</li> <li>• Log or extract (and associated works) timber in a timber plantation or forested area &gt;2.5 acres over 5 years</li> <li>• Establish, modify, decommission or abandon a sawmill</li> </ul>
<b>Coastal or offshore construction or modification.</b>	Establish, modify, expand, decommission or abandon (and associated works)— <ul style="list-style-type: none"> <li>• beach and dune works</li> <li>• ponded pastures for aquaculture and mariculture</li> <li>• moorings</li> <li>• artificial reefs or other offshore structures</li> <li>• cutting or modification of coastal or marine areas</li> </ul>
<b>Mining of beach sand</b>	Remove (and associated works)— <ul style="list-style-type: none"> <li>• beach sand in quantities &gt;60 cubic yards in a 30 day period</li> <li>• sand from beaches known to be nesting sites of marine turtles</li> </ul>
<b>Clearing, excavation, grading or land filling.</b>	<ul style="list-style-type: none"> <li>• Clear, excavate, grade or land fill &gt;½ acre in a buffer zone</li> <li>• Clear, excavate, grade or land fill in an area with distinctive landscapes or wildlife, including land outside a protected area threatened by unregulated development</li> <li>• Clear, excavate, grade or land fill in an area with a slope ≥20%</li> </ul>
<b>Poultry, pig, cattle or other animal husbandry and production.</b>	Establish, modify, expand, decommission or abandon (and associated works) and other activities (including waste disposal) of— <ul style="list-style-type: none"> <li>• a livestock farm in a buffer zone</li> <li>• a facility to hatch, breed or slaughter livestock in a buffer zone</li> </ul>
<b>Establishment and maintenance of infrastructure for land transportation.</b>	<ul style="list-style-type: none"> <li>• Clear, remove, trim vegetation, excavate verge works adjacent to protected areas and buffer zones</li> <li>• Alter land or vegetation established to mitigation erosion</li> </ul>
<b>Establishment and maintenance of utilities for water, electricity, sewage and telecommunications.</b>	<ul style="list-style-type: none"> <li>• Establish cables, ducts, pipes, trenches, poles, substations, switches, fences and associated works in protected areas, buffer zones, ghauts or on steep slopes</li> <li>• Clear land or remove or trim trees or vegetation from utility installations in a buffer zone or areas containing landscapes and, wildlife or features of cultural or heritage and aesthetic importance threatened by unregulated activity</li> </ul>

### 3.3.3 Enforcement and prosecution

CEMA includes provisions for law enforcement that supplement the Police Act and Penal Code. These provisions provide the bases for “authorised officers” to enforce the Act. Authorised officers under CEMA include:

- public officers designated by the Deputy Governor;
- the Director of Environment;
- environment department personnel designated in writing by the Director;
- the Chief Fisheries Officer;
- police officers;
- members of the defence force;
- agricultural officers;
- forest rangers;
- environment officers;
- litter wardens;
- customs officers;
- public health inspectors; and
- building inspectors.<sup>195</sup>

While the list of authorised officers is extensive, each listed person must receive approval from his or her supervisor and from the Director before exercising the duties of an authorised officer, except where it is not reasonably possible to obtain that approval prior to acting.<sup>196</sup> No authorised officers have been designated under CEMA to date. CEMA provides authorised officers with limited powers, including the power to enter premises during business hours, with a warrant or with permission, to monitor effects on the environment or “effect compliance” and to search that premises and seize items used in commission of an offence.<sup>197</sup>

CEMA also provides an extensive set of tools for enforcement against violations once detected. When the Director believes that a person is in violation of an environmental requirement, he or she can serve a Notice of Violation (NOV) on that person, detailing the violation and inviting a response within a specified time,<sup>198</sup> or seek equitable relief in the form of an injunction or restraining order or an order to close a premises or otherwise halt an activity.<sup>199</sup> If a NOV is issued and the matter is resolved within 28 days (or a later time, where reasonably necessary), the Director can dismiss the matter or an agreed resolution can be set out in a consent agreement that may include an administrative civil assessment.<sup>200</sup> Where there is no resolution, the Director can issue an Administrative Order specifying the details of the violation, directing the person to take actions by a

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<sup>195</sup> CEMA § 13.

<sup>196</sup> *Id.* The Act does not indicate whether approval can be provided in general or if it must be obtained in each instance.

<sup>197</sup> CEMA § 62. Officers can take samples during an inspection but sampling is subject to required process set forth in the Act. *Id.* at § 63.

<sup>198</sup> CEMA at § 64.

<sup>199</sup> CEMA at § 69.

<sup>200</sup> CEMA at § 64.

set date (cease and desist, remedy environmental damage date, investigate and monitor), and proposing a civil assessment amount.<sup>201</sup> The person can accept, negotiate for a consent agreement within 28 days, or appeal the order, or the amount of proposed civil settlement (accepting the consent agreement).<sup>202</sup>

CEMA also provides a “private attorney general” clause allowing private citizens to enforce CEMA violations under certain conditions. A person (which may include a group with a general interest in the environment) must notify the Director within 90 days after the violation first occurs, and if the Director does not commence enforcement action within 60 days, that person may initiate a civil action before the Tribunal against the alleged violator during the next 28 days.<sup>203</sup> The action must be served on the Director and Attorney general, and the Director can thereafter take over the claim by commencing enforcement action within 28 days.<sup>204</sup>

Appeals and civil actions under CEMA are heard by the Physical Planning and Environmental (Appeals) Tribunal.<sup>205</sup> The Tribunal is a non-judicial dispute resolution mechanism, established by section 56 of the Physical Planning Act, with jurisdiction over “[a]ll appeals, applications, civil actions, claims or other proceedings arising under” CEMA.<sup>206</sup> CEMA provides for an extensive list of claims that can be referred to the Tribunal, ranging from civil claims brought by the public to appeals of permit denial or conditions. Opportunities for appeal to the Tribunal are indicated in this report where relevant to management of the marine environment.<sup>207</sup> The Attorney General may intervene in any proceedings before the Tribunal on behalf of the government, although the Director may continue to be represented by separate counsel in such instances.<sup>208</sup>

The Tribunal has been established, but does not have permanent members. The Tribunal is comprised of five<sup>209</sup> members appointed by the Governor on the advice of Cabinet, including a Chairman who must be a barrister of no less than five years standing at the bar, two with experience in building and planning matters, and two with environmental management matters.<sup>210</sup> Due to conflicts of interest arising from the small size of the island, members will be appointed on a case-by-case basis. The Tribunal regulates its own procedures, but appeals must be based on oral representations,<sup>211</sup> and CEMA claims must be decided by a majority, except that the opinion of the

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<sup>201</sup> CEMA at § 65-66.

<sup>202</sup> *Id.*

<sup>203</sup> CEMA § 70. In the case of serious or irreversible damage to the environment, a person may seek special leave to expedite the timeline. *Id.*

<sup>204</sup> *Id.* This discontinuance of the civil action and may result in costs levied against the Director; the Director or Attorney General can also intervene as of right at any time during the proceedings. *Id.*

<sup>205</sup> CEMA at § 66. In most instances, claims must be brought before the Tribunal within 45 days after occurrence giving rise to the claim. CEMA at § 74. The Tribunal may allow later-filed claims if there is a reasonable cause for the delay. *Id.*

<sup>206</sup> CEMA at §§ 71-74.

<sup>207</sup> CEMA at § 72.

<sup>208</sup> CEMA at § 89.

<sup>209</sup> CEMA amended section 56 of the Physical Planning to increase the number of members from 3 to 5. CEMA at Schedule 5.

<sup>210</sup> Physical Planning Act at § 56, CEMA at § 71, Schedule 5.

<sup>211</sup> Physical Planning Act at §§ 56-57.

Chairman will take precedence on questions of law.<sup>212</sup> The Tribunal, when deciding CEMA claims, has all the powers, rights, and privileges as the High Court regarding attendance of witnesses, production of documents, entry on property, enforcement of judgments, and other matters.<sup>213</sup> In deciding a claim, the Tribunal has the power under CEMA to:

- dismiss a claim;
- allow a claim and make orders to decide it;
- issue administrative civil assessments;
- award damages payable by a party other than the Director;
- issue restraining orders and other equitable relief; and
- make orders as to costs.<sup>214</sup>

Administrative civil assessments, in turn, can include:

- compensation for actual costs incurred by the Director for
  - responding to a violation,
  - responding to a spill or accidental release of a pollutant or hazardous material,
  - restoring the environment after failure to comply with an environmental restoration order, or
  - seizing, removing, hunting, or impounding unprotected species on crown lands, protected areas, or private land;
- compensation for damage to the environment associated with public lands arising out of a violation;
- compensation to be paid to a person (other than the government) who was harmed by an action resulting in issuance of an environmental restoration order;
- damages for an economic benefit or amount saved by noncompliance;
- damages for losses by a third party; and
- damages for failure to comply, in an amount up to \$3000 plus \$500 per day for an individual and \$5000 plus \$750 per day for another entity, with the specific amount to be based on the nature extent, and gravity of the violation, history of prior violations, willfulness and good faith efforts.<sup>215</sup>

Once decided by the Tribunal, a party can appeal from the decision to the Court of Appeal regarding matters of law.<sup>216</sup> However, matters of fact and amounts of civil assessments are final and cannot be appealed absent a showing that there is no evidence supporting a finding of fact.<sup>217</sup>

CEMA also provides for criminal penalties for breach of select provisions of the Act and of any regulations. These criminal penalties are in addition to the civil administrative assessments

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<sup>212</sup> CEMA at § 71.

<sup>213</sup> CEMA at 74.

<sup>214</sup> CEMA at § 73.

<sup>215</sup> CEMA § 67.

<sup>216</sup> Physical Planning Act at § 59; CEMA at § 74.

<sup>217</sup> CEMA at § 74.

discussed previously and of civil judicial remedies.<sup>218</sup> Violation of any regulation issued under CEMA may result in a fine of up to \$1000 plus \$50 per day for continuing violations and/or to imprisonment for up to three months.<sup>219</sup> Specific violations for protected species, hazardous waste, and obstruction have substantial listed criminal penalties,<sup>220</sup> but most violations of the act do not have listed criminal penalties.

### 3.3.4 Special Fund

CEMA contains financial provisions to provide “stable, adequate, secure and sustainable funding to finance the management of the environment in Montserrat.”<sup>221</sup> The chief mechanism to ensure sustainable funding is a special fund to be created under the Public Finance (Management and Accountability) Act.<sup>222</sup> While the Act calls for establishment of this special fund, it leaves its establishment and regulation to the Public Finance Act. The Fund has not yet been established.

CEMA provides that all fees payable under the Act by regulation or order, including those for access to the National Environmental Information System, must be paid into the special fund (once it is established).<sup>223</sup> The government is developing but has yet to finalize regulations setting forth fees for permits, Certificates, access to documents, and confidentiality claims made under the Act.<sup>224</sup> No other funding streams are required by law to be directed into the special fund. Likewise, the Act provides limited direction on the use of the special fund, providing only that it is to defray all expenses incurred by the advisory council.<sup>225</sup>

While some interviewees expressed concern that the special fund would not be separate from the consolidated fund, the Public Finance Act provides that special funds “do not form part of the consolidated fund.”<sup>226</sup> As a result, while funds currently are deposited into the consolidated fund, once established the funds designated for inclusion in the special fund will be maintained separately, in accordance both with CEMA and regulations issued by the Governor on the advice of Cabinet as directed by the Public Finance Act.

This structure is distinct from that provided in an earlier draft of CEMA, which would have created an “Environmental Trust Fund” managed by an independent, quasi-governmental Environmental Trust analogous to the Montserrat National Trust. This structure, which remains desired by some stakeholders, is distinguished from the fund set out in CEMA primarily because the government retains control over disposition of fund assets under the current system.

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<sup>218</sup> CEMA §§ 80, 92.

<sup>219</sup> CEMA § 75. Regulations may provide for specific offences up to these maxima. *Id.* at § 84.

<sup>220</sup> CEMA §§ 76-78.

<sup>221</sup> CEMA § 3.

<sup>222</sup> CEMA § 83.

<sup>223</sup> CEMA regulations can provide for fees payable under the Act, as well as compensation payable to persons other than the crown. CEMA § 84. The Governor on the advice of Cabinet may also prescribe fees by order. CEMA § 86. *See also* CEMA § 15 (requiring fees for use of system be paid into fund).

<sup>224</sup> Conservation and Environmental Management (Fees) Regulations (draft, on file with authors).

<sup>225</sup> CEMA § 6.

<sup>226</sup> Public Finance (Management and Accountability) Act 2013 § 14.



These draft provisions provide a potential model for a Blue Halo Fund. The Environmental Trust Fund provisions would have created more specificity in how the monies were to be deposited in the trust and the allowable uses of trust monies. In contrast to the actual provisions calling for a special fund in CEMA, trust monies would have included not only fees paid under CEMA but also appropriated amounts, certain taxes, amounts paid by foreign states or organizations for environmental purposes, monies earned by trust investments, and “other sums or amounts” as provided by law. Allowed uses of these monies would include not only defrayment of expenses and liabilities incurred by the trust Board, but also specific uses including training, education, policy study, research, planning, protected area management, and certain other uses—not including salaries for government or NGO staff or recurring expenses of government entities.<sup>227</sup> While not incorporated into the final draft of CEMA, some or all of these provisions could be incorporated into regulations establishing the special fund.

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<sup>227</sup> CEMA Draft Part 18 “Environmental Trust Fund” (on file with author).

## 4 Fisheries Authorities

This section seeks to describe the legal framework governing fisheries rather than describe the industry. However, a brief description may be worthwhile. As reviewed in recent studies,<sup>228</sup> Montserrat fisheries are artisanal, employing a small number of fishermen on a full-time basis and some additional crew and fishermen on a part-time or casual basis. Effort is focused on catch of reef fish and coastal pelagics, with limited effort in deeper waters. Key gear includes traps, drop lining, spearfishing, shore fishing, trolling, and seining.<sup>229</sup>

The Fisheries Department of MATHLE is responsible for fisheries management in all of Montserrat's marine waters Montserrat under the Fisheries Act of 2000.<sup>230</sup> The Governor, on the advice of Cabinet, may make regulations for management and development of fisheries, but no regulations have been adopted to date.<sup>231</sup> The Act makes the Chief Fisheries Officer (CFO) responsible for management and administration of fishery resources on behalf of the Minister<sup>232</sup> and creates a Fisheries Advisory Committee to advise the Minister on management of fishery resources as a "viable and sustainable industry," as well as other specific tasks.<sup>233</sup> Substantively, the Fisheries Act is based on a harmonized model used widely throughout the OECS.

### 4.1 National Fisheries Plan

The Act calls upon the CFO to develop a National Fisheries Plan to guide fisheries management and development and provide for "optimum utilization of the fishery resources".<sup>234</sup> The National Fisheries Plan must be approved by the Minister, and it must include a statement of fisheries policy, identify the fisheries and their state of exploitation, and specify management objectives, including licensing.<sup>235</sup> Once the plan is completed, any measure taken "in relation to the protection,

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<sup>228</sup> See, e.g., R. Wild et al., *Towards Multi-user Marine Management in Montserrat*. LTS International (2007); Alwyn Ponteen, *The Future of Fisheries in Montserrat: A Proposed Framework for Management and Governance Reform*. University of Portsmouth (2013)

<sup>229</sup> R. Wild et al., *Towards Multi-user Marine Management in Montserrat* 59-60. LTS International (2007)

<sup>230</sup> Fisheries Act, CAP 9.01, at § 2 (Rev. 2013); Fishery Limits Proclamation, CAP 9.01, S.R.O. 4/1983, 27/1983 (rev. 2013). A draft revision to the Fisheries Act was developed in 2012, but has not been enacted. Fisheries Management Act, 2012 (on file with authors). The Fisheries Department remains interested in reform and may consider future revisions pending the outcome of fisheries reforms in St. Kitts and Nevis. Interview with Alwyn Ponteen (May 2015).

<sup>231</sup> Fisheries Act § 67. Regulations can address a wide range of issues, including but not limited to conservation measures (gear requirements, minimum sizes, closed seasons, closed areas, prohibited methods, limited entry programs); dive and sportfishing requirements; landing, marketing, and distribution of fish; marine resource protection (e.g. taking of corals, aquaculture); and protection of turtles, lobsters, and conch. *Id.*

<sup>232</sup> Fisheries Act § 6.

<sup>233</sup> Fisheries Act, §§ 3-5. The Minister appoints the six members of the Committee, who must include one representative from each of the Chamber of Commerce, Tourism Board, and National Trust; two representatives of fishermen, nominated by organizations promoting fishermen interests; and the CFO. The Committee is also directed to recommend revisions to the National Fisheries Plan and consider and review guidelines for the conservation of living and marine resources. Committee recommendations are non-binding, but the Minister must consider them.

<sup>234</sup> Fisheries Act § 7.

<sup>235</sup> *Id.*

exploitation, development or management of the fishery resources” must comply with that Plan unless the Minister determines that compliance would be “inexpedient in the national interest”.<sup>236</sup>

While at least one report indicates that a draft was created in 2005,<sup>237</sup> Montserrat has not created an approved National Fisheries Plan to date.<sup>238</sup> However, the Department intends to incorporate fisheries considerations into the National Oceans Policy that is currently under development as part of the process to develop national policy in accordance with ECROP, as described in section 2.3.5 above.<sup>239</sup> In addition, the 2014 National Fisheries Report includes management objectives for fisheries, which are currently in use and could be included in a future, enforceable National Fisheries Plan.<sup>240</sup>

## 4.2 Registration and Licencing Requirements

The Fisheries Act requires registration of fishing vessels and licencing of fishers to fish from those vessels.<sup>241</sup>

Registration is intended to ensure that fishing vessels are seaworthy and “fit for the purposes of fishing”.<sup>242</sup> The owner of each fishing vessel must obtain a valid certificate of registration from the CFO,<sup>243</sup> who must maintain a register of fishing vessels.<sup>244</sup> The Minister, after consultation with the CFO, can condition certificates of registration with respect to fishing activity, including:

- the amount of catch to be marketed in Montserrat;
- reporting;
- observers;
- trans-shipment of fish; and
- the amount of catch that can be removed from Montserrat.<sup>245</sup>

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<sup>236</sup> Fisheries Act § 8.

<sup>237</sup> Wild et al., *supra* note 228, at 59.

<sup>238</sup> Alwyn Ponteen, *Draft National Fisheries Report* (2014) (on file with authors).

<sup>239</sup> *See id.* at 4.

<sup>240</sup> *Id.* at 4-5. Management objectives are to: increase sustainable fish production, enhance food security and nutrition, and generate income; improve the fisheries resource governance, management, and use by developing an appropriate legal framework; improve Montserrat’s fisheries data management and information collection and data sharing systems; improve human capacity development amongst fisheries staff and fishers; promote the adoption of best practices that will enhance quality, hygiene and sanitation, and value addition of fish and fish products; and develop and deploy appropriate fishing technologies for fisheries, with special focus on offshore resources to ease pressure on inshore reef systems. *Id.*

<sup>241</sup> *See* Caribbean Community Common Fisheries Policy, *supra* note 139, at art. 13 (requiring signatories to keep records regarding registration and licencing and share them with CRFM).

<sup>242</sup> Fisheries Act § 9.

<sup>243</sup> Fisheries Act § 9. Foreign vessels may obtain licences from regional organizations, rather than from the CFO, only if the Government of Montserrat has entered into an arrangement with such an organization pursuant to Section 22 of the Fisheries Act. We are not aware of any existing arrangements in this regard.

<sup>244</sup> Fisheries Act § 10. The register must include where each registered vessel is stationed (whether moored or beached) and may include other information as desired. *Id.*

<sup>245</sup> Fisheries Act § 16. The language of this section suggests that the Minister’s power is limited only to these registration conditions.

It is unlawful to fish from a vessel (whether or not that vessel is registered) without a licence in respect of that vessel issued by the CFO.<sup>246</sup> The CFO can place general or specific conditions on licences as are necessary or expedient and can change conditions at will, provided that licence-holders are notified.<sup>247</sup> Specifically authorized conditions can include:

- area limits;
- open and closed seasons;
- net mesh size restrictions;
- species and size restrictions;
- catch limits and landing locations; and
- recordkeeping.<sup>248</sup>

The CFO can cancel or suspend a licence or permit if necessary for fishery management (e.g., season or area closures) or for noncompliance.<sup>249</sup> The CFO must notify licence and registration holders in writing of any suspension or cancellation. When a suspension is for noncompliance, the CFO must provide reasons for the action and require the holder to comply or rectify the violation within a set time.<sup>250</sup> If a licence is suspended or cancelled for fisheries management reasons, holders, upon request, must be reimbursed for a prorated portion of fees paid.<sup>251</sup>

Registration and licencing differs for local vessels, foreign vessels, and locally-based foreign vessels.<sup>252</sup> The CFO must issue a local fishing licence to eligible persons upon request unless denial is necessary for a licence limitation program specified in the National Fisheries Plan, if there is reason to believe that the applicant will not comply with licence conditions (appealable to the Minister), if the referenced vessel is not registered, or for other specific reasons established by regulation.<sup>253</sup> Local registrations and licenses, once issued, are valid for up to 12 months each and are renewable.<sup>254</sup>

The CFO cannot register or issue a licence in relation to a foreign fishing vessel unless:

- the vessel is locally-based (lands all its catch on Montserrat)<sup>255</sup>;
- the activity is for test fishing;<sup>256</sup> or

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<sup>246</sup> Fisheries Act § 14. Operation of an aquaculture facility also requires an aquaculture license issued by the CFO.

<sup>247</sup> Fisheries Act § 15.

<sup>248</sup> Fisheries Act § 15. The list of conditions appears non-exclusive, such that conditions not listed (e.g., gear restrictions other than net mesh size) are likely to be authorized.

<sup>249</sup> Fisheries Act § 19. Cancellation or suspension can also occur if required by an access agreement. *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> Local fishing vessels are wholly owned by Montserrat Belongers, the Government, or a corporate entity established by statute or controlled by Belongers. Foreign fishing vessels are any fishing vessels not meeting these requirements. *Id.* at § 2.

<sup>253</sup> Fisheries Act § 14.

<sup>254</sup> Fisheries Act § 17.

<sup>255</sup> Locally based foreign fishing vessels are those foreign vessels that land all their catch in Montserrat. *Id.* at § 2.

- the Government is a party to a fisheries access agreement with the flag state of the vessel or with an association of which the vessel owner or charterer is a member.<sup>257</sup>

In addition, the owner or charterer of a licenced<sup>258</sup> foreign fishing vessel must appoint a local agent unless he or she is ordinarily resident in Montserrat.<sup>259</sup> The owner, charterer, or master of any foreign fishing vessel without authorization to fish in Montserrat must stow its gear at all times when in Montserrat waters.<sup>260</sup>

### 4.3 Restrictions on Fishing

Fisheries laws commonly govern the size, species, amounts, and areas where fish can be harvested. The Fisheries Act primarily addresses these considerations through its provisions regarding registration and licencing, as provided above. It provides no additional provisions governing fish size or total catch. It does provide an additional mechanism for species restrictions: the Governor acting on the advice of the Cabinet may by order declare any fish to be a protected species.<sup>261</sup> Such orders can prohibit or restrict fishing for that species indefinitely or for a lesser time.<sup>262</sup> The Act also provides several avenues for creation of protected areas, which are discussed in section 5.1. The Penal Code provides a final specific restriction by prohibiting the use of explosives to kill fish.<sup>263</sup>

### 4.4 Regional Cooperation

The Fisheries Act authorizes the Governor to enter into “regional arrangements” with other countries and “competent regional organizations” for several purposes. In addition to licencing of foreign fishing vessels, these purposes include:

- harmonization of fisheries data collection, issuance and mutual recognition of licences;
- joint or harmonized enforcement;
- regional fisheries management; and

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<sup>256</sup> Test fishing operations must be undertaken over a limited period to test the feasibility of fishing operations, *id.* at § 2, and must be undertaken “with a view to the establishment of locally based fishery operations”. *Id.* at § 18.

<sup>257</sup> Fisheries Act at § 18. The Governor in Council may enter into access agreements with other countries and associations representing the owners or charterers of foreign fishing vessels (not including limited liability corporations that own fishing vessels directly or indirectly). Fisheries Act § 23. Fishing rights under the agreement cannot exceed the amount of fishing allowed for the relevant category of foreign fishing vessels under the National Fisheries Plan, and the agreement must establish that the country or association is responsible for taking measures to ensure compliance with the agreement and Montserrat’s laws. *Id.*

<sup>258</sup> This restriction would more appropriately refer to “registered” vessels, but the statute indicates “licenced”. As a result, this presumably applies to any person licenced to fish in respect to a registered foreign fishing vessel.

<sup>259</sup> Fisheries Act § 21.

<sup>260</sup> Fisheries Act § 20.

<sup>261</sup> Fisheries Act, § 26.

<sup>262</sup> *Id.*

<sup>263</sup> Penal Code at § 328. Violations may result on summary conviction to a fine of \$250 or imprisonment for up to three months. *Id.*

- other cooperative measures (e.g., insurance pooling).<sup>264</sup>

The Minister has additional specific authority to enter into agreements to adopt measures to coordinate and ensure the conservation and development of fish stocks that occur in Montserrat and other territories.<sup>265</sup>

In practice, Montserrat is a signatory to the CCCFP and a member of CRFM, which is the “competent authority” implementing that policy by supporting fisheries management across the region. The CCCFP provides for regional standards and harmonization on, *inter alia*: data collection; licencing; enforcement; and fisheries management.<sup>266</sup> CRFM has released guidance on a harmonized approach to fisheries data collection, among other initiatives, and Montserrat is now working to implement a harmonized approach to fisheries data collection, including by developing guidelines for fisheries data management and collection to implement CRFM recommendations.<sup>267</sup>

## 4.5 Research

The Minister, in consultation with the CFO, can take measures to promote and facilitate the development of marine scientific research in Montserrat.<sup>268</sup> A permit under the Fisheries Act is required to conduct any scientific research in Montserrat, and failure to comply may result in a fine of \$25,000.<sup>269</sup> A person wishing to conduct such research must submit a research proposal to the CFO, describing the nature and objectives of the project, methods (including information on vessels and scientific equipment), precise geographical area, start and end dates, institution and primary investigator, and the extent to which Montserrat may be able to participate or be represented in the project.<sup>270</sup>

If the CFO determines that the proposal meets the requirements of the law, he or she must forward the application to the Minister, who may issue a permit.<sup>271</sup> No permit can issue without a written “undertaking” by the permittee that the research is for peaceful purposes, uses appropriate scientific methods, does not interfere with other uses of the fishery waters or the rights of other permit-holders, and will be conducted so as not to interfere with conservation and management of the marine environment.<sup>272</sup> The Minister can refuse to grant a permit or can withdraw a previously-granted permit upon a determination that the research is of no direct significance to exploration and exploitation of living or non-living natural resources; involves drilling or prohibited fishing methods; or is based on inaccurate information.<sup>273</sup> The Minister can attach conditions to a permit, including but not limited to ensuring the representation of the Montserrat government in the

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<sup>264</sup> Fisheries Act § 22.

<sup>265</sup> Fisheries Act § 30.

<sup>266</sup> CCCFP, *supra* note 139, at art. 11-14.

<sup>267</sup> Fisheries Division, *Guidelines for Improving Montserrat’s Fisheries Data Management and Information Collection (Version 1)* (Jan. 2014) (on file with authors).

<sup>268</sup> Fisheries Act § 32.

<sup>269</sup> Fisheries Act § 43.

<sup>270</sup> Fisheries Act § 33.

<sup>271</sup> *Id.*

<sup>272</sup> Fisheries Act § 34.

<sup>273</sup> *Id.*

research, providing interim reports to the CFO, and allowing access to data and samples.<sup>274</sup> The Minister may suspend permits if activities do not follow the proposal<sup>275</sup> or the permittee breaches any permit condition.<sup>276</sup> Notice to the permittee and an opportunity to respond are required before suspension.<sup>277</sup>

CEMA includes separate scientific research provisions that do not distinguish between terrestrial and marine research and are therefore applicable to research in the ocean. Under CEMA, permission from the Director of Environment is required to engage in “scientific research” (a defined term in the Act), documentation, or collecting information for documentary, tourism, or educational or research material.<sup>278</sup> An application for permission must include a research plan, protocol, and other information required by the Director. Permission can be for a “single entry” or for a period of time and can only be granted to those who satisfy the Director of their scientific competence and access to sufficient funds to undertake the research. Permission can be conditioned, including but not limited to terms related to bio-prospecting and ownership of intellectual property. CEMA additionally provides explicitly that this permission is in addition to approval from any other entity as required by other laws; thus, permission is required for marine scientific research pursuant to *both* the Fisheries Act and CEMA.

## 4.6 Enforcement

The Fisheries Act authorizes the Minister, with approval by the Governor acting on the advice of the Cabinet, to designate authorized officers by notice published in the *Gazette*.<sup>279</sup> Authorized officers may include enforcement officers of any country or of a regional marine enforcement entity.<sup>280</sup> To enforce the Act, authorized officers may, without a warrant:

- stop, board and search any fishing vessel;
- require production of, examine, and copy any documentation required under the Act; and
- inspect nets or other fishing gear.<sup>281</sup>

Authorized officers have additional summary arrest powers when they have reason to believe that an offence has been committed. In these instances, they can, without a warrant:

- enter and search any premises (other than a premises used exclusively as a dwelling);
- sample fish found during a search;
- seize vessels, fish, stores and cargo, fishing gear, vehicles, or noxious substances; and

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<sup>274</sup> Fisheries Act § 35.

<sup>275</sup> This provision refers to a proposal under section 37, which deals with technology transfer and does not refer to proposals. As such, this reference is likely the result of a scrivener’s error and should be considered to refer to the proposal for the research required by section 33.

<sup>276</sup> Fisheries Act § 36.

<sup>277</sup> *Id.*

<sup>278</sup> CEMA § 32.

<sup>279</sup> Fisheries Act § 46.

<sup>280</sup> *Id.*

<sup>281</sup> Fisheries Act § 47.



- arrest the master, owner, or charterer of a vessel seized, or any other person who is reasonably believed to have committed an offence.<sup>282</sup>

Vessels and persons who are seized or arrested must be brought to the nearest convenient port for detention.<sup>283</sup> Perishable goods once seized may be sold by the CFO and the proceeds held pending prosecution.<sup>284</sup> Officers enjoy immunity from prosecution for actions done in good faith, and it is an offence to assault, obstruct, or threaten an officer.<sup>285</sup>

Several presumptions apply to prosecution of offences against the Fisheries Act. First, in cases following seizure of a fishing vessel, the place stated in the enforcement vessel logbook is presumed to be the place where the events surrounding the seizure occurred.<sup>286</sup> Second, in cases where the defendant is charged with acting without a licence or other authorization, he or she has the burden of proving that he or she had the required permission.<sup>287</sup>

The Act also addresses liability of persons for violations on fishing vessels. The master of a fishing vessel is liable for any offence committed by any person aboard the vessel.<sup>288</sup> In addition, each of the master, owner, and charterer of a vessel is responsible for registration violations.<sup>289</sup> And any person who fishes without a licence is liable, but the Act does not create a presumption that all persons aboard were fishing within the meaning of the Act.<sup>290</sup>

Offences against the Act may result in fines and/or imprisonment. Fine amounts are set forth in the Act and range from XCD \$2,500 to \$10,000, with larger fines reserved for foreign vessels.<sup>291</sup> Where no penalty is prescribed in the Act for a breach of the Act, the Governor on the advice of the Cabinet can issue regulations establishing that such breach is an offence and setting penalties for that offence not exceeding \$5,000 and may by order change the fees and penalties set out in the Act.<sup>292</sup> In addition to other penalties, the court may order that vessels (with stores and cargo), vehicles, or

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<sup>282</sup> *Id.* § 47.

<sup>283</sup> *Id.* § 47. Vessels and persons may be released on bond. *Id.*; *id.* § 52.

<sup>284</sup> *Id.* § 48.

<sup>285</sup> Fisheries Act §§ 49-50.

<sup>286</sup> Fisheries Act § 54.

<sup>287</sup> Fisheries Act § 55.

<sup>288</sup> Fisheries Act § 51.

<sup>289</sup> Fisheries Act § 41. The master, owner, or charterer is responsible for use of a registered vessel in contravention of conditions attached to the registration—a distinction from the “and” used for simple registration violations. *Id.* As a result, it appears that only one of these individuals would be liable for violation of registration conditions.

<sup>290</sup> Fisheries Act § 42.

<sup>291</sup> See Fisheries Act § 41. Fines for fishing without registration are \$10,000 for a foreign vessel and \$3,000 for a local vessel, and other registration violations are \$10,000. *Id.* at § 41. Any person fishing without a license can be fined \$5,000. *Id.* at § 42. Conducting scientific research without a license may result in a fine of \$25,000. *Id.* at § 43. Offences in relation to fish processing or aquaculture establishments are liable to a fine of \$10,000. Violation of an order establishing a protected or priority area, marine reserve, local fishery management area, or protected species may result in a fine of \$20,000, and violation of LFMA by-laws can be \$2,500. *Id.* at § 47.

<sup>292</sup> Fisheries Act § 67. No regulations or orders have been issued to date.

gear be forfeited.<sup>293</sup> Any fish found on board a fishing vessel used in commission of an offence must be forfeited.<sup>294</sup>

The Minister has the power to compound offenses by agreeing with the violator on the payment of a sum less than the maximum fine for a violation.<sup>295</sup> Upon compounding an offence, the Minister may forfeit<sup>296</sup> articles seized under the Act or order their conditional release to the violator; these conditions may require payment of additional sums up to the value of the thing seized.<sup>297</sup>

## 4.7 Fisheries Deposit Account

The Fisheries Act establishes a Fisheries Deposit Account,<sup>298</sup> which is to be managed by a Fisheries Administrative Committee comprised of the following five persons:

- the Permanent Secretary of the Ministry with responsibility for fisheries;
- the CFO
- the Financial Secretary or his or her nominee from the Ministry of Finance;
- an appointed member of the Fisheries Advisory Committee from the Chamber of Commerce National Trust, or Tourism Board; and
- an appointed member of the Fisheries Advisory Committee representing fishermen.<sup>299</sup>

The Fisheries Administrative Committee meets when it deems necessary, and any member of the committee can request that the Permanent Secretary call a meeting as soon as is practicable. Three members are required for a quorum, provided that a quorum requires the presence of: a) the Permanent Secretary or Financial Secretary (or his or her designee); and b) the fishermen's representative.<sup>300</sup>

The Fisheries Deposit Account is to receive proceeds from sale or other disposal of vessels and gear that are forfeited under the Act.<sup>301</sup> Compounded fines also must be deposited into the Account.<sup>302</sup> The Fisheries Act does not require that other sources of monies<sup>303</sup> be deposited into the Account, nor does it explicitly authorize appropriations into the Account. As a result, fines and other monies associated with violations of the Act adjudicated through prosecution on summary conviction or

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<sup>293</sup> *Id.* § 53.

<sup>294</sup> *Id.* § 53.

<sup>295</sup> *Id.* § 58

<sup>296</sup> The language in the statute provides that the “Minister may forfeit” such items. We interpret this to mean that the Minister may direct that the violator forfeit such items.

<sup>297</sup> *Id.*

<sup>298</sup> Fisheries Act § 59.

<sup>299</sup> Fisheries Act § 60, *citing* Fisheries Act § 3. Section 60 refers to persons appointed to the “Fisheries Administrative Committee” under Sections 3(2)(a) and 3(2)(b). Section 3 addresses appointment to the Fisheries *Advisory* Committee—a distinct body from the Fisheries *Administrative* Committee. We interpret references to appointments to the Administrative Committee under section 3 to be scrivener’s error.

<sup>300</sup> Fisheries Act § 61.

<sup>301</sup> Fisheries Act § 66.

<sup>302</sup> *Id.* § 58.

<sup>303</sup> The Fisheries Act uses a spelling of “monies” distinct from that used in the Public Finance Act, where it is “moneys”. This report uses the language of the relevant Act rather than adopting a uniform spelling.

indictment are not paid into the Fund, but rather are paid into the Consolidated Fund as described in section 3.1.

The Committee may approve the use of Fisheries Deposit Account assets “for any purpose that promotes the preservation and exploitation of the fisheries,” including for “reward or compensation” for actions “that resulted in the preservation of the fisheries.”<sup>304</sup> Specifically, the Fund monies can be used for rewards for information leading to the detection, arrest, or conviction of persons violating the law and to support the promotion of good fishing practices to “ensure the survival” of fish species in Montserrat.<sup>305</sup> With the approval of the Governor in Council, the Fund can also be used to support the purchase of “craft and machinery” required to police the waters around Montserrat.<sup>306</sup>

While the Fisheries Act does not require any process to establish the Fisheries Deposit Account, the Account has not been implemented to date. As a result, these provisions are not currently being implemented, and there is no Fund in operation at this time.

#### 4.8 Fishing Incentive Programs

While the Fisheries Act is the primary law providing for governance of the fishing industry, Montserrat law provides a variety of incentives to support the fishing industry. For example, approved industrial enterprises, including “deep sea fishing and shrimping where they form part of an integrated processing operation”, are eligible for tax incentives,<sup>307</sup> and income arising from agricultural activities, including fishing, is exempt from taxation.<sup>308</sup> Fisheries are similarly within the scope of the Montserrat Development Finance and Marketing Corporation, such that the Corporation can work to “stimulate, facilitate and promote” fishing activity.<sup>309</sup> Finally, local fishing vessels are exempt from port dues under the Port Authority Act.<sup>310</sup>

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<sup>304</sup> Fisheries Act § 62.

<sup>305</sup> Fisheries Act §§ 63-64.

<sup>306</sup> *Id.* § 65.

<sup>307</sup> Fiscal Incentives Act, CAP. 15.04 (rev. 2013), at § 2.

<sup>308</sup> Income and Corporation Tax, CAP. 17.01 (rev. 2013), at § 6.

<sup>309</sup> Montserrat Development Finance and Marketing Act, CAP. 15.06, at §§ 2, 5. We note that the Montserrat Development Corporation is not currently active.

<sup>310</sup> Port Authority Act, CAP. 07.09, at § 56.

## 5 Protected Areas Authority

Several Montserrat laws—most notably, the Fisheries Act and CEMA—provide for creation of protected areas, including in the marine context. Under the Fisheries Act, the Minister of MATHLE may by Order create a Marine Reserve, and the Governor may by Order create Protected Areas. Under CEMA, the Governor on the advice of cabinet may designate multiple types of protected areas, including Strict Nature Reserves, National Parks, Conservation Areas, Heritage Sites, Watershed Management Areas, Protected Forest Areas, or Temporary Protected Areas. These and other laws also provide for other types of protected areas, as summarized in Table . In addition, while not intended for conservation, volcano exclusion zone marine areas serve as *de facto* marine protected areas by prohibiting any activity other than transit during certain hours.

Table 2. Protected area types and uses in Montserrat.

Authority	Type of Area	Implementing Entity	Use
<b>Fisheries Act</b>	Marine Reserve	Fisheries Division (MATHLE)	protect living resources, breeding grounds, habitats; allow regeneration of aquatic life; promote scientific research; and preserve natural beauty
	Fishery protected areas	Fisheries Division	all or some fishing is prohibited
	Fishing priority areas	Fisheries Division	special restrictions to ensure fishing is not impeded
	Local Fisheries Management Area	Local body with assistance from Fisheries Division	manage fishing by local body
<b>CEMA</b>	Strict Nature Reserve	Governor on advice of Cabinet (designation) Environment Division (MATHLE) (implementation)	scientific purposes; must possess “outstanding or representative ecosystems, geological or physiological features or species”
	National Park		ecosystem protection and recreation
	Conservation Area		conservation; must include area to “ensure the maintenance of habitats and to meet the requirements of specific species”
	Heritage Site		conservation of specific natural or cultural features; must contain outstanding or unique natural or cultural heritage feature(s)
	Watershed Management Area		watershed, soil and water resource management
	Protected Forest Area		forest conservation
	Temporary Protected Area		“immediate protection of species of fauna and flora or a geographically defined area”
<b>National Trust Act</b>	Trust land	Montserrat National Trust	purposes defined in trust or in agreement vesting management of protected area in trust
<b>Emergency Powers Order</b>	Unsafe area	Governor	public protection

## 5.1 Fisheries Act

The Fisheries Act authorizes the Minister or Governor to establish several types of area designations for conservation or other purposes. The Act provides robust penalties for violation of prohibitions or restrictions in designated area orders—up to \$20,000 for violation of restrictions or prohibitions in orders establishing marine reserves, protected and priority areas, and local fisheries management areas, as well as up to \$2,500 for violation of local fishery management area by-laws.<sup>311</sup>

### 5.1.1 Marine Reserves

The Minister may by Order declare an area of the fishery waters or adjacent lands to be a marine reserve when he or she considers that special measures are necessary to:

- protect the living resources of the area and protect and preserve the natural breeding grounds and habitats of aquatic life (particularly for endangered species);
- allow for the natural regeneration of aquatic life;
- promote scientific study and research in the area; or
- preserve and enhance the area's natural beauty.<sup>312</sup>
- The Act does not provide any associated restrictions on the uses of declared marine reserves or explicitly authorise the Minister to incorporate such restrictions in an order. However, this section does authorise the CFO to “take such conservation measures as may be necessary to prevent the over-exploitation of the fishery waters.”<sup>313</sup> Thus, while the Minister likely cannot include substantive restrictions or prohibitions in a marine reserve order,<sup>314</sup> the CFO appears to enjoy the power to impose area restrictions prohibiting recreational fishing in marine reserves and can impose conditions on fishing licences to prohibit commercial fishing in these areas. However, the CFO's authority to impose “conservation measures” restricting non-fishing activities is likely limited. No marine reserves have been established in Montserrat to date.

### 5.1.2 Priority and Protected Areas

Section 25 of the Fisheries Act authorizes the Governor, acting on the advice of Cabinet, to declare by Order that areas of the fisheries waters are fishing priority areas or protected areas.<sup>315</sup> Fishing Priority Areas are those areas where the Governor “considers that special measures are necessary to ensure that authorized fishing in an area of the fishery waters is not impeded or otherwise interfered with.”<sup>316</sup> Protected Areas may be any areas of the fishery waters, including land up to high water mark.<sup>317</sup> An order declaring a protected area may prohibit fishing in the area “other than

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<sup>311</sup> Fisheries Act § 45.

<sup>312</sup> Fisheries Act § 24.

<sup>313</sup> *Id.*

<sup>314</sup> The absence of authority to establish an order with substantive restrictions contrasts with the authority in related sections authorising orders for other purposes. This distinction creates a strong argument in favor of implied exclusion of authority.

<sup>315</sup> Fisheries Act § 25.

<sup>316</sup> *Id.*

<sup>317</sup> Fisheries Act § 25.

in accordance with the terms and conditions of a licence” issued under the Act—such that recreational fishing may be prohibited.<sup>318</sup> This section also implies authority to impose broader conditions in an order, as it provides that a person in a protected area “in possession of fish the fishing of which within that area is prohibited by order made under this section” is presumed to have taken the fish in the area. Such conditions would be enforceable independently if incorporated into the terms of a fishing licence, even though the Act does not explicitly authorise their inclusion in an Order. In any case, restrictions in protected area orders would affect only fishing, and would not affect other uses of the marine environment.

### 5.1.3 Local Fisheries Management Areas

The Governor acting on the advice of Cabinet may by Order designate a marine area, including adjacent land up to the high water mark, as a local fisheries management area (LFMA).<sup>319</sup> LFMAs are to be managed by a local authority, fishermen’s co-operative, fishermen’s association, or other appropriate body representing fishermen, and if no such body exists, the Minister can promote the formation of such a body.<sup>320</sup> Where practicable, the CFO is directed to assist the local management entity in the performance of its functions.<sup>321</sup> Designated local management entities may make by-laws regulating fishing in the LFMA after consultation with the CFO, but these by-laws do not take effect until approved by the Governor acting on the advice of Cabinet and published in the *Gazette* or elsewhere as directed by the Minister.<sup>322</sup>

## 5.2 CEMA

CEMA provides a process to create and manage a variety of types of protected areas in Montserrat<sup>323</sup> and directs the Director of Environment to “manage or co-ordinate the management of protected areas” along with his or her other duties.<sup>324</sup> The Governor acting on advice of the Cabinet (after the approval of a protected area system plan) may make regulations related to “the designation, protection, management, use and control of protected areas,”<sup>325</sup> but while draft regulations have been developed by the Environment Department, they have not yet been finalized or adopted.

### 5.2.1 Protected Area System Plan

The Director must draft a Protected Areas Systems (PAS) Plan for the establishment of protected areas consistent with the National Environmental Management Strategy and taking into consideration the National Physical Development Plan created under the Physical Planning Act.<sup>326</sup> The PAS Plan must include a marine ecosystem assessment and “proposals for a system of protected areas to ensure the protection, conservation, development and management of the

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<sup>318</sup> Fisheries Act § 25.

<sup>319</sup> Fisheries Act § 27.

<sup>320</sup> Fisheries Act § 27.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.* § 28.

<sup>323</sup> See CEMA §§ 3, 4.

<sup>324</sup> CEMA, § 11.

<sup>325</sup> CEMA, § 84.

<sup>326</sup> CEMA, § 34.

natural and cultural heritage of Montserrat.”<sup>327</sup> The PAS Plan is then submitted to the Advisory Council and its Protected Areas Standing Committee for review and amendments, after which it is submitted to the Minister, before being submitted to the Governor for approval (on the advice of the Cabinet).<sup>328</sup> Designation, conservation, development, management, and use of protected areas must be consistent with the PAS Plan, as far as reasonably possible.<sup>329</sup> Neither the PAS Plan nor the National Environmental Management System on which is to be based has yet been finalized.

### 5.2.2 Designation

After approval of the PAS Plan,<sup>330</sup> the Governor (acting on the advice of the Cabinet) may designate any land and/or marine area a protected area “in order to conserve biodiversity and the natural and cultural heritage of Montserrat and to encourage ecologically sound and sustainable use, understanding and enjoyment of these areas”.<sup>331</sup> CEMA provides for the seven following different classifications, each of which is defined in section 2 of CEMA.

- **Strict Nature Reserve:** “a protected area managed mainly for scientific purposes and includes an area of Crown or private land or water or both land and water possessing some outstanding or representative ecosystems, geological or physiological features or species”
- **National Park:** “a protected area managed mainly for ecosystem protection and recreation and includes an area of Crown or private land or water or both land and water”
- **Conservation Area:** “a protected area managed mainly for conservation and includes an area of Crown or private land or water or both land and water ... [managed] so as to ensure the maintenance of habitats and to meet the requirements of specific species”
- **Heritage Site:** “a protected area managed mainly for the conservation of specific natural or cultural features and includes an area of Crown land or private land or water, or both land and water, containing one or more specific natural or cultural heritage or both features which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance”
- **Watershed Management Area:** A Watershed Management Area is defined as “a protected area [designated] for the management of watersheds, soil and water resources”
- **Protected Forest Area:** “a protected area managed for the conservation of forests”
- **Temporary Protected Area:** “a protected area [designated] for the immediate protection of species of fauna and flora or a geographically defined area and includes an area of Crown or private land or water or both land and water designated in the national interest”

Prior to designating any of these seven types of protected areas, the Director must publish a notice of intent for public comment by stakeholders, including government entities, private land owners,

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<sup>327</sup> *Id.*

<sup>328</sup> *Id.*

<sup>329</sup> *Id.*

<sup>330</sup> The PAS plan must be completed before areas may be designated, with the exception of temporary protected areas, which can be designated by the Director by order, after consultation with the Council, when he or she determines that it is expedient in the national interest to do so for the protection of a species of flora or fauna, its habitat, or a geographically defined area. CEMA at § 37. Temporary protected areas are valid for 180 days. *Id.*

<sup>331</sup> CEMA, § 35.



nongovernmental organisations, and the public.<sup>332</sup> Within two years after designation, the Director must have the area surveyed, mapped, and area boundaries marked.<sup>333</sup>

CEMA designates one protected area by statute—it establishes the Centre Hills as a “Protected Forest Area” (Figure 4).<sup>334</sup> Four protected areas established by the now-repealed Forestry, National Parks, Wildlife, and Protected Areas Act were revoked prior to the enactment of CEMA, including the Potato Hill Wildlife Reserve.<sup>335</sup>

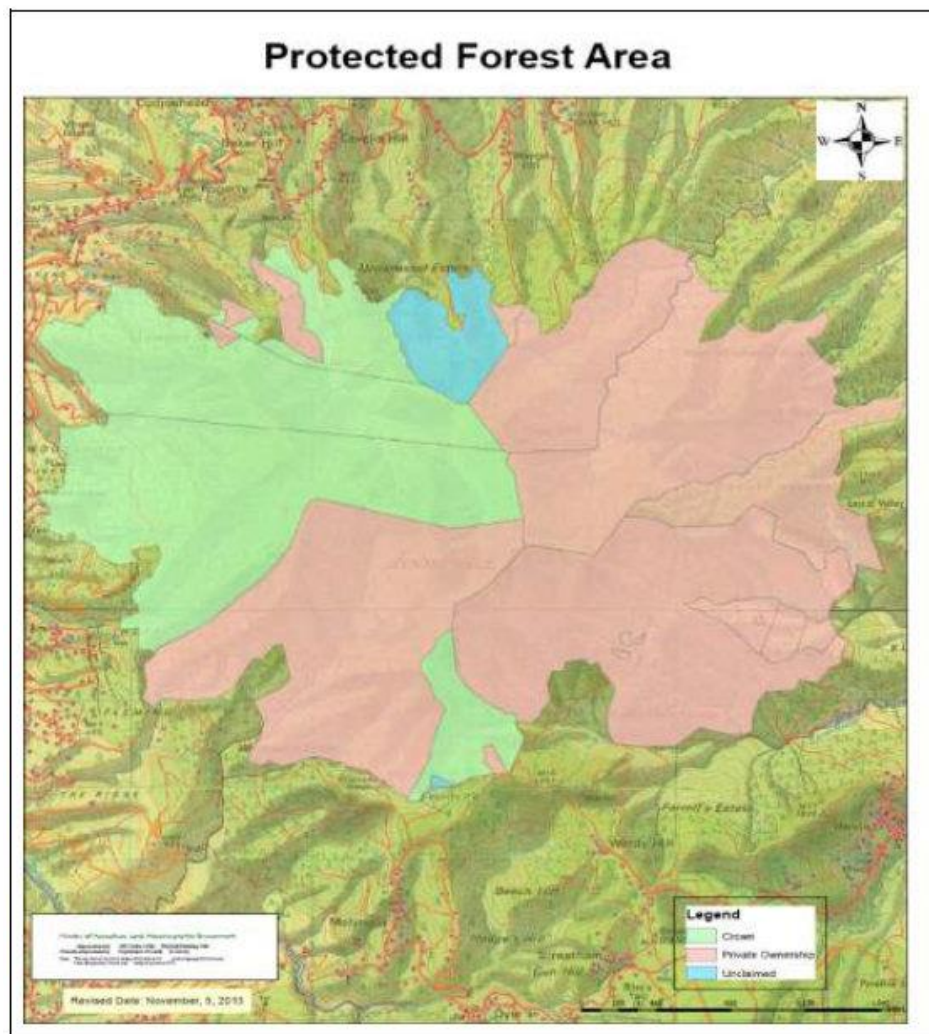


Figure 4. Centre Hills Protected Forest Area

<sup>332</sup> CEMA, § 36. The Director can establish a 180-day Temporary Protected Area when it is in the national interest.

<sup>333</sup> CEMA § 38.

<sup>334</sup> CEMA, Schedule 4.

<sup>335</sup> These were established in the repealed Forestry, National Parks, Wildlife and Protected Areas Act, Schedule I. Prior to the enactment of CEMA, protected areas could also be established under Section 34 of the Physical Planning Act. That section was repealed.

### 5.2.3 Management

The Director is responsible for managing and administering protected areas.<sup>336</sup> However, the Governor acting on the advice of Cabinet may by order delegate responsibility for control and management of a protected area to a competent body, including the Montserrat National Trust.<sup>337</sup> The Governor acting on the advice of Cabinet, can vest Crown land in the competent body as trustee by order in the *Gazette*.<sup>338</sup>

The Director or competent body is responsible for preparing a management plan for each protected area, which must be submitted for public comment before being submitted to the Council for review and the Minister for approval.<sup>339</sup> Once approved, the responsible entity must implement the plan. If a competent body implements the plan, it must report to the Director and act of his or her direction; the Director in all cases remains responsible for monitoring and enforcement.<sup>340</sup>

The Director, in consultation with the competent body, may establish a buffer zone adjacent to a protected area and prepare a buffer zone management plan (after public comment) to manage activities in the area.<sup>341</sup> A buffer zone is defined as “an intermediate area which performs the function of mitigating the direct impacts of an activity on a protected area or the impact of an activity on the surrounding environment.”<sup>342</sup> The Director or competent body must collaborate with the Chief Physical Planner, Director of Agriculture, and other government entities, to be sure that activities permitted and carried out in the buffer zone are compatible with achieving the purposes of the protected area.<sup>343</sup> However, ongoing governmental work can continue in protected areas, and the Director can permit timber extraction in a protected area if incorporated into the management plan.<sup>344</sup>

Protected areas may incorporate both public and private lands. The Act does not authorise the competent body to require compliance with a management plan on private lands. However, a Certificate is required for several activities in a protected area, including:

- Any development<sup>345</sup> in a protected area;
- Clearing, grading, or filling land in a protected area or buffer zone;
- Land transportation work in a protected area or buffer zone;

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<sup>336</sup> CEMA § 39.

<sup>337</sup> CEMA, § 39. Specific delegated authority may include development and amendment of the management plan for the area, making recommendations to the Advisory Council on allocation of resources for its management, and advising the Council on needed changes to the boundaries or categorisation of the area. *Id.*

<sup>338</sup> CEMA § 41.

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> CEMA, § 43.

<sup>342</sup> *Id.* § 2. The Director has authority to establish buffer zones adjacent to protected areas and establish a buffer zone management plan. *Id.* § 43.

<sup>343</sup> *Id.*

<sup>344</sup> CEMA at §§ 47, 48

<sup>345</sup> Development is not defined in CEMA, but it is defined in the Physical Planning Act and that definition would be very likely to be applied in any dispute regarding whether an activity is subject to CEMA certification.

- Utility work in a buffer zone or protected area; and
- Livestock farms and facilities in a buffer zone or protected area.<sup>346</sup>

The Planning and Development Authority also cannot issue development permission under the Physical Planning Act for any development in a protected area unless the applicant holds a certificate of environmental approval for the development.<sup>347</sup> While most certificate requirements in a protected area apply to new or different use, a certificate is required retroactively for any *existing* activity in a buffer zone that the Director determines is likely to cause significant adverse effects on a protected area.<sup>348</sup>

The government can also control activities on private lands directly, by obtaining those lands or agreeing with their owners on management. The Governor may also acquire any private land in a protected area under the provisions of the Land Acquisition Act,<sup>349</sup> and cannot grant, sell, or otherwise dispose of Crown land in protected area.<sup>350</sup> Private property holders who retain land and comply with the provisions of the management plan may remit property tax, or they may enter into a written co-management agreement with the Minister, with the consent of the Governor on the advice of Cabinet, under which the land remains privately owned but is controlled and managed by the Director or competent body.<sup>351</sup>

#### 5.2.4 Enforcement

CEMA enforcement in protected areas follows the general provisions set out in the Act (see section 3.3.3), and is subject to some specific penalties. Knowing or reckless activity in a protected area that may have an adverse effect on flora or fauna is an indictable offence (i.e., can be charged in High Court) and may result in a fine of \$10,000 and/or six months' imprisonment for a first offence or \$25,000 and/or one year's imprisonment for second and subsequent offences.<sup>352</sup> In addition, regulations made under the Act may prescribe specific offenses, and a summary offense is punishable by a \$1000 fine or 3 months imprisonment.<sup>353</sup> Violation of CEMA may also give rise to administrative and judicial civil assessments and liabilities.

### 5.3 Montserrat National Trust Act<sup>354</sup>

The Montserrat National Trust Act (MNT Act) establishes the Trust as a limited liability corporation that can purchase, receive, and otherwise hold property, including real estate.<sup>355</sup> All property of the

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<sup>346</sup> CEMA at Schedule 1.

<sup>347</sup> CEMA, § 45.

<sup>348</sup> *Id.* § 17(2). Oddly, existing activities in a protected area that may cause such impacts are not under an explicit requirement to obtain a certificate.

<sup>349</sup> CEMA, § 40.

<sup>350</sup> CEMA § 44 (except providing that the may by Order on the advice of Cabinet may sell land upon a determination that it is expedient in the national interest or to further the purposes of the protected area designation, or as a to lease to provide a public amenity as described in the relevant management plan. *Id.*

<sup>351</sup> CEMA, § 42.

<sup>352</sup> CEMA § 78.

<sup>353</sup> CEMA, § 75.

<sup>354</sup> Another relevant law may be any successor to the Tourist Board Act, which was repealed in 2014.

<sup>355</sup> MNT Act at §§ 2-3.

trust will revert to the government if the Trust is dissolved.<sup>356</sup> The Trust runs its own affairs under rules and regulations for the object of the Trust, custody of funds, and other matters adopted by a Council after a general meeting of the Trust members.<sup>357</sup> These regulations appear enforceable, as the Trust can sue for any fines or penalties becoming due, or other sums payable to the Trust, before a Magistrate.<sup>358</sup> The Trust is exempt from stamp tax and from recording fees under the Registered Lands Act.<sup>359</sup>

In practice, the Montserrat National Trust is an important manager of protected lands in Montserrat, managing the Centre Hills Forest Reserve, Woodlands Beach, and other areas.<sup>360</sup> The purpose of the Trust is

to conserve and enhance the beauty of Montserrat; to preserve and rehabilitate historical sites, including but not limited to buildings, monuments, documents, chattels etc.; to preserve the fauna and flora of Montserrat; to make the public aware of the value and beauty of the island's heritage; to pursue a policy of preservation and act in an advisory capacity; to acquire property for the benefit of the island; to attract funds by means of subscriptions, donations, bequests and grants for the effective carrying out of the objects; to compile a photographic and architectural records of the above.<sup>361</sup>

The Trust is managed by a staff that works with its Executive Board and volunteers who participate on committees.<sup>362</sup> It is funded by the government, through projects, and through private donations and membership fees.<sup>363</sup>

## 5.4 Volcano exclusion zones

Entry into a substantial proportion of Montserrat lands and waters is prohibited under the Emergency Powers Act as a result of volcanic activity (see section 2.1, Figure 1). Exclusion Zones A, B, and C extend 500 meters offshore; however, zones A and B recently have been opened to overnight use.<sup>364</sup> In addition, Zones W, E, and V include “maritime unsafe areas”<sup>365</sup> that extend 1 km (Zone V), 2 km (zone W), or 4 km (zone E) offshore.<sup>366</sup> A person may enter the maritime unsafe areas of zones W and E between 6:30 am and 5:30 pm if in transit to another area, provided that no person may remain “for any period of time in excess of that which is required to access a place outside of Zone E or Zone W.”<sup>367</sup> Violation of restrictions on daytime entry into Zones E and W may result in fines up to \$2000 or 6 months’ imprisonment.<sup>368</sup> These restrictions effectively prohibit

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<sup>356</sup> *Id.* at § 3.

<sup>357</sup> *Id.* at § 4.

<sup>358</sup> *Id.* at § 5.

<sup>359</sup> *Id.* at § 6.

<sup>360</sup> Personal communication (May 2015).

<sup>361</sup> Montserrat National Trust, *About Us* at <http://montserratnationaltrust.ms/about-us/>.

<sup>362</sup> *Id.*

<sup>363</sup> *Id.*

<sup>364</sup> Emergency Powers (Maritime Unsafe Areas) Order 2014, Schedule 1; Personal communication.

<sup>365</sup> Emergency Powers (Maritime Unsafe Areas) Order 2014, § 3.

<sup>366</sup> Emergency Powers (Maritime Unsafe Areas) Order 2014, § 4.

<sup>367</sup> Emergency Powers (Maritime Unsafe Areas) Order 2014, § 4.

<sup>368</sup> Emergency Powers (Maritime Unsafe Areas) Order 2014, § 4(3).

directed fishing in those areas, although reports indicate that some pot fishing may nonetheless occur in these areas.<sup>369</sup> The current Order does not authorize access to the maritime unsafe area of Zone V, which is a site of recent pyroclastic flows stemming from a dome collapse.<sup>370</sup> Interviews indicate that these areas are used to some extent notwithstanding these restrictions, and there is interest in obtaining daytime access to certain of areas for fishing, volcano tours, and other uses.

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<sup>369</sup> Personal communication (May 2015).

<sup>370</sup> Personal communication with John Cherry, 4/28/15. On land, zone V is an unsafe area, and a person that wishes to enter zone V must have a permit from the Governor. Emergency Powers (Unsafe Areas) Order 2014, § 5.

## 6 Planning and Land Use Authority

Several laws address land use and planning. Most relevant for activities affecting the marine environment are the Physical Planning Act and CEMA, which are discussed below.<sup>371</sup> In addition to these laws, a constellation of other Acts govern land tenure and seek to settle land claims in Montserrat. These laws, including the Land Adjudication Act, Land Acquisition Act, Land Survey Act, Registered Land Act, Settled Estates Act, and Crown Title Act, are not discussed in detail in this report as they will not generally bear upon ocean management.

### 6.1 Physical Planning Act

The Physical Planning Act calls for the establishment of a Planning and Development Authority (Authority).<sup>372</sup> The Authority is composed of eleven members, nine of whom represent government and two of whom represent the private sector.<sup>373</sup>

The Authority is tasked with preparing a National Physical Development Plan (Development Plan) for land use and development on Montserrat.<sup>374</sup> The Development Plan must include principal aims and objectives, a report on the conditions of the areas of Montserrat, and a statement of policies, proposals and programmes for future development and use of land in the area.<sup>375</sup> The Plan should address both land and marine areas within Montserrat's territorial sea, as the Act defines land to include the "foreshore, seabed and land covered by water within the boundaries of the territorial jurisdiction and control of Montserrat."<sup>376</sup>

Plan development requires adequate opportunities for individuals and organizations to provide input.<sup>377</sup> In addition, once complete, the Authority is required to publish the Draft with the input received and responses to comments and allow sixty days for additional input.<sup>378</sup> Once the Development Plan is through the public review process, it must be submitted to the Governor in Council through the Minister for approval and then published in the *Gazette*.<sup>379</sup> The plan can be revised or modified by following the same procedures as the initial plan.<sup>380</sup> Using the same process as required for revisions or modifications, the Authority can develop detailed plans that build upon

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<sup>371</sup> Physical Planning Act, CAP. 08.03 (as amended by CEMA, No. 17 of 2014).

<sup>372</sup> Physical Planning Act, § 3.

<sup>373</sup> *Id.* § 4.

<sup>374</sup> Physical Planning Act, § 5.

<sup>375</sup> *Id.* § 5(3).

<sup>376</sup> *Id.* § 2. Application of this Development Plan beyond 3 nautical miles from shore is not clearly defined in the Act.

<sup>377</sup> *Id.* § 6.

<sup>378</sup> *Id.* §§ 7(1),(2)

<sup>379</sup> *Id.* § 8.

<sup>380</sup> *Id.* § 9.

the contents and provide additional details beyond those in the Development Plan.<sup>381</sup> Montserrat is currently operating under a Physical Development Plan that runs from 2012 to 2022.<sup>382</sup>

No development can be commenced on land except with permission issued by the Authority in accordance with the Act.<sup>383</sup> Development is defined to include “building, engineering, mining or other operations in, on, over or under land,” and excludes agriculture (other than intensive aquaculture and subdivision of agricultural land) and forestry.<sup>384</sup> Prospective developers must apply to the Authority and obtain approval both for the proposed use of the land and the specifics of the proposed development.<sup>385</sup>

When it receives an application, the Authority must notify all departments of Government and persons who may be affected by the development, and each notified entity has 14 days to respond;<sup>386</sup> where a development will affect a large number of persons, it may require publication of the notice in a public place to solicit comment.<sup>387</sup> In some instances applications for development must include an EIA.<sup>388</sup> EIAs are required for mining, marinas, ports and harbours, land reclamation and dredging and filling of ponds, desalination plants, development in environmentally sensitive areas defined as such in an adopted Development Plan, or designated Marine Parks, among others.<sup>389</sup> In accordance with the Act’s Fourth Schedule, EIAs should include a description of the proposed development, data necessary to determine effects on the environment, a description of likely significant direct and indirect effects on the environment, and where significant adverse effects are identified a description of “measures envisaged” to address those effects.<sup>390</sup>

When considering an application for development permission, the Authority must “have regard to the provisions of” and “shall, except where the Authority considers it inexpedient so to do, give effect to” the Development Plan.<sup>391</sup> The Authority must also consider proposed development effects on the interests of others, building code requirements, sustainability of the proposed development, the environmental impact assessment if required, and other material planning considerations.<sup>392</sup> In addition, the Authority may provide permission conditionally or unconditionally or may refuse to provide permission.<sup>393</sup> The decision must be in writing, and the Authority must provide written reasons for any refusal.<sup>394</sup> Applicants may appeal to the Physical Planning and Environmental

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<sup>381</sup> *Id.* § 10

<sup>382</sup> Government of Montserrat, Consultation Draft Physical Development Plan for North Montserrat (2012-2022) (2011) (on file with authors). The authors lack documented evidence that this plan was fully approved as provided in the Act.

<sup>383</sup> *Id.* § 12.

<sup>384</sup> *Id.* § 15.

<sup>385</sup> *Id.* at §§ 16-17.

<sup>386</sup> *Id.* § 16.

<sup>387</sup> *Id.* § 17.

<sup>388</sup> *Id.* § 18.

<sup>389</sup> *Id.* at Third Schedule. Marine parks are not defined here or elsewhere in the laws of Montserrat.

<sup>390</sup> *Id.* at Fourth Schedule.

<sup>391</sup> *Id.* § 11, 19.

<sup>392</sup> *Id.* § 19.

<sup>393</sup> *Id.*

<sup>394</sup> *Id.*



(Appeals) Tribunal (described in detail in section 3.3.3) from any conditional permission or refusal to grant permission.<sup>395</sup>

Once permission is granted, applicants have one year to commence work. Permission runs with the land, but can be revoked or modified where the Authority determines it to be expedient (subject to appeal and compensation for loss or damage).<sup>396</sup> The Authority may issue a notice of compliance to a person for failure to comply with the Act, requiring remedy (whether by seeking development permission or otherwise), which can include restoration of the area to its prior state.<sup>397</sup> These notices may be appealed to the Tribunal.<sup>398</sup> Failure to comply with a compliance notice can be enforced by both criminal and civil means.<sup>399</sup>

The Physical Planning Act includes specific provisions for environmental protection. If “the amenity of an area” is being seriously injured by dilapidated, ruinous or incomplete buildings, the general appearance of land, or the deposit of waste or refuse on land, the Authority may serve an “amenity notice” on the owner of occupier requiring they abate the injury.<sup>400</sup> The Act previously contained special provisions for protected areas, but this section was repealed by CEMA.

## 6.2 Conservation and Environmental Management Act of 2014

CEMA recognizes the close linkage between development and land use planning and the environment and contains provisions to encourage collaboration between the Environment Department and the Physical Planning Unit. The Director is tasked with, among other things, the general responsibility to “manage and regulate the environmental effect of activities in collaboration with the Physical Planning Unit.”<sup>401</sup> While this collaboration has not yet matured, the Department of Environment and Physical Planning Unit are preparing a Memorandum of Understanding to promote integration of CEMA and planning processes.

CEMA also contains several direct linkages between the Director and the physical planners. The Director must take the Physical Development Plan into consideration when developing the PAS Plan for protected areas.<sup>402</sup> The Authority cannot issue development permission for development within a protected area (whether on Crown or private lands) unless the applicant has already obtained a Certificate from the Director.<sup>403</sup> Finally, the Director can recommend to the Authority that a Certificate-holder be required to submit an EIA for an ongoing activity with impacts that could not have been reasonably foreseen at the time the Certificate was issued, or where the holder

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<sup>395</sup> *Id.* at § 20. CEMA amended the name of the Tribunal in two different ways. In the text of CEMA and consequential amendments of the Agriculture Act, the Tribunal is identified to the name used in this report. However, in the consequential amendment of the Physical Planning Act, the Tribunal is named as the “Physical Planning (Appeals) and Environmental Tribunal.” CEMA at Schedule 5. We interpret the latter as scrivener’s error.

<sup>396</sup> Physical Planning Act at § 21-25.

<sup>397</sup> *Id.* at § 26.

<sup>398</sup> *Id.* at §§ 27-28.

<sup>399</sup> *Id.* at § 29, 31.

<sup>400</sup> *Id.* § 32.

<sup>401</sup> CEMA § 11(k)

<sup>402</sup> CEMA at § 34.

<sup>403</sup> CEMA at § 45.

submitted inaccurate or misleading information to obtain the Certificate.<sup>404</sup> In such cases, the Authority can direct the Certificate holder to submit an EIA even absent a need to obtain development permission.<sup>405</sup> In practice, however, the NEMS is not currently actively considered during consideration of planning applications.

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<sup>404</sup> CEMA at § 20.

<sup>405</sup> *Id.*

## 7 Maritime and Shipping

Montserrat's maritime economy was devastated by the volcano, which destroyed access to the port facility at Plymouth. The one existing port on the island, at Little Bay is exposed and cannot service deep draft vessels, such that development of a new port is a development priority. In the interim, vessels use the harbour through moorings and by drawing small boats up on the beach. Vessel arrivals include limited cruise ship activity—including weekly arrivals of small ships with 200-300 passengers. Interviews suggest that a breakwater is highly desirable in Little Bay to support expansion of this activity as well as yacht arrivals, and some dredging is also expected.

The Port Authority Act creates a Port Authority as a quasi-governmental entity, appointed by the Governor and run by a Port Manager, appointed by the Governor after consultation with the Authority. The Port Manager is the Chief Executive and Secretary of the Authority.<sup>406</sup> The Authority is directed by the Act to provide “a co-ordinated and integrated system of ports, beacons, buoys and port services” for Montserrat.<sup>407</sup> In particular, it must administer and operate the port, regulate and control navigation within the port and its approaches, and serve as Harbour Master.<sup>408</sup> The harbour at Little Bay includes a variety of private mooring buoys placed with the permission of the Port Authority—most under a memorandum of understanding with Shamrock Moorings, which charges vessels for their use. The Governor can compulsorily acquire land for the Authority and vest land reclamation, wharfs, and other public works extending from the foreshore in the Authority.<sup>409</sup> The Act vested all Crown land within the port, including the seabed and shore, on the Authority;<sup>410</sup> however, the port at the time of the Act was located in Plymouth (which is still actively used for exports of aggregate) and the current legal status of the port in Little Bay is uncertain. In practice, however, the Port Authority exercises jurisdiction over areas within one nautical mile of the harbour at Little Bay, which will remain the sole point of entry for vessels entering Montserrat. Moorings beyond 1 nautical mile from Little Bay, such as those at the Montserrat Yacht Club in Isles Bay, are not managed or placed by permission of the Port Authority (despite their location in waters controlled by the government of Montserrat). The Port Authority charges dues and fees which it may use for a variety of purposes set out in the Act, and compiles and lists these charges in its regulations and in a tariff book.<sup>411</sup> The Port Dues Act provides additional dues on vessels over 25 tons, which are collected by the Harbour Master.<sup>412</sup> The Cruise Ships Tax Act levies an additional tax on cruise ships, payable only by cruise ships to the Comptroller of Customs.<sup>413</sup>

In enforcing the Act, the Port Manager can authorise officers who have the same powers as police officers, and may appoint “Port Constables” with the approval of the Governor.<sup>414</sup> Violations of the

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<sup>406</sup> CAP 07.09 at §§ 3, 12.

<sup>407</sup> Port Authority Act § 18.

<sup>408</sup> *Id.* As Harbour Master, the Port Manager will also be responsible for implementation of the Harbour Master Act, CAP 07.02 (rev. 2013), and the Piers and Wharves Act, CAP 07.10 (rev. 2013).

<sup>409</sup> *Id.* at § 19-20.

<sup>410</sup> *Id.* at § 73.

<sup>411</sup> *Id.* at §§ 22-23, 53.

<sup>412</sup> Port Dues Act, CAP 17.15, at § 3.

<sup>413</sup> Cruise Ships Tax Act, CAP 17.10.

<sup>414</sup> Port Authority Act at §§ 68, 79.

Act or Port Regulations may result in range of penalties, including a fine of \$500 or imprisonment for six months for violation of a regulation.<sup>415</sup>

In addition to Montserrat port laws, several authorities govern shipping. Notably, the UK Merchant Shipping (Oil Pollution) (Montserrat) Order 1998 extended to Montserrat those provisions of the UK Merchant Shipping Act 1995 adopting the International Convention on Civil Liability for Oil Pollution Damage 1992 and International Convention on the Establishment of an International Fund for the Compensation for Oil Pollution Damage 1992.<sup>416</sup> Under this order, ship owners are liable for damage caused by discharge or escape of oil, the cost of response, and damages caused by the response and are required to obtain insurance.<sup>417</sup> Oil importers must contribute to the international oil spill fund, which serves a reinsurance function if the oil spill liability convention does not fully compensate for damages.<sup>418</sup>

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<sup>415</sup> Port Authority Regulations at § 42; see also Port Authority Act §§ 63-66.

<sup>416</sup> Merchant Shipping (Oil Pollution) (Montserrat) Order, S.I. 1998 No. 1262, CAP 07.03.

<sup>417</sup> Id. at Schedule, §§ 153, 163-64.

<sup>418</sup> Id. at § 175

## 8 Protected Species

Several Montserrat laws protect biodiversity, including marine species, most notably CEMA.<sup>419</sup> The Director of Environment is responsible for implementing CEMA, at times in conjunction with the Fisheries Department and in consultation with the National Conservation and Environmental Management Council.<sup>420</sup> CEMA requires the Director of Environment to prepare a National Strategy for the Conservation of Biological Diversity in accordance with national and regional environmental management frameworks<sup>421</sup> and places restrictions on the take and trade in species as well as on activities that may adversely affect biodiversity.

CEMA restricts actions that may harm listed species of fauna and flora and provides authority to implement the Convention on International Trade in Endangered Species (CITES) by prohibiting trade in biological specimens without a permit from the Director.<sup>422</sup> The Act provides for classification of fauna (members of the animal kingdom) and flora (plant life) as “protected species,” “partially protected species,” or “unprotected species,” and the act includes lists of protected and partially protected species.<sup>423</sup> The Governor acting on the advice of Cabinet can designate additional species by regulation, provided that designation of marine fauna requires consultation with the CFO and the Council.<sup>424</sup> While regulations have been drafted, they are not finalized to date.<sup>425</sup> Certain actions are prohibited with respect to protected and partially protected species, as set out in Table . In addition to these prohibitions, the Director can issue a “stop notice” to any person threatening an unprotected species by act or omission in a way that is contrary to the public interest,<sup>426</sup> and the Governor, on the advice of Cabinet and after circulation of a draft to interested persons by the Director, can issue a “preservation order”, to preserve any species of flora or fauna.<sup>427</sup> As previously indicated in section 4.5, permission from the Director is also required for any scientific research, photography or information collection for financial gain, or information collection for documentary, tourism and education and research material regarding the flora and fauna and associated ecosystems of Montserrat.<sup>428</sup> While a permit is not required, the Director can

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<sup>419</sup> Act 17 of 2014.

<sup>420</sup> CEMA at §§ 5-9.

<sup>421</sup> CEMA at § 22. The Strategy must be presented to the Council for review, but official approval is not required. *Id.* The Strategy must be consistent with both the National Environmental Management Strategy (to be created by the Director under section 14 of CEMA) and the St. George’s Declaration on Principles for Environmental Sustainability in the Eastern Caribbean, which is an agreement signed by OECS environment ministers, last revised in 2006. OECS, St. George’s Declaration of Principles for Environmental Sustainability in the OECS (2006), available at <http://www10.iadb.org/intal/intalcdi/PE/2009/03209.pdf>.

<sup>422</sup> CEMA at §§ 22-32. The Department has developed draft regulations to implement CITES, but these are not yet finalized. Conservation and Environmental Management (Convention on International Trade in Endangered Species) Regulations 2010 (draft, on file with authors).

<sup>423</sup> CEMA at §§ 24-28.

<sup>424</sup> CEMA at §§ 24, 26, 84(2)(d)-(e).

<sup>425</sup> Conservation and Environmental Management (Fauna and Flora) Regulations, 2013 (draft, on file with authors). These regulations would provide procedures for designation, de-designation, and permitting for harvesting, hunting, possession, and trade of listed species, but would not designate additional species. *Id.*

<sup>426</sup> CEMA at § 28.

<sup>427</sup> CEMA at § 30. The Act contains no specifications regarding the content of such orders.

<sup>428</sup> CEMA at § 32.

place terms, conditions, and limitations on any permission that is granted, including for sharing of intellectual property and financial returns on resulting products.<sup>429</sup>

Table 3. Offences related to protected and partially protected fauna and flora.

Offence	Protected fauna	Protected flora	Partially protected fauna	Partially protected flora
Wilfully hunt or attempt to hunt	X			
Hunt or possess without a permit and outside open season			X	
Harvest or attempt to harvest		X		
Harvest or possess without a permit				X
Knowingly disturb during the period of breeding, incubation, aestivation or migration or take, remove, damage, destroy or have possession of a nest or egg;	X			
Expose for sale, or knowingly have in possession, all or part of species taken in Montserrat	X	X		
Export or attempt to export a specimen without a permit	x	X		

CEMA also provides a pathway for restrictions on activities that may be inconsistent with conservation. The Director must identify and monitor the components of biological diversity important for conservation and sustainable use (including ecosystems, habitats, and endangered, threatened, and valuable species), as well as the processes and activities likely to adversely affect conservation.<sup>430</sup> Where activity is likely to have significant adverse effects on conservation and sustainable use of biodiversity, the Director can require the proponent of the activity to apply for and obtain a Certificate of Environmental Approval before proceeding.<sup>431</sup> Such a Certificate, if issued, can contain terms and conditions as appropriate, including for mitigation of environmental harm.<sup>432</sup>

Several additional laws provide additional species protections, as follows.

- The Convention of Migratory Species of Wild Animals Act accepts the Convention into the law of Montserrat.<sup>433</sup> The Convention, also known as the Bonn Convention, lists species of migratory species of animals (including aquatic animals and birds) that are endangered or have an “unfavourable” conservation status requiring international agreement for

<sup>429</sup> *Id.*

<sup>430</sup> CEMA at § 23.

<sup>431</sup> CEMA at § 23.

<sup>432</sup> CEMA at § 18. Proponents can appeal to the Tribunal upon denial of Certificate or to challenge conditions to the Certificate. *Id.*

<sup>433</sup> CAP 12.05 at § 3.

conservation and management. The Convention requires “Range States” to prohibit the taking<sup>434</sup> of any listed endangered species except for certain limited purposes.<sup>435</sup> Range States are directed to seek agreements with other parties relating to the conservation of any species listed as having an unfavourable conservation status.<sup>436</sup> The Act authorizes the Governor acting on the advice of Cabinet to issue orders necessary to give effect to any provisions of the Convention.<sup>437</sup> No Orders are in effect at this time.

- As discussed in section 4.3, the Fisheries Act authorizes the Governor to declare fish to be protected species and to prohibit or restrict fishing for that fish.<sup>438</sup> This authority has not been used to date.
- The Turtles Act<sup>439</sup> prohibits the actual or attempted catch, take, slaughter, or sale of any sea or river turtle, turtle meat, or eggs from June to September.<sup>440</sup> In addition, no person can catch or take any turtle under 20 pounds at any time.<sup>441</sup> Violation of these restrictions may result in a fine not exceeding \$48. Police officers can arrest without a warrant any person they reasonably believe has committed or is attempting to commit a violation against the Act.<sup>442</sup> Any turtle, eggs, or turtle parts found in a person’s possession during the closed season may be seized and will be forfeited upon conviction,<sup>443</sup> and nets and other instrument used in the commission of an offense may be similarly seized and forfeited.<sup>444</sup>
- The Plant Protection Act and regulations provide quarantine authority and prohibit or restrict importation of certain plants (including all grasses) to prevent the spread of pests and diseases.<sup>445</sup>
- The Endangered Animals and Plants Act restricts the import and export of listed species.<sup>446</sup>

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<sup>434</sup> Taking is defined as “taking, hunting, fishing, capturing, harassing, deliberate killing, or attempting to engage in any such conduct”. *Id.* at Schedule, Art. I.

<sup>435</sup> *Id.* at Schedule, Art. III.

<sup>436</sup> *Id.* at Sched., art. IV.

<sup>437</sup> *Id.* at § 4.

<sup>438</sup> Fisheries Act § 26.

<sup>439</sup> Turtles Act, CAP. 12.06 (rev. 2002). According to stakeholders, bill was drafted in 2002 to revise the Turtles Act to, inter alia, extend the closed season to extend from March until September. We found no indication that this draft was enacted into the laws of Montserrat.

<sup>440</sup> Turtles Act § 3.

<sup>441</sup> *Id.*

<sup>442</sup> *Id.* § 4.

<sup>443</sup> Turtles Act § 5.

<sup>444</sup> Turtles Act § 6.

<sup>445</sup> *See generally* CAP 9.02 (rev. 2013).

<sup>446</sup> CAP 12.01 (rev. 2013). CEMA repealed the Endangered Animals and Plants Act, CEMA at § 93, but this repeal is not yet in force pending completion of regulations to implement the biodiversity conservation provisions (which are in development). As a result, both CEMA and the Endangered Plants and Animals Act are simultaneously effective. Conservation and Environmental Management Act 2014 (Commencement) Order, S.R.O. 67 of 2014, at § 3.



## 9 Forestry

CEMA provides for forest management in Montserrat.<sup>447</sup> Forests are defined as land at least ten percent “stocked” by “trees of a size”, now or in the past, and not built up or developed for agricultural use.<sup>448</sup> The status of mangroves under this definition is unclear, as they may not be considered “of a size” even if they cover well more than ten percent of land area. As they are used elsewhere in the Caribbean for charcoal and firewood, however, it is likely that mangrove areas would be considered forests under CEMA.

The Director of Environment is directed to promote silviculture and agro-forestry in Montserrat.<sup>449</sup> He or she is responsible for managing forests on unallocated crown lands outside of protected forest areas.<sup>450</sup> Forests on these lands are must be managed as a “permanent forest estate” in accordance with “sustainable tropical forestry principles, guidelines, and practices”.<sup>451</sup> Felling any timber or forest produce from unallocated crown lands requires a permit from the Director.<sup>452</sup> The Minister, with the approval of the Governor on the advice of Cabinet, can enter into agreements with landowners to place forested private land under the Director’s management and control.<sup>453</sup> On other private lands, the Governor on the advice of Cabinet may make regulations and grant incentives to ensure management in accordance with sustainable tropical forestry.<sup>454</sup>

The Environment Department has developed draft regulations to set out more completely the requirements for forestry permitting under CEMA.<sup>455</sup> These draft regulations would require permits for felling timber and producing charcoal place conditions on those permits to, inter alia, enable inspections and require reporting by permittees, as well as authorising amendment, revocation, suspension, renewal, and transfer of permits.<sup>456</sup>

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<sup>447</sup> CEMA repealed the Forestry, Wildlife, National Parks and Protected Areas Act, CAP. 12.03 (rev. 2013). CEMA at § 93.

<sup>448</sup> CEMA at § 2.

<sup>449</sup> CEMA at § 50.

<sup>450</sup> CEMA at § 49.

<sup>451</sup> CEMA at § 49. A permit from the Director is also required to burn charcoal in any forest area, and a permit from the Chief Fire Officer is required to start a fire in any forest. CEMA at § 52.

<sup>452</sup> *Id.* at § 49.

<sup>453</sup> CEMA at §51.

<sup>454</sup> *Id.*

<sup>455</sup> Conservation and Environmental Management (Protected Areas, Forests and Fires) Regulations 2013 (draft, on file with authors).

<sup>456</sup> Conservation and Environmental Management (Protected Areas, Forests and Fires) Regulations 2013 (draft), at §§ 18-34.

## 10 Pollution, Dumping, and Accidents

### 10.1 CEMA

CEMA provides pollution control authority. Under the law, the Governor, acting on the advice of Cabinet, may issue regulations designating pollutants.<sup>457</sup> Once designated, a permit from the Director of Environment is required to release a pollutant from any premises.<sup>458</sup> In addition, any person who intends to discharge a pollutant in a quantity, concentration, or condition in excess of a prescribed range (provided by regulation) must register with the Director, who must issue a registration certificate but may include any terms and conditions deemed fit.<sup>459</sup> The Director is responsible for monitoring compliance.<sup>460</sup>

No regulations have been issued to date, but the Environment Department has developed draft regulations to designate substances and quantities or concentrations subject to registration and permitting and to establish procedures and fees for registration and permitting.<sup>461</sup> Notably, government entity releases into sewer facilities owned by that entity would not be considered releases of pollutants.<sup>462</sup> Registration and permit applications would both be required to submit a wide range of information and certificates and permits, if issued, would both include conditions to avoid and mitigate adverse impacts from releases.<sup>463</sup> The regulations would also include provisions to support compliance, including by enabling inspections and requiring reporting by permittees, and they would authorise amendment, revocation, suspension, renewal, and transfer of permits.<sup>464</sup> In addition to these broader regulations, the Department has developed draft regulations for noise pollution.<sup>465</sup>

CEMA also provides guidance on spills and accidental releases of pollutants and hazardous substances. The Director may require the owner or person in control of premises on which a hazardous substance, hazardous waste, or a pollutant is handled to create a contingency plan to address spills or accidental releases.<sup>466</sup> Such plans must be submitted to the Principal Environmental Health Officer, who may approve the plan after consultation with the Director of Environment, Director of Disaster Management Coordination Agency, and other persons as the

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<sup>457</sup> CEMA at § 84. A pollutant is any “substance, thing, or man-made phenomenon” designated as a pollutant. CEMA at § 2.

<sup>458</sup> CEMA at § 54. Permits are discretionary and may contain conditions; however, denials or conditions are subject to appeal to the Tribunal. *Id.*

<sup>459</sup> CEMA at § 53.

<sup>460</sup> CEMA at § 54.

<sup>461</sup> Conservation and Environmental Management (Release of Substances and Pollutants) Regulations 2013 (draft, on file with authors). The actual list of designated substances is not complete but would be included in the schedules to the regulations. *Id.*

<sup>462</sup> *Id.* at §§ 5, 10.

<sup>463</sup> *Id.* at §§ 7, 12.

<sup>464</sup> *Id.* at §§ 13-26.

<sup>465</sup> Certificate of Environmental Management (Release of Noise Pollutants) Regulations 2013 (draft, on file with authors)

<sup>466</sup> CEMA at § 57.

Health Officer sees fit.<sup>467</sup> When a spill or accidental release occurs, the responsible person must provide notice, implement the contingency plan, and take necessary and expedient measures to minimise threat to human health or the environment.<sup>468</sup> The Health Officer can also take emergency response measures, either directly or by coordinating others or hiring contractors, and can recover the actual costs of those measures from the responsible person.<sup>469</sup>

Finally, CEMA provides broad authority for environmental restoration. The Director may issue an “environmental restoration order” to any person in response to an action causing environmental harm.<sup>470</sup> The order must require the person to restore the environment as near as possible to the state it was in prior to the action, prevent the person from taking action that could harm the environment, and award compensation to any parties harmed by the action.<sup>471</sup> If the person fails to comply with the order or any included conditions, the Director can take the actions stipulated in the order and can recover the actual costs for those actions.<sup>472</sup>

## 10.2 Beach Protection Act

The Beach Protection Act prohibits deposition of any offal, garbage, litter, waste or any other matter or substance likely to be offensive on any part of the seashore.<sup>473</sup> The penalty for violation is a fine of up to \$2000 and imprisonment for up to 3 months.<sup>474</sup> This prohibition is echoed in section 312 of the Penal Code, which prohibits deposition of “offal or refuse” in the sea within 500 yards of the shore and provides for a fine of \$500 and/or imprisonment for six months for a violation.<sup>475</sup>

## 10.3 Fisheries Act

The Fisheries Act contains some authority for regulation of marine pollution. Specifically, the Minister with responsibility for fisheries, subject to other relevant laws, may take measures that he or she considers necessary to prevent, reduce, and control marine pollution and to ensure that activities in the fishery waters do not adversely affect living resources in fishery waters.<sup>476</sup> The Minister is required to take measures designed to minimize the release of toxic, noxious, and harmful releases from vessels and land-based sources and pollution from installations and devices used to explore and exploit living marine resources.<sup>477</sup> The Minister has not issued regulations or taken other action to implement this authority and if such provisions are contemplated, they must

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<sup>467</sup> CEMA at § 57. The Act itself does not require that applicants receive approval for contingency plans, but simply that they may be directed to prepare and submit them. Eventual regulations to implement this provision could require approval, however.

<sup>468</sup> *Id.*

<sup>469</sup> *Id.*

<sup>470</sup> CEMA at § 58.

<sup>471</sup> *Id.*

<sup>472</sup> CEMA at § 58.

<sup>473</sup> Beach Protection Act § 4.

<sup>474</sup> *Id.*

<sup>475</sup> Penal Code 312.

<sup>476</sup> Fisheries Act § 31.

<sup>477</sup> Fisheries Act § 31.

“have regard” to other enactments relating to marine pollution control,<sup>478</sup> such as those that may be developed under CEMA.

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<sup>478</sup> *Id.*

## 11 Mining and Offshore Industry

Volcanic sand mining is one of Montserrat's only exports.<sup>479</sup> Occurring primarily in the Belham Valley, sand (ash) mining has potential to expand in the terrestrial environment given the abundant resource.<sup>480</sup> In addition, there is a single quarry in Montserrat, which produces aggregates primarily for local building material.<sup>481</sup>

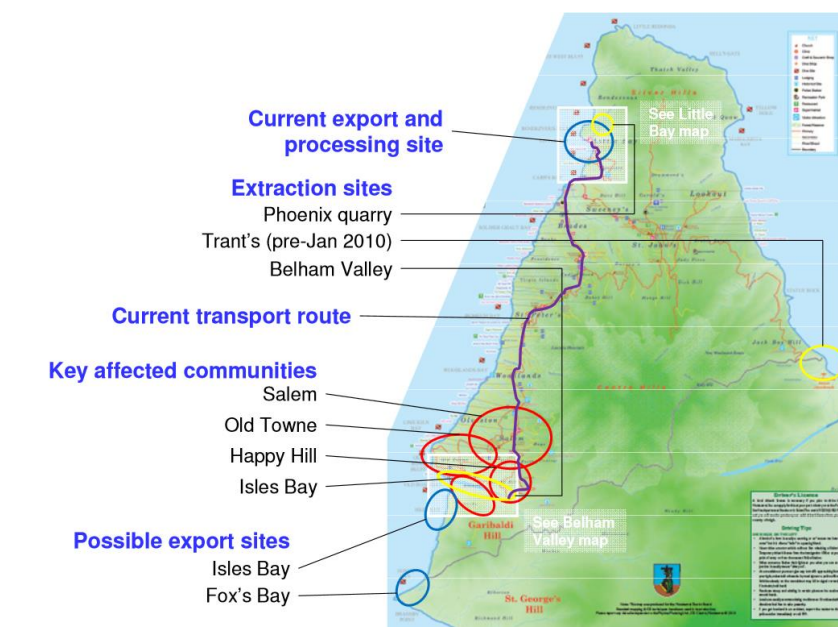


Figure 5. Map of Mining Activity (from Oxford Policy Management, Montserrat Mining and Quarrying Industry Study, 2011).

A number of laws govern current mining operations in Montserrat, as well as hypothetical future mining operations targeting extraction or refining of other materials. As a result of overlapping legislation and definitions, different types of mining may require different or multiple permissions prior to commencing activities. These permissions may include all or some of:

- A license issued by the Governor
- Development permission from the Planning and Development Authority
- Certificate of Environmental Approval from the Director of Environment
- Beach mining permit from the Minister of MATHLE

This section reviews the operations of relevant laws and how and when they apply to different types of mining activity in Montserrat.

<sup>479</sup> Oxford Policy Management, Montserrat Mining and Quarrying Industry Study (2011), available at <http://www.protectmontserrat.com/wp-content/uploads/2012/02/Montserrat-Mining-and-Quarrying-Report-FINAL.pdf>.

<sup>480</sup> *Id.* at 21-30

<sup>481</sup> *Id.* at 21-30.

## 11.1 Mining Licences

The Minerals (Vesting) Act provides that all minerals on or under the land, including radio-active minerals, are vested in the crown.<sup>482</sup> Minerals are defined by this Act to include metals and ores, combustible minerals (coal), mineral oils, precious minerals, and other useful minerals, but do not include pottery clay, rock salt, or materials commonly used in road or building construction—notably, sand and gravel.<sup>483</sup> A mining licence from the Governor is required to prospect for or mine any of these minerals,<sup>484</sup> and miners must pay royalties to the government for the recovered minerals.<sup>485</sup> For radio-active minerals, a different licence from the Governor is required pursuant to the Radio-Active Minerals Act.<sup>486</sup> Such licences will require monthly reporting to the Governor as well as notification of any discoveries, along with export restrictions and other limitations.<sup>487</sup>

Mining for any material on crown lands, including the seabed, may require a separate licence that may or may not be based in statute. A secondary source indicates the existence of but does not explain a “2008 Mining License Template” that “sets out requirements for license when mining ‘Volcanic Materials’, defined as ‘sand, gravel, aggregate expelled from the Volcano and lying in or on property in the restricted areas on Montserrat.”<sup>488</sup> That template, if it exists and is valid, governs only mining on Crown lands and establishes an annual license fee of \$1000EC and \$2EC/metric ton royalty, collected by the Port Authority at the time of export.<sup>489</sup> The statutory authority for this template is unclear, as the Minerals (Vesting) Act excludes the covered materials, and research for this study revealed no other legislation requiring such a licence. However, the crown may be exercising authority to require such a licence as a consequence of its common law rights as owner of the land.

## 11.2 Development permission

Mining is considered “development” under the Physical Planning Act.<sup>490</sup> As a result, permission is required before commencement of any mining operation in Montserrat.<sup>491</sup> The PPA defines “mining operations” to include any activities related to mining, including prospecting, extraction, refining, and depositing waste from mineral extraction.<sup>492</sup> In turn, “mineral” is broadly defined to include

<sup>482</sup> Minerals (Vesting) Act, CAP 08.12 (rev. 2002), at § 3. Thus, under the Act, owners of land in the surface estate cannot own the mineral rights below their land.

<sup>483</sup> Minerals (Vesting) Act at § 2 (excluding “any material, such as clay, sand, limestone, sandstone, or other stones, commonly used for the purpose of road making or for building or for the manufacture of any article used in the construction of buildings where such material does not contain any valuable metal or precious stone in economically workable quantities.”).

<sup>484</sup> Minerals (Vesting) Act at § 4.

<sup>485</sup> Minerals (Vesting) Act at 8.

<sup>486</sup> Radio-Active Minerals Act, CAP 14.10 (rev. 2013), at § 3.

<sup>487</sup> *Id.* at §§ 4, 5, 8.

<sup>488</sup> Oxford Policy Management, Montserrat Mining and Quarrying Industry Study (2011).

<sup>489</sup> *Id.*

<sup>490</sup> Physical Planning Act, § 15

<sup>491</sup> Physical Planning Act, § 12.

<sup>492</sup> Physical Planning Act, § 2 (defining mining operation to include any activity with a view to “working, carrying away, treating or converting” a mineral, including searching or exploring for a mineral and waste deposition).

any naturally occurring substance subject to geologic processes, both on land and underwater.<sup>493</sup> This definition is broader than that under the Minerals (Vesting) Act, most notably in that the PPA includes sand and gravel in its definition of “mineral.”

To obtain development permission for a mining or quarrying operation, proponents must submit an application to the Planning and Development Authority along with an EIA.<sup>494</sup> While proponents are responsible for developing EIAs in most instances, the Authority has issued a “blanket” EIA for sand mining “within the confines of the Belham Valley and its immediate environs”.<sup>495</sup> In reviewing applications for permission to develop under this or another EIA, the Authority must consider the National Development Plan, the sustainability of the proposed operation, the EIA, and other material considerations.<sup>496</sup> The Authority can approve the application, with or without conditions, or can refuse permission along with a statement of reasons, as for other development permissions under the Act.<sup>497</sup>

### 11.3 Certificate of Environmental Approval

A certificate of environmental approval from the Director of Environment is required under CEMA in some cases for mining activities. While mining generally is not listed as an activity triggering the duty to obtain a certificate, regulated activities include mining of beach sand (more than sixty cubic yards in a 30 day period) and soil storage or transport (more than 100 cubic yards).<sup>498</sup>

### 11.4 Beach mining permit

The Beach Protection Act limits sand mining on beaches.<sup>499</sup> Under the Act, motor vehicles cannot be used for the removal of sand, stones, shingle or gravel from any part of any beach, seashore or foreshore without a written permit from the Permanent Secretary to the Minister responsible for beach protection (currently, the Minister of MATHLE).<sup>500</sup> Permits must be produced on request and may be revoked for noncompliance.<sup>501</sup> Violation may result in arrest by a police officer, a fine of up to \$2000, and imprisonment for up to 3 months.<sup>502</sup> In the absence of regulations, Beach Protection Act permits generally will not include conditions limiting when or how much sand may be removed, requiring monitoring, or other similar provisions. As a result, such conditions will primarily be provided by conditions on planning approval and in Certificates, where required.

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<sup>493</sup> Physical Planning Act, § 2 (defining mineral as “a substance in liquid, solid, or gaseous form occurring naturally in or on the earth or on, in or under the seabed and formed by or subject to a geological process”).

<sup>494</sup> Physical Planning Act, § 18, Schedule 3.

<sup>495</sup> MATHLE, Environmental Impact Assessment (EIA) for the Sand Mining Industry in Montserrat, with Specific Reference to the Belham Valley (2011), *available at* [http://www.gov.ms/wp-content/uploads/2011/02/Montserrat-Sandmining-EIA\\_Dec-2011\\_PART-ONE.pdf](http://www.gov.ms/wp-content/uploads/2011/02/Montserrat-Sandmining-EIA_Dec-2011_PART-ONE.pdf).

<sup>496</sup> Physical Planning Act, § 10.

<sup>497</sup> Physical Planning Act, § 19.

<sup>498</sup> CEMA, § 17, Schedule 1.

<sup>499</sup> Beach Protection Act, CAP. 12.04 (rev. 2013).

<sup>500</sup> Beach Protection Act § 3.

<sup>501</sup> *Id.* at §§ 6, 7.

<sup>502</sup> Beach Protection Act §§ 3, 5.



## 12 Summary

As this Framework Report discusses, a variety of options exist to achieve a Montserrat Sustainable Ocean Policy through the use of existing and new laws, regulations, and management tools. However, legal options must be considered in light of the priorities and needs of Montserrat and other information such as the socioeconomic and scientific assessments undertaken by other partners in the BHM project to provide a basis for determining an environmentally, economically, and socially sound approach to development and implementation of the Montserrat Sustainable Ocean Policy.

**Table 4. Key authorities and institutions for Montserrat ocean management.**

Issue	Relevant Laws	Implementing Entities
<b>Fisheries</b>	Fisheries Act	Fisheries Department
<b>Protected Areas</b>	CEMA	Environment Department
	Fisheries Act	Fisheries Department
	Montserrat National Trust Act	Montserrat National Trust
	Emergency Powers Act	Governor of Montserrat
<b>Planning and Land Use</b>	Physical Planning Act	Planning and Development Authority
	CEMA	Environment Department
<b>Maritime and Shipping</b>	Port Authority Act	Port Manager
<b>Protected Species</b>	CEMA	Environment Department
	Convention of Migratory Species of Wild Animals Act	Governor of Montserrat
	Fisheries Act	Governor of Montserrat
<b>Forestry</b>	CEMA	Environment Department
<b>Pollution, Dumping, and Accidents</b>	CEMA	Environment Department
	Beach Protection Act	Permanent Secretary (environment)
	Fisheries Act	Fisheries Department
<b>Mining and Offshore Industry</b>	Minerals (Vesting) Act	Governor of Montserrat
	Physical Planning Act	Planning and Development Authority
	CEMA	Environment Department
	Beach Protection Act	Permanent Secretary (environment)

Based on the analysis in this Report, the following key opportunities exist for legal development to address key issues for the BHM project and provide a strong and achievable legal basis for the Montserrat Sustainable Ocean Policy:

**CEMA implementation:** CEMA implementation could serve as a tool to achieve an enforceable legal framework for sustainable ocean management. In particular, the legal needs from CEMA implementation involve three steps: (1) supporting the further development and completion of existing draft regulations; (2) supporting the development of new regulations for other provisions required to give effect to the Act; and (3) supporting development of non-regulatory documents needed to implement the Act—notably including a Protected Area System Plan. Subordinate legislation is needed to cover several areas relevant to BHM, but has not been drafted to date, most notably Protected and Unprotected Fish and other Marine Life; and Monitoring, Enforcement and Assessment of Orders, Plans and Audits. Additional staff and resources would be required both to complete these and other regulations and to effectively implement the new law.

**Fisheries Act reform:** Montserrat's Fisheries Act provides limited authority. Modernisation of the law could improve of the legal framework for ocean governance. To achieve such legal reformation, Montserrat could replace or amend the existing law or issue subordinate legislation under the existing Fisheries Act, as appropriate, to include the following mechanisms (in addition to traditional fisheries management requirements such as licensing, gear restrictions, etc.):

- a mechanism for ocean zoning with regulations that determine the zones and how they are to be managed;
- a mechanism for advisory oversight with the establishment of a cross-sector ocean management council or body to enable linkages among various legal frameworks, ministries and departments and stakeholders; and
- a mechanism for ocean management fund that allows fees, fines and other monies to be deposited into the special account for implementation of the BHM project.

**Creation of marine protected areas:** Several laws provide for protected area deployment. Key options include: (1) fisheries closures through marine reserves as needed to specifically address fisheries management needs and opportunities; and (2) creation of multi-sector protected areas under CEMA through the protected area designation process. However, if the Fisheries Department moves forward with a new fisheries law, marine reserves and other types of fisheries-related protection could be developed under new legislation.

**Long-term financing:** Long-term financing is critical for continuing implementation of any ocean governance regime. Current legal provisions do not provide an adequate basis for long-term financing that would meet the needs of the BHM project. In the BHM MOU, the Government committed to establishing a dedicated fund for ocean management. To achieve this objective, options include development of a new special fund directed for use by the Montserrat National Trust for BHM purposes or a new fund through a revised Fisheries Act. Both of these actions would require the passage of legislation or subordinate legislation.