



# **UNEP/OECS MODEL HARMONISED BIODIVERSITY LEGISLATION PROJECT**

## **Final Outputs**

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## Preface

OECS Member States and other Small Island Developing States (SIDS) face several challenges in implementing multilateral environmental agreements (MEAs), including those relating to biological diversity. These countries have lacked comprehensive biodiversity laws that effectively and efficiently implement their commitments under the biodiversity-related MEAs; and where they have existed, most of the legislation lacked institutional focus, was fragmented and dispersed over several enactments, and relied on a weak enforcement regime wherein enforcement officers do not have the necessary training and information to effectively manage and protect biodiversity.

At a UNEP Workshop held in 2003 in Kingston, Jamaica, the need to develop efficient ways for OECS Member States and other SIDS to implement their MEA commitments, and the opportunities presented by synergistically clustering of related commitments into a single coherent and effective law was identified by the countries. Given the critical role that biological diversity plays in the economies of many OECS Member States through tourism, fishing, and other activities, and the cross-sectoral nature of biodiversity in the OECS that need was identified as an urgent one.

The development of model legislation to implement MEAs is expected to improve the legislative framework for the implementation and enforcement of MEAs in OECS Member States and other Small Island Developing States (SIDS). To this end, a Memorandum of Understanding was signed between OECS Secretariat and UNEP, through its Division of Environmental Policy Implementation, to assist and support OECS in developing holistic and integrated frame harmonized legislation for the implementation of a cluster of multilateral environmental agreements (MEAs) that relate to the management and protection of biological diversity. These MEAs include the Convention on Biological Diversity (CBD); the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES); the SPAW Protocol to the Cartagena Convention; the Convention on the Conservation of Migratory Species of Wild Animals (CMS); the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention); and, Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention).

This report presents the outputs of the project including the framework document examined each of the selected MEAs to identify their main obligations and areas of synergy and overlap so that they could be grouped in a single instrument that would facilitate the simultaneous, coherent, effective and efficient implementation of the States' obligations under these agreements, the reports of the lead and support consultants respectively, and the draft harmonised Biodiversity Conservation and Sustainable Use Act.

***ELEMENTS OF  
SELECTED BIODIVERSITY-RELATED MULTILATERAL ENVIRONMENTAL  
AGREEMENTS FOR INCORPORATION WITHIN THE NATIONAL LEGISLATIVE  
FRAMEWORK OF OECS STATES***

30 June 2005

**ELEMENTS OF  
SELECTED BIODIVERSITY-RELATED MULTILATERAL ENVIRONMENTAL  
AGREEMENTS FOR INCORPORATION WITHIN OECS NATIONAL LEGISLATIVE  
FRAMEWORKS**

***1. Background, Objectives and Scope***

The concept of clustering or grouping of Multilateral Environmental Agreements (MEAs) is a relatively new one. It is being considered as a strategy for improving implementation of these agreements by reducing institutional fragmentation, promoting synergies among related MEAs, and in reducing overlaps. The ever-increasing number of MEAs makes it difficult for countries with limited human, financial and technical resources, to have a clear understanding of their obligations under each instrument, to participate and obtain the benefits that may be derived under them and to introduce the legislative and institutional changes that their implementation will require. Clustering of MEAs is therefore proposed as a mechanism for promoting compliance with international commitments in a manner that ensures coordination, consistency in the application of policy, principles, rules and practice, comprehensiveness and efficiency in the use of resources. While clustering, at the international level may present formidable challenges<sup>1</sup>, clustering in the domestic context, presents a remarkable tool to advance the implementation of MEA obligations in a more efficient and effective way.

A number of different approaches for clustering MEAs have been proposed. One of the more promising is to group them according to the category they address. In this regard UNEP has proposed four thematic clusters: (1) sustainable development conventions, (2) biodiversity-related conventions, (3) chemicals and hazardous wastes conventions and (4) regional seas conventions and related agreements. At a 2003 UNEP Workshop on Compliance with and Enforcement of MEAs held in Kingston, Jamaica, the need to develop efficient ways for Member States of the Organisation of Eastern Caribbean States (OECS)<sup>2</sup> and other small island developing states (SIDS) to implement their MEA commitments under biodiversity-related conventions by clustering their related commitments into a single coherent and effective law was identified by countries. This would improve the coordination and integration of different international legal regimes addressing biodiversity. Given the role that biological diversity plays in the economies of many OECS Member States through tourism, fishing, and other activities, and the cross-sectoral nature of biodiversity in the OECS that need was identified as an urgent one. This “*UNEP/OECS Project to Develop Frame Harmonised Legislation on Biodiversity*” responds to that need and attempts to address the biggest practical challenge of inadequate resources –both human and financial - to ensure effective implementation of the selected MEAs.

The Project consists of three (3) correlated activities which will lead to the development of draft frame harmonised legislation on biodiversity for OECS countries. This legislation is intended to assist OECS countries to comply effectively with their international obligations under the

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<sup>1</sup> Oberthur, S., “Clustering of Multilateral Environmental Agreements” United Nations University Papers, 2002 P. 10 – 13.

<sup>2</sup> The OECS includes the following Member States: Anguilla, Antigua & Barbuda, British Virgin Islands, Dominica, Grenada, Montserrat, Montserrat, St. Kitts & Nevis, St. Vincent & the Grenadines.

selected MEAs. UNEP and the OECS commissioned this present study to formulate a conceptual framework under which the Convention on Biological Diversity (CBD), the Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 1971), the Specially Protected Areas and Wildlife (SPAW) Protocol to the Cartagena Convention, the World Heritage Convention (WHC), the Convention on International Trade in Endangered Species (CITES) and the Convention on Migratory Species (CMS) [the selected MEAs] may be grouped in a single instrument that would facilitate the simultaneous, coherent, effective and efficient implementation of the States' obligations under these agreements.

For achieving the central objective of this study, an examination of each of the selected MEAs to identify their main obligations and areas of synergy and overlap was conducted.

The content of this study and proposed framework derives from consideration of the concluded works of the various Secretariats on this subject to propose a conceptual framework accordingly<sup>3</sup>. The proposed framework is a draft for discussion, and comments are welcome.

## ***2. Overall Trend and Current Status of Implementation of MEAs in OECS Member States***

A significant occurrence in Caribbean environmental law is the very limited applicability of MEAs within the policy and legal matrix of Caribbean jurisdictions. For example, Putney (1994)<sup>4</sup> later supported by Anderson<sup>5</sup> (2000) indicated that few Caribbean islands participate fully in major conventions and programmes of relevance to protected area management. Though there is scope for a definition of "full" participation, the level of participation has increased in the past five years although there still appears to be ways to enhance that participation.

Governments in the Region are usually aware of the measures necessary to ensure compliance with global multilateral environmental agreements (MEAs). That awareness however, is often restricted to one or two agencies and in many cases widespread support is lacking. Additionally, the general public is highly informed of only a few MEAs, such as the Biodiversity Convention and CITES. In such cases, awareness resulted from public awareness programmes implemented by both public and non-governmental organisations.

There has been very limited enactment of national laws to enable compliance with the obligations of global MEAs. In the cases where such laws exist, such as those dealing with protected species, the laws were often enacted prior to ratification of the related MEA. However, related policies continue to be developed, as confirmed by the proliferation of national environmental strategies.

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<sup>3</sup> See Bibliography

<sup>4</sup> Putney, A. 1994 The Caribbean Chapter in "Protecting Nature: Regional Reviews of Protected Areas", J. Mc Neeley, J. Harrison and P. Dingwall (Eds.). P323-345 IUCN, Gland

<sup>5</sup> UNEP/ROLAC, "Multilateral Environmental Agreements (MEA) Implementation in the Caribbean, Report and Guidelines, 2000.

National regulatory measures and mechanisms were developed primarily to address national environmental problems, instead of the obligations assumed by ratification of the global MEAs. As a result, the existing national laws often do not fully implement the relevant MEAs.

Few, if any, new national institutions have been created in the OECS region to implement global MEAs, neither at the national nor regional levels. However, based on the regulatory and scientific focus/requirements of CITES, related inter-agency coordinating mechanisms have been established in a few countries. Regional coordination mechanisms have been devised in response to regional MEAs. The single exception involves the United Nations Framework Convention on Climate Change, in which eleven Caribbean Community (CARICOM) countries that are Parties to the Convention are collaborating to implement the Caribbean Planning for Adaptation to Global Climate Change Project. This project involves a combination of national pilot/demonstration activities, regional training, and technology transfer.

For the MEAs adopted by Caribbean Countries, most have not been supported at the national level by drafting and implementation of legislation. However, it is usual to find a small number of related projects being undertaken at any one time. It is anticipated that with nine countries now preparing national biodiversity strategies, national implementation of CBD will be supported by legislation, clear institutional mechanisms, and adequate resources.

There are a number of barriers to treaty adoption and national implementation of treaty commitments. Case studies from four Caribbean countries (Caribbean Law Institute, 1998)<sup>6</sup> have identified these constraints for treaty adoption as:

- Limited financial, technical, and human resources;
- Lack of political priority on environmental protection and sustainable development;
- Lack of information and understanding of treaty benefits and costs; and
- Lack of a national focal point responsible for treaty acceptance.

Constraints for national implementation of treaty commitments were identified as:

- Lack of expertise and inadequate financial and human resources in line departments to “champion” legislative follow-up and enforcement;
- Tendency of international financial institutions to support projects rather than long-term institutional capacity-building;
- Other political priorities; and
- The lack of comprehensive, framework environmental legislation.

The only regional environmental convention in place is the Cartagena Convention, and its attendant protocols. The Cartagena Convention was adopted in 1983, providing the legal instrument for the implementation of the Caribbean Action Plan; itself adopted in 1981 by 33 governments of the Wider Caribbean Region. The SPAW Protocol to the Convention is

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<sup>6</sup> Caribbean Law Institute, 1998. Implementation of Marine and Environmental Treaties in Organisation of Eastern Caribbean States: Case Study Reports for Antigua and Barbuda, Dominica, St. Kitts and Nevis and St. Vincent and the Grenadines

identified as a key biodiversity-related instrument, and relevant provisions will be incorporated in the OECS draft frame harmonised legislation on biodiversity supported by this Project.

### **3. Digest of Biodiversity Agreements**

Our understanding of sustainable development has evolved in response to the new awareness of biodiversity in terms of public and political consciousness. Hence, it is now widely accepted that development can only be considered sustainable if it sustains the critical mass of biological organisms on the planet. The scientific information regarding the number of species, species' interactions, and population trends is still relatively weak, yet even conservative estimates point to an alarming decline in the number of species around the world.

There are many international instruments in the form of resolutions, declarations and conventions that deal with the subject of biodiversity. This Project focuses on the following MEAs –

- ***United Nations Convention on Biological Diversity*<sup>7</sup> (CBD)**
- ***The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar)*<sup>8</sup>**
- ***Convention on International Trade in Endangered Species of Wild Fauna and Flora*<sup>9</sup> (CITES)**
- ***Convention on the Conservation of Migratory Species of Wild Animals*<sup>10</sup> (CMS)**
- ***Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1990 (SPAW)***
- ***Convention for the Protection of the World Cultural and Natural Heritage*<sup>11</sup>**

The basic objectives and requirements of each MEA are addressed below.

#### **3.1 United Nations Convention on Biological Diversity<sup>12</sup> (CBD)**

The United Nations Convention on Biological Diversity was negotiated in response to the world-wide loss of biodiversity. The Convention focuses on three main items:

- conservation of biodiversity;
- sustainable use of biological resources; and
- sharing the benefits of biodiversity.

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<sup>7</sup> 1992, For more information on the CBD, please see the CBD website at <http://www.biodiv.org>

<sup>8</sup> 1975

<sup>9</sup> 1973

<sup>10</sup> 1979

<sup>11</sup> World Heritage Convention (1972)

<sup>12</sup> 1992

Sharing the benefits of biodiversity refers to the sharing of profits and knowledge between the host nation--which is at the source of the biological resource in question--and the exploiter of the biological resource in question, (which may be an individual, corporation, research institution, or other body). The CBD reaffirms the principle of national sovereignty over natural resources<sup>13</sup> and in so doing makes it incumbent upon Parties to introduce measures at the national level to facilitate compliance with its requirements.

Adopted in 1992 under the auspices of the United Nations Development Programme, the Convention is the first global treaty to provide a comprehensive framework that addresses all aspects of biodiversity – ecosystems, species, and genetic diversity. Through the Convention, Parties work on a wide range of biodiversity issues. It introduces a new strategy for the biodiversity crisis known as the “ecosystem approach”, which aims to reconcile the need for environmental conservation with concern for economic development and therefore organises its analysis and activities around ecosystems – such as forest ecosystems, dryland ecosystems and marine ecosystems. Some of the key issues covered by the Convention include protected areas, biosafety, invasive alien species, and the access to and the sharing of benefits for the use of genetic resources. It is in every respect an ecosystem/habitat instrument, providing as it does for the establishment and management of protected areas as well as the protection of ecosystems and natural habitats.

The Convention places upon Parties the duty to conserve biodiversity within their jurisdictions, as well as outside their jurisdictions in certain cases<sup>14</sup>. They are charged with responsibility for the formulating and implementing strategies, plans and programmes for the conservation and sustainable use of biodiversity<sup>15</sup>. The Convention asserts the precautionary principle, which advocates a preventive approach to conservation, as well as the taking of prudent actions even when the conclusive scientific evidence of damage has not yet been received. State Parties are also required to apply environmental impact assessment in respect of biodiversity<sup>16</sup>. The CBD makes detailed provisions on matters such as research and training for biodiversity conservation, key ingredients for its successful implementation in OECD States.

### ***3.2 The Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar)<sup>17</sup>***

This Convention was the first global instrument to address the conservation of a particular habitat, wetlands, rather than a species. Ramsar directly promotes conservation of biodiversity by seeking to maintain the ecological integrity of wetlands and to promote resource development. It recognises the fundamental ecological function of wetlands, including biological productivity and their economic, cultural, recreational and scientific values.

With respect to implementation, the Convention requires national efforts to be taken to secure wetlands and requires State Parties to designate at least one national wetland for inclusion on the

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<sup>13</sup> Art.3

<sup>14</sup> Art. 4

<sup>15</sup> Art. 6

<sup>16</sup> Art. 14

<sup>17</sup> 1975 For more information on the Ramsar convention, please see the Ramsar website at <http://www.ramsar.org>

List of Wetlands of International Importance<sup>18</sup>. The Convention addresses issues of ecosystem and habitat as well as species. Ramsar recognises the need for actions at local, national and regional levels in order to effectively implement its provisions to be maintained. Parties are encouraged to develop wetland policies and guidelines to assist them in implementing the Convention's requirements.

The Ramsar Convention is not a regulatory regime and therefore has no punitive sanctions for violations of or defaulting upon treaty commitments.

### ***3.3 Convention on International Trade in Endangered Species of Wild Fauna and Flora<sup>19</sup> (CITES)***

The CITES Convention seeks to ensure that international trade in specimens of wild animals and plants does not threaten the survival of the species traded. Under CITES, Parties are required to designate one or more management authorities to be responsible for administering the Convention, and one or more scientific authorities to advise on technical issues. Parties are required to adopt national legislation that prohibits and penalises international trade in specimens in violation of the Convention and provides for the confiscation of specimens illegally traded.

The Convention's scheme of biodiversity protection is based on 3 Appendices –

Appendix I – includes all species threatened with extinction that are or may be affected by international trade;

Appendix II – includes those species that are internationally traded which may in the future be threatened with extinction;

Appendix III – includes other species that any Party identifies as being subject to regulation within its jurisdiction and needing the cooperation of other Parties in the control of trade.

CITES Parties are asked to consider opportunities for synergy between CITES and CBD as well as appropriate cooperation and collaboration between the two Conventions.

The implementation of CITES involves 2 different interests – wildlife conservation and foreign trade, each of which may have its own specific regulatory regime legislation, institutions and procedures within a State Party. Each Party is required however to have national legislation in place to implement both aspects as they pertain to the goal of the Convention.

### ***3.4 Convention on the Conservation of Migratory Species of Wild Animals<sup>20</sup> (CMS)***

Like CITES, this Convention has a species focus – the conservation and effective management of species that migrate across or outside national jurisdictional boundaries. It recognises the intricate interplay between ecosystems and species conservation and it provides for a wide range of measures for the protection of migratory species in oceans, freshwater, wetlands, deserts and

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<sup>18</sup> Art. 2.

<sup>19</sup> 1973 For more information on CITES, please see CITES website at <http://www.cites.org>

<sup>20</sup> 1979 For more information on CMS, please see CMS website at <http://www.cms.org>

mountains. Appendix I of the Convention carries a list of endangered migratory species for which range states have to provide strict protection.<sup>21</sup> Appendix II includes species that would significantly benefit from international cooperation such as would be achieved through an international agreement. Protective measures for such species include the conservation or restoration of their habitats and the removal of threats and impediments to their movements.

The Convention requires the establishment of a Scientific Council to provide advice on scientific matters pertaining to endangered migratory species. CMS has relied on species-specific agreements to implement its provisions between Parties and non-Parties.

### ***3.5 Protocol Concerning Specially Protected Areas and Wildlife (SPAW) to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, 1990<sup>22</sup>***

The *Cartagena Convention* provides an overarching framework to ensure sound management of the marine and coastal areas of the Wider Caribbean Region. Its SPAW Protocol to the *Cartagena Convention* addresses many aspects of biodiversity, including protection of endangered species from destruction of habitat, protection of habitats, and establishment of protected areas to safeguard important ecosystems. The Protocol also contains facilitative provisions that include cooperation in the development of guidelines for the conservation, maintenance or restoration of specially protected areas of biological, ecological, scientific, historic, cultural, recreational, archaeological, aesthetic or economic value and involvement of the public in the taking of conservation initiatives.

Under the Protocol a Party is required to institute a wide range of measures beyond the main conservation objective<sup>23</sup> to achieve the objectives for which the protected area was established. These measures include the regulation of waste discharges, the passage of ships, fishing, hunting, the introduction of non-indigenous species, archaeological activities, trade in, and import and export of threatened or endangered species of flora and fauna, industrial activities and tourist and recreational activities. Generally the SPAW Protocol reiterates and contextualises principles and scope of activities that already exist in the selected MEAs.

The SPAW Protocol has accorded priority to the provisions of CITES and CMS regarding the rights and responsibilities of Parties.<sup>24</sup> This provision is of key significance in selecting the provisions that are appropriate for inclusion in the draft frame harmonised instrument, because if there is conflict between provisions in SPAW and provisions in either CBD or CITES, the provisions in the global MEA control.

### ***3.6 Convention for the Protection of the World Cultural and Natural Heritage<sup>25</sup> (World Heritage Convention (WHC))***

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<sup>21</sup> Art. III

<sup>22</sup> 1990. For more information on the SPAW Protocol, please see the SPAW website at

<sup>23</sup> Art. 5

<sup>24</sup> Art. 25

<sup>25</sup> World Heritage Convention (1972) For more information on the World Heritage Convention, please see the WHC website at <http://www.unesco.org/whc>

The World Heritage Convention is the primary international instrument that establishes rules for the conservation of cultural and natural heritage. It does so by establishing a “system of collective protection of the cultural and natural heritage of outstanding universal value, organised on a permanent basis and in accordance with modern scientific methods.”<sup>26</sup>

The creation of an international list of places to protect is also one of the characteristics of WHC. WHC is the primary international instrument establishing rules for the conservation of cultural and natural heritage. It seeks to establish an effective system of collective protection of the cultural and natural heritage of outstanding value requiring Parties to integrate the protection of their natural heritage into their national planning programmes, to set up services for the protection of their heritage, to develop scientific and technical studies and to take the necessary financial, legal, technical and scientific steps to protect their heritage.<sup>27</sup>

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<sup>26</sup> UNEP, “Handbook on the Implementation of Conventions on Related to Biodiversity in Africa,” from Partnership for the Development of Environmental Laws and Institutions in Africa Project, Chap. 2, Pp.6

<sup>27</sup> Art. 5

## ***SUMMARY OF COMPARISONS OF SELECTED MEA's***

- Most of the conventions contain provisions that seek to protect (a) ecosystems/habitats or (b) species.
- CITES, CBD and SPAW establish broad conservation strategies. Conservation of biodiversity falls within the objectives of SPAW and thus overlaps considerably with CBD.
- Biodiversity conservation is central to Ramsar, SPAW and CBD particularly with respect to inland/freshwater systems and coastal and marine ecosystems.
- CMS like Ramsar seeks to protect species in wetlands.
- CITES and CMS have species focus – the conservation and effective management of particular listed species. CMS focuses on species that migrate across or outside national jurisdictional boundaries while CITES focuses on species affected by trade. CBD and SPAW also address species directly.
- CITES and CMS also provide for various technical and scientific bodies to provide advice on scientific matters.
- SPAW covers both habitat and species and like CITES requires Parties to create national legislation to enforce its requirements.
- CITES focuses on international trade issues of flora and fauna.
- CBD however covers all biological diversity as well as both in situ and ex situ conservation globally.
- While WHC is concerned with all kinds of cultural and natural heritage for the purposes of this study the relevant provisions –relating to natural heritage- generally are place-based protections linked to ecosystems and/or habitats. The Ramsar Convention and SPAW Protocol also emphasize habitats.
- SPAW also has other links to WHC, as it also addresses archaeological and cultural priorities.
- CBD addresses matters of species, genetic resources, the management of protected areas, the protection of ecosystems and natural habitat, the promotion of sound technology and sustainable development in areas adjacent to protected areas and other related issues. In comparison, CITES, CMS SPAW are more focused in their objectives than CBD.
- CBD is the only instrument which, apart from providing the most comprehensive framework for all forms of biodiversity, devotes several articles to access to genetic resources.

The results of the comparisons made among the selected MEAs make it clear that the scope and coverage of each instrument spreads over several categories of interest as well as broad objectives to protect and conserve genetic diversity, species diversity and habitat/ecosystem diversity and thus cannot be neatly place into a specific category. Moreover the scheme for conserving biodiversity adopted thus far at the international level has invariably proceeded on the basis of the interdependence of species, habitats and ecosystems. Indeed the “ecosystem approach” was expressly adopted as a guiding principle at both the third and fourth Conferences of the Parties to the CBD.

### ***3.7 General Considerations in Developing National Implementing Legislation***

One challenge to the implementation of MEAs in OECS countries is to determine which of their provisions are to be included in national implementing legislation. As mentioned earlier, a treaty once adopted and entered into force requires Parties to give it fulfilment under their domestic policy, legal and administrative framework. The law of the Caribbean for the most part knows nothing, generally speaking, of self-executing treaties: the operating assumption is that

legislation is required to give the force of law to environmental treaty obligations. For OECS this is the practice<sup>28</sup>. Thus the entry into force of a treaty that it has ratified/acceded to does not automatically form part of its domestic legislative framework. This doctrinal disconnection between international environmental treaties and Caribbean domestic law means that, although influenced by developments at the international level, national implementing legislation must be prepared to incorporate the compatible elements of the treaty into the law of the land. The critical need for incorporating legislation was illustrated in the matter of *Natural Resources Conservation Authority v. Seafood and Ting Ltd.*<sup>29</sup> According to the facts of the case the CITES Convention listed the Queen Conch in Appendix II as a species for which contracting states are not to allow its export without the prior grant of an export permit. Jamaica acceded to CITES in 1997. In upholding a challenge by exporters, the Court of Appeal held that in the absence of local legislation incorporating CITES into domestic law, the permit system sought to be upheld was invalid.

The advantages and disadvantages of the conservation of biodiversity at the global level are quite evident. An MEA which aims at the participation of all States will probably be drafted in more general terms to be able to cover all the various situations that may arise and in softer terms in order to obtain the consent of a greater number of Parties. On the other hand, because of the transboundary character of species and threats, even a very strict protection adopted by some States might be frustrated if other States do not comply with the protective measures.

Biodiversity-related MEAs share some common features. Usually they contain general obligations to protect species and habitat and are often completed with one or more annexes which specify the object of the conservation and the listing the endangered species or the places covered by the MEA. The Ramsar Convention, WHC, CITES and CMS provide good examples in this regard. Another common feature of the biodiversity-related MEAs is the possibility of departing, lawfully, from the provisions of the treaties themselves where their implementation depends on the particular national circumstances and priorities of each Party, as well as on the resources available to them. For this reason, on the one hand, the wording of the MEA is sometimes quite soft; terms like “shall endeavour, in so far as possible” (Art. 5 of CMS), “shall endeavour” (Art. 4.4 of Ramsar) refer to the conditional mood “should” instead of “shall” are frequently employed. On the other hand, exceptions are explicitly provided for under certain circumstances. In these cases, Parties have to balance their different necessities in order not to frustrate the scope of the MEA. Exceptions are usually for scientific purposes, for the propagation of species, for extraordinary circumstances and national interests. The CBD, CITES and CMS, as examples, however tend to prevent these abuses by restricting the possibility of exceptions and by subordinating them to more stringent requisites.

From the point of view of coordination, the coexistence of both regional and international treaties could create problems, for instance when the same species or the same area are covered by different provisions of two or more treaties. However in accordance with the relevant customary rules concerning the application of successive treaties relating to the same matter and although SPAW covers items already addressed in other global instruments, a general criterion to resolve coordination problems should they arise during the drafting exercise might be that of

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<sup>28</sup> “Multilateral Environmental Agreements (MEA) Implementation in the Caribbean, UNEP, July 2000

<sup>29</sup> See generally: Winston Anderson, “treaty Implementation in Caribbean law and Practice”, Vol. 8 No. 2 The Caribbean Law Review, 185.

making the more protective measures prevail over others. This coordination is obviously possible among the selected MEAs. For instance CMS could be used to protect migratory species living in areas covered by WHC (which does not contain specific provisions for the protection of wild animals); the enforcement of the Ramsar Convention could be improved if wetlands were included both in the List of Wetlands of International Importance and in the World Heritage List in order to profit by the system of funding and assistance of the WHC; the protection of migratory species covered by CMS could be strengthened by the application of CITES to the same species, and so on. The same could happen therefore between SPAW, a regional Convention and CBD a global convention.

The SPAW Protocol has accorded priority to the provisions of CITES and CMS<sup>30</sup> as regards the rights and responsibilities of Parties. This provision is of key significance in selecting the provisions that are appropriate for inclusion in the draft frame harmonised instrument. Indeed CBD and the Ramsar Secretariats have a signed Memorandum of Cooperation between them which recognises that the two treaties have several areas of common interest. But unlike SPAW, the Parties have not agreed upon which of the treaties will be accorded priority in the event of conflict between their respective provisions.

The CITES Convention carries the strictest legal obligation as regards the areas for which Parties must take legislative measures. These include measures to –

- Designate Management and Scientific Authorities;
- Prohibit trade in specimens in violation of the Convention;
- Penalise prohibited trade, and
- Provide for the confiscation of unlawfully traded or possessed specimens.

Other MEAs are less specific and generally express the obligation to introduce legal measures in very general terms leaving it to the Parties to introduce a range of legal measures it considers appropriate to conserve biodiversity and to enforce its requirements. The challenge in these instances is for the legislative draftsman to examine each treaty's provisions to determine what requirements should be adopted in national legislation to meet the goal of treaty implementation. Some related activities which are not specifically identified as requiring legislation such as national programmes, provisions for research and monitoring may be more likely to be enforced if they are established as legal requirements.

One of the first steps for most of these agreements is the development of implementing legislation. Countries can adopt separate legislation and regulations for each MEA, thus (for example) producing six different laws implementing the CDB, CMS, CITES, Ramsar Convention, WHC, and the SPAW Protocol. Because of the closely related issues and approaches, though, a more coherent and integrated approach may be preferable. This draft report identifying the elements for inclusion in draft frame harmonised legislation on biodiversity that follows, provides one such approach. The report seeks to identify, abstract, and group the key principles and requirements of the selected MEAs. In this process, the analysis also assesses the quality of the obligation (whether it is a precise or a general obligation, as well as whether the provision is mandatory or encouraged) and also its workability within OECS implementing

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<sup>30</sup> Art. 25

countries. This bottom-up approach provides an opportunity to assess the constraints that may arise in the integration of each central requirement on a case-by-case basis.

#### ***4. A Conceptual Framework for Grouping Requirements of Biodiversity-Related Environmental Agreements***

Due to scarce human, technical and financial resources, OECS and small island developing countries face challenges in the implementation of MEAs to which they have become a Party, significant among which is the obligation to enact national legislation to implement MEA requirements. In cases where national legislation has been required to implement an MEA, the approach that OECS countries have adopted has been to prepare distinct enactments for each MEA, notwithstanding synergies and areas of overlap that may exist between them.

This part of the report puts forward a mechanism to ensure that national legislation to implement the selected MEAs is achieved in a coordinated, harmonised and efficient manner. The Report undertakes an examination of the selected MEAs to ascertain –

- (a) the main areas of overlap (areas that are common to each of the selected MEAs);
- (b) the suitability of grouping their provisions, taking into account pre-existing institutional features, culture and political arrangements, and
- (c) the main principles and guidelines embodied in each convention with a view to incorporating them into a single regional or national legal framework.

At present, a universal convention dealing with the protection of all endangered species and their habitats does not exist. A cursory inspection of the selected MEAs however reveals that collectively a high degree of protection does for species and habitat does exist. Numerous incidences of synergies and overlap occur between the MEAs, making the likelihood that grouping the agreements into a single instrument will prove beneficial and workable, without too many political, institutional, cultural or other constraints.

The key measures that Parties are obliged to adopt from the context of legal coordination and harmonisation across the selected MEAs are tentatively grouped under the following elements:

- General obligations
- National Planning for protected areas (including environmental impact assessments)
- National Planning for species conservation
- Institutional Framework
- Access to and Exchange of Information
- Reporting Requirements
- Public Education, Awareness and Participation
- Enforcement and Penalties
- International Cooperation Measures

##### ***4.1 General obligations***

Several resolutions and declarations bear significance to the conservation of biodiversity. They may be used to convey the spirit and intention of the MEA and can add value to the interpretation of treaty provisions. From the perspective of national legislation though they are not “legally binding” on their own, they can influence and provide persuasive authority when incorporated within a legislative enactment. Instruments in this category include the Rio Declaration on Environment and Development, upon which common conservation principles are based including such fundamental principles as the protection of the interests of future generations, the preventive approach to containing biodiversity loss and the commitment to the maintenance of the support systems of the biosphere, the World Conservation Strategy (launched in 1980), the World Charter for Nature (1983) and the Rio Declaration and Agenda 21 (1992). Such instruments have influenced the shaping of national development policies touching upon conservation. Indeed the Rio Declaration has become the cornerstone instrument from which the Barbados Programme of Action and the OECS St. George’s Declaration have been moulded and upon which national sustainable development programmes have been constructed.

Traditional legislative drafting practice does not embrace statements or declarations of the Rio type. They are considered to be un-implementable and thus inappropriate for inclusion within sectoral legislation. Within recent times there has been a shift in this practice as evidenced by the Environmental Protection Act, 1996 of Guyana and the Trinidad and Tobago Environmental Management Act, 1995 both of which contain references to the Rio principles in preambles to the respective Acts. The most significant of the conservation principles are the following:

Sustainable development: This is a general element present in all the selected MEAs. It includes the precautionary approach, the commitment to the maintenance of the life support systems of the biosphere and the protection of the interests of future generations;

Commitment to scientific research: The MEAs rely on scientific knowledge as the basis for biodiversity conservation. Linked to this principle are provisions regarding research, scientific and technical education and training and capacity-building in national institutions for the use of appropriate technologies in conservation initiatives;

Access to genetic resources and conservation technologies: Effective conservation requires the availability of appropriate technologies and the equitable sharing of benefits;

Indigenous Knowledge: There should be fair compensation to developing countries for their endeavours in conserving of genetic resources;

Protective public management: Requires national governments to ensure that conservation measures are built into national planning and development activities inter alia, by –

- (a) establishing special conservation areas;
- (b) undertaking both in-situ and ex-situ conservation of biodiversity;
- (c) involving the public in the conservation of biodiversity;
- (d) including for criminal and civil sanctions in the regulatory framework;
- (e) establishing a legal and institutional and institutional framework for the coordination of biodiversity,

- (f) ensuring that the overall scheme of biodiversity is synergistic and based upon a partnership involving government, communities, non-governmental organisations and individuals.

Education and awareness: The involvement of civil society is fundamental to the success of biodiversity-related programmes.

Consideration should be given to the inclusion of the conservation principles within the preamble of the OECS draft frame biodiversity law.

#### ***4.2 National planning for protected areas (including environmental impact assessments (EIA))***

CBD defines ecosystem as “a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit”. Based on this overarching definition, any consideration of ecosystem will also generally address habitat. Management plans constitute an important tool of control in the context of planning for the implementation of long term measures for biodiversity. When preparing such instruments, it is fundamental to ensure that the various articles of the biodiversity-related agreements and the thematic areas are taken into account for future generations.

While reliance upon environmental impact assessments (EIA) as a pertinent tool to implement planning requirements under the selected MEAs is clearly implied, CBD makes an express requirement for Parties to introduce procedures requiring EIA of their proposed projects that are ‘likely to have significant adverse effects on biological diversity’. It went further to recommend that issues related to EIA be integrated into relevant CBD work programmes and point to the obligation to establish national biodiversity action plans, strategies, programmes and guidelines. In the OECS land use planning mechanisms have advanced to include land use planning, integrated coastal zone management, sea use planning and special area protection as well as national implementation plans required by various MEAs.

CBD states its requirements in general terms, mandating few specific obligations for Parties to undertake. Articles 6 to 20 of the CBD<sup>31</sup> (with Article 6 establishing a main obligation on Parties to develop national biodiversity strategies, plans or programmes) are indicative of the need for biodiversity planning regimes to be established to give effect to the Convention’s requirements. In establishing protected areas (which range from natural habitats, flora and fauna to the maintenance of environmental stability of buffer zones), CBD Parties are required to promote recovery of and regulate or manage processes and activities that have significant adverse effects on biodiversity.

Although the major focus of CITES is to regulate international trade in wild animal and plant species it does have an impact on biodiversity. Like CBD it encourages Parties to restore degraded ecosystems and promote the recovery of threatened species. These requirements can be assimilated in the biodiversity planning framework. Also under CMS States are to develop strategic plans as a basis for implementing activities under the Convention.

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<sup>31</sup> ‘Handbook of the Convention on Biological Diversity’, CBD Secretariat, Earthscan, 2001.

The Ramsar Convention primarily deals with habitat, but in a significant measure, also with ecosystem protection. Similar planning requirements are included under Ramsar in the form of Guidelines for the development of National Wetland Policies which are required under the Convention. Indeed due to the centrality of biodiversity conservation in the Ramsar Convention, the secretariats of the CBD and Ramsar have adopted a Joint Workplan which recognises that the two treaties have common interests. The SPAW Protocol contains a wide range of activities which are appropriate for inclusion within the biodiversity planning framework especially as regards the establishment of protected areas. It puts in place a regional focus for the enforcement of general conservation principles already established in global conservation instruments. Criteria for WHC site selection include the objective of protecting threatened species. Buffer zones have also been recognised as important to biodiversity planning in the WHC.

Most systems of protected areas are categorised according to the 6 areas defined by the IUCN Guidelines for Protected Areas Management<sup>32</sup>. The United Nations has provided a list of Protected Areas in order to provide a single and definitive list of protected areas, classified according to a system defined by the IUCN World Commission on Protected Areas (WCPA). OECS countries should consider the criteria established by the Guidelines when instituting protected area regimes.

The relevant provisions of the selected MEAs that OECS State Parties should include national implementing legislation is summarised in Table I.

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<sup>32</sup> See [http://www.unep-wcmc.org/protected\\_areas/UN\\_list/index.htm](http://www.unep-wcmc.org/protected_areas/UN_list/index.htm)

**TABLE 1 – National Planning for Protected Areas**

Name of MEA	Elements of MEA or Related Instrument	Status of Req't	Comments/Recommendations re: National Implementing Legislation
CBD	<p>Art. 6 – Urges Parties to develop national biodiversity strategies (NBSAPs), plans or programmes and to integrate the objectives of the convention into relevant sectoral or cross-sectoral plans, programmes and policies</p>	Mandatory, specific	<p>OECS countries have prepared NBSAPs within which priorities are established. Their inclusion within the draft frame law will give their provisions the force of law. UNESCO's Man &amp; the Biosphere Programme (MAB) provides guidance at the national level on mechanisms for integrating biosphere reserves into conservation planning envisaged by Art. 6 of CBD and should be considered.</p>
	<p>Art. 2, Art. 8(a), (b), (c) (d), – Requires Parties to establish, regulate and manage a system of protected areas.</p>	Mandatory, specific,	<p>CBD regards a system of protected areas as a central element in the conservation of biodiversity. Regulations should enact procedures for the establishment of protected areas, mechanisms to involve stakeholder and public participation, methods for integrating biodiversity into sectoral plans. Under WHC and CBD some protection through buffer zones around protected areas is required. Overlap between the designation of areas to protect species/habitats under Ramsar, SPAW, and sites under WHC. Measures for the conservation of forests and vegetation and the protection of water catchment areas based on IUCN Guidelines for Protected Areas Management should be included in the draft frame law.</p>
	<p>Art. 14 – Parties must introduce procedures requiring EIAs of proposed projects.</p>	Mandatory, specific	<p>Information obtained in the OECS NBSAP process should be linked to EIA provisions in the draft frame law. Environmental consequences of governmental plans and policies likely to have an adverse effect should also be considered for inclusion in the process. Regulations should also be developed for the management of adverse processes and activities.</p>
	<p>COP IV asked the secretariat to collaborate with the Ramsar Bureau, the secretariat of the CMS and other organisations on the topic of impact assessment.</p> <p>Decision II/7, paras 2, 5 – Requires Parties to take into account other relevant guidelines when preparing and implementing their national strategies.</p>	General, encouraged	<p>This requirement is closely linked to the central conservation objectives of CBD and indirectly in the other biodiversity-related MEAs</p>

			<p>This general requirement is closely linked to the central conservation objectives of CBD and indirectly in the other biodiversity-related MEAs</p> <p>Information generated through the NBSAP process should be used to identify priority components of biodiversity for the country and be linked to EIA regulations. CBD COP 6 endorsed guidelines for incorporating biodiversity-related issues into EIA legislation and/or processes. These guidelines should be incorporated in EIA regulations of OECS States.</p>
CITES	<p>Art. II – V – Requires Parties to prohibit international trade in wild animal and plant species.</p> <p>Art. III - lists “all species which any Party identifies as subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation”.</p>	Mandatory, specific	<p>Links with Art. 8 (f) of CBD and Art. 3(2) of SPAW which require Parties to rehabilitate and restore degraded ecosystems and promote the recovery of threatened species through plans or other measures. Obvious gap is that CITES does not cover domestic trade and consumption with countries. The draft law should cover the regulation of national trade.</p> <p>Art II links also with Art. 8(f) of CBD which also requires Parties to regulate or manage those processes and activities that have a significant adverse effect’ on biodiversity, which may include trade.</p>
CMS	<p>Art. II – Establishes the main obligation of its Parties – to take action to protect and conserve migratory and to avoid any becoming endangered.</p> <p>CMS Resolution 6.4, paras. 3 and 7 - CMS Parties are requested to use the CMS Strategic Plan as a basis for defining and</p>	<p>Mandatory, specific</p> <p>Encouraged</p>	<p>The draft law should include coverage for conservation and protection of migratory species in national biodiversity plans, the establishment of protected areas, buffer zones and other natural resource planning activities. CITES species should also be considered when establishing a national list of endangered species under CMS Appendices.</p> <p>National economic sector plans that have a significant impact on migratory species should be reviewed. OECS countries can accomplish</p>

	<p>implementing national activities under the Convention.</p> <p>Art. III, para. 4(b) &amp; Appendix I – indirectly establish the duties of Parties to undertake EIAs to prevent, remove or minimise the adverse effects of activities in the migration of Appendix I species.</p>	Encouraged	<p>this during the preparation of NBSAPs under CBD.</p> <p>EIA regulations should make provisions that include the conduct of EIAs in respect of the migration of Appendix I species.</p>
RAMSAR	<p>Art 2.2 – Requires Parties to designate suitable wetlands based on their international significance in terms of established criteria.</p> <p>Art. 3.1 - Parties have an obligation to ‘formulate and implement their planning so as to promote the conservation of wetlands included in the List, and as far as possible the wise use of wetlands in their territory’.</p> <p>COP 7 , Resolution VII.16 on impact assessment requires Parties to ensure that plans, projects, programmes and policies likely to alter the ecological character of wetlands are subject to EIA. Such procedures should be formalised under policy, legal, institutional and administrative arrangements</p> <p>Wise Use Guidelines – Urges Parties to conduct legal and institutional review of national and local laws impacting upon the conservation and wise use of wetlands.</p>	<p>Mandatory, specific</p> <p>Mandatory, specific</p> <p>Encouraged</p> <p>Encouraged</p>	<p>The criteria for selection of Wetlands should be included in regulations. CBD COP Decision III/21, para. 8 promote coordination with Ramsar requirements for the conservation and sustainable use of wetlands.</p> <p>Guidelines for developing and implementing National Wetland Policies were developed to assist Parties in their planning to promote conservation of wetlands. OECS States should integrate the provisions of these Guidelines within coastal zone planning and management policies. National regulations to establish the procedures and mechanisms established in the Guidelines should also be prepared.</p> <p>EIA regulations should include provisions for EIA procedures regarding wetlands.</p> <p>A specific timeframe for this review should be established in the draft law. The review will identify conflict, gaps or unclear areas in other sectoral legislation that may affect wetlands; may require amendment of national laws and institutions to ensure compliance with Guidelines.</p>
SPAW Protocol	<p>Art. 3 (1)– Requires Parties to take measures to protect, preserve and manage areas that require protection to safeguard their special value; and threatened or endangered species of flora and fauna.</p>	Mandatory, specific	<p>Requirements should be harmonised with those for protected areas and species under CBD, CITES, CMS and Ramsar. Need to ensure that the decisions and actions of all government agencies are consistent with</p>

	<p>Art. 3(2) – Parties shall regulate and prohibit activities having adverse effect on these areas and spaces</p> <p>Art 3(3) – Parties to manage species of flora and fauna with the objective of preventing them from becoming endangered.</p> <p>Art. 4, 6 – Requires Parties to establish protected areas in order to conserve and restore coastal and marine areas, habitats critical to the survival of endangered or endemic species of flora and fauna, areas of special biological importance.</p> <p>Art. 13 – Each Party is required to evaluate the possible and direct impacts of projects</p>	<p>Mandatory, specific</p> <p>Encouraged</p> <p>Mandatory, specific</p> <p>Mandatory, specific</p>	<p>the draft frame law which implements the Protocol.</p> <p>Trade in endangered species similar to CITES Appendices should be included in the list of prohibited activities for which severe penalties will be incurred.</p> <p>The management framework for protected areas established under the selected MEAs should similarly apply to those under SPAW.</p> <p>This requirement encompasses those established in the other selected MEAs, with specific reference to coastal and marine areas. Ramsar wetland areas can also be included. A clear statement of management policies and objectives for a system of protected areas including coastal and marine areas is recommended taking into account the criteria for the selection of a protected area that are consistent with the objectives set out in Article 4.2..</p> <p>The draft frame law should expand this obligation to require EIAs for all projects that are likely to have a negative environmental impact.</p>
WHC	<p>Art. 5(a) – Parties are encouraged to integrate the protection of the cultural and natural heritage into their planning programmes.</p> <p>Art. 5(d)- Parties are required to take appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of their cultural and natural heritage.</p>	Encouraged , permissive	<p>OECS States should establish a Tentative List of natural and cultural properties sites and a management plan for these sites. These sites should be brought under the umbrella of protection afforded protected areas under CBD.</p> <p>The network of biosphere reserves provides a useful tool for the conservation of biodiversity. Its provisions should be considered in establishing the protected areas system envisaged under Art. 2.2 CBD.</p>

### ***4.3 National Planning for Species Conservation***

The enforcement of every treaty on environmental matters can more or less directly improve the conservation of species or of some parts of it. The basic scheme of species conservation is established in several MEAs including those that have been selected for this study. However the shifting focus of conservation strategies towards the “ecosystem” framework established by CBD perhaps tends to give species-oriented conservation initiatives a low priority. CBD is the leading MEA on the conservation of species. It lays clear emphasis on in-situ conservation of species, and requires Parties to undertake in-situ conservation measures to complement ex-situ measures where appropriate.

CMS places obligations on Parties for the conservation of migratory species and requires Parties to take steps to ensure that migratory species are not endangered, special attention being paid to species whose conservation status is unfavourable. CMS Appendices include endangered migratory species, and migratory species that have an unfavourable conservation status. SPAW like CITES and Ramsar are concerned with both habitat and species requiring Parties to undertake measures to protect and maintain environments that are suitable for species conservation. Art 2 of WHC defines “natural heritage” to include areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation and requires its Parties to identify and delineate the different areas of its property that fall within that category.

In preparing the draft frame law on biodiversity, considerations of trade and trade relations such as introduced by the CITES Convention and indirectly by CBD should be carefully considered. Matters of trade usually are within the ambit of central government and in some instances touch on bilateral or relations that are already shaped by trade practices. Notwithstanding, the draft law should include provisions that honour the treaty responsibilities of OECS States.

The relevant provisions of the selected MEAs relating to species protection for which provisions should be established in the OECS draft frame law are included in Table 2 below.

**TABLE 2 – National Planning for Species Conservation**

Name of MEA	Elements of MEA or Related Instrument	Status of MEA Req't	Comments/Recommendations re: National Implementing Legislation
CBD	<p>Art. 8(d) – Parties are asked to promote the maintenance of viable populations of species in natural surroundings or <i>in-situ</i> conditions</p> <p>Art. 8(f), 9(c), 8(k) – Parties should promote the recovery of threatened species, both in-situ and ex-situ, regulate the protection of threatened species and populations</p> <p>Art. 8(h) – Parties should prevent, control or eradicate alien species that threaten ecosystems, habitats or other species.</p> <p>Art. 7(a)- Parties are required to identify components of biodiversity important for its conservation and sustainable use, taking into account the indicative list of categories that is included in Annex I to the CBD<sup>33</sup></p>	Encouraged, permissive	<p>These provisions are consistent with the overall requirement to conserve biodiversity. The draft frame law should integrate these requirements with those of SPAW, CITES &amp; Annexes and CMS and establish within its provisions.</p> <p>CBD Parties are required also to regulate processes and activities that affect biodiversity, which may include trade. Provisions prohibiting trade along lines similar to CITES should be considered.</p> <p>This requirement is related to Articles 8 to 10. The list of categories that should be identified in legislation and in respect of which measures should be taken for conservation purposes include <u>ecosystems and habitats</u> containing high diversity, required by <u>migratory species</u>, <u>unique biological processes</u>, <u>species and communities</u> which are threatened <u>and genomes and genes</u>.</p>
CITES	<p>Art. II –Prohibits Parties from conducting trade in specimens of species included in Appendix I, II, and III except in accordance with its provisions.</p>	Mandatory, specific	<p>The Convention’s scheme of protection is based on the 3 Appendices. Though dealing with endangered wildlife, CITES regulates directly neither of the 2 main threats affecting wild species – their over-exploitation and the disappearance of their habitats. The draft frame law must arrange lists of wild animal and plant species according to the Appendices. The Convention does not cover domestic trade issues.</p> <p>The draft frame law should introduce measures for domestic trade and consumption within countries including provisions for export restrictions and for the taking of measures against over-exploitation and destruction of habitats.</p>

<sup>33</sup> CBD Annex I “Identification and Monitoring” see at <http://www.biodiv.org/convention/articles.asp?lg>

CMS	<p>Art. I &amp; II – Parties are required to take action to avoid any migratory species becoming endangered</p> <p>Art. IV (4) &amp; V(1)- Encourages Parties to conclude agreements to restore migratory species concerned to a favourable status or at maintaining it at such a status</p> <p>Strategic Plan 2000-2005 – promotes the conservation of migratory species in major animal groups listed in CMS</p>	<p>Mandatory, specific</p> <p>Permissive</p>	<p>Provisions to immediately protect migratory species included in Appendix I – endangered. This provision should be integrated with CITES Appendices</p> <p>OECS States should consider entering into a sub-regional agreement to restore migratory species which are likely to be shared between them given their close proximity.</p> <p>The Strategic Plan expands the scope of the Convention to include birds, marine mammals, marine turtles, terrestrial mammals, bats, fish and other taxa traditionally not covered within the framework of CMS.</p> <p>One significant gap in CMS is that for Appendix I species, it directly provides for protective measures but for Appendix II species it simply constitutes a framework treaty for further agreement to be concluded according to the Guidelines laid down in Art. 5.</p>
RAMSAR	Ramsar COP 7 1999 – Criteria for designating Ramsar sites were established	Mandatory	Criteria for designating Ramsar sites include conditions based the species and ecological communities of the wetland. Specific criteria to designate Ramsar sites based on waterfowl are also established. These criteria should be established in regulations.
SPAW Protocol	<p>Art. 10 (1) - Each Party shall identify endangered or threatened species of flora and fauna and accord protected status to such species.</p> <p>Art. 12 – Parties shall regulate the intentional or accidental introduction of non-indigenous or genetically altered species that may cause harmful impacts to the natural flora and fauna.</p>	<p>Mandatory, specific</p> <p>Mandatory, specific</p>	<p>A list of species that are endangered or threatened should be developed and harmonised with CITES and CMS Lists.</p> <p>A statutory scheme restricting the entry into the country of flora and fauna should be introduced to implement this provision. The scheme should introduce such measures as the identification of ports of entry, inspection and notification processes, licences for importation, authority to prevent the spread of disease and recovery of costs and measures from person responsible for introduction.</p>

WHC		General, encouraged	Operational Guidelines for the Implementation of the World Heritage Convention <sup>34</sup> - Establishes 4 criteria for designating natural heritage sites. The existence of an international list of places to protect has great practical advantages for developing country States like the OECS as they can benefit from the Fund and have access to technical assistance
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<sup>34</sup> As adopted in 1994. See <http://www.unesco.org/whc/nwhc/pages/doc/main.htm>



#### ***4.4 Institutional Frameworks***

Unlike their Caribbean neighbours Jamaica, Guyana and Trinidad and Tobago which have established a single specialised focus dedicated to environmental management and concomitantly MEA implementation, the existing institutional arrangement for <sup>35</sup>the implementation and enforcement of the selected MEAs in OECS States, with the exception of St. Kitts and Nevis, is divided between several government ministries, departments and agencies. In St. Kitts and Nevis, the National Conservation and Environmental Protection Act 1987, 1996 makes the most explicit provisions for the articulation of a lead environmental agency (Department of Environment (DOE)) into the MEA implementation process. The DOE is expressly empowered to negotiate environmental treaties and of implementing environmental policies, programmes and projects in order to achieve sustainable development. Notwithstanding the institutional focus of the DOE, the administration of 6 selected MEAs will require additional resources and new administrative approaches in order to manage their implementation.

Fragmented institutional arrangements for the implementation of treaties have impeded the efforts of OECS States to implement MEAs in an efficient and effective manner and for an exchange of critical information in the development of national programmes. The preparation of a single draft frame biodiversity law incorporating the provisions of 6 selected MEAs will therefore present the need to rationalise the existing arrangements to ensure effective and efficient implementation and enforcement of the national legislation across departments and agencies. One option that has been exercised is to establish a technical focal point for MEA operationalisation. But this too has its limitations as it may lead to over-centralisation of biodiversity-related policies and programmes. The United Nations Development Programme (UNDP) also proposed some institutional options<sup>36</sup>,

- (a) a cross-cutting national committee bringing together key participants;
- (b) separate institution with a coordinating mechanism, and
- (c) a single institution responsible for all instruments.

Either of these options will require high levels of coordination among national institutions and their officials in the national implementation of the selected MEAs to give effect to synergies and inter-linkages between MEAs at the national level. In OECS States however different government departments discharge responsibilities for the implementation of various aspects of biodiversity. These departments often lack the required level of coordination or even means of communicating with each other for effective implementation of MEAs. In recent practice the responsibility for facilitating the fulfilment of Government's international environmental treaty obligations is assigned

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<sup>35</sup>UNEP/ROLAC, "Multilateral Environmental Agreements (MEA) Implementation in the Caribbean, Report and Guidelines, 2000 Pp. 29.

<sup>36</sup> UNDP, "Synergy in National Implementation: The Rio Agreements", submitted to UNU Interlinkages Conference in July 1999. Available at <http://www.geic.or.jp/interlinkages/docs/online-docs.html>

to a national lead environmental agency<sup>37</sup>. In St. Kitts this function is expressly written into its agency mandate<sup>38</sup>.

At the institutional level, grouping the implementation aspects of biodiversity-related of MEAs into a single instrument may result in the combining or relocating of duties previously discharged by different government agencies. This will require political impetus and a clear political mandate. This factor should therefore be considered early in the process before the changes are incorporated in legislation. A sound analysis of the pros and cons of making changes to existing arrangements should carefully be considered to avoid problems that may arise as a result of such grouping of MEAS and will require a case-by-case analysis and evaluation be made.

And while all of the selected MEAs require some form of institutional arrangement, be it a Management and Scientific Authority<sup>39</sup>, National Commission<sup>40</sup>, National Focal Point<sup>41</sup> or Administrative Authority/ National Committee<sup>42</sup> be put in place to administer their requirements, assimilating these responsibilities into one agency could result in too much centralisation and control. So while clustering of common functions may work in a legislative context the same may not hold true for any attempt aimed at clustering of responsibilities into a single agency. The test is therefore to find workable institutional mechanisms that can deliver the expected benefits.

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<sup>37</sup> E.g. the Environmental Management Authority of Trinidad and Tobago.

<sup>38</sup> National Conservation Environmental Protection Act, No. 5 of 1987 augmented by the National Conservation and Environmental Protection (Amendment) Act, 1996.

<sup>39</sup> CITES

<sup>40</sup> WHC

<sup>41</sup> Under CBD, CMS, WHC and SPAW

<sup>42</sup> Ramsar

**TABLE 3 - Institutional Requirements**

<b>Name of MEA</b>	<b>Elements of MEA or Related Instrument</b>	<b>Status of MEA Req't</b>	<b>Comments/Recommendations re: National Implementing Legislation</b>
CBD	<p>CBD does not require the establishment of focal points.</p> <p>Art. 25 – Establishes a subsidiary body to provide scientific, technical and technological advice to the COP on the implementation of the Convention</p>		<p>OECS States have established focal points for CBD to be responsible for several aspects of the Convention. The draft frame law should formalise these arrangements</p> <p>The value of this body to OECS States is as regards providing advice related to conservation of biological diversity. At the national level similar support may be obtained through the scientific and management authorities set up under CITES and CMS.</p>
CITES	<p>Art. IX- Requires Parties to designate one or more Management Authorities competent to grant permits or certificates and one or more Scientific Committees</p> <p>COP 11 2000 – adopted Strategic Vision to strengthen administrative, management and scientific capacities of Parties.</p>	Mandatory, specific	<p>Because of its trade emphasis the duties of these Committees are integral to successful treaty implementation. These Authorities must be vested with the necessary powers and functions and thereby established in law. Care must be taken to appoint suitable members to the Authorities and include measures to promote coordination between the Management and Scientific Authorities.</p>
CMS	Parties are asked to nominate a Focal Point and a Scientific Councillor <sup>43</sup>	General, encouraged	<p>Consideration should be given to rationalising the numbers and duties of the various focal points or other institutional arrangements required by the MEAs bearing in mind the scarcity of resources available in OECS Countries.</p>
RAMSAR	<p>Parties are required to designate a national governmental agency to act as administrative authority of the Convention</p> <p>Recommendation 5.7 of the COP and the Strategic Plan encourages Parties to establish National Ramsar Committees</p>	<p>Mandatory, specific</p> <p>Encouraged, permissive</p>	<p>The agency is responsible for implementing the treaty and is the focal point for communications. These duties must be established in the draft frame law.</p> <p>This Committee could be in-house. No particular need to establish in law.</p>

<sup>43</sup> See at <http://www.wcmc.org.uk/cms>

SPA W Protocol	Art. 21 – Each Party to designate a Focal Point to serve as liason with the organisation on the technical aspects of the implementation of the Protocol.  Art 20- Establishes a Scientific and Technical Committee which shall be responsible for advising the Parties	Mandatory, specific	The Focal Point should coordinate with other similar functionaries under the selected MEAs.  A counterpart national or sub-regional agency should be established in OECS States
WHC	Art 8 – Establishes World Heritage Committees.	Mandatory, specific	Counterpart WHC Heritage Committees/focal points are usually established in Ministries having responsibility for education and culture. Close coordination of functions with other focal points should be ensured.

#### ***4.5 Access to and Exchange of Information***

It is common for MEAs to require Parties to exchange information among them. This is critical not only for government departments but for the public and private sectors. The CBD<sup>44</sup> requires Parties to facilitate the exchange of information relevant to the conservation and sustainable use of biological diversity and in so doing identifies scientific, technical and socio-economic research as information that must be exchanged. Under Ramsar, Parties must transmit information of changes to listed wetlands immediately to the government or organisation serving as the Bureau for the instrument. Likewise, CMS, CITES and SPAW include provisions for exchange of information. CITES has gone even further to require Parties to ‘develop mechanisms to ensure transfer and exchange of information between CITES and other relevant conventions, agreements and associations for species of concern’. All biodiversity-related conventions have even taken a step further to make information available and accessible to the public by placing such information on their websites.

At the national level a recent trend has been to prescribe for the establishment of public registers of information to which the public is given access. Certain transactions such as the grant of permits and licences are even maintained as part of the public record and made available for inspection upon the payment of a nominal fee.

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<sup>44</sup> Art. 17

**Table 4 – Access to and Exchange of Information**

Name of MEA	Elements of MEA or Related Instrument	MEA Status	Comments/Recommendations re: National Implementing Legislation
CBD	<p>Art. 17, 17(2) – Parties should facilitate the exchange of information and exchange results of technical, scientific and socio-economic research as well as information on training and surveying programmes, specialised, indigenous and traditional knowledge taking into account the special needs of developing countries</p> <p>COP Decision III/11 recommends that Parties explore ways to make taxonomic information available to countries of origin</p> <p>Art 18(3) sets up a Clearing House mechanism to ensure that information and technologies are made available to governments on an effective basis.</p>	General, permissive	<p>Institutional measures should be put in place at the national level to systematically gather, analyse and update information.</p> <p>The availability of this information is critical to prepare for attendance at COPs and meetings by OECS States. Focal points should provide access to information by government departments.</p>
CITES	COP11, Cites Action Plan facilitates the development and use of appropriate technologies and information management systems that expedite the collection, submission and exchange of accurate information.	General	The trade aspects are a central element to the implementation of CITES. Also the availability of scientific information is critical to monitor the status of species. Provisions requiring information exchange among Parties are therefore recommended for inclusion in the draft frame law.
CMS	Art V(5)(d) – Parties are required to provide for the exchange of information on the results of statistics on the migratory species concerned	Mandatory, specific	This requirement is fundamental to ensuring that timely interventions are taken to conserve migratory species.
RAMSAR	<p>Art 3. – Requires Each Party to <u>immediately</u> transmit information to the Bureau of any change in the character of any listed wetland</p> <p>Art. 4(3) – Encourages Parties to research and exchange data</p>	Mandatory, specific  General,	<p>To give effect to this requirement OECS States must put institutional mechanisms in place</p> <p>OECS Regulations on information sharing should consider the Ramsar Guidelines related to the sharing</p>

	and publications on wetlands, their flora and fauna.	encouraged	of information.
SPAW Protocol	Specific requirements to exchange information among agencies is established	General, encouraged	SPAW does not specifically recognise the need to share biodiversity-related information with other international agencies. This requirement should be established for OECS national implementing agencies.
WHC	Art. 27 – Requires Parties to strengthen appreciation for cultural and natural heritage properties through educational and informational programmes  Art 28 – Requires Parties to make known the importance of the property for which assistance has been received.	General, encouraged,  General, permissive	OECS States are encouraged to institute informational programmes regarding cultural and natural heritage properties

#### ***4.6 Reporting Requirements***

All of the selected MEAs require Parties to submit national reports to the respective Secretariats providing information on the way MEA compliance is monitored and to measure the success in implementing its provisions. Although the main types of information required by the selected MEAs are not identical in all cases, there is much common ground- recognising the need for cooperation among States and organisations in biodiversity conservation programmes and the need for synergies in decision-making among States, government, communities and non-governmental organisations. As a planning tool for OECS States, meeting reporting obligations at the national level will assist them in better understanding their own commitments, monitor their status of implementation and improve overall MEA implementation.

**TABLE 5 – Reporting Requirements**

<b>MEA or Instrument</b>	<b>Elements of MEA or Related Instrument</b>	<b>Status of MEA Req't</b>	<b>Comments/Recommendations re: National Implementing Legislation</b>
CBD	Art. 26 – Parties must submit reports to the CBD COP detailing the measures they have taken to implement CBD provisions, as well as their effectiveness in meeting the objectives of the Convention.	Mandatory, specific	Meeting the requirement to report to CBD will identify gaps in policy research, technical and financial requirements.  COP 5 adopted a format for national reporting. OECS countries should the format in this guide to do its national reporting <sup>45</sup> . National reports are called for every 4 years giving adequate opportunity to submit a comprehensive report to the secretariat.
CITES	Art. VIII, 7, b – Parties are required to submit an annual report containing a summary of permits and trade in species of the three CITES Appendices. A biennial report on legislative, regulatory and administrative measures to enforce the provisions of the Convention.	Mandatory, specific	The reporting obligation is linked to the implementation of the Convention. To promote compliance with national legislation to implement MEAs the draft frame should require that the reports be made available to the public
CMS	Art. VI – Within 6 months before the COP, Parties must inform the Secretariat, of the measures being taken to implement the Convention. Parties are also required to keep the Secretariat informed of the migratory species listed in any of the Appendices it considers itself to be a Range State.	Mandatory, specific	The obligation is also to inform the Secretariat about their flag vessels operating outside national jurisdictional limits and engaged in activities of taking any of the migratory species. The scope of the draft frame law should cover maritime transport matters. Coordination with maritime authorities is required to implement this requirement.
RAMSAR	Art 5 – Requires Parties to consult with each other about implementing obligations arising from the Convention. They shall endeavour to coordinate and support present and future	General, encouraged	No specific requirement for reporting however Art 5 promotes the exchange of information regarding treaty obligations. OECS State can use the checklist of actions needed for the report to develop procedural rules.

<sup>45</sup> Guidelines for the second national report and thematic reports are available in <http://www.biodiv.org/doc/ref/nr-02-guidelines.asp?lg=0>

	policies and regulations concerning the conservation of wetlands and their flora and fauna		
SPAW	Art. 19 – Parties are required to periodically report to the Organisation on the status of protected areas, buffer zones, and protected species and any changes in their legal status .	Mandatory, specific	Provisions specifying the information that is to be contained in these reports should be prescribed in law..
WHC	Art. 29(1) – Parties are required to give information on legislative and administrative provisions that they have adopted in respect of the Convention. Parties are required to report every 6 years.	Mandatory, specific	A Format and Explanatory Notes for the periodic reporting under WHC <sup>46</sup> sets out the information that should be included in the report.

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<sup>46</sup> See <http://www.unesco.org/whc/reporting/prexpl.htm>

#### **4.7 Public Education, Awareness and Participation**

In the absence of independent legislation guaranteeing access to public information, the promotion of public participation is one of the critical integrative requirements to involve members of the public in the process of integrating environmental concerns in biodiversity planning.

The post-UNCED era has witnessed an ever-increasing involvement of the broad public in law-making as regards environmental matters. Environmental NGO's and indigenous groups have increased their participation and some Secretariats have even formalised relationships with a number of international NGO's such as the World Conservation Union, the World Wildlife Fund and Wetlands International. Ramsar, CITES and CMS include specific obligations for their Parties to involve civil society in their implementation at the national level. Likewise WHC even receives information from civil society on the state of conservation of cultural and natural properties. CMS Agreements all include provisions allowing agencies or bodies with relevant expertise to participate in its Meetings of the Parties. Several provisions of the CBD promote public participation in the implementation aspects of the Convention and its thematic programmes.

In several Caribbean jurisdictions, public participation is statutorily mandated in relation to the requirement for an environmental impact assessment (EIA) or the evaluation of an EIA.

Public education and awareness are essential to establishing an enabling environment for the public to participate in conservation initiatives. CBD, Ramsar and CITES all contain specific provisions that recognise the importance of public awareness to implementation of treaty law. CITES has in its Strategic Vision included the need to promote awareness specific sectors such as the judiciary, local communities, consumer groups, the scientific communities, the media and the broad public in understanding functional ecological systems and the role of biodiversity in these systems.

**TABLE 6 – Public Education, Awareness and Participation**

<b>Name of MEA</b>	<b>Elements of MEA or Related Instrument</b>	<b>Status of MEA Req't</b>	<b>Comments/Recommendations re: National Implementing Legislation</b>
CBD	Art. 13 – Parties to promote understanding of biodiversity and the measures required at the national level. Cooperate with other countries at	Permissive, general	The preamble of the Convention affirms the need for public participation of women which may be included in preamble to draft frame law

	<p>international level</p> <p>In accordance with COP decisions, Parties are urged to supply information on national participatory processes for the activities covered in Art. 15, and 8(j)</p> <p>Art. 23(5) – Provides for the participation of governmental and non-governmental NGO's and agencies to participate at COP meetings in accordance with the COP rules of procedure<sup>47</sup></p> <p>Decision IV/10: Parties should support initiatives that promote stakeholder participation in biodiversity conservation and sustainable use, as well as those that integrate biodiversity conservation matters into their practices and educational programmes.</p>	Encouraged	<p>National programmes to facilitate the full and effective participation of indigenous and local communities and the involvement of the media in the implementation of CBD and other biodiversity-related MEAs should be developed.</p>
CITES	<p>Art XI (7): Admission of civil society to meetings as observers. Observers should take place through a regulated procedure that identifies the expertise of both organisations and individuals representing them.</p>	Encouraged	<p>Similar provision exists in CBD which should be incorporated in the draft frame law on biodiversity.</p>
CMS	<p>Art VII (9): Permits observers to COP meetings</p> <p>CMS Agreements: Include provisions allowing agencies or bodies with relevant expertise to participate in the Meeting of the Parties to these agreements, as observers.</p>		<p>The availability of financial resources to facilitate attendance by observers can be a constraint.</p>
RAMSAR	<p>Ramsar's Outreach Programme on Communication, education and awareness requires</p>		<p>This nominee could facilitate and expedite communications between the Secretariat and the OECS State and assist the Focal Point. This could be done via</p>

<sup>47</sup> Annex to Decision I/1

	<p>Parties to designate a National Focal Point for Wetland Communication, Education and Public Awareness</p> <p>COP 7 formalised the relationship between Ramsar and a several international NGO's to facilitate their participation</p> <p>Recommendation 6.3 – Parties are urged to consider representation of local and indigenous peoples on National Ramsar Committees</p> <p>Resolution VII.2: This Resolution modifies the <i>modus operandi</i> of this body to invite some organisations to participate as observers including indigenous people, and in particular women, in the meetings.</p>		<p>administrative arrangements rather than in law. An online site is also available.<sup>48</sup></p> <p>The Convention's Strategic provides guidance on actions to encourage active participation of local communities.</p> <p>Expert group to allow for gathering and dissemination of information should be established. Ramsar 'Guidelines related to the sharing of expertise and information' should be used to provide directions on the sharing of information.</p>
SPAW Protocol	Art. 16: Requires each Party to give publicity to the establishment of protected areas, in particular to their boundaries, buffer zones and applicable regulations and to the designation of protected species, in particular their critical habitats and applicable regulations.	Encouraged, permissive	<p>Measures to provide for publicity, and the undertaking of ongoing public awareness programmes regarding the significance and value of protected areas and species and applicable regulations should be enacted.</p> <p>Local advisory groups should be promoted.</p>
WHC	<p>Article 5a, WHC: Parties are encouraged to integrate the protection of the cultural and natural heritage into regional planning programmes and adopt measures that give heritage “ a function in the day-to-day life of the community</p> <p>Art. 27: Parties shall endeavour by all appropriate means, and in particular by educational and information programmes to strengthen appreciation and respect of the cultural and natural</p>	<p>Encouraged, permissive</p> <p>Encouraged, permissive</p> <p>Encouraged, permissive</p>	Mechanisms to facilitate public participation should be developed and coordinated with existing and planned programmes as regards the other selected MEAs

<sup>48</sup> See at [http://www.wetlands.agro.nl/ramsardatabase/ramsar\\_quick.html](http://www.wetlands.agro.nl/ramsardatabase/ramsar_quick.html)

	<p>heritage</p> <p>Intergovernmental or non-governmental organisations may attend meetings in an advisory capacity as representatives or observers if they conduct activities in the field covered by the Convention. Representatives of local communities and indigenous groups can participate as members of a State Party delegation.</p>		
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#### ***4.8 Enforcement provisions***

It is usual practice in OECS countries for the Legislature to delegate law making powers to a subordinate authority. It is a method by which the Legislature leaves the detailed provisions required under an Act of Parliament to a Minister, in effect to departmental officials<sup>49</sup>. The power to delegate is now recognised as a constitutional element of the legislative power of Parliament. There are 2 types of delegated legislation. One with which we are concerned and the more common is the power conferred by Parliament on subordinate authorities to put flesh and blood on the skeleton of an Act of Parliament. A major output of this UNEP/OECS Project is to develop frame harmonised legislation on biodiversity. Frame legislation does not address matters of detail such as procedures, guidelines and such other matters which are convenient or necessary to be prescribed for the better carrying out of, or in giving effect to the provisions of an Act, in this case the frame legislation. In this regard a significant element of the legislative framework on biodiversity will be left to regulations and concurrently with this will be a large portion of the enforcement measures that OECS States will take to implement the selected MEAs. A manifestation of this occurs in the legislative framework to implement the CITES Convention in Guyana. The Environmental Protection Act, 1996 establishes the broad frame for all matters of conservation and conferred on the Minister having responsibility for environmental matters, the authority to make Regulations for the better carrying into effect the purposes and principles of the Act. The Species Protection Regulations, 2000 subsequently established the majority and details of the CITES enforcement requirements. The care that must be taken in preparing the draft frame law is to ensure that the enabling power to prescribe Regulations is sufficiently flexible so as incorporate the measures that are necessary for effective legislation to implement the selected MEAs. Much then depends upon the legislative draftsman.

This section of the report identifies the areas for which Parties are required to take specific enforcement measures as Parties to the selected MEAs for inclusion in the draft frame harmonised legislation. The CITES Convention carries the strictest legal obligation as regards the areas for which Parties must institute enforcement measures or even the strictness of those measures. National enforcement measures to enforce CITES in the OECS must cover as a minimum provisions in accordance with Articles II(4), VIII(1) and IX as well as Resolution Conf. 8.4 to -

- designate management and Scientific Authorities;
- Prohibit trade in specimens in violation of the Convention;
- Penalise prohibited trade, and
- Provide for the confiscation of unlawfully traded or possessed specimens.

Other MEAs are less specific and generally express the obligation to introduce legal measures in very general terms leaving it to the Parties to introduce enforcement as it considers appropriate to conserve biodiversity and to meet its requirements.

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<sup>49</sup> Crabbe, V.C.R.A.C., "Legislative Drafting" Cavendish Publishing Co., 1993

**TABLE 7 - Enforcement measures**

<b>Name of MEA</b>	<b>Elements of MEA or Other Instrument</b>	<b>Status of MEA Req't</b>	<b>Comments/Recommendations re: National Implementing Legislation</b>
CBD	COP Decision IV/4, Annex I, Para 9(m)	Mandatory	The draft frame law should incorporate a regime of fines and penalties for activities that adversely affect the conservation of biodiversity.
CITES	<p>Articles II(4), VIII(1), IX and Resolution Conf. 8.4– Parties must adopt the necessary <u>regulations</u> for the grant of export and import permits or certificates, and re-export certificates for trading specimens of the species included in its Appendices; the prohibition of trade of specimens, the penalisation of trade in, or possession of such specimens; and the confiscation or return of the specimens to the State of export.</p> <p>Art. XIV – Parties may prescribe stricter measures where an Appendix I or II is traded in contravention of its laws. Objective 3.3 of Strategic Plan encourages “mutual technical assistance in enforcement matters’</p> <p>Resolution Conf. 8.4 - Directs Secretariat to identify Parties whose laws do not meet requirements, seek information indicating procedures, action &amp; time frames needed for compliance.</p> <p>COP 11 – Recommended that all Parties ensure strict compliance and control in respect of all mechanisms for regulating trade in animal and plant species listed in Appendix II and all provisions ensuring protection against illegal traffic for species listed in</p>	<p>Mandatory, specific</p> <p>Encouraged</p> <p>Mandatory, specific</p>	<p>CITES gives clear directions on the areas for which enforcement measures must be instituted at the national level. The draft law must cover these. OECS States may introduce harsh penalties for offences. A continuing programme to analyses legal, technical and administrative actions should be established to ensure the highest level of enforcement is being undertaken.</p> <p>Provisions to exchange information with Parties and among government departments on illegal traffic and control measures should be mandated in law. Mechanisms should also be put in place for coordination and collaboration</p> <p>CITES Resolutions have the same status as an Article of the Convention itself, thus OECS Sates are bound by the requirements of this Resolution</p>

	the Appendices		
CMS	Art. II(3) – Requires Parties to provide immediate protection for migratory species included in Appendix I.		To give effect to this requirement OECS States should enact provisions to prohibit the taking of animals belonging to migratory species, prevent or control activities that endanger migratory species, and the introduction of exotic species. Research and monitoring programmes could provide the information necessary to protecting these species.
Ramsar	Recommendation 4.4 (1990) Parties are required to review their legal mechanisms to ensure that existing laws for the wise use of wetlands do not conflict or leave gaps or unclear areas.	Encouraged	Measures should be taken to ensure the harmonisation and rationalisation of existing OECS biodiversity-related laws with the draft frame law on biodiversity being developed. Ramsar’s Operational Guidelines should be considered for this exercise.
SPAW	<p>Art. 5 – Parties shall take such measures to achieve the objectives for which the protected area was established, inter alia, regulations to prohibit dumping, in protected areas, the passage of ships, fishing, hunting, activities that result in the destruction of the protected area, trade in and export or import of endangered species of flora and fauna, archaeological activity.</p> <p>Art 10(2) – Requires Parties to prohibit all forms of destruction and disturbance including commercial trade in species identified to be threatened or endangered.</p> <p>Art 10(7) –Parties shall make provisions for repatriation of protected species exported illegally</p>	<p>Mandatory, specific</p> <p>Mandatory specific</p>	<p>Provisions should be established in the draft frame law to make regulations for each protected area in the areas identified in Art. 5 These areas are consistent with those required under CITES, CMS and CBD. A regime of permits could also be utilised. As the SPAW provisions are explicit an option will be to adopt the language used in the Protocol itself The OECS Model Fisheries Act contains a very comprehensive delineation of the activities that are subject to regulation and may be considered for language for conferring regulatory authority.</p> <p>Article 10 provisions are consistent with requirements under CMS and CITES also as regards trade matters and</p>
WHC	Art. 5(d) – Parties must take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation, and rehabilitation of its heritage		The measures to meet the requirements of Art 5(d) should include the establishment of a regime of offences, fines and penalties for activities that are inconsistent with the objectives of WHC.

## 4.9 International Cooperation

Activities for the conservation of biodiversity have become a highly scientific and costly undertaking. It requires the application of highly sophisticated technologies which are beyond the human, financial and technical capabilities of most developing countries including OECS States. As a consequence OECS countries must to a large extent, rely on international cooperation initiatives in the areas of access to and transfer of technology, funding and capacity-building, to meet their obligations or derive benefits under MEAs.

Article 16(1) of CBD recognises the importance of technology transfer among Parties and requires them to provide and/or facilitate access for and transfer to other Parties of technologies that are relevant to the conservation and sustainable use of biological diversity. With particular reference to developing countries, Article 16 (2) requires such access to be facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and where necessary in accordance with the prescribed financial arrangement. The benefits of coordination and collaboration amongst conventions and international organizations with related or overlapping missions have been widely recognized for some time. These advantages may also be beneficial at the MEA implementation stage. With a multiplicity of agencies involved in biodiversity management in OECS countries, increased communication and cooperation between Secretariats at the operational level, the prospect of a combined reporting structure for various MEAS becomes a likely objective that may be pursued. Such cooperative arrangements might later lead to more permanent and formal structures of coordination.

These linkages may be even extended to include other instruments e.g. the Ramsar Secretariat is working with the UNFCCC and the Intergovernmental Panel on Climate Change (IPCC) on the relationships between wetlands and climate change. At the regional level and closer home, the Ramsar Secretariat has also affected Memoranda of Cooperation with UNEP's Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (Cartagena Convention).

The CBD recognises the importance of the transfer of technology and requires the commitment of its Parties to provide or facilitate access and transfer to other Contracting Parties. The ability of OECS countries to ensure that this is facilitated may limit the benefit that they may derive from this requirement.<sup>50</sup> The availability of financial, technical and scientific resources to a significant extent controls the capability of developing country Parties to effectively implement treaty obligations. The biodiversity agreements all require research, training, public education and awareness and cooperation initiatives be followed. These requirements can pose a burden to developing countries with their already scarce resources. Article 20.4 of CBD recognises this limitation in the following terms –

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<sup>50</sup> The Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement can also limit the effectiveness of CBD provisions.

“The extent to which developing country Parties (including OECS countries) will effectively implement their commitments under this Convention will depend on the effective commitment by developed countries of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties”.

**TABLE 8 - International Cooperation Measures**

<b>Name of MEA</b>	<b>Elements of MEA or Related Instrument</b>	<b>MEA Status</b>	<b>Comments/Recommendations re: National Implementing Legislation</b>
CBD	<p>Art 8(j): Parties, subject to its national legislation, maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation of biological diversity.</p> <p>Art. 15: Parties to facilitate access to their genetic resources by other Parties. Parties to take legislative, administrative or policy measures with the aim of sharing the results of research and development and the benefits arising from utilisation of the genetic resources with the Party of origin.</p> <p>Art. 16(4) – Parties must introduce legislative, administrative or policy measures so that private sector facilitates access to, joint development and transfer of technology for the benefit of governmental and private sector institutions of developing countries.</p> <p>Art. 18: Parties shall promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity.</p> <p>The COPs have provided specific guidance in relation to the implementation of Art. 6. and also stressed the</p>	<p>Encouraged</p> <p>Mandatory, specific</p> <p>Mandatory, specific</p> <p>Mandatory, specific.</p> <p>Encouraged, permissive</p>	<p>The protection of such knowledge, innovations and practices can be difficult as they are usually preserved through oral tradition and not easily incorporated within modern intellectual property rights regimes. OECS Parties should enact separate legislation to retain and protect these as their own intellectual property thereby facilitating opportunities for its sharing with other Parties while also accruing royalties for its use.</p> <p>Like Art. 16 provisions relating to access to technology, below, OECS countries are on mutually agreed terms. A supporting national legal framework for intellectual property rights is vital to the implementation and enforcement of this provision.</p> <p>The draft frame should include provisions to facilitate private sector involvement in technology transfer.</p> <p>This requirement supports the need for the taking of national legislative measures in respect of biological diversity.</p> <p>Access to scientific and technical information is a fundamental underlying principle to facilitate the implementation of the goals of CBD, particularly for developing countries like the OECS. This requirement should be incorporated in the draft frame law. Enforcement will prove</p>

	<p>need for coordination of national strategies and regional and international cooperation for its implementation.</p> <p>In accordance with CBD Art. 20.4 the extent to which developing countries will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take into account the fact that economic and social development and eradication of poverty are the first and over-riding priorities of the developing country Parties.</p> <p>Art. 18: Parties to promote international technical and scientific cooperation in the field of conservation and sustainable use of biological diversity, ...through appropriate international and national institutions.</p>		difficult however.
CITES	Parties, intergovernmental and non-governmental organisations have been urged to provide additional financial support for the enforcement of the Convention.	General	Although there are no enforcement mechanisms attached to this exhortation Parties should recognise that as a fundamental principle, cooperation between Parties in the protection of endangered species is essential to the success of CITES.
CMS	Art. V(5)(d)- Agreements for Appendix II should provide for the exchange of results and information on research and relevant statistics.	Mandatory, specific	All CMS Agreements and MOU's should require executing Parties to exchange scientific, technical and legal information needed to coordinate conservation measures.
RAMSAR	Resolution VII. 19, COP 11 1999.- Guidelines for international cooperation in areas of management of shared wetland species and	Permissive	Because of their proximity to each other, these Guidelines can be of tremendous value in the management of shared wetland species to OECS countries.

	the sustainable harvesting and international trade in wetland-derived plant and animal products. Parties encouraged to harmonise the implementation of Ramsar with other treaties.		
SPAW Protocol	<p>Art. 7 – Requires Parties to establish cooperation programmes for the listing of protected areas.</p> <p>Art 8 – Requires the establishment of buffer zones in which activities are less restricted.</p> <p>Art. 10 (5), (7) – Parties are required to coordinate their efforts through bilateral or multilateral actions, including any treaties for the protection of migratory species. Parties shall consult with range States that are not Parties with a view to coordinating their efforts to manage and protect migratory species.</p> <p>Art. 11 – Parties are to adopt cooperative measures to ensure the protection and recovery of endangered and threatened species.</p> <p>Art. 17 – Parties are to encourage and develop scientific, technical and management –oriented research:</p> <p>Art. 18- Parties to cooperate with other relevant</p>	<p>Encouraged</p> <p>Encouraged</p> <p>Encouraged</p> <p>Encouraged</p>	<p>SPAW like the other selected MEAs recognises the need for coordination of activities to protect biodiversity. At the national level provisions should be made for interagency consultations for activities that may not be subject to EIA but which may adversely affect a protected area. Coordination between the lists of protected area established under the selected MEAs including Ramsar site. Buffer zones should form part of the management plan..</p> <p>This is an express requirement to harmonise actions with CMS. Provisions should go beyond prohibiting actions to include the taking of actions to eliminate threats to species. The requirement for systematic monitoring of species under Art. 17(2) and Art. 7 of CBD reflect an obligation to ensure that protection and management measures are effective.</p> <p>A list of actions to be prohibited is prescribed. These actions are consistent with those identified under CITES and CMS. The authorised agency should also participate in regional and global programmes for the protection and recovery of endangered and threatened species.</p> <p>The ability to meet these requirements is constrained by a lack of resources in OECS States. The draft law should however assign this responsibility to the agency having responsibility for the conservation of biological diversity. The agency should be required to coordinate closely and to exchange scientific and technical information with other Parties</p> <p>The designated agency for conservation of biodiversity should be vested with the authority to request and receive assistance from other Parties and the Organisation.</p>

	international organisations in formulating, drafting, financing and implementing programmes of assistance . Programmes include training, public education and the acquisition, utilisation and design of equipment.		
WHC	<p>Art.5 (d) – Requires Parties to take appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation and rehabilitation of its heritage.</p> <p>Art 7 – Defines international protection to mean the establishment of a system of international cooperation and assistance designed to support States Parties to the Convention in their efforts to conserve that heritage.</p> <p>Art. 15, 19 – Sets up the World Heritage Fund which may be used to provide assistance to countries in their implementation programmes.</p> <p>Art 22 – provides <i>inter alia</i> technical assistance, training of staff, and supply of equipment for the purposes of the Convention.</p>	Mandatory, specific	OECS countries can create an institutional focus by establishing a regional centre for training in the protection and conservation of the cultural and natural heritage .

### ***Conclusion***

In grouping requirements of MEAs into a single legislative instrument, the issue of workability becomes a reality. An assessment must be made as to which elements or functions of which MEA can reasonably be integrated yet in so doing ensuring that adaptations may easily be made to the frame legislation without risk of losing the essential obligation of the provision.

In a general context, the level of commitment to the process should be considered as it will give an indication of the level of success that should be anticipated. A 1999

UNEP/ROLAC report<sup>51</sup> revealed weak legislative support for MEAs generally and the United Nations Framework Convention on Climate Change and the CDB in particular. This tendency is beginning to change<sup>52</sup>. Thus participation in other relevant regional or sub-regional biodiversity conventions or protocols, whether the constitution recognises principles of biodiversity conservation or recognise rights and duties pertaining to the protection of the environment generally, whether other conservation or environmental legislation is in place, are pertinent to successful implementation of the draft frame harmonised legislation on biodiversity and should be considered.

The OECS Environmental Management Strategy, through which the St. George's Declaration is implemented, proposes the establishment of a "comprehensive system of environmental law" and recommends provision of adequate resources for its implementation and enforcement<sup>53</sup>. It also adopts an integrated approach to the management of natural resources. Already major legal restructuring [to replace numerous] statutes concerned with land, air, water resources and the coast has been embarked upon.

There are three regional MEAs that have been adopted under the Caribbean Environmental Programme of UNEP. The *Cartagena Convention* is the premier Caribbean environmental convention and is supplemented by three protocols, one of which is the SPAW Protocol. The record of acceptance of regional multilateral agreements shows that the level of acceptance for the SPAW Protocol is relatively low.

A potential limitation to the implementation of provisions of the selected biodiversity agreements is the course of action required to be taken by MEAs and already existing trade practices. CBD includes several requirements which relate to the issue of trade<sup>54</sup>. It requires that Parties should also regulate or manage those processes and activities that have a significant adverse effect on biodiversity<sup>55</sup>, which can include trade. In some instances those processes may touch on bilateral or multilateral relations that are already shaped by trade practices. Attempts to restructure such relations in the interest of biodiversity conservation will require careful attention be paid to the trade regimes

Recent decades have been marked, on an international scale, by increasing concern for the loss of biodiversity. In response to this, countries have entered into MEAs as a mechanism for cooperating among themselves to address this vital issue. OECS and other small island developing countries however face a considerable challenge in incorporating their commitments into their national legislative frameworks in compliance with their obligations. The multiplicity of similar-themed conventions makes it attractive for countries like the OECS to employ a mechanism that combines these related obligations into a single instrument whereby they are assured that numerous commitments are

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<sup>51</sup> "A Report on MEA implementation in the Caribbean".

<sup>52</sup> 364) Antigua and Barbuda has ratified and adopted legislation for the Basel Convention on the Transboundary Movement of Hazardous Wastes (Res. 3/1993), the Montreal Protocol on Substances that Deplete the Ozone Layer (33/193), and the Convention on Biological Diversity (4/1993).

<sup>53</sup> UNEP "Caribbean Environmental Law Development and Application", Pp. 3

<sup>54</sup> Arts. 6(b), 7 (c), 10(b), 11 and 15

<sup>55</sup> Art. 8(1)

simultaneously being met. This study has recommended a conceptual framework which, as a mechanism, can provide a structure for the simultaneous implementation and harmonisation of the fundamental requirements of the selected biodiversity-related MEAs, improve compliance and establish an effective approach towards problems of overlap and duplication of effort. To some countries this process may appear to be offering a step backward since in several cases specific national legislation has already been enacted. National legislation to implement the CITES Convention provides such an example. This reality can present a challenge in settling on the form that the domestic legislation will eventually take after the draft frame harmonised legislation on biodiversity – the immediate next step of this Project- is completed.

With all of its possible disadvantages, grouping of MEAs should be viewed as useful step towards the effective implementation of MEAs. For OECS countries, it can assist in addressing problems of overlap of functions between MEAs, duplication of effort and piecemeal enforcement. In a real sense it can promote coordination and effective participation in international fora as the linkages between biodiversity-related issues become apparent and transparent in a single instrument.

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**AMERICAN & CARIBBEAN LAW INITIATIVE (ACLI)**

**REPORT ON THE UNEP/OECS MODEL HARMONISED**

**BIODIVERSITY LEGISLATION PROJECT**

Prepared by

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21 February 2006

## **I. Background**

In 2003, the United Nations Environmental Programme (UNEP) organized a workshop in Kingston, Jamaica to discuss the implementation of Multilateral Environmental Agreements (MEAs) in the Caribbean. At that workshop, member states of the Organisation of Eastern Caribbean States (OECS) and other Small Island Developing States (SIDS) realized that they face several challenges in implementing (MEAs), including those relating to biological diversity.

Those countries recognized that they lack comprehensive biodiversity laws in that effectively and efficiently implement their commitments under the biodiversity-related MEAs and where they do exist; most of the legislation lacks institutional focus and is fragmented and dispersed over several enactments. They also recognized that they rely on a weak enforcement regime wherein enforcement officers do not have the necessary training and information to effectively manage and protect biodiversity.

OECS Member States and other SIDS identified the need to develop efficient ways for to implement their MEA commitments, and the opportunities presented by synergistically clustering of commitments in related into a single coherent and effective law. Given the critical role that biological diversity plays in the economies of many OECS Member States through tourism, fishing, and other activities, and the cross-sectoral nature of biodiversity in the OECS that need was identified as an urgent one.

## **II. Objective**

The overall objective of this assignment was to develop a holistic and integrated model law that implements five global and one regional Multilateral Environmental Agreements related to the management and protection of biological diversity. These MEAs are the –

- Convention on Biological Diversity (Rio de Janeiro, 1992)
- Convention on the International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973)
- Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979)
- Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972)
- <sup>56</sup>Specially Protected Areas and Wildlife (SPAW) Protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean (Cartagena des Indias, 24 March 1983)

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<sup>56</sup> This is a regional instrument.

- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 2 February 1971)

To achieve this objective the OECS entered into a contract with Consultant, the American & Caribbean Law Initiative (ACLI) as well as with an individual Lead Consultant, Judy Daniel, to develop a model law that facilitates the implementation of these six MEAs. The role of the Consultant was to support the work of the Lead Consultant primarily through comments on draft documents produced by the Lead Consultant as well as by participating in meetings by telephone and in person.

### **III. Methodology**

In May and June, 2005 Keith Sobion and John Knechtle were involved in several phone calls, including conference calls, as well as numerous email exchanges with Judy Daniels, Carl Bruch, Elizabeth Mrema, Charlotte Salpin, Arnold Kreilhuber, Vasantha Chase and Peter Murray. The purpose of these exchanges was to discuss in greater detail the nature of the work to be produced, the methodology and its timeframe. It was agreed that the process must be thorough and transparent and engage stakeholders from Government, NGOs, Parliamentary representatives, academia, communities, the media, the private sector, and other interested parties.

The initial output was the development of a conceptual framework for grouping the requirements of the various MEAs into a single document. In identifying the required elements, the Consultant worked with the Lead Consultant, OECS and UNEP to develop and refine this conceptual framework. Specifically, during July and August 2005, under Keith Sobion's direction, Danielle Archer and Judith Carter analyzed and provided feedback on the draft document, *Elements of Selected Biodiversity-Related Multilateral Environmental Agreements For Incorporation within the National Legislative Framework of OECS States, 30 June 2005*.

This Elements report essentially identified the synergistical relationship between the MEAs and made an assessment of the requirements as regards the critical necessity for implementing them in national legislation was subsequently prepared. It, in essence, set forth the *elements* of a frame harmonized legislation on biodiversity. This Report indicated whether a particular provision is mandatory, encouraged, or permissive; general or specific; and discussed other matters relating to the nature of the provision. The report also indicated which provisions relate to which MEAs. Additionally, the report included other factors that address potential gaps in the biodiversity law that are not covered by any of the MEAs. Such extra factors were identified clearly as such.

The OECS and Lead Consultant subsequently convened a series of national consultations in each of the 9 countries to raise awareness of the project; review the background research document on elements of the frame harmonized legislation on biodiversity in the OECS region; highlight the key concerns, priorities, and issues relating to biodiversity in the respective countries (including any potential conflicts or synergies between the elements of the frame harmonised legislation and existing legislation, policies, institutions, and practice); identify which elements of the proposed frame harmonized legislation might be the most feasible, and which might present potential

difficulties requiring particular care in how the draft legislation addresses them; and build support for the frame harmonized legislation that will be drafted. Although OECS intended for the Consultants to participate in at least a two of these national consultations, notice of those meetings came a few days before their meeting so the Consultant was not able to participate. Details of those country visits are in the Lead Consultant's Report.

#### **IV. Workshop to consider Draft Frame Harmonised Legislation on Biodiversity**

Based on the views expressed in the national consultations, the Lead Consultant produced an initial draft of the frame harmonized legislation on biodiversity. The draft legislation followed the general structure of the elements outlined in the research and was informed by the national consultations. This initial draft legislation was circulated shortly before the Regional Workshop convened.

In November 2005 the following representatives of the Consultant, Norman Davis, Tutor at Norman Manley Law School (and former law school classmate of the Lead Consultant) and Akilah Anderson, Legal Director, Jamaica Environment Trust and John Knechtle and Tim Frantz from Florida Coastal School of Law, analyzed the first draft of *Regional Framework Conservation of Biodiversity Act 2005*. These four individuals traveled to St. Lucia to participate in OECS's Regional Workshop on Harmonized MEA Biodiversity Legislation, which took place on November 10<sup>th</sup> in Castries. There the representatives of the Consultant worked collaboratively with members of the OECS Legal Unit, the OECS Environment Policy Committee, and national experts from member states to revise this draft document.

The Workshop began with presentations from OECS Programme Experts explaining the linkages between the MEA exercise and other initiatives to develop environmental management legislation and protected areas management strategies. Because the goal of having all these representatives discuss the consolidation of six MEAs into this one Act in one day was overly ambitious, the group was subdivided into small groups and each group was given a sub-section of the draft Act on which to provide comments. These small groups then reported back to the full group at the end of the day.

#### **V. Conclusion**

Following this regional workshop, the Lead Consultant revised the draft legislation to take into account the feedback received both at the workshop and afterwards by email. This ended phase one of this project. Phase two will require the implementation of this Act at the national level which will require assessments to be made at the national level to determine –

- (a) whether any existing enactment should be repealed or amended to accommodate the provisions of the draft Act;
- (b) whether the implementation of the 6 instruments in a single draft was appropriate taking into account existing institutional arrangements;

- (c) the extent of the regulatory framework that is required, and;
- (d) the appropriate institutional structures to facilitate execution of the model law.

Although Phase Two is currently not funded, the Global Environmental Facility (GEF) funds implementation projects of MEAs and may be the most likely funder. Hopefully UNEP and OECS will pursue such funding.

The members of the ACLI appreciated working collaboratively on this project with OECS, UNEP, representatives of OECS states, and the Lead Consultant. The collaboration could be even more successful if it began in the grant writing stage because then the individuals could begin working off the same page from the start. As the only legal advocacy NGO working throughout the Commonwealth Caribbean, the ACLI would like to build on this relationship with OECS and UNEP. The ACLI currently advises the attorney generals of the countries of Jamaica, Trinidad & Tobago, and Bahamas and is seeking to develop a programmatic response to requests from five other attorney generals in the Commonwealth Caribbean. The work of phase two provides that opportunity in regards to the MEAs.



FINAL REPORT

**UNEP/OECS MODEL HARMONISED BIODIVERSITY LEGISLATION  
PROJECT**

Prepared by

Judy Daniel

Attorney-at-Law  
Legal, Policy & Institutional Specialist

18 January 2006

## **1 - Introduction and Background**

Organisation of Eastern Caribbean States (OECS) Member States and other Small Island Developing States (SIDS) face several challenges in implementing Multilateral Environmental Agreements (MEAs), including those relating to biological diversity. These countries lack comprehensive biodiversity laws in that effectively and efficiently implement their commitments under the biodiversity-related MEAs and where they do exist; most of the legislation lacks institutional focus and is fragmented and dispersed over several enactments. and rely on a weak enforcement regime wherein enforcement officers do not have the necessary training and information to effectively manage and protect biodiversity.

At a UNEP Workshop held in 2003 in Kingston Jamaica, countries identified the need to develop efficient ways for OECS Member States and other SIDS to implement their MEA commitments, and the opportunities presented by synergistically clustering of commitments in related into a single coherent and effective law. Given the critical role that biological diversity plays in the economies of many OECS Member States through tourism, fishing, and other activities, and the cross-sectoral nature of biodiversity in the OECS that need was identified as an urgent one.

The OECS has experience in working with its Member States to develop model legislation and frame harmonized legislation to implement MEAs. Its work programme is moving aggressively towards finalizing their national environmental management strategies, including a related review of legal and institutional frameworks. This activity is therefore consistent and timely as regards this effort to introduce legislation implementing MEAs.

The development of model legislation to implement MEAs will serve to improve the legislative framework for the implementation and enforcement of MEAs in OECS Member States and other Small Island Developing States (SIDS).

## **2. - Objective**

The overall objective of this assignment was to develop a holistic and integrated model law that implements five global and one regional Multilateral Environmental Agreements related to the management and protection of biological diversity. These MEAs are the –

- Convention on Biological Diversity (Rio de Janeiro, 1992)
- Convention on the International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973)
- Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979)

- Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972)
- <sup>57</sup>Specially Protected Areas and Wildlife (SPA) Protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean (Cartagena des Indias, 24 March 1983)
- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 2 February 1971)

### 3. - Task Methodology

The exercise involved a thorough and transparent process that engaged stakeholders from Government, NGOs, Parliamentary representatives, academia, communities, the media, the private sector, and other interested parties.

The initial output was the development of a conceptual framework<sup>58</sup> for grouping the requirements of the various MEAs into a single document. In identifying the required elements, the Consultant worked with OECS and UNEP to develop and refine this conceptual framework.

An Elements report<sup>59</sup> which essentially identified the synergistical relationship between the MEAs and made an assessment of the requirements as regards the critical necessity for implementing them in national legislation was subsequently prepared. It, in essence, set forth the *elements* of a frame harmonized legislation on biodiversity. This Report indicated whether a particular provision is mandatory, encouraged, or permissive; general or specific; and discussed other matters relating to the nature of the provision. The report also indicated which provisions relate to which MEAs. Additionally, the report included other factors that address potential gaps in the biodiversity law that are not covered by any of the MEAs. Such extra factors were identified clearly as such.

The Consultant subsequently convened a series of national consultations in each of the 9 countries to raise awareness of the project; review the background research document on elements of the frame harmonized legislation on biodiversity in the OECS region; highlight the key concerns, priorities, and issues relating to biodiversity in the respective countries (including any potential conflicts or synergies between the elements of the frame harmonised legislation and existing legislation, policies, institutions, and practice); identify which elements of the proposed frame harmonized legislation might be the most feasible, and which might present potential difficulties requiring particular care in how the draft legislation addresses them; and build support for the frame harmonized legislation that will be drafted.

#### Details on Country Visits

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<sup>57</sup> This is a regional instrument.

<sup>58</sup> Appendix I

<sup>59</sup> Appendix II

In accordance with the output requirements under the Project, 9 in-country consultations with stakeholders to discuss the aforementioned Project were held. The countries were divided into 2 groups. Group 1 comprises 4 countries – St. Lucia, Antigua, St. Kitts and Nevis and Grenada. Group 2 comprised the British Virgin Islands, Anguilla, Dominica, St. Vincent and the Grenadines and Montserrat.

#### *OECS Secretariat and St. Lucia*

In a briefing session at the OECS Secretariat, the relationship of the MEA Project with other related OECS-ESDU initiatives was discussed. These initiatives include a -

- (a) CDB-funded Institutional Strengthening Project;
- (b) development of model OECS environmental legislation Project; and
- (c) Protected Areas Project (OPAL).

The objective of the discussions was to ensure that the outputs of this Project did not produce overlaps with projects (a) –(c). The Legal Consultant informed the meeting of the approach that was being adopted to deliver the required outputs. As a result, the meeting concluded that while useful synergies existed between the Projects, the prospect for overlap was unlikely.

The Legal Consultant also informed the meeting of a UNEP Project to develop an institutional framework and environmental management legislation in Grenada. That Project will also conduct a series of consultations with stakeholders and was expected to deliver its outputs by October 31, 2005.

#### *St. Lucia*

A stakeholder meeting, coordinated by the Ministry of Planning, was attended by representatives from biodiversity management-related agencies including Forestry, Agriculture, Sustainable Development and the St. Lucia National Trust. The meeting was advised of ongoing initiatives related to biodiversity in St. Lucia. These include the development of a –

- (a) Draft Biodiversity Conservation Act;
- (b) National Biodiversity Strategy;
- (c) Draft Land Policy;
- (d) National Water Policy;
- (e) Climate Change Policy;
- (f) Coastal Zone Management Policy, and
- (g) Draft CITES Act.

The meeting welcomed this UNEP/OECS initiative as an opportunity for St. Lucia to look holistically at conservation management rather than the present approach which puts

in place several policy instruments that tend to further deepen the compartmentalisation of environmental activities. The servicing of several treaties posed a serious challenge to St. Lucia officials and an approach that combines agencies into a single mechanism to consider them was recommended. As an enforcement option, a recommendation was made for establishing locus standi in the private citizen to institute enforcement action.

The Legal Consultant discussed the mechanisms for developing the legislative framework for biodiversity established in the 6 instruments (CBD, CITES, CMS, Ramsar, SPAW and WHC) proposed in the Project. The mechanism, as explained, relies on the development of an elements report and a Model Draft law on Biodiversity which will ultimately be tailored to suit national circumstances at a later stage. In concluding, the meeting recognised the value of the elements report developed by the Project as a flexible tool which could be applied to assess compliance requirements for other MEAs to which St. Lucia may become/are a party.

#### *Antigua and Barbuda*

According to Mr. Philmore James of the Ministry of Agriculture, Lands and Fisheries, of the 6 instruments covered by the Project, Antigua and Barbuda is a party only to CBD, CITES and SPAW. Officials at the Environment Division were unavailable at the time of this mission thus confirmation of this information will be done at a later date.

There were several unsuccessful attempts to establish a Biodiversity Committee to address matters pertaining to the management of conservation in Antigua and Barbuda. The Project therefore registers another such opportunity. From the discussions it appeared that there was dissatisfaction with the existing institutional framework for environmental management generally and in particular as regards MEAs. The Environment Division has a small staff which was ineffective to address the myriad of issues presented in MEAs in a holistic manner. Cited as an example, is the submission of CITES documents by the Fisheries Division (the CITES Scientific Authority), to the Environment Division (the CITES Management Authority) which usually does not meet timely attention by the latter Division.

To obviate the difficulties of inappropriate policy or technical representation attending international meetings, lack of dissemination of information among agencies and inadequate consideration given to the meeting of treaty obligations it was proposed that a multidisciplinary, multisectoral institutional mechanism be established to deal with all matters pertaining to MEAs. That mechanism should be established by and report to Cabinet and should comprise focal points for the various treaties. Accordingly, technical responsibilities will continue to reside with the governmental entity. Among its responsibilities will be the task of facilitating the implementation of MEA obligations including taking the lead in the enactment of national implementing legislation for all instruments.

It was the held view that the existing National Coordinating Mechanism could not fulfil this mandate as it met infrequently. Membership should include representatives of

Tourism, Agriculture, Health and Public Works. As a programme of activity it was recommended that a review of MEAs to which Antigua and Barbuda was a party should be conducted to identify areas of duplication among them.

In a meeting attended by the Directors of Forestry and the Soil and Water Conservation and Engineering Unit, participants pointed to the fragmentation of outdated legislation in the Forestry and Wildlife sectors. A draft Forestry and Wildlife Act has been prepared, but political support for the Act appears to be lacking.

In discussions about an institutional mechanism for the implementation of MEAs, a recommendation was made for its establishment under the Governor General's Office, if possible. Membership should also include Solid Waste, Planning, Fisheries, Foreign Affairs and NGO representation. A membership of a core of no more than 7-9, with the option to establish ad hoc sub-committees should be established in law. The Committee should also be mandated in law to disseminate its matters to the public and private sectors and civil society.

#### *St. Kitts and Nevis*

A meeting was convened by the Director of Physical Planning and attended by representatives of the Environment Department and the Sustainable Development Ministry. The meeting examined the provisions of the existing and proposed Environmental Management Acts in relation to the Project. The country is not a party to CMS, Ramsar and SPAW Protocol partly due to MEA requirements for financial contributions from Government to the respective Secretariats. St. Kitts and Nevis is hard-pressed to make such contributions.

CITES legislation is presently being prepared. The meeting identified the scarcity of resources to service MEAs, prepare policy briefs and reports and attend meetings as among the difficulties associated with MEAs. As an institutional measure, the officials proposed that existing focal points could be established as a Committee under the Ministry of Sustainable Development to be responsible for all MEAs and resulting projects and programmes. Some aspects of this arrangement already exists informally and can easily be formalised in law thereby circumventing the establishment of several ad hoc committees on a case-by-case basis.

The Senior Fisheries Officer is the Scientific Authority for marine species under CITES in St, Kitts and grants CITES permits for conch. Nevis has its own Scientific Authority. The Management Authority for both islands is exercised by the Director of Agriculture. CBD is not presently considered in the country's work programme although this is anticipated to be modified as marine protected areas are incorporated within the National Biodiversity Strategy.

As regards MEAs, it was recommended that the offices of Legal Affairs, Fisheries, Customs and the private sector be represented in a proposed institutional mechanism. Programmes to sensitise the political directorate on MEAs was also recommended. It

was the held view that the establishment of an institutional mechanism/Committee with responsibility for MEAs was very important to provide for continuity, transparency and to promote comprehensive approaches to compliance with international instruments as a whole.

#### *Grenada*

A broad cross-section of representatives attended a meeting coordinated by Grenada's Environmental Affairs Department including the Attorney General's Office, Forestry and the Produce Chemists Laboratory. NGO representation comprised GRENEA which is based in St. Andrew and which focuses on environmental awareness in relation to livelihoods and skills of villagers.

According to the participants, the mechanisms for the ratification of MEAs were generally uncoordinated. Both the public and private sectors were often unaware of the domestic commitments associated with these instruments, the reports of meetings, or even protocols that have been signed. A significant weakness also exists as regards the establishment of institutional arrangements for implementation. The meeting agreed to the need for the establishment of a central institutional mechanism for MEAs. The Ministry of Finance should be represented and the mechanism should have the power to establish sub-committees or working groups to address specific issues thereby limiting the permanent membership to a convenient number of participants.

#### *British Virgin Islands*

A meeting of representatives of government and non-governmental organisations was convened by the Environment Division. In the discussions the National Parks Trust representatives pointed to some discomfort with the inclusion of CITES in the list of biodiversity treaties, citing the strong regulatory style of the instrument as opposed to the other 5 treaties.

The meeting called for technical assistance with advocacy in the promotion of MEAs in the Caribbean region. The process towards ratification is a stifled one, with limited opportunity for stakeholder participation. The meeting considered the Project initiative to be a welcome and long overdue one, providing assistance to countries in meeting their international commitments.

The BVI is, through the law Reform Commission, engaged in a review of all environmental laws in the country. The Model Regional Draft Frame legislation on Biodiversity, the major output of this UNEP-OECS Project, will be incorporated in that process.

#### *St. Vincent and the Grenadines*

The meeting consisted of a wide-ranging representation that included the Ministry of Agriculture, Fisheries and Forestry Departments, Physical Planning, Health and

Environment, Attorney General's Chambers, the NGO community and private sector. The representatives considered the project to be very valuable and timely as regards the pressing unresolved environmental issues. The country had not prepared national implementing legislation for the selected MEAs although some activity was underway as regards CITES-specific legislation.

#### *Montserrat*

The UK has extended membership of CMS, CITES and Ramsar to Montserrat. The meeting to consider the Project was of the view that Montserrat should also enact national legislation in respect of the remaining 3 treaties (CBD, SPAW and WHC) considered by the Project.

There is insufficient capacity to address MEAs in Montserrat. As a recommendation, it was proposed that a Committee of representatives from the other territories - BVI, Turks & Caicos Islands, Anguilla and Montserrat- should be established to consider MEA implementation.

#### *Dominica*

The Environmental Coordinating Unit of the Ministry of Agriculture, Lands and Fisheries arranged a meeting of representatives, being the government agency that is responsible for MEA compliance and public awareness.

In the discussions, Mr Pascall expressed the view that the treaties selected for the Project were not on a priority list for Dominic and pointed to a lack of consultation between the OECS and the ECU in the process to select the treaties for the Project. In this regard he offered a list of areas which were of interest to Dominica. These are –

1. Model legislation to address the technical aspects of the CBD;
2. Turtle management;
3. Policy development to establish an Organic Dominica;
4. River protection;
5. National legislation to implement the *International Whaling Convention*.

The ECU requested the need for assistance in finalising the Model at the national level.

#### *Anguilla*

A multisectoral meeting was convened by the Ministry of Agriculture to discuss the Project. The Ministry also has responsibility for environmental matters on the island. Anguilla is presently engaged in an activity to prepare an *Environment Act* and a separate *Natural and Cultural Heritage Conservation Act*. A concern was also expressed regarding the inclusion of CITES in the list of MEA treaties as it is being viewed as addressing matters of trade rather than conservation. The challenge is to unify treaties that share the same institutional arrangements and govern similar issues.

In light of this, the officials recommended prior consultation by the OECS in the identification of instruments that were relevant to the country's work programme. In general, the meeting welcomed the timeliness of the Project in coinciding with the drafting of the Conservation Act. The Elements Report was also considered to be a very useful document which would provide an invaluable input to the drafting of legislation to implement the selected treaties.

*Summary of Recommendations from Country Visits*

1. The UNEP/OECS MEA Project should take into account other related OECS Project activities.
2. A multidisciplinary multisectoral institutional mechanism should be established to be responsible for all matters pertaining to MEAs including projects and programmes under them. Such a mechanism may -
  - Be established by Cabinet as an independent institution;
  - Be established under the agency having responsibility for environmental management;
  - Include among its membership technical focal points for MEAs, the Ministry of Finance, Physical Planning, Customs, Agriculture, Forestry, Fisheries, Attorney General's Chambers, Tourism, Health, Public Works, Fisheries, Foreign Affairs, NGO's and private sector, Attorney General's Chambers;
  - Consist of no more than 7-9 permanent members.
  - Have the power to establish working groups or sub-committees.
3. The Elements Report prepared under this Project should be utilised to gauge compliance with other MEAs not presently considered by the Project.
4. OECS should facilitate prior consultations with countries with regard to project activities.
5. Only the conservation aspects of CITES should be addressed in the proposed Model Frame Act. The regulatory aspects should be established in a separate instrument.
6. A Committee membered by the dependent territories should be established and charged with responsibility for the implementation of MEAs.
7. An advocacy component should be included in the future activity to prepare national implementing legislation.

**4. - Workshop to consider Draft Frame Harmonised Legislation on Biodiversity**

Based on the views expressed in the national consultations, the Consultant produced an initial draft of the frame harmonized legislation on biodiversity. The draft legislation followed the general structure of the elements outlined in the research and was informed by the national consultations.

A Workshop was convened to consider the draft Act<sup>60</sup>. A list of participants by country is attached. Although the Elements Report, which is essential for evaluating the usefulness of each provision for domestic implementation purposes, was circulated well in advance of the Workshop, generally, participants did not familiarise themselves with its contents. Very few of the participants had previous experience with the 6 MEAs being considered particularly with regard to their legal aspects. Given time constraints, there was little opportunity to provide the degree of guidance that was obviously indispensable to providing a clear understanding of the tasks and the draft document. Without adequate training and experience, the consideration of a single MEA is by no means an easy task let alone 6 instruments!

Workshop participants benefited from presentations from OECS Programme Experts that explained the linkages between the MEA exercise and other initiatives to develop environmental management legislation and protected areas management strategies. These contributions were invaluable in assisting the participants to tackle the key issue of determining the appropriate institutional arrangement for implementing the draft Act.

## **5. - Conclusion and recommendations**

Following this regional workshop, the Consultant revised the draft legislation to take into account the feedback received. This revised finalized draft frame harmonized legislation on biodiversity is submitted at Appendix IV to this report. The implementation of the draft Act will require assessments to be made at the national level to determine –

- (e) whether any existing enactment should be repealed or amended to accommodate the provisions of the draft Act;
- (f) whether the implementation of the 6 instruments in a single draft was appropriate taking into account existing institutional arrangements;
- (g) the extent of the regulatory framework that is required, and;
- (h) the appropriate institutional structures to facilitate execution of the model law.

The provisions of the draft law, in some instances, recommend options for institutional arrangements that may be exercised.

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<sup>60</sup> OECS/UNEP Workshop to Review the Draft Regional Framework Conservation and management Act, 10 November 2005.

In the course of delivery of outputs the Consultant worked and collaborated closely with the OECS Environment Policy Committee, UNEP, Secretariats of the various MEAs particular CITES and national experts. Research was conducted into the several initiatives that were undertaken in other regions to develop similarly styled legislative policies and instruments. These included initiatives in Africa under the Partnership for the Development of Environmental Laws and Institutions in Africa (PADELIA) project, South Africa, Eritrea, the UNEP/UNDP/GEF Biodiversity Planning Support Programme, UNEP-WCMC on harmonized reporting for a cluster of biodiversity MEAs and work by INECE on indicators for compliance and enforcement of biodiversity-related MEA. The Consultant expresses her gratitude for the tremendous encouragement and support that was obtained from the aforementioned programmes, in particular UNEP and the CITES Secretariat without which this undertaking could have been much more challenging.

## List of Persons involved in national consultative processes

### St. Lucia

Crispin d’Auvergne	Chief Sustainable Development & Environment Officer
Anita James	Biodiversity Coordinator
Donatien Gustave	Forestry Department
Bishnu Tulsie	Executive Director, St. Lucia National Trust
Joan Norville	Director of Agricultural Services
Suzanna Scott	Fisheries Biologist
Thomas Nelson	Fisheries Assistant

### Antigua and Barbuda

Mr. Philmore James	Senior Fisheries Officer – Fisheries Division, of the Ministry of Agriculture, Lands and Fisheries.
Everette Williams	Senior Forestry Officer
Jerry Fernandez,	Senior Agricultural Engineer - Soil and Water Conservation Unit

### St. Kitts and Nevis

Ellis Hazelle	Department of Physical Planning and Environment
Randolph Edmeade	Senior Environment Officer
Austin Fariel	Planning Officer (Biodiversity/Biosafety liaison with Env. Div.)
Rhon Boddie	Planning Officer
Mr. Joseph Simmonds	Senior Fisheries Officer (Scientific Authority in St. Kitts for marine species under CITES)
Dr. Jerome Thomas	Director of Agriculture

### Grenada

Kelvin Dottin	UNV – Environmental Affairs
Gloria Payne-Banfield	GRENEA, Grenada National Organisation of Women, etc.
Guido Marcelle	Pesticides Control Board
Paul E. Phillip	Fisheries Division
Keith Friday	Ministry of Legal Affairs/legal draughtsman
Gordon Paterson	Forestry/Parks

### St. Vincent and the Grenadines (SVG)

Cornelius A. Richards	Forestry department
Brian Johnson	Forestry Department
Junior Cottle	Forest Users Groups/IFMDP
Theona Stapleton	Attorney General’s Chambers
Edmund Jackson	Environment Services Unit
Rowena Kirby-Straker	Fisheries Division
Fr. Mark de Silva	Mayreau Environment Development Organisation
Sydney Toney	Public Health Department

Kathy Martin SVG National Trust  
Nigel Weekes National Parks Authority  
Verlyn Saunders Permanent Secretary, Ministry of Health and Environment

Tortola British Virgin Islands

Richard Holder Superintendent of Police  
Grenelvia Chalwell Environmental Officer – GIS, Conservation and Fisheries  
Department (CFD), Ministry of Natural Resources and  
Labour  
CFD  
Haynes Marine Biologist, CFD  
Shannon Gore Physical Planner, Town and Country Planning Department  
Cynthia Roll (TCPD)  
Irene Smith Surveillance Officer, CFD  
Dean Fahie Assistant Comptroller – Enforcement, Customs  
Joseph Smith-Abbott Director, National Parks Trust  
Louis Potter Country Planner, TCPD  
Allison Williams Physical Planner, TCPD  
Rozina Norris Professional Cadet, CFD  
Christine Chan A Shing Fisheries Officer, CFD  
Ian MacIntyre Parliamentary Counsel, AG's Chambers  
Bertrand Lettsome Chief Conservation and Fisheries Officer, CFD  
Angella Montrose Bennett Environmental Education Officer, CFD

Montserrat

Kenya Lee Department of Agriculture  
Melissa O'Garro Chief Fisheries Officer, Dept. of Agriculture  
Jerome Meade Physical Planning Unit  
Jean M. Dyer Legal Department  
Eudora Fergus Montserrat National Trust  
Carole McCauley RSPB/Centre Hills Project  
Eugine Skerritt PS, MALHE  
Roderick Murrain Royal Montserrat Police Force  
Rudolph Dyett Customs and Excise Dept.  
Hewlett Williams Customs and Excise Dept  
Claude Browne Dept of Agriculture

Dominica

Andrew Magloire Chief Fisheries Officer, Fisheries Division  
Lloyd Pascal Coordinator Environmental Coordinating Unit (ECU)  
Jeff JnoBaptiste Public Awareness Officer, ECU  
Andrea Marie POPS coordinator ECU  
Komerit Gabriel MEA Project Officer ECU  
Winston Magloire Division of Agriculture  
Albert Bellot GEFSGP Coordinator

Anguilla

Farah Mukhida

Augul Wilson

Gordon Carnegie

Kellie Bailey

Griffin Webster

Ambrell Richardson

James Gumbs

Glenn Hodge

Keith David

Karim Hodge

Anguilla National Trust

Attorney General's Chambers

Legislative Reform Lead Consultant

Legislative Reform Consultant

Anguilla Archeological & Historical Society

Environmental Health Unit

Director of Fisheries, Department of Fisheries

Customs Department

United Nations Volunteer Dept. of Environment

Dept of Env, Chief Minister's Office



**ORGANISATION OF EASTERN CARIBBEAN STATES  
ENVIRONMENT AND SUSTAINABLE DEVELOPMENT UNIT (ESDU)**

**Regional Workshop on Harmonised Multilateral Environmental Agreement (MEA) Biodiversity Legislation**

Cara Suites Hotel – St Lucia  
Thursday 10<sup>th</sup> November 2005

LIST OF PARTICIPANTS

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**FINAL DRAFT**

**BIODIVERSITY CONSERVATION AND SUSTAINABLE USE ACT, 2006**

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## **BIODIVERSITY CONSERVATION AND SUSTAINABLE USE ACT, 2006**

An Act to provide for the conservation of biological diversity and the sustainable use of biological resources and for matters connected therewith and incidental thereto.

BE IT ENACTED by [COUNTRY] as follows –

### **PART I**

#### **PRELIMINARY**

##### **Short title.**

1. This Act shall be called the Biodiversity Conservation and Sustainable Use Act.

##### **Interpretation.**

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

“agreement” means multilateral environmental agreement;

“animal” means any member of the animal kingdom, whether dead or alive, in any stage of biological development, and any part or product thereof;

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

“biological resources” includes genetic resources, organisms or parts thereof, populations, or any other biotic component of ecosystems with actual or potential use or value for humanity;

“Cabinet” means the Cabinet of Ministers of Government;

“CITES” means the Convention on International Trade in Endangered Species of Wild Flora and Fauna done at Washington, District of Columbia in the United States of America on the 3<sup>rd</sup> day of March, 1973 and any amendment thereto as may be adopted from time to time by the Government of [Country];

“Committee” means the Multilateral Environmental Agreements Committee established at section 44;

“conservation” includes preservation, protection, management, rehabilitation, improvement, restoration and sustainable use;

“conservation status” means the sum of the influences acting on a species that may affect its long-term distribution and abundance;

“COP” means the Conference of the Parties to multilateral environmental agreements;

“cultural heritage” includes monuments, architectural works, elements or structures of an archaeological nature, buildings, works of man or the combined works of nature which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological perspective;

“domesticated animal” means an animal the form and growth of which has been modified through the provision of food, protection from enemies and selective breeding over several generations of living in association with human beings;

“endangered species” means any animal or plant species in danger of extinction and whose survival is unlikely if factors which threaten its extinction continue to operate;

“export” means to take out or transfer, or attempt to take out or transfer, from a place within [Country] to another country or to international waters;

“government authorities” includes the agency responsible for tourism;

“habitat” means a place where a species or ecological community naturally occurs;

“Heritage Committee” means the Natural and Cultural Heritage Committee established under section 37 of this Act;

“import” means to land on, bring into, introduce or attempt to land on, bring into or introduce into [Country] and includes bringing into or introducing into [Country] for re-export or trans-shipment;

“indigenous species means those species of national importance not covered by either Appendix I, II or III of CITES whose populations are believed to be at risk and are in need of conservation;

“introduction from the sea” means the transportation into [Country] of specimen which is taken from the marine environment not under the jurisdiction of any State;

“legislation on the conservation of biodiversity” includes enabling or primary legislation on the subject of forestry, wildlife, plant protection, national parks, protected areas or natural or cultural heritage;

“Management Authority” means the [Director of Forestry][Director of Environment];

“management plan” means in relation to any forest reserve or any protected area the plan adopted in accordance with section 20 of this Act;

“marine area” includes open water, water column, islands and the seabed;

“MEA” means a multilateral environmental agreement;

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

“[Minister]” means the [Minister assigned the responsibility for protected areas, forestry and wildlife]; [Minister assigned the responsibility for environmental management];

“natural heritage” includes natural features consisting of physical and biological formations, geological or physiological formations and areas which constitute the habitat of threatened species of wildlife or natural sites which are of outstanding universal value from the point of view of science, conservation or natural beauty;

“physical plan” means a plan showing the manner in which land may be used (whether by carrying out of development or otherwise) and the stages by which such development may be carried out;

“population” means a group of animals or plants belonging to the same species or sub-species which is geographically separate from other groups belonging to the same species or sub-species;

“protected area” means an area of land or sea especially dedicated to the protection and maintenance of biological diversity, and the natural and associated cultural resources, managed through legal or other means and includes wetlands;

“recovery plan” means a plan or policy that describes the activities necessary to allow a threatened species to recover its numbers to a secure status.

“species” includes any subspecies, variety, form or geographically separate population, whether wild or domesticated, of any species;

“specimen” includes a live or dead animal specimen or plant specimen;

“sustainable use” means the use of biological resources in such a way and at a rate that-

(a) would not lead to its long-term decline;

- (b) would not disrupt the ecological integrity of the ecosystem in which it occurs; and
- (c) would ensure its continued use to meet the needs of present and future generations;

“take” includes –

- (a) in relation to an animal specimen, catch, capture, trap and kill; and
- (b) relation to plant specimen, pick, gather and cut;

“threatened species” means a species that is rare, vulnerable or endangered;

“taking” in relation to any plants includes to gather, pluck, cut, pull up, destroy, dig up, remove or injure the flora or to cause or permit the same to be done by any means;

“waterfowl” means birds that are ecologically dependent on wetlands;

“wetland” means an area of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres;

“wildlife” means all animals including all terrestrial or freshwater wild animals, migratory species, vertebrate or invertebrate, turtles on land, plants or micro-organisms but does not include domesticated animals or plants;

### **Act binds the State.**

3. This Act binds the [State/Government].

### **Objects of the Act.**

4. The objects of the Act are –

(a) within the framework of the [Environmental Management Act], to provide for -

- (i) the management and conservation of biological diversity;
- (ii) the use of indigenous and exotic biological resources in a sustainable manner;
- (iii) the protection and conservation of cultural and natural heritage of [Country];

(b) implementation of the multilateral environmental agreements related to biodiversity mentioned in the First Schedule; and

(c) regulation of international trade in indigenous biological resources.

**Scope and application.**

5. (1) The provisions of this Act shall be consistent with any applicable provisions of the [Environmental Management Act].

(2) In the event of any conflict between the provisions of this Act and the [Environmental Management Act], the latter shall prevail.

(3) Where any other law in force is inconsistent with the provisions and objectives of this Act, it shall, as of the date of coming into force of this Act, cease to apply to the extent of such inconsistency.

(4) The provisions of this Act shall prevail save and except they are expressly repealed.

**PART II**

**ADMINISTRATION**

**Establishment and functions of Management Authority.**

6. (1) The [Director of Forestry] [Director of Environment] shall be the Management Authority for the purposes of this Act.[ OR]

(2) The [Minister] may by order from time to time designate such other person or such governmental authority as he thinks fit, to be the Management Authority for the purposes of this Act.

(3) It shall be the function of the Management Authority to -

(a) administer this Act and the Regulations thereunder;

(b) take such steps as are necessary to protect and monitor the natural resources and their habitats and the natural and cultural heritage of [Country];

(c) maintain a programme for the conservation of biodiversity and its sustainable use;

- (d) coordinate the establishment and management of national parks and protected areas system, wetlands programmes and wildlife management programmes;
- (e) protect and conserve wildlife by regulating the exportation and importation of specified animals, plants and goods in accordance with the provisions of this Act;
- (f) be responsible for all functions and duties assigned to the Management Authority under CITES ;
- (g) conserve watersheds;
- (h) promote scientific research into the conservation and protection of biodiversity and education and training in the management of protected areas, wildlife, forestry and related areas;
- (i) enquire into and report to the [Minister] on any matters referred to it by him or in relation to the conservation of biodiversity and may advise the [Minister];
- (j) perform such other functions pertaining to the conservation of biodiversity as may be assigned to it by the [Minister] by or under this Act or any other law.

(4) In carrying out its functions under this Act, the Management Authority shall -

- (a) cooperate with other governmental authorities, [particularly the Department of Forestry] [particularly the Department of Environment] and non-governmental entities as necessary to fulfil its responsibilities under this Act;
- (b) supervise the preparation of the National Biodiversity Strategy;
- (c) coordinate the inventory and monitoring of the status of biological resources and natural and cultural heritage in [Country];
- (d) ensure that all physical plans and coastal and marine area management plans contain adequate provisions for *in-situ* conservation of biological diversity;
- (e) coordinate with line ministries and local authorities to ensure that conservation and sustainable use of biological resources is adequately provided for in all policies and activities;

(f) coordinate with line ministries, regional and local authorities, and non-governmental organizations to develop programmes of appropriate incentives for conserving and using biological resources;

(g) ensure that environmental impact assessments are carried out for all plans, programmes and projects with potential impact on biological diversity and the natural and cultural heritage of [Country];

(h) coordinate with line ministries, local authorities, and local communities in administering the System Plan for Protected Areas;

(i) carry out any other activities which may be required to ensure compliance with the provisions of this Act.

(4) The Minister shall have the power to remove any person or governmental authority designated as the Management Authority under this Act.

#### **Establishment of Scientific Authority.**

7. (1) The Management Authority shall appoint a group of persons or body to be the Scientific Authority for the purpose of providing advice to the management Authority and in assisting in activities for the conservation of biodiversity in [Country] under this Act.

(2) On matters of a scientific nature, the Management Authority shall give deference to the Scientific Authority.

#### **Functions of Scientific Authority.**

8. (1) The Scientific Authority shall –

(a) advise the Management Authority on the implementation and enforcement of this Act;

(b) in consultation with the Management Authority, prepare guidelines for the management of each category of protected area;

(c) in consultation with the Management Authority and relevant line ministries, propose additional categories of protected areas;

(d) be responsible for all functions and duties assigned to the Scientific Authority under CITES established by regulations under this Act;

(e) advise on and guide the preparation of local, regional, and national inventories of habitats and species, particularly identifying the traditional and subsistence uses of each;

- (f) in cooperation with the Management Authority, develop guidelines for identifying degraded ecosystems and critical wildlife habitats;
- (g) compile and maintain up-to-date an archive of relevant scientific research and field work;
- (h) direct that research be undertaken when information on a relevant question is lacking;
- (i) make recommendations to the Management Authority on the issuance of permits and in regulating the trade in specimens of listed threatened or protected species;
- (j) monitor the provisions of this Act relating to the illegal trade in specimens of listed threatened or protected species; and
- (k) any other matter consistent with, or incidental to, its powers and duties.

(2) In performing its duties the Scientific Authority shall –

- (a) base its findings, recommendations and advice on scientific and professional review of all available information; and
- (b) consult, as necessary, organs of state, the private sector, non-governmental organisations, local communities and other stakeholders before making any findings or recommendations.

(3) The Scientific Authority shall provide written explanations for any findings, recommendations or advise it may submit in accordance with section 8(2).

#### **Establishment of Multilateral Environmental Agreements Committee.**

9. (1) There is hereby established a Committee to be known as the Multilateral Environmental Agreements Committee which shall be appointed by Cabinet.

(2) The Second Schedule shall have effect as to the matters therein provided for in relation to the Committee.

#### **Application of Part.**

- 10. (1) This Part applies to any multilateral environmental instrument whether [Country] became a party to it before or after coming into force of this Act.
- (2) The provisions of any multilateral environmental instrument published in accordance with this section are evidence of the contents of the multilateral

environmental instrument in any proceedings or matter in which the provisions of the instrument come into question.

**Policy directions from [Minister].**

11. The Minister may from time to time give the Management Authority directions of a special or general character in the exercise of the powers conferred and the duties imposed on the authorities by or under this Act.

**PART III**

**PROTECTED AREAS**

**Policy and planning.**

12. (1) The Government of [Country] shall ensure that a policy promoting the conservation of terrestrial and marine biological diversity and natural and conservation heritage is adopted as an obligatory element of all national, regional, and local physical plans and coastal zone and marine area management plans in accordance with [sec. on adoption of national plan, and management plan].

(2) The [Minister] shall revise the policy as appropriate but not less than every ten years, in accordance with the process set out by Regulations.

(3) No land use plan or coastal zone and marine area management plan shall be valid and binding until the Management Authority has issued its decision on the assessment of its impact on the conservation of biological diversity.

**Inventory.**

13. (1) The Management Authority shall keep an inventory of the biological resources and natural and cultural heritage of [Country].

(2) The inventory shall include all available information on the state of the biological resources and natural and cultural heritage of [Country], their ownership and utilisation and the areas requiring protection;

(3) The inventory shall be kept under periodic review and updated as necessary but not less than every five years;

(4) The inventory shall be accessible to any person during normal working hours of the [Department] in which it is kept.

**Wildlife surveys.**

14. The Management Authority shall monitor the state of the wildlife of [Country] and keep surveys of such species as may be necessary for the purposes of conservation of wildlife and biodiversity.

**Record of watersheds.**

15. The Management Authority shall keep a record of watersheds of [Country] and monitor their state, identifying watersheds which require particular protection for the purposes of the conservation of water and soil.

**National plan.**

16. (1) The Management Authority shall prepare an integrated and co-ordinated national plan regarding protected areas and wildlife which shall –

- (a) establish a national protected area system, identifying areas of State and private lands which may be suitable for declaration as protected areas;
- (b) establish a regional network of coastal and marine protected areas to preserve and protect marine and coastal biodiversity;
- (c) protect habitats and associated ecosystems critical to the survival and recovery of endangered, threatened or migratory species;
- (d) protect areas of special biological, scientific, ecological, historical, cultural, archaeological, aesthetic or economic value ecological processes;
- (e) delimit wetlands and specific habitat types; and
- (f) develop an action plan for implementing and further developing the system.

**Integrated management plans.**

17. (1) In preparing physical plans and coastal and marine area management plans, the value of biological diversity particularly as regards wetlands shall be taken into account.

- (2) Physical plans and coastal zone and marine area management plans shall –
  - (a) establish priority uses for types of ecosystems, including wetlands, soils and the seabed;
  - (b) integrate areas important for the conservation of biological diversity along with principal activities including agriculture, civil construction, fishing, forestry, industry, mining, tourism, urbanization; and
  - (c) incorporate recovery plans for degraded ecosystems to be developed.

### **Categories of protected areas.**

18. (1) The Management Authority may propose the following areas to be declared a protected area whenever it appears to be necessary for the following purposes as -

- (a) natural sites, to be managed for strict protection of natural areas and for scientific research;
- (b) national parks, to be managed for ecosystem conservation and tourism;
- (c) natural monuments;
- (d) habitat and wildlife management areas;
- (e) protected landscapes;
- (f) managed resource areas, to be managed for sustainable use of natural ecosystems; and
- (g) cultural and heritage sites.

(2) The Management Authority may, in consultation with the Scientific Authority and relevant line ministries, propose additional categories of protected areas.

(3) The protection of habitat types, including but not limited to coral reefs, forests, mangroves, wetlands and seagrass beds, shall be provided within the categories provided in paragraph (1) above, or in additional categories to be established.

### **Declaration of protected area.**

19. (1) A proposal for the declaration of a protected area shall include –

- (a) a physical survey and description of the area including size and boundaries;
- (b) a justification for establishment of the area and the category of protection proposed, including an evaluation of the advantages and disadvantages of establishing the site;
- (c) a socio-economic impact survey of the local human population with a description of traditional uses of biological resources in the area proposed for declaration;

- (d) a report on collaboration with local authorities and communities in determining the boundaries and category of the area proposed for declaration;
  - (e) a compilation of comments received from local authorities and citizens concerning the proposed declaration of the protected area and the category of protection to be declared;
  - (f) a description of any compensatory measures that may need to be taken as a result of establishment of the area being declared.
- (2) In furtherance of the requirements of subsection (1)(d) and (e), the Management Authority shall solicit comments regarding any proposal under this section and for this purpose shall –
- (a) publish the proposal in the *Gazette* and at least one national newspaper of general circulation;
  - (b) send a copy of the proposal to relevant government departments and agencies; and
  - (c) consult with local national communities that are likely to be affected by the declaration.
- (3) After a period of not less than sixty days from the date of publication, the Management Authority shall hold at least one public consultation to discuss the proposal.
- (4) Within ninety days from the expiry of the term referred to in subsection (2)(a), the Management Authority shall take into account any comments which have been received, and revise the proposal as appropriate.
- (5) The Management Authority shall submit a recommendation to the [Minister] regarding the declaration of the protected area.
- (6) The [Minister] may by proclamation published in the *Gazette* declare the concerned land to be a protected area.
- (7) No land may be granted, devised or sold within a protected area.
- (8) No right or title to or interest in any land within a protected area system may be acquired by prescription.

**Public utility works.**

20. (1) The Management Authority responsible for a public utility may, after an area has been declared a protected area under this Act manage and maintain any works or undertaking in any part of the protected area for which it was authorised and commenced to do before the area was declared to be a protected area.

(2) Any new works or extension of existing works or undertaking on or under the surface of land within a protected area shall be in accordance with the management plan developed for such in accordance with the provisions of this Act.

### **De-classifying protected areas.**

21. Any proposal for de-classifying a protected area shall be prepared by the Management Authority and shall include –

- (a) justification for de-classifying the protected area, which includes a description of the reasons for the proposal;
- (b) an environmental impact assessment which describes the impact of de-classifying the protected area on the ecosystems, species, and local communities affected by the de-classification;
- (c) a description of any mitigation measures that may need to be taken as a result of de-classifying the protected area; and
- (d) a compilation of comments from local authorities and citizens concerning the proposed de-classification.

### **Management plans and guidelines.**

22. (1) Subject to the contents of the national plan, the Management Authority shall, in consultation with the Scientific Authority, develop a management plan and guidelines for each protected area in accordance with the procedures established in Regulations made hereunder.

(2) Every management plan shall be kept under constant review and updated as necessary.

### **Contents of management plans.**

23. Every management plan shall contain the following –

- (a) physical boundaries for each protected area;

- (b) management objectives for the respective protected area including its relationship to national conservation strategies;
- (c) description of the physical and biological characteristics of the existing biological resources and their values, the state of conservation and the main environmental threats to them;
- (d) description of the socio-economic factors of the area including an analysis of the existing conflicts regarding the use of natural or historical–cultural resources and any provisions for the sharing of benefits from the area and maintaining traditional resource rights;
- (e) activities permitted within the protected area;
- (f) activities appropriate for surrounding areas; [Art. 9 SPAW Protocol]
- (g) provisions for controlling tourism and related services;
- (h) programmes and mechanisms for self-financing ;
- (i) legal framework for the implementation of the management plan including regulations for marine areas;
- (j) in the case of forestry, set out applicable conditions regarding activities which may be carried out, including conditions regarding
  - 
  - (i) logging, including harvesting practices and minimum or maximum limits by quantity, species or size;
  - (ii) location and construction of main roads;
  - (iii) agricultural, pastoral and other activities, whether or not in conjunction with forestry;
  - (iv) afforestation and reforestation.
- (k) any other provisions specific to the area.

**Privately operated protected areas.**

24. The Management Authority may enter into formal agreements in respect of private lands with conservation organisations or private individuals that provide for specific

obligations regarding activities which may have an adverse impact on biological diversity.

## **PART IV**

### **ENVIRONMENTAL IMPACT ASSESSMENTS**

#### **Environmental impact assessment.**

25. (1) Environmental impact assessments shall be carried out for all projects, and activities which may have significant adverse impacts on biological diversity.

(2) The Management Authority shall maintain consultations with relevant governmental authorities to ensure that the possible direct and indirect impacts, including cumulative impacts on biological diversity, of major projects listed in the Second Schedule are evaluated.

(3) Environmental impact assessments shall –

(a) be prepared during the planning process for industrial projects and other projects and activities that could have an adverse environmental impact;

(b) evaluate the possible direct, indirect and cumulative impacts of proposed project activities on protected areas and species, their habitats and associated systems; and

(c) involve, in its preparation and review, relevant agencies, the general public, conservation organisations and local communities in a timely manner.

(4) Any decision regarding environmental impact assessments that have been conducted shall be consistent with the purposes for which a protected area was established.

(6) The Management Authority may request the assistance of the Scientific and Technical Advisory Committee in making an environmental impact assessment of a proposed project activity.

(7) Any person desiring to conduct activities within 100 metres of a protected area which may affect any components of the water system including wetlands, mangroves, coral reefs, beaches or seagrass beds or is hydrologically connected to any significant wetland ecosystem, shall first obtain the approval of the Management Authority before commencing such activities.

#### **Prohibition.**

26. (1) Any activity that may result in the destruction of endangered or threatened species shall be prohibited.

(2) No government agency shall authorise any activity that may undermine the purposes for which a protected area was established.

## PART V

### SPECIES MANAGEMENT

#### **Listing of species.**

27. (1) The Management Authority in consultation with the Scientific Authority shall publish a list of species according to the following categories –

(a) endangered species threatened with extinction and which may be affected by trade therein;

(b) species which could become extinct or which have to be effectively controlled;

(c) species which CITES Parties regulate within their jurisdiction to prevent or restrain over-exploitation and require the cooperation of other Parties for the control of trade in such species; and

(d) indigenous species which is to be controlled to meet conservation objectives .

(2) The Minister may, on the advice of the Management and Scientific Authority from time to time upon determining that an indigenous species of animal or plant is endangered, vulnerable or rare, amend any part of the list mentioned in subsection (1) by adding such particular species to the appropriate part of sub subsection (a) to (c).

(3) Migratory species may be included in any of the categories listed in subsection.

(4) The [Minister] may, in consultation with the Management and Scientific Authority, review and amend the list mentioned in subsections (1) and (2) from time to time to reflect changes in the conservation status of individual species taking into account any relevant amendments to Appendix I, II and III of CITES.

(5) The [Minister] shall cause the list and any amendment thereto to be published in the *Gazette*.

#### **Taking of listed species.**

28. (1) No person shall take any listed species except-

- (a) such person is the holder of valid permit issued by the Management Authority;
- (b) in accordance with the requirements of subsection (3) or any Regulations made hereunder; or
- (c) in accordance with any other law that authorises such taking.

(2) The [Minister] may by notice in the *Gazette* publish a list of activities that are prohibited from being carried out in respect of any listed species.

(3) The Management Authority may on such terms and conditions as it thinks fit on application made, grant a permit which shall entitle the holder of such permit to take a listed species for any of the following purposes -

- (a) scientific or educational purposes;
- (b) collection of specimens for zoological and botanical gardens, museums and similar institutions;
- (c) captive breeding;
- (d) artificial propagation;
- (e) traditional subsistence use; or
- (f) any other purpose that the Management Authority may deem appropriate.

Provided that such taking, in the opinion of the Scientific Authority, will not be detrimental to the survival in the wild of the species concerned.

(4) A permit issued under subsection (3) shall be –

- (a) in the prescribed form and shall not be transferable;
- (b) be in respect of a particular location or area;
- (c) for a specified purpose; and
- (d) valid for the period specified therein.

**Amendments.**

29. (1) Within 1 year of amending the status of any species referred to in section 27(2) and (4), the Management Authority in collaboration with the Scientific Authority shall prepare a Recovery Plan that would specify the conservation activities that will be undertaken to recover the species to a secure status.
- (3) After a review and approval of the Recovery Plan, the Minister may publish in the *Gazette* such plan for such species.
- (4) Upon the publication of the Recovery Plan in the *Gazette* the Management Authority may issue instructions to Ministries, Departments, and governmental authorities for achieving the goals of the Recovery Plan, and it shall be the duty of all Ministries, Departments, and governmental authorities to carry out such instructions.

**Non-indigenous species and living modified organisms.**

30. (1) The import and voluntary introduction into [Country] of species non-indigenous to native ecosystems and of living modified organisms through any means including in ballast water for use or release in areas within the jurisdiction or control of [Country] is prohibited, except in accordance with the conditions of a permit issued by the Management Authority.
- (2) The introduction of non-indigenous species into protected areas is prohibited.
- (3) The Management Authority, in cooperation with the Scientific Authority, shall prepare a list of species known to create negative impacts whose introduction may be strictly prohibited.
- (4) Applicable quarantine provisions shall govern introductions of domestic pet animals and domestic plants.
- (5) The Management Authority, in coordination with the relevant line agencies, shall prepare eradication plans for the removal of harmful or potentially harmful non-indigenous species which have already been introduced or which may be introduced accidentally in violation of this Act.

**Re-introduction of indigenous species.**

31. The Management Authority shall permit re-introduction of indigenous species into an ecosystem, including into a protected area, provided that the Scientific Authority has advised that such re-introduction will not be detrimental to the conservation status of the receiving ecosystem.

***Ex-situ* conservation of species.**

32. (1) The Management Authority, in coordination with line ministries and national and international institutions, shall devise appropriate plans to establish facilities for *ex-situ* conservation of biological resources, on the basis of the requirements identified in the National Biodiversity Strategy to be prepared pursuant to section...below.

(2) Priority shall be given to *ex-situ* conservation of indigenous species and to genetic resources for which [Country] is the country of origin.

## PART VI

### TRADE IN SPECIES

#### **Import of species.**

33. (1) Subject to any other law, no person shall –

(a) import any species mentioned in the list referred to in section 27 into [Country]

(b) . introduce from the sea any species mentioned in the list referred to in section 27 into [Country];

except with a valid permit or certificate issued by the Management Authority.

(2) No species listed under CITES shall be imported into [Country] without a CITES Import Permit issued by the Management Authority.

(3) The Management Authority may, on written application, the payment of a prescribed fee, and the presentation of a valid export permit or re-export certificate, issue an import permit provided that –

(i) such import is for purposes which are not detrimental to the survival of the species involved; and

(ii) the recipient of such species is suitably equipped to house and care for it.

#### **Export of species.**

34. (1) Subject to any other law, no person shall export or re-export any species mentioned in the list referred to in section 27 from [Country] except with a valid permit issued by the Management Authority.

(2) No species listed under CITES shall be exported or carried coastwise for export without a CITES Export Permit issued by the Management Authority.

### **Cancellation of permit or certificate.**

35. The Management Authority may cancel a permit or certificate mentioned in sections 28, 33(2) and 34(2) where –

(1) such permit was issued as a result of misleading or false information by the applicant or a person acting on behalf of the applicant; or

(2) the applicant has contravened or failed to comply with –

(a) any condition or term of the permit;

(b) any provision of this Act or other law governing the permitted activity; or

(c) any law of a Party to CITES governing the permitted activity.

### **Appeals.**

36. (1) An applicant who is aggrieved by any decision of the Management Authority in respect of a permit or certificate issued under sections 29, 43(2) and 35(2) of this Act may appeal to the Magistrate's Court by way of a notice of appeal within 28 days after having been informed of the decision.

(2) The notice of appeal shall set out clearly the grounds of the appeal and there shall be attached to such notice, copies of any correspondence, documents or statements relevant to the appeal.

(3) A copy of the notice of appeal together with copies of any correspondence, document or statement shall be served on the Management Authority

### **Customs Act.**

37. The provisions of the [Customs Act] relating to uncustomed and prohibited goods shall apply to prohibitions and restrictions imposed on wildlife under this Act.

### **Offence to trade.**

38. No person shall possess, transport, sell, offer for sale or purchase any listed or protected species or product made from any listed or protected species which has been illegally imported, introduced from the sea, taken from the wild, or otherwise not lawfully acquired without a valid permit issued by the Management Authority.

### **National Biodiversity Strategy and Plan.**

39. (1) The Management Authority shall adopt a national biodiversity strategy and plan for the conservation of biological diversity and its components within one (1) year from the date of adoption of this Act.

(2) The Management Authority shall ensure that –

- (a) measures identified in the strategy are included in national and regional sectoral and cross-sectoral plans; and
- (b) the national biodiversity strategy is updated periodically.

## **PART VII**

### **PROTECTION OF NATURAL AND CULTURAL HERITAGE**

#### **Duties of Management Authority,**

40. The Management Authority functions as the focal point for the identification, protection, conservation and rehabilitation of the natural and cultural heritage of [Country] in accordance with the Convention for the Protection of the World Cultural and National Heritage, to which [Country] is a party.

#### **Establishment, composition and function of Heritage Committee.**

41. (1) There is hereby established a Natural and Cultural Heritage Committee to act in an advisory capacity to the Management and Scientific Authorities on all matters pertaining to the protection of the natural and cultural heritage of [Country] including –

- (a) the adoption of a general policy to promote the cultural and natural heritage of [Country];
- (b) compilation, adoption or amendment of lists of –
  - (i) buildings, monuments, places and sites of prehistoric, historic or architectural merit or interest;
  - (ii) places of natural beauty or natural interest;
- (c) the issuance of interim preservation orders for the urgent protection of unlisted buildings, monuments and sites of prehistoric, historic or architectural merit or interest;
- (d) the determination of applications in respect of listed buildings, monuments or development of land within protected areas;

- (e) the incorporation of the protection, conservation and rehabilitation of the natural and cultural heritage into local, regional and national planning policy;
- (f) the preparation of plans for the preservation, conservation and rehabilitation of buildings of historical, architectural or historic merit or interest including the designation of buffer zones and the conditions for the use, development and enjoyment of land in such areas;
- (g) the designation of Heritage Conservation Areas;
- (h) the determination of applications for the construction of new buildings on land situated in Heritage Protection Areas or in the buffer zones of those areas; and
- (i) the conduct of enforcement measures.

(2) The Heritage Committee mentioned in subsection (1) shall consist of no more than [7] persons drawn from the following disciplines or groups, namely, culture, tourism, fisheries and forestry, environmental management, national parks, architectural society and non-governmental organisations.

(3) A member of the Heritage Committee shall be appointed for a term of 5 years and under such terms and conditions as the Minister may fix in the instrument of appointment.

(4) The Heritage Committee shall regulate its own procedure.

**Listing of buildings, monuments and sites.**

42. (1) The Management Authority may, on the advice of the Heritage Committee, compile lists of –

- (a) buildings, monuments and sites of prehistoric, historic or architectural merit; and
- (b) places of natural beauty or interest, including submarine and subterranean areas and their wildlife.

(2) If the Management Authority is of the view that it is desirable to grant special protection to any area on a list compiled under subsection (1), the Authority may, by order in the *Gazette*, declare that area to be a protected area under this Act.

(3) The Management Authority may amend such lists from time to time.

**Effect of listing of monuments etc..**

43. (1) No person may execute or cause or permit to be executed any works for the demolition or alteration of works of a building or monument or disturbance of a site included in a list compiled under section 43 which would seriously affect its character, whether or not such works would ordinarily constitute permitted development under the [*Physical Planning and Development Control*] Act unless the Management Authority has granted its consent in writing.

(2) The Management Authority shall establish such conditions and procedures as it considers appropriate for the granting of such consent mentioned in subsection (1).

#### **Interim preservation orders.**

44. (1) If it appears to the Management Authority to be expedient to make urgent provision for the preservation of any unlisted building, monument or site, the Authority may, for that purpose, by an order published in the *Gazette* restrict the demolition, alteration or extension of that building or monument or the disturbance of that land.

(2) The Minister may make regulations establishing the procedures for the making of an interim preservation order.

#### **Conservation and preservation of listed buildings, monuments and sites.**

45. (1) Every owner and occupier of a listed building, monument or site is responsible for its conservation and rehabilitation.

(2) The Management Authority shall, as far as practicable, provide assistance to owners and occupiers in procuring technical and financial assistance for the purposes of the rehabilitation and conservation of any listed building, monument or site.

(3) The Management Authority may serve on the owner or occupier of any listed building, monument or site a notice requiring specific steps to be taken to conserve or rehabilitate the building, monument or site within a specified time.

(4) The Minister may make regulations regarding the procedure where the requirements of the notice mentioned in subsection (3) is not complied with.

#### **Heritage protection areas.**

46. (1) The Management Authority may, on the advice of the Heritage Committee, by order published in the *Gazette*, designate any area containing a group of separate or connected buildings which, because of their history, architecture, homogeneity or

their place in the landscape, are of outstanding universal value, including such other land in the buffer zone of those buildings as a Heritage Protection Area.

(2) The Minister may by regulations establish the procedures for establishing a Heritage Protection Area.

#### **Preservation of amenities.**

47. The Management Authority may, as a condition subject to which permission is granted for the development of land, make provision for the preservation of amenities of any area, including the protection of any trees or the planting of new trees.

## **PART IX**

### **INFORMATION, TRAINING AND RESEARCH**

#### **Information.**

48. (1) The Scientific Authority shall compile information on the status of biological diversity in [Country] with the objective of identifying –

- (a) those areas, including wetlands, that are suitable for protected area status;
- (b) those species, including migratory species, for which conservation measures are required to be taken;
- (c) those activities that may have an adverse impact on the protected area status; and
- (d) such other purpose that the Scientific Authority may determine.

(2) The information that is compiled under subsection (1) shall be made available to the Multilateral Environmental Committee for the purpose of meeting its obligations for the submission of national reports to the COP to which [Country] is a party.

(2) The Management Authority shall coordinate the exchange of information on biological diversity in [Country] and the conservation and sustainable use of biological resources, particularly through appropriate established clearinghouse mechanisms.

#### **Public education and awareness.**

49. The Management Authority shall coordinate with the relevant line ministries and local authorities to prepare and carry out public awareness campaigns to inform and educate the public about the value of biological diversity, threats to biological diversity, cultural and natural heritage and ways to conserve and use them in a sustainable manner.

**Research.**

50. (1) The Scientific Authority shall promote research programmes for the conservation and sustainable use of biological resources, and shall cooperate in international programmes to conduct research and develop methods for the sustainable use and conservation of biological diversity.

(2) The Management Authority shall coordinate with national research institutions and line ministries to ensure that research programmes are relevant to the objectives of this Act and to those identified in the National Biodiversity Strategy.

(3) The Minister shall, prepare regulations governing the conservation and sustainable use of biological resources and natural and cultural heritage.

**PART X**

**MONITORING AND ENFORCEMENT**

**Monitoring of biodiversity.**

51. (1) The Scientific Authority shall monitor the status of biological diversity and the sustainable use of its components.

(2) The Management Authority shall be responsible for coordinating and instituting measures for the effective enforcement of the provisions of this Act.

(3) Where a governmental authority does not adequately monitor and enforce the provisions of this Act, the Management Authority is empowered to carry out all necessary monitoring, inspections and enforcement.

**Appointment of enforcement officers.**

52. [The [Minister] may, on the recommendation of the Management Authority appoint fit and proper persons to be enforcement officers for the purpose of carrying out the provisions of this Act.]

**Disqualification.**

53. A holder of a permit who contravenes the terms of his permit may be disqualified from holding a permit for a maximum period of 5 years.

**Seizure of specimens.**

54. (1) Where a court convicts a person of an offence under this Act or the regulations, the court shall order the forfeiture to the Government of any species used or otherwise involved in the commission of the offence.

(2) Where any species is forfeited under subsection (1) the Court may, on the advice of the Scientific Authority, order that the species be –

- (a) returned to the wild;
- (b) stored or kept under the control or management of, or donated to an approved zoological or academic organisation; or
- (c) returned to its owner or country of origin.

#### **Seizure of goods.**

55. Where a court convicts a person of an offence under this Act or accompanying regulations, the court may order the forfeiture to the Government of any goods or equipment used or otherwise involved in the commission of the offence.

## **PART XI**

### **REGULATIONS**

56. The [Minister] may make regulations for –

- (a) the procedure for the adoption of national plan, management plans and revision of policy;
- (b) the ecologically sustainable utilisation of biodiversity;
- (c) detailed criteria for the selection of protected areas;
- (d) the establishment of fishing zones;
- (e) the establishment of maximum fishing limits and minimum size of catches;
- (f) prohibiting the use of certain types of equipment or fishing methods;
- (g) controlling access to protected areas by visitors and their activities through a system of permits and licences;
- (h) the conduct of research on biological diversity and its components in [Country];

- (i) detailed provisions and procedures for the implementation and enforcement of the CITES regulating the trade in specimens of listed threatened or protected species which is binding on [Country];
- (j) the listing of endangered, threatened, vulnerable, protected, alien or invasive species;
- (k) the carrying out of a restricted activity involving a specimen of a listed threatened or protected species;
- (l) the procedure to be followed and the fees to be paid in respect of an application for a permit or certificate that is required under this Act;
- (m) the form and contents of permits or certificates that are required under this Act;
- (n) access to genetic resources;
- (o) the form and contents of, and the requirements and criteria for, benefit-sharing agreements and material transfer agreements relating to genetic resources;
- (p) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species;
- (q) procedures for making amendments to buildings, monuments or other properties of prehistoric, historic or architectural merit;
- (r) procedures for the making of interim preservation orders; and
- (s) any other matter that may be prescribed under this Act.

**Amendment of Schedules.**

57. (1) The Minister may by order published in the *Gazette* amend any Schedule under this Act or regulations made thereunder by adding thereto or deleting therefrom the name of any particular species or otherwise or by the inclusion of new protected areas or deleting or amending the existing protected areas and may apply any such deletion or alteration to the whole of [Country] or confine it to any district or other area thereof, (so, howsoever that the Minister shall, before amending any of the Appendices, comply with the relevant provisions of Article XV or XVI of CITES).

- (2) The Minister shall, by regulations, prescribe procedures for amending the Schedules mentioned in subsection(1).

PART XII

## OFFENCES AND PENALTIES

### **Penalty**

58. (1) A person who commits an offence under this Act shall be liable in summary conviction to a maximum fine of [sum] and imprisonment for a maximum of [time].

### **Offences.**

59. Notwithstanding anything to the contrary in any other enactment, a person commits an offence who, except under and in accordance with the provisions of this Act -

- (a) encloses in or with any letter, parcel or packet any specimen to which this Act refers; or
- (b) uses any mailbag or mail van, ship or other vehicle used for the carrying of mail for the transportation of any specimen to which this Act applies.
- (c) for the purposes of obtaining whether for himself or for any other person, the issue, grant or renewal of any permit issued under this Act, makes any declaration or statement which is false or misleading in any material particular;
- (d) imports illegally or brings into [Country] or exports therefrom any specimen contrary to the provisions of this Act;
- (e) deals in any specimen by way of a transaction of any description whatsoever contrary to the provisions of this Act;
- (f) is in unlawful possession of, or has unlawfully under his control, or offers or exposes for sale or displays to the public any specimen to which this Act relates;
- (g) takes or attempts to take any wildlife within a protected area or forest reserve;
- (h) takes or attempts to take wildlife without a permit or contravenes the conditions of such permit;
- (i) threatens, assaults or obstructs an authorised person acting in the execution of his duties;

and shall be liable to the penalties prescribed in section 59.

### **Obstruction of authorised persons.**

60. Every person who assaults, obstructs or hinders an authorised person in the execution of his duty under this Act or the regulations commits an offence and shall be liable to the penalties prescribed under section 59 of this Act.

**Wilful damage.**

61. (1) Every person who causes material harm by wilfully or recklessly and with the result that material harm will or might result commits an offence and shall be liable to the penalties prescribed under section 59 of this Act.

(2) Wilful damage is to be treated as material harm if –

(a) it consists of a nuisance of high impact or on a wide scale; or

(b) it involves actual or potential harm to the health or safety of human beings that is not trivial; or other actual or potential environmental harm that is not trivial.

**Continuing offences**

62. Where a person is convicted of an offence under this act or the regulations, then, if the contravention in respect of which he was convicted is continued after such conviction he shall be guilty of a further offence and liable on conviction to a further fine of [state fine or formula].

**Orders of court.**

63. (1) Where an offender has been convicted of an offence under this Act or the regulations, in addition to any fine, imprisonment, or other sanction that may be imposed the court may, after considering the nature of the offence and the circumstances surrounding its commission, make an additional order having any or all of the following effects –

(a) prohibiting the offender from doing any act or engaging in any activity that may result in the continuation or repetition of the offence;

(b) directing the offender to take such action as the court considers appropriate as to remedy or avoid any harm to the biological and indigenous resources of [Country] that results or may result from the act or omission that constituted the offence.

(c) directing the offender to publish, at the offender's cost, in the manner prescribed by the court, the facts relating to the conviction;

(d) directing the offender to post such bond or pay such amount of money into court as will ensure compliance with any order made pursuant to this section;

(e) requiring the offender to comply with such other reasonable conditions as the court considers appropriate in the circumstances for securing the offender's good conduct and for preventing the offender from repeating the same offence.

### **PART XIII**

#### **MISCELLANEOUS**

##### **Non-application of Act to certain specimen.**

64. Where in relation to any specimen that is to be exported or re-exported –

- (a) the Management Authority is satisfied that the specimen was acquired before the relevant provisions of CITES applied to that specimen, and;
- (b) the Management Authority grants a certificate, that is to say, a pre-CITES certificate to that effect,

the provisions of section 34 shall not apply to that specimen.

##### **Expired permit may serve as proof of lawful import.**

65. If in any proceedings there arises any question as to whether a specimen is lawfully imported or is lawfully in the possession of the holder thereof, an expired permit or certificate may serve as proof of the lawful import, export, re-export of the specimen to which it relates.

##### **Repeal and transitional.**

66. (1) The [name of Acts] are hereby repealed.

(2) Notwithstanding subsection (1), the regulations made under those Acts shall remain valid and shall apply *mutatis mutandis* until such time as regulations are made under this Act .

FIRST SCHEDULE (sec. 9)

ESTABLISHMENT AND FUNCTIONS OF MULTILATERAL ENVIRONMENTAL  
AGREEMENTS COMMITTEE

**Composition.**

1. (1) The Committee shall consist of not more than eleven persons appointed in accordance with this regulation.
- (2) The Cabinet shall appoint –
  - (a) a Chairman;
  - (b) eight other persons representing government agencies responsible for forestry, fisheries, finance, physical planning, environmental management, tourism, foreign affairs and legal affairs; and
  - (c) two other persons representing non-governmental organisations and the private sector.
- (3) The names of the members appointed to the Committee shall be published in the *Gazette* and at least one daily newspaper of general circulation.

**Meetings.**

2. The Committee shall meet at such times and at such place as the Chairman determines is necessary for the efficient discharge of its functions.

**Procedure.**

3. The Committee may determine its own procedures and may, subject to the approval of Cabinet, make rules governing such procedures.

**Sub-committees and working groups.**

4. The Committee may appoint such sub-committees or working groups as necessary to assist in the performance of its functions or to further the objectives of the Act.

**Functions.**

5. (1) The Committee shall be responsible for advising the Cabinet on all matters pertaining to the ratification of, monitoring, and compliance with multilateral

environmental agreements to which [Country] is a party including those agreements set out in the First Schedule.

- (2) The Committee shall prepare an Annual Performance Report to –
  - (a) meet the government’s commitment to –
    - (i) the agreements to which [the Country] is a party
    - (ii) Agenda 21;
    - (iii) the Johannesburg Plan of Implementation;
    - (iv) the Small Island Developing States Programme of Action; and
    - (v) St. George’s Declaration.
  - (b) cover all relevant activities of governmental entities, statutory bodies and other agencies.
- (3) The Committee may appoint persons or contractors as it considers necessary to act as a Secretariat to ensure preparation of the report.
- (4) The purpose of the report shall be to –
  - (a) review procedures for coordinating policies and budgets to meet the objectives of the MEAs to which [Country] is a Party;
  - (b) review national implementing legislation and regulations; and
  - (c) review progress on public education and awareness programmes to support their objectives.
- (5) The Committee shall make recommendations to Cabinet regarding –
  - (a) the ratification/accession of any multilateral environmental agreement by [Country];
  - (b) projects, programmes or other activities that may be instituted to facilitate compliance with or enforcement of any multilateral environmental agreement to which [Country] is a party;
  - (c) the policy positions that should be taken at international regional or sub-regional negotiations related to any multilateral environmental agreement.
- (6) In making recommendations under subsection (5) (a) the Committee shall submit reports to Cabinet regarding the following particulars –

- (a) the resources that are available to facilitate implementation;
- (b) the views of interested and affected parties;
- (c) the benefits and disadvantages to the country of becoming a party;
- (d) the responsibilities of relevant agencies involved;
- (e) reservations to be made, if any; and
- (f) any other matter which may be relevant.

(7) After considering the report mentioned in subsection (6), the Cabinet may ratify/accede to an MEA.

(8) Cabinet shall take such steps as may be necessary to implement any MEA mentioned in paragraph (6) including –

- (a) the coordination of the implementation of such agreement;
- (b) the allocation of responsibilities with respect to such agreement;
- (c) the gathering of information for the purposes of compiling and updating reports for submission to Parliament;
- (d) the dissemination of information related to the instrument and reports from attendance at meetings;
- (e) initiatives and steps regarding research, education, training, awareness raising and capacity-building;
- (f) ensuring public participation;
- (g) implementation of and compliance with the provisions of the agreement, including the creation of offences and the prescription of penalties where applicable;
- (h) the submission of reports as required under the respective multilateral environmental agreement Secretariats; and

- (i) any other matter necessary to give effect to the instrument.

(9) Cabinet may, prior to making a recommendation mentioned under paragraph (6), publish a notice in the *Gazette*, stating its intention to ratify/accede to such agreement and inviting written comments.

**Attendance at meetings, etc.**

6. (1) Where any person attends any sub-regional regional or multilateral environmental meetings, workshops and training on behalf of [Country] such person shall, within twenty-eight days after such attendance submit a report containing particulars of the proceedings at the meeting, workshop or seminar and recommendations, including follow-up activities that may be appropriate to the interests of [Country], to the Committee.

(2) The Committee shall submit the report mentioned in paragraph (6) (1) to Cabinet.

**Reports to Parliament.**

7. The Cabinet may report to [Parliament] once a year regarding MEAs to which [Country] is a party and such report may include details on –

- (a) participation at multilateral meetings concerning MEAs;
- (b) progress in implementing MEAs;
- (c) preparations undertaken in respect of MEAs;
- (d) the efficacy of coordination mechanisms; and
- (e) legislative measures that have been undertaken and the timeframe within which it is envisaged that their objectives will be achieved.

SECOND SCHEDULE (sec. 25)

PROJECTS AND ACTIVITIES THAT REQUIRE A DETAILED ENVIRONMENTAL  
ASSESSMENT

Electrical power plants

Ports and harbour projects, pier construction, dredging and harbour maintenance

Marina construction

Airport and road construction

Oil refineries and transshipment terminals

Sewerage projects and solid waste disposal

Tourism facilities

Dams and water irrigation systems

Structural shoreline protection

Changes in land use

Industrial parks

Chemical manufacture, storage and transport

Intensive agriculture, forestry, fisheries projects (including aquaculture)

Any project or activity which have a significant impact on biological diversity