THE COURT MANAGEMENT SERVICES

NATIONAL ENVIRONMENT AND PLANNING AGENCY

Hilton Rose Hall Resort and Spa

REPORT

JUDICIAL TRAINING SEMINAR IN ENVIRONMENTAL LAW FOR RESIDENT MAGISTRATES

NOVEMBER 18-20 2011

Prepared by:

Jamaica Environment Trust

November 2011

ENVIRONMENTAL LAW • INSTITUTE®

NORMAN MANLEY LAW SCHOOL

ACKNOWLEDGEMENTS

The 2011 Judicial Training Seminar in Environmental Law for Resident Magistrates was made possible by the following organisations which contributed funding, resource materials and support:

- The National Environment and Planning Agency
- The Environmental Law Institute
- The Commonwealth Magistrates' and Judges' Association
- The Court Management Services of Jamaica
- The Norman Manley Law School

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OVERVIEW

This report assesses the 2011 Judicial Training Seminar in Environmental Law for Resident Magistrates held November 18-20, 2011 at the Hilton Rose Hall Resort and Spa in Montego Bay, St. James, Jamaica. The seminar was sponsored by The National Environment and Planning Agency (NEPA), Environmental Law Institute (ELI), and the Commonwealth Magistrates' and Judges' Association (CMJA) and facilitated by the Court Management Services (CMS), the Norman Manley Law School (NMLS) and the Jamaica Environment Trust (JET).

The seminar built upon the body of experience, lessons learned and materials produced from previous environmental law seminars organized by NEPA for members of the judiciary in Jamaica and a pilot judicial training seminar conducted by ELI in the Dominican Republic for judges in Jamaica, Haiti and the Dominican Republic.

OBJECTIVES

The primary objectives of the seminar were to:

- **Increase the judiciary's awareness** of the role of environmental and natural resources law and the judiciary in protecting and conserving biodiversity.
- **Build greater awareness of the role of biodiversity protection** in the administration of justice in the field of environmental law.
- **Provide tools for continuing learning and reference** after the training is completed.
- **Institutionalize training in environmental law** within the judicial education systems of Jamaica.

The feedback received from the participants indicates that the seminar was successful in increasing their awareness of environmental law and the importance of biodiversity protection. See **Appendix 4** for specific written comments from participants.

> *An extremely productive workshop, very enlightening. Objectives achieved and exceeded.*
>
> - Judge

BUDGET

The budget for the seminar was JMD 2,968,762 or USD 34,520; however the actual cost was **JMD 2,643,233.00** or **USD 30,736**. NEPA and ELI contributed towards the cost for the accommodation, venue and equipment. All other costs were covered by the CMJA.

Programme Costs	Allocated Budget		Actual Budget		Variance	
	USD	JMD	USD	JMD	USD	JMD
Local Transportation	581	50,000	863	74,187	-282	-24,187
Airfare	3,000	258,000	2,270	195,242	730	62,758
Stationary & Supplies	581	50,000	106	9,093	475	40,907
Materials	2,489	214,054	873	75,068	1,616	138,986
Equipment Rental	1,485	127,710	1,468	126,248	17	1,462
Venue	2,100	180,600	2,340	201,240	-240	-20,640
Accommodation	23,760	2,043,360	(ELI-11,880; NEPA-10,936) =22,816	(ELI-1,021,680; NEPA-940,475) = 1,962,155	944	81,205
Communications	291	25,000	0	0	291	25,000
Miscellaneous Charges	233	20,038	0	0	233	20,038
TOTAL	**34,520**	**2,968,762**	**30,736**	**2,643,233**	**3,784**	**325,529**

Exchange rate: USD86:JMD1

PROGRAMME

The sustainability of this education programme necessitates the development of a course curriculum in environmental law inclusive of permanent learning and reference materials that may be adapted to various audiences within the justice system (Resident Magistrates, Puisne judges, Clerk of Courts and prosecutors) and is sufficiently dynamic to allow for creativity in the delivery of the various topics.

To facilitate this seminar and the development of a course curriculum, NMLS drafted a proposed syllabus in collaboration with legal professionals, ELI, NEPA and JET. The syllabus formed the basis for the topics and presentations at the seminar and in this way the syllabus was tested for academic viability and relevance. See **Appendix 1** for the proposed syllabus.

Photograph 1: Mr. Justice Winston Anderson, Judge of the Caribbean Court of Justice giving his presentation.

Fifteen (15) technical and legal professionals, both local and overseas, presented at the seminar on a wide range of topics as outlined in the agenda below. These presentations examined the application, challenges and opportunities in the practice of environmental law in Jamaica as it pertains to each particular topic. Some presentations examined the development of jurisprudence in this area, the interpretation of environmental legislation in case law, and compared the practice of environmental law in Jamaica with other jurisdictions. See **Appendix 5** for the profile of presenters, **Appendix 8** for the written presentations and **Appendix 9** for the Powerpoint presentations.

The presentations were approximately 20-30 minutes in length and were followed by question and answer segments. Over 35 questions were raised and answered during the seminar on issues relating to the various topics outlined on the agenda. See **Appendix 6** for some of the questions raised during the question and answer segments.

A breakout session was held on the third day of the seminar to give the judicial participants an opportunity to apply the information and materials presented. The objective of the breakout session was to determine their level of understanding of environmental laws and their application. The judicial participants were divided into four groups and presented with a Hypothetical Fact Pattern (HFP) relating to a development that caused environmental damage and breached environmental laws.

The feedback received from the participants showed that the objectives of the seminar had been achieved, in particular, the participants generally had a good sense of understanding of the relevant laws relating to the protection of the environment. See **Appendix 7** for the HFP and feedback from the various groups.

"This has been a truly enlightening experience. No longer will I consider environmental issues as 'soft' and 'unsexy'... I was very impressed by the background and obvious wealth of knowledge of the various presenters, both local and non-local…What you have emphasized MUST be improved without further delay to enable a more efficient and worthwhile management of all things environmental."

- Resident Magistrate's comment on the evaluation form

The presenters were excellent. The knowledge gained was superb and very relevant.

- Judge

AGENDA

FRIDAY, NOVEMBER 18, 2011

WELCOME AND OPENING

3:30 - 4:30 P.M.	Check-in and Registration
4:30 - 3:30 P.M.	Opening and Welcoming Remarks -The Hon. Mrs. Justice Zaila McCalla- Chief Justice of Jamaica -Mr. Peter Knight - Chief Executive Officer, National Environment and Planning Agency (NEPA) - Mr. John Pendergrass - Senior Attorney and Director of Judicial Education, Environmental Law Institute -Mr. Norman Davis - Senior Tutor, Norman Manley Law School

SESSION 1: THE SIGNIFICANCE OF ENVIRONMENTAL PROTECTION AND THE LAW

4:50 - 5:20 P.M.	*The Judiciary and Environmental Law: From Koala Bears to Killer Whales* -H.H. Judge Keith Hollis-Circuit Judge, England and Wales
5:20 - 5:30 P.M.	Q & A
5:30 - 5:50 P.M.	*The State of Jamaica's Environment and Biodiversity Conservation* -Prof. Dale Webber, Centre for Marine Sciences (Mona)
5:50 - 6:10 P.M.	*Methods for Estimating the Economic Value of Damages to Natural Resources and their Application in the Caribbean* -Mr. Jeffrey Wielgus - Consultant in Natural Resource Economics
6:10 - 6:30 P.M.	Q & A

SATURDAY, NOVEMBER 19, 2011

SESSION 2: THE DEVELOPMENT OF INTERNATIONAL ENVIRONMENTAL LAW

9:00 - 9:30 A.M.	*International Environmental Agreements: Impact on National Law and Their Application in Jamaican and Caribbean Courts* -The Hon. Mr. Justice Winston Anderson - Judge of the Caribbean Court of Justice
9:30 - 9:45 A.M.	Q & A

SESSION 3: THE JAMAICAN ENVIRONMENTAL LEGAL REGIME

a. Enforcement mechanisms; trial and evidence issues

9:45 - 10:15 A.M.	*Balancing Environment and Planning in Jamaica* -Mr. Peter Knight, Chief Executive Officer, NEPA
10:15 - 10:30 A.M.	COFFEE BREAK
10:30 - 11:00 A.M.	*Enforcement of Environmental and Planning Laws* -Mr. Robert Collie, Director of Legal Services and Enforcement, NEPA -Mr. Richard Nelson, Manager of the Enforcement Branch, NEPA

11:00 - 11:30 A.M.	*Overview of the Prosecution of Environmental Crimes in Jamaica* -Ms. Marie Chambers, Manager of the Legal Services Branch -Ms. Brenda Miller, Legal Officer, NEPA; -Mr. Phillip Cross, Legal Officer, NEPA
11:30 - 12:00 A.M.	*Sentencing and Assessing Damages to Natural Resources* -Mr. Gilroy English, Attorney-at-Law
12:00 - 12:30 P.M.	Q & A
12:30 - 1:30 P.M.	LUNCH BREAK

b. Marine and freshwater resources; species and habitat protection

1:30 - 1:50 PM	*Access and Management of Jamaican Beaches* -Mrs. Laleta Davis-Mattis, Executive Director, Jamaica National Heritage Trust
1:50 - 2:10 P.M.	*Emerging Environmental Issues in Fisheries Management in Jamaica* -Ms. Yvonne Joy Crawford, Senior Legal Officer, Ministry of Agriculture and Fisheries
2:10 - 2:30 P.M.	*Forest Law Enforcement in Jamaica* -Ms. Rainee Oliphant, Senior Legal Officer, Forestry Department
2:30 - 2:50 P.M.	*The National Solid Waste Management Authority (NSWMA) Act: Purpose and Scope of Work* -Mr. Phillip Morgan- Senior Investigator, NSWMA
2:50 - 3:30 P.M.	Q &A - PANEL DISCUSSION

SUNDAY, NOVEMBER 20, 2011

SESSION 4: BREAK OUT SESSION

9:00 - 10:30 A.M.	BREAKOUT SESSION
10:30 - 10:45 A.M.	COFFEE BREAK

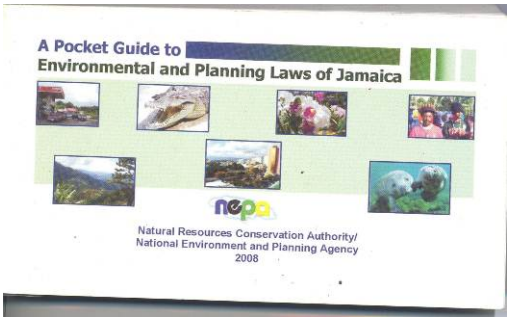
SESSION 5: ENVIRONMENTAL JURISPRUDENCE

10:45 - 11:15 A.M.	*Environmental Justice: New Developments and Innovative Approaches by Judiciary Worldwide* -Mrs. Carole Excell, Senior Associate, World Resources Insitute
11:15 - 11:45 A.M.	*Emerging Environmental Jurisprudence in the Caribbean* -Ms. Danielle Andrade, Legal Director, Jamaica Environment Trust+
11:45 - 12:15 P.M.	*The Environmental Commission in Trinidad and Tobago* -Her Honour Sandra Paul, Chairman of The Environmental Commission, Trinidad and Tobago
12:15 - 12:45 P.M.	Q & A
12:45 - 1:00 P.M.	CLOSING
1:00 - 2:00 P.M.	LUNCH BREAK

MATERIALS

Each participant received the following information:

- A booklet with presentations from the seminar
- 'A Pocket Guide to Environmental and Planning Laws of Jamaica' produced by NEPA
- A CD of Environmental and Planning Laws of Jamaica produced by NEPA
- A Hypothetical Fact Pattern to consider during the interactive breakout session
- The profile of the various presenters
- One-page background paper on the seminar



ATTENDANCE

The overall attendance at the seminar was good with a total of 78 participants from Jamaica and other countries. The total number of judicial participants was 48. A detailed breakdown of the range of participants is given in Tables 1 below. See **Appendix 2** for a copy of the registration sheets.

Table 1 – Participants

PARTICIPANTS	NUMBER
Resident Magistrates from Jamaica	36
Supreme Court and Court of Appeal judges from Jamaica	6
Overseas judges from the UK, Bermuda, Trinidad & Tobago and Guyana	6
Presenters	15
Resources personnel	15
TOTAL	**78**

EVALUATION OF SEMINAR

METHODOLOGY

At the end of the seminar, participants were asked to complete and submit a Workshop Evaluation Form. This form was used to obtain feedback from the participants about the clarity of the aims of the seminar, its usefulness and their satisfaction with the resources provided and organization of the seminar. 36 participants (46% of the total participants that attended the seminar) submitted a Workshop Evaluation form. These were 22 judges and 14 non-judicial participants. See **Appendix 3** for the sample evaluation form and **Appendix 4** for comments received.

Participants were asked to evaluate the seminar as a workshop by rating it under the following categories:

- Clarity of workshop aims
- Overall usefulness of workshop
- Satisfaction with presenters
- Satisfaction with materials
- Pace of workshop
- Length of workshop
- Organization of workshop
- Venue and food provided

Participants assessed most areas by indicating their level of satisfaction. (e.g. 'not satisfied', 'satisfied' or 'very satisfied'). In the case of the clarity of the aims of the seminar- 'not clear', 'somewhat clear' and 'very clear' and in the case of overall usefulness of the workshop- 'not useful', 'very useful', 'somewhat useful'. The responses to each question were tallied and representational charts are produced below.

An enlightening seminar which has now 'pumped' me up to fight for our environment and the attendant issues.

- Judge

RESULTS

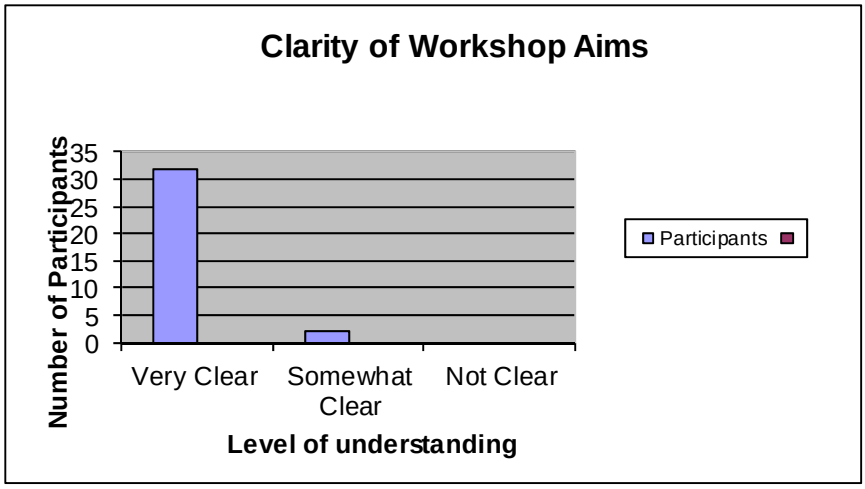
Overall, the responses indicated that the workshops were informative, useful, interesting, and had fulfilled the objectives.

Category 1: Clarity of the aims of the seminar

The question asked was: *Were the workshop's aims made clear to you?*

The results are given in Figure 1.

FIGURE 1



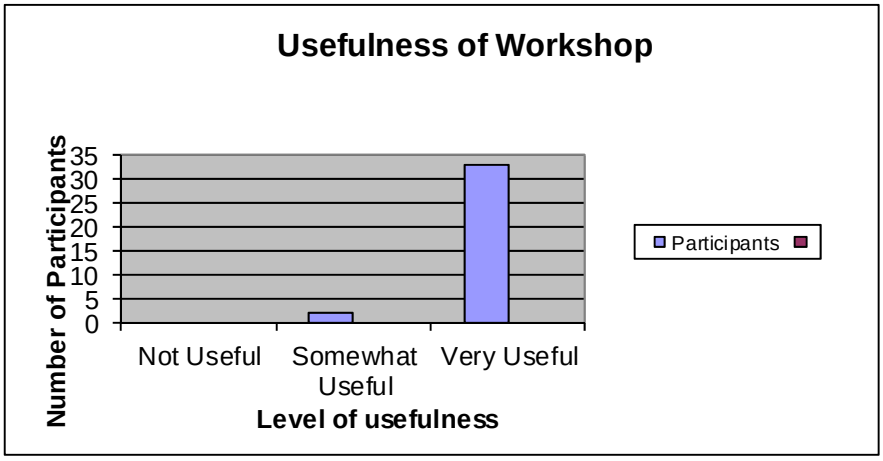
32 participants (94%) had a "very clear" understanding of the aims of the seminar.

Category 2: Overall usefulness of workshop

The question asked was: *How useful did you find the workshop overall?*

Results are shown in Figure 2.

FIGURE 2



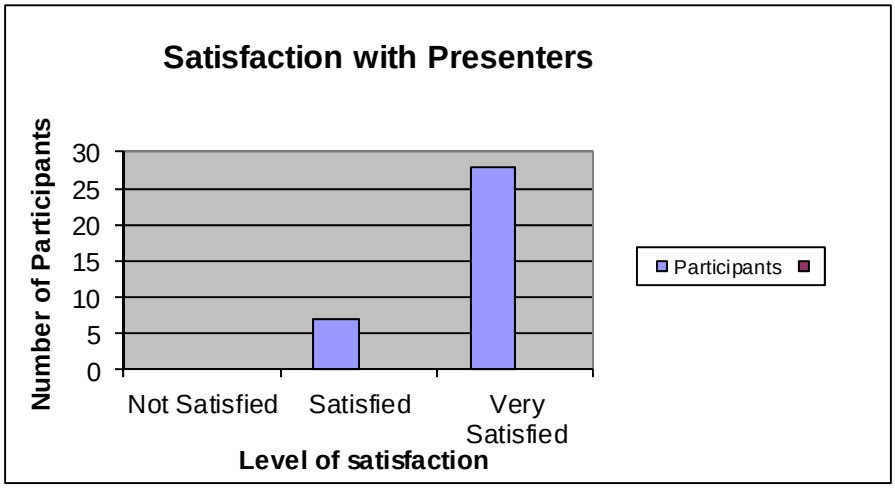
33 participants (94%) rated the seminar as "very useful".

Category 3: Satisfaction with Presenters

The question asked was: *How satisfied were you with the presenters?*

Results are shown in Figure 3

FIGURE 3



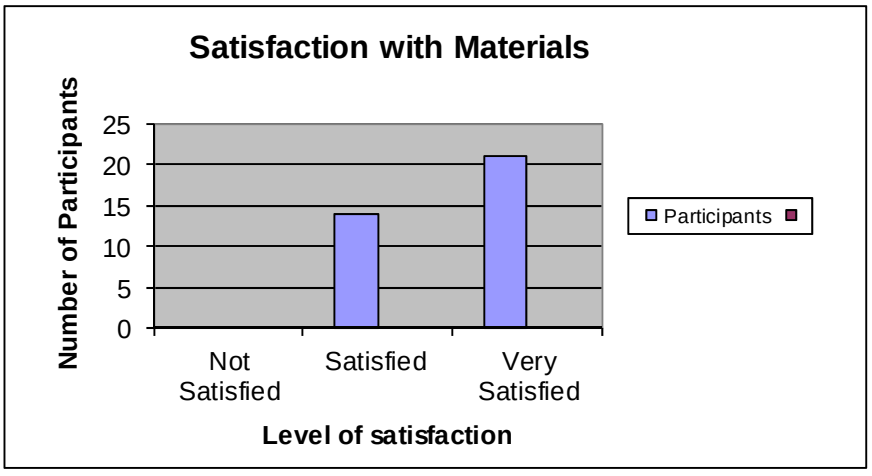
28 participants (80%) were "very satisfied" with the presenters and 7 (20%) were "satisfied".

Category 4: Satisfaction with materials

The question asked was: *How satisfied were you with the materials?*

The results are shown in Figure 4

FIGURE 4



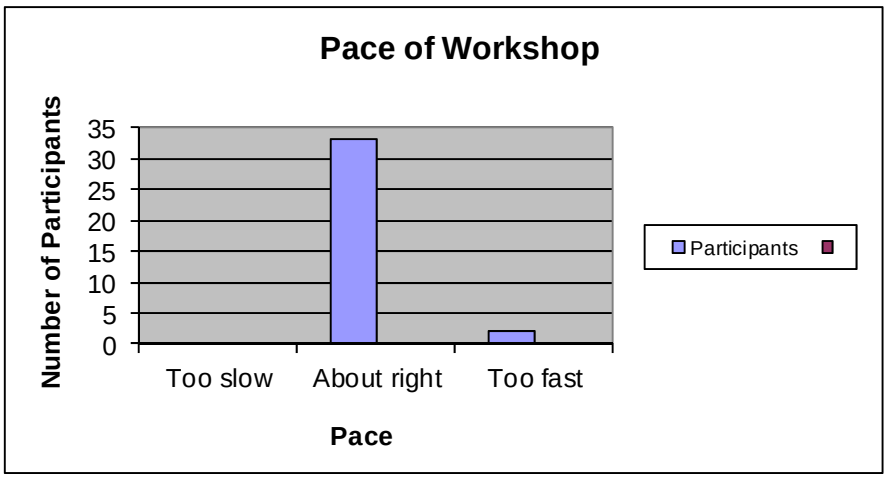
21 participants (60%) were "very satisfied" with the materials provided at the seminar and 14 participants (40%) were "satisfied".

Category 5: Pace of workshop

The question asked was: *How did you find the pace of the workshop?*

The results are shown in Figure 5

FIGURE 5



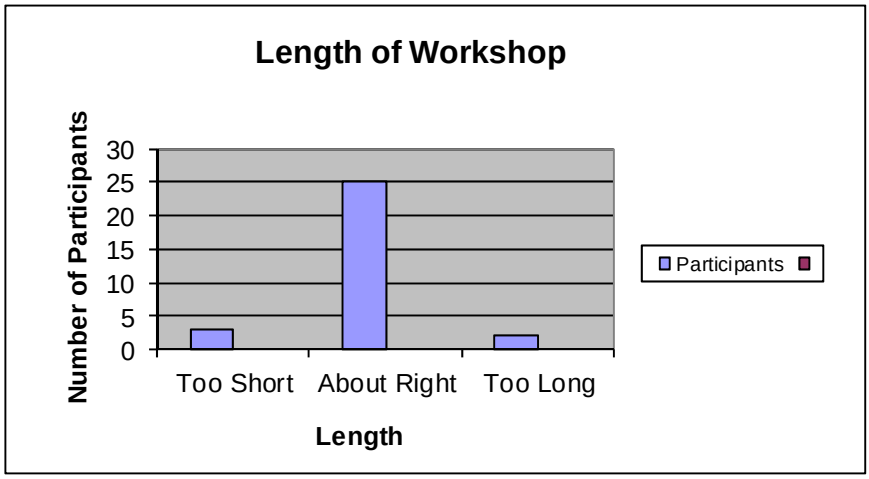
33 participants (94%) rated the pace of the seminar as "about right".

Category 6: Length of workshop

The question asked was: *How did you find the length of the workshop?*

The results are shown in Figure 6

FIGURE 6



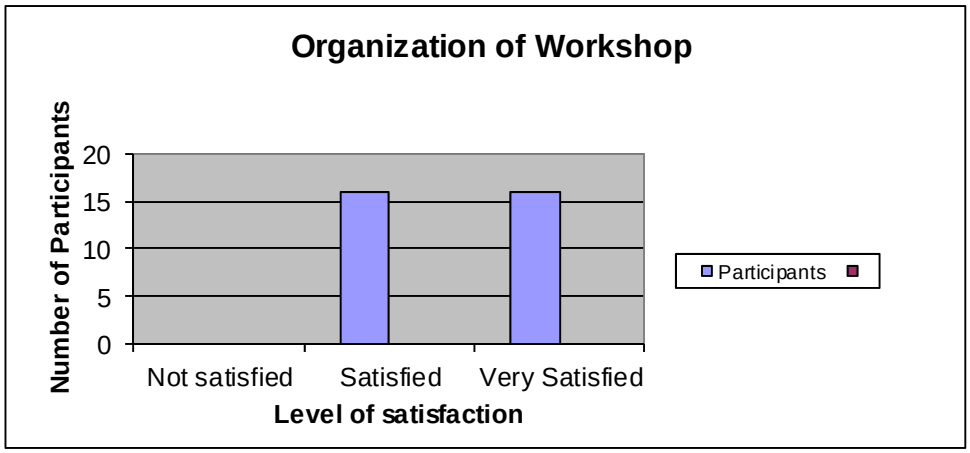
25 participants (83%) rated the length of the seminar as "about right". 3 participants (10%) thought the seminar was "too short" and 2 participants (7%) thought it was "too long". It should be noted that only 30 participants responded to this question.

Category 7: Organisation of workshop

The question asked was: *How satisfied were you with the organisation of the workshop?*

The results are shown in Figure 7.

FIGURE 7



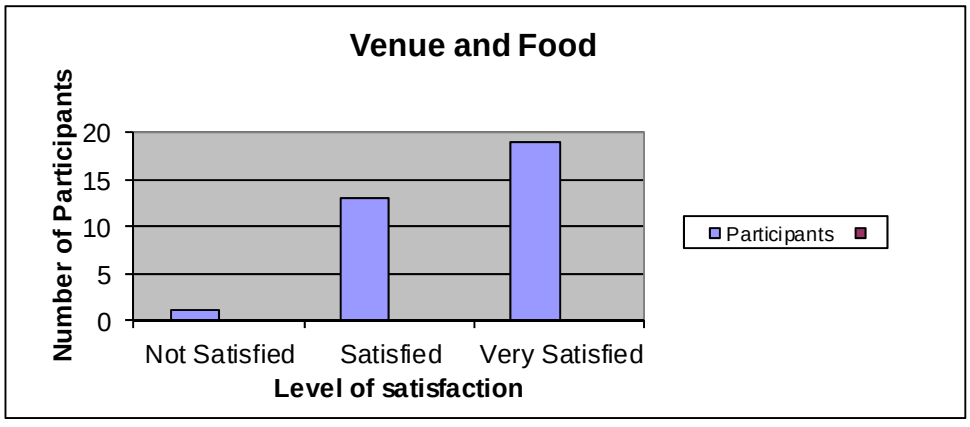
An equal number of participants (16) were "very satisfied" or "satisfied" with the organisation of the seminar. Only 32 participants responded to this question.

Category 8: Venue and food provided

The question asked was: *How satisfied were you with the venue/food provided?*

The results are shown in Figure 8.

FIGURE 8



19 participants (58%) were "very satisfied" with the venue and food provided at the seminar and 13 (39%) were "satisfied" and 1 participant (3%) was "not satisfied". Only 33 participants responded to this question.

SUMMARY OF EVALUATION

An overview of the ratings and comments highlight the following conclusions:

1. **Clarity of Workshop Aims:** 94% of participants had a very clear understanding of the aims of the seminar.

2. **Overall Usefulness of Workshop:** 94% of the participants rated the seminar as very useful.

3. **Satisfaction with Presenters:** 80% of the participants were very satisfied with the presenters.

4. **Satisfaction with Materials:** 60% of the participants were very satisfied with the materials provided at the seminar and 40% of the participants were satisfied.

5. **Pace of the Workshop:** 94% of the participants rated the pace of the seminar as about right.

6. **Length of Workshop:** 83% of the participants rated the length of the workshop as about right.

7. **Organization of Workshop:** 50% of the participants were very satisfied and 50% were satisfied with the organization of the seminar.

8. **Venue and Food:** 58% of the participants were very satisfied and 39% of participants were satisfied with the venue and food provided.

9. Of the 36 participants that completed evaluation forms, none indicated dissatisfaction with the clarity of aims, materials provided, presenters and presentations or usefulness of the workshop. Only one (1) participant was not satisfied with the venue and food provided.

A full listing of comments made by participants is given as Appendix 8.

Possible sources of error in analyzing workshop evaluations

1. No response: In 9 instances there were unanswered questions on the Evaluation Form.
2. Only 46% of the total number of participants (36 out of 79 participants) completed the Evaluation Form.

APPENDICES

APPENDIX 1 - PROPOSED SYLLABUS

1. **Introduction to Environmental Jurisprudence:** All topics are to be discussed with the application of these principles in jurisdictions around the world with an emphasis on Caribbean region

   - The beginnings of environmental law: the significance of environmental protection, genesis and development of International and Caribbean Environmental Law and principles.
   - Standing and developments in the area: "the environment as client or complainant".
   - Environmental rights: Constitutional protection under the Charter of Rights and its implications.
   - Use of other areas of law to address matters of the environment:
     - Statutory Nuisances
     - Administrative Law
     - Criminal Law

2. **Multilateral Environmental Agreements (MEAs)**

   - Monist vs Dualist Jurisdictions: Examination of case law where conflicts arise between non-ratification and impact on citizens.
   - Overview of the MEAs ratified by Caribbean nations as well as those not ratified (non-exhaustive list): Law of the Sea, International Convention for the Prevention of Pollution from Ships (MARPOL Convention and 1997 Protocol), Convention on Biological Diversity, Convention on the International Trade in Endangered Species, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Convention on Biological Diversity, The Rio Declaration, Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (the Aarhus Convention- Jamaica is not a party), UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage.
   - International Environmental Law: Practice in the Courts.
   - International Trade Law: Environmental implications.

3. **The Jamaican Environmental Legal Regime:** An examination of the principal laws governing the environment (non-exhaustive list).

   - Marine and freshwater resources:
     - National laws – Beach Control Act, Fishing Industry Act, Wildlife Protection Act, Water Resources Act, Maritime Areas Act.

- Species and habitat protection:
    - National laws - Forest Act, Natural Resources Conservation Authority Act, The Endangered Species (Protection, Conservation, and Regulation of Trade) Act, Wildlife Protection Act.
- Waste management:
    - National laws – Solid Waste Management Authority Act, Public Health Act and Regulations.
- Planning and environment:
    - National laws – Natural Resources Conservation Authority Act (environmental impact assessments), Town and Country Planning Act, Beach Control Act, Local Improvements Act, Land Development and Utilization Act, Access to Information Act, Quarries Control Act, Mining Act, Jamaica National Heritage Trust Act.

4. Caribbean Environmental Law: Practice in the Courts

- Overview of significant Jamaican criminal cases
- Overview of significant Jamaican and Caribbean civil cases: Jamaica, Belize, Trinidad and Tobago, Bahamas, Guyana etc.
- Enforcement mechanisms and evidence issues
- Sentencing and the quantum of damages: giving value to natural resources

APPENDIX 2 - REGISTRATION SHEETS

The Court Management Services

JUDICIAL TRAINING WORKSHOP ON ENVIRONMENT LAW IN JAMAICA

18TH – 20TH NOVEMBER, 2011, HILTON HOTEL, ROSE HALL, MONTEGO BAY, JAMAICA

NO.	NAME	POSITION	SIGNATURE NOVEMBER 18, 2011	NOVEMBER 19, 2011	NOVEMBER 20, 2011
✓	Alleyne Desiree	Ag. Senior Resident Magistrate Her Honour Mrs.			
	Anderson Jennes	Resident Magistrate, Her Honour Miss			
	Barnes Sheron	Resident Magistrate, Her Honour Miss			
	Blake Powell Paula	Ag. Senior Resident Magistrate Her Honour Mrs.			
	Brooks Natalie	Resident Magistrate, Her Honour Miss			
	Brown Cresencia	Resident Magistrate, Her Honour Miss			
✳	Brown Yvonne	Resident Magistrate, Her Honour Miss			
✓	Burchenson Oswald. E.	Resident Magistrate, His Honour Mr.			
	Burton George	Resident Magistrate, His Honour Mr.			
	Campbell William	Resident Magistrate, His Honour Mr.			
	Chatoor Vashti	Resident Magistrate, His Honour Mr.			
	Dunbar-Green Marcia	Senior Resident Magistrate, Her Honour Mrs.			

NO.	NAME	POSITION	SIGNATURE NOVEMBER 18, 2011	NOVEMBER 19, 2011	NOVEMBER 20, 2011
	Edwards Valrie	Resident Magistrate, Her Honour Miss			
	Ellis Maxine	Resident Magistrate, Her Honour Miss			
	Facey Vaughn	Resident Magistrate, His Honour Mr.			
	Fraser Georgiana	Ag. Senior Resident Magistrate Her Honour Mrs.			
✳	Gallimore-Rose D.	Resident Magistrate, Her Honour Mrs.			
	Harris Vivene	Senior Resident Magistrate, Her Honour Mrs.			
	Hart Hines Natalie	Resident Magistrate, Her Honour Mrs.			
	Henry Winsome	Resident Magistrate, Her Honour Miss			
	Henry-McKenzie Grace	Resident Magistrate, Her Honour Mrs.			
	Jackson Haisley Stephane	Resident Magistrate, Her Honour Mrs.			
	Lawrence Ruth	Resident Magistrate, Her Honour Miss			
	Maddix Simone	Resident Magistrate, Her Honour Miss			
	Moyston Marjorie	Resident Magistrate, Her Honour Mrs.			
	Nembhard Anne-Marie	Resident Magistrate, Her Honour Miss			

No.	Name	Position	Signature		
			November 18, 2011	November 19, 2011	November 20, 2011
	Orr Stephany	Resident Magistrate, Her Honour Miss			
	Palmer Dale	Resident Magistrate, His Honour Mr.			
	Pettigrew-Collins Andrea	Senior Resident Magistrate Her Honour Mrs.			
	Pennicooke Winsome	Resident Magistrate, Her Honour Miss			
	Pusey Judith	Senior Resident Magistrate Her Honour Miss			
	Reid Icolin	Resident Magistrate, Her Honour Mrs.			
	Reid Tara	Resident Magistrate, Her Honour Miss			
	Shelly -Williams Lorna	Resident Magistrate, Her Honour Mrs.			
	Smith Opal	Resident Magistrate, Her Honour Miss			
*	Thomas Andrea	Ag. Senior Resident Magistrate Her Honour Miss			
	Wiltshire Calys	Resident Magistrate, Her Honour Miss - Chair			
	Wolfe-Reece Simone	Resident Magistrate, Her Honour Mrs.			
	Smith Vaughn	Acting Resident Magistrate			

Attendance Register
Environmental Law Judicial Seminar

Name	Fri Nov 18	Sat Nov 19	Sun Nov 20
The Hon Mrs. Justice Zaila McCalla - Chief Justice			
The Hon Mrs. Justice Norma McIntosh			
The Hon Mrs. Justice Marjorie Cole Smith			
The Hon Mr. Justice Evan Brown (Actg)	—		
The Hon Mrs. Justice Sharon George (Acting)	—	S. George	S. George
Mrs. Sonia Bertram-Linton (Master-In-Chambers) Actg			

Attendance Register
Environmental Law Judicial Seminar

Name	Fri Nov 18	Sat Nov 19	Sun Nov 20
The Hon. Mrs. Justice Norma Wade- Miller - Puisne Judge - Bermuda, President of the Commonwealth Magistrates Association			
The Hon. Mr. Justice Winston Anderson - Judge of the Caribbean Court of Justice			
Her Honour Sandra Paul - Environmental Commission of Trinidad & Tobago			
H. H. Judge Keith Hollis - Circuit Court Judge, England & Wales			
The Hon. Madame Justice Mira Dean- Armorer - High Court of Trinidad & Tobago			—
The Hon. Mr. Justice Winston H. D. Patterson - Supreme Court Judge, Guyana			

JUDICIAL TRAINING SEMINAR IN ENVIRONMENTAL LAW
HILTON ROSE HALL RESORT AND SPA, MONTEGO BAY
NOVEMBER 18-20, 2011

	NAME	ORGANIZATION	CONTACT #	EMAIL ADDRESS
1.	Sandy-Lue Cole	Forestry Department	330-6450	sandy.lue.cole@gmail.com
2.	Jeffrey Wielgus	Ocean Conservancy		
3.	Marcia Chambers	NEPA	353-8658	marcia.chambers@hotmail.com
4.	Lolett Lewis Myatt	JMTI / U.W.I.		
5.	Peter Knaggs	NEPA	754-7540	peter.knaggs@nepa.gov.jm
6.	Brenda Marsh	NEPA	754-7540	brenda.marsh@nepa.gov.jm
7.	Dale Webber	UWI	935 8835	dale.webber@uwimona.edu.jm
8.	Robert Collie	NEPA	614-1380	robert.collie@nepa.gov.jm
9.	Harley Jackson	NSWMA	399-4777	hjackson@nswma.gov.jm
10.	Phillip Morgan	NSWMA	445-0902	pmorgan@nswma.gov.jm
11.	John Pendergrass	ELI	202 939 3816	pendergrass@eli.org
12.	Sandra Nichols	ELI	202 939 3828	Nicholls@ELI.org
13.	Cecil Excell	WRI	202-729-7701	cexcell@wri.org
14.	Krista Pitcher	Bermuda Gov't	441 297 1240	kjpitche@gmail.com
15.	PHILIP CROSS	NEPA		philip.cross@nepa.gov.jm
16.	Anthony McCarthy	NEPA	894-8941	amccarthy@nepa.gov.jm
17.	DEMARCT WILLIAMS	FORESTRY DEPARTMENT	469-4586	forestry.dwilliams@forestry.gov.jm
18.	Karen Oliphant	Forestry Dept.	817-4901	koliphant@forestry.gov.jm
19.	RICHARD MASON	N.E.P.A.	880 5064	RMason@nepa.gov.jm
20.	Suzanne Stanley	JET	470-1580	sstanley.jet@cwjamaica.com

JUDICIAL TRAINING SEMINAR IN ENVIRONMENTAL LAW
HILTON ROSE HALL RESORT AND SPA, MONTEGO BAY
NOVEMBER 18-20, 2011

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APPENDIX 3 - EVALUATION FORM

WORKSHOP EVALUATION FORM

Judicial Training Seminar In Environmental Law for Resident Magistrates

November 18-20, 2011

Thank you for attending this workshop. Please fill in the evaluation form below --your feedback will help us improve our future training programs.

Date:_____

Name (OPTIONAL)**:**_____

Background (Occupation):_____

1. Were the workshop's aims made clear to you?

Not clear ☐
Somewhat clear ☐
Very clear ☐

2. How useful did you find the workshop overall?

Not useful ☐
Somewhat useful ☐
Very useful ☐

3. How satisfied were you with the presenters?

Not satisfied ☐
Satisfied ☐
Very satisfied ☐

4. How satisfied were you with the material?

Not satisfied ☐
Satisfied ☐
Very satisfied ☐

5. How did you find the pace of the workshop?

Too slow ☐
About right ☐
Too fast ☐

6. How did you find the length of the workshop?

Too short ☐
About right ☐
Too long ☐

7. How satisfied were you with the organization of the workshop?

Not satisfied ☐
Satisfied ☐
Very satisfied ☐

8. How satisfied were you with the venue/food provided?

Not satisfied ☐
Satisfied ☐
Very satisfied ☐

9. Please use the space below for any additional comments and suggestions.

_____

_____

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_____

_____

THANK YOU.

APPENDIX 4 - COMMENTS ON EVALUATION FORM

- Informative weekend in a beautiful country. Looking forward to attending another environmental seminar in Jamaica in the future. Thankful for the extended invitation.

  - Attorney-at-Law

- Lovely accommodation. Let's maintain this standard in menu selection.

  - Resident Magistrate

- In relation to question 6 (length of workshop). It was too short. Only in light of all the material that had to be covered. A lot within a short space of time

  - Resident Magistrate

- More time needed.

  - Acting Puisne Judge

- This has been a truly enlightening experience. No longer will I consider environmental issues as 'soft' and 'unsexy' :). I was very impressed by the background and obvious wealth of knowledge of the various presenters, both local and non-local. I strongly recommend that you lobby Parliament and policy makers to make the relevant changes to legislation etc. What you have emphasized MUST be improved without further delay to enable a more efficient and worthwhile management of all things environmental.

  - Resident Magistrate

- Very informative and comprehensive. Presenters were concise and very knowledgeable. Consolidation of writing legislation should be considered.

  - Resident Magistrate, Special Coroner

- The presenters were excellent. The knowledge gained was superb and very relevant.

  - Judge

- The hypothetical could have been better time managed, for example, with four groups the questions could have been apportioned between the groups instead of asking each to address every question in the assigned section.

  - Puisne Judge (Ag)

- The sustainable continuation of the objectives.

  - Attorney-at-Law

- The presentations were short and interesting, very instructive and informative. I especially liked the early end on Saturday - a rare treat and I learnt a lot on a very interesting and emerging area in the law.
  - Senior Resident Magistrate

- The presentations were well prepared and well-delivered.
  - Chairman, Environmental Commission

- An enlightening seminar which has now 'pumped' me up to fight for our environment and the attendant issues.
  - Judge

- An extremely productive workshop, very enlightening. Objectives achieved and exceeded.
  - Judge

- There needs to be a standard bearer for review of Legislation as it applies to current outdated fines. Just speaking about it will not start the process of change.
  - Unknown, Administration and Finance

- Thanks. Very useful Seminar in a very important but often too neglected area in our society.
  - Resident Magistrate

- Very good presentations. Professor Webber really set the tone for what most thought would be boring.
  - Unknown

- More practical scenarios utilised in presentations.
  - Resident Magistrate

APPENDIX 5 - PROFILE OF PRESENTERS

1. H.H. Judge Keith Hollis - Circuit Judge, England & Wales
2. Professor Dale Webber – Centre for Marine Sciences, University of the West Indies
3. Mr. Jeffrey Wielgus – Consultant in Natural Resource Economics
4. The Hon. Mr. Justice Winston Anderson – Judge of the Caribbean Court of Justice
5. Mr. Robert Collie- Director of Legal Services and Enforcement, NEPA
6. Ms. Marie Chambers - Legal Officer, NEPA
7. Mr. Richard Nelson – Manager of the Enforcement Branch, NEPA
8. Ms. Yvonne Joy Crawford – Senior Legal Officer, Ministry of Agriculture and Fisheries
9. Mr. Gilroy English – Attorney-at-Law
10. Miss Rainee Oliphant – Senior Legal Officer, Forestry Department
11. Mr. Phillip Morgan – Senior Investigator, National Solid Waste Management Authority
12. Mrs. Laleta Davis-Mattis – Executive Director, Jamaica National Heritage Trust
13. Mrs. Carole Excell – Senior Associate, World Resources Institute
14. Miss Danielle Andrade – Legal Director, Jamaica Environment Trust
15. Her Honour Sandra Paul – Environmental Commission of Trinidad & Tobago

HIS HONOUR JUDGE KEITH HOLLIS

Keith Hollis has been a judge in England for twenty years, for the last eleven years sitting as a Circuit Judge in Kent & Sussex. Before taking judicial appointment he was the founder and senior partner of a firm of solicitors in south west London.

He has a wide experience in judicial training which has included work as a tutor for the Judicial Studies Board of England & Wales (now the Judicial College) on both civil law and human rights. For ten years until 2009 he was the Director of Studies for the Commonwealth Magistrates & Judges Association (CMJA) and responsible devising and running for their wide programme of activities.

He has been the Diversity and Community Relations Judge for Sussex. His main professional interest has been in environmental and housing law. He started in practice acting as a solicitor for the Banabans of Ocean Island in the Pacific in their actions against the UK Government and others arising from the environmental degradation of their homeland island by phosphate mining. During his time with the C.M.J.A he was involved with the United Nations Environment Programme in their development of a judicial benchbook and a judicial training module on international environmental law.

Keith is married with two grown up children. His interests are in hill walking and music, chairing New Sussex Opera.

PROFESSOR DALE F. WEBBER

Professor Dale Webber is a Coastal Ecologist with more than twenty years' experience in the environmental field both as a lecturer and as a consultant. He has Doctor of Philosophy (Ph.D.) in Marine Ecology from the University of the West Indies where he has for many years lectured courses in Ecology, Coastal Zone Management and Environmental Management. Dale has supervised over 38 Masters and Ph.D. graduate students and published over 40 papers on a range of marine, coastal and environmental issues including:The development of the Jamaica national programme of action for marine pollution from land based sources and activities, The South Coast Sustainable Development Study; Towards the Management of the Black River Lower Morass; The North Coast Highway Improvement Project; Planning and Management of Heavily Contaminated bays and Coastal Areas in the Wider Caribbean - Kingston Harbour and the development of a Management Plan for The Falmouth Wetlands and the Martha Brae River Estuary Management project. Professor Webber was recently appointed to Grace Kennedy Foundation's endowed Chair at the UWI as The James Moss Solomon Chair in Environmental Management, where he heads the Environmental Management Unit and continues to serve as Director of the Centre for Marine Sciences. Since 2009 Professor Webber has been the Chairman of the Environmental Foundation of Jamaica and a member of the National Council of Ocean and Coastal Zone Management, a sub-committee of Cabinet.

JEFFREY WIELGUS

Jeffrey Wielgus is a consultant in Natural Resource Economics for Ocean Conservancy, where he is helping to assess the economic damages resulting from the BP-Deepwater Horizon oil spill in the Gulf of Mexico. Jeffrey has also worked for the World Resources Institute, where he studied the economic values of coastal resources in the Caribbean and provided guidance to companies on including economic valuation as part of their environmental management protocols. Jeffrey has a B.Sc. in Marine Science/Biology (University of Miami) and Master degrees in Ecology (Universidad de los Andes, Colombia) and Environmental and Natural Resource Economics (University of Maryland/Universidad de los Andes joint degree). For his Ph.D. research (Bar-Ilan University, Israel), Jeffrey studied the impact of human activities on the ecology and economics of the coral reef system of the northern Red Sea. Jeffrey has conducted research on marine conservation and economics at Arizona State University, the University of British Columbia, and the University of Cambridge. He worked in the Colombian Ministry of the Environment as its first Assistant Director for Non-forest Ecosystems, where he helped develop legislation to protect the country's coastal and marine ecosystems.

THE HON. MR. JUSTICE WINSTON ANDERSON

Mr Justice Winston Anderson, of Jamaican nationality, took the degree of Bachelor of Laws (with Honours) from the University of the West Indies (Cave Hill) in 1983. From 1983 to 1984 he taught International Law, among other subjects, at his Alma Mater, whilst pursuing the Masters in Law degree there. In 1984, Mr Justice Anderson proceeded on a Commonwealth Scholarship to Cambridge University in England and graduated with a Doctorate in Philosophy (PhD) in 1988 majoring in International and Environmental Law. Also, in 1988, he completed a

course of training at the Inns of Court School of Law in London (with Honours) and was called to the Bar of England and Wales, as a Barrister of the Honourable Society of Lincoln's Inn.

He rejoined the Faculty of Law of the University of the West Indies in 1988 and was called to the Bar of Barbados in 1989. In 1996 Mr. Justice Anderson was appointed Senior Lecturer on Fellowship Leave at the University of Western Australia, and in 1999 became Senior Lecturer in the University of the West Indies on indefinite tenure. Mr. Justice Anderson was appointed General Counsel of the Caribbean Community (CARICOM) Secretariat on secondment from the University of the West Indies for the years 2003-2006. In 2006 he was appointed Professor in the Faculty of Law, University of the West Indies and was called to the Bar of Jamaica in February 2007. In 2006, he was appointed CLIC Executive Director. Mr. Justice Anderson was elevated to the Bench of the Caribbean Court of Justice at King's House, Kingston, Jamaica, on 15 June 2010.

ROBERT COLLIE

Robert Collie is the Director of Legal Services and Enforcement at NEPA. Prior to ascending to this position Robert worked as an attorney-at-law for five (5) years at Myers, Fletcher and Gordon in the Property and Litigation Departments. His property practice included commercial, hotel and residential developments, mortgages, probate, general conveyancing matters and providing advice regarding property ownership and development in Jamaica. In his litigation practice he has appeared before all courts in Jamaica and has prepared cases for the Privy Council. His clientele has included RedStripe, BNS, NCB, VMBS, FCIB, WIHCON, Grand Bahia Principe, Iberostar among other prominent Jamaican companies and overseas business interests. He is the Jamaica Independence (Male) Scholar for the year 2001 awarded to the male student with the second highest Cambridge Advanced Levels score in Jamaica and received the Michael March Memorial Prize from the Norman Manley Law School for outstanding performance in the Law of Remedies.

A member of the Commercial Law, the Social Affairs and the Civil Procedure and Practice Committees of the Jamaican Bar Association, Robert sits on the Board of Directors of the Jamaica Foundation for Lifelong Learning, the Jamaica Intellectual Property Organisation, the Jamaica 4H Clubs, the Jamaica Information Service and is a Commissioner of the Fair Trading Commission. He is currently a tutor at the Norman Manley Law School teaching the Law of Succession.

MARIE CHAMBERS

Marie Chambers is a graduate of the Norman Manley Law School and Manager of the Legal Services at the National Environment and Planning Agency. She is an advocate for environmental protection since high school. She chose the field of environmental and planning law and her interests are Wildlife Protection and Ecosystem Management.

YVONNE JOY CRAWFORD

From 1977 to 1981, Yvonne Joy Crawford (Joy) worked in various administrative posts in government. Joy has also had extensive experience in the private sector as a paralegal in conveyancing, probate and commercial law, throughout the period 1982 to 1995. From 1995 until present, Joy has been the Senior Legal Officer at the Ministry of Agriculture where she spearheads the Ministry's Legal Programme including the promulgation of legislation. Throughout the period she has, inter alia, represented the Ministry/Government at various meetings on Food Safety, Bilateral Agreements on Trade, Intellectual Property Rights in Agriculture dealing with such subjects as Plant Protection, Biosafety, and the International Treaty on Plant Genetic Resources for Food and Agriculture.

Joy is currently Chairman of the Ad Hoc Legal Working Group for the development a common fisheries and regime for CARICOM, a position which she has held from January 2006 to present. Additionally, in May 2007, she represented the Caribbean Regional Fisheries Mechanism at the ESA Meeting on Trade and Sustainable Approaches to Fisheries Negotiations under WTO/EPA in Port Luis, Mauritius,(May 2-4, 2007) where she did a presentation on "*The Caribbean Experience on the Development of a Regional Fisheries Policy and Relations with the EU"*.

Mrs. Crawford has also been a presenter at Meetings on Fisheries Aspects of the ACP-EU Economic Partnership Agreements on *"Fisheries in ACP-EU EPA Negotiations"* in Windhoek, Namibia, August 28-29, 2008 and Mombasa, Kenya, February 9 -10, 2010 where she presented the CARIFORUM Experience. Additionally, Joy was a National Legal Consultant for the Food and Agriculture Organization in 2005 and 2006.

GILROY ENGLISH

Mr. Gilroy English is a graduate of the Norman Manley Law School and an advocate for environmental protection. He is a past employee of the National Environment and Planning Agency for over 9 years and a past Manager and Director of the Legal and Enforcement Division. He now works on the other side, guiding developers on sustainable development within the confines of the law. He is also a consultant on risk assessment associated with developments and regulatory matters.

RAINEE OLIPHANT

Ms. Rainee Oliphant, is the Head of the Legal and Enforcement Division of the Forestry Department and a practicing Attorney-at-Law, with a specialisation in Environmental Law. Her deep-seated interest in all things environmental started in 1997 when she actually began working in this field as a legal researcher at the Natural Resources Conservation Authority until her graduation in 1999 from the Norman Manley Law School. This initial start panned out into a career and has persisted throughout the entire eleven years of her practice. After graduation from the Law School, Ms. Oliphant worked for a brief stint at the National Environment and Planning Agency before moving to the Forestry Department in 2000 as the

entity's Legal Officer. During her tenure as the Department's Legal Officer Ms. Oliphant participated in the completion of the process for the Debt-for-Nature Swap under the US based Tropical Forest Conservation Act. In 2006 she transitioned into the position of Executive Officer of the Jamaica Protected Areas Trust, where her main responsibilities centred around the establishment and daily operations of the "Forest Conservation Fund".

In 2009 Ms Oliphant returned to the Forestry Department in a different capacity, namely its Senior Legal Officer, and the Director of the Legal and Enforcement Division. She continues to serve in that capacity to date.

PHILLIP GARFIELD GEORGE MORGAN

Mr Phillip Morgan came to the National Solid Waste Management Authority after eight years of exemplary services as a Revenue Investigator in the Revenue Protection Division of Ministry of Finance. His current position at the National Solid Waste Management Authority is as a Senior Investigator. Among his functions is the Enforcement of the National Solid Waste Management Act of 2001. One of his major achievements is the implementation of the Fixed Penalty Notice System which saw the issuing tickets for breaches of the Public Cleanliness Regulation of 2003. He has been instrumental in the drive to increase the level of compliance in waste management by commercial entities island wide. This resulted in significant increases in revenue earned by the Authority.

A trained Commercial Fraud investigator, Mr Morgan holds BSc. (Hons.) in Computer & Management Studies from the University of Technology (UTECH). He is a member of the Power of Faith Ministry. Among his Interests are Computers, Football, and Cricket.

CAROLE EXCELL

Carole Excell is an environmental lawyer and freedom of information expert with more than 12 years of professional development experience. She has worked in the Caribbean, Africa and parts of Asia, on access to information and environmental law projects. Carole Excell is currently Senior Associate in the Institutions and Governance Program (IGP) at the World Resources Institute (WRI) Washington D.C. working on Access to Information, Public Participation and Access to Justice issues around the world. Previously she was the Coordinator for the Freedom of Information Unit of the Cayman Islands Government in charge of ensuring the development and effective implementation of the Cayman Islands Freedom of Information Law. She also worked with The Carter Center in Jamaica working on their Access to Information Project implementing the Jamaica Access to Information Act. As part of the Carter Center Access to Information project she was involved in the development of materials, conduct of research and analysis on legal and policy issues associated with the right to information. Her formative experience in environmental law came from working for seven years with the Government of Jamaica on environmental and planning issues both at the Natural Resources Conservation Authority and then at its successor the National Environment and Planning Agency.

Carole Excell is an Attorney-at-law with a LLB from the University of the West Indies and Certificate of Legal Education from the Norman Manley Law School, Mona. She has a Masters Degree in Environmental Law from the University of Aberdeen in Scotland.

DANIELLE ANDRADE

Danielle Andrade is an Attorney-at-Law currently working and living in Jamaica. She obtained a Bachelor of Laws (LLB) degree from the University of the West Indies, Cave Hill, Barbados, in 2003 and her Legal Education Certificate (the required qualification to practise law in Jamaica) at the Norman Manley Law School, Jamaica, in 2005. In 2009 she was the recipient of a British Chevening scholarship and completed a Masters degree in Environmental Law from Queen Mary, University of London where she focused on Climate Change Law and Policy, International Environmental Law and Advanced Administrative Law.

For the past five years she has been practising public interest environmental law as Legal Director of the Jamaica Environment Trust (JET), a non-profit, environmental, non-governmental organisation, where she is presently employed. Her work focuses on public interest environmental cases. Areas of expertise include environmental policy, litigation, reviewing legislation, environmental impact assessment and decision-making procedures and environmental law education.

HER HONOUR SANDRA PAUL

Her Honour Sandra Paul is the Chairman of the Environmental Commission of Trinidad and Tobago she was formally the Commission's Deputy Chairman. She is a former Judge of the Industrial Court of Trinidad and Tobago, a former Magistrate of the Judiciary of Trinidad and Tobago. Her Honour obtained Diplomas in International Environmental Law and Comparative International Environmental Law from the United Nations Institute of Training and Research (UNITAR), Geneva, Switzerland. She holds a Masters of Laws Degree from the University of London and is the holder of a Bachelor of Laws Degree (Upper Second Class Honours) from the University of the West Indies.

She was the recipient of a Fulbright Hubert H. Humphrey Fellowship tenable at the University of Minnesota, USA, where she specialized in Alternative Dispute Resolution with an emphasis on Mediation. She has lectured extensively on alternative dispute resolution and mediation and conducted mediation workshops and training programmes for the Supreme Courts of Trinidad and Tobago and the Organisation Eastern Caribbean States. Her Honour was appointed a member of the Committee for the establishment of the Mediation Programme in the Family Court Pilot Project. She along with the other members of that Committee drafted what is now the Mediation Act No. 8 of 2004. Her Honour served as a Member of the Mediation Board of Trinidad and Tobago for two terms.

APPENDIX 6 - QUESTION AND ANSWER SEGMENTS

Q & A Segment 1

The State of Jamaica's Environment and Biodiversity Conservation

- Prof. Dale Webber –Centre for Marine Science, University of the West Indies

Methods for Estimating the Economic Value of Damages to Natural Resources and their Application in the Caribbean

- Mr. Jeffrey Wielgus – Consultant in Natural Resource Economics

1. *What happened in Belize's Westerhaven (ship grounding) case and how much was the award in damages to the coral reef?*
   A. The award was USD$2600 per m2

2. *I have a case before me in Trinidad and Tobago about a man who cut through a forest range and we are trying to make an appropriate assessment about the cost of the damage. Your presentation is very helpful and I would like to discuss this with you in more detail.*

3. *Is the sponge specie that you showed us original (native)?*
   A. Yes

4. *Are there still mangroves in Black River and the original shrimp species in Middle Quarters?*
   A. The mangrove population has decreased due to growth of invasive Ginger Lillies that compete for space. Very few shrimp remain and most of what is sold is an evasive crustacean.

5. *Your methodology is very relevant for the Caribbean. A contingent valuation was done for the Navairo Swamp in Trinidad and Tobago.*

Q & A Segment 2

The Judiciary and Environmental Law: From Koala Bears to Killer Whales

- H.H. Judge Keith Hollis, Circuit Judge of England and Wales

International Environmental Agreements: Impact on National Law and Their Application in Jamaican and Caribbean Courts

- The Hon. Mr. Justice Winston Anderson , Judge of the Caribbean Court of Justice

1. *How do you prove custom if you need evidence of this for the case?*

2. *With issues such as human rights and population growth how do you deal with people's rights to develop/enjoy their land vs the environment?*

3. *Are we moving away from the exceptions for incorporation?*
   A. More countries are incorporating conventions into their local laws.

4. *Can you tell us some of the recent development in the UK on access to justice that improves the ability of citizens to take case before the court (criminal and civil law)?*
   A. In the UK there are Protective Costs Orders for parties that bring public interest cases.

5. *Can you indicate whether there are any exceptions to the doctrine of dualism which could have been taken into consideration in the Seafood and Ting case? Are there any other cases where exceptions would be relevant?*

Q & A Segment 3

Enforcement of Environmental and Planning Laws

- Mr. Robert Collie, Director of Legal Services and Enforcement, NEPA
- Mr. Richard Nelson, Manager of the Enforcement Branch, NEPA

Overview of the Prosecution of Environmental Crimes in Jamaica

- Ms. Marie Chambers, Manager of the Legal Services Branch

Emerging Environmental Issues in Fisheries Management in Jamaica

- Ms. Yvonne Joy Crawford- Senior Legal Officer, Ministry of Agriculture and Fisheries

1. *Where are the new fines under the Act found?*
   A. The fines will be under new Fisheries Act so that we can increase the fines as we need to.

2. *What else are we doing to deal with this problem of sea turtle poaching?*
   A. NEPA has a public education branch – doing education in schools and communities.

3. *Have you noted an increase in poaching from fishermen of neighbouring countries and who is the relevant agency dealing with this?*
   A. The coastguard will usually be the first to respond. They will seize and detain vehicles until adjudication.

4. *Concerning the licences to bring in exotic marine mammals? If they escape shouldn't this be at their peril (e.g. Rylands v Flethcer)?*
   A. Under the new Act there will be a provision dealing with this.

5. *Wildlife are not capable of ownership but does ownership vest in the authorities and if so why can't you bring prosecution for malicious destruction of property or larceny where the penalties are higher?*
   A. A permit is required for the introductions of certain species. The wildlife is owned by the government but this has never been tested.

6. *When people appeal the conviction, is there a provision for an injunction?*
   A. The Minister can order a constable to enter property and stop activity.

7. *Why is it that the Clerk of Court cannot have the right of forfeiture under the Fisheries Act?*
   A. We did not think of this and will ask the Attorney General if this can be done.

8. *The discharge into Kingston Harbour may be licensed but could be deleterious to the environment and fish. How does the fisheries industry handle this.*
   A. We defer this issue to NEPA.

9. *How many matters does the Fisheries Division prosecute or does the DPP do this?*
   A. It is hard to estimate this but there are some matters.

10. *People in intellectual property, Jamaica Intellectual Property Office, have been collating information on cases. Can we do this for environmental offences?*
    A. A project was started on this but has not been completed.

11. *What provisions are there for children that are attacked by endangered species?*
    A. This usually happens when people wonder into the habitat for the alligators.

Q & A Segment 4

Access and Management of Jamaican Beaches

- Mrs. Laleta Davis-Mattis, Executive Director, Jamaica National Heritage Trust

Sentencing and Assessing Damages to Natural Resources

- Mr. Gilroy English, Attorney-at-Law

Forest Law Enforcement in Jamaica

- Ms. Rainee Oliphant, Senior Legal Officer, Forestry Department

National Solid Waste Management Authority Act: Purpose and Scope

- Mr. Phillip Morgan, Senior Investigator, National Solid Waste Management Authority

1. *There is legislation on beach access in St. Kitts that says there should be public access to beaches.*

2. *We are concerned about the value of the environment as it relates to humans but is there any consideration of the value in itself?*
   A. *It started as being very anthropocentric and is now heading towards more of an ecocentric approach.*

3. *To what extent are people using charges of conspiracy to deal with people who are not willing to pay fines?*
   A. *There is a Valdez oil spill case where there was a holding company and a subsidiary and this makes it difficult to track offenders.*

4. *Legislative capping is not good because it can become outdated.*
   A. *I am not recommending this but what I suggested is that we could have a formula for estimating damage which would take into account inflation.*

5. *Would the law give people a right to enjoy a beach in Negril?*
   A. *It is discretionary whether the judge can do this.*

6. *We added automatic review of penalties to our laws in the States and it can be increased every 3 years. Money collected must be used to restore damage.*

7. *There is a case where five fishermen were brought before the court because they tried to charge people for entering Hellshire. The case was dismissed for want of prosecution but here are many unanswered questions.*
   A. *They have no right to charge for entry.*

8. *Can someone dock offshore and walk around the island?*
   A. *The Crown has no rule that you cannot walk along the foreshore – only as it relates to dry land which is private property.*

9. *In the case of Sandals which has lost land from erosion, can people stop you from walking along that foreshore area now.*
   A. *The law says that when you have lost land then it is lost. In the case of accretion, people have applied to the commissioner of Lands to annex this part of the land to their title.*

10. *How do you track waste being dumped from ships?*
    A. *There are few persons who are licensed to collect waste from ships and we know who they are so we can track them.*

11. *What percentage of persons pay fixed ticket fines?*
    A. *30%*

12. *Under which law does the burning of residential garbage fall under?*
    A. *Under the NRCA Regulations.*

13. *Are community service orders being utilized for offenders under the Act?*
    A. *Yes this is being utilized. An RM convicted someone recently for cutting down trees in a forest reserve and his sentence was to replant a hectare of tress in a forest reserve.*

Q & A Segment 5

Environmental Justice: New Developments and Innovative Approaches by Judiciary Worldwide

- *Mrs. Carole Excell , Senior Associate, World Resources Institute*

Emerging Environmental Jurisprudence in the Caribbean

- *Ms. Danielle Andrade, Legal Director, Jamaica Environment Trust*

The Environmental Commission in Trinidad & Tobago

- *Her Honour Sandra Paul, Chairman of The Environmental Commission, Trinidad & Tobago*

1. *Can you give an example of how India has progressed in the development of environmental law?*
   A. *India has regulations for the EIA process, a certification process for EIA consultants and sanctions for EIA consultants that prepare fraudulent EIAs. The right to a healthy environment in their constitution which has been interpreted by the courts as a right to environmental education.*

2. *Can the right to a healthy environment be used by a government agency to protect children's rights to open spaces?*
   A. *Yes the Charter of Rights is open to agencies that want to do this. An example could be NEPA or the Children's Advocate. There is a case (Minors Oposa) in the Philipines where a constitutional action was filed on behalf of children to challenge approvals given to cut down trees in a forest. The principle of inter-generational equity was applied.*

3. *What led to the establishment of the Environmental Commission of Trinidad and Tobago?*
   A. *There was a recognition that we needed to have our own court to deal with environmental offences.*

APPENDIX 7 - SUMMARY OF BREAKOUT SESSION

Hypothetical Fact Pattern

Instructions

This Hypothetical Fact Pattern concerns the construction of a development and is divided into two sections: the pre-construction phase and the post-construction phase.

Background

Tranquil Vista Ltd. has acquired 50 acres adjacent to a forest reserve and a traditional bathing beach located in a marine park. Tranquil Vista has plans to build a new 500-room beachfront resort. There will be multi-floor guest units, restaurants and bars, recreational areas, swimming pools, tennis courts, and volleyball courts. Tranquil Vista applied for a permit for the hotel construction from the Natural Resources Conservation Authority (NRCA) through the National Environment and Planning Agency (NEPA). Tranquil Vista also prepared and submitted an Environmental Impact Assessment (EIA) to NEPA to support its application for a permit. The project is scheduled to begin construction in December 2011.

The site occupies diverse terrain, encompassing beachfront property and a forest reserve. Due to the forest, the site is home to a wide range of mammals, birds and native plants including the endangered Hutia (coney) and Swallowtail butterfly. The beach is also a known sea-turtle nesting beach. The location is ideal because it will allow guests to enjoy the beaches and observe the forest's unique biodiversity. Tranquil Vista intends to capitalize on its proximity to the forests by offering walks and bird watching expeditions within and adjacent to the forest.

In keeping with the hotel's environmental focus, the hotel will include a large day care facility that will have activities for children from 9 am to 5 pm on fishing, sailing and on nature walks. The resort will build and operate a small-scale aquarium and zoo on the property for the children which will house exotic animals such as the Hawksbill Sea Turtle and Bottlenose Dolphins. Tranquil Vista does not think this is a problem since these animals are readily found in the waters near the hotel.

The construction company hired by Tranquil Vista, Kwik Konstructions Ltd., plans to clear about 10 acres of trees in the forest reserve to build nature trails and to construct a 700 sq. ft building in the forest reserve to house the recreational activities and equipment. Kwik Konstructions decides it would be much cheaper to construct the buildings for the hotel using some of the hardwood trees found easily in the forest reserve. The forest is very large so the company does not think this will be a problem and no approval from any agency is therefore necessary. Construction plans call for an on-site wastewater treatment plant to process waste from the kitchen, the laundry, and employee housing. The sludge that will be produced will be collected by Swift Waste Haulage Company and disposed of along with other waste generated by the hotel.

SECTION ONE

Pre-construction Phase

Tranquil Vista is waiting for its permit from the NRCA but begins clearing the site for the hotel and cutting down some of the trees in the forest reserve because it is on a tight deadline to complete construction.

The hotel also wants to start the aquarium immediately so it begins collecting some Hawksbill turtles that crawled unto the beach and some dolphins that they bought from a fisherman who caught them in the wild. These animals are being housed in a temporary holding facility while the hotel waits for its permit to construct the hotel.

Tranquil Vista also begins to dredge offshore and replenish the sand on the beach which had eroded somewhat due to the passage of a hurricane. While dredging offshore, about 100 square

metres of coral reef is uprooted and damaged. The dredging is being done without permission from NEPA.

Swift Waste Haulage Company begins collecting waste generated during the hotel construction. The company cannot find a suitable landfill close by so it decides to dump the waste on an unoccupied piece of land further down the road.

Jebadiah Jones, a concerned resident leaving near the hotel property, notices some activity going on at the site and reports this to NEPA. A team of enforcement officers from NEPA, the Forestry Department and the National Solid Waste Management Authority (NSWMA) visit the site the next day. While en route to the site, NSWMA notices a large pile of papers and construction material and other waste with the words Kwik Konstructions Ltd and Tranquil Vista Ltd. marked on some items. At the hotel site, they discover the animals being held in a holding cell on the property, some timber lying in a pile on the property and some crushed corals lying along the beach. Tranquil Vista denies that the timber came from the forest reserve and that the corals were taken from the beach. They also declare that it was Kwik Konstructions that did all of this without their consent or knowledge.

After Tranquil Vista ignores an enforcement notice served on them by NEPA pursuant to the Natural Resources Conservation Authority (NRCA) Act, the relevant authorities decide to seek an injunction to stop the hotel construction and to prosecute Tranquil Vista and Kwik Konstruction Ltd. The authorities are also seeking restorative orders to repair the damage to the marine resources and forest reserve.

SECTION ONE- Questions

i. Can you identify local laws which could have been breached and which may lead to criminal prosecution? Who or what would be the likely defendant? What would be the nature of the proof and evidence in support that you would expect to see? What are the penalties and the criteria you would apply in assessing the penalties?
ii. What evidence would you expect to see in support of the application for the injunction?
iii. Under what circumstances would you be prepared to consider granting an injunction on an ex parte basis?
iv. What issues may come up in respect of the wording of any injunction that you decided to make? How would you deal with these?
v. What steps would you consider appropriate in respect of costs orders, including costs for the future of the case? Are there steps you could and should take to protect the developers from any losses they may suffer as a result of the application?
vi. Subsequently there is an allegation of breach of the injunction. What evidence would you expect to see? How would you approach the allegation? Would your approach be different if the allegation is made against an officer or an employee of the developer company?

SECTION TWO

Post-construction Phase

Forget the above. The development has proceeded apparently without a hitch. The resort is an economic success, providing employment to many and bringing in wealth to a community that been poor and remote. However after 4 years there is evidence that the local ecology can no longer cope: the coral reef is dying, as are the mangroves, the fresh water is increasingly polluted leading to a decline in the health of the local community, there is a serious run off problem during hurricane season as a result of the clearance of some of the forest above the resort, leading to a loss of topsoil. The hotel is also disposing of its wastewater and detergents into a drain that leads into a nearby river resulting in a yearly fish kill event. There is evidence coming to light that corners were cut in the original development.

NEPA applies to the court for the closure of the resort until the problems are rectified and for damages on behalf of the local community. At the same time there are criminal proceedings

started against the developers under the NRCA Act in respect of their failures to construct and manage the resort in accordance with the conditions set out in the NRCA permit.

SECTION TWO - Questions

vii. Can you identify local (i.e. Jamaican) laws which could have been breached and which may lead to criminal prosecution? Who or what would be the likely defendant? What would be the nature of the proof and evidence in support that you would expect to see? What are the penalties and the criteria you would apply in assessing the penalties?

viii. In the civil proceedings there are applications from a number of other potentially interested parties to be joined including; local businesses who supply the resort and depend on the work, and two individuals, acting in person, who claim to represent the local community that has been adversely affected by pollution allegedly emanating from the hotel and are distrustful of the public agencies involved. How would you approach their respective applications? What criteria would you apply (and evidence you would expect to see) in deciding whether or not they should be parties. What steps could, and should you take, in respect of costs?

ix. The evidence in support of the allegations is, you are told by counsel for the resort, highly controversial. What are your powers and what directions would you consider giving in respect of expert evidence? How would you direct that this was paid for?

x. What sort of disclosure would you expect the developer to make in respect of documents relating to the original development?

xi. Under what circumstances would you consider making any interim orders, beyond making directions?

xii. What evidence would you expect to see at this early stage in support of an application for interim orders?

SUMMARY OF FEEDBACK

Groups 1 and 2 considered section one and Groups 3 and 4 considered section two.

Group 1

1. In response to the question in SECTION ONE the group identified the following applicable statutes: the Natural Resources Conservation Authority (NRCA) Act, the Forest Act, the Wildlife Protection Act (WLPA) and Regulations, the National Solid Waste Management Act, the Beach Control Act (BCA) and the Endangered Species Act.
2. The group identified the likely defendants: Tranquil Vista, Swift Waste Haulage Company, Kwik Konstruction Company and the fishermen who caught the dolphin.
3. The nature of offences identified were: section 9(2) of the NRCA Act and Permit and Licence Regulations: cutting a forest over 2 hectares, s. 30 of the Forest Act – cutting trees in a forest reserve without a permit, s. 31 of the Forest Act, s. 4(2) of the WLPA – possession of a protected animal, s. 5 of the BCA – encroaching on the floor of the sea and foreshore without a licence, the Endangered Species Act – permit required for trade in bottlenose dolphins and corals. (note: it was brought to their attention that the Endangered Species Act did not regulate domestic trade in protected animals and was therefore not relevant to this fact pattern.
4. The evidence required would be as follows: likely witnesses which would include individuals who saw the offence being committed and witnesses to say that no permission was given for the offending activities; there is a possibility of forensic evidence being used to identify wildlife and trees taken from the forest reserve; photographs would be needed of the animals; enforcement notice served by the NRCA and steps taken by the authority.
5. An injunction ex-parte is generally frowned upon and would likely be heard inter-partes. An interim-injunction would likely be granted.

Group 2

1. Since the offender is a hotel, the suggested approach would be mediation and restoration.
2. Offences other than those already identified by Group One include s. 6 of the WLPA and s. 7 subsections; the dumping of waste under the National Solid Waste Management Act is a strict liability offence.
3. Factors that would be considered in the grant of an interim injunction include the urgency of the situation; the attitude of the offending party, the timeframe for it to take effect would be too short.
4. Factors determining the cost include the economic cost, security for costs for the successful party, daily penalty for breach.
5. The group would consider more punitive approaches.

Group 3

1. The group would recommend an algae test to see oxygen level and evidence of fish kill. They would compare the state of the coral reef, identify the runoff from the hotel using pictures and examine the pipes to identify run-off. The EIA could be used to identify before and after pictures to show deterioration after construction.
2. Need to see if sludge was being collected by Haulage Contractors.
3. The parties would include ill health sufferers, two parties and NEPA. Business people would not be joined.

Group 4

1. The criminal offences include: pollution of freshwater, forest clearance, improper disposal of wastewater.
2. It should be noted that under s. 38 of the Forest Act, the action must be brought within 12 months. Prosecution could be affected by the fact that 12 months had passes, Due diligence might have been hard to prove.
3. Under s. 12 (1) of the NRCA Act, the penalties could be buttressed by community service orders. Defendants could be sent to replant trees and restore the forest reserve.
4. The sentence imposed on the hotel for the fish kill would be $80,000 / 2 years.
5. In relation to the civil proceedings - local businesses and the two industries would have to pursue the matter on their own and the application to be joined would be allowed. NEPA has statutory mandate to prosecute on behalf of the community and hotel would represent the local businesses.
6. Evidence needed would include expert witnesses, disclosure of permits, licences and correspondence.
7. An injunction would not be granted lightly and one would need to establish that a prima facie case could be made out.

APPENDIX 8 – WRITTEN PRESENTATIONS

THE JUDICIARY AND ENVIRONMENTAL LAW
H.H. Keith Hollis, Circuit Judge- England and Wales

FROM KOALA BEARS TO KILLER WHALES

- INTRODUCTION

I touch briefly on aspects of the judicial role in environmental work and go on to deal with three specific and related issues:
- the context that environmental law sets for our judicial independence,
- the extent to which in the common law we are able to develop the law in our respective jurisdictions, and
- as an example of an issue in environmental cases, the question of a litigant's "standing", with a particular example (in the area of costs) of the sort of practical development that the courts can contribute.

A warning. Possibly one of the most environmentally damaged countries in the world is the Island of Nauru in the central Pacific. Nauru is a commonwealth country, and I often think of Nauru and a visit I made there over 30 years ago. Even then what had been a beautiful Pacific Island had been largely destroyed by the open cast phosphate mining that had been carried out throughout the 20th century. What was extraordinary was that Nauru had for most of that period been administered under League of Nations, and subsequently United Nations,Trusteeship. As such its land and its people should have been, in the context of the times, the most legally protected in the world from environmental degradation.

As with other branches of the law, so much depends on the ability of people to hold those who govern them to account and to obtain effective legal redress through a court or a tribunal. Access to justice The existence of a sophisticated structure of law (whether national or international) is of no value if is it is not backed up by accessible and independent courts or tribunals with the knowledge and ability to enforce that legal structure. That too depends on the existence of an educated and independent bar with the ability to to argue the law, and on confident judges and magistrates who apply the the law "without fear or favour, affection or ill will".

2. ENVIRONMENTAL ISSUES IN THE COURTS

The UNEP handbook defines environmental law as "the body of law that contains elements to control the human impact on the earth and on public health". We are taught at school that there is a "geographical reason for everything" and on that basis, there may be a degree of environmental context to many of the decisions taken in court each week.

A purpose of this weekend is to raise our awareness of that context and to consider some of the practical consequences in the courts of the international agreements that our political leaders have come to, sometimes perhaps without considering adequately their practical effect.
Environmental issues can cause the courts especial difficulties in that;
- there may be political aspects and campaigns which could draw the courts into conflict and when the political imperatives of economic growth clash with the need to protect the environment
- much of the evidence may be highly technical. We may have to rely on expert scientific evidence which itself may lack the clarity and certainty that we seek (and indeed may be self serving)
- underlying this may be writ large the usual human failings which we are familiar with in the day to day work of the courts: greed, fear of change and progress, superstition.

We have to consider our national laws, what are they and how can they be applied to the facts, as agreed or as found by us on the evidence we are give. We need to look to international law as found in the various forms of international agreements which our country is a party to; treaties, conventions, charters,

protocols,declarations, ratifications (and indeed reservations to ratifications), each of which have different legal effect as their different descriptions imply.

We need to know of decisions of judges in other courts, national or international in nature, who may already have endeavoured to interpret those treaties etc. Those of us in common law countries are quite familiar with the quoting of case law from other jurisdictions in our courts; this is increasingly important in environmental cases, especially bearing in mind the cross border nature of many environmental issues.

Although international law may be regarded sometimes as inconvenient or unpopular - it is still law, and we have a duty to uphold the integrity of international as much as national law. Perhaps we have a part to play in ensuring that our political leaders do not use international law as a mask to hide inadequacies in local law and or as an easy route to buy off environmental issues.

And in all this we have to bear in mind the principle of the equality of arms of the parties before us: very strong commercial and political interests may be being met by local and underfunded interests or by interests whose connection with the issues before the court may be doubtful.

We need to have the confidence to meet, perhaps mischievous, procedural points head on and not to allow ourselves to be diverted by such issues from more difficult and substantive matters, a common flaw in many of our jurisdictions.

3. JUDICIAL INDEPENDENCE

All these add to the pressures on our judicial independence, with political and financial issues arising as developmental pressures crash against environmental factors. Judicial independence and courage may well be tested. Also, how can a judge be impartial, and seen to be so, in a case where he/she - as with all other human beings - has an interest? We have our own views and feelings too. We live in the environment after all, but as judicial officers we can only look at these matters as issues of law.

There are many examples throughout the world of judicial courage in this area. There are notable examples of interventions by the Indian and Sri Lankan supreme courts. In a case in the Philippines their Supreme Court confirmed the right of a group of children to bring an action on their own behalf and on behalf of future generations in respect of permitted (and valuable) timber felling licences, referring to the right in the 1987 constitution to a "balanced and healthy ecology". This is one example amongst many.

But no doubt there are other less happy examples which may, by their nature, be less well known. As always in matters relating to our independence we must be alert to, and very cautious of, these pressures.

4. THE DEVELOPMENT OF THE LAW

In my own jurisdiction it has been statute law that has been the main motor for environmental protection; starting in the early 19th century when pollution and health problems grew with the industrial revolution at the same time as a more liberal and caring political class developed, many with a background of religious non-conformism and indeed of anti slavery campaigning. The common law had gone little further than to provide a private remedy through the law of nuisance. The law of trespass had its place too.

By the middle of the 20th century there was a patchwork of statute and case law but it is In the last 60 years that matters have really moved forward, with the development of european and international environmental law, including significant development of criminal law. It is worth noting that nearly all environmental offences are drafted as offences of strict liability without the necessity of proving intent, or even recklessness or negligence.

The domestication of international treaties, protocols etc can be a lengthy and complicated process. However we can and should bear in mind the principle that by ratifying an international instrument on the international stage our state has accepted the obligations that emanate from the instrument and so has taken on certain responsibilities as a result, even if it hasn't formally been passed into domestic law.

We should consider how far we may be proactive, innovative or progressive and use international standards as persuasive or interpretative tools. In effect to use the international instruments to which our country is a party to bring justice to the cases we try.

As an analogy, it is common practice to apply a purposive interpretation of statutes to ensure that they are human rights compliant. Are environmental rights really different, and arguably too a form of human right?

Could it be that the great invention that is the common law could play a more central part in sustaining our environment in a similar way as it has developed to improve other aspects of our lives? I will turn to a concrete example.

5. STANDING

With a "traditional" action in tort - in this context nuisance, trespass, and perhaps breach of statutory duty, there should be few issues of standing. The law is clear where a party has a direct personal interest. But what of the concerned bystander, non governmental organisation, or indeed the environment itself, especially where government decisions may be involved?

In a 1972 judgement a US Supreme Court judge, Justice William Douglas, ("*Wild Bill*") judgement contemplated a degree of judicial activism which many may like to dream of in this field arguing that "inanimate objects" should have standing:

"the critical question of standing would be simplified and also put neatly in focus if we fashioned a federal rule that environmental issues be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled defaced or invaded by roads and bulldozers and where injury is the subject of public outrage".

He referred to how under the common law inanimate objects were sometimes parties in litigation, for example ships having a legal personality, and went on to say:

"so it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes - fish, aquatic insects, water ouzels, otter, fish, deer, elk, bear, and all other animals, including man, who are dependant on it or who enjoy it for its sights, sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water, fisherman, canoeist, zoologist, or a logger - must be able to speak for the values which the river represents and which are threatened with destruction". [Sierra Club v. Morton, 405 U.S. 727 (1972)].

We have yet to go that far, although mechanisms have developed in some jurisdictions for the awkward questions to be asked. What has become acceptable is for parties without a direct interest to be given standing in appropriate cases by way of judicial review of administrative decisions.

Where wide discretions are given to government authorities legal rights have been established which give people standing to object if they consider that those rights are

- being violated, or
- disproportionately balanced against other factors, or
- where a public body has made a decision that has been irrational, perhaps made as a consequence of an unfair procedure, perhaps failing to take into account material considerations (or taking into account immaterial considerations).

Such factors may well lie at the core of many environmental issues.

In 1981 the UK Senior Courts Act s.31 provided that the court should not grant permission for such judicial review "unless it considers that the applicant has a sufficient interest in the matter to which the claim relates."

This has been applied broadly by our courts, for example:

- Pressure groups may have standing

[R v Secretary of State for Foreign and Commonwealth affairs ex p World Development Movement (1995) 1 WLR 386]

- Individuals whose concern is with environment rather than any personal interest

[R v Somerset CC ex p Dixon (1998) EnvLR 111]

- A limited company that has been formed solely for purpose of objecting to a proposed development

[R (Residents Against Waste Site Ltd) v Lancashire CC (2007) EWHC 2558]

As well as this, arguments as to "standing" can sometimes be postponed until the substantive hearing [R v IRC ex p National Federation of Self Employed (1982) AC 617].
The court may want to decide the strength of the claim before making a decision on standing - the stronger the claim the less likely standing is to be an issue. [R (Grierson) v Ofcom and Atlantic Broadcasting Ltd (1982) AC 617].

There are examples too of there being limits to flexibility and standing has been denied
- where the motive for the claim appeared to be to damage a commercial rival
[R (Waste Recycling Group Ltd) v Cumbria (2011) EWHC 288 (Admin)]
- where the claimant has no direct interest in the decision under challenge but wished the decision to be quashed because of its potential knock on implications for another planning decision
[R (Coedbach Action Team) v Secretary of State for Energy & Climate Change (2010) EWHC 2312]

Overriding this anyway is the greater issue, the question of discretion: if the claimant is found not to be sufficiently affected by the alleged illegality demonstrated then they may be denied the form of relief they have applied for by way of discretion.
[see R v Secretary of State for Transport ex p. Presvac Engineering (1991) 4 Ad LR 121]

Constitutional human rights may be engaged too, although it is worth noting that in the UK any claim involving Human Rights Act 1998 s.7(3) requires a stricter standing test of being a victim.

6. COSTS

The courts exist to deal with such matters and the principle is now well established, but what of the cost? Not just a claimant's own costs, difficult enough as that may be, but the question of the other side's costs too if at the end of the day a claimant is unsuccessful, and an opponent may be big, powerful, and wealthy.

In 1989 Mr Justice Toohey in Australia posed the problem:

"relaxing the traditional requirements for standing may be of little significance unless other procedural reforms are made. Particularly is this so in the area of funding of environmental litigation and the awarding of costs. there is little point in opening the doors to the courts if litigants cannot afford to come in. The general rule is that costs follow the event. The fear, if unsuccessful, of having to pay the costs of the other side (often a government instrumentality or a wealthy private corporation) with devastating consequences to the individual or environmental group bringing the action, must inhibit the taking of cases to court. In any event it will be a factor that looms large in any consideration to initiate litigation".

I think that it was the Privy Council that led the way, in 1994, in a New Zealand case involving the Maori Council. Even though the Maori Council had been unsuccessful it was not subject to an adverse order for costs, in short because, it was not pursuing a private gain but found to be pursuing an important part of national heritage.
[New Zealand Maori Council v A.G. of New Zealand (1994) 1AC 466]

Subsequently principles started to develop for such special costs orders. In Oshlack v Richmond River Council 1998 HCA 11 a majority (3-2) of the High Court of Australia upheld a trial judge's decision to make no order for costs against Mr Oshlack, although Mr Oshlack had lost an action raising concerns about the absence of an fauna impact statement for a development effecting the habitat of the koala bear.

In England our Court of Appeal built on Oshlack in Re Corner House Research V Secy of State 2005 EWCA 192 - *a case which related to prosecution decisions on potentially corrupt defence contracts* as had the Privy Council in a case involving Belize, refusing a costs order when it dismissed an application for an interim injunction made by an alliance of conservation NGOS. The argument was that it was a public interest matter that fell to be considered by the court.
[Belize Alliance of Conservation Non-Governmental Organisations v. Dept. of the Environment of Belize & Anor (2003) UKPC 63]

In consequence of these decisions the following factors for departing from ordinary costs rules (providing statute allows) have been developed:
- the complainant has nothing personally to gain beyond (to quote Oshlak) a "worthy motive of seeking to uphold environmental law and the preservation of endangered fauna",
- that a significant number of members of the public share the same view so that there was a public interest in the outcome,
- the challenge had raised - and resolved - significant issues about the interpretation and future administration of statutory provisions.

This was dealing with costs orders made at the end of the case, but that doesn't go far enough. There may need to be anticipatory protection from adverse costs orders from the outset of a case, by making what we call protective costs orders at an early stage.

The courts have established that such orders may now be made, perhaps subject to conditions,
- where the issues raised are of general public importance and need to be resolved (the basis, as I have read it, of the judicial logic in developing this area of law),
- where the applicant has no personal interest in the outcome,
- where having regard to the parties' respective financial resources it is fair and just to make such an order, and
- where if such an order was not made then the proceedings would probably be discontinued.
Finally the application had to have a real prospect of success.

Such an order may invariably be accompanied by a reciprocal costs capping order, were the claimant turn out to be successful.

There has been enthusiasm for cost capping orders in both directions since 2002 when our High Court imposed a cap of £25,000 on the costs that the CND would have to pay if they lost a legal challenge to the UK Government's policies in Iraq.

Canada has gone further. The Supreme Court there has gone as far as to oblige defendants to finance a claimant's costs as the litigation proceeded. (British Columbia (Minister of Forests) v Okanagan Indian Band 2003 114 CRR). In the UK the courts have specifically declined to go that far.

These matters need careful preparation and thought and argument from good counsel. At the end of the day of course, if governments are unhappy about such decisions they have the power to divert the judiciary by statute.

In an international context this will be difficult as many governments have bound themselves by treaty to go in another direction. We have the Aarhus Convention of 1998, although this has yet to be as effective as it should be. Aarhus is a UN not a European Treaty. Aarhus provides, in Article 9, for signatory nations to ensure the existence of an independent or impartial body, with procedures that are fair and equitable and not prohibitively expensive, to hear challenges to the substantive and procedural legality of an environmental decision.

There is an obligation too on governments to consider the establishment of appropriate assistance mechanisms to remove or reduce barriers to access to justice in environmental cases.

Article 9 was incorporated into European Community directives relating to environmental assessments in 2003. In 2009 the Court of Appeal (Morgan & Baker v. Hinton Organics (Wessex) Ltd 2009 EWCA Civ 107) resisted steps that could develop separate costs regimes in public law cases, saying that Aarhus was at most a matter to which the Court should have regard when exercising discretion in making protective costs orders.

It was only in July 2010 that our Court of Appeal [R (Garner) v Elmbridge Borough Council (2010) EWCA Civ 1006] determined that in the light of those EC Directives in cases relating to Environmental Impact Assessments (EIA) it was no longer necessary for the claimant to show a general public interest to applying for a protective costs order, thus moving on from Corner House and in effect creating a separate protective costs regime for environmental impact assessment cases (although not for environmental cases generally).

Notwithstanding this, in September 2010 the UK was found (by the relevant compliance committee) to be non compliant with the Aarhus Convention insofar as the principles established by the courts that I have described left too much discretion and uncertainty. Further steps to ensure compliance are being considered. I have heard that the UK government is considering legislating for protective costs orders in environmental cases. Will legislation will be able to take matters further than the admirable judgement in Corner House? There is going to have to be room for an exercise of judicial discretion, isn't that what we are there for?

6. CONCLUSION

Going back to the issue of standing generally and the judgement I referred to in the US of Wild Bill Douglas. On the 27/10/11 the London Times reported that five performing killer whales were plaintiffs in an action against their Florida workplace claiming that they were "violently seized from the ocean and taken from their families as babies. They are denied freedom and everything else that is natural and important to them while kept in concrete tanks and reduced to performing stupid tricks". It is alleged that they are slaves, in violation of the 13th Amendment to the US Constitution - the 13th Amendment not being species specific and so (it is imaginatively argued) not confined to human beings.

Methods for Estimating the Economic Value of Damage to Natural Resources and their Application in the Caribbean

Jeffrey Wielgus, PhD

In economic terms, the goal of natural resource damage liability is to compensate the public for losses in economic welfare (well-being) arising from damages to natural resources. Compensation for damage can be done by using two broad approaches: (1) monetary compensation for lost economic benefits, and (2) restoration of damaged biophysical functions, which are the source of economic benefits. Traditional markets are lacking from which to obtain information on the economic benefits of subsistence use and many of the other services provided by natural resources. In order to estimate liability for these items, economists use two approaches: (1) the application of economic valuation methods, which use surveys or data on resource use to estimate "markets" and prices, and (2) calculation of the cost of restoring the damaged resources to their baseline (pre-impact) levels. The second approach is commonly referred to as "replacement cost". In many countries, the parties responsible for natural resource damage are also responsible for compensating the public for the economic damage that take place while the damaged resources are restored ("interim losses").

From an economic standpoint, calculating compensation from actual or estimated markets is a preferred method because the costs of replacing a lost biophysical function may exceed the economic benefits of the function. However, economic valuation methods are technically challenging and data-intensive. In addition, the measurement of the economic value of the various services provided by a damaged ecosystem requires a variety of techniques, and these techniques may not capture the economic value of ecosystem services that are still poorly understood. In the United States, the rules provided by the National Oceanic and Atmospheric Administration (NOAA) for conducting natural resource damage assessments promote measures to achieve "expeditious and cost-effective restoration", including the use of restoration strategies based on the replacement-cost approach. NOAA has frequently used Habitat Equivalency Analysis (HEA)-a technique based on replacement cost- to estimate claims for oil-spill damage (DARP, 2006). HEA estimates the reduction in ecosystem services following oil spills and calculates the scale of restoration that is required to restore these services. HEA accounts for interim losses by adjusting the scale of restoration activities. To implement HEA, it is necessary to select a metric from the injured resource, habitat, or ecosystem as a proxy for ecosystem services.

In the Caribbean, the Belize Supreme Court recently mandated compensation for damage caused to the coral reef by a vessel grounding (the M/V Westerhaven) based on an average economic value of coral reef services estimated from previous studies.

ASSESSMENT OF ENVIRONMENTAL DAMAGES AND CURRENT TRENDS IN SANCTIONS IN ENVIRONMENTAL LAW

By Gilroy S. English

This paper will attempt to address the assessment of environmental damages to natural resources in the context of the Law of Damages, highlighting some of the challenges faced in the assessment of the value of the damages and also introduce current trends in the punishment for environmental breaches.

1. Environmental Law has increased in importance as a direct result of the increase in public consciousness regarding the economic value of the environment to daily life and future prosperity of nations due largely in part to the easy access to information over the past twenty years. Terminologies and principles of Environmental Law such as Environmental Impact Assessments (EIA's) and the "polluter pays principle" that were "relevant" to the field of natural science before are now commonly known by the general public. The growth in this keen interest in the environment has also led to the increased need to ascertain the value of natural resources to mankind. There is now a greater recognition of the direct correlation between the socio-economic impact of the environment on the quality of life for themselves, their children and their communities.

2. The object of an award of damages is to give the Plaintiff compensation for the damage, loss or injury suffered as a result of the Defendant's actions.[1] Awards of damages are intended to put the Plaintiff back in the position he was in before the "wrong" causing the damage was done. The principle is sometimes referred to as *restittutio in integrum*. Damages are awarded in matters of Tort and Contract and both areas of the law have settled principles and methodologies in assessing the value of the damage that has occurred. The calculation of damages to property or to the person can be described as being settled in law. However, the assessment of damages to natural resources is not as predictable in principle.

3. A claim for damages in Environmental Law is subject to the principles of damages related to tortious acts as well as any of the limitations at Common Law (contributory negligence, causation, remoteness, forseeability. Although as a general rule the award of exemplary damages is not made readily save for (i) arbitrary or unconstitutional conduct of government servants, (ii) conduct calculated to result in profit and (iii) expressed authorization by statute, it may be awarded in matters relating to environmental harm.[2] In some countries like Trinidad and Tobago and New Zealand the environmental legislation provides for damages including factors such as the nature, gravity and circumstances of the

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[1] Harvey McGregor Q.C. ,McGregor on Damages (16th Ed,1997)
[2] MC Mehta v Kamal Nath, WP (Beas River Case) 182/1996

offence and history of the offender.[3] The largest award for exemplary damages made to date on the eastern side of the Atlantic was in the Exxon Valdez case in the United States of America with the initial amount being US$5B at first instance but was reduced to US$2.5B on appeal.[4]

4. The main methodologies used to value natural resources are the Contingent Valuation and Choice Modeling methodologies.[5] A comparison of the 2 methodologies is explained in the work of N. Hanley, S. Mourato and R. Wright in their paper Choice Modeling Approaches: A Superior Alternative for Environmental Valuation. Methodologies applied to valuation are not precise and therefore may prove to be the bane of litigation Attorneys. As a practitioner of the law and not science I will not delve into the esoteric of these methods but will rightly leave them at the feet of the economists and scientists.

The challenges as to methodologies should not prevent a tribunal from making an award of damages. In the case of British Columbia v Canadian Forest Products Ltd (2004) 2 SCR 74 it was made clear that assessment of damages for ecological loss to the natural resource should not be strangled because of technical objections as long as there is fairness to the sides and that the challenges in accurately assessing the claim should not allow the wrong doer to escape the responsibility of compensation.

In the Commonwealth Caribbean one of the earliest assessments of natural resources was for the Nariva Swamp in Trinidad and Tobago. The Nariva swamp was Crown land of approximately 6000 Hectares and the valuation was conducted in furtherance of meeting obligations under the RAMSAR convention. Rice farmers who squatted on 1200 hectares of the 6000 hectares that comprised the swamp (wetland) were served with eviction notices and they refused to vacate the said lands.[6] The farmers brought a claim in the Court formalize their possession but were unsuccessful. An assessment of the value of the swamp was undertaken assessing the total value of the ecosystem at TT$608M or US$96.51M.

The most recent application of valuation methodologies in the Caribbean Commonwealth region can be seen in the Belizean Admiralty case known as the *Westerhaven*[7]. In a claim in Admiralty for damage to the Belizean Barrier reef the Court had to rule on the quantum of damages to award as liability was not an issue. The claimant relied on 2 experts who utilized the Habitat Equivalency Analysis (HEA) Methodology but the Defendants disagreed with the methodology. HEA is consistent with the replacement cost method of valuation. The Defendant while challenging the claim did not provide an amount for the damages. In recognition of the variance in methodologies in the case even between the claimant's experts (each had separate figures for the assessment ranging from a high of US$31M to a low of US$18M) and taking all the factors into consideration the judge awarded US$11,510,000.00 for damage to the reef.It should be noted that the judgment is being appealed.

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[3] Environment Management Act,2000 Trinidad and Tobago, New Zealand Resource Management Act 1994

[4] Exxon Shipping Co. and Exxon Mobil Corp. v. Baker.

[5] N.Hanley, S. Mourato and R. Wright 'Choice Modelling Approaches: A Superior Alternative for Environmental Valuation? Volume 15 Journal of Economic Survey;436

[6] Jabar vs. Minister of Agriculture, Land & Marine Resources, No. 630 of 1993,High Court of Justice, Trinidad and Tobago, dated 28 July1993

[7] A.G. of Belize v M.S. Westerhaven Schniffahrts GMBH and Others (Unreported) Supreme Court of Belize, Claim No 45 of 2009 delivered 26 April 2010.

5. To overcome the challenges of valuation methodologies environmental legislation tend to stipulate that restoration of the environment is undertaken. In the United States the two main environmental statutes relating to environmental damages are the Comprehensive Environmental Response, Compensation and Liability Act (CERLA) and the Oil Pollution Act (OPA)[8]. CERLA addresses restoration of natural resources damaged by hazardous substances and OPA relates to oil pollution. Under CERLA after assessments as to the nature of the damage have been conducted the measure of damages includes the cost of restoration, rehabilitation, replacement and or acquisition of the equivalent of the injured natural resource and the services those resources provide. OPA also provides for restoration, rehabilitation, replacement or acquisition of the equivalent of the natural resources. The main feature of these legislation is that competent authorities determine the restoration actions on the occurrence of an incident, then allow the polluter to implement the action or pay to the authorities the cost of implementation. The polluter knows upfront what actions are to be taken and bears the risks of those actions.[9]

7. In recognition of the challenges in the acceptance of methodologies some countries have opted to legislate the method for calculation of the damages. Commonwealth Caribbean Legislation makes provision for the restoration in circumstances where there is damage to the environment. For example the Environment Management Act, 2000, Trinidad and Tobago, Environment Protection Act 2000, Belize, Natural Resources Conservation Authority Act and Beach Control Act 1956, Jamaica. While the legislation may not capture the entire value of the environment they at least assure that the restoration is undertaken and that the cost of such restoration is not the burden of the State.

8. Not only do some legislation provide for the restoration of the environment some tend to attach a "penal" component to the act. An example of the "penal" component can be seen in the example of the New Zealand Resource Management Act Section 339B which states:

New Zealand Resource Management Act
Section 339B: Additional penalty for certain offences for commercial gain
(1) Where a person is convicted of an offence against section 338(1A) or (1B), the court may, in addition to any penalty which the court may impose under section 339, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.
(2) For the purposes of subsection (1), the value of any gain shall be assessed by the court, and any amount ordered to be paid shall be recoverable in the same manner as a fine.

Conclusion:

Despite the uncertainty of the existing methodologies used to assess the value(s) of the resources in a claim for damages, Courts can still refer to the established principles in the

[8] U.S.C. 9601(16) and 33 U.S.C. 2701(21)
[9] Valuing natural resource damages. A transatlantic lesson by Linda B. Burlington ,Environmental law Review Vol.6 Issue 2 2004

Law of Damages "*restitutio integrum*" for the calculation of damages. If we accept that the environment is in essence a person with its own rights then one could treat a claim for damages in a similar manner as a claim for personal injury. To eliminate uncertainty as to applicable methodologies in the assessment of the value of the resources the use of legislation with inbuilt formulae may prove useful to all parties as it maybe more predictable and certain.

The National Solid Waste Management Authority (NSWMA)

A statutory body established by the NSWM Act, 2001. Its genesis is in the Parks & Markets companies. The National Solid Waste Management Authority was established to:

- effectively manage and regulate the collection and disposal of solid waste in Jamaica;

- Aims to safeguard public health and the environment by ensuring that domestic waste is collected, stored, transported, recycled, reused or disposed of in an environmentally sound manner, by the necessary enforcement steps,

- Guaranteed compliance with the National Solid Waste Management Act, 2001 by business operators and licensed garbage disposal companies and through public education.

NSWMA FUNCTIONS

- Alleviate the environmental burdens of improper waste management including disposal.
- Enforce the NSWM Act.
- Increase public awareness as it relates to illegal dumping.
- Institute measures to encourage waste reduction and resource recovery.
- Introduce cost recovery measures for services provided by or on behalf of the Authority.
- Conduct seminars and provide appropriate training programmes and consulting services and gather and disseminate information relating to waste management.
- Ensure the registration of companies involved in garbage disposal.

AUTHORIZED OFFICERS

The Authority has a complement of 26 Enforcement Officers along with three Investigators and is lead by a Senior Investigator under the guidance of a Director of Enforcement & Compliance.

Their primary role is the enforcement of all aspect of the National Solid Waste Management Act. Their Authority comes from section 4(2) (k) of the Act with their names being published in the Gazette. It should be noted that “for the purpose of carrying out his duties in relation to this Act, every authorized officer shall have the same privileges and immunities as a Constable”, as stated in the Act.

However an authorized officer is not limited to those persons employed to the NSWMA but includes:

- Traffic Wardens,
- Public Health Officers,
- Municipal Police (needs to be Gazetted)
- Environmental Wardens
- JCF
- ISCF
- Any person acting in aid of such person acting in the execution of his office or duty

Opportunities

The Enforcement of the NSWM Act provides us with the opportunities to:

a) Heighten the public awareness for the need to practice proper waste management.
b) Allows for the regulation of the stakeholders in the Waste Management Industry.
c) Provide public education as to how best to treat the various types of waste generated across the Island.
d) Provide a effective enforcement tool to deal with individuals and organizations who continue to ignore best practices in the management of waste.

SUMMARY of NSWM ACT BREACHES and PENALTY

Section 44(a)	Unlawfully remove waste from Disposal facility	$500,000.00 or Six Months or both fine and confine
Section 44(b)	Interferes or tampers with disposal facility	$500,000.00 or Six Months or both fine and confine
Section 45(a)	Dispose of waste in manner not approved by the Authority	$1,000,000.00 or Nine Months or both fine and confine
Section 45(b)	Operates, Collects, or Transfer waste without a license	$1,000,000.00 or Nine Months or both fine and confine

Section 45(c)	Impedes the collection/disposal of solid waste	$1,000,000.00 or Nine Months or both fine and confine
Section 46 (1)(a)	Litter in Public	Fixed Penalty - $ 2,000.00
Section 46 (1)(b)	Erect, display (whether writing or marking), deposit, or affix anything on public place wall, building, fence or other structure causing defacement	Fixed Penalty - $ 3,000.00
Section 46(2)	Commission person(s) to erect, display (whether writing or marking), deposit, or affix anything on public place wall, building, fence or other structure causing defacement	Fixed Penalty - $ 10,000.00
Section 47	Littering Private Property	Fixed Penalty - $ 5,000.00
Section 48	Willfully breaking bottles in public place	Fixed Penalty - $ 5, 000.00
Section 49 (1) a, b, c,& d	Making false or misleading statements	$1,000,000.00 or 1 year or both fine and confine
Section 50(1) (a), (b), (c) & (d)	Hinder, disobey, fails to disclose or give name, and place of residence	$500,000.00 or Six Months or both fine and confine
Section 51 (a) & (b)	Fail to keep records or to produce records	$500,000.00 or Six Months or both fine and confine
Section 52(b)	Offence for which there is no penalty	$500,000.00 or Six Months or both fine and confine

Section 55	Fail to comply with Removal Notice	$100,000.00 plus recover cost to clean area
Section 58(b)	Failure to provide information on operation of Sewage/industrial waste plant	$500,000.00 or Six Months or both fine and confine

Challenges

1. Public Cleansing Regulations

Public Cleansing Regulations was enacted in 2003 and embodies the systems & procedure that should be followed as set in Section 53 of the act- Public Cleansing regulation was enacted to give life to section 53 of the NSWM Act. This section sets out how breaches under sections 46, 47 and 48 of the Act are to be treated.

Concern*-*
Where a person is brought to court an application is made to the R.M for an order that the offender pays the fixed penalty plus an additional sum (court cost), we are concerned that the aspect of the fixed penalty is not being carried out by the court.
Were these offenders ordered to pay the fixed penalty charges, this revenue would greatly assist the Authority in defraying the Administrative cost of mobilization and would act as a further deterrent to potential offenders.

2. Impact on the Court System

Currently we issue an average of 650 Fixed Penalty Tickets in Kingston and St. Andrew monthly .Of this approximately sixty percent (60%) ends up in court actions. Our plan is to roll out our enforcement activities to other parishes and we anticipate that a similar percentage will end up in the courts. Consequently there would be a noticeable increase in these cases in the courts, thereby increasing clogs in the court system.

Recommendation
We believe that it would be more prudent and convenient to explore having a separate court to deal with these and other local issues.

3. Interpretation of Section 45(a) of the NSWM ACT

Section 45(a) of the NSWM Act 2001 speaks to “dispose of waste in manner not approved by the Authority”. On a number of occasions when cases are brought before the court, these cases are dismissed on arguments forwarded by attorneys that “the manner approved” should be set out in the form of a regulation.

Recommendation

However it is our contention that the guidelines and standards which speaks to the best practice for solid waste management as set out by the Authority in conjunction with the Act, (4 (2) (g)), should be relied upon to determine “the approved manner” referred to in Section 45(a).

Forest Law Enforcement:

The Jamaican Experience.

Authored by: Rainee Oliphant

If a man walks in the woods for love of them half of each day, he is in danger of being regarded as a loafer. But if he spends his days as a speculator, shearing off those woods and making the earth bald before her time, he is deemed an industrious and enterprising citizen. ~ Henry David Thoreau

Forest Law Enforcement: The Jamaican Experience.

Introduction

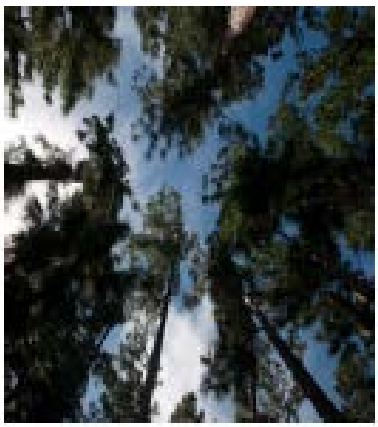
This paper seeks to introduce one of the tools used by the Forestry Department (the Department) to preserve and maintain Jamaica's forests, namely the enforcement of the Forest Act of 1996 (the Act) and the Forest Regulations of 2001 (the Regulations). This approach will touch on the role that strict liability offences play in the enforcement of the forestry legislation, and the impact that the discharge of the criminal law standard of proof has on the manner in which prosecutions are conducted by the Department.

The discussion will be separated into four main segments, namely –

1. "Why" we do what we do?
2. "How" we do what we do?
3. "Where" we do what we do? and
4. "When" we do what we do?

The main aim is to provide you, the Tribunal of Fact, with a more fulsome picture of the work of the Forestry Department, the role played by its first responders in the enforcement of the legislation, the offences established by the statue, the legal burdens, standards and constraints which need to be met by the Department and the options available in relation to any penalties imposed after a conviction.

1. The "WHY"



The mandate of Jamaica's Forestry Department sets it apart from other entities tasked with the responsibility of regulating Jamaica's environment. The focus of the organization is fixed on the maintenance of a healthy forest eco-system, by conserving and protecting the trees and other non-timber forest products contained therein. Based on the land use assessment published by the Department in 1999, approximately thirty percent (30%) of Jamaica or 335,900 hectares is covered by

[1] When reference is being made to both the Act and Regulations, they will jointly be referred to as the forestry legislation.

forests, of which thirty percent (30%) or 109,514 hectares is managed by the Department. This mandate to oversee the management of the island's forested crown lands was imparted legislatively in 1937, and continues to be derived from the overarching legislation to this day. A brief comparison of the previous Act (1937), with the existing legislation (1996), shows that the core functions of the organisation remain virtually unchanged, as the business of forestry was and continues to be rooted in the practice of sound scientific principles.

The Legislative Mandate

The legislatively prescribed functions of the Department, as outlined in section 4 of the Act include but are not limited to

- The sustainable management of forests in crown lands or in forest reserves and the effective conservation of these forests;
- Establishing and promoting public education programmes to improve understanding of the contribution of forests to national well-being and national development;
- Preparation of forest inventories and the demarcation and maintenance of forest boundaries;
- Granting of licences and permits under this Act;
- Protection and preservation of watersheds in forest reserves, protected areas and forest management areas; and last but not least
- **Taking steps to enforce compliance with the provisions of this Act**; and for this purpose the Conservator and other forest officers shall have the powers of a Constable under the Constabulary Force Act.

2. **The "HOW"**

In order to fulfill its mandate to "*take such steps to enforce compliance with the provisions of the Act*", the Department is utilizing a more strategic approach in its operations, as evidenced by the critical adjustment to its organizational structure by the formation of a Legal and Enforcement Division. The Division forms part of the newly established Executive Agency[II] and has an array of new positions which includes that of the forest ranger to

[II] On May 1, 2010 the organisation was designated as an Executive Agency (EA).

facilitate the patrolling and monitoring of the activities carried out in the reserves, forest management areas and estates.

Enforcement personnel

The two categories of enforcers empowered by the Act to enforce are that of -

(1) forest officer; and
(2) authorized officer.

A **forest officer**[iii] includes *"the Conservator of Forests and any other persons appointed to be a forest officer"* and an **authorized officer** includes *"forest officers, a member of the Constabulary or other person designated by the Minister"* with responsibility for forestry.
There are currently eight-six (86) persons who are the official eyes and ears of the Department on the ground and of this grouping a core set of approximately forty (40) forest rangers monitor the activities within the areas managed by the organisation. Though this may seem like a lot of personnel, when taken in the context that the Forestry Department manages over 109,514 hectares of land with varied levels of forest cover, much of which is extremely mountainous, the ability to detect and follow up on the investigation of these offences is sometimes not as effective as would be required.

3. **The "WHERE"**

Statutory limitations

It is worthy of note that the authority to protect these looming, often decade old giants, is not as all-encompassing as one would expect, as the jurisdiction of the Department is limited by the restrictions imposed in the Act, and more clearly defined in the map contained in *Appendix I*. The majority of the areas managed by the Department are classified as forest reserves (98,962 hectares), and fall under the jurisdiction of the Act. There are currently *One Hundred and Two (102) declared forest reserves* (See *Appendix II*),

[iii] Within the Department, positions that have been assigned the designation of forest officer - the Enforcement Branch staff, (Forest Rangers, the Senior Compliance and Enforcement Officers, and the Enforcement Manager); and the staff of the Forest Operations Division (Foresters; Forest Managers, Forest Supervisors, and the Zonal Directors).

Two (2) declared forest management areas[iv] and *numerous forest estates* across the island. In keeping with this trend, the vast majority of offences listed under the Act and Regulations focus on the forest reserve, and specifically prohibit the commission of prescribed activities whilst regulating others.

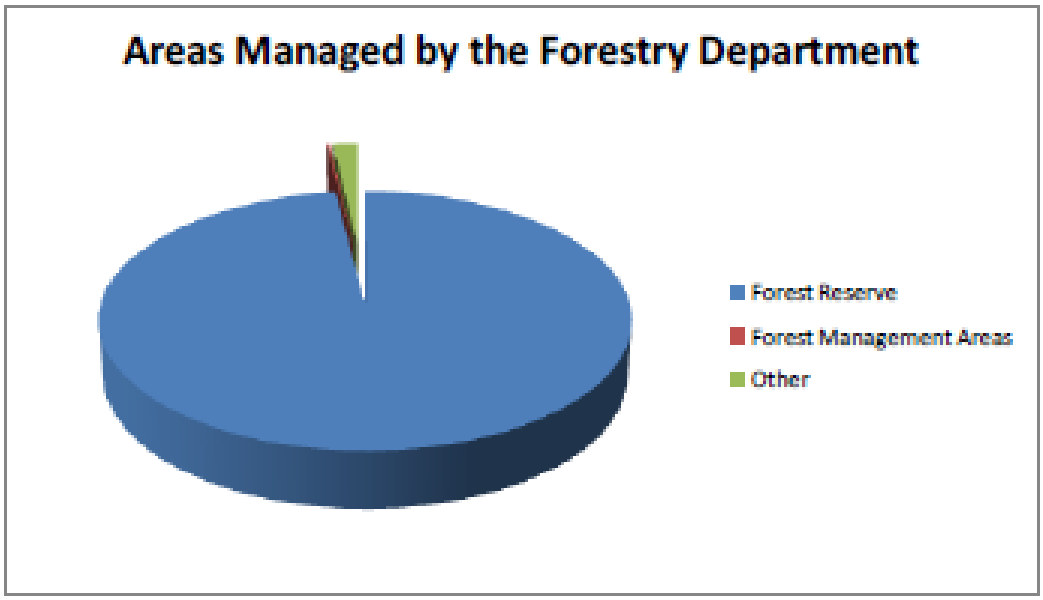


Table 1

When thinking of the parameters attached to discharging its evidential burden, the limitation placed on the prosecutorial authority of the Department must be taken into account. This is due to the fact that **the prosecution of matters under the Act or Regulations is dependent on the infraction taking place in one or more of the areas designated as a forest reserve**[v]**, forest management area**[vi] or that fall within the definition of those known as **forest estates**[vii].

[iv] Tulloch Estate Forest Management Area and Hampden Forest Management Area both of which are located in St. Catherine.
[v] *"Means any area of land declared by or under the Forest Act to be a forest reserve".* Section 6 of the Act sets out the uses for which the forest reserve should be put, namely the conservation of forests existing naturally in the area of those forest reserves; the conservation of soil and water resources; the provision of parks and other recreational amenities; and the protection and conservation of endemic flora and fauna.
[vi] *"Means any area of land declared under the Forest Act to be a forest management are".* Section 7 (2) sets out the purposes for which forest management areas should be used primarily, and these coincide with hose listed above for the forest reserve.
[vii] *"Means a forest reserve, or any other land managed by the Forestry Department pursuant to the Act".*

Before launching into the prosecution of a matter, the Department carries out the following checks -

- The location of the activity in order to determine whether it has taken place on private land or state owned land. This is done using Global Positioning System (GPS) technology to pinpoint the coordinates of the activity. This information can be as detailed as identifying the stumps that are left behind after the standing timber is cut, or merely capturing the boundaries of the site in the case of squatting. This data is transferred to the Department's Geographic Information System (GIS) and a map is generated to indicate if the area is a forest reserve, forest management area, forest estate, other crown land not managed by the Department or private land. (*See Appendix III*)

- If it found to have taken place on an area managed by the Department, the exact designation assigned to the area is determined in order to ensure that the correct charge is laid against the accused person. As indicated in the diagram below, the area determines which piece of legislation is relied on during the process of prosecution.

4. The "WHEN"

In exercising its discretion as to whether to prosecute a matter under the Act or the Regulations, consideration is given by the Department as to whether based on the facts -

a) It can be established that an offence was committed;

b) A defence exists on which the accused individual could seek to rely (including those under the Forest Act[viii]);
c) The burden of proof which would need to be discharged to prove the commission of the offence; or
d) There is a need to prove fault or knowledge / forseeability

a) Offences

The offences listed under the Act and Regulations range from the more obvious -*illegal logging or extraction of forest produce* to the less known of *failing to comply with a notice requiring that the person restore the land to the condition it was in before the offending activity took place.* A synopsis of some of these offences is provided in Table 2, which though not exhaustive, gives an idea of some of the more well-known offences versus unknown ones under the forestry legislation.

POPULAR	RELATIVELY UNKNOWN
• Fells, cuts, uproots or burns a tree • Kindles or carries fire • Cultivates land • Removes soil, sand and gravel • Pastures or permits cattle to trespass • Erects a building or shelter • Operates a charcoal kiln • Assaults or obstructs a forest officer acting in the execution of their duties	• Girdles, marks, lops or taps a tree • Kills, wounds or captures a wild bird of animal • Unlawfully affixes a mark used by forest officers on timber • Uses a forest road without a permit • Operates a sawmill without a permit • Fails to determine boundaries of lands adjoining forest estate before cutting • Carries a firearm

Table 2.

It is worthy of note, that the trend has been for the offences which appear to be easier to commit (cutting down a tree or operating a charcoal kiln) and somewhat opportunistic in nature, are the ones that are more often observed by the forest rangers. The problems to

[viii] Section 31(3) Nothing in this section shall be construed as prohibiting or rendering punishable any act done – (a) in accordance with the permission in writing of the Conservator or a forest officer; or (b) by or in accordance with the permission of the owner or lessee of the land on which the act is done; or pursuant to and in accordance with any licence or permit granted under this Act.

date are linked mainly to the "*lickle man eating a food*" as against a large conglomerate shearing off the tree cover from an entire hillside.

Whether the circumstances are such that the former or the latter situation presents itself, the responsibility for protecting the resources within these areas still remains solely with the Department, and more often than not results in some punitive action being taken.

Penalties

The Act and the Regulations provide options for the exercise of a Magistrate's discretion in relation to the imposition of a sanction on a convicted individual. These include –

i. **Fines**: The ***Forest Act*** has three tiers of maximum fines which can be imposed on summary conviction before a Resident Magistrate
   a. Section 30(2) – Five Hundred Thousand dollars ($500,000.00)
   b. Section 31(1) – Two Hundred Thousand dollars ($200,000.00)
   c. Section 31(2) – One Hundred Thousand dollars ($100,000.00)

   The ***Forest Regulations*** has a maximum fine of fifty thousand dollars ($50,000.00) which covers 99.9% of the offences stipulated therein.

ii. **Term of Imprisonment**: Under the Act, with the exception of a conviction under section 30, the term of imprisonment is in lieu of payment of the fine.
   a. Section 30 (2) Term of imprisonment not exceeding two (2) years. **NB – this is the only provision which allows for the imposition of both a fine and a term of imprisonment.**
   b. Section 31(1) in default of payment of the fine, a maximum of two (2) years
   c. Section 31(2) in default of payment of the fine, a maximum of one (1) year

   The ***Forest Regulations*** has a maximum term of imprisonment of one (1) year.

iii. **Cost of restoration**: Section 21 of the Forest Regulations states that

   "A person convicted of an offence under these Regulations or the Act shall, **in addition to any penalty for which he may be liable for the offence**, be liable to **pay the cost of repairing or restoring any damage done** to a forest estate,

protected area or forest management area or to any plant or tree growing therein or to any property of the Forestry Department affected by the commission of the offence." This option has not been used to date, but several Resident Magistrates have expressed an interest in it.

iv. **Forfeiture of seized items to the Crown:** Section 33 of the Forest Act also makes provision for the forfeiture of items (including a conveyance, tools and / or forest produce) seized by a forest officer or constable which that individual has reasonable cause to suspect is or was being used in the commission of an offence against the Act.

The Order of forfeiture will only take effect after the successful conviction of an individual(s) under the Act and may be overturned if a person prejudiced by the Court order is successful in his or her appeal of the order of forfeiture.

b) **Defences**

One of the means of forestalling a prosecution is a viable defence. Listed below are some of the defences which accused persons sometimes seek to rely on, as well as the courses of action available to the Department to counteract them -

i. **Permit, Licence or written permission from the Department:** it is easy to determine whether the documents uttered by the accused person are valid ones. The existence and validity of these documents will determine whether the individual has a defence under Section 31 subsections 3(a) or (c) and can be checked internally by the Department.

ii. **The role of the National Land Agency (NLA):** The NLA is the owner of all of the state-owned land managed by the Department, and as the owner has the right to grant leases governing parcels of land designated as forest reserves, to third parties. The Department has in recent times been involved in this process and oftentimes makes recommendations where the land in question is forested crown land. What has become the norm is that persons claim to hold a lease from the NLA not recognizing that this is a refutable fact, and one which the Department will examine when considering whether to initiate a prosecution.

iii. **Strict Liability Offences:** The fact that the liability assigned to the majority of offences under the Act is strict in nature negates any defence that an accused individual could seek to rely on, where the claim is lack of knowledge that the area was a declared forest reserve, forest management area or forest estate. Wright J in *Sherras v De Rutzen*[9] stated that

"There is a presumption that *mens rea*, or evil intention, or knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."

As such, there is no need for the prosecution in the case of the majority of offences under the Forest Act, to prove what the prescribed state of mind of the accused was at the time of the commission of the offence as the maxim "*actus non facit reum nisi mens sit rea*" does not apply in relation to ninety-five percent (95%) of the offences listed under the forestry legislation.

Unlike the often quoted cases supporting the utilization of the strict liability rule (*Hobbs v Winchester Corporation*; *Cundy v Le Cocq*[10]) where questions were raised as to the fairness of convicting individuals who had no knowledge that they were in fact committing an offence, the individuals who perpetuate the offences against the environment under the Forest Act, deserve in our view no sympathy, as they often benefit quite handsomely from the fruits of their ill-gotten gains.

Statutory Exceptions requiring the proof of *Mens Rea*

A few exceptions to the strict liability offence trend can be found in Sections 31(1)(b); 31 (2)(b); 31(2)(c) which make it an offence in a forest reserve to "*willfully or by gross negligence causes any damage in felling any tree or cutting or dragging timber;*" "*knowingly counterfeit on any tree or timber, ...a mark used by forest officers to indicate that any tree or timber is the property of Government ...*" and "*unlawfully or fraudulently affixes to any tree or timber a mark used by forest officers*" respectively. In these instances, the state of mind of the accused will have to be addressed.

[9] [1895] 1 QB 918 at 921
[10] [1910] 2 KB 471, CA.
[11] (1884) 13 QBD 207

iv. **Private land:** It is estimated that approximately 214,976 hectares of forested land are privately owned and as such do not unless they have been declared under the Act, fall within the ambit of the legislation. The fact that the forestry legislation does not protect a particular specie of tree, which would be easily discernible, or that there are no distinguishing marks on timber produced on private land, provides an opportunity for an accused person accosted with timber in his or her possession, to use the common refrain that *"I got the items from privately owned land"*.

This is particularly true where the investigation takes place after the trees have been cut and the logs or converted boards are located outside the boundary of the areas managed by the Department. This in and of itself is not sufficient to deflate the prosecution's case, as the statute makes further provision in sections 34[xii] and 35[xiii] of the Regulations for an individual to provide information to an authorized officer on the source of any timber or forest produce, failing which they run the risk being prosecuted[xiv].

c) Burden of proof

It is common in environmental law, to see criminal law being used in one of two ways, namely via the application of a sanction as a result of the direct commission of an activity contrary to a statute or the omission to act for example to get a permit or licence to carry out a particular activity.

In both instances the *actus reus* is a necessary component of the prosecution's case and the standard of proof applicable is as with other criminal cases, *"beyond a reasonable doubt"*. This standard of proof has in the past resulted in the Department having to discontinue the pursuit of a prosecution, as it was unable to say that items found outside

[xii] 34. An authorized officer has the right, without a search warrant, while in the performance of his duties, at any reasonable time to enter into and upon lands and premises other than a dwelling to obtain any timber or forest information concerning the quantity, species or source of any timber or forest produce.

[xiii] 34(1) An authorized officer may stop and search without a search warrant, any vehicle on or off any road or highway for the purpose of enforcing the provisions of these Regulations.
(2) Every person operating or travelling on or accompanying any vehicle referred to in paragraph (1) shall upon request, provide an authorized officer with information as to his name, address, destination, delivery address and any other information requested from him pertaining to his duties and to the extent to which his duties relate to forest matters.

[xiv] Sections 34(2) and 35(3) respectively

the boundaries of the areas managed by the organization, were unlawfully removed from the confines of a forest reserve, forest management area or forest estate.

There is no burden placed on the Department however, to prove direct environmental harm under the forestry related legislation, only that the activity took place within the prescribed boundaries of the designated area. The fact that the majority of the offences prescribed under the Act and the Regulations are strict liability offences negates the need to prove that there was any negligence or forethought on the part of the offender.

What is the burden of proof applicable to the Department in relation to the prosecution of strict liability offences against the forestry legislation?

1. To provide proof that a particular activity was carried out
2. That it was carried out within the areas designated by the Forest Act and / or the Forest Regulations
3. That it is one of the prescribed offences under the legislation; and
4. That the person before the Court committed or was involved in the commission of the offence

To discharge this burden, the Department will among other things produce the following pieces of evidence to the Court –

1. **Map of forest reserve identifying the *locus in quo***
2. **Copy of the Gazette (*See Appendix IV*)**
3. **Statements of investigating officers and / or forest officers**
4. **Valuation of the timber or forest produce (economic value)**
5. **Pictures**
6. **Perishable Items Form**

These documents along with the No. 1 Information make up the case file for the prosecution.

5. Challenges faced in the prosecution of environmental cases

As prosecutors we are well aware of the fact that a variety of factors stymie our ability to be successful in one hundred percent (100%) of the matters brought before our Resident Magistrate Courts. The more obvious factors are -

i. Die hearted environmental attorney's are not litigators in the true sense of the word. In the local context what that results in is **lack of courtroom expertise**, as a separate litigation department does not exist within these regulatory agencies. The "prosecutors" based on the case load of the particular entity, will not have as much litigation experience as a Clerk of Court or a defence attorney. Strong reliance is often put on the experience of the Clerk of Court where the matter eventually gets to trial and a interdependence develops in that the Clerk is dependent on the technical expertise of the attorney representing the technical regulatory agency, to make his or her case, and conversely the attorney requires the help of the Clerk to see that all of the I's are dotted and T's crossed in relation to proper court procedure.

ii. **Low or non-existent fines** - It has been said that environmental offences "*are not criminal in any sense, but are acts which in the public interest are prohibited under penalty.*"[xv] This position though postulated by a Justice over a hundred years ago, could arguably be said to be the bane of the environmental prosecutor today. This unfortunate interpretation continues to haunt environmental regulatory agencies in Jamaica, and more specifically the Forestry Department as though criminal sanction is often statutorily prescribed for these offences, the fact that the management of the environment is also carried out using regulatory or administrative practices, perhaps suggests that the fines that should be imposed on the conviction of an offender, should be lower. Whether it is that the low fines stem from outdated legislation, or the imposition of a lower penalty by the Tribunal of Fact, any such judicial pronouncement ultimately sounds the death knell for the likelihood of higher fines being imposed in the future.

It is the humble opinion of the writer, that low fines and / or short terms of imprisonment do not serve as effective a deterrent to offenders as the message that trickles down is that if they take the risk and are not caught they get off scot-free,

[xv] *Sherras v Rutzen* [1895] 1 QB 918, 922 Wright J

and if they are caught, the low fine equates to the same result as if they had not been.

iii. **Inability of the prosecution to properly make its case** What this results in, in some instances, is tantamount to the regulatory agency being forced to throw in the towel prior to the initiation of a matter before the Court because it is unable to meet the standard placed by the criminal law in relation to the burden of proof. This often happens in the case of the Department where there is no direct or "eye-see" evidence and the physical evidence supporting the commission of the offence (timber, board, logs) is located outside of the confines of the forest reserve, forest management area or forest estate. This remains one of the more challenging areas of prosecution of forestry related offences.

ARE WE WINNING THE BATTLE, BUT LOSING THE WAR?

Only when the last tree has died
The last river poisoned
And the last fish caught
Will we realize we cannot eat money.
~ Cree Indian Proverb

In concluding, the Forestry Department is concerned solely with the protection, conservation and sustainable management of Jamaica's forests. Over the last two (2) years the following trends were noted in relation to the prosecution of matters under the Act and / or Regulations in the Resident Magistrates' Courts within the parishes of St. James, Hanover, St. Andrew, Clarendon and Portland.

Seventeen (17) cases were brought before the Courts, of which thirteen (13) were disposed of. The fines imposed ranged from Five Thousand dollars to One Hundred and Fifty Thousand dollars, with the sum total of fines ordered by the various Courts for the period being approximately Five Hundred and Twenty-Five Thousand dollars ($525,000.00)[xvi]

As indicated previously, the majority of offences detected by the forest officers fell into the category of offence more properly described as squatting in the forest reserve (54%), while thirty-nine percent (39%) was unauthorized cutting of trees and seven per cent (7%) for kindling a forest fire. Other cases saw charges being laid for using a forest road without a

[xvi] Two persons opted to serve their sentences in jail. Total fines imposed on these persons is $170,000.00

permit, not producing records on timber related activity on the request of an authorized officer to name a few.

The following trends were noted in the last two years in relation to matters brought before the Court –

- Cases were more readily dealt with when the Resident Magistrates spoke directly to the accused when they are pleaded, and the elements of the offence explained to them; in the majority of instances, the lack of understanding of the strict nature of the offence prevented these individuals from recognising that they were in fact guilty. The statement "guilty with explanation Mironner" has often proved to be their undoing.
- Increasingly higher fines have been imposed by the Courts of which approximately sixty percent (60%) have been paid by the convicted persons.
- Where fines were not paid, the convicted individuals served time in prison ranging from 10 days to 30 days.
- The majority of offenders when faced with the possibility of jail time over thirty (30) days have found the money to pay the fine. In fact some have travelled to court on the day with the means to pay tens of thousands of dollars in order to ensure that they will not be incarcerated. Who said crime doesn't pay?
- The convicted offenders are more willing to respect the sanctity of the forest reserves, management areas and estates one they have been punished by the Court.
- The fact that people have been convicted under the legislation has served as a warning on the ground to other members of the community. Increased information on untoward activities in an area is often forwarded to the organization once news of the successful prosecution filters down to the community.
- The imposition of Community Service as a penalty by the Court has worked in some instances, but will require a revamping of the Department's internal processes for it to be a more effective deterrent.
- The option of awarding costs for restoration has not been used to date, but several Resident Magistrates have expressed an interest in it. Any such order would be particularly fortuitous, as it provides an opportunity for direct compensation to be made to the Department or the work of the organisation rather than merely paying a fine into the Consolidated Fund. This can also be used as a punitive sanction by

the Court where for example an offender was systematic in his or her selection of a particular long growing specie (juniper cedar), or where the removal was in a particularly sensitive locale (at the head of a stream).

The Forestry Department is committed to reducing the number of offences that are committed in the areas that we manage. To ensure that this happens we will pledge to -

- Provide legislation and other reference material to the Resident Magistrates, and Clerk of Courts, as well as to Police stations in close proximity to areas managed by the Department
- Train our first line responders (the forest rangers and the members of the Constabulary) in proper enforcement techniques and environmental awareness respectively;
- Educate the public, especially communities living on the fringes of the forest reserves, estates and management areas, even though lack of knowledge is not a defence for strict liability offences.
- Develop our case files in the shortest amount of time to ensure a speedy conclusion once the trial commences;
- Provide opportunities for the forest border communities to be involved in the management of the forest resources in order to reduce the likelihood of them poaching these.
- Reducing the red-tape that is currently plaguing our permitting and licensing system to make the access to legal sources of state-owned timber easier to interested parties.

The Department is committed to serving Jamaica, by protecting, preserving and restoring her forest cover.

Help us to help you, to put the "WOOD"
back into the Xaymacan phrase
"Land of Wood and Water".

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COLIN TAPPER. Cross and Tapper on Evidence. 8th Ed.

J.C. SMITH & BRIAN HOGAN. Criminal Law 7th Ed.

SIMON BALL & STUART BELL. Environmental Law 3rd Ed.

ANDREW WAITE. The Quest for environmental law equilibrium. Env. Law Review 2006

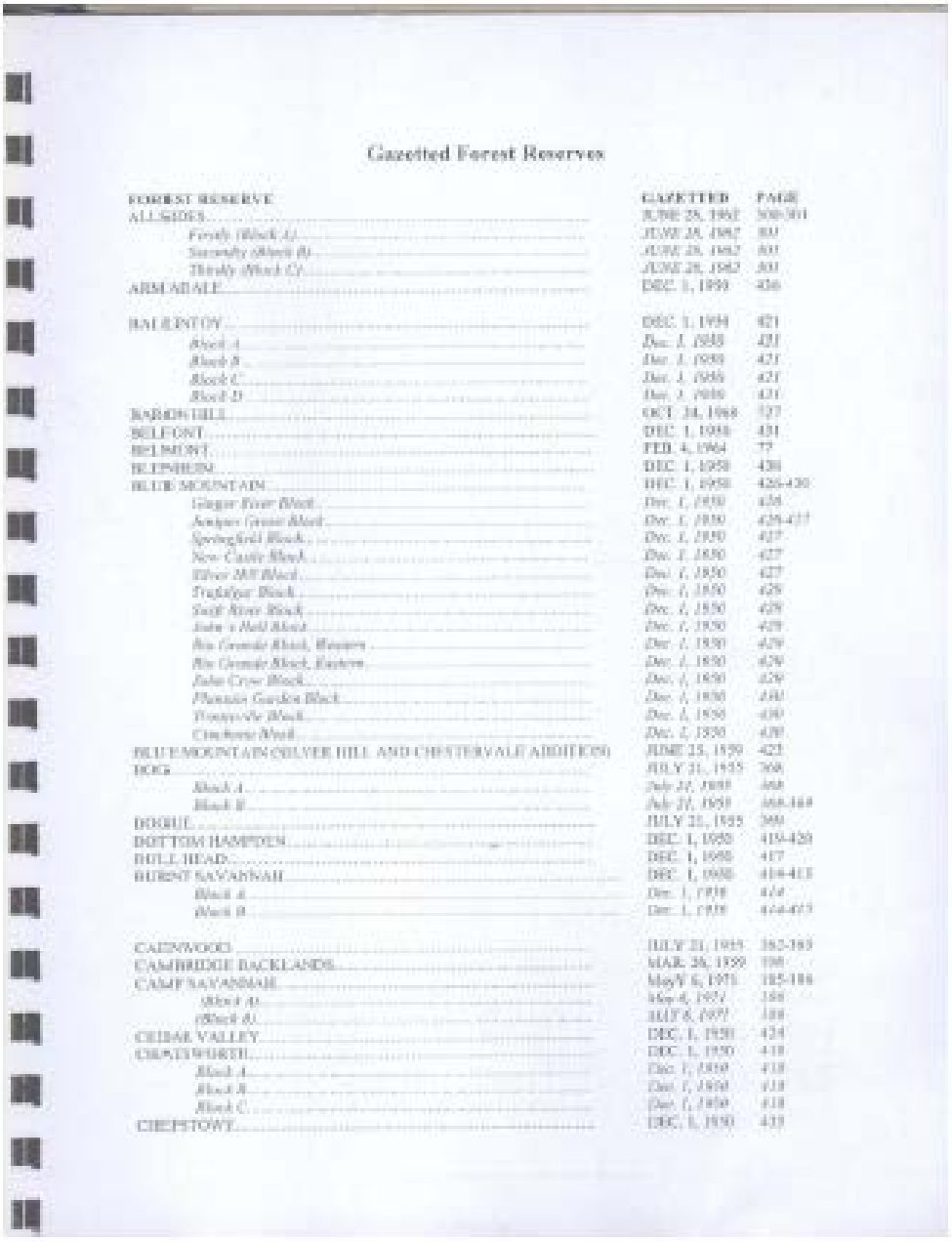
WATSON MICHAEL. Environmental Offences: the reality of environmental crime. Env. Law Review 2005

FORESTRY DEPARTMENT OF JAMAICA 2001. National Forest Management and Conservation Plan

FOREST ACT 1996

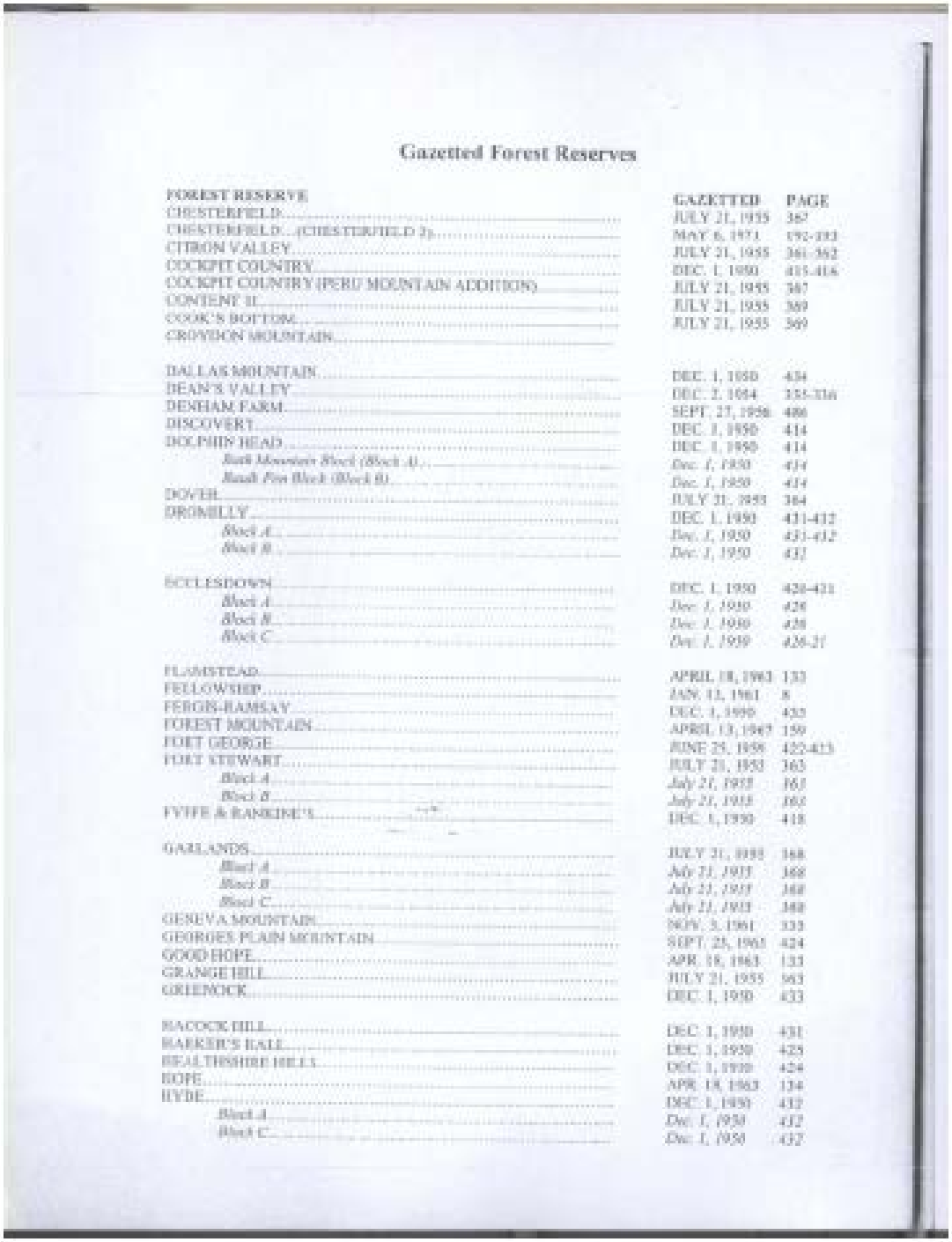
FOREST REGULATIONS 2001

Appendix I – List of Jamaica's Forest Reserves and date of Gazette



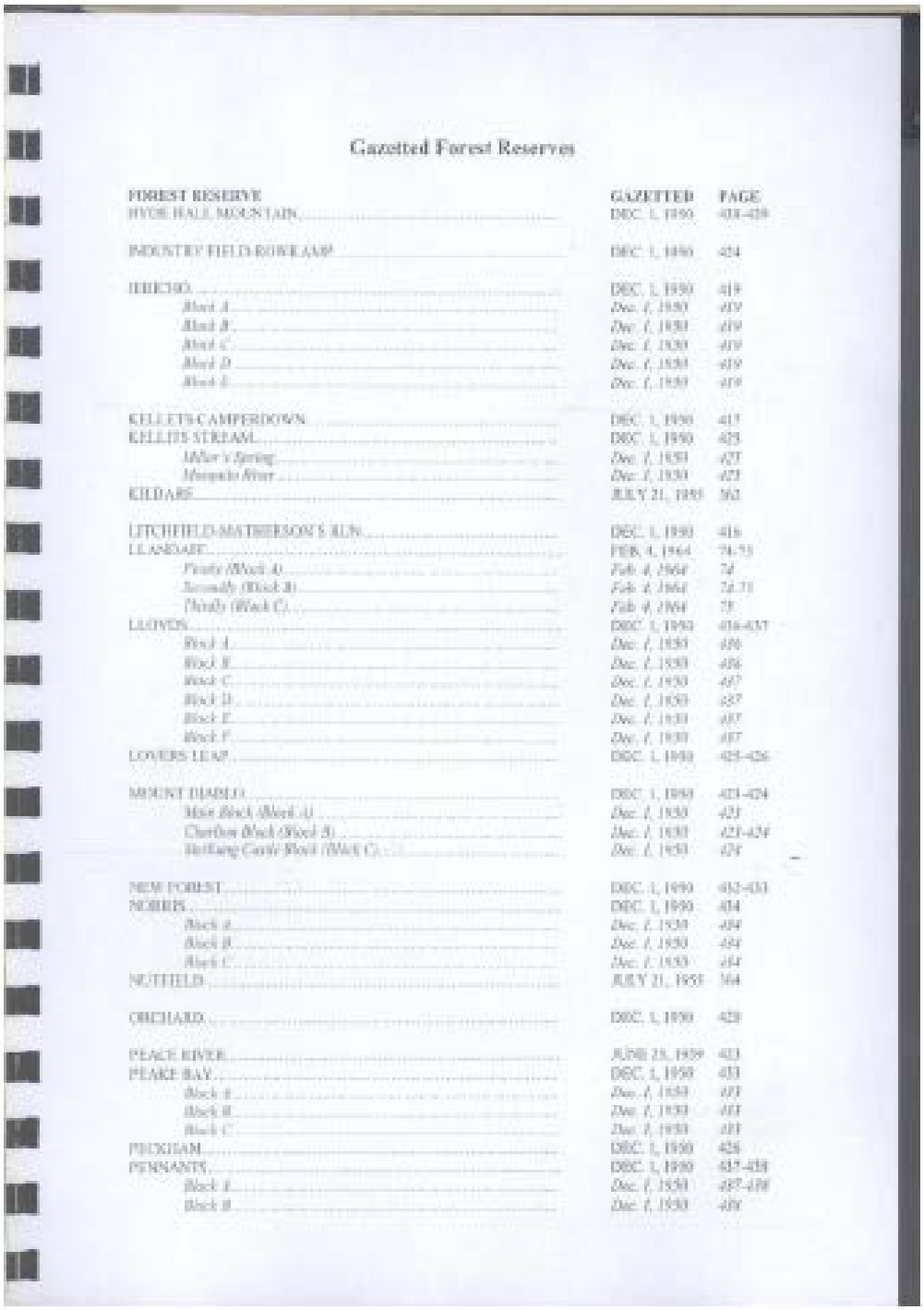
Gazetted Forest Reserves

FOREST RESERVE	GAZETTED	PAGE
ALLSIDES	JUNE 28, 1962	500-501
Firstly (Block A)	*JUNE 28, 1962*	*501*
Secondly (Block B)	*JUNE 28, 1962*	*501*
Thirdly (Block C)	*JUNE 28, 1962*	*501*
ARMADALE	DEC. 1, 1950	426
BALCINTOY	DEC. 1, 1950	421
Block A	*Dec. 1, 1950*	*421*
Block B	*Dec. 1, 1950*	*421*
Block C	*Dec. 1, 1950*	*421*
Block D	*Dec. 1, 1950*	*421*
BARRON HILL	OCT. 24, 1968	727
BELFONT	DEC. 1, 1950	431
BELMONT	FEB. 4, 1964	77
BLENHEIM	DEC. 1, 1950	430
BLUE MOUNTAIN	DEC. 1, 1950	426-430
Ginger River Block	*Dec. 1, 1950*	*426*
Juniper Grove Block	*Dec. 1, 1950*	*426-427*
Springfield Block	*Dec. 1, 1950*	*427*
New Castle Block	*Dec. 1, 1950*	*427*
Silver Mill Block	*Dec. 1, 1950*	*427*
Trafalgar Block	*Dec. 1, 1950*	*428*
Swift River Block	*Dec. 1, 1950*	*428*
John's Hall Block	*Dec. 1, 1950*	*429*
Rio Grande Block, Western	*Dec. 1, 1950*	*429*
Rio Grande Block, Eastern	*Dec. 1, 1950*	*429*
John Crow Block	*Dec. 1, 1950*	*429*
Plumtree Garden Block	*Dec. 1, 1950*	*430*
Tentoryville Block	*Dec. 1, 1950*	*430*
Cinchona Block	*Dec. 1, 1950*	*430*
BLUE MOUNTAIN (SILVER HILL AND CHESTERVALE ADDITION)	JUNE 25, 1959	425
BOKS	JULY 21, 1955	368
Block A	*July 21, 1955*	*368*
Block B	*July 21, 1955*	*368-369*
BOGUE	JULY 21, 1955	366
BOTTOM HAMPDEN	DEC. 1, 1950	419-420
BULL HEAD	DEC. 1, 1950	417
BURNT SAVANNAH	DEC. 1, 1950	414-415
Block A	*Dec. 1, 1950*	*414*
Block B	*Dec. 1, 1950*	*414-415*
CALDWOOD	JULY 21, 1955	363-365
CAMBRIDGE BACKLANDS	MAR. 26, 1959	198
CAMP SAVANNAH	May 6, 1971	185-186
Block A	*May 6, 1971*	*186*
Block B	*JULY 8, 1971*	*189*
CEDAR VALLEY	DEC. 1, 1950	424
CHATSWORTH	DEC. 1, 1950	418
Block A	*Dec. 1, 1950*	*418*
Block B	*Dec. 1, 1950*	*418*
Block C	*Dec. 1, 1950*	*418*
CHEPSTOWE	DEC. 1, 1950	433



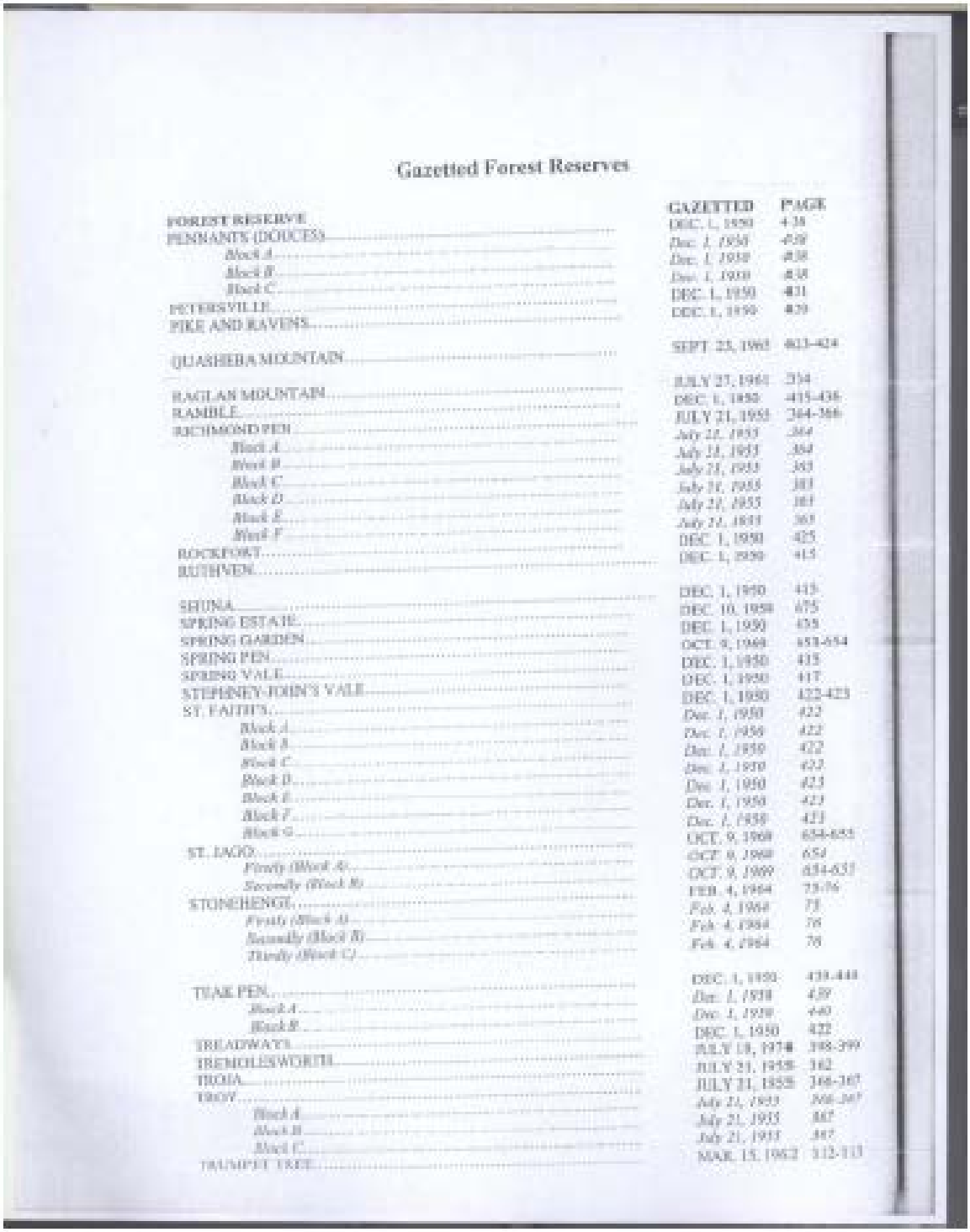
Gazetted Forest Reserves

FOREST RESERVE	GAZETTED	PAGE
CHESTERFIELD	JULY 21, 1955	367
CHESTERFIELD (CHESTERFIELD 2)	MAY 6, 1971	192-193
CITRON VALLEY	JULY 21, 1955	361-362
COCKPIT COUNTRY	DEC. 1, 1950	415-416
COCKPIT COUNTRY (PERU MOUNTAIN ADDITION)	JULY 21, 1955	367
CONTENT II	JULY 21, 1955	369
COOK'S BOTTOM	JULY 21, 1955	369
CROYDON MOUNTAIN		
DALLAS MOUNTAIN	DEC. 1, 1950	434
DEAN'S VALLEY	DEC. 2, 1954	335-336
DENHAM FARM	SEPT. 27, 1956	486
DISCOVERY	DEC. 1, 1950	414
DOLPHIN HEAD	DEC. 1, 1950	414
Bath Mountain Block (Block A)	*Dec. 1, 1950*	*414*
Bauh Pen Block (Block B)	*Dec. 1, 1950*	*414*
DOVER	JULY 21, 1955	364
DROMILLY	DEC. 1, 1950	431-432
Block A	*Dec. 1, 1950*	*431-432*
Block B	*Dec. 1, 1950*	*432*
ECCLESDOWN	DEC. 1, 1950	428-431
Block A	*Dec. 1, 1950*	*428*
Block B	*Dec. 1, 1950*	*428*
Block C	*Dec. 1, 1950*	*428-31*
FLAMSTEAD	APRIL 18, 1963	133
FELLOWSHIP	JAN. 13, 1961	8
FERGIS-RAMSAY	DEC. 1, 1950	433
FOREST MOUNTAIN	APRIL 13, 1967	159
FORT GEORGE	JUNE 25, 1959	422-423
FORT STEWART	JULY 21, 1955	365
Block A	*July 21, 1955*	*365*
Block B	*July 21, 1955*	*365*
FYFFE & RANKINE'S	DEC. 1, 1950	418
GARLANDS	JULY 21, 1955	368
Block A	*July 21, 1955*	*368*
Block B	*July 21, 1955*	*368*
Block C	*July 21, 1955*	*368*
GENEVA MOUNTAIN	NOV. 3, 1961	333
GEORGES PLAIN MOUNTAIN	SEPT. 25, 1963	424
GOOD HOPE	APR. 18, 1963	133
GRANGE HILL	JULY 21, 1955	363
GREENOCK	DEC. 1, 1950	433
HACOCK HILL	DEC. 1, 1950	431
HARKER'S HALL	DEC. 1, 1950	425
HEALTHSHIRE HILLS	DEC. 1, 1950	424
HOPE	APR. 18, 1963	134
HYDE	DEC. 1, 1950	432
Block A	*Dec. 1, 1950*	*432*
Block C	*Dec. 1, 1950*	*432*



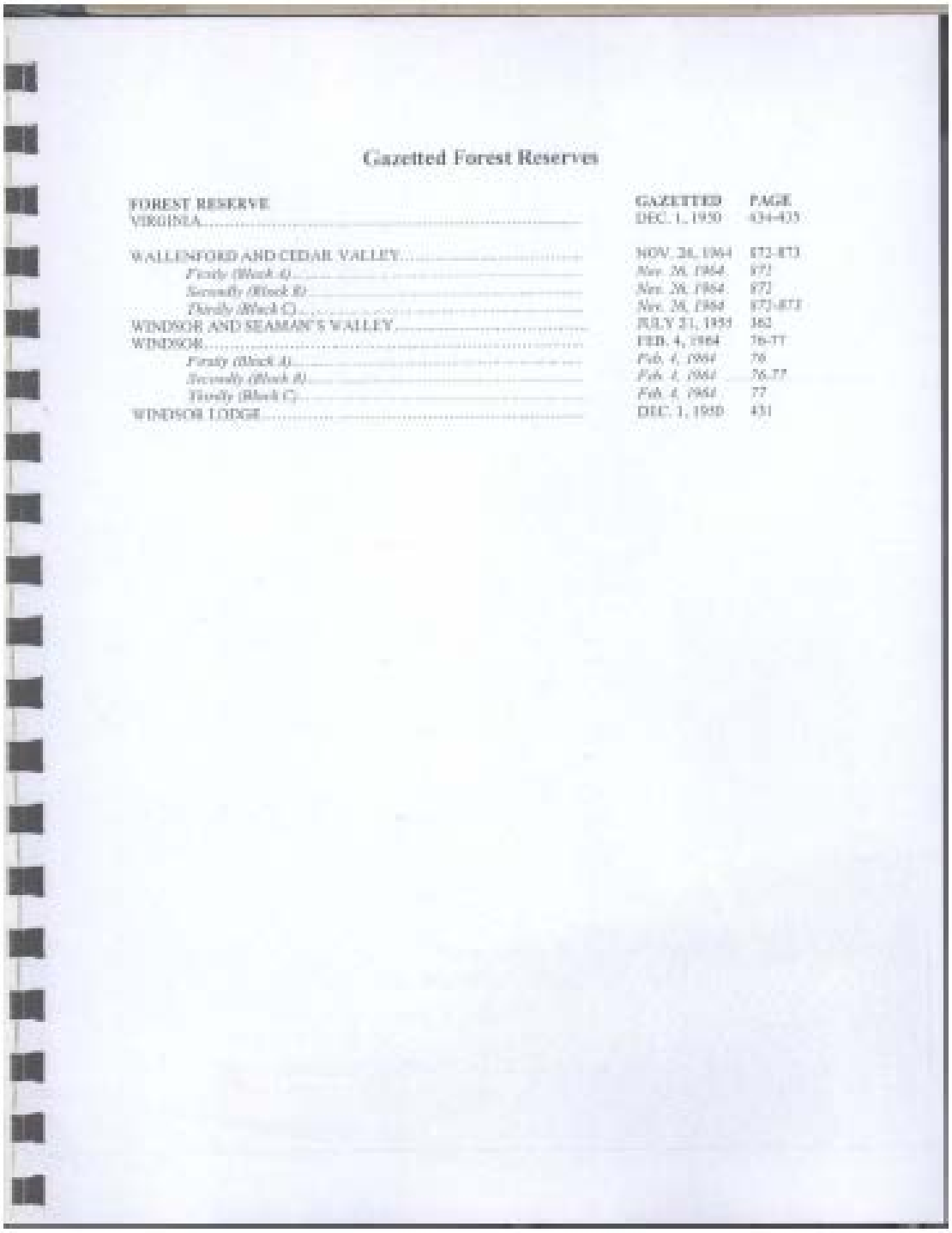
Gazetted Forest Reserves

FOREST RESERVE	GAZETTED	PAGE
HYDE HALL MOUNTAIN	DEC. 1, 1950	418-420
INDUSTRY FIELD-ROWE AMP	DEC. 1, 1950	434
IRELAND	DEC. 1, 1950	419
Block A	*Dec. 1, 1950*	*419*
Block B	*Dec. 1, 1950*	*419*
Block C	*Dec. 1, 1950*	*419*
Block D	*Dec. 1, 1950*	*419*
Block E	*Dec. 1, 1950*	*419*
KILLETS CAMPERDOWN	DEC. 1, 1950	417
KELLITS STREAM	DEC. 1, 1950	425
Miller's Spring	*Dec. 1, 1950*	*425*
Mosquito River	*Dec. 1, 1950*	*425*
KILDARE	JULY 21, 1950	362
LITCHFIELD-MATHERSON'S RUN	DEC. 1, 1950	416
LLANDAFF	FEB. 4, 1964	74-75
Pirate (Block A)	*Feb. 4, 1964*	*74*
Serenity (Block B)	*Feb. 4, 1964*	*74-75*
Thrifty (Block C)	*Feb. 4, 1964*	*75*
LLOYDS	DEC. 1, 1950	436-437
Block A	*Dec. 1, 1950*	*436*
Block B	*Dec. 1, 1950*	*436*
Block C	*Dec. 1, 1950*	*437*
Block D	*Dec. 1, 1950*	*437*
Block E	*Dec. 1, 1950*	*437*
Block F	*Dec. 1, 1950*	*437*
LOVERS LEAP	DEC. 1, 1950	425-426
MOUNT DIABLO	DEC. 1, 1950	423-424
Mist Block (Block A)	*Dec. 1, 1950*	*423*
Charlton Block (Block B)	*Dec. 1, 1950*	*423-424*
Barbary Castle Block (Block C)	*Dec. 1, 1950*	*424*
NEW FOREST	DEC. 1, 1950	432-433
NORRIS	DEC. 1, 1950	434
Block A	*Dec. 1, 1950*	*434*
Block B	*Dec. 1, 1950*	*434*
Block C	*Dec. 1, 1950*	*434*
NUTFIELD	JULY 21, 1950	364
ORCHARD	DEC. 1, 1950	428
PEACE RIVER	JUNE 23, 1959	423
PEAKE BAY	DEC. 1, 1950	433
Block A	*Dec. 1, 1950*	*433*
Block B	*Dec. 1, 1950*	*433*
Block C	*Dec. 1, 1950*	*433*
PECKHAM	DEC. 1, 1950	426
PENNANTS	DEC. 1, 1950	437-438
Block A	*Dec. 1, 1950*	*437-438*
Block B	*Dec. 1, 1950*	*438*



Gazetted Forest Reserves

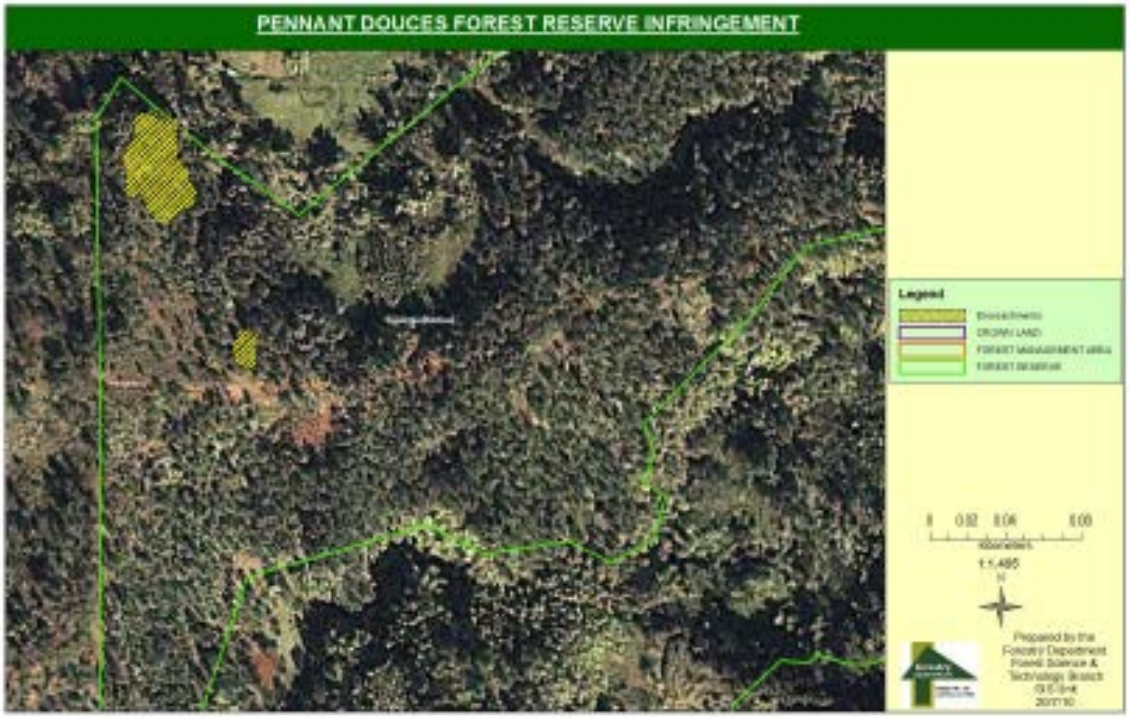
FOREST RESERVE	GAZETTED	PAGE
PENNANTS (DOUCES)	DEC. 1, 1950	438
Block A	*Dec. 1, 1950*	*438*
Block B	*Dec. 1, 1950*	*438*
Block C	*Dec. 1, 1950*	*438*
PETERSVILLE	DEC. 1, 1950	431
PIKE AND RAVENS	DEC. 1, 1950	429
QUASHEBA MOUNTAIN	SEPT. 23, 1965	823-824
RAGLAN MOUNTAIN	JULY 27, 1961	554
RAMBLE	DEC. 1, 1950	415-436
RICHMOND PEN	JULY 21, 1955	384-386
Block A	*July 21, 1955*	*384*
Block B	*July 21, 1955*	*385*
Block C	*July 21, 1955*	*385*
Block D	*July 21, 1955*	*385*
Block E	*July 21, 1955*	*385*
Block F	*July 21, 1955*	*385*
ROCKFORT	DEC. 1, 1950	425
RUTHVEN	DEC. 1, 1950	415
SHUNA	DEC. 1, 1950	415
SPRING ESTATE	DEC. 10, 1959	675
SPRING GARDEN	DEC. 1, 1950	435
SPRING PEN	OCT. 9, 1969	653-654
SPRING VALE	DEC. 1, 1950	435
STEPHNEY-JOHN'S VALE	DEC. 1, 1950	417
ST. FAITH'S	DEC. 1, 1950	422-423
Block A	*Dec. 1, 1950*	*422*
Block B	*Dec. 1, 1950*	*422*
Block C	*Dec. 1, 1950*	*422*
Block D	*Dec. 1, 1950*	*423*
Block E	*Dec. 1, 1950*	*423*
Block F	*Dec. 1, 1950*	*423*
Block G	OCT. 9, 1969	654-655
ST. JACO	*OCT. 9, 1969*	*654*
Firstly (Block A)	*OCT. 9, 1969*	*654-655*
Secondly (Block B)	FEB. 4, 1964	73-76
STONEHENGE	*Feb. 4, 1964*	*75*
Firstly (Block A)	*Feb. 4, 1964*	*76*
Secondly (Block B)	*Feb. 4, 1964*	*76*
Thirdly (Block C)		
TIAK PEN	DEC. 1, 1950	439-440
Block A	*Dec. 1, 1950*	*439*
Block B	*Dec. 1, 1950*	*440*
TREADWAYS	DEC. 1, 1950	422
TREMOLESWORTH	JULY 19, 1974	398-399
TROJA	JULY 21, 1955	362
TROY	JULY 21, 1955	366-367
Block A	*July 21, 1955*	*366-367*
Block B	*July 21, 1955*	*367*
Block C	*July 21, 1955*	*367*
TRUMPET TREE	MAR. 15, 1962	312-313



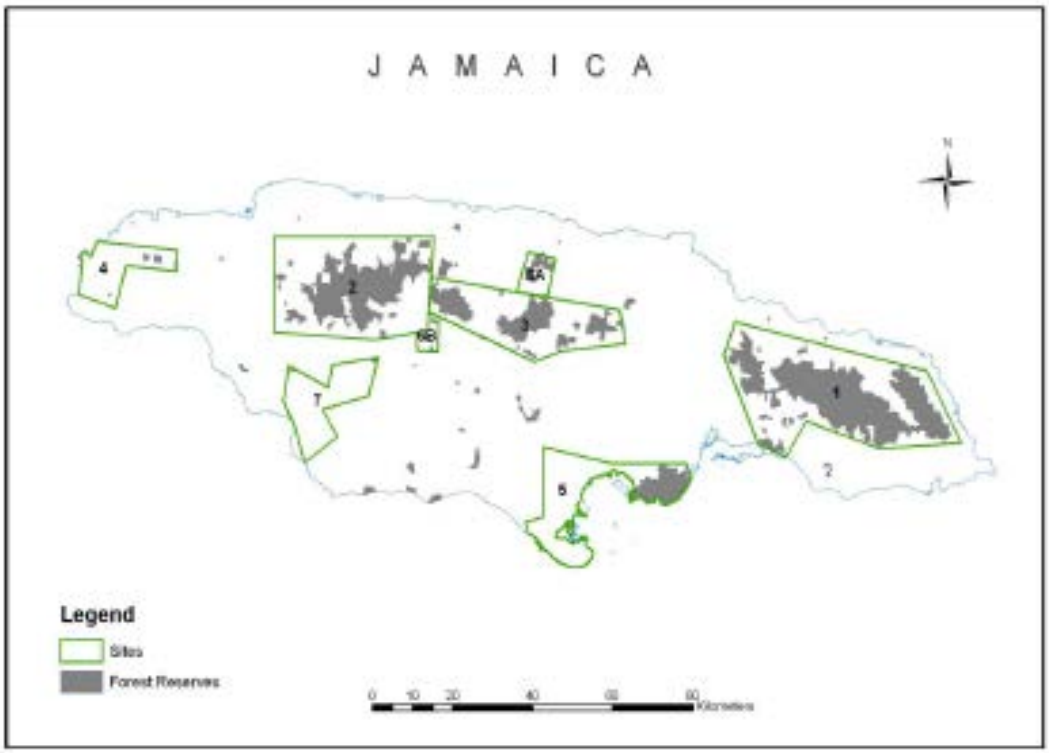
Gazetted Forest Reserves

FOREST RESERVE	GAZETTED	PAGE
VIRGINIA	DEC. 1, 1950	434-435
WALLENFORD AND CEDAR VALLEY	NOV. 26, 1964	872-873
Firstly (Block A)	*Nov. 26, 1964*	*872*
Secondly (Block B)	*Nov. 26, 1964*	*872*
Thirdly (Block C)	*Nov. 26, 1964*	*872-873*
WINDSOR AND SEAMAN'S VALLEY	JULY 21, 1955	382
WINDSOR	FEB. 4, 1964	76-77
Firstly (Block A)	*Feb. 4, 1964*	*76*
Secondly (Block B)	*Feb. 4, 1964*	*76-77*
Thirdly (Block C)	*Feb. 4, 1964*	*77*
WINDSOR LODGE	DEC. 1, 1950	431

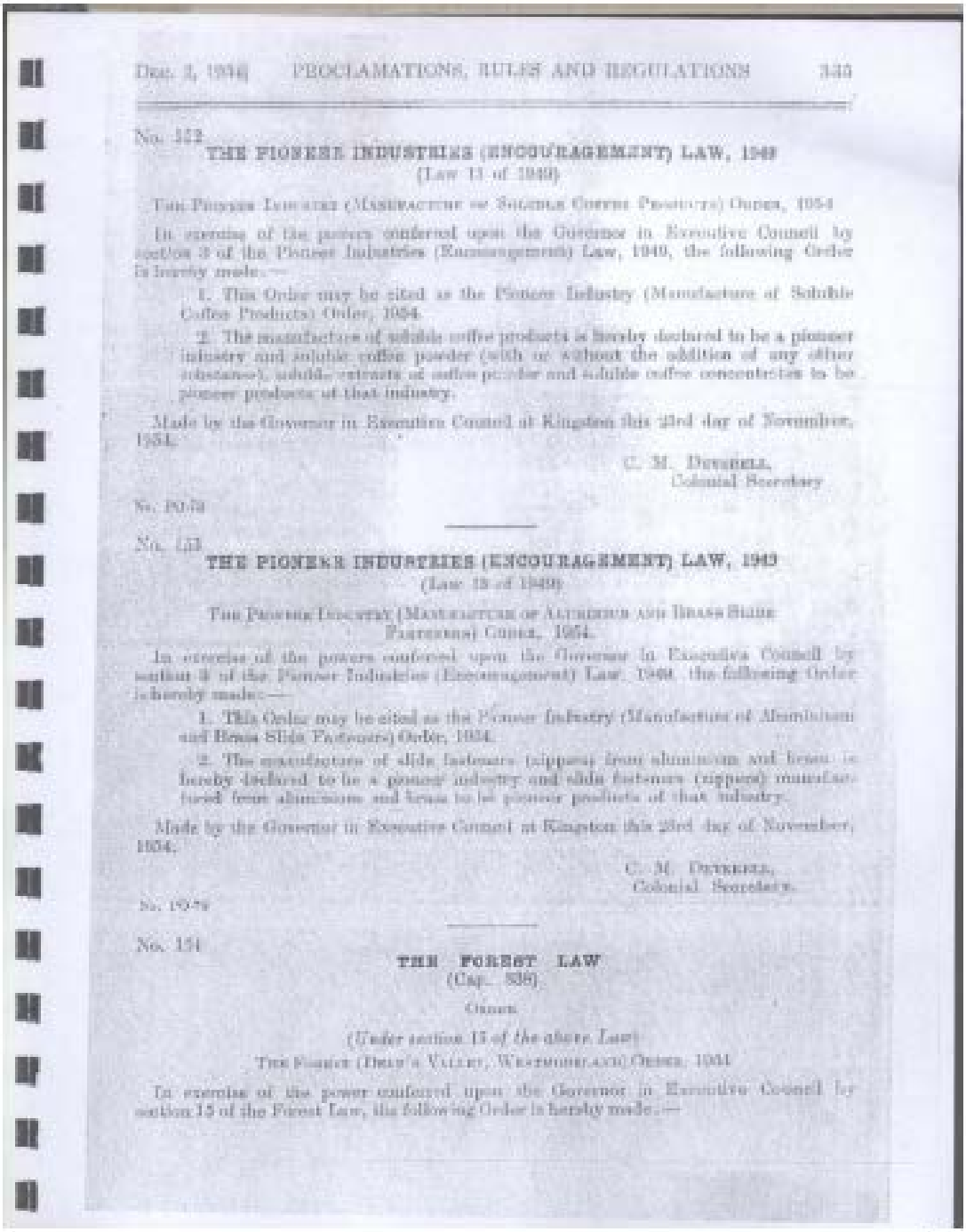
Appendix II – Map of a specific forest reserve – GPS capability within the organization



Appendix III – Map of Jamaica's Forest Reserves and Forest Management Areas



Appendix IV – The Forest (Deans Valley, Westmoreland) Order 1954



Dec. 3, 1954] PROCLAMATIONS, RULES AND REGULATIONS 343

No. 152

THE PIONEER INDUSTRIES (ENCOURAGEMENT) LAW, 1949
(Law 13 of 1949)

THE PIONEER INDUSTRY (MANUFACTURE OF SOLUBLE COFFEE PRODUCTS) ORDER, 1954

In exercise of the powers conferred upon the Governor in Executive Council by section 3 of the Pioneer Industries (Encouragement) Law, 1949, the following Order is hereby made:—

1. This Order may be cited as the Pioneer Industry (Manufacture of Soluble Coffee Products) Order, 1954.

2. The manufacture of soluble coffee products is hereby declared to be a pioneer industry and soluble coffee powder (with or without the addition of any other substance), soluble extracts of coffee powder and soluble coffee concentrates to be pioneer products of that industry.

Made by the Governor in Executive Council at Kingston this 23rd day of November, 1954.

C. M. DUTHIELL,
Colonial Secretary.

No. 1959

No. 153

THE PIONEER INDUSTRIES (ENCOURAGEMENT) LAW, 1949
(Law 13 of 1949)

THE PIONEER INDUSTRY (MANUFACTURE OF ALUMINIUM AND BRASS SLIDE FASTENERS) ORDER, 1954.

In exercise of the powers conferred upon the Governor in Executive Council by section 3 of the Pioneer Industries (Encouragement) Law, 1949, the following Order is hereby made:—

1. This Order may be cited as the Pioneer Industry (Manufacture of Aluminium and Brass Slide Fasteners) Order, 1954.

2. The manufacture of slide fasteners (zippers) from aluminium and brass is hereby declared to be a pioneer industry and slide fasteners (zippers) manufactured from aluminium and brass to be pioneer products of that industry.

Made by the Governor in Executive Council at Kingston this 23rd day of November, 1954.

C. M. DUTHIELL,
Colonial Secretary.

No. 1979

No. 154

THE FOREST LAW
(Cap. 336)

ORDER

(Under section 15 of the above Law)

THE FOREST (DEAN'S VALLEY, WESTMORELAND) ORDER, 1954

In exercise of the power conferred upon the Governor in Executive Council by section 15 of the Forest Law, the following Order is hereby made:—

1. This Order may be cited as the Forest (Dean's Valley, Westmoreland) Order, 1954, and shall come into effect on the date of publication in the Jamaica Gazette.

2. There shall be applied to the parcel of land described in the Schedule to this Order, as if the said land was Crown Lands declared to be a Forest Reserve, the following provisions of the Forest Law, namely,

a. section 3

b. section 13 (save lines 3 to 10)

SCHEDULE

All that parcel of land formerly known as Water Works and Ferris Mountain but now known as part of Dean's Valley in the parish of Westmoreland containing approximately 1,100 acres of the shape and butting as appears:

(i) by plan attached to Certificate of Title registered at Volume 23 Folio 79;

(ii) Sections A, B, E and H of the plan attached to Certificate of Title registered at Volume 73 Folio 5;

(iii) That portion of section C of the aforementioned plan attached to Certificate of Title registered at Volume 73 Folio 5 bounded westerly by a line commencing on the boundary of these lands with land belonging to John Morris at a point approximately 25 chains east of the north-western corner of land belonging to John Morris and proceeding in a northerly direction for approximately 47 chains 50 links along the foot of the hills to a point approximately 8 chains and 50 links south of the northerly bend of the Parochial Road to Cairn Curran, east of its junction with the main road from Savanna-la-Mar to Whithorn; thence north-easterly in a straight line ending on the southern boundary of the aforesaid Parochial Road at a point approximately 10 chains west of its junction with the Parochial Road to Carawina Mountain.

Dated at Kingston the 23rd day of November, 1954.

G. M. DAVIES [illegible],
Colonial Secretary.

No. [illegible]

[illegible]

EMERGING ENVIRONMENTAL ISSUES IN FISHERIES MANAGEMENT IN JAMAICA

It is indubitably a fact that the Environment and what affects it has an impact on our fisheries and their management. Fisheries Management resides in the Fisheries Division and, to a lesser extent, the Veterinary Services Division, the former dealing with the harvesting of fish and the latter with the phytosanitary issues relating to harvesting, from hook to plate.

The extant Fishing Industry Act is an Act of 1975, effectively thirty six (36) years old, with fines which are archaic and a law which did not contemplate the serious issues that one has had to deal with since then, particularly today. These fines do not even begin to remotely cover the value of a catch of say conch which retails at US$6.00 per pound, lobster at US$7.00 per pound or fin fish (Snapper, Parrot, Grunt or King Fish) at J$350.00 per pound.

Fishing is, therefore, big business, whether for the international or local market, so when one looks at the fines in the Fishing Industry Act (the Act), one is totally nonplussed.

The Act does not deal with environmental issues directly save and except Section 18 by which the Minister may declare fish sanctuaries of which there are 12[1] without any definition of "fish sanctuary" in the Act. Section 18 only states that the Minister declares, by Order, any area specified in such Order to be a "fish sanctuary". The fine for fishing in a fish sanctuary is a paltry maximum fine of Five Hundred Dollars ($500.00) and, in default of payment, to imprisonment not exceeding six months. The Orders just state the co-ordinates for the respective fish sanctuaries and nothing more, so that all one can glean is that, pursuant to Section 18, "*any person who fishes or attempts to fish in any area declared by the Minister to be a fish sanctuary*" is guilty of an offence. There

[1]Bogue Islands Lagoon, Port Morant Harbour Lagoon, Orange Bay, Three Bays, Salt Harbour, Galleon, Galleon Harbour, Discovery Bay, Bluefields Bay, Montego Bay Marine Park, Sandals Boscobel and Oracabessa Bay.

is nothing to guide anyone on what type of action would be an offence save and except the definition of "fishing" which is "catching or attempting to catch any fish in any manner whatsoever and includes killing, gathering or destroying any fish".

Over the years, we have attempted to put certain "management" regulations in place such as the Fishing Industry Regulations 1976 which by Regulation 14, inter alia, prohibits the catching, bringing ashore or destruction of any berried lobster (which is a lobster with eggs) or any spiny lobster under 7.62 centimetres (3 inches). Even then, that was an attempt to recognize that killing pregnant lobsters or lobsters under 3 inches would have a deleterious effect on the fishery. Unfortunately, the fine, under Regulation 15 is only a maximum of $500.00. Over the years, convictions have been bitter/sweet because the fines are viewed with derision and, as a consequence, we have had repeat offenders.

It is, therefore, challenging to manage the Fishery with these fines, the highest of which is Five Thousand Dollars ($5,000.00). Examples of the fines are:-

Section 3(3) – Fishing without a licence - $1,000.00

Section 7(2) – Not carrying identification - $20.00

Section 8(3) – Operating an unlicensed boat - $200.00

Section 14(5) – Failure to report loss, destruction of boat - $50.00

Section 18(2) – Fishing in Fish Sanctuary - $500.00

Section 19(2) – Fishing in the Close Season - $500.00

Section 20(2) – Failure to comply with direction of a Fishery Inspector - $500.00

Section 22(1) – Unlawful removal of boat, fishing equipment - $1,000.00

Section 23 – Penalty for knowingly landing, selling, buying etc fish - $1,000.00

Section 24(2) (a) – Failure to keep register of all fishermen on carrier vessel - $100.00

(b) - Failure to supply crew with adequate food and drinking water - $500.00

(c) - Failure to make arrangements for rescue at sea - $5,000.00

(d) - Failure to make arrangements for the payment of any fine or penalty incurred by fishermen/boat for fishing in foreign waters without a licence or permit - $5,000.00.

Section 29 – Any offence for which no other penalty is provided - $100.00

All the fines carry varying terms of imprisonment from one to twelve months in default of payment. To my recollection, I do not think any fines have been laid under Section 24(2) (c) and (d).

In recent years we, have made further regulations such as the Fishing Industry (Spiny Lobster) Regulations, 2009, made under Section 25(k) which, inter alia, seeks to tighten management by requiring fishers, middlemen, owners/operators of commercial storage establishments, hotels, eating establishments or similar entities to declare any spiny lobster in their possession in writing to the Authority, before the commencement of the close season. This declaration should state whether it is the whole or part of the lobsterand the part is to be specified. Unfortunately, the fine is only $1,000.

The only provision which is likely to invoke some amount of terror is Section 27 which gives the Court the discretion to forfeit "*any boat, net, fishing equipment or appliances used in the commission of an offence*" for which there has been a conviction. It should be noted that Section 27 does not lay down the procedure for forfeiture as does more modern legislation such as Section 35 of the Aquaculture Inland and Marine Products and By-Products (Inspection, Licensing and Export) Act 1999 (the Aquaculture Act) which requires the DPP to apply to the Court for an Order of Forfeiture and notify the owner of and any person having an interest in the equipment that he/she proposes to apply for such an Order.

Although the Aquaculture Act does not expressly deal with the Environment, it is an act which ensures that all aquaculture products[2]are harvested under sanitary conditions. The objects of the Act are to:

a) advance public health and safety standards in the export of aquaculture products intended for human consumption;

b) specify and maintain international standards of production, harvesting, processing, handling, storage and transport of such products; and

c) monitor the hygiene and sanitary conditions of vessels and establishments engaged in the processing of aquaculture.

I have mentioned the Aquaculture Act because it has been used as an aid to the Fishing Industry Act where poachers have been found with products that not only have been harvested but processed at sea, in particular Queen Conch which is an endangered species under the CITES Convention[3] and the Endangered Species Act[4]. Although we have the latter Act which falls under NEPA and was promulgated to administer the CITES Convention, possession is not an offence under that Act which deals with trade.

Repeatedly, persons have been brought to Courtand, although they can be charged with fishing without a quota, under the Fishing Industry (Conservation of Conch(Genus Strombus)) Regulations, the fine is a mere $1,000.00. On the otherhand, Section 25(b) of the Aquaculture Act attracts a fine of $1,000,000 for anyone found guilty of operating "*any processing establishment, factory, freezer or carrier vessel or any other facility or installation for the purpose of harvesting, handling or processing for export…*"

Once it is clear that they are foreigners without the requisite licences and particularly where there is evidence of processing, such as the presence of sodium bisulphite to preserve the white colour of lobster meat, it is not hard to get a conviction.

[2] Aquaculture is defined as "the controlled propagation, growth or harvest of aquatic animals or plants, including fish, amphibians, shellfish, molluscs, crustacean, algae and vascular plants and includes seawater or freshwater fish or crustaceans caught in their natural environment when juvenile".
[3]Convention on International Trade in Endangered Species of Wild Fauna and Flora
[4]The Endangered Species (Protection, Conservation and Regulation of Trade) Act

Although an act for export, the Aquaculture Act is very mindful of the Environment. It could be argued that it was hastily promulgated when Jamaica was barred from exporting to the EU but, nonetheless, it assures that harvesting is done in pristine waters, devoid of microbiological elements which would be harmful to the human body, and that such harvesting does not negatively impact the Environment. Previous to this Act, there were no post-harvest sanitary and phytosanitary considerations, as The Fishing Industry Act focuses on primary production. Apart from the paltry fines under the Fishing Industry Act, there are difficulties in protecting Jamaica's maritime space from biological degradation due to its vast size of 274,000 square kilometres, which is about 25 times the size of Mainland Jamaica. It would be remiss of me not to mention the potentially negative environmental impact of fishers who live on the Pedro Banks (8,400 square kilometres or ¾ of the size of Mainland Jamaica) and earn their livelihood therefrom without proper modern sanitary facilities and water supply. Nonetheless, they have acquired prescriptive rights and, eventually, Government will have to do something about this before it negatively impacts the fishery, as unpopular as it is.

It should be noted that Pedro Bank is Jamaica's most productive fishing ground. One hundred percent (100%) of conch and lobster exported from Jamaica originates from the Pedro Bank which is the prescribed area under the Aquaculture Act. Fishing can only be harvested from this area for export. The area is, in fact, the most productive. In order to maintain our export status on the EU Third Country List, we have to monitor the waters by taking water and sea vegetation samples eighteen timesper year to test for toxic phytoplankton. So far so good, and whilst we had to promulgate that Act, based on trade, this has inured to the benefit of not only our fishery but our environment.

The challenge has been to enact new fisheries' legislation to deal with not only the fishery but also issues which impact the fishery. Although over ten (10) years in the making, we are at the stage of finalization and, hopefully, we should have an Act by 2012. A burning issue which has been the subject of litigation and which, inter alia, succeeded in closing down the Industry for a year from 2000 to 2001, was the ability of

the Minister to declare quotas. You may recall that quotas have been used in the conch fishery in allocating rights to fishers. In 1999, a fisher challenged the Minister's power to allocate quotas, even though the Minister had done so pursuant to Section 25(k) of the Act which is the regulation-making section empowering the Minister to make regulations "prescribing measures for conservation of fish" He said, inter alia, that the Minister did not have the legislative power to issue quotas. The result was the Fishing Industry (Conservation of Conch (Genus Strombus)) Regulations, 2000. Not satisfied with this, the fisher further challenged the Government in 2000, which resulted in a shutdown of the entire Industry until 2001. This challenge happily ended in a Settlement Agreement which allowed the Industry to continue its fishing activities. No judicial pronouncement was made on the "vires" of the Genus Strombus Regulations and we have, since then, operated with them, unchallenged.

The new Act will unequivocally speak to quotas and interim quotas. This is very important as, in the Conch Industry in particular, it is imperative to sustain the fishery and we recognize our responsibility, particularly as it relates to endangered species. Conch falls on Appendix II of the CITES Convention and Schedule Two of the Endangered Species Act which means if, it is not properly managed, it will be added to Appendix I thereby prohibiting all trade.

The new Act will recognize the following:

1) Aquaculture, aquaculture products and aquaculture management areas, plans and zones, with aquaculture being "*the controlled propagation, growth or harvest of aquatic animals or plants, including fish, amphibians, shellfish, molluscs, crustaceans, algae and vascular plants and includes seawater or freshwater fish or crustaceans caught in their natural environment when juvenile*".

2) Similarly, there are fishery management areas, plans and zones.

3) Interestingly, we have established the concept of a "buffer zone" which means an area of the fishery water[5] established to minimize, eliminate

[5] Being all Jamaica's waters including internal waters, archipelagic waters, territorial seas as defined in the Maritime Areas Act, the Exclusive Economic Zone Act and inland waters such as rivers and ponds.

and prevent actual and potential adverse impact to fishery management areas and zones, aquaculture management areas and zones or fish sanctuaries.

4) We have introduced the concept of "deleterious substance" which is, inter alia, "*any substance, including water, that has been treated, processed or changed by heat or other means from a natural state that, if added to any fishery waters, would be deleterious, or likely to be deleterious, to fish or fish habitat or to the use by humans of fish that frequent those fishery waters"*.

5) We have also defined "fish habitat" as "*the fishery waters or aquaculture management zone which forms the habitat for fish or a particular species of fish*".

6) "Precautionary principle" which basically will allow us to take fishery management decisions, in the absence of available scientific data, based "*on measures which embody the protection against over-exploitation, stock depletion, habitat degradation and other potential vulnerabilities to increased levels of fishing mortality and unsustainable interventions"*.

7) "National total allowable catch" means "*the total sustainable yield of a fishery or species of fish determined by scientific means*".

What we have sought to do is plug the loopholes that have plagued us in the past so that we have offences, inter alia, involving prohibited fishing methods, stealing from traps, offences involving quotas, importing live fish without a permit, causing damage to fish habitats, failure to protect fish habitats and relating to aquatic invasive species.

You would have heard about our problem with the Lionfish, an aquatic invasive specie. By this new enactment, once we can identify any person who damages fish habitat, he would be liable to a maximum fine of $5,000,000.00 or imprisonment up to a year or both such fine and imprisonment. The fines vary up to $5,000,000.00 and can be increased by affirmative resolution. We recognize that fishing is the mainstay of our country and that degradation of the environment will invariable equate to a depletion of a valuable food source.

The new Act will also include the use of observer devices, photographic and certificate evidence and their admissibility so that the task of proving a case should be much easier. The DPP will be able to apply for forfeiture of vessels, conveyances and equipment and the procedure will be clearly set out. There will also be provision for security for release of fishing vessels or conveyances.

We have tried to be as comprehensive as possible, in the hope that the loopholes have been plugged and that any new ones will be few and far between.

Yvonne Joy Crawford (Mrs)
Senior Legal Officer, Ministry of Agriculture & Fisheries
November 1, 2011

Emerging Environmental Jurisprudence in the Commonwealth Caribbean: *The Environmental Impact Assessment Process*

Danielle Andrade, Jamaica Environment Trust
Judicial Training Seminar in Environmental Law
November 18 - 20, 2011
Hilton Rose Hall Resort and Spa, Montego Bay, Jamaica

Introduction

Environmental jurisprudence in the Commonwealth Caribbean although traceable before the 1990s, grew substantially after that period with the acceptance of several international treaties[6]. Small Island Developing States (SIDS) in the Caribbean were encouraged to enact legislation to ensure that environmental considerations are taken into account in governmental decisions to approve developments. In particular this meant the introduction and use of Environmental Impact Assessments (EIAs) in the decision-making process for developments.

The EIA is an examination, analysis and assessment of planned activities with a view to ensuring environmentally sound and sustainable development. [7] As a procedure, it is used to examine both beneficial and adverse environmental consequences of a proposed development project. The development of environmental legislation across the Caribbean reveals the range of approaches used to introduce adequate EIA procedures. The earlier approaches, as shown in the case of Jamaica, lack comprehensive legislative provisions to determine the conduct of the EIA process while the later approaches adopted by Trinidad and Tobago and Belize were accompanied by subsidiary legislation and were more substantial.[8]

The introduction of EIAs created added responsibility not just on developers who were now required to prepare these studies prior to receiving approval for developments but also on governments whose duty it became to ensure that such studies were properly conducted. Along with this duty came added scrutiny by the general public who considered themselves affected by such developments. This scrutiny has led people worldwide to resort to the courts for judicial review of decisions relating to the EIA process. In the Caribbean region- Jamaica, Belize and Trinidad and Tobago, in particular, there has been a thrust from non-government organisations (NGOs) to use legal mechanisms such as judicial review to challenge EIAs and the decision-making process relating to developments in environmentally sensitive areas.

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[6] *Agenda 21*, the *Programme of Action for Sustainable Development* and the *Rio Declaration on Environment and Development (The Rio Declaration)* were adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janerio, Brazil from June 3rd to 14th, 1992

[7] UNEP Goals and Principles of Environmental Impact Assessment: Preliminary Note, 1987

[8] Jamaica introduced the Natural Resources Conservation Authority Act in 1991. Section 10 of the Act gives the NRCA the power to require EIAs for certain developments. See the Environmental Management Authority Act, 2000 of Trinidad and Tobago and the Environmental Protection Act of Belize.

BELIZE
"The Chalillo Dam case"

Belize Alliance of Conservation Non-Governmental Organisations v. Department of the Environment & Anor (Belize) [2003] UKPC 63 and 2004 [UKPC] 6

A Canadian-owned company, Belize Electrical Company Limited proposed to increase Belize's capacity to generate electricity by constructing a hydroelectric dam in Chalillo, a forested area in Belize. The dam would result in the flooding of nearly 10 square kilometres of land on the border between two protected areas – a forest reserve and national park (the Mountain Pine Ridge Forest Reserve and the Chiquibul National Park). These areas were designated for preservation on account of the importance of the plants and animals found there- many of which are native species threatened with extinction elsewhere. The area has the highest density of the surviving big cats (jaguar, puma and ocelot) in Central America, and rare species found nowhere else in the world.

The Belizean government's regulatory agency for the environment, the Department of the Environment (DOE), granted approval for the construction of the dam in 2002. A group of NGOs known as the Belize Alliance of Conservation Non-governmental Organisations (BACONGO) filed an action for judicial review challenging the procedure by which the decision was reached. Belize like many other countries such as Jamaica, require an EIA before certain projects that may have significant adverse impacts on the environment, can proceed. This procedure required public disclosure of relevant information concerning the effects of the project and an opportunity for public comment. The essential allegation was that the government did not follow the procedure required by law before approving the project. The Chief Justice and Court of Appeal rejected claims that the EIA was inadequate or that the DOE acted unreasonably or irrationally in giving approval. The case was appealed to the Privy Council which delivered its judgment in 2004. The grounds for judicial review were that:

1. The EIA did not comply with the provisions of the Act and Regulations and there had consequently been no EIA within the meaning of the Act or alternatively that, given the deficiencies of the EIA, it was unreasonable or irrational for the DOE to treat it as an adequate basis for approving the project. The applicants alleged that the EIA omitted certain important details about the natural resources in the area in particular the existence of Mayan ruins, the impacts to wildlife and rare plants. Additionally, the composition and geology of the riverbed on which the dam would be constructed was inaccurately described in the EIA.
2. Secondly, the DOE acted unlawfully in not holding a public hearing before making its decision.
3. Thirdly, at first instance it was alleged before the Chief Justice that members of the National Environmental Appraisal Committee (NEAC), the advisory body to the DOE, were biased in favour of the project. On appeal to the Privy Council – the allegation was cast against the DOE itself was biased. Before the DOE granted approval, the Belizean government had entered into an agreement with the developer and had commenced work on an access road for the dam.

<u>Deficiencies in EIA</u>

The Privy Council ruled that the errors in the EIA were not of such significance to prevent it from satisfying the requirements of the legislation or forming a proper basis for approval by the DOE. It was not necessary for the EIA to be comprehensive, to "pursue investigations to resolve every issue". The Privy Council relied on the fact that the EIA regulations itself stated that the EIA should indicate "gaps in knowledge and uncertainty" and highlight "areas of controversy and issues remaining to be resolved". Also in Belize, an EIA is required to have a monitoring programme post approval and the Privy Council felt that this was an opportunity to clear up such gaps and uncertainties. It is important to note that the Privy Council based their conclusions on the fact that the EIA was not inadequate to meet the express requirements of the legislation of Belize. Belize, unlike Jamaica, has extensive EIA regulations which expressly state the parameters for EIAs.

Public hearing

On the other grounds of appeal, the Privy Council ruled that in accordance with the EIA regulations, the public hearing was a matter for the discretion of the NEAC and the agency had not recommend that one should be held.

Bias

With regards to the allegation of bias, the Privy Council ruled that the DOE was not exercising a judicial function but was making "a political decision about the public interest" and in arriving at its decision, it had only to fairly apply the procedures prescribed by the Act and Regulations and there is nothing to show that this had not been done.

It is interesting to note that there were two dissenting judgments where their Lordships felt that the EIA was so flawed that it was incapable of satisfying the requirements of the EIA and these flaws were known to the DOE at the time the decision was taken to approve the project.

JAMAICA
"The Pear Tree Bottom case"

The Northern Jamaica Conservation Association and Others v. The Natural Resources Conservation Authority and Another (2006) claim no. HCV 3022 of 2005

Pear Tree Bottom is located on the north coast of Jamaica and was an ecologically sensitive coastland, rich in biodiversity. Its importance was reflected in the fact that since 1997 the area had been slated for designation as a protected area under Jamaica's Policy for creating a National System of Protected Areas. In 2003, a Spanish hotel development company, Hoteles Jamaica Pinero Limited (HOJAPI), purchased the property with plans to build a 1,918-room facility on the site. The government issued an environmental permit to HOJAPI in July of 2005. Shortly thereafter, two NGOs the Northern Jamaica Conservation Association (NJCA) and Jamaica Environment Trust (JET) along with four individuals (residents of the area) brought suit against the permitting agencies challenging the decision to grant HOJAPI an environmental permit as irrational and unreasonable.

The issues addressed by the court were whether the Natural Resources Conservation Authority (NRCA) failed to properly consult with other relevant government departments

as provided by statute, whether the NRCA adequately addressed concerns raised by the Water Resource Authority (WRA), whether the agencies gave adequate weight to empirical data (or lack thereof) contained in the environmental impact assessment (EIA), whether the NRCA and the National Environment and Planning Agency (NEPA) met the legal standard of public consultation, and whether the public meetings held by NRCA and NEPA met the legitimate expectations of the public. It should be noted that the statutory regime for EIAs is vastly different from that of Belize, in that Jamaica has not enacted regulations to deal with the procedure for conducting EIAs and instead relies on NEPA's internal guidelines.

In its first judgment, the Supreme Court quashed the decision granting the permit, holding, in part, that the NRCA "failed in its statutory duty to consult according to law with the relevant government department and agencies by failing to circulate the marine biology report to them." Additionally, NRCA did not properly take into consideration concerns raised by the WRA regarding sewage disposal; a particularly grievous oversight for a project in an ecologically sensitive area with a water table only three-meters underground. Likewise, the court also concluded that the agencies "failed to give adequate weight to the obvious empirical failings of the EIA," and that such "significant empirical shortcomings" rendered any monitoring program based on the EIA practically useless. Furthermore, although the court found the form of the public meetings held by NRCA and NEPA adequately met recommended guidelines, the substance did not. The court held that the agencies failed to meet legal standards for consultation because they withheld from the public an important ecological report and two addenda to the EIA. The court also found the agencies abused their decision-making power by knowingly circulating an incomplete EIA, thereby increasing the possibility that the public would make inaccurate and erroneous conclusions about the impact of the development at Pear Tree Bottom. This action deprived the public of information necessary to make a fully informed and intelligent decision and constituted a breach of the public's legitimate expectation of fair and meaningful participation. The court applied what is know referred to as the 'Sedley definition' for the legal standard for public consultation which was approved by Lord Lord Woolf in *R v North and East Devon Health Authority, Ex Parte Coughlan [2001] Q.B. 213*:-

"It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken: ***R v Brent London Borough Council Ex p. Gunning*** *(1985) 84 LGR 168"*

The hotel intervened after the judgment and a subsequent court decision varied the decision by revoking the order to quash the permit but upheld the declaratory orders that the procedure for consulting the public and governmental agencies were inadequate. See *North Jamaica Conservation Association and Others v. Natural Resources Conservation Authority and Another, No. 2 (2006) claim no. HCV 3022 of 2005*. The Court varied the previous judgment on the basis of evidence that the developers, who had not been served with the proceedings, had relied on the validity of the permits in carrying on the

development and would therefore suffer hardship if the permit were quashed. Essentially, the later decision of the Court left in place the findings of the earlier decision while altering the remedy afforded. The Court cited the Chalillo dam case in particular it quoted from the dissenting judgment of Lord Walker of Gestingthorpe that "the rule of law must not be sacrificed to foreign investment, however desirable".

TRINIDAD AND TOBAGO
"The Smelter case"

Trinidad & Tobago - People United Respecting the Environment (PURE) v. the Environmental Management Authority, CV 2007-02263 (High Court of Justice)

Three different applicants challenged the same decision of the governmental agency – the Environmental Management Authority (EMA), to grant approval (a Certificate of Environmental Clearance) on 2nd April, 2007, to Alutrint Limited, a State Corporation, to construct a 125,000 metric ton per year smelter in Southwestern Trinidad. Some 4,100 persons live in surrounding villages and an additional 5,000 persons live within a 4 Kilometer radius.

Prior to this, permission to clear the land had been granted through an EIA prepared by the Institute of Marine Affairs (a state organization) and approved by the EMA. The forest was clear-cut to make way for applications to use the land for industrial use by Alutrint and others. This gave the impression that construction of the smelter was a foregone conclusion.

In February 2008, a Medical Monitoring Report for Alutrint's operations was prepared by the Caribbean Health Research Council and the International Institute for Healthcare and Human Development. The Report acknowledged the significant human health risks associated with aluminium smelters and proposed x-rays and cancer testing every 6 months for workers and similar testing for the 4,070 residents within a 2 Kilometer radius of the plant. This information was not released to the public.

Construction of the Alutrint smelter began in late 2008. An injunction was obtained and the three cases were consolidated and heard by the High Court of Justice in Trinidad. On June 16th 2009, the court ruled that the decision to grant approval to Alutrint Limited, was, with respect to handling of hazardous wastes and cumulative human health and environmental impacts, "outrageous"…"irrational"…"shrouded in secrecy"… and… "procedurally irregular". In particular, the court quashed the grant of the permit for failure to assess the cumulative impacts of the smelter with other aspects of the overall project (including a port and a conveyor facility).

The judgment cited the Pear Tree Bottom case and the Chalillo Dam case.

In respect of the obligations of the Authority to consider cumulative effects, the Court was guided by the judgment of Justice Stollmeyer in a first instance Trinidadian case- *Fisherman and Friends of the Sea v. EMA and ALNG* CV 2148 of 2004 which set out the following principles:

(i) The requirement for the EMA to consider cumulative effects is provided by legislation, without any specific guidelines.
(ii) The Court is required to assess whether the Authority took a hard look at all relevant circumstances.
(iii) The Authority's hard look must be supported by substantial evidence.
(iv) The Court ought not to impose its own views and ought to set aside the decision only if the Authority's decision is not supported by substantial evidence.
(v) The Court's mandate is to verify two things:
    a. procedural compliance
    b. substantive compliance
(vi) Compliance by the Authority is judged by the level of detail and the decision-making process must exhibit transparency.

This "hard look doctrine" was applied to the facts of the case:- Alutrint was requested by EMA and did prepare a report on the cumulative impact of the port and smelter which was dated 28th March 2007. In the report, Alutrint concluded that: "… there will be no significant incremental environmental impact by the Port and Conveyor Facility that will affect the cumulative impact assessment findings from the Alutrint CEC Application". The EMC gave its approval on 2nd April, 2007 contained in a complete 27 page CEC permit, five days later, making it highly improbable that the Authority had undertaken a thorough review of the report.

In addition the report, unlike earlier studies, was not released in the public domain and the court considered that an issue as important as this that would impact human health should have had the benefit of public scrutiny.

Conclusion

Environmental legislation in Jamaica and other countries seeks to protect natural resources: - water, air, land, wildlife; ensure safe disposal of waste; and control development and pollution to ensure sustainable development for the benefit of the public, both present and future generations.[9] Accountability in planning decisions and other regulatory mechanisms that affect the environment is critical, as the failure to effectively regulate the environment may put individuals at risk both for their health and for their quality of life. Environmental protection is increasingly being viewed as a matter *in* the public interest and not merely *of* public interest resulting in increased scrutiny of governmental decisions.

The special circumstances inherent to Small Island Developing States (SIDS), the level and pace of socio-economic advancement and severe resource constraints, do little to encourage the implementation of treaty obligations relating to environmental management. The limitations in legislation dealing with public participation in the EIA process, in particular in Jamaica, is a concern, especially in light of increased international recognition of the right to public participation in decision-making and

[9]The widely accepted definition of sustainable development, as defined by World Commission on Environment and Development (Brundtland Commission) is development that meets the needs of the present 'without compromising the ability of future generations to meet their own needs.' See: World Commission on Environment and Development, *Our Common Future* (Oxford 1987), p. 43

access to justice in environmental matters.[10] In the absence of comprehensive legislation to guide the decision-making process, common law principles, based on the notion of fairness and natural justice have been applied to determine the legality of decisions. Although the notion of EIAs is fairly new, having been developed in the last two decades, these principles have been considered or applied in several cases in the region concerning the EIA process. With the growth of precedents it is becoming increasingly possible to trace the evolution of environmental jurisprudence in the Commonwealth Caribbean.

November 2011

[10] The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Aarhus, Denmark, June 1998 (Aarhus Convention). It is applicable only to members if the Economic Commission of Europe.

Environmental Justice: New Developments and Innovative Approaches by Judiciary Worldwide

Carole Excell, World Resources Institute

Judicial Seminar

November 20, 2011

Hilton Rose Hall Resort and Spa, Montego Bay, Jamaica

It is my pleasure to be invited to speak at this Judicial Seminar in Jamaica on environmental law.

The United Nations Environment Programme (UNEP) has described the Judiciary as a "focal point for the promotion of environmental law at the national level"[1]. Judges promote the rule of law through development, interpretation and enforcement of national law and international principles in their judgments. The "Johannesburg Principles on the Role of Law and Sustainable Development" adopted in August 2002 at the Global Judges Symposium recognised judges duty to aid "in the enhancement of the public interest" to obtain "a healthy and secure environment, with a special recognition that weaker sections of society are often prejudiced by environmental degradation". At the time of the launch of the Principles then Chief Justice of South Africa, Arthur Chaskalson, adamantly professed

"Laws are ineffective unless they are implemented, and much environmental law exists but has not been enforced. We are saying in this declaration that across every continent we have a commitment to the principles of the rule of law and from now on we have to be active in giving force to environmental law."[2]

Next year in June 2012 the Earth Summit will be held, a gathering of over 100 governments from around the world, which will provide a much needed opportunity to reflect on progress made in the last 10 years towards sustainable development. The role of judges in the enforcement of environmental law will also be examined. Indisputably, there is still an implementation gap[3] and this has contributed to continued deterioration of our natural environment, the loss of forests, large spills of hazardous substances, increased air and water pollution, unwieldy development and exploitation of natural resources.

It must be emphasized at the outset, that the judiciary is only one component of the framework needed to ensure appropriate environmental governance and management. Strong environmental authorities and enforcement personnel are needed as well. However visionary Judges have

[1] http://www.unep.org/law/Programme_work/Judges_programme/index.asp

[2] http://www.guardian.co.uk/environment/2002/aug/28/worldsummit2002.internationalnews1

[3] Gaps in the Implementation of Environmental Law at the National, Regional and Global Level1
Prepared by Gregory L Rose Professor, Faculty of Law, University of Wollongong, NSW Australia Director, Institute for Transnational and Maritime Security First Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability

played a leading role to protect the environment in a number of countries in the way they have interpreted laws and approached solving environmental problems. Innovation has been driven by promoting the achievement of social rights in the constitution e.g. a right to life. More recently the right to a healthy environment has been adopted in over 100 countries constitutions. This has spurred creative judicial decisions and remedies for a number of different types of environmental problems. The passage of new laws and administrative procedures to improve citizen access to justice and allow citizens to undertake enforcement of environmental laws has provided opportunities for judges to interpret environmental laws and deepen the jurisprudence. Finally innovation has been spurred by the development of new specialized environmental courts and tribunals. I will briefly describe some of the developments which I argue have led to increased innovation as well as provide a short review of some instances of judicial innovation relevant to the Jamaican context.

What has driven innovation?

Development of New Specialised Environmental Courts

New specialised environmental courts have been developed all around the world in what has been described by some experts as an "explosion"[4] of new judicial institutions specially designed to address environmental cases. There has been at one last count 350 specialised environmental courts and tribunals established in 41 countries. Countries which have recently established these institutions include Bolivia, Belgium, China, England, Paraguay, the Philippines, South Africa, and Thailand[5]. The "grandmother" of all these institutions is the Environmental Court of New South Wales which has now been in existence for over thirty years. This court addresses Environmental Planning and Protections Appeals; Local Government miscellaneous appeals and applications; Land tenure, criminal enforcement; Appeals with respect to environmental offences and mining offences. It has succeeded in developing innovations in case management, dispute resolution, and sharing of standard sentencing databases. More importantly however it has changed its approach to a problem solving jurisprudence addressing environmental matters and seeking to protect nature and improve the environment instead of simply determining that one particular party prevails and the other party does not. The Environmental Court in New South Wales has served as a model to other environmental courts throughout the world.

There are a number of arguments both for and against the setting up of specialised environmental courts. The publication "Greening Justice"[6] launched last year by the Access Initiative highlights a number of the factors that can signal the need to look for alternative options for addressing environmental conflicts. The authors the Prings note

[4] http://www.pace.edu/school-of-law/sites/pace.edu.school-of-law/files/UJEA/jciPring%20PACE-UJEA%203-17_cropped.pdf

[5] Journal of Court Innovation Volume 3 Winter 2010" Increase in Environmental Courts and Tribunals prompts New Global Institute "
George Pring and Catherine Pring

[6] GEORGE PRING & CATHERINE PRING, GREENING JUSTICE: CREATING AND IMPROVING ENVIRONMENTAL COURTS AND TRIBUNALS (THE ACCESS INITIATIVE 2009), *available at* http://www.accessinitiative.org/resource/greening-justice and http://www.law.du.edu/ect-study (available free of charge electronically at both websites).

"ECTs can be an attractive solution as they enable the use of expert judges and decision-makers with knowledge of environmental law, science, and economics; they provide higher visibility for environmental cases, special procedures can be designed for environmental cases, they can effectively harness expansion in standing, they demonstrate government and judicial commitment to environmental justice and finally allow increased transparency and accountability for government agencies."

While effective implementation of these courts will need to be monitored, a number of specialized courts have provided a framework for innovation and problem solving.

New Constitutional rights and Procedural Rules for Environmental cases

Innovations have also been driven by the adoption of new constitutional rights and procedural rules. The Philippines are perhaps the premier examples of this. The Philippines has a constitutional right of the people to a balanced and healthful ecology. In order to ensure implementation of this right new "Procedures for Environmental Cases" were approved in April of 2010 by the Supreme Court. They are extremely impressive. They start with visionary objectives specifically - protecting and advancing the constitutional right. These procedural rules then revolutionize how environmental cases are addressed. They apply to both civil and criminal trials in municipal and circuit courts. The rules include provisions to simplify trials; make them speedier, and inexpensive. They also enable courts to monitor and ensure enforcement of judgments. The courts have been given sweeping new powers including a citizen suit provision, which allows ordinary citizens to bring matters before the court "any Filipino citizen in representation of others including children or generations yet unborn, to file any action to enforce rights or obligations under environmental laws". The rules also prescribe requirements for mediation and powers for the judge to make best efforts for the parties to settle the matter.

A special writ called a Writ of Kalikasan is available where a person's constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful actor omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces. This provision allows special orders to be issued by the court. This is a writ for environmental protection that could be applicable to cases of breaches of environmental laws on mining, logging and water pollution.

The courts have also been given powers to provide innovative remedies e.g. directing a government agency or private business to perform an act to protect, preserve or require rehabilitation of the environment. To address the issue of costly trials the payment of filing and other legal fees by the person bringing the case (plaintiff) are deferred until a decision is made by court, while there are also specific provisions for no fees for poor persons.

What are some examples of innovation?

While there are many examples to be found around the world, I will discuss (i) Continuous Mandamus (ii) Public Trust and (iii) new forms of Criminal Sentencing.

Continuous mandamus

Manila Bay has been described as a "huge septic tank" it receives waste from factories, un sewered houses and other sources. It has remained polluted despite their being government agencies mandated to ensure the protection of the environment[7]. Fourteen young people filed a suit in 1999 against ten executive departments and agencies for neglecting to perform the duties of their respective offices and endangering the public health and contaminating marine life. *In The Manila Metropolitan Manila Developmental Authority v. Concerned citizens of Manila Bay 2008 case*[8] the plaintiffs asked for clean up and rehabilitation of Manila Bay and restoration of its waters to be fit for swimming, and other recreational activities. The judges in the decision at the high court considered whether a mandamus should properly be issued to compel government agencies to perform their official duties. The judges ordered for the first time in the history of the Philippines what is called a continuous mandamus where the court continuously monitors compliance with orders. The mandamus addressed an environmental issue which required a long term solution and government agencies to coordinate their actions, and provide progressive reports to the court. The order keeps the court as supervisor even after the execution of an order. The order required establishment of sanitary landfills and dismantling of illegal constructions erected at the bay and on rivers. The Department of Environment and Natural Resources (DENR), was ordered to implement its comprehensive operation plan for the rehabilitation and conservation of Manila Bay. More surprising the court assigned the Departments of Education and Budget to integrate lessons on environmental protection and like subjects into schools' curricula "to inculcate in the minds and hearts of students and, through them, their parents and friends, the importance of their duty toward achieving and maintaining a balanced and healthful ecosystem in the Manila Bay and the entire Philippine archipelago."

It is important to note that this case was heard before the passage of the procedural Rules for Environmental cases in the Philippines and at that time a continuing mandamus was not included in the procedural rules. The court referred to their inherent power to issue this order in extraordinary cases where the court wanted to ensure that the execution of its orders was not being tampered with or ignored.

Public Trust

The Indian judiciary have perhaps been the most innovative in the world in relation to environmental law. In the paper "Implications of Indian supreme court's innovations for environmental jurisprudence"[9] it is noted that

"Innovative methods, for instance, include entertaining petitions on behalf of the affected party and inanimate objects, taking suo motu action against the polluter, expanding the sphere of litigation, expanding the meaning of existing Constitutional provisions, applying international environmental principles to domestic environmental problems, appointing expert committee to give inputs and monitoring implementation of judicial decisions, making spot visit to assess the environmental problem at the ground level, appointing amicus curiae to speak on behalf of the

[7] http://www.scribd.com/full/37088110?access_key=key-r2m3ctqampfju0dlhrf
[8] MMDA v. The concerned citizens of Manila Bay G. R. No.171947-78 SCRRA
[9] http://www.lead-journal.org/content/08001.pdf LEAD Journal Geetanjoy Sahu

environment, and encouraging petitioners and lawyers to draw the attention of Court about environmental problems through cash award".

The Indian courts have been responsible for expanding the doctrine of public trust to ensure the conservation of all types of natural resources. The traditional concept of public trust entailed only protected the public's rights to fishing, navigation, and commerce over and in navigable waterways and tidal waters. In the *M.C. Mehta v. Kamal Nath case*[10], the court clearly extended the doctrine to rivers, forests, sea shores, air and stated that the State holds the natural resources as a trustee and cannot commit breach of trust. The Court found that the resources (in this case the Beas River)

"have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature. They should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes."

The court quashed the grant of a lease to a government company of a motel located on the bank of the river Beas, which had resulted in interference with the natural flow of the water, and the government was required to compensate the cost of restitution of environment and ecology in the area.

Creative Sentencing

State Environmental Court Judge Adalberto Carim Antonio from Brazil has been called "the master of the creative criminal remedy"[11]. In the *Journal of Court Innovation*[12] he is described as a judge who has not only ordered persons who have committed environmental crimes to do community service but ensures that this directly relates to the offence e.g. sentencing waste dumpers to work in a recycling plant, illegal foresters to plant trees, wildlife poachers to work for wildlife recovery groups. In a presentation he made to the Asian Judges Symposium on Environmental Decision-Making in 2010[13] he showed photos of the environmental night school he has created and his rulings where he has offered environmental offenders the chance to pay for environmental education in lieu of fines. His most well known accomplishments are the use of fines for payment of billboards on buses for a bus company that breached noise and air pollution laws, and to support environmental comic books that provide public education on the importance of the protection of the environment. Other innovations have included requiring those convicted of environmental crimes in lieu of jail and/or fines, to conduct a year of volunteering at environmental centers.

[10] the Supreme Court of India, Judgment of 13 December 1996, 1997 (1) SCC 388
[11] http://www.pace.edu/school-of-law/sites/pace.edu.school-of-law/files/UIEA/jciPring%20PACE-UIEA%203-17_cropped.pdf
[12] http://www.pace.edu/school-of-law/sites/pace.edu.school-of-law/files/UIEA/jciPring%20PACE-UIEA%203-17_cropped.pdf
[13] http://www.scribd.com/full/36952276?access_key=key-1tagncpwjzsmetv8wizk

What role should judges play to ensure environmental justice?

Naturally the question arises what role should judges play in the protection of the environment. Clearly judges uphold the law and contribute to ensuring its enforcement. Judges have in the cases above embraced their role to take into consideration the impact of decision on natural resources over the long term and have gone beyond just solving a dispute between two parties. Are these cases examples of judicial activism? Or just innovations to solve a problem at hand? While there may be a diversity of views on these issues there is a need to provide a legal and administrative framework in Jamaica that will promote opportunities for innovation for Resident Magistrates and Supreme Court Justices to assist in solving Jamaica's environmental problem.

With a new right to a healthy environment having been adopted in Jamaica's constitution[14] there is clearly an opportunity to discuss the type of new procedural rules which will need to be developed to allow easier engagement by citizens to actually approach the court. A process of reform is also underway of some of the most important environmental legislation in Jamaica with the issuance of a Green Paper on an environmental regulatory authority this year[15]. Civil Society have already called specifically for powers to be included within environmental laws to liberalise the rights of citizens to approach the court and take matters where public authorities have failed to take action[16].

An examination of the tangible barriers to access justice is also likely overdue. Issues like cost, standing to sue, opening up the courts for people in poverty to be able to be heard, provision to ask for injunctive relief without a heavy cost burden for public interest litigation and even options to provide legal aid in public interest matters all need to be reviewed. Also it may be the right time to consider an environmental court or tribunal to hear a myriad of different type of matters including beach control, forestry, planning appeals, land and pollution control. Judicial innovation is likely happening every day in Jamaica's courts. But in relation to environmental matters the promise of the Johannesburg principles is likely to remain elusive without reconsidering our current legal framework and developing forums to address environmental matters that firstly provide justice but that also overcoming existing barriers to effectively resolve environmental problems.

[14] http://jamaica-gleaner.com/gleaner/20110417/cleisure/cleisure2.html
[15] http://www.cabinet.gov.jm/files/ERA-Report-AC-D6-Updated-November-23-2010.pdf
[16] http://www.accessinitiative.org/sites/default/files/Jamaica_3D.pdf

APPENDIX 9 – POWERPOINT PRESENTATIONS

Methods for Estimating the Economic Value of Damages to Natural Resources and their Application in the Caribbean

Jeffrey Wielgus
Judicial Training Workshop
Montego Bay
November, 2011

Ecosystem Services

Components of Economic Value

A. Use Value: Ecosystem services are enjoyed in the present.

1. Direct

   a. Consumptive Use Value: The quantity and/or quality of services is/are reduced.

   b. Non-Consumptive Use Value: The quantity and/or quality of services is/are not affected.

A. Use Value(continued)

2. Indirect

   Examples:

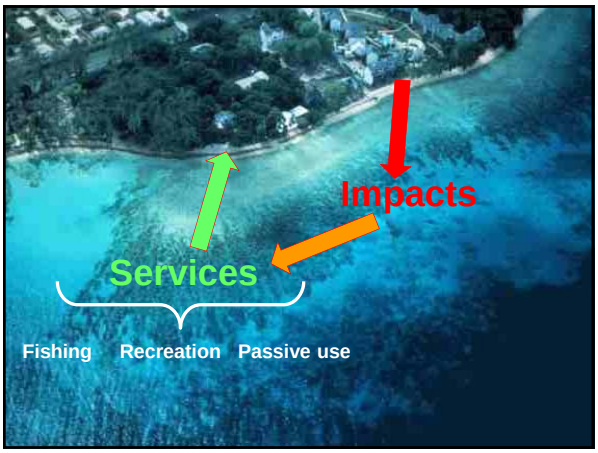
   - Protection against storms and wave surges.
   - Provision of habitats for diverse species.

B. Non-Use Value (Passive Use Value): Enjoyment from saving resources for the future.

1. Existence Value: Well-being from the knowledge that a resource exists.

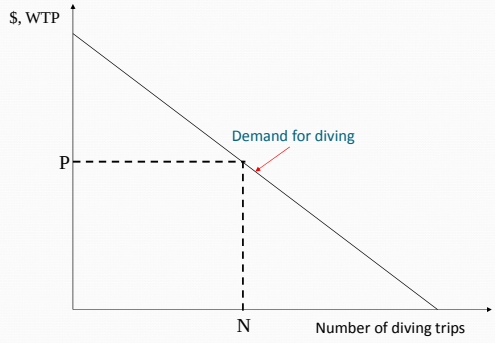
2. Option Value: Well-being from the knowledge that a resource can be used in the future.

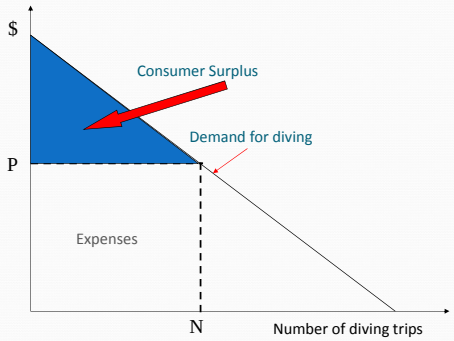
3. Bequest Value: Well-being from the knowledge that future generations can benefit from a resource.

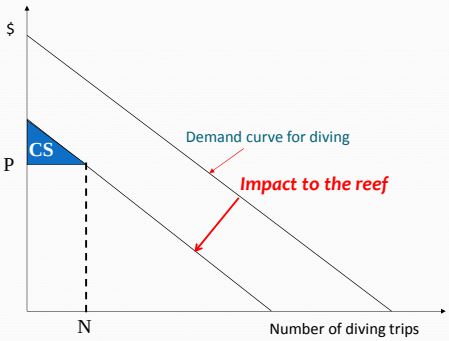


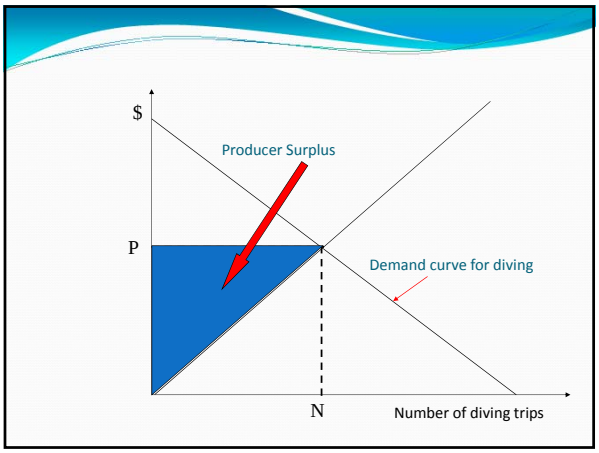
Impacts on Ecosystem Services

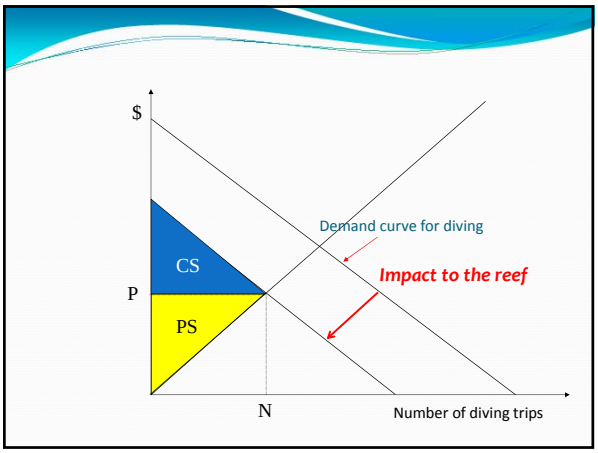
Measuring the Economic Value of Impacts











Methods for Measuring the Economic Value of Losses

1. "Sociologically-based" Methods:

   A. Revealed Preferences

   - **Travel Cost Method**
     Number of visits = *f*(site quality, income)
   - **Hedonic Prices Method**
     Price of housing= f(housing characteristics, neighborhood socioeconomic characteristics, neighborhood environmental attributes)

"Sociologically-based" Methods (continued):

B. Revealed Preferences

- **Contingent Valuation**
  WTP= *f*(environmental quality, income)
- **Choice Modelling**

Scenario 1	*Scenario 2*	*Scenario 3*
Number of fish species: 12 Visibility: 20 m Price: US$200	Number of fish species: 8 Visibility : 10 m Price: US$120	Number of fish species : 4 Visibility : 15 m Price : US$160

2. "Ecologically-based" Methods

- **Production Functions**
  Value of services= *f*(Ecosystem health)
- **Replacement and Avoided Costs**

Examples of Applications

- *Exxon Valdez, Alaska (1989)*
  - Contingent Valuation
- *Westerhaven (2009)*
  - Various methodologies

Thank you!

STATE OF JAMAICA'S ENVIRONMENT & BIODIVERSITY CONSERVATION

Dale F. Webber
James Moss-Solomon Professor of Environmental Management
UWI Mona

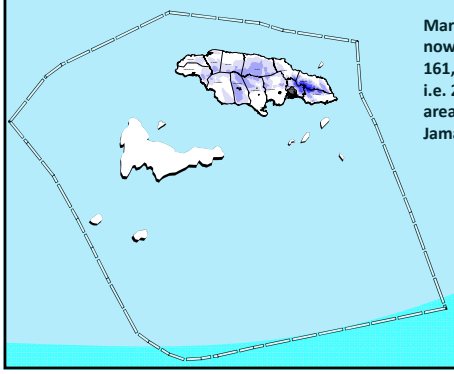
16 Greatest Global Environmental Issues

1. Global Climate Change
2. Population Growth
3. Ozone Depletion
4. Loss of Habitat and Reduction of biodiversity (Species Extinction).
5. Chemical Change in & availability of Water
6. Acid Precipitation

7. Solid waste Pollution
8. Wetland Destruction
9. Deforestation
10. Pesticides
11. Groundwater Pollution
12. Photochemical Smog
13. Oil Spills and Supply
14. Hazardous Waste Sites
15. Farmland Conversion/ Salinization
16. Soil Erosion

JAMAICA…the Island

JAMAICA…an Island?



Marine territory is now approximately 161,000 Km^2 i.e. 24 times the land area of mainland Jamaica

"Small Island(s): Big Issues"

- **Freshwater resources (overexploited/Polluted)**
- **Natural disasters (Hurricanes, earthquakes etc)**
- **Waste management (solid, sewage & indust.)**
- **Overexploitation (forest, fisheries, mines)**
- **Global Climate Change & Sea Level Rise**
- **Invasive species (goats, mongoose, *Cherax*, lionfish)**
- **Soil Erosion**
- **Pollution**
- **PADH**(Physical alteration and destruction of Habitats)

HOT ISSUES

These are urgent environmental issues in Jamaica currently

Environmental Protection & Biodiversity

WHAT IS BIODIVERSITY?

- Coined from the phrase "Biological Diversity"
- Defined by UNEP as:
  - "the variability among living organisms from all sources including, terrestrial, marine and aquatic systems and the ecological complexities of which they are a part."
- The variety of life on earth, expressed through ecosystems, goods and services that sustain our lives (CBD).
- 3 components of Biodiversity
  - Genetic or hereditary diversity
  - Taxonomic or species diversity
  - Ecosystem or habitat diversity

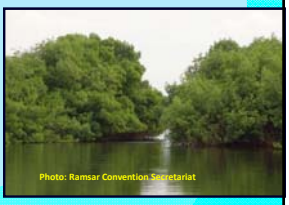


Photo: Ramsar Convention Secretariat

BIODIVERSITY DEFINITION

Biodiversity has a variety of meanings:

1) **The number of different native species** and individuals in a habitat or geographical area;
2) **the variety of different habitats** within an area;
3) **The variety of interactions that occur** between different species in a habitat; and
4) **The range of genetic variation** among individuals within a species.

Jamaica's Biodiversity at a glance.

Over 8,000 species recorded
Ranked 5th among worlds islands in endemic species

Group	No. of Species	Endemics
Plants (Flowering /ferns/lichens)	>6000	28%
Butterflies	>120	15?
Frogs	19	17
Breeding birds Migrant birds	113 100	28
Mammals	22 (21 bats)	4?

Diverse Jamaican community types

1. Wet Limestone Forest
2. Dry Limestone Forest
3. Thorn Scrub
4. Cactus Thorn Scrub
5. Strand Woodland
6. Lower Montane Rain Forest
7. Montane Mist Forest
8. Elfin Woodland
9. Montane Sclerophyll
10. Herbaceous Swamp
11. Mangrove Woodland
12. Marsh Forest

Port Royal and environs

Port Royal and environs

over 1000 species recorded

Taxon	Number of Species
Macroalgae	98+
Porifera	54+
Cnidaria	156+
Ctenophora	4
Platyhelminthes	3+
Annelida	26+
Crustacea	158+
Mollusca	295
Bryozoa	18+
Chaetognatha	3
Echinodermata	81
Hemichordata	2
Chordata	228-278+

Goodbody, 2004

Mangrove Prop roots

Prop roots hang into the water and provide firm substrate for the attachment of sessile organisms

Sessile Organisms

Value of Mangrove Biodiversity

- Ecological value
  - Sediment trap
  - Purification (sewage, fertilizers)
  - Shoreline and infrastructure protection
  - Nutrient release
  - Nursery ground
  - Habitat for other species
  - Refuge during hurricanes and severe storms
- Exploitable resources
  - Medicinal
  - Food
  - Timber cutting
  - Tannins

OPPORTUNITIES

- *Ecteinascidia turbinata*

NEW SPECIES

- ***Haliclona portroyalensis n.sp***

FORESTS AND CLIMATE Vulnerability

- 30% of Jamaica's land area is forest
- Provide a wide variety of goods and services
- Home of several endemic plants and animals
- Small changes in temperature and precipitation have significant effects on forest growth

Jamaican Tody (*Todus todus*)

One of the many endemic birds found in Jamaican forests

Forests

- The actual rate of deforestation is 0.1 per cent per annum.
- The extent and rate to which forest cover and biodiversity is being degraded as a result of disturbance is unknown.
- Since 2007 the Forestry Department has been producing an average of 250,000 seedlings per year.
- The Forestry Department planted 102.7 ha and 69.7 ha on public lands during the financial years 2007/2008 and 2008/2009, respectively.

Blue & John Crow Mountains

Blue & John Crow Mountains

over 1000 species recorded

Group	No. of Species	Endemics
Plants (Flowering /ferns/lichens)	>500	240
Orchids	>200	65
Snails	100	?
Breeding birds	50	22
Invertebrates	>200	?

Blue mountain guide, 1993

Threatened species

- Portland Ridge Frog
- Logger head turtle
- Hawksbill turtle
- Green turtle
- Jamaican slider turtle
- Cricket lizard
- Jamaican Iguana
- Blue-tailed Galliwasp
- Jamaican Boa
- Jamaican Thunder snake
- White Ibis
- Glossy Ibis
- WI Whistling Duck
- Masked Duck
- Black Rail
- Clapper Rail
- Caribbean Coot
- Bridled Tern
- Fish-eating Bat
- Jamaican Hutia (Coney)

Freshwater Resources

- Ground water constitutes 84 % total available water resources (US Army Corps 2001).
- Ground water resources are threatened by:
  - pollution,
  - aging or undeveloped distribution systems

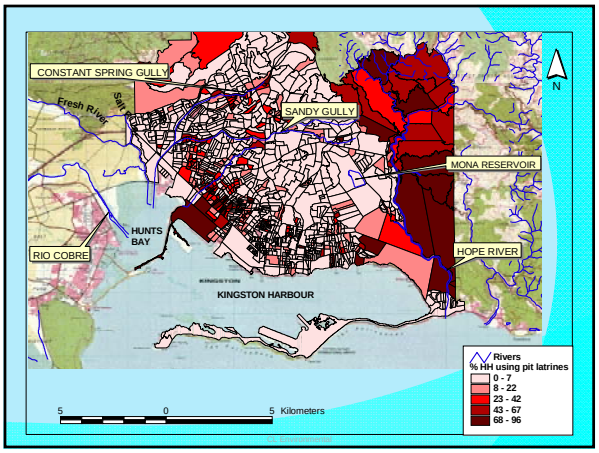
- Quality of piped water is not always acceptable. In 1996, 24.5% of samples tested by the Ministry of Health for faecal coliform were positive (SOE 1997).
- Between 06-09 Eighteen rivers monitored with 40% showed signs of faecal coliform and/or nutrient pollution.
- Pollution of this nature was largely due to improper disposal of organic waste as well as run off from agricultural lands.

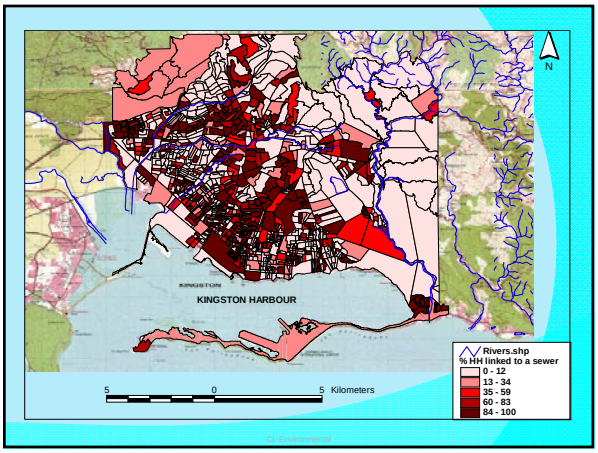
Ocean and Coastal Resources

- Current levels of coral cover contrast with the situation in the 1970s.
- In the late 1970s, 9 reefs on the north coast had live coral cover averaging 52% at 10m depth, but this declined to 3% in the 1990s.
- Percentage of live coral cover in 2008-13.7%.
- While the situation has improved since the 1990s, the island's reefs still remain under threat.
- No. of fish kills: Fairly constant with 4 - 5 fish kills reported per year in Kingston Harbour.

Sewage Treatment

- Jamaica had 103 municipal sewage treatment plants 49 of which are publicly run by the NWC
- Approx. 15% of Jamaica's population is served by sewerage systems operated by the NWC
- The remaining 75% of Jamaica's sewage wastes are disposed of through soak away systems, septic tanks, tile fields, pit-latrines etc.
- The national average for sewage generation is estimated at 455 million litres/ day





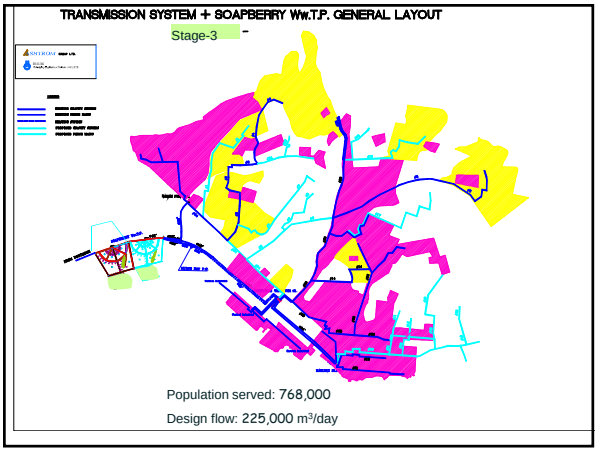
Parameter	Mean value	Standard Deviation	Maximum value	Minimum value
Chlorophyll a mg m^{-3}	54.1	62.5	166	19.12
Dissolved Inorganic Phosphorus µmol L^{-1}	48.32	180.6	854	0.051
Total Dissolved Phosphorus µmol L^{-1}	120 *	41 *	190 *	96.6 *
Ammonia µmol L^{-1}				
Dissolved Inorganic Nitrogen µmol L^{-1}	85.27	161.77	744.53	0.56
Total Dissolved Nitrogen µmol L^{-1}	1617.85 *	603.57 *	2642.8 *	1107.14 *
Total Suspended Solids mg L^{-1}	71.48	193.6	817.5	1.2
Faecal Coliform MPN 100 ml^{-1}	1104	1008.6	>2400	5.8
Biochemical Oxygen Demand mg L^{-1}	53.3	94.27	440	2.4

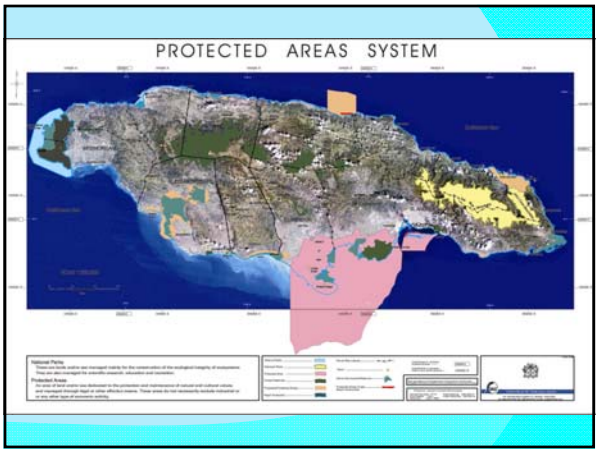
Water quality concentrations from land based sources Kingston Metropolitan Area

Sewage pollution

- Coliform levels at many of the operating treatment plants have often exceeded NRCA's (now NEPA's) sewage effluent standards (ECD 1997)
- Widespread discharge of high volumes of untreated sewage from on-shore, and visiting marine vessels has lead to abnormal growth of algae on coral reefs
- This has assisted in diminishing their productivity and introduced human health risks
- Studies of Kingston Harbour have revealed that the major sources of pollution are sewage and industrial effluent discharged directly into the Harbour, or into the gullies and rivers that enter it.

Aerial View of Portmore Sewage Treatment Ponds





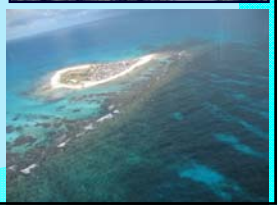
Protected Species

Species that are currently protected by law are:

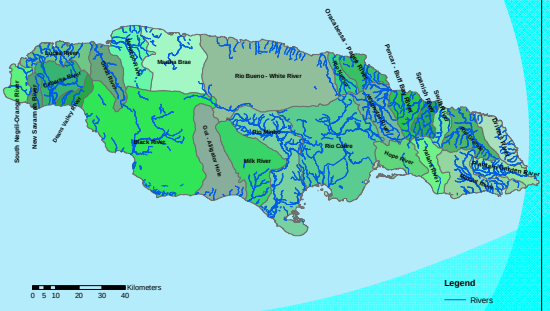
- Birds - plain (blue) Pigeon, Golden Swallow, West Indian Whistling Duck, Ring-tailed Pigeon, Jamaican Black Bird, Black and Yellow-Bill Parrots, Sooty Tern, Brown Noddy, Masked Duck
- Mammals - West Indian Manatee, Jamaican Hutia (coney) Giant Swallowtail Butterfly
- Amphibians & Reptiles - all sea turtles, Jamaican Boa, Jamaican Iguana, American Crocodile
- Invertebrates - Giant Swallow Tail Butterfly, Black Coral, White Coral

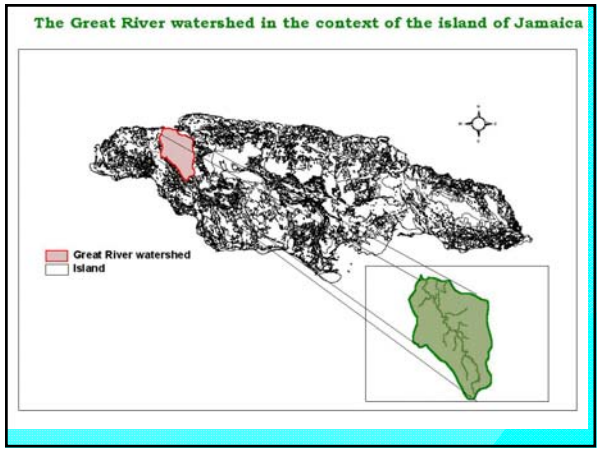
Important Jamaican biodiversity habitats

- **Cockpit country**
- Hellshire Hills
- Blue Mountains
- Portland Ridge
- Black River
- Canoe Valley
- Port Royal Mangroves
- Harris Savanna
- Mason River
- Portland Bight
- **Pedro Banks**

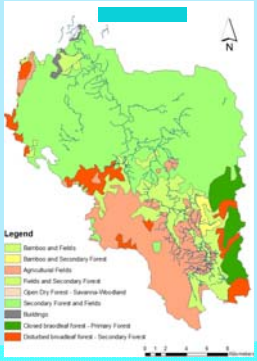


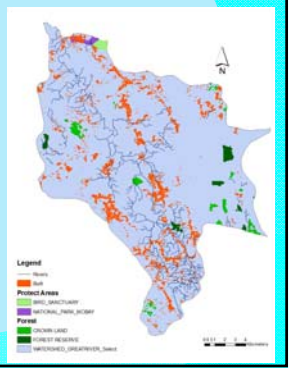
Jamaica's Watersheds





Land cover of GRW





Major Issues on the Pedro Cays and Bank

1. **Heavy population density and poor living conditions**
2. **Limited fisheries management & enforcement, heavy fishing pressure & unsustainable practices**
3. **Fishers not organized and have limited skills (limited education & job opportunities)**
4. **No formal biodiversity protection & increasing threats (e.g. habitat loss, poaching)**
5. **Poorly-defined institutional framework & limited capacity to effectively address issues**

Lionfish invasion (Dr. Dayne Buddo)

Environmental Protection and Climate Change

CLIMATE CHANGE IMPACT ON JAMAICA'S BIODIVERSITY

- Ecosystems most vulnerable to climate change impacts include coral reefs, highland forests, and coastal wetlands (mangroves).
- Jamaica's biodiversity already under stress from:
  - human impacts including land use change,
  - pollution,
  - invasive species, and
  - over-harvesting of commercially valuable species.
- Climate change is an additional stress with expected profound impacts on the islands natural ecosystems and their species.

General projected impacts of climate change on Jamaica's biodiversity

- General impacts could be as a result of:
  - Increases in temperature on land.
  - Altered rainfall and runoff patterns.
  - Sea level rise.
  - Increase in sea surface temperature.
  - Altered intensity of hurricanes.

Climate Change: A Threat to Biodiversity Higher Temperatures

- Change in species abundance & distribution
- Migration to higher altitudes
- Genetic changes in species to new climatic conditions
- Change in reproduction timings (life cycle)
- Increased sand temperatures, can lead to changes in sex ratios (reducing male turtle production).
- Change in length of growing seasons for plants
- Increase in extinction rate

Citrus Swallowtail ***(Papilio andraemon)***
Island Hop in Wind Currents

Climate Change: A Threat to Biodiversity Altered rainfall & runoff patterns

- Drying of ecosystems leading to loss of species and changes in community composition.
- Changes in species distribution and ecosystem composition.
- Changes in the geographical extent of habitats and ecosystems.
- Flooding of nests of various species and death of young individuals.

Climate Change: A Threat to Biodiversity
Higher Sea Surface Temperatures

- Mild warming (+2ºC), tropical near-shore communities will change from coral-dominance to algal-dominance.
- Creates conditions that may be suitable for some invasive species to become established in new areas
- High temperatures lead to coral bleaching and even coral death

Healthy (Left) and Bleached (Right) Coral

Jamaica's coral reefs experience massive bleaching due to high sea temperatures in years 1987, 1989, 1990 and 1998.

- The elimination of coral reefs would have dire consequences. Coral reefs provide habitats and nursery areas for numerous commercially important species

Climate Change: A Threat to Biodiversity
Altered hurricane intensity

- Loss of vulnerable island species.
- Changes in species competitive interactions and species and community composition.
- Changes in range of invasive species.
- Increased damage to nests & nesting sites.
- Increased destruction of sensitive habitats:
  - Coral reefs,
  - Mangrove ecosystems
  - Terrestrial (esp. forest) ecosystems.

QUESTIONS & COMMENTS

THANK YOU

ASSESSMENT OF ENVIRONMENTAL DAMAGES

Judicial Training Workshop in Environmental Law in Jamaica

18-20 November 2011

By Gilroy S. English

Damages

- Awards of Damages are intended to put the "person" that suffered a wrong back into the position he was before the wrong was committed.
- In Tort and Contract there are fairly settled principles and methodologies for assessing the value of damage that occurred.

ENVIRONMENTAL LAW

- Identifiable area of law in its own right
- Based on its own principles (e.g. polluter pays, precautionary, sustainable development)
- Management of the environment using legislation. Laws implemented based on the "command and control" model whereby standards are set and monitored by Government Public bodies.

- A claim for damages in Environmental Law is subject to the principles of damages related to tortious acts as well as any of the limitations at Common Law (contributory negligence, causation, remoteness, forseeability).

EXEMPLARY DAMAGES

- Although as a general rule the award of exemplary damages is not made readily save for (i) arbitrary or unconstitutional conduct of government servants, (ii) conduct calculated to result in profit and (iii) expressed authorization by statute, it may be awarded in matters relating to environmental harm.[1]
  MC Mehta v Kamal Nath, WP (Beas River Case) 182/1996

Exxon Shipping Co. and Exxon Mobil Corp. v. Baker, 07-219.(Exxon Valdez)

- The largest award for exemplary damages made to date on this side of the Atlantic was in the Exxon Valdez case in the United States of America with the initial amount being US$5B at first instance reduced to US$2.5B on appeal.[1]

- The Exxon Valdez spilled millions of gallons of oil into Alaska's Prince William The case before the court was brought separately by a class of 32,677 fishermen and other interests that had business disrupted by the oil spill.
- After a lengthy trial, a jury awarded those harmed by the spill $287 million in compensatory damages and $5 billion in punitive damages.

- The 9th U.S. Circuit Court of Appeals in San Francisco first ruled in the case in 2001 when it upheld damages against Exxon Mobil but ordered the trial court to reduce the award from $5 Billion to $2.5Billion. A second appeal (2008) to the Ninth Circuit reduced what had once been a $5 billion punitive damages award against Exxon Mobil to about $500 million.

Methodologies

- Contingency Valuation
- Choice modeling
- Hedonistic
- Habitat Equivalency Analysis (HEA)

Valuation of Resources in the Caribbean

- The Nariva Swamp* Assessment (One of the earliest assessments of natural resources valuation using economic methodologies)
- Trinidad and Tobago acceded to the RAMSAR Convention on Wetlands 1992
- Nariva Swamp (6000 hectares) identified to be designated under RAMSAR

- Rice farmers "squatters" occupied approx 1200 Hectares.
- Steps taken by Government to evict "squatters" and challenged on constitutional grounds. Squatters claim not successful.
- Valuation undertaken using the contingency valuation methodology.
- The social value of the swamp was estimated at TT$608(US$96M) .
- An arithmetic calculation based on the negative impact of the occupation of the 1200 hectares occupied was valued at $TT110.5M
- .

Westerhaven Case

- Belizean Admiralty case known as the *Westerhaven*
- Damage to the Belize Barrier Reef by ship grounding
- Claim for damages in the sum of $US31M based on valuation of resources.
- The Defendant while challenging the claim did not provide an amount for the damages*.

- British Columbia v Canadian Forest Products Ltd (2004) 2 SCR 74 where it was made clear that assessment of damages for ecological loss to the natural resource should not be strangled because of technical objections as long as there is fairness to the sides and that the challenges in accurately assessing the claim should not allow the wrong doer to escape the responsibility of compensation.

Westerhaven (cont'd)

- In recognition of the variance in methodologies in the case even between the claimant's experts (each had separate figures for the assessment ranging from a high of US$31M to a low of US$18M) and taking all the factors into consideration the judge awarded US$11,510,000.00 for damage to the reef.

Using Legislation to combat challenges to methodologies.

- Establish method(s) of assessment
- Establish conditions for restoration

- Benefits
- The main feature of these legislation is that competent authorities determine the restoration actions on the occurrence of an incident, then allow the polluter to implement the action or pay to the authorities the cost of implementation. The polluter knows upfront what actions are to be taken and bears the risks of those actions.

Conclusion

- To eliminate and or reduce uncertainty applicable to methodologies in the assessment of the value of the natural resources the use of legislation with inbuilt formulae may prove useful to all parties as it is more predictable and certain.

Sanctions

- Fines
- Imprisonment
- Revocation of permissions
- Imprisonment
- Restoration

Sanctions and Trends

- Restoration to what it was before the breach
- Rectification of a breach
- Fines plus restitution (Canadian EPA, NZ RMA, T&T, Ja BCA, NRCA)

Sanctions and Trends (cont'd)

- *New Zealand Resource Management Act*
- *Section 339B: Additional penalty for certain offences for commercial gain*
- *(1) Where a person is convicted of an offence against section 338 (1A) or (1B), the court may, in addition to any penalty which the court may impose under section 339, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.*
- *(2) For the purposes of subsection (1), the value of any gain shall be assessed by the court, and any amount ordered to be paid shall be recoverable in the same manner as a fine.*

THANK YOU

The N S W M ACT 2001

Presenter

Mr. Phillip Morgan
Snr. Investigator – Enforcement & Compliance
pmorgan@nswma.gov.jm

What Is The NSWMA?

- *A statutory body established by the NSWM Act, 2001. Its genesis is in the Parks & Markets companies.*
- *The National Solid Waste Management Authority was established to:*
  - *effectively manage and regulate the collection and disposal of solid waste in Jamaica;*
  - *aims to safeguard public health and the environment by ensuring that domestic waste is collected, stored, transported, recycled, reused or disposed of in an environmentally sound manner, by the necessary enforcement steps,*
  - *guaranteed compliance with the National Solid Waste Management Act, 2001 by business operators and licensed garbage disposal companies and through public education.*

NSWMA FUNCTIONS

- *Alleviate the environmental burdens of improper waste management including disposal.*
- *Enforce the NSWM Act.*
- *Increase public awareness as it relates to illegal dumping. S. 4(1)(b)*
- *Institute measures to encourage waste reduction and resource recovery. S. 4(2)(d)*
- *Introduce cost recovery measures for services provided by or on behalf of the Authority. S. 4(2)(e)*
- *Conduct seminars and provide appropriate training programmes and consulting services and gather and disseminate information relating to waste management. S. 4(2)(i)*
- *The registration of companies involved in garbage disposal. S (23)(1)(a-c)*

"Jamaica's Beauty is Our Duty"

NSWMA AUTHORISED DISPOSAL SITES

SITES	REGION	LOCATION
Riverton	*MPM*	*St. Andrew*
Church Corner	*MPM*	*St. Thomas*
Tobolski	*NEPM*	*St. Ann*
Hadden	*NEPM*	*St. Ann*
Doctor's Wood	*SPM*	*St. Elizabeth*
Martin's Hill	*SPM*	*Manchester*
Retirement	*WPM*	*St. James*

What is Waste

- *Anything that has outlived its useful life*

OR

- *Anything that is considered to have no more value or purpose and needs to be discarded*

OR

- *Anything which by their presence may injuriously affect the health, safety, and comfort of persons*

OR

- *The by-product of a process*

Definitions (as per the NSWM ACT)

- ***Solid Waste" – includes medical & hazardous waste as well as refuse or sludge from a waste treatment facility, water supply plant, air pollution control facility, garbage, solid or semi-solid or contained gaseous liquid matter resulting from industrial, commercial, mining or agricultural operation or domestic …S. 2***
- ***… activities and any contained substance or object which is or is intended to be required by law to be disposed of. S. 2***

Solid Waste Management" –systematic control of the generation, collection, separation, storage, reuse, recycling, transportation, transfer, treatment, and disposal of solid waste.

- ***Litter" – Solid waste in any public place and includes any refuse, rubbish, bottles, glass, debris, dirt, rubble, ballast, stones, noxious or contained substances, waste matter or any other matter likely to deface, make untidy, obstruct or cause a nuisance in public places.*** *S. 2*

- ***Hazardous waste*** *- speaks to any waste that is considered to be corrosive, toxic, explosive, fire potential, or will react adversely with other material on the landfill.* *S. 2*

- ***Disposal Facility*** *– includes motor vehicles, containers and equipment used for management of solid waste, transfer station, landfills, composting sites, and other solid waste operations and sites.* *S. 2*

- ***Container*** *– means a receptacle or portable device in which solid waste is stored, transported, treated, disposed of or otherwise handled.* *S. 2*

Authorised Officer

- Enforcement Officers
- A Traffic Warden,
- Public Health Officer,
- A person so designated (gazetted) by the authority,
- An Inspector
- Municipal Police –
- Environmental Wardens
- ISCF

Any person acting in aid of such person acting in the execution of his office or duty.

Duties of an Authorised Officer

- **Enforcement of all aspects of the NSWM Act.**
- **The inspecting all records and facilities maintained by commercial entities as it relates to solid waste management**
- **The issuing of FIXED PENALTY TICKETS and Summonses**
- **Issuing of Removal Notices**
- **Attending court proceedings as follow-up to enforcement actions taken under the Act.**

SUMMARY of NSWM ACT BREACHES and PENALTY

- Section 44(a)Unlawfully remove waste from Disposal facility $500,000.00 or Six Months or both fine and confine
- Section 44(b)Interferes or tampers with disposal facility $500,000.00 or Six Months or both fine and confine
- Section 45(a)Dispose of waste in manner not approved by the Authority $1,000,000.00 or Nine Months or both fine and confine
- Section 45(b)Operates, Collects, or Transfer waste without a license $1,000,000.00 or Nine Months or both fine and confine
- Section 45(c)Impedes the collection/disposal of solid waste $1,000,000.00 or Nine Months or both fine and confine

THE FIXED PENALTY NOTICE SYSTEM PUBLIC CLEANLINESS REGULATUION (2003)

- **Section 46 (1)(a) Litter in Public** - $ 2,000.00
- **Section 46 (1)(b) Erect, display deposit, or affix anything on public place causing defacement** – $ 3,000.00
- **Section 46(2)Commission person(s) to erect, display deposit, or affix anything on public place causing defacement** – $ 10,000.00
- **Section 47 Littering Private Property** - $ 5,000.00
- **Section 48 Willfully breaking bottles in public place** – $ 5, 000.00

SUMMARY of NSWM ACT BREACHES and PENALTY (cont'd)

- Section 49 (1) a, b, c,& d Making false or misleading statements $1,000,000.00 or 1 year or both fine and confine
- Section 50(1) (a), (b), (c) & (d) Hinder, disobey, fails to disclose or give name, and place of residence $500,000.00 or Six Months or both fine and confine
- Section 51 (a) & (b) Fail to keep records or to produce records $500,000.00 or Six Months or both fine and confine

SUMMARY of NSWM ACT BREACHES and PENALTY (cont'd)

- Section 52(b)Offence for which there is no penalty $500,000.00 or Six Months or both fine and confine
- Section 55 Fail to comply with Removal Notice $100,000.00 plus recover cost to clean area
- Section 58(b) Failure to provide information on operation of Sewage/industrial waste plant $500,000.00 or Six Months or both fine and confine

CHALLENGES

- **EXTRACT FROM FIRST SCHEDULE**

PUBLIC CLEANLINESS REGULATION 2003

"If you do not pay the fixed penalty or if you notify the Authority that you wish to dispute liability in accordance with this Notice, an application will be made to the Resident Magistrate for an order that you pay the fixed penalty and additional sum of _____ by way of costs."

THIS IS CURRENTLY NOT BEING PRACTICE BY THE COURTS

CHALLENGES

- As the number of persons charged under this act increases, there will be a further burden on the RM Courts to deal with this matter.
- In KSAC alone the number of FIXED PENALTY TICKETS issued rose from 114 in January, to 616 in October, 2011, with 713 tickets being issued in August.

IT WOULD BE MORE PRUDENT & CONVIENENT TO HAVE A SEPARATE COURT DEALING WITH THESE AND OTHER LOCAL ISSUES

CHALLENGES

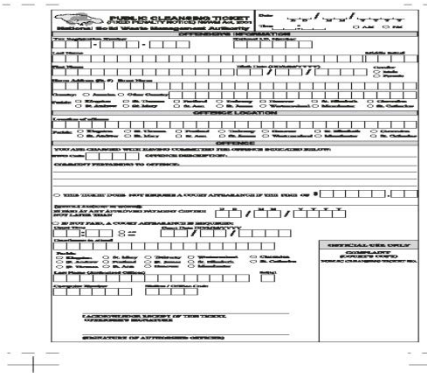
- Section 45(a)Dispose of waste in manner not approved by the Authority.....Is a regulation needed for this section?

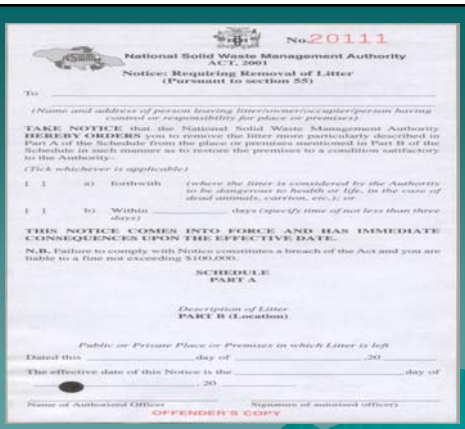
WHAT OF GUIDELINES AND STANDARDS

New developments

- The drafting of additional regulations, such as, for the licensing of Waste Haulers. and amendments to the Public Cleanliness Regulation are well advance and will see increase prosecution by the Local Authorities

Enforcement





No. 20111

National Solid Waste Management Authority
ACT, 2001

Notice: Requiring Removal of Litter
(Pursuant to section 55)

To _____

(Name and address of person having litter/owner/occupier/person having control or responsibility for place or premises)

TAKE NOTICE that the National Solid Waste Management Authority HEREBY ORDERS you to remove the litter more particularly described in Part A of the Schedule from the place or premises mentioned in Part B of the Schedule in such manner as to restore the premises to a condition satisfactory to the Authority:-

(Tick whichever is applicable)

[ ] a) forthwith *(where the litter is considered by the Authority to be dangerous to health or life, in the case of dead animals, carrion, etc.); or*

[ ] b) Within _____ days *(specify time of not less than three days)*

THIS NOTICE COMES INTO FORCE AND HAS IMMEDIATE CONSEQUENCES UPON THE EFFECTIVE DATE.

N.B. Failure to comply with Notice constitutes a breach of the Act and you are liable to a fine not exceeding $100,000.

SCHEDULE
PART A

Description of Litter
PART B (Location)

Public or Private Place or Premises in which Litter is left

Dated this _____ day of _____ 20__

The effective date of this Notice is the _____ day of _____ 20__

_____ _____
Name of Authorized Officer Signature of authorized officer)

OFFENDER'S COPY

Forest Law Enforcement:
The Jamaican Experience

Presented by: Rainee Oliphant
Judicial Training Seminar in Environmental Law for Resident Magistrates
Hilton Hotel, Rose Hall
November 19, 2011

Overseeing the sustainable management of Jamaica's Forest Resources

Jamaica's Forests

- 335,900 hectares of forest island wide
- 109,514 hectares managed by the Agency
  - Forest Reserves (98,912 ha)
  - Forest Estates (10,552)
- 214,976 hectares privately owned land

Overseeing the sustainable management of Jamaica's Forest Resources

AREAS MANAGED BY THE FORESTRY DEPARTMENT

Overseeing the sustainable management of Jamaica's Forest Resources

Private land vs. Crown land

- No jurisdiction under the legislation for privately owned lands that have not been declared.
- If it is determined that an offence was committed what legislation to charge the person under

Overseeing the sustainable management of Jamaica's Forest Resources




Overseeing the sustainable management of Jamaica's Forest Resources





Overseeing the sustainable management of Jamaica's Forest Resources

Sanctions

- **Fines**
  - Act
    - 30(2) – Five Hundred Thousand dollars ($500,000.00)
    - 31(1) – Two Hundred Thousand dollars ($200,000.00)
    - 31(2) – One Hundred Thousand dollars ($100,000.00)
  - Regulations - Fifty thousand dollars ($50,000.00)

  Consol Fund
- **Term of imprisonment**
  - Act
    - Two (2) years
  - Regulations
    - One (1) year
- **Cost of Restoration**
- **Forfeiture** – Section 33 of the Act.

Overseeing the sustainable management of Jamaica's Forest Resources

Cost of Restoration

"A person convicted of an offence under these Regulations or the Act shall, **in addition to any penalty for which he may be liable for the offence,** be liable to **pay the cost of repairing or restoring any damage done** to a forest estate, protected area or forest management area or to any plant or tree growing therein …"

Overseeing the sustainable management of Jamaica's Forest Resources

Burden of Proof

- Provide proof that a particular activity was carried out
- That the activity took place in the **regulated area** and that it is a **prescribed offence** under the Act
- That the person before the Court committed or was involved in the commission of the offence

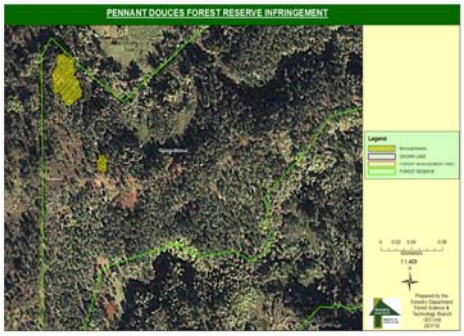
Overseeing the sustainable management of Jamaica's Forest Resources

Contents of Case File

- **Map of forest reserve identifying the *locus in quo***
- **Copy of the Gazette (*See Appendix IV*)**
- **Statements of investigating officers and / or forest officers**
- **Valuation of the timber or forest produce (economic value)**
- **Pictures**
- **Perishable Items Form**

Overseeing the sustainable management of Jamaica's Forest Resources

Mapping Capability



Overseeing the sustainable management of Jamaica's Forest Resources

Challenges

- The imposition of low fines continue
  - Out-dated legislation
  - Low awards from the Court
  - Affiliation with the economic value of the good versus the value of the eco-system service provided
- Litigation experience needed by Regulatory Agencies
- Inability to make our case e.g. when timber found on premises or on a conveyance off the designated area

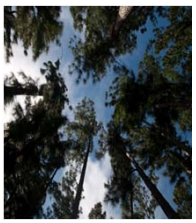
Overseeing the sustainable management of Jamaica's Forest Resources

The Recent Past …

- Seventeen cases have been brought before the courts
- 13 of these have been resolved favourably
- Fines imposed ranged from **$5000.00** to **$150,000.00**
- Of the $585,000.00 imposed in fines, over seventy percent was paid.
- Seized over a million dollars worth of forest produce.

Experience to Date

- Cases were dealt with quickly where the RM spoke directly to the accused
- Imprisonment terms ranged between 10 – 30 days
- Order for the payment of restoration costs was used once but has not paid yet.



Our Pledge

THANK YOU FOR YOUR ATTENTION!

Rainee Oliphant
Forestry Department
173 Constant Spring Road
Kingston 8
roliphant@forestry.gov.jm
925-7479
564-7498

EMERGING ENVIRONMENTAL ISSUES IN FISHERIES MANAGEMENT IN JAMAICA

1

- The Environment and what affects it has an impact on our fisheries and their management. Fisheries Management resides in the -
  - Fisheries Division
  - Veterinary Services Division

2

- The extant Fishing Industry Act is thirty six (36) years old, with fines which are archaic -
  - It did not contemplate the serious issues that one has had to deal with since then
  - fines do not even begin to cover the value of a catch of conch which retails at US$6.00 per pound, lobster at US$7.00 per pound or fin fish (Snapper, Parrot, Grunt or King Fish) at J$350.00 per pound.
  - Fishing is big business, whether in the international or local market

3

- The Act does not deal with environmental issues directly except Section 18 by which the Minister may declare fish sanctuaries. There are 12 (Bogue Islands Lagoon, Port Morant Harbour Lagoon, Orange Bay, Three Bays, Salt Harbour, Galleon, Galleon Harbour, Discovery Bay, Bluefields Bay, Montego Bay Marine Park, Sandals Boscobel and Oracabessa Bay). The fine for fishing in a fish sanctuary is Five Hundred Dollars ($500.00) and, in default, to imprisonment not exceeding 6 months. The Orders just state the co-ordinates for fish sanctuaries - Section 18, "*any person who fishes or attempts to fish in any area declared by the Minister to be a fish sanctuary*" is guilty of an offence. There is nothing to guide on what type of action would be an offence.

4

- Over the years, there have been some "management" regulations such as the Fishing Industry Regulations 1976, which by Regulation 14, prohibits the catching, bringing ashore or destruction of any berried lobster (which is a lobster with eggs) or any spiny lobster under 7.62 centimetres (3 inches). The fine under Regulation 15 is only a maximum of $500.00.

5

- It is challenging to manage the Fishery with these fines, the highest of which is Five Thousand Dollars ($5,000.00). Examples are:-

  Section 3(3) – Fishing without a licence - $1,000.00
  Section 7(2) – Not carrying identification - $20.00
  Section 8(3) – Operating an unlicensed boat - $200.00
  Section 14(5) – Failure to report loss, destruction of boat - $50.00
  Section 18(2) – Fishing in Fish Sanctuary - $500.00
  Section 19(2) – Fishing in the Close Season - $500.00
  Section 20(2) – Failure to comply with direction of a Fishery Inspector - $500.00
  Section 22(1) – Unlawful removal of boat, fishing equipment - $1,000.00

6

Section 23 – Penalty for knowingly landing, selling, buying etc fish - $1,000.00

Section 24(2) (a) –Failure to keep register of all fishermen on carrier vessel - $100.00

(b)- Failure to supply crew with adequate food and drinking water - $500.0

(c) - Failure to make arrangements for rescue at sea - $5,000.00

(d) - Failure to make arrangements for the payment of any fine or penalty incurred by fishermen/boat for fishing in foreign waters without a licence or permit - 5,000.00.

Section 29 – Any offence for which no other penalty is provided - $100.00

7

- All the fines carry varying terms of imprisonment from one to twelve months in default of payment. To my recollection, I do not think any fines have been laid under Section 24(2) (c) and (d).

In recent years we, have made further regulations such as the Fishing Industry (Spiny Lobster) Regulations, 2009, made under Section 25(k) which, inter alia, seeks to tighten management by requiring fishers, middlemen, owners/operators of commercial storage establishments, hotels, eating establishments or similar entities to declare any spiny lobster in their possession in writing to the Authority, before the commencement of the close season. This declaration should state whether it is the whole or part of the lobster and the part is to be specified. Unfortunately, the fine is only $1,000.

8

- The only provision likely to invoke some amount of terror is Section 27 which gives the Court the discretion to forfeit "*any boat, net, fishing equipment or appliances used in the commission of an offence*" for which there has been a conviction. Section 27 does not lay down the procedure for forfeiture, as does more modern legislation such as Section 35 of the Aquaculture Inland and Marine Products and By-Products (Inspection, Licensing and Export) Act 1999 (the Aquaculture Act) which requires the DPP to apply to the Court for an Order of Forfeiture and notify the owner.

9

- Although the Aquaculture Act does not expressly deal with the Environment, it is an act which ensures that all aquaculture products are harvested under sanitary conditions. Objects of the Act are to:
  - advance public health and safety standards in the export of aquaculture products intended for human consumption;
  - specify and maintain international standards of production, harvesting, processing, handling, storage and transport of such products; and
  - monitor the hygiene and sanitary conditions of vessels and establishments engaged in the processing of aquaculture.

10

- Fishing without a quota, under the Fishing Industry (Conservation of Conch(Genus Strombus)) Regulations, the fine is a mere $1,000.00. On the other hand, Section 25(b) of the Aquaculture Act attracts a fine of $1,000,000 for anyone found guilty of operating "*any processing establishment, factory, freezer or carrier vessel or any other facility or installation for the purpose of harvesting, handling or processing for export…*"

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- Where there is evidence of processing, such as the presence of sodium bisulphite to preserve the white colour of lobster meat, it is not hard to get a conviction.
- Although an act for export, the Aquaculture Act is very mindful of the Environment. It assures that harvesting is done in pristine waters, devoid of microbiological elements which would be harmful to the human body, and that such harvesting does not negatively impact the Environment. Previous to this Act, there were no post-harvest sanitary and phytosanitary considerations, as The Fishing Industry Act focuses on primary production. There are difficulties in protecting Jamaica's maritime space due to its vast size of 274,000 square kilometres, which is about 25 times the size of Mainland Jamaica.

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- Potentially negative environmental impact of fishers who live on the Pedro Banks (8,400 square kilometres or ¾ of the size of Mainland Jamaica) and earn their livelihood therefrom without proper modern sanitary facilities and water supply. They have acquired prescriptive rights and, eventually, Government will have to do something about this before it negatively impacts the fishery.

- Pedro Bank is Jamaica's most productive fishing ground. 100% of conch and lobster exported from Jamaica originates from the Pedro Bank which is the prescribed area under the Aquaculture Act. In order to maintain our export status on the EU Third Country List, we have to monitor the waters by taking water and sea vegetation samples eighteen times per year to test for toxic phytoplankton. Whilst we had to promulgate that Act, based on trade, this has inured to the benefit of not only our fishery but our environment.

- The challenge has been to enact new fisheries' legislation to deal with not only the fishery but also issues which impact the fishery. Hopefully, we should have an Act by 2012. A burning issue was the ability of the Minister to declare quotas. In 1999, a fisher challenged the Minister's power to allocate quotas, even though the Minister had done so pursuant to Section 25(k) of the Act empowering the Minister to make regulations "prescribing measures for conservation of fish". The result was the Fishing Industry (Conservation of Conch (Genus Strombus)) Regulations, 2000. Another challenge in 2000 resulted in the shutdown of the entire Industry until 2001. This challenge happily ended in a Settlement Agreement. No judicial pronouncement was made on the "vires" of the Genus Strombus Regulations and we have, since then, operated with them, unchallenged.

- The new Act will unequivocally speak to quotas and interim quotas. It is imperative to sustain the fishery and we recognize our responsibility, particularly as it relates to endangered species. Conch falls on Appendix II of the CITES Convention and Schedule Two of the Endangered Species Act which means if, it is not properly managed, it will be added to Appendix I thereby prohibiting all trade.

- The new Act will recognize:
  - ❑ Fishery management areas, plans and zones.
  - ❑ We have established the concept of a "buffer zone" - an area of the fishery water established to minimize, eliminate and prevent actual and potential adverse impact to fishery management areas and zones, aquaculture management areas and zones or fish sanctuaries.
  - ❑ "Deleterious substance" - *"any substance, including water, that has been treated, processed or changed by heat or other means from a natural state that, if added to any fishery waters, would be deleterious, or likely to be deleterious, to fish or fish habitat or to the use by humans of fish that frequent those fishery waters".*

- ❑ "Fish habitat" - "*the fishery waters or aquaculture management zone which forms the habitat for fish or a particular species of fish*".
- ❑ "Precautionary principle" – which will allow us to take fishery management decisions, in the absence of available scientific data, based "*on measures which embody the protection against over-exploitation, stock depletion, habitat degradation and other potential vulnerabilities to increased levels of fishing mortality and unsustainable interventions*".
- ❑ "National total allowable catch" - "*the total sustainable yield of a fishery or species of fish determined by scientific means*".

- We have sought to plug the loopholes so that we have offences involving prohibited fishing methods, stealing from traps, offences involving quotas, importing live fish without a permit, causing damage to fish habitats, failure to protect fish habitats and relating to aquatic invasive species.

- You would have heard about our problem with the Lionfish, an aquatic invasive specie. Under the new Act, once we can identify any person who damages fish habitat, he would be liable to a maximum fine of $5,000,000.00 or imprisonment up to a year or both such fine and imprisonment. The fines vary up to $5,000,000.00 and can be increased by affirmative resolution. We recognize that fishing is the mainstay of our country and that degradation of the environment will invariable equate to a depletion of a valuable food source.

- The new Act will also include the use of observer devices, photographic and certificate evidence and their admissibility so that the task of proving a case should be much easier. The DPP will be able to apply for forfeiture of vessels, conveyances and equipment and the procedure will be clearly set out. There will also be provision for security for release of fishing vessels or conveyances.

THANK YOU

Yvonne Joy Crawford
Senior Legal Officer
Ministry of Agriculture & Fisheries
November 1, 2011

The Judiciary and Environmental Law: From Koala Bears to Killer Whales

Presentation by:
H.H. Judge Keith Hollis
Circuit Judge, England and Wales

Judicial Training Seminar in Environmental Law
November 18-20, 2011

"the critical question of standing would be simplified and also put neatly in focus if we fashioned a federal rule that environmental issues be litigated before federal agencies or federal courts in the name of the inanimate object about to be despoiled defaced or invaded by roads and bulldozers and where injury is the subject of public outrage".

He referred to how under the common law inanimate objects were sometimes parties in litigation, for example ships having a legal personality, and went on to say:

"so it should be as respects valleys, alpine meadows, rivers, lakes, estuaries, beaches, ridges, groves of trees, swampland, or even air that feels the destructive pressures of modern technology and modern life. The river, for example, is the living symbol of all the life it sustains or nourishes - fish, aquatic insects, water ouzels, otter, fish, deer, elk, bear, and all other animals, including man, who are dependent on it or who enjoy it for its sights, sound, or its life. The river as plaintiff speaks for the ecological unit of life that is part of it. Those people who have a meaningful relation to that body of water, fisherman, canoeist, zoologist, or a logger - must be able to speak for the values which the river represents and which are threatened with destruction". [Sierra Club v. Morton, 405 U.S. 727 (1972)].

Multi-lateral International Environmental Agreements: Impact on Decision-Making in Jamaican and (other) Caribbean Courts

Judicial Training Seminar in Environmental Law
Hilton Hotel, Rose Hall, Montego Bay, Jamaica
November 19, 2011

Mr. Justice Winston Anderson, JCCJ

Principles of Caribbean Environmental Law, (2012), chp. 2

- Caribbean adherence to the notion of territoriality of national law is well established … [but] protection and preservation of the Caribbean environment is inextricably linked to and dependent upon protection and preservation of the global environment, and *vice versa*.
- There is a physical, geographical and ecological unity to the environment that is only palely reflected in the trans-frontier migration of species such as birds and fishes, the dispersion of marine pollutants across oceans, or the emissions of carbon-based gases by individual nations that combine to contribute to global ozone depletion and climate change. At the most elemental, molecular level, the environment is one. There is therefore a necessary and inherent relationship between legal efforts to protect the global environment and Caribbean environmental law… protection of the environment in the Caribbean is dependent on Caribbean participation in international environmental laws, particularly multilateral environmental treaties.

Principles of Caribbean Environmental Law (2012), chp. 2

- There is another way in which international environmental law is relevant to the Caribbean environment. Since 1972 international environmental law has developed extensively. The domestic environment of states has become increasingly internationalized resulting in the erosion of domestic jurisdiction… Alan Boyle confirms that the extensive scope of international environmental law and policy have intruded into all aspects of environmental protection including "the reserved domain of domestic sovereignty". There is a real sense then in viewing international environmental law as part of the juridical response even in respect of environmental problems that manifest themselves within national and regional borders.

Objectives

- Brief overview of importance and nature of multilateral environmental agreements (MEAs)
- Describe process of incorporating MEAs into domestic law
- Investigate potential impact of MEAs on Caribbean judicial decision-making in absence of incorporation
- Introduce the wider implications of greater role for the domestic courts in MEA application

Why protect the environment?

- ecosystems and related ecological processes are essential for the functioning of the biosphere in all its diversity
- maintaining maximum possible biological diversity of species of flora and fauna helps protect e.g., those which are rare, endemic, or endangered
- biodiversity critical for food production, health and other aspects of human survival and sustainable development

Use of treaties for the environment

- Treaties are the most commonly used + fastest growing source of Int'l Environmental Law
- In 1989 UN listed a total of 139; today there are over 400
- More than any other source, treaties permit int'l society to tackle complex int'l environmental problems with rapidity, specificity, adaptability

Multilateral environmental treaties (MEAs): basic features

- A frame work agreement ("Umbrella") (broad obligations)
- Protocols (more specific obligations)
- Annexes or Appendices (list species or substances regulated)
- Institutional arrangement: self regulating (Conference of Parties)

Refinement of MEAs

- Institutional practice (COP, Scientific Bodies, Panels of Experts etc.)
- International judicial-decisions
  - Arbitration
  - International Court of Justice (ICJ)
  - United Nations Tribunal on Law of Sea
  - World Trade Organization/General Agreement on Tariffs and Trade (WTO/GATT)

Process of incorporating MEAs into domestic law

- Westminster model of constitutional government
- Three (3) branches of government
  - Executive -policy making
  - Legislature – law making
  - Judiciary – law interpreting and applying
- Separation of powers (*Hinds v R* [1976] 1 All E.R. 353)

Environmental Treaties

- Executive – exclusive treaty making power

Versus

- Legislature – exclusive power to transform treaties into domestic law

Versus

- Courts – application of environmental treaty law

Doctrine of dualism

- Treaties accepted by Executive have no legal force within domestic law unless and until incorporated by legislation enacted by Legislature
- *The Parlement Belge* (1878-79) 4 PD 129
- *Attorney-General for Canada v. Attorney-General for Ontario* [1937] AC 326
- *Council of Civil Service Union v Minister for Civil Service* [1985] AC 374
- *Attorney-General* v *Joseph and Boyce* [2006] CCJ 3 (AJ)

Some Major MEAs to which Caribbean States are Parties (1)

- Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar) 1971 ("Wetlands Convention")
- Convention for the Protection of the World Cultural and Natural Heritage (Paris) 1972 ("World Heritage Convention")
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington), 1973 ("CITES")
- International Convention for the Prevention of Pollution by Ships (London) 1973 as amended by Protocol of 1978 ("MARPOL 73/78")

Some Major MEAs to which Caribbean States are Parties (2)

- United Nations Convention on the Law of the Sea (Montego Bay) 1982 ("UNCLOS")
- Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region 1983 ("1983 Cartagena Convention") as well as companion Oil-spill Protocol 1983; SPAW Protocol 1990, LBSMP Protocol ("Cartagena Protocols")
- Convention for the Protection of the Ozone Layer (Vienna) 1985 ("1985 Vienna Convention") and Montreal Protocol, 1987
- Convention on Control of Trans-boundary Movement of Hazardous Wastes and their Disposal (Basel) 1989 ("Basel Convention")

Major MEAs to which Caribbean States are parties (3)

- International Convention on Civil Liability for Oil Pollution Damage 1992, ("1992 CLC Convention")
- Convention on Biological Diversity (Rio de Janeiro) 1992 ("Biodiversity Convention") and Cartagena Protocol on Bio-safety, 2000
- United Nations Framework Convention on Climate Change (New York) 1992 ("1992 Climate Change Convention") and Kyoto Protocol 1987
- Agreement for the Implementation of UNCLOS Provisions Relating to Straddling Fish Stocks and Highly Migratory Fish Stocks 1995 ("Straddling Stocks Convention")
- Stockholm Convention on Persistent Organic Pollution ("POPs Convention") 2001

MEAs on Protection of the Marine Environment & Resources

COUNTRY	UNCLOS	Straddling Stocks	MARPOL 73/78	Civil Liability Convention '92
Antigua & B	2/02/1989		29/04/1988	14'06/2000
Bahamas	29/07/1983	16/01/1997	2/10/1983	1/04/1997
Barbados	12/10/1993	22/09/2000	6/08/1994	7/07/1998
Belize	13/08/1983	14/07/2005	26/08/1995	27/11/1998
Dominica	24/10/1991		21/09/2000	31/08/2001
Grenada	25/04/1991			7/01/1998
Guyana	16/11/1993		10/03/1998	10/12/1997*
Jamaica	21/03/1983		13/06/1991	6/06/1997
St Kitts & N	7/01/1993		24/03/1998	7/10/2004
St Lucia	27/03/1985	9/08/1996	12/10/2000	20/05/2004
St Vincent & G	1/10/1993		28/01/1984	9/10/2001
Trinidad & T	25/[illegible]/1986	13/09/2006	6/06/2000	6/03/2000

MEAs on Pollution Regulation and Transboundary Movement of Waste

COUNTRY	1989 Basel Convention	2001 Stockholm POP Convention	1998 Rotterdam Convention on PIC
Antigua & B	05/04/1993 a	10/09/2003	
Bahamas	12/08/1992 a	03/10/2005	
Barbados	24/08/1995 a	07/06/2004 a	
Belize	23/05/1997 a		20/04/2005 a
Dominica	05/05/1998 a	08/08/2003 a	30/12/2005 a
Grenada			
Guyana	04/04/2001 a		
Jamaica	23/01/1994 a		20/08/2002 a
St Kitts & N	07/09/1994 a	21/05/2004 a	
St Lucia	09/12/1996 a	04/10/2002 a	
St Vincent & G	02/12/1996 a	15/09/2005 a	
Trinidad & T	[illegible]/02/1994 a	13/12/2005 a	

MEAs on Protection of the Atmosphere

COUNTRY	1992 Climate Change	1987 Kyoto Protocol
Antigua & B	02/02/1993 r	03/11/1998 r
Bahamas	29/03/1994 r	09/04/1999 r
Barbados	23/03/1994 r	07/08/2000 r
Belize	31/10/1994 r	26/09/2003 r
Dominica	21/06/1993 r	25/01/2005 r
Grenada	11/08/1994 r	06/08/2002 r
Guyana	29/08/1994 r	05/08/2003 r
Jamaica	06/01/1995 r	28/06/1994 r
St Kitts & N	07/01/1993 r	
St Lucia	14/06/1993 r	20/08/2003 r
St Vincent & G	02/12/1996 r	31/12/2004 r
Trinidad & T	24/06/1994 r	28/01/1999 r

MEAs on Biodiversity

COUNTRY	1992 CBD	Cartagena Protocol '00	CITES	World Heritage	Ramsar / Wetlands
Antigua & B	9/3/1993 r	10/9/2003 r	8/7/1997 a	1/11/'83 a	2/10/2005
Bahamas	2/9/1993 r	15/1/2004 r	20/6/'79 a		7/6/1997
Barbados	10/12/'93 r	6/9/2002 a	9/12/'92 a	9/4/'02 a	12/4/2006
Belize	30/12/'93 r	19/8/1986 s	19/8/'86 s	6/11/'90 a	22/8/1998
Dominica	6/4/1994 r	4/8/1995 a	4/8/1995 a	4/4/'95 r	
Grenada	11/8/1994 r	5/2/2004 r	30/8/'99 a	13/8/'98 r	
Guyana	29/8/1994 r		27/5/'77 a	20/6/'77 a	
Jamaica	6/1/1995 r		23/4/'97 a	14/6/'83 a	7/2/1989
St Kitts & N	7/1/1993 r	23/5/2001 a	14/2/'94 a	10/7/'86 a	
St Lucia	28/7/1993 a	16/6/2005 a	15/12/'82a	14/10/'91r	19/6/2002
St Vincent & G	3/6/1996 a	27/8/2003 a	30/11/'88a	3/2/'03 r	
Trinidad & T	1[illegible]/1996 r	5/10/2000 a	19/1/'84 a	16/2/'05 r	21/4/1993

Regional MEAs

COUNTRY	Cartagena Convention '83	OILSPILL Protocol	SPAW Protocol	LBSMP Protocol
Antigua & B	10/9/1986 r	11/9/1986		
Bahamas				
Barbados	28/5/1985 r	28/5/1984	14/10/2002	
Belize	22/9/1999 r	22/9/1999		
Dominica	5/10/1990 r	5/10/1990		
Grenada	24/3/1983 r	17/8/1987		
Guyana				
Jamaica	24/3/1983 r	1/4/1987		
St Kitts & N		15/6/1987		
St Lucia	24/3/1983 r	30/11/1984	25/4/2000	
St Vincent & G	11/7/1990 r	11/07/1990	26/7/1991	
Trinidad & T	24/3/1986 r	24/1/1986	10/8/1999	26/3/2003

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MEA: acceptance v. incorporation

- Widespread MEA acceptance/ratification but limited incorporation by legislation into domestic law

See:

(1) Caribbean Law Institute, *The Environmental Laws of the Commonwealth Caribbean* (1992), at 317-369

(2) "Implementation of Maritime and Environmental Treaties in Organization Eastern Caribbean States"

Prepared by Ocean Institute of Canada (OIC); Caribbean Law Institute Centre (UWI); OECS-Natural Resources Management Unit (1988)

MEAs and Caribbean Governance Arrangements

- Fairly widespread acceptance
- But… limited legislative incorporation
- Absence of incorporation brings dualism into play

Absence of incorporation brings dualism into play (1)

- *Acting Chief of Police v Bryan* (1985) 36 WIR 207) (High Court of BVI)
- *Seafood and Ting* v *NRCA* (1999) 58 WIR 269 (Court of Appeal of Jamaica).

See: Winston Anderson, "Implementing MEAs in the Caribbean: Hard Lessons from Seafood and Ting" [2001] Vol. 10 No. 2 *Review of European Community and International Environmental Law* 227

Dualism applied to MEAs (2)

- *National Trust for the Cayman Islands et al. v The Planning Appeals Tribunal et al* [2000] CILR 521
- *Talisman (Trinidad) Petroleum Ltd. v. The Environmental Management Authority* (2002) No. EA3 (High Court) (Trinidad & Tobago)

Some reasons for limited enactment/incorporation (1)

- Lack of domestic interest/other domestic priorities (e.g., conventions accepted to placate international audience)
- Lack of human resources/finances to draft the relevant legislation/create appropriate institutions
- Impact on private sector/private rights

Some reasons for limited enactment/incorporation (2)

- Governmental inertia
- Complexity of treaty obligations
- Reliance on inappropriate legislation (too old or too general)
- Lack of awareness of acceptance conventional obligations (e.g., LOSC)

Modes of legislative incorporation

- Incorporation by traditional legislative enactment
- Incorporation by reference

Incorporation by traditional legislative enactment

- E.g., CITES
- Endangered Species Protection, Conservation and Regulation of Trade Act 2000 (Act No. 6 of 2000) (Jamaica)
- International Trade in Endangered Species of Wild Fauna and Flora Act 2006 (2006-3), (Barbados)
- Species Protection Regulations1996, (Guyana)

Query: what of pre-MEA legislation?

- Town and Country Planning Act
  - (e.g., CBD)
- *NRCA v Seafood and Ting* (1999) 58 WIR 269
- *Talisman (Trinidad) Petroleum Ltd., v The Environmental Management Authority,* (No. EA3 of 2002), Trinidad and Tobago.

Incorporation by reference

- *Pianka v The Queen* [1979] AC 107
  - The Territorial Sea Act 1971 (Jamaica)
  - 1958 Convention on the Territorial Sea and Contiguous Zone legislation
- The Shipping Act of Barbados (Cap. 296) (1994-15)
  - Shipping (Oil Pollution) Act 1994 (199-16) as amended by the Shipping (Oil Pollution) (Amendment) Act 1997 (1997-22)

Incorporation by reference

- E.g., The National Conservation and Environmental Protection Act 1987 as amended in 1996 (No. 12 of 1996)
  - The 1996 Amendment lists a number of Conventions in the Fifth Schedule:
  - CITES 1973
  - UN Climate Change 1992
  - UN Convention on Biological Diversity 1992
  - Vienna Convention on Ozone Layer 1985

St. Kitts and Nevis, NCEPA1987 as amended 1996

- Montreal Protocol 1987 to the Ozone Layer Convention
- Basel Convention on Control of Trans-boundary Movement of Hazardous Waste
- Civil Liability Convention for Oil Pollution Damage 1969 [NB: not 1992 Protocol]
- International Fund Convention for Oil Pollution Damage 1971 [NB: not 1992 Protocol]

Section 54A these treaties "shall have the force of law in Saint Kitts and Nevis"

Query: some implications of incorporation by reference

- Modification of treaty since incorporation (see NCEPA 1987, 1996 of St Kitts and Nevis)
- All provisions of treaty?
  - "soft law" provisions?
  - Self-executing vs. non-self executing provisions: (*Sei Fujii v California* (1952) ILR 312); cf. *NRCA v Seafood & Ting* (1999)
  - Obligations on state parties?

"Confession and avoidance": undesirability of strict dualism

- Difficulties of strict adherence to dualism
- Separation of international law from domestic law: (protection of local from international environment)
- Lack of access by our Judges to content of MEAs: ***engine of the international environmental movement***
- Lack of Access to institutional and judicial development of MEAs (Arbitral Tribunals; ICJ; ITLOS; WTO DSB)

Exceptions to dualism (1)

- Treaty codifies customary international law
  - *Trendtex Trading Corporation v Central Bank of Nigeria* [1977] 1 QB 529
  - *R. v Director of Public Prosecutions and Another ex parte Dafney Schwartz* [1976] 24 WIR 491

Customary int'l environmental law

- E.g., the precautionary principle
- Rio Declaration, Principle 15
- Climate Change Convention; Convention on Biodiversity
- *R v. Secretary of State ex parte Duddridge* ([1995] Envt'l. L. Rev. 151 (H.C.) [no]
- *Leatch v. Director-General of National Parks* (1993) 81 L.G.E.R.A. 270 [yes]
- *Fishermen and Friends of the Sea v The Environmental Management Authority et al* HCA Cv. 2148 of 2003, dated 22 October 2004

Exceptions to dualism (2)

- Protection of rights of indigenous peoples
  Aurelio Cal v Attorney General of Belize and Minister of Natural Resources and the Environment (2007)
  Conteh, C.J.
- Implications for protection of:
- Caribs in Dominica?
- Maroon community in Jamaica?

Exceptions to dualism (3)

- Legitimate expectation
- *Boyce & Joseph v Attorney General of Barbados* (CCJ, 2006)
  - Inter-American Convention on Human Rights
  - Expectation that Barbados would respect its obligation to consider report of human rights bodies
- Implications for traditional decision-making e.g., *NRCA v Seafood & Ting* (1999); *Talisman (Trinidad) Petroleum Ltd. v. The Environmental Management Authority (2002)*

Exceptions to dualism (4)

- Caribbean Court of Justice (CCJ)
- Original jurisdiction
- Interpret and apply environmental RTC provisions (Art. 56: Natural resources; Art. 226 environmental exceptions)
- Art. 217: in original applies rules of international law:
  - e.g., treaties; custom;
  - e.g., cases from ICJ, LOSC, WTO/GATT
- Referral obligations and domestic courts
  - Peculiar reference legislation in Jamaica

Exceptions to dualism (5)

- Constitutional or legislative mandate:
- Article 39 (2) of the 2003 Amendment to the Guyana Constitution
- Ratification of Treaties Act 1987 (No. 1 of 1987) of Antigua and Barbuda
- Cf. Constitution of Belize (Belize Constitution Act, Cap. 4), Sect. 61A (2) (b)

Exceptions to the doctrine of dualism (6)

- Matter falls within the legislative competence of Executive
  Post Office v Estuary Radio [1968] 2 QB 740
- *Territorial limits – Law of Sea issues?*
- *But note: Acting Chief of Police v Bryan* (1985) 36 WIR 207) (High Court of BVI)

Conclusions

- MEAs play an important role in linking protection of domestic environment with rules of international environmental law
- Dualism requires that the MEA be made part of domestic law by legislation enacted in Parliament
- As a rule, MEAs not incorporated by legislation cannot be applied in the courts, even where accepted by the State.
- In exceptional cases, MEAs are not directly enforceable by the courts but may nonetheless impact judicial decision-making by several means

Conclusions

- Implications for judges
- Broadens the scope of responsibility and required competences
  - treaties
  - law of treaties
  - international judicial decisions
  - customary international law
  - decisions of the institutions created by treaties
- Sensitivity to pleadings and submissions of counsel
- Entrance to exciting new judicial vistas (int'l trade, IPR, LOS, int'l economic law, etc.)

Thank you!

- Mr. Justice Winston Anderson, JCCJ©

National Environment and Planning Agency

Judicial Symposium – November 18-20, 2011
Hilton Rose Hall, Montego Bay

Stop! In the Name of the Law

How the Jamaican Legal Regime Seeks to Enforce Environmental and Planning Laws

Prepared and Presented by Robert Collie, Director of Legal Services and Enforcement

What are we protecting?

Take a look at the following pictures:



What are we protecting?

- **What do all three have in common…**
- **I'll give you a second to figure it out….**

What are we protecting?

If your answer is, they are all located in Jamaica, you win a prize!

Note how beautiful all three are? The beauty of the beach, the beauty of the architecture and the beauty of the people. They all speak to a distinctly Jamaican conception of beauty.

Our task, at NEPA, is to use the tools provided by our legislation to protect all three.

The Legal Regime

NEPA is an executive agency of the Government of Jamaica designed to administer, principally, the following Acts:

- **The Natural Resources Conservation Authority Act;**
- **The Town and Country Planning Act;**
- **The Beach Control Act;**
- **The Wild Life Protection Act;**
- **The Endangered Species (Protection, Conservation and Regulation of Trade) Act; and**
- **The Watersheds Protection Act.**

The Tools

- **Each statutory regime provides NEPA and its officers with a number of tools with which it can try and protect the environment and to ensure proper planning.**
- **The principal tool in all of these regimes is the licensing and permit regime. In other words, if you don't get the permit or license, then you can't, to quote the eminent orator 'Cliff Twang', you 'canna cross it'.**

The Tools

- However, this presentation will not be dealing, in any depth at least, with that principal tool, but rather, the bread and butter tools used by NEPA and its officers to enforce environmental and planning laws.
- Before I get into the substantive tools, I think it is important to bear in mind the difference between 'environmental law' and 'planning law'.

The Tools

- Environmental matters concern principally the effect that mankind, through its manipulation of nature, will have on the flora and fauna of nature. Human beings are to be considered within the context of fauna. Therefore the Environmental laws will be concerned principally with how can we limit man from harming the environment.
- Planning matters concern principally the effect that built engineering of land will have on other people. Its object is, legally speaking, 'land' in its widest legal definition and, most importantly, how land can be used by the person having the right to alter it.

The Natural Resources Conservation Authority Act

- This is the principal piece of legislation protecting our environment. It does so by establishing a body, the Natural Resources Conservation Authority ('NRCA'), in which is reposed the power to protect the environment by determining the granting or refusal of permits and licences to do activities involving the physical environment.

Tools under the NRCA Act

- Right of Entry under s. 20
  - NEPA and its officers have the right to at all reasonable times enter onto any premises to ensure compliance with the NRCA Act or any other law pertaining to the protection of the environment (such as the Beach Control Act or the Wild Life Protection Act).
  - This tool is essential in allowing for the proper monitoring of premises and facilitates greatly investigations by our environmental officers of offending activity.
  - If a person fails to grant entry to our officers we can then prosecute that person.

Tools under the NRCA Act

- Revocation/Suspension of a Permit/Licence under s. 11
  - The trigger that enables NEPA to revoke/suspend a permit/licence is where the offender breaches any of the terms/conditions of the permit/licence or the offender fails to disclose to the Authority any information or documentation required by them.
  - The offender will be given a timeframe within which to take corrective measures and he/she may apply to the Authority within a stated period of time to be heard concerning the breach.
  - If the offender continues with their offending activity after the Permit/Licence has been revoked then they would be guilty of an offence under the Act and would be subject to the other tools in the kit of NEPA, which are……

Tools under the NRCA Act

- The Cessation Order under s. 13 –
  - The trigger that enables NEPA to issue a Cessation Order is as follows:
    - The offender begins an activity which is proscribed under the Act (such as the construction of a sub-division of 10 or more units).
    - The offender does not submit an Environmental Impact Assessment (EIA) when required to do so by the Authority.
    - The offender discharges effluent/sewage or constructs a facility for the discharge of effluent/sewage without a licence.
  - The offender will thereafter have one of two options. He can comply or he can continue in breach.

Tools under the NRCA Act

- **The Cessation Order continued –**
  - If he continues in breach then the Minister (not NEPA) may take such appropriate steps to stop the offending activity and this may include him/her sending police officers to use physical force to stop the activity.
  - Note that it is not a crime for a person not to comply with a Cessation Order. It merely provides a springboard for the Minister to take such action as he/she deems necessary to stop an offending activity. This has the unfortunate implication that if the Minister was so minded, he may choose not to take any action to stop the offending activity.

Tools under the NRCA Act

- **The Enforcement Notice under s. 18 –**
  - The trigger that enables NEPA to issue an Enforcement Notice is where the activity being undertaken by the offender Is such that it poses a 'serious threat to natural resources or to public health'. These words do not need much interpretation and will be determined by the judge as a matter of fact.
  - The Notice will specify what is it that the offender has done and describe the activities which he/she must take in order to remedy the breach.
  - A person receiving this Notice can do one of the following things:
    - Comply – Fixing the breach to the satisfaction of NEPA.
    - Appeal – Where it is that the person is ordered to stop doing something in the Notice, then they have the right to appeal to a specially established Appeals Tribunal as established by s. 34 of the Act.
    - Breach – The offender can continue his offending activity, which leads to…..

Tools under the NRCA Act

- **Supplemental Powers of NEPA under s. 19**
  - Once the offender continues in breach, in addition to the matter being a crime and the person being subject to prosecution, NEPA can if the offender continues in breach enter onto the land where the activity is taking place and take such steps as are necessary to correct the offending activity.
  - Importantly, NEPA may recover, without limit of amount, the sums expended in correcting the activity in the Resident Magistrate's Court. The only limitation placed on the recovery of funds under this section is that the offender (not NEPA) must satisfy the court that the sums expended by NEPA were unreasonable. Of note is that if the offender did not take the opportunity to appeal against the Enforcement Notice then they are barred by the statute from disputing NEPA's claim.

Tools under the NRCA Act

- **Revocation/Modification of planning permission under s. 22**
  - The trigger that enables NEPA to revoke/modify planning permission is where it appears expedient to the Authority to do so having regard to the development order (briefly, these are orders promulgated by the TCPA which govern the use of land within a given Parish) or other material considerations.
  - Therefore, unlike the NRCA tool, the trigger here is not necessarily that the offender has breached the terms and conditions of his permission, rather it takes into account not only where the person might have breached, but other considerations brought to the attention of the TCPA.
  - Of note is that such an order revoking/modifying planning permission has no effect until it is confirmed by the Minister. Again this invites political interference into the enforcement activities of the TCPA.

Tools under the NRCA Act

- **Revocation/Modification of planning permission under s. 22**
  - It is noteworthy that, where permission is revoked or modified the permittee can claim compensation from the TCPA where it is shown that he/she has suffered loss due to the modification/revocation.
  - The permittee will have to be notified by the TCPA of their intention to modify/revoke his permit and he will have the opportunity to be heard by the Minister who will, before he confirms the modification/revocation, afford the permittee and the TCPA the opportunity to be heard.

Tools under the NRCA Act

- **Stop Notice under s. 22A**

The trigger that enables NEPA to issue a Stop Notice is where the development is taking place which is:

- Unauthorised;
- Hazardous; or
- Dangerous to the public.

Tools under the NRCA Act

- **Stop Notice under s. 22A**

  Development is given a wide definition under the Act and is defined under s. 5(2) as the 'the carrying out of building, engineering, mining or other operations in, on, over or under land or making material change in the use of any buildings or other land." Therefore the categories of matters which can be considered under a Stop Notice are extremely wide.

Tools under the NRCA Act

- **Stop Notice under s. 22A**

  Of note is that the categories of persons on whom a stop notice can lawfully be served includes not just the owner/occupier of the land, but also any person 'engaged' in the development or any person appearing to have an interest in the land.

  A person who fails to comply with a Stop Notice is subject to conviction before an RM and a fine of not less than $25,000 and no more than $1,000,000 and a term of imprisonment of up to 6 months.

Tools under the NRCA Act

- **Enforcement Notice under s. 23**
  - **The trigger that enables NEPA to issue an Enforcement Notice is where the a development is taking place without permission or in beach of any of the conditions of a permission granted.**
  - **The Enforcement Notice will describe the offending activity and will require the offender to take such steps to come into conformity, which steps may include the demolition and alteration of any building or works on land.**

Tools under the NRCA Act

- **Enforcement Notice under s. 23**
  - **A person receiving this Notice can do one of the following things:**
    - **Comply – Fixing the breach to the satisfaction of NEPA.**
    - **Appeal – Where it is that the person is ordered to stop doing something in the Notice, then they have the right to appeal to the Minister of Local Government. The decision of the Minister may be appeal to the Court of Appeal by any aggrieved party, which would include NEPA.**
    - **Breach – The offender can continue his offending activity, which leads to…**

Tools under the NRCA Act

- **Injunction under s. 23B**
  - **Where a person does not comply with an Enforcement Notice then NEPA may apply for an injunction to restrain the continued breach.**
- **Entry onto premises to correct breach and recovery of monies under s. 24**
  - **NEPA may enter onto the land and take such steps as are necessary to correct the breach and recover those sums expended in correcting the breach through the RM's Court as a simple contract debt. Of note is that, unlike the NRCA Act, such right of recovery is not given an unrestricted amount of recovery.**
- **Prosecution**
  - **I draw your attention to a peculiar aspect of s. 24 which requires, after a second conviction for failure to abide by an Enforcement Notice, such land which is subject to the Notice shall be forfeited to the Crown.**

Brief Word on Prosecution

I have asked my colleagues in the department to speak at length regarding the prosecution of crimes under the various Acts. However, I just want to mention in brief that prosecution, while a key tool of the Agency, is not the overriding mechanism of enforcement.

We do not take prosecution lightly and it is normally a last resort when dealing with offenders. Regulation is about compliance and most compliance is garnered not through prosecution, but in the steps outlined above.

FIN!

THANK YOU FROM THE NEPA FAMILY

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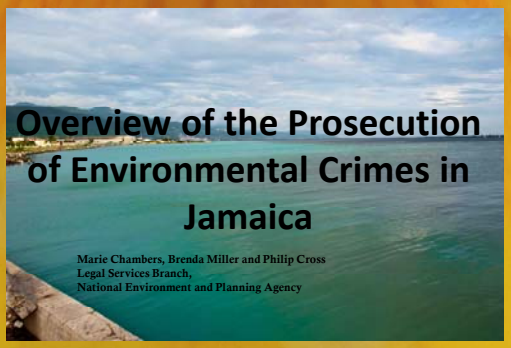


Overview of the Prosecution of Environmental Crimes in Jamaica

Marie Chambers, Brenda Miller and Philip Cross
Legal Services Branch,
National Environment and Planning Agency

Outline of presentation

- Historical Context of Environmental Laws and Enforcement
- Effects of the historical approach undertaken
- Major issues surrounding criminal prosecution of breaches of environmental law
- Solutions proposed

Historical Context

'Enforcing the law' to an environmental health officer means securing compliance with the law through persuasion and advice, rather that the apprehension and subsequent punishment of offenders. The law is regarded as a means to an end rather than an end itself and officers consider themselves to be delivering a service both to the local community –by promoting and maintaining a required standard of public health- and, in some respects, to the regulated – by advising them on how best to attain these standards rather than being members of an 'industrial police force'

-The Reasonable arm of the law: the enforcement procedures of environmental health officers – Bridget M. Hutter

Environmental Laws regulated by Natural Resources Conservation Authority

- Natural Resources Conservation Authority Act,1991
- Wild Life Protection Act, 1945
- Beach Control Act, 1956
- Watersheds Protection Act, 1963
- Endangered Species (Protection, Conservation and Regulation of Trade) Act, 2000

Private Law vs. Public Law Enforcement

Private – Common Law based

- Seen as more effective in achieving remediation of the environment
- Appearance of less bias
- Encourages "polluter pays principle"
- Proof is based on a balance of probabilities
- Tort – negligence, nuisance, Rylands v Fletcher
- Breach of statutory duties of Public Regulatory bodies

Private Law vs. Public Law Enforcement

Public Law Enforcement

- Dependent on Regulators
- Burden of proof beyond a reasonable doubt
- Punishment not usually linked to remediation
- No "polluter pays" embodied
- Usually based on an administrative breach
- Appearance that justice has been served after conviction
- Uniformity in the application of the law

Alternative if Polluter Pays is not adopted

- The Environment pays and there is no remediation or restorative works undertaken
- State/Public pays i.e. state undertakes the clean up and seeks to recover the money in a civil suit

Public Law Enforcement of Environmental Laws

- Voluntary compliance
  - Dependent on relationship between regulator and industry
  - Repeat offenders or major offences are usually prosecuted
  - Use of administrative enforcement tools preferred to criminal prosecution
  - Remediation / restoration of the environment is the main aim of enforcement action
  - Low incidence of criminal enforcement compared to pollution incidences

Enforcement Administrative Tools of the NRCA

- Initial tools of Enforcement
- Formal Administrative Tools
  - Cessation Order - Section 13 NRCA Act
  - Enforcement Notice – Section 13 NRCA Act
  - Revocation and/or Suspension of Permits and Licences – Section 11 NRCA Act, The Natural Resources Conservation (Permits and Licences) Regulations,1996 ; 11A Beach Control Act

Informal Administrative Enforcement Tools

- Warning Notices
- Warning Letters

Aim of Criminal Environmental Law

- Punish offender
- Cessation of the offending activity
- Amelioration/restoration of the environment
- Minimisation of loss to the ecosystem

Peculiarities of Punishment/Crimes under Environmental Law

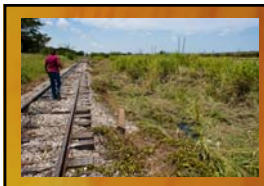
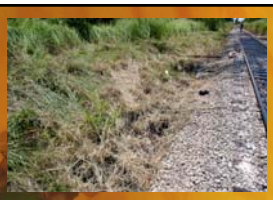
- Loss of ecosystem cannot usually be ameliorated
- Permanent loss of Species of flora and fauna to ecosystem and the value of the ecosystem cannot be restored
- Fines are usually not comparative to profits gained from the breach
- Offences usually relate to administrative breaches and not the substantive activity

Peculiarities of Punishment/Crimes under Environmental Law

- Administrative breaches are usually strict liability offences
  - The offence is usually linked to failure to fulfil a regulatory requirement
    - Environmental Permit
    - Environmental Licence
    - Beach Licence

Initiation of Criminal Prosecution

- Seriousness of the pollution incident
- Behaviour of the offender prior to, during and post pollution incident


Oil pollution incident on land

Issues with prosecution of Environmental breaches

- Response time to pollution incident
  - At the time of investigation the evidence of the pollution may no longer be visible
  - The area may have recovered by the time of the visit
- Collection of evidence
  - Evidence may have disintegrated at time of collection
  - Evidence collected may not be sufficient to prove the offence
  - Lack of historical data for comparisons
  - Difficulties in tracing pollutant to a specific offender
  - Lack of eye witnesses to pollution incidents
  - Certification of evidence
  - Lack of local laboratory facilities

Scene of Pollution Incident at Kingston Harbour – Issues regarding collection of evidence and security of the site

Environmental Officer collecting and securing evidence of fish kill



Loss of various species of fish resulting in significant impact to the ecosystem of the marine area

Issues with prosecution of Environmental breaches

- Maximum Fines are insignificant compared to the economic gains from the breach and do not act as a deterrent
  - Do not accord with polluter pays principle
- The process of voluntary compliance may lead to actions being statute barred
- The environment is usually not remediated/ restored
- The offending activity may continue despite conviction

Issues with prosecution of Environmental breaches

- Complexity of scientific arguments supporting the offence
- Multiple causes of pollution
- Interplay between private, public and criminal law
- Insufficient accepted scientific information related to the damage to the environment

Solutions

- Increase in the fines
- Increase in resources of the Regulatory Agencies
- Expansion of the types of punishments imposed on conviction
  - Community service
  - Remediation of the environment and restorative works
  - Fines directly linked to the extent of the pollution
  - Seizure of assets and pecuniary gains from the commission of the offence

Solutions

- Enforcement should be based on the letter of the law
- Newer laws moving away from 'voluntary compliance'

THE END
Thank you.

LIVING ISLAND STYLE

RECLAMING OUR BEACHES:NEPA TO THE RESCUE

Access to beaches in Jamaica will always be a controversial matter ,for the beach and the sea forms part of our very existence as a people. Culturally, the beach is a place for social interaction, community cohesiveness and ultimately national development.

Examples from Other Caribbean Islands

St. Lucia

- In the Island of St. Lucia which has a French colonial history, the land adjacent to the beach forms the Queen's Chain and is owned by the government. This land extends 57 m inland from the high water mark and is equivalent to 60 French 'pas' (French feet).
- This coastal strip was reserved primarily for the positioning of fortresses for the island's defences during French occupation
- As a general policy, land within the Chain cannot be purchased, only leased, although there are a few exceptions where portions of the Queen's Chain have been sold. With so much of its coastal land in public ownership, the government has greater control over the planning of new beachfront development

(Cambers 1989 cited in Beach Access ,Rights And Justice – A Case For Equity Considerations In Resource Allocation Anthony McKenzie)

Haiti

Haiti, which was also once under French control has a similar pattern of coastal land ownership as St. Lucia. In Haiti no one can own land within 16 m of high water mark, the equivalent of the French law 'Les Quinze Pas du Roi'.

Trinidad and Tobago

In Tobago the sister state of Trinidad and Tobago, the Three Chains Act, vest the strip or belt of land round the coast commonly called the three chains in the respective proprietors and their heirs of lands adjoining the three chains. The Act also provides public access to the beach through property within a specified distance from the high water mark of the adjoining beach.

Barbados

- In Barbados, the beach is considered public property, since the foreshore is public land. The
- ownership of the area of beach land between the high water mark and a structure such as a
- property fence or a building falls is often unstated. This area however is typically viewed as public land and therefore available for the use and enjoyment of the public at large. It is the case
- that unless there is a legal setback, the beach land upwards of high water mark is privately
- owned.

ST. Vincent and the Grenadines

- In St. Vincent and the Grenadines, owners of beachfront lands must ensure that there is a public
- access to the beach. Permanent structures must be at least 12 m from the high water mark, and
- permits are required from the Physical Planning and Development Board.
-

Legislative Developments in Jamaica: From Then to Now

In 1954 the Jamaican government constituted a Commission of Enquiry to " investigate the question of the use of beaches and foreshore lands throughout Jamaica, taking into account the needs of the public for recreational and fishing purposes, and to make recommendations for securing adequate facilities for such purposes."

Legislative Development contd.

Recommendations by the Commission called for the creation of a Beach Control Authority and the enactment of Beach Control legislation. The Commission also made recommendations to provide for action to restore rights of access where these privileges have been enjoyed for a certain period and to acquire beach lands for use by the public through statutory easement, by a long-term lease, negotiated purchase, or by compulsory acquisition. (McKenzie: Beach Access Rights and Privileges)

The result was the Beach Control Act of 1956 which essentially codified common law legal principles relating to beach access and provide a series of mechanisms to secure existing rights and privileges.

Preserving Rights and Privileges

- 3.-(1) Subject to the provisions of this section, all rights in Foreshore and over the foreshore of this Island and the floor of the sea are hereby declared to be vested in the Crown.
- (2) All rights in or over the foreshore of this Island or the floor of the sea derive from, or acquired under or by virtue of the Registration of Titles Act or any express grant or licence from the crown subsisting immediately before the commencement of this Act are hereby expressly~ preserved.

Preserved Rights

Any rights enjoyed by fishermen engaged in fishing as a trade, where such rights existed immediately before the 1st June, 1956, in or over any beach or adjoining land; or the enjoyment by such fishermen of the use of any part of the foreshore adjoining any beach or land in or over which any rights have been enjoyed by them up to the 1 st June, 1956.

- (NRCA VS. Lewis)

  Any person who is the owner or occupier of any land adjoining any part of the foreshore and any member of his family and any private guest of his shall be entitled to use that part of the foreshore adjoining his land for private domestic purposes, that is t o say, for bathing, fishing, and other like forms of recreation and as a means of access t o the sea for such purposes:

Licensing

Section 5 of the Act provides that from and after the 1st June, 1956, no person shall encroach on or use, or permit any encroachment on or use of, the floor of the foreshore or the floor of the sea for any public purpose in connection with any trade or business, or commercial enterprise, or in any other manner (whether similar to the foregoing or not) except as provided by sections 3 , 4 and 8, without a licence granted under this Act.

Licensing

- The Authority may, on application made in such manner as may be prescribed under section 18, grant licences (whether exclusive in character or not) for the use of the foreshore or the floor of the sea for any public purpose, or in connection with any business or trade or for any other purpose (whether similar to the foregoing or not) to any person, upon such conditions (including the payment of an annual fee) and in such form as they may think fit.

Material Consideration

Where an application is made for a licence under subsection (I) , the Authority shall consider what public interests in regard to fishing, bathing or recreation, in regard to the protection of the environment or in regard to any future development of the land adjoining that part of the foreshore in respect of which the application is made, require to be protected, and they may provide for the protection of such interests by and in the terms of the licence or otherwise in accordance with the provisions of this Act.

NEPA to the Rescue

Section 12 imposes a mandatory obligation on the part of the NRCA (The Authority) to from time to time determine the needs and requirements of the public in relation to the use of any portion of land, whether such portion of land adjoins the foreshore or not, for or in connection with bathing or any other form of lawful recreation or for the purpose of fishing as a trade or otherwise or for any other purpose in the interest of the economic development of the beaches of the Island.

Stepping into the 'Public Shoe'

Under Section 14, the Authority may, upon receipt of a petition from not less than five persons concerned in any dispute with respect to the right to use any beach, or any land, road, track or pathway to gain access to such beach, lodge a plaint in the appropriate Court pursuant to section 9 of the Prescription Act with a view to establishing such right; and the Authority shall for the purposes of that section be deemed to be a person concerned in the dispute. (NRCA V Lewis)

Jurisdiction of the Resident Magistrate

Where there is a dispute, the matter is tried before the Resident Magistrate. Where such user is not disputed, the Authority may, if they think it expedient so to do, make an application to the Supreme Court by motion for a declaration of the right of the public t o use such beach, land, road, track or pathway, and the Court, upon being satisfied that the user is not disputed, shall have power to make such order as the Court may think fit.

Discretionary Option to Develop Beaches

Section 13 provides that the Authority may maintain, use and develop any beach or land vested in them or may make provision for the maintenance, use or development of such beach or land by any person, body or authority, on such terms as they may think fit.

Acquisition of land or Rights of User

The Authority may, with the approval of the Minister and by agreement with the owner or any other person having power to dispose of such portion of land, acquire for any purpose specified in the said subsection such portion of land by lease or purchase, or rights of user over such portion of land.

The Concept of the Public Beach

Section 52 of the Beach Control Act provides that the Authority may, in agreement with any person who operates a beach upon payment of a fee declare such beach to be a public bathing beach . Section 54 provides for the revocation of this order.

Section 53 provides for the reverse of compulsory acquisition

How Successful Have We Been?

- Road diversions
- Hotel development
- Public Rights
- Fishermen's rights

What is the future for future generations.

We do have an OBLIGATION TO SECURE ACCESS TO THIS VALUABE RESOURCE FOR OUR CHILDREN AND THEIR CHILDREN

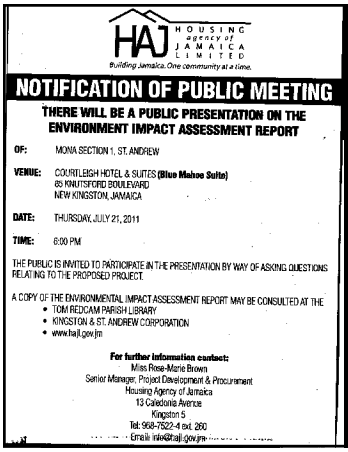
Environmental Jurisprudence in the Commonwealth Caribbean: The EIA Process

Objectives

- Overview of “surprising” legal challenges to administrative decisions involving EIAs in the Caribbean
- What, if any, are the contributions of this jurisprudence?
- Prospects for broadening the scope of public participation in environmental decision-making

Environmental Impact Assessments (EIAs)

- The EIA is a study of the impacts of projects or developments on the environment
- Acceptance internationally:
  - The Rio Declaration on Environment and Development, Convention on Biological Diversity, Espoo Convention, Aarhus Convention and others
  - Over 100 countries incorporated EIA requirements into their domestic legislation
- Significant variation in EIA legislation across the Caribbean



HAJ HOUSING AGENCY OF JAMAICA LIMITED

Building Jamaica, One community at a time.

NOTIFICATION OF PUBLIC MEETING

THERE WILL BE A PUBLIC PRESENTATION ON THE ENVIRONMENT IMPACT ASSESSMENT REPORT

OF: MONA SECTION 1, ST. ANDREW

VENUE: COURTLEIGH HOTEL & SUITES **(Blue Mahoe Suite)**
85 KNUTSFORD BOULEVARD
NEW KINGSTON, JAMAICA

DATE: THURSDAY, JULY 21, 2011

TIME: 6:00 PM

THE PUBLIC IS INVITED TO PARTICIPATE IN THE PRESENTATION BY WAY OF ASKING QUESTIONS RELATING TO THE PROPOSED PROJECT.

A COPY OF THE ENVIRONMENTAL IMPACT ASSESSMENT REPORT MAY BE CONSULTED AT THE
- TOM REDCAM PARISH LIBRARY
- KINGSTON & ST. ANDREW CORPORATION
- www.haj.gov.jm

For further information contact:
Miss Rose-Marie Brown
Senior Manager, Project Development & Procurement
Housing Agency of Jamaica
13 Caledonia Avenue
Kingston 5
Tel: 968-7522-4 ext. 260
Email: info@haj.gov.jm

PUBLIC CONSULTATION:

Much Ado About Nothing?

BELIZE: The Chalillo Dam case (2003-2004)

Belize Alliance of Conservation Non-Governmental Organisations v. Department of the Environment & Anor (Belize) [2003] UKPC 63 and 2004 [UKPC] 6

JAMAICA: The Pear Tree Bottom Case (2006)

The Northern Jamaica Conservation Association & Ors v The Natural Resources Conservation Authority & The National Environment and Planning Agency, Unreported Judgment No 1 and No 2, The Supreme Court, delivered May 16, 2006 and June 23, 2006

TRINIDAD: The Smelter case (2009)

People United Respecting the Environment (PURE) v. the Environmental Management Authority, CV 2007-02263 (High Court of Justice)

Trends in environmental jurisprudence

- Increasing scrutiny of decisions relating to the environment by ordinary citizens and NGOs
- Increasing number of cases challenging the EIA process
- The application of common law principles (natural justice) to protect the environment and promote transparency in decision-making

Broadening the scope for public participation

- Enact EIA regulations with minimum requirements
- A new constitutional right to a healthy environment:-

  "the right, compatible with sustainable development, to enjoy a healthy and productive environment free from the threat of injury or damage from environmental abuse and degradation of the ecological heritage".

  – 13(3) (l) of the Charter of Rights

THANK YOU

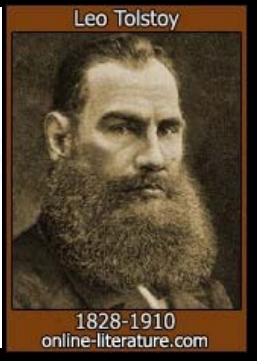
Environmental Justice: New Developments and Innovative Approaches by Judiciary Worldwide

Carole Excell,
World Resources Institute
Judicial Seminar
November 20, 2011

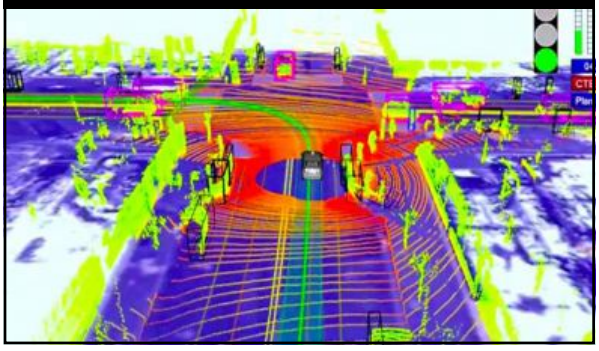
Jamaica

WORLD RESOURCES INSTITUTE

"Judges are a Focal Point for promotion of environmental law " - UNEP



What has driven innovation?



1. Development of specialised environmental courts and tribunals

2. Constitutional rights to a healthy environment

3.New Procedural Rules

4. Improved Access to Justice

What are some examples of Judicial Innovation?

Manila Bay Case Continuous Mandamus

- Greenpeace.org

Public Trust Doctrine

Creative Sentencing

CRIMES AMBIENTAIS

Pena alternativa ajuda projet

CONDENADOS PRESTAM SERVIÇOS NO PARQUE DO MINDU E EMPRESA FUNDA DOOU EQUIPAMENTOS AO BOSQUE DA CIÊNCIA DO INPA

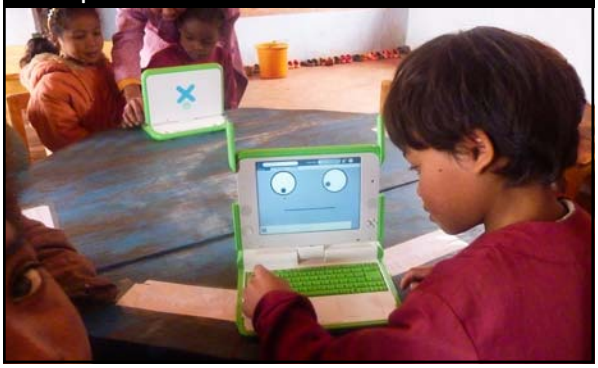
Protective Cost Orders

UK EXPORT FINANCE

Export Credits Guarantee Department

VS

What role should judges play in protection of the environment ?



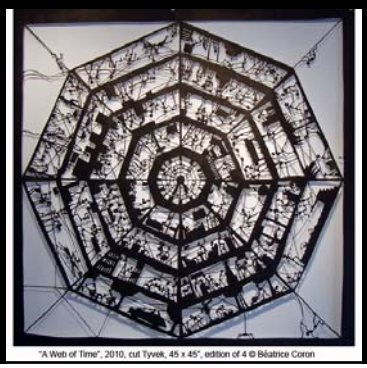
Role of Judges

- uphold the law and contribute to ensuring its enforcement
- take into consideration the impact of decision on natural resources over the long term
- Solve the dispute
- Be innovative

Are all the conditions in Jamaica met to promote innovation?

- Should we be considering a specialised environmental courts? What are the pros and cons?
- Are additional measures to promote access to justice needed?
- How do we ensure that the right to a healthy environment is a right that the citizens of this country can utilise?

Thank You



"A Web of Time", 2010, cut Tyvek, 45 x 45", edition of 4 © Béatrice Coron

The Environmental Commission
OF TRINIDAD & TOBAGO

THE
ENVIRONMENTAL
COMMISSION
OF TRINIDAD AND TOBAGO

A SUPERIOR COURT OF RECORD

THE ENVIRONMENTAL COMMISSION AND ITS MEMBERS

- Established by an Act of Parliament: The Environmental Management Act Chap. 35:05
- Members appointed by the President of the Republic of Trinidad and Tobago
- Members have diverse backgrounds

THE ROLE OF THE ENVIRONMENTAL COMMISSION

- Efficiently and effectively resolve environmental issues through:
  - Public hearings
  - Decisions
  - Alternative Dispute Resolution (Mediation)

THE ROLE OF THE ENVIRONMENTAL COMMISSION (cont'd)

- Provide excellent customer service through:
  - Expeditious resolution of matters
  - Public Education

TYPES OF HEARINGS

APPLICATIONS
- Environmental Management Act Chap. 35:05

COMPLAINTS
- Environmental Management Act Chap. 35:05

APPEALS
- Environmental Management Act Chap.35:05
- Certificate of Environmental Clearance Rules, 2001
- Noise Pollution Control Rules, 2001
- Water Pollution Rules, 2001

APPLICATIONS UNDER THE ENVIRONMENTAL MANAGEMENT ACT

- Applications for deferment of decisions made by the Environmental Management Authority with respect to emergency response activities
- Applications for deferment of decisions by the Environmental Management Authority to designate a defined portion of the environment as an environmentally sensitive area or any species of living plant or animal as an environmentally sensitive species

APPLICATIONS UNDER THE ENVIRONMENTAL MANAGEMENT ACT (cont'd)

- Applications by the Environmental Management Authority for the enforcement of any Consent Order or any final Administrative Order

COMPLAINTS UNDER THE ENVIRONMENTAL MANAGEMENT ACT

- An individual or group of individuals expressing a general or a specific concern with respect to a claimed violation can bring a complaint (a Direct Private Party Action) under the Act

APPEALS UNDER THE ENVIRONMENTAL MANAGEMENT ACT

- An appeal against a decision of the Environmental Management Authority (E.M.A.) to designate an environmentally sensitive species or an environmentally sensitive area
- An appeal where the E.M.A. has failed to comply with the requirement for public participation
- An appeal from a decision by the E.M.A. to refuse to issue a certificate of environmental clearance or to grant such a certificate with conditions

APPEALS UNDER THE ENVIRONMENTAL MANAGEMENT ACT (cont'd)

- Appeals from any determination by the E.M.A. to disclose information or materials claimed as a trade secret or confidential business information

APPEALS UNDER THE CERTIFICATE OF ENVIRONMENTAL CLEARANCE RULES

- An appeal against a decision by the E.M.A. to reject a claim under the Rules that information supplied in an application is a trade secret or confidential business information and should be excluded from the National Register of Certificates of Environmental Clearance

APPEALS UNDER THE NOISE POLLUTION CONTROL RULES

- An appeal against a decision of the E.M.A. under the Rules to :
  - Refuse to grant a variation
  - Refuse to transfer a variation
  - Refuse to renew a variation
  - Revoke a variation
  - Impose any conditions of a variation
  - Reject a claim that information supplied in an application is a trade secret or confidential business information and should be excluded from the Noise Variation Register

APPEALS UNDER THE WATER POLLUTION RULES

- An appeal under the Rules to:
  - refuse to grant a permit or issue a registration certificate;
  - attach conditions to a grant;
  - refuse to grant a variation;
  - refuse an application for a variation;
  - refuse an application for a transfer;

APPEALS UNDER THE WATER POLLUTION RULES (contd.)

- refuse an application for a renewal;
- revoke a grant;
- suspend a grant; or
- reject a claim made that information supplied in a an application is a trade secret or confidential business information and should be omitted from the Water Pollution Register.

MEDIATION

- Conducted at any time
- Members and staff are trained and experienced
- Confidential and without prejudice

THE HEARING PROCESS

- Governed by the procedures provided by:
  - The enabling legislation (the Environmental Management Act Chap. 35:05)
  - The Environmental Commission's Rules of Practice and Procedure
  - The Chairman/ Deputy Chairman presiding at the hearing

THE HEARING PROCESS (cont'd)

- Usual steps in the hearing process:
  - The Commission fixes date of hearing
  - Preliminary hearing
  - The hearing

PUBLIC INFORMATION SESSIONS

- Conducted by Members of the Environmental Commission
- Information about the hearing process
- Information about how to file appeals/ applications/ complaints

THE ENVIRONMENTAL COMMISSION'S DECISIONS

- Decisions on Appeals
  - Dismiss
  - Allow
  - Allow and modify decision or action of the E.M.A.
  - Allow and refer the decision or action to the E.M.A. for reconsideration

THE ENVIRONMENTAL COMMISSION'S DECISIONS (cont'd)

- Decisions on Applications
  - Dismiss
  - Allow and make an Order for deferment of the decision under section 25 or designation under section 41
  - Administrative civil assessment, the court makes an order determining the amount of the assessment

THE ENVIRONMENTAL COMMISSION'S DECISIONS (cont'd)

- Decisions in Civil Actions:
  - Dismiss
  - Allow and issue an Order as if the E.M.A. had taken action under sections 64-67 of the E.M. Act Chap. 35:05
  - Allow it and refer the decision or action back to the E.M.A. for reconsideration

Allow and issue an Order as if the E.M.A. had taken action under sections 64-67 of the E.M. Act Chap.35:05

The Commission may make an administrative civil assessment of –

- Compensation for actual costs incurred by the EMA to respond to environmental conditions or other circumstances arising out of the violation referenced in the Administrative Order;
- Compensation for damages to the environment associated with public lands or holdings which arise out of the violation referenced in the Administrative Order;
- Damages for any economic benefit or amount saved by a person through failure to comply with applicable environmental requirements; and

Allow and issue an Order as if the E.M.A. had taken action under sections 64-67 of the E.M. Act Chap. 35:05 (cont'd)

- Damages for the failure of a person to comply with applicable environmental requirements.

DETERMINATION OF DAMAGES

In determining the amount of damages the Commission shall take into account –

- The nature, circumstances, extent and gravity of the violation;
- Any history of prior violations; and
- The degree of willingness or culpability in committing the violation and any good faith efforts to co=operate with the EMA.

AMOUNT OF DAMAGES

The total amount of damages shall not exceed –

- For an individual, five thousand dollars for each violation and, in the case of continuing or recurring violation, one thousand dollars per day for each such instance until the violation is remedied or abated; or
- For a person other than an individual, ten thousand dollars for each violation and, in the case of continuing or recurrent violations, five thousand dollars per day for each such instance until the violation is remedied or abated.

POWER TO AWARD COSTS

- Participation may involve certain "costs" such as:
  - Fees
  - Travel/accommodation expenses
  - Disbursements

FOR FURTHER INFORMATION …

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