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BEYOND PET BOTTLES AND PLASTIC BAGS

FIXING JAMAICA'S ENVIRONMENTAL REGULATORY FRAMEWORK



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CONTENTS

EXECUTIVE SUMMARY	2
1 INTRODUCTION	4
2 THE LEGAL AND INSTITUTIONAL FRAMEWORK: SYSTEM FAILURE	6
2.1 NATURAL RESOURCES CONSERVATION AUTHORITY ACT 1991	7
GOVERNANCE OF THE IMPLEMENTING BODY	8
BINDS THE CROWN	12
INEFFECTIVE PENALTIES DECIDED ON AND LEVIED IN A FLAWED SYSTEM	14
PERMIT AND LICENSING REGULATIONS (1996)	15
VOLUNTARY COMPLIANCE AND VALIDATION OF SUBMITTED DATA	16
DELEGATION	16
2.2 THE TOWN AND COUNTRY PLANNING ACT	17
2.3 LAND DEVELOPMENT AND UTILIZATION ACT	17
2.4 MERGER OF THE THREE MAIN AUTHORITIES AND THE CREATION OF THE NATIONAL ENVIRONMENT & PLANNING AGENCY	17
2.5 THE PUBLIC INTEREST	20
2.6 A NEW ENVIRONMENTAL REGULATORY AUTHORITY	21
3 THE ENVIRONMENTAL PLANNING FRAMEWORK: INCHOATE AND FRAGMENTED	22
3.1 DEVELOPMENT ORDERS	23
3.2 CASE STUDY: NEGRIL'S DEVELOPMENT ORDER	25
3.3 SANCTIONS UNDER THE TOWN AND COUNTRY PLANNING ACT	27
3.4 PUBLIC CONSULTATION	28
3.5 THE PLANNING AND ENVIRONMENTAL POLICY FRAMEWORK	28
3.6 NATIONAL PHYSICAL PLANS	30
3.7 STATE OF THE ENVIRONMENT REPORTS	31
4 THE COMPROMISED ENVIRONMENTAL IMPACT ASSESSMENT PROCESS	33
4.1 THE INHERENT WEAKNESS OF ENVIRONMENTAL IMPACT ASSESSMENTS	35
4.2 INADEQUATE BASELINE DATA	37
4.3 PUBLIC ACCESSIBILITY	38
4.4 LACK OF REGULATIONS	38
5 JAMAICA'S INABILITY TO DELIVER QUALITY MONITORING AND EFFECTIVE ENFORCEMENT	39
5.1 CASE STUDY: THE FALMOUTH CRUISE SHIP PIER	41
5.2 RESOURCES AND CAPACITIES	43

CONTENTS

6	CONCLUSION AND RECOMMENDATIONS	45
6.1	RECOMMENDATIONS	46
	PROMULGATE THE NEPA ACT AS AN URGENT PRIORITY	46
	COMPLETE AND PROMULGATE THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS	47
	COMPLETE AND PROMULGATE THE REGULATIONS FOR ALL TYPES OF PARKS AND PROTECTED AREAS	47
	PARKS AND PROTECTED AREAS OF VARIOUS TYPES CAN BE DECLARED UNDER THE NRCA ACT, BUT WITH THE EXCEPTION OF MARINE AND NATIONAL PARKS, THERE ARE NO REGULATIONS IN PLACE FOR OTHER TYPES OF PROTECTED AREA. THIS MEANS THAT THERE ARE NO RESTRICTIONS ON WHAT TYPES OF DEVELOPMENT AN OCCUR IN THESE AREAS OR HOW THEY SHOULD BE MANAGED.	47
	INCREASE FINES AND SANCTIONS	47
	COMPLETE THE REMAINING DEVELOPMENT ORDERS AND CONDUCT OUTREACH ON THEIR PROVISIONS	47
	RATIONALIZE AND COMPLETE ENVIRONMENTAL POLICIES	47
	FAST TRACK THE NATIONAL SPATIAL PLAN	48
	SETTLE THE LOCATION OF THE ENVIRONMENTAL PORTFOLIO	48
	ESTABLISH A PARLIAMENTARY COMMISSION ON THE ENVIRONMENT	48
	INVESTIGATE THE FEASIBILITY OF AN ENVIRONMENTAL COURT FOR JAMAICA	48
	LIST OF ACRONYMS	49
	REFERENCES	50
	APPENDIX 1	51
	APPENDIX 2	51
	APPENDIX 3	51
	APPENDIX 4	53

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LIST OF TABLES

TABLE 4: MOVEMENT OF THE ENVIRONMENTAL PORTFOLIO 1991-2018	8
TABLE 1: PARTIAL LIST OF STATE AGENCIES THAT EXERCISE ENVIRONMENTAL FUNCTIONS	10
TABLE 2: OTHER MAIN ENVIRONMENTAL STATUTES ADMINISTERED BY NRCA	11
TABLE 3: SAMPLE OF ENVIRONMENTAL STATUTES NOT ADMINISTERED BY NRCA	11
TABLE 5: CURRENT STATUS OF DEVELOPMENT ORDERS	24
TABLE 6: PARTIAL LIST OF JAMAICA'S ENVIRONMENTAL PLANS AND POLICIES AND THEIR STATUS	28
TABLE 8: ENFORCEMENT WEAKNESSES IDENTIFIED BY JET IN 2009. UPDATED 2018.	40
TABLE 9: ENVIRONMENTAL ENFORCEMENT BY NEPA UNDER ITS RESPECTIVE ACTS (2010-2013)	40
TABLE 10. APPLICATIONS PROCESSED BY NEPA 2017-2018 FISCAL YEAR	43
TABLE 11. TECHNICAL SKILLS AVAILABLE AT NEPA SEPTEMBER 2018	44



EXECUTIVE SUMMARY

Despite many public statements at the highest level assuring commitment to environmental protection and sustainability, the Jamaican government has failed to operationalize these promises. Deforestation, soil erosion, degradation of coastal ecosystems, over-fishing, poor air quality, poorly managed parks and protected areas, pollution of harbours, rivers, streams and aquifers, unplanned and unregulated settlements in areas most vulnerable to natural disasters, inadequate management of solid and liquid waste, and poor development planning and control are key features of the state of Jamaica's natural environment. It has long been recognized that the weakness of the environmental regulatory and institutional framework is the primary obstacle to good environmental stewardship.

The promulgation of the Natural Resources Conservation Authority Act in 1991 ostensibly sought to address the extant fragmentation of multiple laws, policies and regulations, the majority of them incomplete and not promulgated, but almost thirty years later, the consolidation of Jamaica's environmental regulatory framework remains unfinished business.

Given the seriousness of the problem and Jamaica's vulnerability to the impacts of environmental degradation on the economy and public health, this report seeks to obtain a better understanding of why the environmental protection framework is so weak, and how it can be strengthened. This report reviews and assesses four aspects of Jamaica's planning and environmental legislative and enforcement framework, with a view to identifying weaknesses and proposing remedies:

- » **The Natural Resources Conservation Authority Act of 1991, relevant regulations and the permit and licensing system**
- » **The Town and Country Planning Act of 1958 and Development Orders**
- » **The environmental impact assessment process**
- » **Monitoring and enforcement procedures**

The early commitment to protection of the environment via the Natural Resources Conservation Authority Act has never been delivered. A culture of non-compliance with environmental rules has evolved, a culture in which state agencies and private sector actors are not constrained by laws or regulations in their actions, regardless of the environmental effects. This culture of impunity has been exacerbated by a lack of enforcement of the Permit and Licensing System that was put in place five years after the promulgation of the NRCA Act, where environmental permits and licenses were to be issued for a wide range of types of development. There is an absence of effective enforcement measures, including the application of sanctions. Monitoring of the health of the natural environment remains extremely weak. There are significant execution gaps, and many identified solutions, policies, plans and programmes take far too long to be implemented. What has existed for nearly 30 years is a situation where overlapping and diffuse responsibilities for the environment remain spread across many different

government agencies, leading to confusion, delays and deflection of responsibilities.

What then remains is an environmental regulatory framework comprised of a long list of worthwhile intentions, codified in incomplete policies, and characterized by failure to act over long time periods. Many recommendations have simply not been carried out, many plans not implemented, and many declarations not followed through. The main weakness of Jamaica's environmental framework is lack of sufficient interest on the part of the government and its agents to protect our natural environment in a substantive way. While there are specific areas that call for attention, such as the current ineffectiveness of low fines, and the need for greater and more meaningful public engagement, the most important change that is needed in Jamaica is a commitment to execute and complete identified actions.

The report recommends:

- » **Promulgate the NEPA Act as an urgent priority**
- » **Complete and promulgate the environmental impact assessment regulations**
- » **Complete and promulgate the regulations for all types of parks and protected areas**
- » **Increase fines and sanctions for breaches of the NRCA Act and regulations**
- » **Complete the remaining Development Orders and conduct public outreach on their provisions**
- » **Rationalize and complete draft environmental policies**
- » **Fast-track the National Spatial Plan**
- » **Settle the location of the environmental portfolio for at least ten years**
- » **Establish a Parliamentary Commission on the Environment**
- » **Investigate the Feasibility of an Environmental Court for Jamaica**

1. INTRODUCTION

The state of Jamaica's natural environment, and its management, have been documented by the Jamaican government in a series of six reports between 1987 and 2013.¹ The reports consistently describe deforestation, soil erosion, degradation of coastal ecosystems, over-fishing, poor air quality, poorly managed parks and protected areas, pollution of harbours, rivers, streams and aquifers, unplanned and unregulated settlements in areas most vulnerable to natural disasters, inadequate management of solid and liquid waste, and poor development planning and control.

The very first State of the Environment (SOE) Report, the Jamaica Country Environment Profile (CEP) in 1987, identified the weakness of the environmental regulatory and institutional framework as an obstacle to good environmental stewardship: "...a review of the institutional framework that existed in the 1960s to early 1970s reveals a fragmented approach to environmental management, with numerous agencies and committees sharing responsibility for the administration of various environmental laws."² The CEP also identified the chronic shortage of technical staff as an obstacle. The promulgation of the Natural Resources Conservation Authority Act in 1991 ostensibly sought to address this fragmentation, but almost thirty years later, the consolidation of Jamaica's environmental regulatory framework remains unfinished business.³

¹ State of the Environment (SOE) Reports have been done in 1995, 1997, 2001, 2010 and 2013. The State of the Environment Reports will hereinafter be footnoted as "SOE" with the relevant year.

² "Jamaica Country Environmental Profile," Natural Resources Conservation Division, Ministry of Agriculture, 1987.

³ SOE (2010), p. 138.

One of the goals of Jamaica's National Development Plan, Vision 2030, is that Jamaica has a healthy natural environment.⁴ Vision 2030 outlines examples of Jamaica's environmental problems as follows:

- » 94 per cent of Jamaica's forests is disturbed and more than 20 per cent of land within forest reserves has been impacted by human activity;
- » Almost all of our watersheds have been impacted by human activity and experience some level of degradation;
- » All major river courses receive pollutants at some point from industrial waste, sewage, silt, debris, and agricultural run-off;
- » 30 per cent of mangrove forests has been lost due to activities such as infilling for construction of hotel and housing developments;
- » Land use pressures have resulted in environmental degradation, including exacerbation of erosion and flooding, degraded and diminishing wetlands, compromised water resources, and deteriorating coral reefs. Land use pressures are greatest in the coastal and urban areas. Contributing factors are related to poor agricultural and forestry practices, human encroachment in forest reserves and protected areas, urbanization, and population growth in vulnerable areas;
- » Direct release of pollutants to the air occurs from economic activities such as bauxite and alumina mining and production.

Jamaica is ranked 78th out of 180 countries in the 2018 Environmental Performance Index, behind its Caribbean

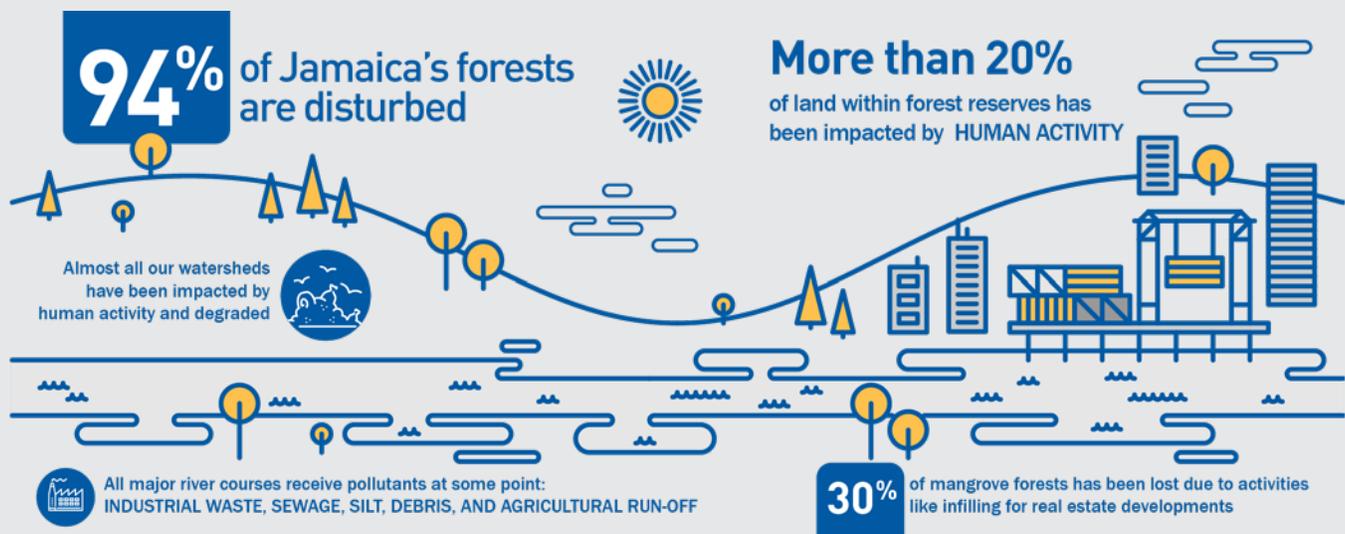
neighbours of Trinidad and Tobago, St. Vincent and the Grenadines, the Dominican Republic, Cuba, Dominica, and Antigua and Barbuda.⁵

Given the seriousness of the problem and Jamaica's vulnerability to the impacts of environmental degradation on the economy and public health, there is an urgent and objective need for a better understanding of why the environmental protection framework is so weak, and how it can be strengthened.

This report reviews and assesses four aspects of Jamaica's planning and environmental legislative and enforcement framework, with a view to identifying weaknesses and proposing remedies:

- » The Natural Resources Conservation Authority Act of 1991, relevant regulations and the permit and licensing system
- » The Town and Country Planning Act of 1958 and Development Orders
- » The environmental impact assessment process
- » Monitoring and enforcement procedures

The report conducts detailed reviews of the main environment and planning statutes and orders, the State of the Environment (SOE) Reports between 1997 and 2013, and a number of other relevant reports such as Auditor General's performance audits, green papers (policies), and reports issued by environmental NGOs. Interviews with key actors and stakeholders were conducted to gather additional data and insights not contained in the reports.



⁴ "Vision 2030 Jamaica, National Development Plan," 2009. Planning Institute of Jamaica. (www.vision2030.gov.jm/National-Development-Plan)

⁵ Yale Center for Environmental Law & Policy, "2018 Environmental Performance Index." (<https://epi.envirocenter.yale.edu/downloads/epi2018policymakerssummaryv01.pdf>). The Environmental Performance Index ranks country performance on high priority environmental issues.

2. THE LEGAL AND INSTITUTIONAL FRAMEWORK: SYSTEM FAILURE

The protection and use of Jamaica's natural environment is governed by a number of laws administered by various state agencies across different ministries. Some policy direction is set by the environmental minister with regard to specific environment-related matters, with the idea that these policies and the respective legal mandates are carried out by the relevant technical agencies and/or ministry staff. However there are other environment-related matters that are administered by other government agencies and ministries, pertaining to other laws and regulations, and these often overlap with the direct functions of the environmental ministries and agencies. For example, mining and quarrying is governed by the Mining Act of 1947 and the Quarries Control Act of 1984, which is regulated by the Mines and Geology Division, currently under the portfolio of the Ministry of Transport and Mining. This complex regulatory framework has not delivered an effective environmental management regime for Jamaica, as deterioration of natural resources continues to be evident.

2.1 NATURAL RESOURCES CONSERVATION AUTHORITY ACT 1991

The first and most significant of the environment-specific laws is the Natural Resources Conservation Authority Act (NRCAA) of 1991, which established the Natural Resources Conservation Authority (NRCA), to “take such steps as are necessary for the effective management of the physical environment of Jamaica so as to ensure the conservation, protection, and proper use of its natural resources.”⁶ The NRCAA is Jamaica’s main environmental statute and it regulates specific categories of enterprise, construction and development which have been declared in the Order and take place anywhere in Jamaica.⁷ An order under the NRCAA 1996 Permit and Licensing regulations conferred prescribed area status on the entire island, giving the NRCA jurisdiction over any activity conducted anywhere in Jamaica which could result in damage to the natural environment or public health.⁸ There is also provision for Ministerial Orders for protection of the environment under Section 32 of the NRCA Act.

The NRCAA and its corresponding regulations (emission standards and regulations, wastewater and sludge, permit and licensing regulations, marine parks, national parks, and movement of hazardous waste) give the broadest powers relating to environmental protection to any single body in Jamaica.⁹ These powers are highly discretionary and include the authority to:

- » Issue permits and licenses to guide specific categories of development that are likely to pose harm to the natural environment or public health and therefore require an environmental permit;¹⁰
- » Regulate air emissions and discharges of liquid effluent;¹¹
- » Require an environmental impact assessment (EIA) for any development that is having or likely to have an adverse impact on the environment;¹²
- » Carry out enforcement action (warning notices, enforcement notices, breach notices, cessation notices, suspension or withdrawal of permits, verbal warnings, legal action) against any undertaking which “poses a serious threat to the natural resources or to public health” anywhere in Jamaica;¹³
- » Carry out and recover costs of a cleanup or restoration of environmental damage;¹⁴
- » Make orders, declare, and manage national parks and protected areas;¹⁵
- » Establish regulations, codes of practice, standards and guidelines regarding any sort of development;¹⁶
- » Promote public awareness “of the ecological systems of Jamaica” and their importance;¹⁷ and,
- » Advise the relevant minister on matters of general policy relating to the environment.¹⁸

⁶ The Natural Resources Conservation Authority Act 1991, s. 4(1)(a). The URLs for all the laws and regulations mentioned in this report are in Appendices 3 & 4.

⁷ The Natural Resources Conservation Authority Act 1991, s. 9(1).

⁸ The Natural Resources (Prescribed Areas) (Prohibition of Categories of Enterprise, Construction and Development) Order, 1996; The Natural Resources (Prescribed Areas) (Prohibition of Categories of Enterprise, Construction and Development) (Amendment) Order, 2015.

⁹ “Regulations,” National Environment and Planning Agency, last updated December 31, 2014. (http://nepa.gov.jm/new/legal_matters/legal_framework/regulations.php)

¹⁰ The Natural Resources Conservation Authority Act 1991, s. 9(1). Development here can mean virtually any physical structure or alteration to the natural environment, including roads, airports, ports, hotels, farms, housing developments, and fish farms.

¹¹ Regulations exist pertaining to types of factories, but not—so far—for ships, and not for cars.

¹² The Natural Resources Conservation Authority Act 1991, s. 10(1)(b).

¹³ The Natural Resources Conservation Authority Act 1991, s. 11, 13, 15, 17, 18.

¹⁴ The Natural Resources Conservation Authority Act 1991, s. 19(1)

¹⁵ The Natural Resources Conservation Authority Act 1991, s. 4(1)(c), 5(1).

¹⁶ The Natural Resources Conservation Authority Act 1991, s. 4(2)(d).

¹⁷ The Natural Resources Conservation Authority Act 1991, s. 4(1)(b).

¹⁸ The Natural Resources Conservation Authority Act 1991, s. 4(1)(d).



GOVERNANCE OF THE IMPLEMENTING BODY

The NRCA, generally referred to as “the Authority,” or the NRCA Board, consists of between seven and ten members appointed by the relevant minister for a renewable term, not to exceed three years for each term.¹⁹ The “relevant minister” is determined by which ministry the environmental portfolio is assigned to.

Since its inception, the environmental portfolio (as it is embodied by the NRCA) has fallen under 13 different government ministries and been led by 11 different ministers, including two Prime Ministers.²⁰ Placing the environmental portfolio within other ministries, often with

explicit development mandates such as tourism or housing, can lead to conflicts of interest. Inevitably, the environmental mandate loses.

Since the change in administration in 2016, portfolio responsibility for the environment falls under the Ministry of Economic Growth and Job Creation at the Office of the Prime Minister. The de jure environmental minister is therefore the Prime Minister. The Prime Minister has, however, delegated the environmental portfolio to Minister without Portfolio in the Office of the Prime Minister, the Hon. Daryl Vaz, who is thus the de facto environmental minister.

Table 4: Movement of the Environmental Portfolio 1991-2018

DATES	MINISTRY	MINISTER WITH PORTFOLIO RESPONSIBILITY FOR THE ENVIRONMENT
1991	Ministry of Development, Planning and Production	Hon. P.J. Patterson
1992	Ministry of Tourism and the Environment	Hon. John Junor
1993	Ministry of Public Service and the Environment	Hon. Easton Douglas
1995	Ministry of Environment and Housing	Hon. Easton Douglas
2000/1	Office of the Deputy Prime Minister and the Ministry of Land and Environment	Hon. Seymour Mullings
2001/2	Ministry of Land and Environment	Hon. Horace Dalley
2002/6	Ministry of Land and Environment	Hon. Dean Peart
2006/7	Ministry of Local Government and Environment	Hon. Dean Peart
2007/8	Ministry of Health and Environment	Hon. Rudyard Spencer
2008/11	Office of the Prime Minister	Most Hon. Bruce Golding Hon. Daryl Vaz (Minister without portfolio)
? (short period)	Ministry of Water and Housing	Hon. Horace Chang
2011	Ministry of Water, Environment and Housing	Hon. Horace Chang
2011	Ministry of Water, Environment, Housing and Local Government	Hon. Horace Chang
2012/16	Ministry of Water, Land, Environment and Climate Change	Hon. Robert Pickersgill
2016	Ministry of Economic Growth and Job Creation	Most Hon. Andrew Holness Hon. Daryl Vaz (Minister without portfolio)

Source: NEPA Key: Orange – Government formed by the Peoples National Party; Green – Government formed by the Jamaica Labour Party

¹⁹ The Natural Resources Conservation Authority Act 1991, First Schedule 1, 3(1).

²⁰ Under the Westminster-Whitehall system of government, the model of Jamaica’s democratic system, the cabinet is comprised of members of Parliament of the ruling party, and from the ruling party’s senators. With each change of administration there is often a shuffling of the tasks and responsibilities that come under various cabinet portfolios.

Board appointees are political appointments. When the administration changes, the directors of all state boards typically resign to be replaced by others more aligned with the new administration, a process which can cause considerable delay as well as find certain well-connected people sitting on multiple boards. As such, directors' main qualification tends to be an affiliation to the ruling party; they are not necessarily equipped with the required technical knowledge to assess the recommendations of the agency's technical staff, nor do many of them have any experience with environmental matters. While the argument may be made that it is the role of the salaried technocrats within the agency to carry out its mandate, there is an informed view that the boards should be populated by people concerned with conservation, and with experience and insight in ecological matters, sustainability, and climate resilience. While the technical agency provides the political directorate with lists of competent persons with those attributes and qualifications, these seem to be of limited value, as the practice has been that those who are appointed generally do not meet that criteria.²¹ While there is often a selection of a highly visible and/or well-known environmental advocate, it is generally just one or two people with insufficient clout to have any meaningful influence on the board's decisions. The appointment of sufficient numbers of people with a known or stated interest in the environment seldom occurs. This issue of lack of specific expertise related to the organization's mandate was recognized by the administration in 2016 as a problem across all state boards and a proposed reform was promulgated in 2018.

The NRCA Board carries out its work by various modalities, including communicating government policy directions, monthly and ad hoc board meetings, monthly subcommittee meetings, review of technical reports and directing specific interventions for protection/preservation of the environment.²² The number and type of sub-committees vary, but generally include a Technical Review Committee, a Beaches and Coastal Resources Management Committee, a Biodiversity and Game Birds Committee, a Legal and Enforcement Committee, and an Air Quality Management Committee.²³ Each committee is guided by its own Terms of Reference. The Technical Review Committee, for example, reviews all applications for permits and licenses, and recommends approval or rejection to the NRCA Board, along with suitable permit/license conditions.

The Act explicitly gives the minister broad discretionary

powers, and the regulations allow for ministerial discretion to "give directions of a general character" regarding policy and the performance of the NRCA's functions.²⁴ An "aggrieved person" has the right to appeal against any decision of the NRCA in relation to a permit or license, and the Minister has wide powers to vary or uphold decisions and does not have to give reasons.²⁵ An aggrieved person is defined as anyone who has been refused a permit or license, or who objects to the terms and conditions of the permit/license.²⁶ The Minister's decision is final.²⁷ The implications of the Act's openness in this regard are manifest. Regardless of the intentions of the NRCA salaried staff or even the appointed board, the minister's intentions, however ill-advised, will prevail. The Minister can ignore the recommendations of his technical staff, legally, and there is no explicit right of appeal contained in the NRCA Act for the public to object to the granting of permits/licenses, or to challenge their conditions. The public can, however, subject a minister's final decision to judicial review by the courts. A 2010 Green Paper on a proposed new environmental regulatory authority included a specific provision to protect the proposed entity from interference from the political directorate.²⁸ (The new authority never materialized.)

There are other aspects of the Act which allow for highly discretionary decisions, and where the Act is open to interpretation. Chief among these is the word "may". The Act uses the word "may" to cover most of the Authority's functions. For example, Section 2, 1 (a) reads: "The Authority may develop, implement and monitor plans and programmes relating to the management of the environment and the conservation and protection of natural resources." Section 6 (a,b): "The Authority may grant a permit subject to such terms and conditions as it thinks fit; or refuse to grant a permit."

The unwieldiness of the regulatory framework further lends to the Act's inefficacy. Section 9 of the NRCA Act requires the Authority to consult "any agency or department of Government exercising functions in connection with the environment." This is extremely broad, and the law prescribes no time frame for response. The website of the National Environment and Planning Agency (NEPA) lists 100 statutes and regulations relating to the environment.²⁹ Applications for large projects may have to be reviewed by over 20 state agencies, spanning several ministries.

²¹ Franklyn McDonald, former Executive Director of NRCA and CEO of the National Environment and Planning Agency (NEPA) 1992-2004, phone conversations with author, August 22, 2018.

²² Peter Knight, CEO of NEPA, e-mail to author, October 4, 2018.

²³ NEPA executives, personal interviews with author, September 3, 2018.

²⁴ The Natural Resources Conservation Authority Act 1991, s. 7.

²⁵ The Natural Resources Conservation Authority Act 1991, s. 35(1) and (2).

²⁶ The Natural Resources Conservation Authority Act 1991, s. 35(3).

²⁷ The Natural Resources Conservation Authority Act 1991, s. 35(2).

²⁸ Whether this was inserted in the proposal because of specific concerns about ministerial overreach in environmental matters, or was simply a reflection of broader concerns about the abuse of ministerial power, is not clear.

²⁹ "Environmental and Planning Laws of Jamaica," National Environment and Planning Agency, last updated July 9, 2018. (<http://nepa.gov.jm/new/legal/matters/laws/>). NEPA, which is discussed in much greater detail further on, was created in 2001 as a state executive agency to carry out the technical (functional) and administrative mandate of the three statutory bodies: the Natural Resources & Conservation Authority (NRCA), the Town & Country Planning Authority (TCPA), and the Land Development & Utilisation Commission (LDUC).

Table 1: Partial list of state agencies that exercise environmental functions

1	Environmental Health Unit (EHU) (e.g. all sewage treatment facilities)	13	Office of Disaster Preparedness and Emergency Management (ODPEM) (e.g. developments which increase vulnerability to natural disasters or occur in flood or earthquake zones)
2	National Water Commission (NWC) (e.g. new housing developments requiring water supply)	14	Parish Councils, now called Municipal Corporations (on a case by case basis)
3	National Environment and Planning Agency (NEPA) (e.g. all developments which could affect the environment or public health)	15	National Land Agency (NLA) (e.g. developments occurring on Crown lands)
4	Jamaica Public Service Company Ltd. (JPSCo) (e.g. new housing developments requiring electricity supply)	16	National Irrigation Commission (NIC) (e.g. farming projects requiring water for irrigation)
5	National Works Agency (NWA) (e.g. roads)	17	Rural Agriculture Development Authority (RADA) (e.g. developments occurring in areas designated for agriculture)
6	Jamaica Fire Brigade (JFB) (e.g. multi storey buildings, or any development where access to fight fires is an issue)	18	Civil Aviation Authority (CAA) (e.g. multi storey developments whose height or location might impede air traffic)
7	Jamaica Bauxite Institute (JBI) (e.g. bauxite mining or processing, bauxite roads)	19	Urban Development Corporation (UDC) (e.g. projects taking place on land owned by the UDC)
8	Mines and Geology Division (MGD) (e.g. all mining or quarrying projects, including prospecting)	20	Island Traffic Authority (ITA) (e.g. regulations to control vehicular emissions)
9	Water Resources Authority (WRA) (e.g. developments which want to abstract water for farming or domestic use)	21	National Solid Waste Management Authority (NSWMA) (e.g. projects which generate solid waste, or in areas where solid waste collection is inadequate)
10	Forestry Department (e.g. developments taking place in forest reserves)	22	Ministry of Economic Growth and Job Creation (MEGJC) ³⁰ (e.g. projects which may conflict with official policy)
11	Fisheries Division (e.g. activities taking place in marine parks, requiring quotas for protected species)	23	Customs Department (e.g. importation of goods which could affect the environment or public health)
12	Jamaica National Heritage Trust (JNHT) (e.g. developments which could affect heritage resources)	24	Ministry of Agriculture (MOA), Plant and Animal Quarantine Division (e.g. importation of live animals which could introduce diseases or become invasive if allowed to escape)

In addition to the sheer number of agencies that may “exercise functions in connection with the environment”, many of them perform overlapping functions. For example, with regard to air quality, there are four state agencies: NEPA, via air quality standards under the NRCA Permit and Licensing regulations; the Ministry of Health via the Public Health Nuisance Regulations; the Jamaica Fire Brigade via Country Fires Act; and the Jamaica Bauxite Institute (JBI),

via delegation of environmental monitoring of the bauxite industry. There are five agencies whose work pertains to water: NEPA, regarding raw water quality; the Water Resources Authority, regarding underground and surface water resources; the National Water Commission, regarding treated water; the Forestry Department, regarding forests and watersheds; and the Ministry of Health regarding treated water quality.³¹

³⁰ Compiled from SOE (2010) and “Establishment of an Environmental Regulatory Authority,” Green Paper No 2/2010, Public Sector Modernisation Division, Office of the Cabinet (Jamaica), November 16, 2010. (http://japarliament.gov.jm/attachments/440_Green%20Paper%20No.%202%20-%202010%20pt1.pdf) Hereinafter referred to as Green Paper No 2/2010.

Table 2: Other main environmental statutes administered by NRCA

 <p>Beach Control Act 1956, most recent amendment 1991</p>	 <p>Wildlife Protection Act 1945, most recent amendment 2016</p>	 <p>Watersheds Protection Act 1963, most recent amendment 1991</p>
 <p>Endangered Species (Protection, Conservation and Regulation of Trade) Act 2000</p>	 <p>Town and Country Planning Act 1958</p>	

Table 3: Sample of environmental statutes NOT administered by NRCA

1 Forestry Act 1996	9 Fisheries Industry Act 1976
2 National Solid Waste Management Authority Act 2001	10 Clean Air Act 1974
3 Public Health (Nuisance Regulations) 1995	11 Country Fires Act 1942
4 Building Act 2017	12 Pesticides Act 1987
5 Housing Act 1969	13 Water Resources Act 1995
6 Urban Development Control Act 1968	14 Quarries Control Act 1984
7 Exclusive Economic Zone Act 1991	15 Mining Act 1947
8 Maritime Areas Act 1996	

³¹ SOE (2010), SOE (2013).

This surfeit of GOJ agencies that exercise functions regarding the environment affects both those who apply for permits and licenses and the general public. The Natural Resources Conservation Authority Act's requirement for consultation can cause considerable delay in processing development applications. Further, the responsibility for regulating environmental issues resides in numerous state agencies under multiple laws, resulting in a lack of clarity

for developers, the public, and, it would appear, the agencies themselves, which readily deflect responsibility, sometimes incorrectly. For example, citizens affected by the burning of trash or the clearing of land by fire (open burning) are often told by NEPA to call the Ministry of Health, but the Ministry of Health then advises that they are only responsible for indoor air quality and suggests a call to the Jamaica Fire Brigade.



BINDS THE CROWN

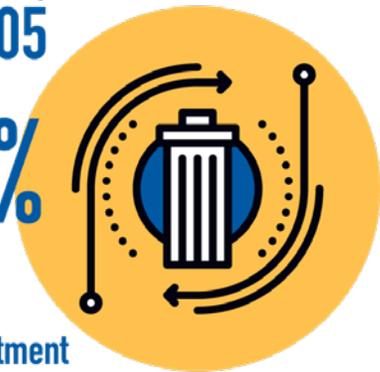
While the NRCA is obliged by the Act to consult a plethora of state agencies, Section 39 of the Natural Resources Conservation Authority Act empowers the NRCA to take enforcement action against state agencies which are either in breach of permits/licenses, or have not applied for or been granted a permit or license before carrying out a development. When a statute explicitly requires adherence by the state, this is referred to as “binding the Crown”. In practice, however, effective and meaningful sanctions against state agencies is rare.³² For example, in September 2018, seven of eight of Jamaica's “approved” waste disposal sites are operating without the permits required by law.³³

Poorly managed waste disposal sites can have significant environmental impacts on air, water and public health. Properly designed and managed sanitary landfills are lined to prevent contamination of ground water, collect all gases and leachate (water contaminated by flowing through or over the waste) for treatment, are covered daily to prevent fires, and separate different types of waste for processing. Access to a sanitary landfill is strictly controlled and workers wear protective gear. All Jamaica's waste disposal sites are accessible to the public due to lack of fencing and inadequate security and in some cases, people live on the dumpsites. Jamaica has no sanitary landfills.

The sewage treatment plants operated by the National Water Commission are another example of state agencies failing to adhere to the law, without sanction. An internal NEPA report from 2004-2005 found that there was “very low frequency” of monitoring visits by NEPA, and compliance with effluent standards was “an alarming situation”, with only 40% of sewage treatment plants meeting standards for Biological Oxygen Demand (BOD).³⁴ The report described the waste

An internal NEPA report from
2004–2005
found only

40%



of sewage treatment
plants meeting standards
for Biological Oxygen Demand (BOD)

treatment sector as in a “woeful state”, with specific mention of improper plant design, old technology, overloading, poor maintenance, and improper operations.³⁵

Some five years later, there was a 26% compliance rate for the National Water Commission's sewage treatment plants, a 37% rate for plants operated by the GOJ, and none of nine hospitals with sewage treatment plants met standards.³⁶ The situation continues to be grim: in 2013 only 4% of the Water Commission's sewage treatment plants were in compliance, and only 33% of GOJ-operated plants met standards. There were fewer hospital sewage plants, from nine to five, and one was by then meeting standards. Even the hotel-operated STPs met standards only 54% of the time.³⁷

³² NEPA regards enforcement action, regardless of outcome, as a sanction. For example, although the dumps have been operating illegally NEPA has neither closed them nor taken them to court. Nevertheless they regard the enforcement notice they sent as a sanction.

³³ National Environmental Planning Agency (NEPA) senior director, personal communication with author, September 3, 2018. The Riverton Dump (waste disposal site) was granted an environmental permit in 2005, which was suspended, although the dump continued to operate. The permit expired in 2010 without adherence to any of its conditions, and was not reissued until 2018. The Riverton waste disposal site now has been issued with two environmental permits, governing general disposal and hazardous waste disposal.

³⁴ Biological Oxygen Demand (BOD) is the amount of dissolved oxygen needed by aerobic biological organisms to break down organic material present in a given water sample. It is a common measure of water quality.

³⁵ Dillard Knight, “State of the Sewage Treatment and Disposal Sector in Jamaica: Towards meeting the requirements of local sewage effluent regulations and the LBS protocol,” 2004.

³⁶ SOE (2010).

³⁷ SOE (2013), p. 210.

NEPA's Wastewater Treatment Plant audit report (2017-2018) of the National Water Commission plants showed 46.3% of NWC plants produced effluent of poor quality (meeting less than two of the required parameters), 41.4% produced effluent deemed satisfactory by NEPA (meeting three to four of the required parameters), and 12.2% produced effluent of good quality (meeting five to six of the required parameters). None of the NWC's plants audited met all of the required standards. One of the plants producing poor quality effluent was the Soapberry Wastewater Treatment Plant in St. Catherine, the main sewage plant for Kingston and environs.

NEPA's audit report went on to list the following concerns regarding the NWC plants:

1. While the aesthetics of some plants especially those with current licensees could be considered satisfactory, most were in a deplorable state.
2. Many of the facilities were considered operational; however some had non-functional mechanical component(s) or the overall plant was not working efficiently.
3. 95% of the plants lacked flow meters or a flow measuring mechanism.
4. Some plants had inadequate supply of chlorine for the disinfection of the effluent.
5. In some instances the wastewater treatment plants were used as a walkway for nearby residents as well as housing for squatters.
6. Livestock were observed to be tied or loitering at some facilities.
7. The majority of the facilities are not licenced under the current Wastewater and Sludge Regulations.
8. Insufficient effluent data submitted to the Agency for some plants.³⁸

Inadequate treatment of sewage threatens public health, due to the discharge of bacteria-laden effluent into water bodies, drainage channels, or on land, where it is eventually washed to the sea in heavy rain. The nutrients in sewage also harm coral reefs, causing algae to grow over the reefs, killing them.

This failure in the area of sewage treatment, and the absence of any punitive action taken against those operating plants

that consistently do not meet basic standards set out in law, is emblematic of the overall picture of impunity enjoyed by state agencies who perpetuate environmental breaches. Throughout the system there is little political will to apply sanctions to state agencies. Various enforcement measures (enforcement notices, stop orders and others) are used, but prosecutions are rare. In any event, the fines are so low that they do not deter breaches, so that even in those cases where a fine is levied it is generally painless. State agencies in breach of environmental laws may claim there is insufficient budget to carry out statutory functions, but it is not clear whether this is an adequate defence in law. Cases argued before United Kingdom (UK) courts have reached different conclusions on this point, depending on whether the applicable statute imposed a duty or a power on the government agency.³⁹ This principle has not been tested in Jamaican courts, although there was a case brought by the Jamaica Environment Trust and Harbour View residents in 2010 challenging the National Water Commission's failure to effectively operate the Harbour View Sewage Treatment Plant, which ended with a consent order whereby the National Water Commission agreed to fix the plant.⁴⁰

There is a moral hazard contained in this dynamic. Even in the event that the NRCA exercises its powers in this regard, and a violation does become a matter for the court, this is a no-win situation: if prosecution against state agencies results in a fine, it would have to be paid by taxpayers. There are also hurdles to enforcement action against entities that manage essential facilities and services such as sewage treatment plants and waste disposal sites, because they cannot simply be shut down, however poorly managed, given the massive inconvenience to the entire society, and the likely greater environmental degradation that would result. Indeed, malfunctioning sewage plants cannot be closed, they can only be decommissioned after an alternative method of sewage treatment has been found, which would also take resources, the lack of which would have brought about the compliance failures in the first instance.

The visible breaches of environmental standards by state agencies and the general understanding that they can "get away" with low standards, weak compliance, and causing damage to the natural environment establishes a perverse norm that is then followed by private citizens and businesses. The state's example, together with the extant complexity and lack of clarity on which agency has responsibility for what aspect of the environment, makes for a regulatory environment that is observed mostly in the breach.

³⁸ "Wastewater Treatment Plant Audit Report, April 2017 – March 2018", NEPA, 2018.

³⁹ R. v East Sussex CC Ex.p. Tandy [1998] AC 714; R. v Gloucestershire CC Ex.p. Barry [1997] AC 584.

⁴⁰ Jamaica Environment Trust et al v National Water Commission and Others, (unreported), Supreme Court, Jamaica, Claim no. HCV 00114 of 2010, judgment delivered 6 July 2010. (www.caribbeanenvirolaw.org/sites/default/files/JET_v_NWC_andOthers_FinalOrder_FiledJuly6_2010.pdf)



INEFFECTIVE PENALTIES DECIDED ON AND LEVIED IN A FLAWED SYSTEM

Governments use disincentive policies such as fines or penalties to punish those who do not comply with laws and rules. However, the penalties under the NRCA Act are so low that they are virtually meaningless, and hardly disincentivize anyone to comply with the law.

In Jamaica in 2018, the fines of J\$20,000.00 for failing to comply with notices or orders, and J\$50,000 for an offending activity, are likely a fraction of the gain that the rule-breaker is making in their offence. Where offences are continuing, the fine is J\$3,000.00 per day for each day on which the offence continues after conviction.⁴¹ It is likely that better suits a developer to break the rule and pay the fine than to curtail his (or her) activity.

The system via which fines are imposed is itself a flawed process. Fines are imposed after successful prosecution in a Resident Magistrate’s Court, and court cases take many years to bring to conclusion. An example of such a case is R v Nordie Smith: The defendant was charged with undertaking a development of a prescribed description (construction and operation of a sewage treatment facility) without a permit, contrary to s.9(2) of the Natural Resources Conservation Authority Act. The first court date was 23 January 2013. The defendant was to apply for the required permit by 24 July 2013, and the court then instructed NEPA to meet with the defendant to guide him through the application process. The first mention date was 22 January 2014, and the trial began on 20 October 2014. After eight adjournments, the defendant was “admonished and discharged” on 20 September 2018 as

being, by then, “fully compliant”.

In the case of failure to pay the fine the punishment is imprisonment for a term not exceeding two years, a considerably more weighty sanction but no one in Jamaica has ever been incarcerated for an environmental crime as fines are usually paid.

NEPA’s website lists only five cases currently before the courts, with no indication as to start dates.⁴² A 2017-2018 unpublished list was made available by NEPA,⁴³ showing 19 legal cases before the Parish Courts under four Acts – the Natural Resources Conservation Authority Act, the Town and Country Planning Act, the Beach Control Act, and the Wildlife Protection Act. Except for the cases under the Beach Control Act and one under the Wildlife Protection Act, all fines imposed by the court under the Natural Resources Conservation Authority Act were less than J\$50,000.00. The Auditor General’s (AG) 2016 performance review of NEPA identified 452 cases referred to NEPA’s legal branch between April 2012 to March 2015, but only 11 cases before the courts.⁴⁴

In the absence of effective deterrents (fines are too low), and where court cases take many years to be heard, NEPA has not employed other techniques to ensure compliance with environmental laws or statutes. NEPA does not use “name and shame” techniques effectively, with the result that even successful court cases do not serve as a deterrent to others as few know about them.⁴⁵

A 2017–2018 unpublished list was made available by NEPA, showing 19 legal cases before the Parish Courts under four Acts:



Natural Resources Conservation Authority Act



Town and Country Planning Act



Beach Control Act



Wildlife Protection Act

Except for 2 cases, ALL FINES IMPOSED WERE LESS THAN **J\$50,000**



The Auditor General’s 2016 performance review of NEPA identified

452 CASES referred to NEPA’s legal branch, but only

11 CASES BEFORE THE COURTS

Between April 2012 & March 2015

⁴¹ Fines are higher under some of the other acts administered by NEPA, notably the Wildlife Protection Act (WPA), the Endangered Species (Protection, Conservation and Regulation of Trade) Act and the Beach Control Act (BCA).

⁴² “Matters which have been heard/are to be heard before the Parish Courts, 2017-2018,” NEPA, undated. (http://nepa.gov.jm/new/legal_matters/legal_framework/docs/court_cases.pdf)

⁴³ Ibid.

⁴⁴ Auditor General (2016).

⁴⁵ “Name and shame” techniques may be used by regulatory agencies (or civil society groups) to publish the names of environmental offenders, usually private sector companies, to encourage compliance.



PERMIT AND LICENSING REGULATIONS (1996)

Section 9 of the NRCA Act forms the basis of the NRCA (Permits and Licences) Regulations (1996) which came into force in January 1997. The Permits and Licences (P&L) regulations require proponents of activities falling into so called “prescribed categories” to apply for a permit or license and pay the required fee. The P&L regulations provide for the Authority to evaluate the potential environmental impacts of these types of activity before they are underway. The NRCA may refuse to issue a permit, order changes to the plans to reduce environmental damage, modify or vary permits/licenses, and revoke permits/licenses.⁴⁶ The list of prescribed categories in 2018 includes power generation facilities, pipelines, port and harbour development, housing projects of 10 houses or more, hotel complexes of more than 12 rooms, new highways, mining projects, solid, liquid and hazardous waste treatment facilities, and many others.⁴⁷

The Permit and Licensing Regulations were amended in 2004 and 2015. Prior to the 2015 amendment, an industry which was already in operation before 1996 was not required to apply for an environmental permit, even if the industry fell into a prescribed category as outlined in the Permit and Licensing Regulations. As of the 2015 amendment, however, all industries/activities are now required to apply, even those which have been in operation long before environmental laws were passed.⁴⁸ In practice, industries agree a compliance plan with NEPA, which is supposed to bring their operation into compliance with standards and regulations over a period of years.

The consequences of breaches to environmental permits/licenses, however, are insignificant. Typically, various warnings, notices, and orders are issued by NEPA, developers may be required to attend meetings, compliance plans may be established, and projects might be shut down for short periods, but permits are rarely withdrawn. Broadly, environmental harm seems to be accepted as collateral damage if “development objectives” are to be achieved. The most infrequently applied type of enforcement action is Suspension of Permit – only one was suspended between 2012 and 2015. By comparison, 163 enforcement notices were issued over the same time period, 59 cessation orders, 70 stop notices, 50 notices of intention to suspend license or permit, and 52 summons served.⁴⁹



Permits and licenses may be approved and issued but not collected, with the result that the proponent does not know what the conditions of the permit or license are, which is an obvious impediment to compliance. NEPA provided a list of over 270 uncollected permits going back as far as 2008. Most uncollected permits, however, were from 2015 to the present date. In some cases, projects have not gone ahead, and some beaches’ licenses are renewals, presumably with the identical conditions as the expiring license. NEPA advised that this is less of a problem than it used to be, due to permit fees having to be paid at the application stage.⁵⁰

The sanctions for failure to apply for the required permits/licenses or for breaches to permits/licenses are weak. In 2016, draft instructions for increases in fines for both the NRCAA and the Wildlife Protection Act were said to be in preparation.⁵¹ Drafting instructions were completed in 2017, and are said, in 2018, to be “far advanced.”⁵²

⁴⁶ The Natural Resources Conservation Authority Act 1991, s. 9 and 11.

⁴⁷ The Natural Resources (Prescribed Areas) (Prohibition of Categories of Enterprise, Construction and Development) Order, 1996; The Natural Resources (Prescribed Areas) (Prohibition of Categories of Enterprise, Construction and Development) (Amendment) Order, 2015.

⁴⁸ The Natural Resources (Prescribed Areas) (Prohibition of Categories of Enterprise, Construction and Development) (Amendment) Order, 2015, s. 2.

⁴⁹ Auditor General (2016), p.18.

⁵⁰ NEPA executives, *ibid*.

⁵¹ NEPA executives, *ibid*.

⁵² NEPA executives, *ibid*.



VOLUNTARY COMPLIANCE AND VALIDATION OF SUBMITTED DATA

The NRCA and NEPA have relied on voluntary compliance throughout their history. Section 17 of the NRCA Act allows for voluntary submission of data on emissions and effluent to NEPA from business or state entities, but this is done much less frequently following the 2015 amendment to the Permit & Licensing regulations which require all prescribed activities to apply for an environmental permit. Whether under Section 17 or pursuant to an environmental permit, the results reported may not be validated by NEPA, in part due to the inability to conduct a wide range of air and water quality tests, and inadequate laboratory facilities.⁵³ NEPA does not have all the required equipment and technical expertise to spot check reported results.

Voluntary compliance is much more likely to occur where there is a real possibility of unwelcome consequences to lack of compliance, which is absent in Jamaica. Even in countries with a strong regulatory framework, like the United States of America (USA), an assessment of the success of the US Environmental Protection Agency's (EPA) flagship voluntary compliance programmes found that they did not produce much environmental benefit. "The EPA was never able to demonstrate that regulated facilities that participated in the Performance Track (voluntary compliance) had better outcomes than facilities that did not participate."⁵⁴



DELEGATION

The Natural Resources Conservation Authority may delegate any of its functions under the Act, except the power to make regulations.⁵⁵ This power has been exercised to delegate responsibility for environmental monitoring of the bauxite industry to the Jamaica Bauxite Institute (JBI), a clear conflict of interest, and to some non-governmental organizations (NGOs) for the management of protected areas and national parks, including marine parks.

The delegation of responsibility for parks and protected areas has been only partially successful, as some NGOs have been unable to raise sufficient funds to supplement the subvention received from the Government of Jamaica (GOJ), or meet due diligence requirements. The management of national parks in Jamaica presents a mixed picture with some parks/protected areas under very little visible management, such as the Palisadoes/Port Royal Protected Area and the Negril Environmental Protection Area, both currently managed by NEPA, while others benefit from NGO efforts, such as the Blue and John Crow Mountain National Park, managed by the Jamaica Conservation and Development Trust, and the Portland Bight Protected Area, managed by the Caribbean

Coastal Area Management Foundation.

All parks and protected areas in Jamaica are underfunded.⁵⁶ National parks and marine parks have regulations under the NRCA Act, but protected areas do not, which presents a hurdle to enforcement. Some important areas remain unprotected, such as the Cockpit Country; though a new protected area was announced by the Prime Minister in November 2017, the boundary has not yet been finalized.⁵⁷

While delegation can bring new skills and funding to environmental management, delegation agreements may present conflicts of interest, and there is no guarantee delegates will deliver adequate results. Oversight is still needed by the NRCA/NEPA to ensure the terms and conditions of delegation agreements are met. In some cases, delegates have failed to deliver adequate results and have had their delegation agreements terminated, such as the Negril Coral Reef Preservation Society and the Negril Environment Protection Trust, which together managed the Negril Environmental Protection Area and the Negril Marine Park up until March 2016.

⁵³ "Review of the Legal and Policy Framework for Air and Water Quality in the Island of Jamaica," Jamaica Environment Trust, August 2017, p. 8-9.

⁵⁴ Cary Coglianese and Jennifer Nash, "Motivating Without Mandates: The Role of Voluntary Programs in Environmental Governance Faculty Scholarship, Paper 1647," June 3, 2016. (http://scholarship.law.upenn.edu/faculty_scholarship/1647)

⁵⁵ The Natural Resources Conservation Authority Act 1991, s.6.

⁵⁶ Susan Otuokon, Executive Director, Jamaica Conservation and Development Trust, telephone interview with author, August 17, 2018.

⁵⁷ Petre Williams-Raynor, "Earth Today | Cockpit Country Ground Truth Ongoing," Gleaner, July 19, 2018. (<http://jamaica-gleaner.com/article/news/20180719/earth-today-cockpit-country-ground-truth-ongoing>)

2.2 THE TOWN AND COUNTRY PLANNING ACT

Jamaica's main planning statute is the Town and Country Planning Act of 1958 (with amendments 1991, 1993 and 1999). As with the Natural Resources Conservation Authority Act, the law requires the minister to appoint a Town and Country Planning Authority (TCPA) of not less than six members, as well as an Advisory Planning Committee of not less than three members.⁵⁸ The TCP Act also outlines compensation regimes in the event that development is restricted or prohibited on privately owned land.⁵⁹

The TCP Act's main regulatory instruments are the Development Orders through which the TCPA seeks

to control the development of land. Currently, there is a concerted effort underway to update or produce Development Orders for most of Jamaica,⁶⁰ but for decades, the TCPA and the Parish Councils were working with long outdated Development Orders, or with areas of the island not under any planning control at all. A Development Order for Portmore, for example, after five decades of dense housing development in a low-lying wetland area, only began to be prepared in 2016 and up to 2018 was still in process. (The TCPA and Development Orders are discussed in more detail in the next section.)

2.3 LAND DEVELOPMENT AND UTILIZATION ACT

The Land Development and Utilization Act (LDUA) was passed in 1966 (amended in 1997) and constituted the Land Development and Utilization Commission (LDUC), consisting of nine members, appointed by the minister. The main object of the Act is to ensure that land parcels over ten acres that are designated as agricultural land are being

farmed, and that privately owned agricultural land is not unused. The Act gives the Commission powers to declare land idle, and if the owner or leaseholder fails to respond to notices, the power to require vacant possession, though this appears to be rarely applied.⁶¹

2.4 MERGER OF THE THREE MAIN AUTHORITIES AND THE CREATION OF THE NATIONAL ENVIRONMENT & PLANNING AGENCY

In 2001, the Natural Resources Conservation Authority, the Town and Country Planning Authority, and the Land Development and Utilization Commission were merged to create the National Environment and Planning Agency (NEPA). There was to be a phased approach to the merger, including the repeal of the NRCAA and the promulgation of a new NEPA Act, but this was never completed. As a result, NEPA has continued to operate under multiple laws that predate the organization. There is no legislation to give legal authority to the agency, and it continues to depend on the NRCA to make legally-binding decisions based on the NRCA Act, and associated regulations and additional legislation that have either not been finalized or operationalized.⁶²

Following the change in administration in September 2007, when the Jamaica Labour Party (JLP) took office, almost the same individuals were appointed to both the Natural Resources Conservation Authority and the Town and Country Planning Authority boards, and board meetings dealt with matters under both laws. The rationale was to improve coordination between the environmental protection and planning agencies. This has since continued though in the most recent round of appointments, after the change in administration in 2016, not all members appointed to the first board term, 2016-8, were common to both boards. Nevertheless, NEPA advised that, up to 2018, the NRCA and the TCPA boards "meet as one body."⁶³

⁵⁸ The Town and Country Planning Act, 1958, s. 3 and First Schedule

⁵⁹ The Town and Country Planning Act, 1958, s. 17-21 and 27.

⁶⁰ The motivations for this effort are unclear but ought to be explored.

⁶¹ The Land Development and Utilization Act, 1966, s. 5, 8-9.

⁶² _

⁶³ _

The NRCA Board remains a statutory body, which through its chairman, reports directly to the minister with portfolio responsibility for the environment. NEPA is an executive agency, which under the law (Executive Agencies Act) has an advisory board, which should be comprised of persons from the public and private sectors, and the function of the advisory board is to advise the chief executive officer. The full executive authority and total accountability for the management of the agency are reposed in the position of the chief executive officer, who reports directly to the responsible minister. The advisory board has no legal power over the agency's actions or policy decisions. There is no articulated or codified relationship between the NRCA board chair and the

NEPA CEO. Because the Natural Resources Conservation Authority Act was never repealed, however, the Authority continues to grant permits and instruct on enforcement, while NEPA administers the decisions of the Authority along with other functions, including public education. In effect NEPA is the NRCA's de facto agent. The Town and Country Planning Authority also has its own Board, as does the Land Development and Utilization Commission, although in the latter case, meetings seem to be infrequent. They operate along the same lines as the NRCA with regard to reporting to the ministers, and implementation and enforcement, with NEPA as their agent. This is an inherently unwieldy structure. (See Figure 1.)

Figure 1. Organizational chart environmental governance and decision-making

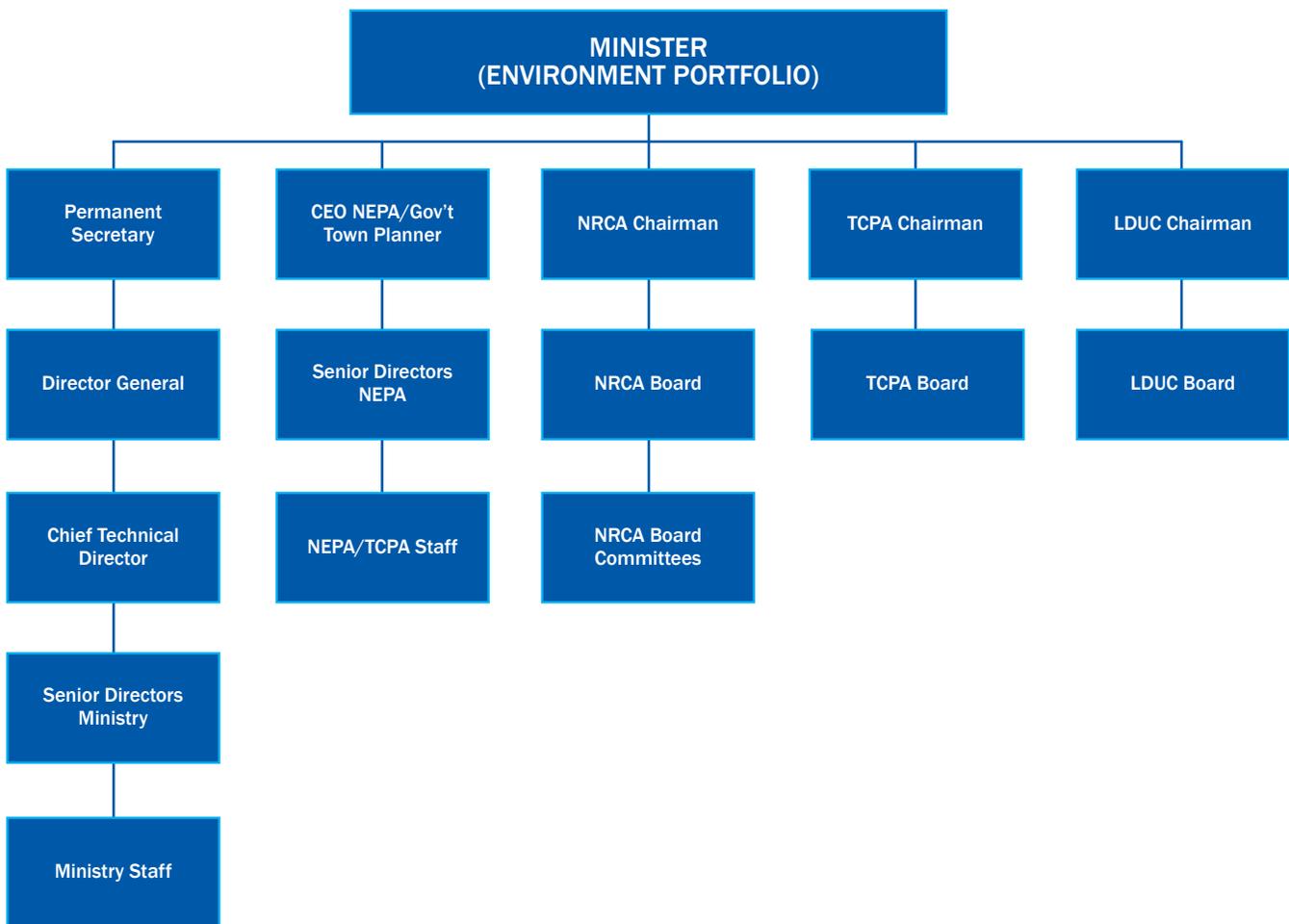


Figure 2: Members of statutory boards related to the environment, and NEPA Advisory Board 2016-2018



The decision to merge the Natural Resources Conservation Authority, the Town and Country Planning Authority, and the Land Development and Utilization Commission was taken nearly two decades ago, yet there is still a question as to whether the merger should proceed, or to revert to pre-merger

status.⁶⁴ Both avenues have advantages and disadvantages, but it is more likely that the merger will proceed. The biggest drawback to this path is the extant need for new legislation, which has very long lead times.

2.5 THE PUBLIC INTEREST

And where, in all of this, is the voice of the people? In some countries, (Guyana,⁶⁵ Trinidad and Tobago,⁶⁶ for example) the main environmental legislation recognizes the legitimate interest of the public in protecting natural resources, and grants third party rights to file legal action. The Natural Resources Conservation Authority Act does not give third party rights to members of the public. While the Act allows an “aggrieved party” (defined as someone whose permit has been denied or someone objecting to the conditions of the permit) to appeal to the Minister in relation to a permit or license, the right of appeal contained in law for members of the public is vague.⁶⁷

In 2011, the Jamaica Environment Trust filed an appeal against an environmental permit granted to RIU Hotel at Mahoe Bay in St James, on behalf of the Whitehouse Fishing Cooperative; their submission was heard, albeit after a long delay, during which time the hotel continued construction.⁶⁸ In 2013, JET was heard by the Appeals Tribunal of the NRCA regarding an appeal filed by the Ministry of Agriculture and Fisheries (MOAF) against enforcement action taken by the NRCA concerning destruction of trees in the riparian zone of the Cabarita River and other rivers in Westmoreland.⁶⁹ The tribunal upheld the NRCA’s decision, and the Ministry was ordered to replant the trees that were already cut down.

Jamaican citizens do have a broad right to challenge the actions of the state through judicial review.⁷⁰ Jamaican

environmental NGOs have twice filed judicial review cases alleging flaws in the public consultation process, and asserted standing; both were accepted by the Supreme Court.⁷¹ However, establishing one’s legal standing in order to challenge environmental infractions or appeal a NRCA or NEPA decision, is an expensive and lengthy process. The Jamaica Environment Trust’s ability to pursue legal action was only possible because the organization received external funding to pursue the matter; those types of resources are generally not available to environmental NGOs, much less to individuals. The scope for the public to have a say in the governance of their natural environment is extremely proscribed.

There are other barriers to access to justice. Judicial review requires filing the application in court within three months of the state’s decision or “promptly”.⁷² There is no requirement for timely notification of NRCA decisions and generally, only permittees are notified directly. NRCA Board decisions are posted on NEPA’s website, but not in a timely manner. The judge has discretion to require the claimant to give an undertaking for damages if an injunction is applied for. If the claimant loses their case, they have to pay the economic losses suffered by the defendant. This restricts the willingness of the public to apply for injunctive relief, with the result that construction (and the risk to the environment and public health) continues while the case is being heard.

⁶⁵ The Environmental Protection Act (Guyana) 1996, s. 28.

⁶⁶ The Environmental Management Act (Trinidad and Tobago) 2000, s. 69.

⁶⁷ The Natural Resources Conservation Authority Act, 1991, s. 35.

⁶⁸ Appeal of Environmental Permit No 2006-08017-EP00094 granted to RIU Jamaicaotel, Jamaica Environment Trust on behalf of the Whitehouse Fishing Cooperative.

⁶⁹ Submissions of the Jamaica Environment Trust Hearing of the Appeal filed by the Ministry of Agriculture and Fisheries against the Natural Resources Conservation Authority: Enforcement Notice served for clearing of Riparian Zone along Cabarita River and other rivers.

⁷⁰ Rule 56.2 (1) of The Civil Procedure Rules of Jamaica 2002 allows any person, group or body to apply for judicial review which has sufficient interest in the subject matter of the application. This includes:

- (a) any person who has been adversely affected by the decision which is the subject of the application;
- (b) any body or group acting at the request of a person or persons who would be entitled to apply under paragraph (a);
- (c) any body or group that represents the views of its members who may have been adversely affected by the decision which is the subject of the application;
- (d) any statutory body where the subject matters falls within its statutory remit;
- (e) any body or group that can show that the matter is of public interest and that the body or group possesses expertise in the subject matter of the application;
- (f) any other person or body who has a right to be heard under the terms of any relevant enactment or the Constitution.

⁷¹ The Jamaica Environment Trust v The Natural Resources Conservation Authority et al, Supreme Court of Jamaica unreported judgment delivered October 13, 2011. Claim No. HCV 5874 of 2010; and The Northern Jamaica Conservation Association et al v The Natural Resources Conservation Authority et al., Supreme Court of Jamaica, unreported judgment delivered May, 16 2006. Claim no. HCV 3022 of 2005.

⁷² Rule 56.6 Civil Procedure Rules of Jamaica 2002.

2.6 A NEW ENVIRONMENTAL REGULATORY AUTHORITY

In 2011, the GOJ released a concept paper that outlined a new entity to strengthen Jamaica's environmental regulatory framework.⁷³ The main recommendations were:

- » To establish an environmental regulatory authority which would assume full responsibility for environmental monitoring and enforcement;
- » To develop a National Spatial Plan (NSP), to be done by NEPA; and
- » To give NEPA the lead role in environmental education, outreach, advisory assistance and problem solving.

During stakeholder consultations in 2011, there was pushback from the Jamaica Environmental Advocacy Network (JEAN), a network of over 40 environmental and civil society non-government organizations. Their main concerns were the scant details on the legal reform necessary, the paucity of information about the interface between the many government agencies, incomplete problem analysis, and lack of comparative investigation with other developing countries. JEAN recommended a return to the pre-merger status but supported the recommendation for an independent commission on environmental issues.

As of 2018 this environmental regulatory authority has not been brought to life. While the State of the Environment Report 2013, stated: "Work towards the promulgation of an Environment and Planning Act, and the creation of

the Environmental Regulatory Authority, were the two main areas of focus,"⁷⁴ the most recent utterances of NEPA executives suggest that the new environmental regulatory authority will not go ahead.⁷⁵

In sum, Jamaica possesses a cumbersome and unwieldy administrative framework that retards the effective management and protection of the island's natural environment. The extant system facilitates ministerial overreach and corruption, evinces little accountability, and makes moral hazard in environmental matters inevitable. The legal framework does not provide for the public to have a say in the enforcement of environmental laws, and fails to disincentivize actions that cause environmental damage, thereby promoting the impunity with which developers and others continuously break the law, with disastrous environmental consequences. The proposal to replace this disjointed environmental framework was badly flawed, and for better or for worse, was never brought into effect. Thus while the country has been spared the birth and enactment of yet another defective institution through which the environment would continue to be mismanaged, there are no other efforts by the GOJ to act on identified solutions in a meaningful time frame. The apparent lack of priority given to the environmental portfolio by the political directorate causes leadership instability, policy uncertainty/delay, and fails to engender a long-term commitment to environmental protection at the highest level of national leadership.



⁷³ Green Paper 2/2010.

⁷⁴ SOE (2013).

⁷⁵ NEPA executives, *ibid.*

3. THE ENVIRONMENTAL PLANNING FRAMEWORK: INCHOATE AND FRAGMENTED

The planning process for cities, towns and rural areas in any country seeks to set out a rational framework for development, in order to deliver a predictable regulatory environment and prevent the impacts of disorderly, illegal and hodge-podge construction. An effective planning framework will consider transportation needs, availability of other types of critical infrastructure, such as sewage treatment and water supply, current and future land use patterns, and vulnerability to natural disasters. A good planning regime will “bring an offending activity under planning control, remedy or mitigate its undesirable effects, and punish and deter the wrongdoer.” Jamaica’s planning system, despite its early origins, has so far not managed to develop effective enforcement, which remains “complex, technical, challenging, and weak.”⁷⁶

⁷⁶ Carole Excell, “The Enforcement of Planning Laws in Jamaica,” NEPA Judicial Symposia, 2003. (http://nepa.gov.jm/symposia_03/Papers/TownandCountryplanningEnforcement3.pdf)

3.1 DEVELOPMENT ORDERS

A development order is a legal document whose purpose is to guide development in the area to which it applies. Development orders are created for cities, towns, parishes and other specifically designated areas, by the Town and Country Planning Authority (TCPA), and serve to guide the relevant authorities—the Parish Municipal Authorities (what were formerly called Parish Councils)—to regulate land developments within the area defined as the Development Order Area. The TCPA also issues interim development orders, after consultation with local planning authorities, in respect of any land which is not the subject of a confirmed development order. An interim order is made where an area needs to be brought urgently under planning control and no confirmed development order exists.

Development orders (whether provisional or confirmed) are the Town and Country Planning Authority’s principal regulatory instrument.⁷⁷ They contain guidelines on a range of issues, including:

- » **Development control (densities, setbacks, heights of buildings, parking, drainage)**
- » **Sanitary conditions and conveniences**
- » **Advertisements on public roads**
- » **Roads and public services (road reservations, types of roads, access by fire services, utilities, sewage treatment)**
- » **Protecting and expanding amenities (views, open spaces, parks, access to coast)**
- » **Protecting natural resources (trees, coastal assets such as beaches)**

- » **Guiding local planning authorities (formerly parish councils, now called municipal corporations)**
- » **Receiving referrals from local planning authorities on developments which are not in conformance with the Development Order**
- » **Providing information to the public on land development policies in a specific region**

When a development order is prepared, it is printed and gazetted as a Provisional Development Order, and is made available to the public for comments in a specified time period, but only “interested persons” can legally object.⁷⁸ Although it is regarded as material, the provisional development order is not the legal land use document for the area. After the expiration of the period for comments and/or objections, a confirmation notice is prepared to include any modifications. The confirmation notice, along with the comments/objections, is then submitted to the minister for a decision, and thereafter the confirmation notice is published in the Gazette.⁷⁹

The first development orders in Jamaica were done in the 1950s and 1960s. They governed land use and development of Jamaica’s coastline up to one mile inland from the highwater mark. A few other areas and some towns also had Development orders, but much of the rest of the island was left without a development control instrument until a recent initiative, which began in 2015, and which is currently (in 2018) underway.⁸⁰

⁷⁷ Pauline McHardy, “Gap Analysis of Relevant Policies,” NEPA Judicial Symposia, 2003. (http://nepa.gov.jm/symposia_03/others/policygapanalysis.pdf)

⁷⁸ An “interested person” means: (a) any local authority concerned; (b) any person in whom is vested any freehold estate in any land within the locality to which the provisional development order relates; (c) any person in whom is vested any term of years in any land in such locality, the unexpired portion of which on the day on which such objection is made is not less than three years, or who holds an option to renew such lease for a period of not less than three years; (d) any person who is entitled under the Water Resources Act to exercise any right in relation to the use of any public water in a public stream within the locality and whose interest therein will be affected by the application of the order.

⁷⁹ The Town and Country Planning Act 1958, s. 5-7.

⁸⁰ O. Rodger Hutchinson, “Development Orders for all Parishes Should be in Place by 2017,” Jamaica Information Service, November 12, 2015. (<https://jis.gov.jm/development-orders-for-all-parishes-should-be-in-place-by-2017>). As at October 2018, the parishes/areas without recent provisional development orders were St James and Portmore.

Table 5: Current Status of Development Orders

PARISH	FIRST PROMULGATED	PROVISIONAL	CONFIRMED
Kingston			1966
Kingston & St Andrew & Pedro Cays	2017	2017	No
Tinson Pen Harbour Front	1963	1963	unknown
St Thomas (coast)			1965
St Thomas Parish		2018	No
Portland (coast)			1963
Portland Parish	2013	2013	2015
St Mary (coast)			1963
St Mary Parish	2017	2017	No
St Ann Parish	1999	1999	2000
Trelawny Parish	1982	2013	2015
St James Parish			1982
Manchester/Mandeville Parish	1976	2013	No
Hanover (coast)	1957	1957	1962
Hanover Area		2018	No
Westmoreland Area		2018	No
Negril/Green Island Area	1959, 1984	2013	2015
South St Elizabeth	1966, 1976		
St Elizabeth Parish	2018	2018	No
Clarendon Parish	1982	2017	No
Spanish Town			1964
St Catherine (coast)			1965
St Catherine Area	2017	2017	No
Bog Walk/Linstead/Ewarton Area			1965

Source: NEPA⁸¹

⁸¹ “Development Order Areas,” National Environmental Planning Agency, last revised February 6, 2004. (http://nepa.gov.jm/symposia_03/Laws/Maps/Map_of_Development_Orders_FullScreen.htm)

Development orders for areas throughout Jamaica have not been updated for decades, allowing development to take place in a planning vacuum. In some cases, developers argue that what has been permitted previously justifies new developments along the same lines, even if this violates the development order, and regulators have found this persuasive. Development orders seek to regulate and control the use of land in conformance with pre-established guidelines and long-term planning objectives, but they have not been complied with or enforced since their inception. While there are sanctions under the Town and Country Planning Act for carrying out developments without planning permission,

there are no sanctions for granted permissions that do not confirm with the provisions of a development order.

Where no development order exists for an area or parish, or for any other reason, the minister with portfolio responsibility for the environment can “call in” an area. In these cases, all development applications must be submitted to the Town and Country Planning Authority directly, and can no longer be handled by local planning authorities alone.⁸² Planning permission can only be granted if the application is in conformance with the Natural Resources Conservation Act.⁸³

3.2 CASE STUDY: NEGRIL’S DEVELOPMENT ORDER

The 1984 Negril/Green Island Development Order is an instructive case study in assessing the history of compliance, or rather, non-compliance of these requirements. The Negril/Green Island Area actually had one of the earliest development orders in Jamaica in 1959. It was only confirmed in 1984, however, after being updated in 1981, well after

resort development was underway, beginning in the 1970s. (A more recent update was confirmed in 2015.) The 1984 Development Order describes the importance of Negril’s natural resources and sets out a range of measures to protect them.

Sample list of the provisions of the 1984 Negril/Green Island DO and the current status

PROVISION	STATUS
No development will be permitted on land adjacent to the line of high-water mark which would preclude public access to and along the foreshore.	Access is now limited and declining. Access ways between private property development have not been consistently required
The coast and coastal waters are to be protected against pollution by control of adjoining development and of such development inland.	Negril’s most recent sewage treatment plant was built in the 1990s, and many properties on the hills overlooking the West End are still not connected. Due to development outpacing early sewage treatment capacity, Negril’s coral reefs are severely degraded by nutrient pollution from poorly treated sewage and agricultural runoff.
	 <p>Pipe from one of the hotels going straight into the sea – this is Long Bay Beach where people swim</p>
	 <p>Drain dumping what appears to be laundry water directly into the sea</p>

⁸² The Town and Country Planning Act 1958, s. 12(1A)

⁸³ The Town and Country Planning Act 1958, s. 11(1A)

Sample list of the provisions of the 1984 Negril/Green Island DO and the current status

PROVISION	STATUS
No modification of natural features of the foreshore and or floor of the sea without the permission of the NRCA	<p>Permission has been given to build groynes, wave attenuation devices, remove seagrass beds and “nourish” beaches. Modifications have also been done without the required permits/licences, but all have since been “regularized”.</p>  <p>Photo showing unrepaired and failed groyne</p>
Tree Preservation Orders should be enacted	There are no Tree Preservation Orders enacted in Negril.
A national park should be declared to cover the majority of the DO area	Negril Environmental Protection Area, Negril Marine Park and Orange Bay Special Fishery Conservation Area have been declared, but management and enforcement are weak.
The natural vegetation covering the beach sand dunes at the sea edge must be protected from removal and trampling by regulating access to the beach.	Very little natural vegetation or dunes remain in Negril.
The already impaired swamp forest should not be further destroyed.	Incursions into the Negril Morass continue for farming, parking and land clearance
Strict observance should be made of present regulations regarding capture of fish and lobsters	Lobsters are readily available for sale on Long Bay beach during the closed/off season.
The use of beach seines (a type of fishing net) should be discontinued	Still in use, even in the Special Fishery Conservation Area
No building shall be closer than 150 feet from the highwater mark	<p>Due to beach erosion in some parts of Long Bay beach, the highwater mark has moved inland. At least three hotels have been built with less setback for some of its buildings than stipulated by the DO; two with permission, and one which is the subject of legal action.</p>  <p>One of many examples of buildings too close to the shoreline</p>
Buildings higher than two storeys will not be permitted within the DO, except on very special consideration by the authorities	The height restriction has been varied repeatedly, to three stories in 1996/7, and then to five stories in 2016.
It is desired that buildings should not be obtrusive, and the architectural expression be low-keyed	Hotels have become larger, higher and more and more obtrusive over Negril's history
In order to preserve the amenity of views to the sea on the cliffs, buildings shall be as unobtrusive as possible, one storeyed and small scaled	Very few views to the sea remain from the cliffs

The 2015 Negril/Green Island Area Development Order repeats many of these requirements, but they continue to not be heeded, whether because they are ignored or not known

about is unclear. Indeed the motivation and rationale for updating the development orders is thrown into question by their continued irrelevance to what actually obtains.

3.3 SANCTIONS UNDER THE TOWN AND COUNTRY PLANNING ACT

The Town and Country Planning Act provides for the service of a stop notice in circumstances where a development is proceeding without permission from the planning authorities or the Town and Country Planning Authority, or if the permission granted has not been adhered to. Failure to comply with a stop notice attracts a fine of between J\$25,000 and J\$1 million, on conviction in a Resident Magistrate's Court. Failure to pay the fine can result in imprisonment not exceeding six months.⁸⁴ The Act provides for service of an enforcement notice, which can require the demolition of buildings, and restoration of land to its condition before the development took place.⁸⁵

These provisions are seldom enforced. In the late 1980s construction commenced on a six-story building at the corner of Trinidad Terrace and St Lucia Avenue in New Kingston. The KSAC put a stop order for breaching its permit by building six floors instead of the approved four, and for defying other zoning rules, and ordered the top three floors demolished. This was never done; it sat incomplete and idle for decades. The mortgaged building later fell into the hands of its bankers who claimed a default on loan payments, and was among assets taken over during the 1990s financial sector crisis and the subsequent government bailout. The still incomplete building was sold in 2014 through the government's debt collection partner; the building was refurbished and renamed the Dawgen Towers. When this rare occurrence does actually happen, it is an extremely protracted and lengthy process. For example, a building in Kingston that was demolished in 2011 because it had been

erected without the authorisation of the KSAC, and was deemed too close to the roadway, only occurred after a 15-year court battle.⁸⁷

The Act also allows for an application for retention of use for buildings existing before permission has been granted.⁸⁸ Whereas this may have been intended to facilitate buildings existing before the completion of the applicable development order, it is applied to buildings constructed without the required planning permission, and which are already being used. While NEPA acknowledges that this happens,⁸⁹ the exact extent to which it occurs is debatable. The decision whether to allow the retention of use, according to NEPA, is based on whether planning permission would have been granted at the outset.⁹⁰ In any case, it is clear that there will likely be no serious penalty for beginning developments without permission.

The fines pertaining to the Town and Country Planning Act, as with the Natural Resources Conservation Authority Act, are too low to serve as an effective deterrent, (though they are higher than the NRCAA,) and the retention of use clause provides a loophole for developments which have been started without permission to continue, or which have been completed without permission to remain. NEPA acknowledges that few illegally constructed buildings have been demolished.⁹¹ There was only one case before the courts under the Town and Country Planning Act in 2017/8.⁹² This creates another opening for the regularization of developments to proceed without permission.

⁸⁴ The Town and Country Planning Act 1958, s. 22A.

⁸⁵ The Town and Country Planning Act 1958, s. 23-25. Avia Collinder, "Dawgen Buys Old Auburn Court Building - Renames It St Lucia Towers," *Gleaner*, July 13, 2014. (<http://jamaica-gleaner.com/gleaner/20140713/business/business1.html>)

⁸⁷ "Demolished - KSAC Destroys Structure At Auburn Court After 15-Year Legal Battle," *Gleaner*, June 20, 2011. (<http://jamaica-gleaner.com/gleaner/20110620/lead/lead1.html>)

⁸⁸ The Town and Country Planning Act 1958, s. 15.

⁸⁹ NEPA executives, *ibid*.

⁹⁰ *Ibid*.

⁹¹ *Ibid*.

⁹² "Matters which have been heard/are to be heard before the Parish Courts," NEPA, 2017/8.

3.4 PUBLIC CONSULTATION

The Town and Country Planning Act requires consultation with local planning authorities in the preparation of provisional development orders, followed by publication via Gazette and in local newspapers.⁹³ “Interested parties” (defined as local planning authorities, landowners, leaseholders and anyone holding water rights) may submit objections.⁹⁴ Beyond publishing a notice in the newspapers, there is no requirement for the general public to be consulted about the contents of the development order, either before or after it has been produced.

Development orders are dense, lengthy documents which are not easily accessible to a layperson. The new development orders are available online on NEPA’s website;⁹⁵ the public can also obtain hard copies from NEPA or at local Municipal Corporations at a cost of J\$3,000.00. While these efforts to make the documents more accessible is a positive step, the public is generally unaware of development order requirements, and there is very little public outreach or awareness building.

3.5 THE PLANNING AND ENVIRONMENTAL POLICY FRAMEWORK

Policies to guide aspects of planning and environmental stewardship are developed by the many ministries and state agencies involved in this area. They can take decades to complete.

Table 6: Partial List of Jamaica’s Environmental Plans and Policies and their status

POLICY	IN DRAFT	MINISTRY/AGENCY	STATUS
National Forestry Management and Conservation Plan	1990, 2001-2010; 2010-14; 2017	Agriculture Ministry, Industry and Commerce Ministry	2017 update
National Policy for the Conservation of Seagrasses	1996	NRCA	In draft
Coral Reef Protection and Preservation Policy	1997	NRCA	In draft
Mangrove and Coastal Wetlands Policy	1997	NRCA	In draft
Protected Animals in Captivity	1997	NRCA	In draft
National Mariculture Policy	1998	NRCA	In draft
National Water Sector Policy and Implementation Plan	1999, 2004	Water Ministry; Environment Ministry	White Paper; submitted to Cabinet 2018
National Environmental Education Action Plan for Sustainable Development	1998-2010	NRCA	Expired
Jamaica Coral Reef Action Plan; now called Action Plan for Corals and Reefs	1999	NRCA	In draft
Jamaica National Environmental Action Plan	1999-2002	NRCA	In draft
2006-2009	NEPA	Expired	In draft
National Ocean and Coastal Zone Management Policy	2000	Foreign Affairs Ministry	In draft

⁹³ The Town and Country Planning Act 1958, s. 5

⁹⁴ The Town and Country Planning Act 1958, s. 6

⁹⁵ “Environment and Planning Laws of Jamaica,” NEPA, last modified July 9, 2018. (http://nepa.gov.jm/new/legal_matters/laws/)

Table 6: Partial List of Jamaica's Environmental Plans and Policies and their status

POLICY	IN DRAFT	MINISTRY/AGENCY	STATUS
Beach Policy for Jamaica, now Beach Access and Management Policy	2000	Environment Ministry	With Cabinet 2018
Watershed Management Policy	2003	NEPA	In draft, being revised
Jamaica's Protected Areas System Master Plan (PASMP)	2006; 2013-2017	Environment Ministry	Recently expired
Dolphin Conservation Policy	2006	Environment Ministry	White Paper. In draft.
Jamaica's National Environmental Action Plan	2006-2009	NRCA	Expired
Biosafety Policy	2007	Environment Ministry; NEPA	In draft
National Energy from Waste Policy	2010	Energy Ministry	In draft
Cays Management Policy	2013	Foreign Affairs Ministry	In draft
Climate Change Policy Framework for Jamaica	2013	Environment Ministry	Finalized
Policy and Guidelines for Overwater Rooms	2016	Environment Ministry	Finalized. Now being revised
National Policy for the Environmentally Sound Management of Hazardous Wastes	Not known	Environment Ministry; NEPA	Green Paper; approved by Cabinet July 2017, to be tabled in Parliament August 2018
National Policy on Environmental Management Systems	Not known	Environment Ministry	Green Paper; approved by Cabinet March 2018, tabled in Parliament July 2018
Emissions Policy Framework	Not known	Environment Ministry; NEPA	In draft

Source: Cabinet Office (Jamaica)⁹⁶

⁹⁶ "Government of Jamaica Policy Development Programme as at 31 March 2018," Cabinet Office. (<https://cabinet.gov.jm/wp-content/uploads/2018/06/GOJ-Policy-Development-Programme-Update-at-March-2018-web-version.pdf>)

As was seen with the many laws, statutes and regulations relating to the environment in Jamaica, which are cumbersome and opaque, policies relating to the environment are equally dysfunctional. The list in Table 6 is by no means exhaustive, but there are dozens (or more) of policies across scores of state agencies and many government ministries. This in part reflects the movement of the environment portfolio to different ministries over the years, which comes with the inherent risk that when it is moved, priorities may be different in the new ministry, causing the policy to languish, and new policies developed. Another factor is that policies are frequently developed with donor funds to the draft stage, but there is then no funding to complete them. As Table 6 shows, some policies have been in draft since 1996. Sometimes policies become other policies, for example: the mangrove and seagrass policies were never finalized and are now being subsumed under the National Ocean and Coastal Zone Management Policy, which has been in draft since 2000. Similarly, the Beach Policy has been in draft since 2000; in 2018 it was called the Beach Access and Management Policy. Policies which include Action Plans are usually for a stated time period, and may be evaluated at some point, but this is not generally shared with the public.

Policy prescriptions have been ignored. For example, the Policy and Guidelines for Overwater Rooms developed in 2016 required overwater rooms to (a) have an environmental permit; (b) an environmental impact assessment; (c) not be located where seagrass beds covered more than 30%

of the seafloor; and (d) not be located in special fishery conservation areas.⁹⁷ The overwater rooms which began construction at Sandals Whitehouse in Westmoreland in 2017 breached all those conditions, but were allowed by the NRCA Board to proceed.⁹⁸ The Guidelines are now under review by the NRCA's Beaches and Coastal Management Resources Subcommittee, with the stated intention to make them more robust.⁹⁹

Sandals SOUTH COAST
WHITEHOUSE, JAMAICA



OVER-THE-WATER
BUNGALOWS

Perched above clear turquoise waters, these 12 Tahiti-style bungalows feature breathtaking ocean views and exclusive amenities.

3.6 NATIONAL PHYSICAL PLANS

A national physical plan is a written statement that summarizes strategic policies and directions for spatial planning, land use, physical development, and environmental conservation. National Physical Plans were prepared for Jamaica (1970-1990) and (1978-1998) but were never implemented.¹⁰⁰ The proposed Environmental Regulatory Authority Green Paper (referred to earlier) identified the need for a national spatial plan to "...establish clear priorities, identify areas in which particular types of land use would be encouraged and others prohibited (e.g. no build zones), and guide the development of transport routes, residential accommodation and industrial development, and conservation of the built and natural environment." A process to develop a national

spatial plan, which was conceptualized in 2009, was launched in 2018, with funding from the Inter-American Development Bank. (A spatial plan has the same general characteristics as a physical plan.) Seven technical papers, funded by the Caribbean Development Bank, were commissioned and scheduled to be completed by June 2019.

Without an implemented and/or enforced physical plan, a vacuum has been created which has allowed illegal developments to proliferate throughout the island. In 2010, the author of the proposal for a new environmental regulatory authority wrote:

⁹⁶ "Government of Jamaica Policy Development Programme as at 31 March 2018," Cabinet Office. (<https://cabinet.gov.jm/wp-content/uploads/2018/06/GOJ-Policy-Development-Programme-Update-at-March-2018-web-version.pdf>)

⁹⁷ "Planning Guideline for Overwater Structures, 1/2016," Ministry of Economic Growth and Job Creation (Jamaica).

⁹⁸ "The Risks of Overwater Rooms for Jamaica," Jamaica Environment Trust, Brief, 2017. (www.jamentrust.org/wp-content/uploads/2017/05/Overwater-rooms-JET-brief-updated-May-2017.pdf)

⁹⁹ NEPA executives, *ibid.*

¹⁰⁰ McHardy (2003), *ibid.*

There was little or no planning taking place at local level, nor was any local-level planning authorized under the Town and Country Planning Act, so the primary functions of planners at the local level was simply processing applications. There were significant numbers of illegal developments, where people had proceeded with construction without submitting an application. Estimates of the level of this activity varied from relatively insignificant to about half of all development applications, so the true extent of the problem was hard to gauge, but it was clear that a significant portion of society did not believe in the planning system, had no commitment to its purpose, or appreciation of its benefits.¹⁰¹

Little appears to have changed. The lack of commitment to planning laws was made manifest in August 2018, when the St. Catherine authorities issued an amnesty for completed

developments, and those underway, without the required building plans to be “regularized.”¹⁰²

3.7 STATE OF THE ENVIRONMENT REPORTS

According to the 1997 State of the Environment Report:

The objective of the State of the Environment (SOE) Report is to provide readily available information on an annual basis about Jamaica’s environment and natural resource use. Together with the Jamaica National Environmental Action Plan (JANEAP), the SOE provides a basis for the public [sic] participation in development planning and environmental protection. . . . [T]he State of the Environment Report records changes and identifies trend [sic] of indicators measuring the impact of all human activities and natural events on our natural resources.¹⁰³

SOEs were done in 1995, 1997, 2001, 2010 and 2013. The 2010 and 2013 Reports are online; a new State of the Environment Report was in preparation as of September 2018. Two editions of the Jamaica National Environmental Action Plan were produced: in 1998 and 2000; none has been done since.

The reports, when they are produced, are not consistent with regard to frequency or indicators, and issues raised in one report are often not updated in the next. There is greater emphasis on process indicators compared to outcome indicators. Most SOEs to date have been funded by donors;

¹⁰¹ Green Paper 2/2010. The author was Professor Anthony Clayton, University of the West Indies lecturer in the Institute of Sustainable Development, Mona campus.

¹⁰² “Amnesty for Building Plans,” St. Catherine Municipal Corporation, not dated. (<https://stcatherinemc.gov.jm/news/08-2018/amnesty-building-plans>)

¹⁰³ SOE (1997).

if funding is not available, they are either long-delayed or not produced at all. Despite the objectives outlined above, public outreach on the contents of the SOEs is weak. In effect, the SOEs have never realized their potential, nor have they been much heeded.

In sum, Jamaica's environmental planning policy situation is in a dire state. Planning laws and regulatory instruments tend to be outdated, and even when they are updated they are

ignored or unheeded. Penalties are too low to act as effective disincentives to breaches, and enforcement has been weak. Many environmental policies languish in draft for decades, and others are simply overlooked. Throughout the gamut of laws, regulations, policies and reports there is insufficient public education and engagement. The intention of closer collaboration between environmental regulation and the planning function has never been realized.



4. THE COMPROMISED ENVIRONMENTAL IMPACT ASSESSMENT PROCESS

An environmental impact assessment (EIA) gathers scientific information about the potential impact of a project on natural resources to help decision makers determine whether the project should go ahead, and if so, how damage to natural resources can or should be mitigated. The EIA process may include the requirement for a public meeting to present the findings of the EIA to the public and allow for their input or objections.

There is no mandatory requirement for an environmental impact assessment under Jamaican law, and they are seldom done. The Natural Resources Conservation Authority Act gives the NRCA the discretion to require an EIA for any “enterprise, construction or development” which has or could have an adverse impact on the environment.¹⁰⁴ Of the 3,655 permits and licenses granted by the NRCA between 2010 and 2013, only seven were the subject of completed EIAs.¹⁰⁵

NEPA makes a determination whether or not an EIA is necessary by reviewing the proponent’s application form. In general, EIAs may be required where there is a risk to natural resources or public health or whether the development falls within a “prescribed category” under the Permit and Licensing Regulations. NEPA makes provision for a shorter type of assessment, called a Technical Report, if it deems that a full environmental impact assessment is not necessary.

¹⁰⁴ The Natural Resources Conservation Authority Act 1991, s. 10.

¹⁰⁵ SOE (2013), p. 302.

There is no provision for developments and activities that are not in a prescribed category but for which there are obvious environmental implications, and thus no environmental impact assessment is conducted. In practice, some actors who are pursuing non-prescribed activities have done EIAs voluntarily. For example, Tullow Oil, an oil and gas exploration company, commenced prospecting for oil in Jamaican waters in 2014-5; their own company policy required an environmental assessment, though this was not required by any Jamaican law or regulation. (Drilling for oil is a prescribed category, but prospecting was not at the time Tullow Oil began. Prospecting has since been added to the list of prescribed categories.)

Further, there is no mandated requirement for a strategic environmental assessment (SEA). This is a method of assessing and mitigating environmental risks in national policies, plans and programmes, and/or the cumulative impacts of development on a particular region (a stretch of coastline, for instance), national park or city/town. A SEA is comprised of comprehensive or long-term considerations of the environmental impact of a development should it go beyond an individual development or project. Whereas one or two developments or projects may have low environmental impacts on their own, a number of projects in the same region or of the same type may have significant cumulative impacts. For example, a single hotel on a stretch of coastline may have little impact on natural resources, but as more and more are built, the impact becomes significant. Central sewage treatment becomes necessary, but may be built after hotel development is well underway, or may be undersized as more and more hotels are added. Greater requirements for housing for workers also result in environmental impacts. This has happened in all of Jamaica's major resort towns – Montego Bay, Ocho Rios and Negril.

Strategic environmental assessments ought to be conducted to inform the policy framework that should guide project decisions, such as for transportation, energy, or the impacts of climate change, and their terms of reference should be the subject of public consultation. Environmental impact assessments, on the other hand, relate to specific projects and are often required too late in the process when land has already been acquired, investors identified, and the decision to go ahead already taken. A Strategic Environmental Assessment policy was developed by NEPA in 2003, but remains in draft.

Relatively few strategic environmental assessments have been required or conducted in Jamaica. Examples of completed strategic environmental assessments are:

- » **Port Royal Heritage Tourism Project, Kingston and St Andrew**
- » **Highway 2000, St Catherine/Clarendon/Manchester**
- » **Rose Hall Developments Ltd., St James**
- » **Amaterra Resort Development, Trelawny**

No strategic environmental assessment was done for the North South Highway Link, which crossed the entire island, including the floodplains of five major rivers, traversed steep, forested slopes, and encountered significant geological risks. Before the highway was completed, soil erosion caused by reportedly inappropriate excavation practices during its construction caused significant volumes of silt, solid waste and debris to wash into the Old Fort Bay, a coastal resort community that lies below the highway; the estimated restoration cost from one major rainfall and the ensuing damage was US\$6 million.¹⁰⁶



¹⁰⁶ Christopher Serju, “‘We Prefer Not To Sue’ - Property Owners Hope To Settle Old Fort Bay Issue With CHEC Out Of Court,” Gleaner, August 13, 2016. (<http://jamaica-gleaner.com/article/lead-stories/20160813/we-prefer-not-sue-property-owners-hope-settle-old-fort-bay-issue-chech>)

Even where NEPA requires an environmental impact assessment, however, the process is flawed. The normal steps are:

- » Develop a terms of reference for the EIA, which may be the subject of public input,
- » Gather background information with regard to relevant legislation,
- » Collect background scientific data, for example rainfall, topography, and baseline data on environmental parameters,
- » Assess the main environmental impacts (which are often scored in various ways as to their long- or short-term impacts and the significance of those impacts),

- » Recommend mitigation measures
- » Consult local communities directly affected, and
- » Hold a public meeting in accordance with NEPA's published guidelines, though this step is discretionary.¹⁰⁷

Despite this ostensibly clear-cut and logical process, there are a number of systemic weaknesses which undermine the intention of an environmental impact assessment, sometimes to the point of rendering the EIA process meaningless.

4.1 THE INHERENT WEAKNESS OF ENVIRONMENTAL IMPACT ASSESSMENTS

Environmental impact assessment consultants are contracted and paid by developers; this presents a clear conflict of interest. An EIA consultant who frequently recommends that projects not proceed will very likely soon be out of business. Recommendations from the Jamaican NGO community that developers pay for EIAs into an escrow account managed by NEPA, which would then appoint the EIA consultant, have never been acted upon.

Anyone can call themselves an EIA consultant, as they are not held to any standard, nor is there a scheme for their certification, though this has been discussed since 2012, and forms part of the draft EIA regulations. The quality of some EIAs has been called into question by members of the public during the public consultation process. This has sometimes led to NEPA requiring an addendum from the EIA consultant, but the process for making sure the public

knows this has been done is insufficient. Typically, the addendum will simply be posted on NEPA's website, without any accompanying public outreach.

Indeed specific EIAs and the associated public consultation process have been deemed flawed by the Supreme Court in two separate legal cases.¹⁰⁸ In 2005 the Northern Jamaica Conservation Association, the Jamaica Environment Trust, and some residents of the area filed a legal challenge to the environmental impact assessment conducted for the construction of a hotel at Pear Tree Bottom in St Ann. The developer planned to build a 1,918 room hotel in an area that is particularly ecologically sensitive and rich in biodiversity.

In the Pear Tree Bottom matter, the court stated in its first ruling that:

¹⁰⁷ "Guidelines for Conducting Environmental Impact Assessments," National Environmental Planning Agency, last revised October 2007. (http://nepa.gov.jm/new/services_products/guidelines/docs/EIA-Guidelines-and-Public-presentation-2007.pdf)

¹⁰⁸ Supreme Court Claim HCV 3022 of 2005 Northern Jamaica Conservation Association et al v Natural Resources Conservation Authority et al, Pear Tree Bottom; Supreme Court HCV 5674 of 2010 Jamaica Environment Trust v Natural Resources Conservation Authority et al.

The NRCA and NEPA failed to give adequate weight to the obvious empirical failings of the EIA, thereby depriving themselves of the opportunity to put in place adequate controls in light of the circumstances that actually existed in the ecologically sensitive area. Unless there was reasonably accurate empirical data in the EIA, in light of the fact that neither NEPA nor the NRCA nor anyone else undertook such studies to submit to NEPA or the NRCA, there was no evidence upon which the NRCA and NEPA could act in determining the proper terms to include in the permit. Without a proper evidential basis it would be difficult to see on what basis an effective monitoring programme could be developed, since one would need to know the true ecological state of Pear Tree Bottom at the time the monitoring programme is implemented.¹⁰⁹

A second judgment in the Pear Tree Bottom matter stated:

I understand Environmental Solutions Ltd. (the consultant that conducted the EIA) to be saying that given all the time “forced” on them by the NRCA’s approval and reviews procedures, they produced an acceptable EIA in accordance with the terms of reference. What this means is that if there is any problem with the EIA, the source of it is the shortcomings in the existing procedures and not with the consultants. While past studies ought to be taken into account there has to be some limit on how far back one can go without raising serious questions about the reliability of the information, even if the EIA complies with the terms of reference. In so far as it was stated or implied in my previous judgment that the consultants deliberately produced a questionable EIA, I say that is not the case, in light of Dr. Wade’s explanation. However, this is only an explanation for the EIA produced and is not sufficient to disturb my conclusion that the Water Resources Authority ought not to have acted on the EIA as it was.¹¹⁰

¹⁰⁹ The Northern Jamaica Conservation Association et al v The Natural Resources Conservation Authority and the National Environment and Planning Agency (Claim no. HCV 3022 OF 2005) (May 16, 2006) (Judgment No. 1), p. 52. (<http://supremecourt.gov.jm/content/northern-jamaica-conservation-association-et-al-v-natural-resources-conservation-authority>)

¹¹⁰ The Northern Jamaican Conservation Association and the Jamaican Environment Trust and ors v The National Environmental Planning Agency (NEPA) No. 2 (Claim no. HCV 3022 of 2005) (June 23, 2006) (Judgment No. 2), p. 23 para. 64. (www.jamentrust.org/wp-content/uploads/2016/03/Pear_Tree_Botton_Judgment_No_2.pdf.)

The Court concluded that the order should be granted quashing NEPA/NRCA's decision to issue the permit. It also emphasized that consultation of citizens by public bodies and authorities was a well-established feature of modern governance, including the requirement that the public body take the input of the public into account, and that even if there is no statutory requirement for consultation, it had to be done in accordance with a certain standard.¹¹¹ The Court ruled that the public had been deprived of participating in a consultation process with complete information, specifically a marine ecology report, and instructed the Authority to reconsider its decision to grant a permit to the developer. The developer then applied to be heard by the Court, as the hotel was well underway. The Court found that stopping the hotel would present undue hardship to the investors, strengthened the declarations made in the first hearing, and allowed the hotel to be completed.

In the second case, in 2011, the Jamaica Environment Trust (JET) sought judicial review of the NRCA's decision to grant a beach license for the construction of sea defence works in the Palisadoes/Port Royal Protected Area, and the associated public consultation process. JET contended that the clearing of the beach was a prescribed category and therefore needed an environmental permit (as well as a beach license), and that the public consultation process was flawed, given that the public meeting had occurred after work on the site had started. The Court ruled that the proper licenses had been issued, but that the public consultation process had not met

legal standards.¹¹²

These two cases are not outliers. JET has conducted over 50 reviews of Jamaican EIAs, with assistance from the Environmental Law Alliance Worldwide (ELAW),¹¹³ and completed a summary of the main weaknesses observed in multiple EIAs conducted by different EIA consultants over a period of six years. These weaknesses were:

- » **Insufficient analysis of alternatives and cumulative impacts**
- » **Inadequate baseline data and poor study methods**
- » **Failure to comply with NEPA's Terms of Reference**
- » **Inadequate assessment of public health impacts**
- » **Insufficient care taken in parks/protected areas or proposed protected areas**
- » **Downplaying of environmental impacts, particularly dredging, sewage treatment and discharge, coastal works, run off from roads and parking lots and solid waste handling**
- » **Failures in the public process**
- » **Failure to assess associated activities, such as mining and quarrying at other sites**
- » **Failure to provide a comprehensive monitoring plan**
- » **Piecemeal approach to permit review and approval, leaving critical aspects to a later date, such as sewage treatment facilities**

4.2 INADEQUATE BASELINE DATA

The terms of reference for environmental impact assessments invariably require baseline data on a number of parameters, which are not easily available, if at all. This means that a proponent, in theory, must stand the cost of collecting these data over time. Marine water quality data, for example, should be collected at different depths for at least a year to account for different climatic conditions. This has been regarded as producing too much delay, so NEPA has allowed

abbreviated data collection, which, when needed to assess impacts during post-permit monitoring, is almost useless because the baseline data was not robust. As another example, NEPA has allowed daytime "windscreen surveys" to assess biological diversity, which omits all nocturnal animals and is likely to exclude all migratory birds. This practice supported the reasoning by Justice Sykes in the Pear Tree Bottom case discussed previously.

¹¹¹ "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.

¹¹² *Jamaica Environment Trust v Natural Resources Conservation Authority et al* (Claim no. HCV 5674 of 2010) (October 13, 2011). (www.jamentrust.org/wp-content/uploads/2016/03/Final_Judgement_Palisadoes_Judicial_Review.pdf)

¹¹³ ELAW is a public interest, non-profit, environmental organization that helps communities protect the environment and public health through law. (www.elaw.org)

4.3 PUBLIC ACCESSIBILITY

The extent to which the public is excluded from the environmental assessment impact is particularly concerning. While EIAs are made available online and at various libraries or state agencies in the vicinity of the applicable projects, due to their length and technical nature, they are simply not accessible to the general public. They have become increasingly lengthy and complex over the past 15 years. A very early EIA conducted on the first phase of the Pear

Tree Bottom tourism development in 1993 was just over 100 pages, including photographs and appendices. A 2017 EIA conducted on the Southern Coastal Highway Improvement Project ran to 393 pages, also including plates, tables and appendices.¹¹⁴ The public consultation guidelines require a non-technical summary to be given at public meetings, but this frequently is only slightly more understandable for the general population.

4.4 LACK OF REGULATIONS

The United Nations Environment Programme's (now UN Environment) Principle of Environmental Impact Assessment provides a good roadmap for the basic principles of an effective EIA system. Principle 2 provides that “the criteria and procedures for determining whether an activity is likely to significantly affect the environment and is therefore subject to an EIA, should be defined clearly by legislation, regulation, or other means, so that subject activities can be quickly and surely identified, and EIA can be applied as the activity is being planned.”

There are no regulations under the NRCA Act for the conducting of EIAs, but NEPA does provide written guidelines, last updated in 2007.¹¹⁵ Based on its own exhaustive investigations of the EIA process in Jamaica,

the Jamaica Environment Trust submitted a detailed set of recommendations for EIA regulations to the environmental ministry in 2011.¹¹⁶ Proposed regulations were completed by NEPA in 2015 and reviewed by the Jamaica Institute of Environmental Professionals (JIEP), which also submitted comments. The regulations remain in draft.¹¹⁷

The environmental impact assessment, the most significant tool for environmental preservation, as it is utilized in Jamaica—without standards or regulations—is an ineffective means through which development can be approved, guided and monitored. Neither are strategic environmental assessments adequately conducted or utilized for environmental protection and planning.



¹¹⁴ “Environmental Impact Assessment Draft Final Report Southern Coastal Highway Improvement Project Part B (ii) Works – Harbour View to Yallahs Bridge,” Ministry of Economic Growth and Job Creation (Jamaica), October, 2017. (http://nepa.gov.jm/new/services_products/applications/eias/docs/misc/southern_coastal_highway/EIA_SCHIPSeg1_HarbourViewYallahs_Draft%20Final_NEPA_Rev2.pdf)

¹¹⁵ “Guidelines,” *ibid.*

¹¹⁶ Jamaica Environment Trust, “Submission on Proposed EIA Regulations for Jamaica,” December, 2011.

¹¹⁷ NEPA executives, *ibid.*

5. JAMAICA'S INABILITY TO DELIVER QUALITY MONITORING AND EFFECTIVE ENFORCEMENT

Monitoring and enforcement of Jamaica's environmental laws, policies and regulations is weak at both the national and local levels.¹¹⁸ (See Table 8.) As one example, in 2018 there were only two cases before the courts of breaches of the Beach Control Act, where the defendants pleaded guilty, but "following pleas in mitigation the charge was withdrawn."¹¹⁹

¹¹⁸ SOE (2013), p.302.

¹¹⁹ R v Orville Webb; R v Rashidi Williams.

Table 8: Enforcement Weaknesses Identified by JET in 2009. Updated 2018.

Projects which start without a permit and are “regularized”	No data available
Insufficient monitoring of permits, delays in collecting permits	The AG’s 2016 report found insufficient monitoring of the Special Monitoring List (SML). 270 permits were uncollected in 2018, a few going back to 2008
Ineffective enforcement action, generally not including sanctions	In 2018, NEPA reported 19 cases before the courts: six for breaches of the NRCA Act, five for breaches of the WPA, one for breaches of the TCPA Act, and seven for breaches under the BCA.
Failure to seek court sanctions against state agencies in breach of environmental laws	The 2017/8 list contains no cases against state agencies
Failure to respond effectively to public concerns and conform consistently to the requirements of the Access to Information (ATI) Act	The Auditor General’s 2016 Performance Report reports 1,217 complaints to NEPA by the public, of which 90% were investigated. No details are provided on how these were resolved.
Failure to finalize or enforce a range of policy documents and development orders	There are now new development orders for several parishes. Many policies remain in draft.
Failure to implement an effective EIA process	The EIA regulations are still in draft

Source: Jamaica Environment Trust

Table 9: Environmental Enforcement by NEPA under its respective Acts (2010-2013)

TYPE OF ENFORCEMENT ACTION	AMOUNT
Enforcement Notices	105
Cessation Orders	35
Stop Notices	42
Notice of Intention to Suspend	30
Notice of Intention to Revoke	1
Warning Notice (air quality regulations)	0
Onsite Breach Notices	1,188
Warning Letters	213
Summons served	48
Bird shooting prosecutions	20
TOTAL	1,682

Source: State of the Environment Report 2013, Table 75

The Auditor General of Jamaica (AG) conducted two Performance Audits of NEPA, in 2010 and 2016.¹²⁰ Serious monitoring and enforcement deficiencies were identified in 2010, and the 2016 audit sought to assess progress in addressing those deficiencies. While there had been improvements in the numbers of technical staff able to conduct monitoring visits, and greater numbers of enforcement actions including legal cases, there were egregious failures.

For example, of the permits/licences on NEPA's own Special Monitoring List (which prioritizes those developments presenting serious threats to the environment,) a number of them had expired, nearly half did not meet the standard for monitoring, many were not consistently monitored, and NEPA could not verify the status of nine sewage/wastewater treatment facilities, "to determine whether they were operational and discharged sewage and trade effluent."¹²¹

Regarding permits not on the Special Monitoring List, the AG found that, "NEPA did not conduct the required monitoring on a timely basis to ensure that approved activities were being

carried out in accordance with the terms and conditions of the permits/licenses."¹²² The AG sampled 108 permits/licenses and found gaps of up to five years between the time the license was issued and the conduct of the first monitoring visit, many permits were not monitored in accordance with NEPA procedures, and many were not monitored at all.

The environmental permit itself is problematic. A typical NRCA environmental permit relies heavily on other documents or plans, for example: outlining monitoring and mitigation activities, drainage plans, habitat conservation and revegetation activities, and waste management. The enforcement officer may or may not have these plans to hand. The post-permit monitoring reports generally cover the receipt (or otherwise) of required plans, but include few or even none of the details contained therein. The enforcement officer will record that a required plan, for example a drainage plan, has or has not been received, but if it has been received, the enforcement officer may not have it on site, or may not report on any of the requirements contained in the drainage plan.

5.1 CASE STUDY: THE FALMOUTH CRUISE SHIP PIER

The Falmouth Cruise Ship Terminal was constructed in Trelawny (Jamaica's north coast) in 2009-2011 to accommodate the mega cruise ships that were too big for the island's existing cruise ship facilities. The project entailed extensive dredging and reclamation works, including the creation of the cruise ship terminal itself, and the dredging of an access channel and two berthing pockets through a coral reef. The environmental impact assessment was contracted to Mott MacDonald, a UK engineering consulting firm, who then subcontracted to Technological and Environmental Management Network (TEMN), a Jamaican environmental management agency. The EIA stated that, "the dredging activities will contribute to physical, chemical and biological

changes to the harbour's ecology, with possible direct and indirect impacts on the nearby fringing coral reef, seagrass beds and bioluminescence in Oyster Bay."¹²³

A number of mitigation measures were indicated:

- » Suspension of dredging in rough conditions, use of silt screens
- » Relocation of approximately 140,000 healthy corals
- » Replanting of 20 hectares of seagrasses to replace those removed
- » Replanting of 40 hectares mangroves, to replace those destroyed for the market, parking and a sewage plant

PLANNED MITIGATION MEASURES WERE TO



¹²⁰ Auditor General (2010) and (2016).

¹²¹ Ibid.

¹²² Ibid.

¹²³ "Falmouth Cruise Ship Terminal Environmental Impact Assessment," Mott MacDonald, June 2007, p. S4. (www.elaw.org/system/files/Final%20Report%20by%20Mott%20Mac%20Version%20202.pdf)

NEPA's 2009 and 2010 monitoring reports revealed:

- » Dredging commenced before removal of coral and continued in rough conditions
- » Silt screens were often poorly deployed, ineffective and failing to function for extended periods
- » Sewage from the dredging vessel was dumped in the harbour on at least one occasion
- » Dredge spoils were dumped on the reef
- » The coral reef replanting was poorly done: "There appears to be a rush to move and replace items and thus to make a daily quota of numbers of items moved. Little or no regard is being given to their long-term chances eventual survival (sic) which is directly impacted by the manner in which the transplant is carried out and the apparent lack of training or expertise of the crew/ individuals involved."¹²⁴
- » There were at least two incidences of ship grounding, destroying large areas of coral reef, resulting in NEPA requiring the installation of two different types of artificial reef
- » The artificial reef structures were improperly sited and impacted by the high turbidity
- » A wastewater pipeline was poorly anchored and shifted, causing extensive damage to benthic resources, including the reef.

- » Only phase one of the seagrass replanting was ever done and the plugs were reported as heavily silted.
- » All the wetlands were cleared, sewage and dredge spoils were dumped in the area – the monitoring officer did not know if the required restoration plan had ever been submitted.

CL Environmental Ltd., a Jamaican environmental consultant, was contracted by the Port Authority of Jamaica to review the environmental status of the Falmouth Cruise Ship Terminal roughly two years after completion. Field work was done in 2013 and CL Environmental concluded general indications of success were poor:

- » Survival rates of the relocated coral were low at 4.0%, 14.0% and 18% at relocation sites
- » Success rates for sponges were even lower at 1.2%, 0.7% and 0.4%
- » Most of the seagrass plugs were said to be in "fair" condition
- » Dinoflagellate counts in Oyster Bay (Glistening Waters) were much lower
- » There was a significant increase in macroalgae cover
- » There was no mention of the requirement for replanting of mangroves.¹²⁵

2013 field work by CL Environmental indicated underwhelming results



HEALTHY CORALS
SUCCESS RATE

4% - 18%



SEA SPONGES
SUCCESS RATE

0.4% - 1.2%

Other mentions and counts of seagrass, dinoflagellate, and mangroves were either fair, much lower or unavailable.

Except for
MACROALGAE

Which saw a
SIGNIFICANT INCREASE

¹²⁴ Technological and Environmental Management Network (TEMN), Report No 7, Dec 1-31, 2009. TEMN is a Jamaican environmental consulting firm that conducted the monitoring.

¹²⁵ CL Environmental Consultants, "Environmental Status of the Falmouth Cruise Ship Terminal, Trelawny, Jamaica (Final Report)," July 2013.

5.2 RESOURCES AND CAPACITIES

The extent to which NEPA can properly fulfill its mandate is dependent on what one considers that mandate to be. Its stated mandate is, “to carry out the technical (functional) and administrative mandate of [the] three statutory bodies” (NRCA, TCPA and LDUC). As we have seen, the legal process giving effect to this mandate was never completed, but it could be said that NEPA nevertheless does this on a de facto basis. The mission NEPA sets out for itself is “to promote sustainable development by ensuring protection of the environment and orderly development,” and its vision is that “Jamaica’s natural resources are used in a sustainable way and that there is broad understanding of environment, planning and development issues, with extensive participation amongst citizens and a high level of compliance to relevant legislation.”¹²⁶

A partial list of NEPA’s functions includes:

- » Monitor natural resources (including those in the sea) and public health indicators
- » Conduct public education
- » Prepare national environmental, planning and development policies, strategies and plans
- » Manage national parks and protected areas and oversee delegation agreements for the management of national parks and protected areas
- » Consult with a wide range of other state agencies
- » Prepare and update development orders
- » Advise local planning authorities, the private sector, the Natural Resources Conservation Authority, and the Town and Country Planning Authority on a range of planning and environmental issues
- » Prepare plans and reports to meet requirements of international agreements
- » Enforce planning and environmental laws, permits and licenses in areas covered by development orders, and for all activities within permitted categories
- » Process applications for permits and licenses
- » Develop standards and regulations
- » Set quotas for harvest and monitor imports and exports of protected species

Table 10: Applications processed by NEPA 2017-2018 fiscal year

TYPE OF APPLICATION	NO. PROCESSED	NO. PROCESSED WITHIN 75-90 DAYS
Beach License	45	34
Environmental Permit	178	145
Environmental License	66	51
Non TPA Planning	36	24
TCPA Planning	32	24
Subdivision (9 lots and under)	96	94
Subdivision (10 lots and over)	27	22
Enquiries	16	9
TOTAL	496	403

¹²⁶ “Agency Profile,” National Environment and Planning Agency, last modified July 21, 2014. (<http://nepa.gov.jm/new/about/overview.php>)

The only areas which the organization's senior management acknowledges a lack of human resources is with regard to having enough staff to process permits and licences (which results in them now being assigned priority based on a risk assessment,) and to respond to the large number of

complaints from the public requiring investigation, as well as an inability to easily increase the staff complement in these areas. The target for processing is 75-90 days, and for fiscal year 2017/8, 403 out of 496 permits or licenses were completed within this time frame.

Table 11: Technical skills available at NEPA September 2018

TECHNICAL SKILLS	NUMBER OF EMPLOYEES
Architect	1
Planners	48
Marine Biologists	11
Environmental Scientists	40
Civil Engineers	2
Chemical Engineers	10
Environmental Engineer	1

Source: Peter Knight, CEO, NEPA, email to author, September 5, 2018.

The extent to which NEPA has the sufficient technical expertise, personnel and equipment to enact its mission and vision, and to carry out these many functions are debatable. NEPA seems to have a large cadre of trained professionals—the employees in the categories above (Table 10), according to NEPA's CEO, are some of the best trained environment and planning practitioners, and they have “the minimum qualification of a bachelor's degree, many also have masters' degrees.”¹²⁷ With regard to its enforcement function, the 25 enforcement officers are supplemented by the support of other staff members (e.g., members of the Ecosystem Services Branch). They also co-opt the resources of other GOJ agencies (e.g. the Marine Police and members of the Island Special Constabulary Force), and the public (e.g. Game Wardens).¹²⁸

NEPA acknowledges resource constraints, particularly with regard to physical equipment and technology, for example to conduct sufficient water or air quality testing. Even with these constraints, however, the organization's focus appears

to be far more on processes rather than results. While there is no definitive data showing the impact of enforcement actions (or lack thereof) on natural resources, it is certain that fines are too low and sanctions are too ineffective to disincentivize breaches. The Natural Resources Conservation Authority Act and the Town and Country Planning Act are seldom the basis of legal action, monitoring visits are not frequent enough and often significantly delayed after the permit/license is granted, and there is tolerance for developers to embark on activities without the required permits. Environmental permits rely on a range of other documents that are not generally accessible to the public, or even to monitoring officers. Even if we assume that NEPA lacks the resources to effectively implement laws and regulations, the agency could, but doesn't, look to alternative means of improving compliance, such as publicizing the few instances where sanctions are levied, or developments are stopped. Instead, there is an over-reliance on “soft” enforcement measures such as warnings and enforcement notices, which neither prevent nor remedy environmental damage.

¹²⁷ Peter Knight, CEO of NEPA, email correspondence with author, September 5, 2018.

¹²⁸ Peter Knight, personal interview with author, September 3, 2018.



6. CONCLUSION AND RECOMMENDATIONS



Despite many public statements at the highest level assuring commitment to environmental protection and sustainability, the Jamaican government (regardless of the administration's political stripe) has failed to operationalize these promises. The early commitment to protection of the environment via the Natural Resources Conservation Authority Act has never been delivered. At the time, there seemed to be an understanding that significant environmental risks were presented by state agencies, with the result that the NRCA Act binds the Crown. This meant that the NRCA then (and NEPA now) could take court action against government agencies which breached environmental laws. But this has happened rarely over the 27 years of the NRCA Act's existence, with the result that a culture of non-compliance with environmental rules has been created, a culture in which the general public, including the private sector, are not constrained by laws or regulations in their actions, regardless of the environmental effects. This culture of impunity has been exacerbated by a lack of enforcement of the Permit and Licensing System that was put in place five years after the promulgation of the NRCA Act, where environmental permits and licenses were to be issued for a wide range of types of development.

While NEPA could and should be better resourced, particularly with regard to physical infrastructure such as laboratory space and equipment, the evident absence of effective enforcement measures, including the application of sanctions, has more to do with NEPA's tacit definition of its mandate as a facilitator of development than with a lack of resources. NEPA's monitoring of the health of the natural environment remains extremely weak, and their focus is overwhelmingly on processes rather than results, with the result that there are significant execution gaps, and many identified solutions, policies, plans and programmes take far too long to be implemented.

A critical juncture occurred in 2001: the incomplete merger of the NRCA, the TCPA and the LDUC resulted in an overly complex iteration of what was a simple regulatory framework; the required repeal of the NRCA Act and the promulgation of a new NEPA Act has never been done. What we have been left with for nearly 30 years is a situation where overlapping and diffuse responsibilities for the environment remain spread across many different government agencies, leading to confusion, delays, and deflection of responsibilities.

The lack of commitment at the highest level to environmental protection is illustrated by the frequent movement of the environmental portfolio to different ministries. Qualified environmental professionals have never comprised the majority on the NRCA Board, with the result that decisions inevitably reflect the pro-development-at-any-cost stance of

public and private sectors alike, regardless of environmental impacts. Since 2016, the environmental portfolio is located in the Ministry of Economic Growth and Job Creation – a clear indication of the GOJ's priorities, which is ironic given that this administration's leader has made the most meaningful public statements about environmental protection than any other Prime Minister in the past three decades.

What then remains is an environmental regulatory framework comprised of a long list of worthwhile intentions, codified in incomplete policies, and characterized by failure to act over long time periods. Many recommendations have simply not been carried out, many plans not implemented, and many declarations not followed through. One might even argue that it would suffice for Jamaica to implement the policies that already exist, and enforce the laws already on its books, for environmental protection to be far more effective than it is at present—that before we add any new laws or policies, we follow through on those we have now. What this suggests is that the main weakness in Jamaica's environmental framework is a lack of sufficient interest on the part of the government and its agents to protect our natural environment in a substantive way. While there are specific areas that call for attention, such as the current ineffectiveness of low fines, and the need for greater and more meaningful public engagement, the most important change that is needed in Jamaica is a commitment to execute and complete identified actions.

6.1 RECOMMENDATIONS



PROMULGATE THE NEPA ACT AS AN URGENT PRIORITY

The steps that need to be taken to carry through on this commitment are contained in a 2005 document, “Progress report on legislation addressing an integrated approach to environment and planning in Jamaica.”¹²⁹ These include the repeal of the Natural Resources Conservation Authority Act, the Town and Country Planning Act, the Land Development and Utilization Commission Act, the Beach Control Act, the Watersheds Protection Act and the Wildlife Protection Act, as well as amendments to the Local Improvements Act and the Housing Act.

Additional clauses should include third party rights for the general public, specification of the skills required on the new regulatory authority, and explicitly stated parameters regarding ministerial discretionary powers, with a view to minimizing them only to matters of emergency and national security.

Given the long-standing and evident failure to adhere to development orders, sanctions for breaches to the development orders should be included in the new NEPA Act. Discretion for state agencies and/or ministers to vary development order provisions should be reduced, and development orders should be updated on a specified schedule, including a review of compliance with the previous development order.

The environmental focus should be made explicit by calling the new act the National Environmental Protection Act.

¹²⁹ “Progress report on legislation addressing an integrated approach to environment and planning in Jamaica,” NEPA, March, 2005



COMPLETE AND PROMULGATE THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS

The environmental impact assessment system is the main environmental management system in Jamaica. Complete the EIA regulations to establish, at a minimum, mandatory strategic environmental assessments and environmental impact assessments for certain types of development and/or developments in certain areas, certification of EIA consultants, and provisions to guard against conflicts of interest and public consultation procedures.



COMPLETE AND PROMULGATE THE REGULATIONS FOR ALL TYPES OF PARKS AND PROTECTED AREAS

Parks and protected areas of various types can be declared under the NRCA Act, but with the exception of marine and national parks, there are no regulations in place for other types of protected areas. This means that there are no restrictions on what types of development can occur in these areas, or how they should be managed.



INCREASE FINES AND SANCTIONS

There are a number of proposals for increased fines for breaches of the NRCA Act and its regulations (or whatever legislation replaces it). They need to be implemented on the basis of a modern assessment as to what sanctions and fines comprise effective disincentives.



COMPLETE THE REMAINING DEVELOPMENT ORDERS AND CONDUCT OUTREACH ON THEIR PROVISIONS

Summarize key requirements of the Development Orders in a format that can be easily understood by the public. Conduct outreach to development organizations, such as architects, engineers, developers, Jamaica Promotions (Trade and Investment) (JAMPRO), and private sector umbrella groups.



RATIONALIZE AND COMPLETE ENVIRONMENTAL POLICIES

There are more than 20 policies relating to the environment in various stages of development, many long delayed. Identify, consolidate and complete the critical ones, including any gaps, starting with the following:

- National Ocean and Coastal Zone Management Policy (to include beach access, overwater structures, mangrove, seagrass and coral reef protection, cays management)
- Watershed and River System Management Policy
- Protected Areas System Policy and Master Plan
- National Environmental Education Policy and Plan
- Policy for Conservation and Management of Protected Plants and Animals



FAST TRACK THE NATIONAL SPATIAL PLAN

Developers and investment agencies should be able to review the National Spatial Plan to see the framework for development in any part of the island. If an area is identified as important for watershed protection, for example, there would be no need to proceed with an application which would require removal of forests. This would also insulate the GOJ against potential lawsuits if land has already been purchased for certain purposes which were clearly prohibited in the NSP.



SETTLE THE LOCATION OF THE ENVIRONMENTAL PORTFOLIO

There are a number of options: the Ministry of Health is relevant because of the relationship between poor environmental management and public health, for example, and thus in ensuring effective solid waste management and preventing air and water pollution. The Ministry of Local Government may be appropriate given its role in development orders. The Office of the Prime Minister has proven, in this administration, a suitable home as the prime minister's own apparent interest in the environment seems to have spurred more action and gotten better results in environmental matters than has previously obtained. Secure bipartisan approval for this commitment.



ESTABLISH A PARLIAMENTARY COMMISSION ON THE ENVIRONMENT

Given the immediate and existential threat of climate change to island states, the large numbers of Jamaicans inhabiting zones vulnerable to disasters, and the manifest failure to manage development or protect the environment over the country's history, establish a Parliamentary Commission on the Environment, along the lines of the Electoral Commission or the Office of the Children's Advocate. Establish outcome indicators for environmental health, such as air and water quality, coral reef health, beach erosion status, forest restoration, waste management indicators, and others. Publish them in annual State of the Environment Reports, which are tabled in Parliament.



INVESTIGATE THE FEASIBILITY OF AN ENVIRONMENTAL COURT FOR JAMAICA

There has been an explosion of environmental courts and tribunals all over the world. In 2018, there are almost 1,500 tribunals or courts in 44 countries, including the Caribbean.¹³⁰ Courts with specialized expertise in environmental matters are able to deliver faster and better judgments, and use alternative dispute resolution processes. The experience of the Trinidad and Tobago Environmental Commission may be useful as one aspect of assessing best practices appropriate for the Caribbean region.¹³¹

¹³⁰ Don C Smith, "Environmental courts and tribunals: changing environmental and natural resources law around the globe," *Journal of Energy & Natural Resources Law*, 36:2, 137-140, 2018. (www.tandfonline.com/doi/full/10.1080/02646811.2018.1446404)

¹³¹ "Report on Performance and Activities, 2000-2003," Environmental Commission of Trinidad and Tobago, 2003. (www.ec.gov.tt/index.php/publications/category/1-annual-reports?download=2)

LIST OF ACRONYMS

AG	Auditor General	NRCA	Natural Resources Conservation Authority
BCA	Beach Control Act	NRCAA	Natural Resources Conservation Authority Act
CAA	Civil Aviation Authority	NSWMA	National Solid Waste Management Authority
CEO	Chief Executive Officer	NSP	National Spatial Plan
CEP	Country Environmental Profile	NWC	National Water Commission
DO	Development Order	NWA	National Works Agency
ED	Executive Director	ODPEM	Office of Disaster Preparedness and Emergency Management (ODPEM)
EHU	Environmental Health Unit	P&L	Permit and Licensing Regulations
EIA	Environmental Impact Assessment	RADA	Rural Agriculture Development Authority (RADA)
ELAW	Environmental Law Alliance Worldwide	SML	Special Monitoring List
GOJ	Government of Jamaica	STP	Sewage Treatment Plant
ITA	Island Traffic Authority	TEMN	Technological and Environmental Management Network
JCDT	Jamaica Conservation and Development Trust	TCP Act	Town and Country Planning Act
JAMPRO	Jamaica Promotions (Trade and Investment) Co. Ltd.	TCPA	Town and Country Planning Authority
JEAN	Jamaica Environmental Advocacy Network	UDC	Urban Development Corporation
JET	Jamaica Environment Trust	USA	United States of America
JBI	Jamaica Bauxite Institute	US EPA	United States Environment Protection Agency
JFB	Jamaica Fire Brigade	UWI	University of the West Indies
JIEP	Jamaica Institute of Environmental Professionals	WPA	Wildlife Protection Act
JNHT	Jamaica National Heritage Trust	WRA	Water Resources Authority
JPSCo	Jamaica Public Service Company Ltd.		
LDUA	Land Development and Utilization Act		
LDUC	Land Development and Utilization Commission		
MEGJC	Ministry of Economic Growth and Job Creation		
MGD	Mines and Geology Division		
MOAF	Ministry of Agriculture and Fisheries		
NEPA	National Environment and Planning Agency		
NIC	National Irrigation Commission		
NGO	Non-Governmental Organization		
NLA	National Land Agency		

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(http://nepa.gov.jm/new/legal_matters/laws/Planning_Laws/TCP_NGIA_Provisional_Development_Order2013.pdf)

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APPENDIX 1

TERMS OF REFERENCE

Identify key areas of weakness in Jamaica's current governance framework for environmental management and propose institutional and other changes to address these deficiencies.

The following areas, amongst others, are proposed to be addressed through the research:

- » **Development orders:** Jamaica has several development orders intended to govern the development of various parts of Jamaica, with due regard to environmental considerations. However, these development orders are largely ignored in development implementation - in some instances, aided by corruption in the permitting process, in others aided by lax or non-existent monitoring and enforcement during the development process - generally, to the detriment of the environment;
- » **EIA process:** Jamaica requires Environmental Impact Assessments (EIAs) for all major developments, but with EIA consultants paid directly by developers there is a strong motivation for EIAs to make the case for the development rather than not. Moreover, all decisions require ministerial approval which in some cases is given before the EIA process has been completed. Finally, the EIA regulatory agency, NEPA, does not have sufficient technical or financial capacity to adequately assess EIAs (e.g. by conducting field travel and independent verification) within the stipulated time limit and thus rely heavily on the information in the provided EIA report;
- » **Enforcement:** Enforcement of environmental regulations in Jamaica is lacking, due to lack of resources, including funding, but also equipment and trained personnel.

APPENDIX 2

INTERVIEWS

Franklin McDonald, former Executive Director and CEO of NRCA and NEPA

Carl Chen, Architect, former member of the TCPA and current member of the Advisory Planning Committee

Douglas Stiebel, Architect, former member of the TCPA, former Chairman of the Jamaica Environment Trust

Peter Knight, CEO of National Environment and Planning Agency (NEPA).

Susan Otuokon, Executive Director, Jamaica Conservation and Development Trust.

NEPA executives, personal interviews with author.

APPENDIX 3

LIST OF ENVIRONMENTAL LAWS ADMINISTERED BY NEPA

Beach Control Act 1956, most recent amendment 1991

moj.gov.jm/laws/beach-control-act

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

moj.gov.jm/laws/endangered-species-protection-etc-act-0

Town and Country Planning Act 1958, most recent amendment 1999

moj.gov.jm/laws/town-and-country-planning-act

Watersheds Protection Act 1963, most recent amendment 1991

moj.gov.jm/laws/watersheds-protection-act-1

Wildlife Protection Act 1945, most recent amendment 2016

moj.gov.jm/laws/wild-life-protection-act-0

LIST OF ENVIRONMENTAL LAWS NOT ADMINISTERED BY NEPA

Building Act 2017

<https://japarliament.gov.jm/attachments/article/339/The%20Building%20Act,%202017%20--hp.pdf>

Clean Air Act 1964

<http://moj.gov.jm/laws/clean-air-act>

Country Fires Act 1942

<http://moj.gov.jm/laws/country-fires-act>

Exclusive Economic Zone Act 1991

<http://moj.gov.jm/laws/exclusive-economic-zone-act>

Fishing Industry Act 1976

http://moj.gov.jm/sites/default/files/laws/The%20Fishing%20Industry%20Act_0.pdf

Forestry Act 1996

<http://moj.gov.jm/laws/forest-act>

Housing Act 1969

<http://moj.gov.jm/sites/default/files/laws/The%20Housing%20Act.pdf>

Maritime Areas Act 1996

www.moj.gov.jm/sites/default/files/laws/Maritime%20Areas%20Act.pdf

Mining Act 1947

<http://moj.gov.jm/laws/mining-act>

National Solid Waste Management Authority Act 2001

<http://moj.gov.jm/laws/national-solid-waste-management-act>

Pesticides Act 1987

<http://moj.gov.jm/laws/pesticides-act>

Public Health (Nuisance Regulations) 1995

[http://nepa.gov.jm/new/legal_matters/laws/Other_Laws/Public_Health\(Nuisance\)Regulations_1995.pdf](http://nepa.gov.jm/new/legal_matters/laws/Other_Laws/Public_Health(Nuisance)Regulations_1995.pdf)

Quarries Control Act 1984

<http://moj.gov.jm/laws/quarries-control-act>

Urban Development Corporation Act 1968

<http://moj.gov.jm/laws/urban-development-corporation-act>

Water Resources Act 1995

<http://moj.gov.jm/laws/water-resources-act>

APPENDIX 4

JAMAICA'S ENVIRONMENTAL POLICIES AND PLANS

Government of Jamaica Policy Development Programme March 2018 update

<https://cabinet.gov.jm/wp-content/uploads/2018/06/GOJ-Policy-Development-Programme-Update-at-March-2018-web-version.pdf>

Beach Policy for Jamaica, now Beach Access and Management Policy

http://nepa.gov.jm/symposia_03/Policies/BeachPolicyforJamaica-November2000.pdf

Biosafety Policy

<http://nepa.gov.jm/documents/Draft-Biosafety-Policy.pdf>

Cays Management Policy

<https://jis.gov.jm/cay-management-policy-to-be-completed-in-2013/>

Climate Change Policy Framework for Jamaica

http://nepa.gov.jm/Climate_Change/Climate_Change_Policy_Framework_and_Action_Plan_November_2013.pdf

Coral Reef Protection and Preservation Policy

http://nepa.gov.jm/symposia_03/Policies/CoralReefReg.pdf

Dolphin Conservation Policy

http://nepa.gov.jm/symposia_03/policies/dolphinpolicydraft.pdf

Emissions Policy Framework

<https://jis.gov.jm/govt-develop-national-policy-emissions/>

Jamaica Coral Reef Action Plan ; now called Action Plan for Corals and Reefs

http://nepa.gov.jm/symposia_03/Policies/JCRAP.pdf

Jamaica's Protected Areas System Master Plan (PASMP) 2013-2017

[https://info.undp.org/docs/pdc/Documents/JAM/Jamaica's%20Protected%20Areas%20System%20Master%20Plan%202013-17\(Final%20Submission%20to%20the%20PAC\).pdf](https://info.undp.org/docs/pdc/Documents/JAM/Jamaica's%20Protected%20Areas%20System%20Master%20Plan%202013-17(Final%20Submission%20to%20the%20PAC).pdf)

Jamaica's National Environmental Action Plan 2006/9

<http://nepa.gov.jm/documents/JANEAP-2006.pdf>

Mangrove and Coastal Wetlands Policy and Regulation

http://nepa.gov.jm/symposia_03/Policies/Mangrove&WetlandsProtectionPolicy.pdf

National Energy from Waste Policy 2010-2030

www.mset.gov.jm/sites/default/files/pdf/Draft%20Waste%20to%20Energy%20Policy.pdf

National Environmental Education Action Plan for Sustainable Development

http://nepa.gov.jm/symposia_03/Policies/NEEAPSD.pdf

National Forestry Management and Conservation Plan

www.forestry.gov.jm/sites/default/files/Resources/draft_national_forest_management_conservation_plan-_2017.pdf

National Mariculture Policy

<http://nepa.gov.jm/policies/draft/mariculture.htm>

National Policy for the Conservation of Seagrasses

http://nepa.gov.jm/symposia_03/Policies/NationalPolicyfortheConservationofSeagrasses.pdf

National Ocean and Coastal Zone Management Policy

http://nepa.gov.jm/symposia_03/Policies/OceanandCoastalZoneManagementActionPlan.pdf

http://nepa.gov.jm/symposia_03/Policies/OceanandCoastalZoneManagementPolicy.pdf

National Policy on Environmental Management Systems

<https://japarliament.gov.jm/attachments/article/1927/2018%20Green%20Paper%20-%20National%20Policy%20on%20Environmental%20Management%20Systems.pdf>

National Policy for the Environmentally Sound Management of Hazardous Wastes

National Water Sector Policy and Implementation Plan

www.wra.gov.jm/sites/default/files/Jamaica_water_sector_policy_2004.pdf

Policy and Guidelines for Overwater Rooms

Protected Animals in Captivity

Watershed Management Policy

<http://nepa.gov.jm/projects/R2RW/R2RW%20CD%20-%202002/031/031.pdf>

BEYOND PET BOTTLES AND PLASTIC BAGS

FIXING JAMAICA'S ENVIRONMENTAL REGULATORY FRAMEWORK



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