

### Comparative Analysis of Cook Islands<sup>1</sup> Legal Framework and Environment Safeguards in the ADB Safeguard Policy Statement

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions <sup>2</sup>	(C) Extent of Equivalence <sup>3</sup>	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<b>Environmental Safeguards Objectives: To ensure the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process</b>			
<b>Key Element (1)</b> Ensure the environmental soundness and sustainability of projects	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - (1) No person shall undertake any activity which causes or is likely to cause significant environmental impacts except in accordance with a project permit issued under this section.	<b>Full Equivalence.</b>	None required
<b>Key Element (2)</b> Support the integration of environmental considerations into the project decision-making process	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - ...(2) A person who proposes to undertake an activity of the kind referred to in subsection (1) shall apply to the permitting authority for a project permit in respect of the activity in accordance with the procedures (if any) prescribed by regulations. (3) Every application for a project permit shall be submitted to the Service and shall include an environmental impact assessment, ... (7) After the permitting authority has reviewed and assessed the application...including the environmental impact assessment, it shall... (a) issue a permit... (b) request the applicant to submit modifications... (c) refuse to issue a permit.  <b>Seabed Minerals Act 2009</b>	<b>Full Equivalence.</b>	None required

<sup>1</sup> This analysis covers only national policies, laws and regulations. At least three islands, all in the Southern Cook Islands, have environmental regulations: Environment (Atiu and Takutea) Regulations 2008; Environment (Mitiaro) Regulations 2008. These regulations do not govern EIA, but do regulate other issues related to the principles and elements of the environmental safeguards in the ADB Safeguard Policy Statement.

<sup>2</sup> All text in Column B is direct citation from the official versions of the legal instruments. Citations to non-legally-binding policies and guidelines are in footnotes to recommendations in Column D. In this analysis, the words “shall” and “must” are interpreted to mean that an action is mandatory; the word “may” is interpreted to mean that an action is discretionary.

<sup>3</sup> “Full Equivalence” denotes that the national legal instruments are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element thereof. “Partial Equivalence” denotes that the national legal instruments are in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and “No Equivalence” denotes that no legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element. It is intended that the referenced text of the national legal instruments be sufficiently clear to demonstrate the findings of Full Equivalence or No Equivalence without further explanation, except in those instances where an explanation would appear necessary and is given. A finding of Partial Equivalence normally requires the explanation provided.

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	<p>3. Objects of this Act - ... (2) In order to achieve its objects, the Act <i>inter alia</i>...</p> <p>(e) provides for the protection of the environment through the continued application of the provisions of the Environment Act including environmental impact assessment and project permitting;...</p> <p>60. Offer documents - ... (2) The Authority must not issue an offer document to an applicant for a title under this Act unless and until the Authority is satisfied that the applicant has complied with the environmental impact assessment and permitting requirements of the Environment Act.</p>		
<b>Scope and Triggers: Environmental safeguards are triggered if a project is likely to have potential environmental risks and impacts.</b>			
	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that establish the requirement for scoping at the earliest stage of project development and stipulate the factors that trigger the need for an EIA.
<b>Policy Principle 1:</b> Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.			
<b>Key element (1)</b> Screen as early as possible	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that establish the requirement for screening as soon as the need for an EIA has been determined.
<b>Key element (2)</b> Determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that stipulate the factors that need to be taken into account in screening to determine the appropriate extent of an EIA.

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with the significance of potential impacts and risks.			
<b>Policy Principle 2:</b> Conduct an environmental assessment for each proposed project to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological, socioeconomic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources in the context of the project's area of influence. Assess potential trans-boundary and global impacts, including climate change. Use strategic environmental assessment where appropriate.			
<b>Key element (1):</b> Identify indirect as well as direct impacts	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require identifying indirect as well as direct impacts.
<b>Key element (2)</b> Identify cumulative impacts	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require identifying cumulative impacts.
<b>Key element (3)</b> Identify induced impacts <sup>4</sup>	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require identifying induced impacts.
<b>Key element (4)</b> Identify physical impacts	<b>Environment Act 2003</b> 2. Interpretation - In this Act, unless the context otherwise requires... "Environment" – (a) Means the ecosystems and the quality of those ecosystems as well as the physical...processes and resources in those ecosystems and (b) Includes...(ii) those...physical...qualities and characteristics of an area...	<b>Partial Equivalence.</b>  The Environment Act 2003 defines 'environment' to include physical processes, qualities and characteristics. By implication, an environmental impact assessment should identify physical impacts, but the Act does not stipulate that explicitly.	Amend the Environment Act 2003 and/or issue EIA regulations that require identifying physical impacts.
<b>Key element (5)</b> Identify biological impacts	<b>Environment Act 2003</b> 2. Interpretation - In this Act, unless the context otherwise requires... "Environment" – (a) Means the ecosystems and the quality of those ecosystems as well as the...biological...processes and resources in those ecosystems...	<b>Partial Equivalence.</b>  The Environment Act 2003 defines 'environment' to include biological processes and resources. By implication, an environmental impact assessment should identify biological impacts, but the Act does not stipulate that explicitly.	Amend the Environment Act 2003 and/or issue EIA regulations that require identifying biological impacts.
<b>Key element (6)</b> Identify	<b>Environment Act 2003</b> 2. Interpretation - In this Act, unless the context otherwise	<b>Partial Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA

<sup>4</sup> ADB defines induced impacts as adverse and/or beneficial impacts on areas and communities from unintended but predictable developments caused by a project, which may occur later or at a different location.

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socioeconomic impacts (including on livelihood through environmental health and safety, vulnerable groups, and gender issues)	requires... “Environment” – (a) Means the ecosystems and the quality of those ecosystems as well as the... social...processes and resources in those ecosystems... and (b) Includes...(ii) ...cultural, demographic and social...qualities and characteristics of an area...	The Environment Act 2003 defines ‘environment’ to include social processes and resources. By implication, an environmental impact assessment should identify social impacts, but the Act does not stipulate that explicitly. The Act does not require identifying economic impacts.	regulations to explicitly require assessment of gender issues as well as economic and social impacts on vulnerable groups.
<b>Key element (7)</b> Identify impacts on physical cultural resources	<b>Environment Act 2003</b> 2. Interpretation - In this Act, unless the context otherwise requires... “Environment” – (a) Means the ecosystems and the quality of those ecosystems as well as the...cultural...resources in those ecosystems...	<b>Partial Equivalence.</b>  The Environment Act 2003 defines ‘environment’ to include cultural resources. By implication, an environmental impact assessment should identify impacts on cultural resources, but the Act does not stipulate that explicitly.	Amend the Environment Act 2003 and/or issue EIA regulations that require identifying impacts on physical cultural resources.
<b>Key element (8)</b> Identify impacts in the context of the project’s area of influence	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require an EIA to explicitly define the proposed project’s area of influence and analyze impacts in the context of a project’s area of influence.
<b>Key element (9)</b> Assess potential trans-boundary impacts	No corresponding legal provision.	<b>Irrelevant in the context of Cook Islands.</b>	None required
<b>Key element (10)</b> Assess potential global impacts, including climate change	No corresponding legal provision.	<b>Irrelevant in the context of Cook Islands.</b>	None required
<b>Key element (11)</b> Use strategic environmental	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 to introduce strategic environmental assessment where appropriate.

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assessment where appropriate			
<b>Policy Principle 3.</b> Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts and document the rationale for selecting the particular alternative proposed. Also consider the no project alternative.			
<b>Key element (1)</b> Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - ...(3) Every application for a project permit shall...include an environmental impact assessment, setting out details of – ...(c) the alternatives to the proposed project.	<b>Full Equivalence.</b>	None required
<b>Key element (2)</b> Document the rationale for selecting the particular alternative proposed	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require an EIA to document the rationale for selecting the alternative proposed.
<b>Key element (3)</b> Also consider the no project alternative	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require an EIA to consider the no project alternative.
<b>Policy Principle 4:</b> Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management. Prepare an environmental management plan (EMP) that includes the proposed mitigation measures, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates, and performance indicators. Key considerations for EMP preparation include mitigation of potential adverse impacts to the level of no significant harm to third parties, and the polluter pays principle.			
<b>Key element (1)</b> Avoid adverse impacts where possible	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require an EIA describe how a project will avoid adverse impacts.

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<b>Key element (2)</b> Where avoidance is not possible, minimize and/or, mitigate adverse impacts to the level of no significant harm to third parties	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - ...(3) Every application for a project permit shall...include an environmental impact assessment, setting out details of – (a) the impact of the project upon the environment and in particular- (i) the adverse effects that the project will have on the environment... (b) the proposed action to mitigate adverse environmental effects...	<b>Full Equivalence.</b>	None required
<b>Key element (3)</b> Offset adverse impacts	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that provide for offsets as an option for mitigating adverse environmental impacts.
<b>Key element (4):</b> Enhance positive impacts	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require an EIA to identify a proposed project's potential positive impacts and describe how the project will enhance them.
<b>Key element (5)</b> Prepare an environmental management	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - ...(3) Every application for a project permit shall...include an environmental impact assessment, setting out details of –	<b>Partial Equivalence.</b>  The Environment Act 2003 does not require an EMP, but it does require an EIA to set out the details of proposed mitigation measures.	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP

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plan (EMP) that includes the proposed mitigation measures	(a) the impact of the project upon the environment and in particular- (i) the adverse effects that the project will have on the environment... (b) the proposed action to mitigate adverse environmental effects...		that includes the proposed mitigation measures.
<b>Key element (6)</b> Prepare an environmental management plan (EMP) that includes the proposed monitoring requirements	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - ... (3) Every application for a project permit shall... include an environmental impact assessment, setting out details of... (b) ...the proposed plan to monitor environmental impacts arising out of the project;...	<b>Partial Equivalence.</b>  The Environment Act 2003 does not require an EMP, but it does require an EIA to set out a proposed plan for monitor environmental impacts arising out of a project.	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP that includes the proposed monitoring requirements.
<b>Key element (7)</b> Prepare an environmental management plan (EMP) that includes the proposed reporting requirements	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP that includes the proposed reporting requirements.
<b>Key element (8)</b> Prepare an environmental management plan (EMP) that includes related institutional or organizational arrangements	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP that includes institutional or organizational arrangements.
<b>Key element (9)</b> Prepare an environmental management plan (EMP) that includes related	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP that includes capacity development and training

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capacity development and training measures			measures.
<b>Key element (10)</b> Prepare an environmental management plan (EMP) that includes an implementation schedule	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP that includes an implementation schedule.
<b>Key element (11)</b> Prepare an environmental management plan (EMP) that includes cost estimates	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP that includes cost estimates.
<b>Key element (12)</b> Prepare an environmental management plan (EMP) that includes performance indicators	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to include an EMP that includes performance indicators.
<b>Key element (13)</b> Consider the polluter pays principle in environmental management planning	<b>Environment Act 2003</b> 36. Environmental Impact Assessment... (12) ...the Court may order that the person convicted – (a) ...clear up and remove the damage caused to the environment as a consequence of the offence...; (b) pay such amount as the Court may assess in respect of the expenses and costs that have been or are likely to be incurred- (i) in restoring the environment to its former state...; or (ii) in removing or cleaning up or dispersing any oil or noxious	<b>Full Equivalence.</b>	None required

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	<p>liquid, or other harmful substance...</p> <p>53. <u>Emergency Provisions</u> – Whenever the Service is of the view that there is an imminent danger of loss of life or property due to serious environmental degradation, it shall immediately take necessary action to remove the cause of environmental degradation by itself, or direct any other relevant agency to do so, and recover the cost of so doing from the person who is responsible for causing that pollution as a debt due to the Service.</p> <p>58. <u>Protection of wetlands</u> -... (5) The Court may, in addition to the penalty provided for by subsection (4) order the offender to repair or restore...any damage done as a consequence of any act done in contravention of subsection (1).</p> <p>59. <u>General Penalties</u> – ...(2) ...the Court may order that individual or body corporate to do all or any of the following: (a) under the supervision and to the satisfaction of a person nominated by the Court, to clean up and remedy any damage caused to the environment as a consequence of the offence within such period and under such conditions as may be specified in the order with the intent that any damaged area be restored as near as possible to a satisfactory, environmentally sound state; (b) to remove any structure, fill or material placed in contravention of this Act; (c) to pay such amount as the Court may assess in respect of the expenses and costs that have been or are likely to be incurred restoring the environment to its former state (its state immediately before the offence) or in removing or cleaning up or dispersing any oil or noxious liquid substance, or other harmful substance to which the offence relates.</p>		
<p><b>Policy Principle 5:</b> Carry out meaningful consultation with affected people and facilitate their informed participation. Ensure women’s participation in consultation. Involve stakeholders, including affected people and concerned nongovernment organizations, early in the project preparation process and ensure that their views and concerns are made known to and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment. Establish a grievance redress mechanism to receive and facilitate resolution of the affected people’s concerns and grievances regarding the project’s environmental performance.</p>			
<p><b>Key element (1)</b> Carry out</p>	<p><b>Environment Act 2003</b> 36. Environmental Impact Assessment -</p>	<p><b>Partial Equivalence.</b></p>	<p>Amend the Environment Act 2003 and/or issue EIA</p>

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meaningful consultation with affected people and facilitate their informed participation.	(5) The [National Environment] Service shall undertake public consultation for the issuance of the project permit... (6) The Service shall request comments from any...person affected by or having expertise relevant to the proposed project or its environmental impact.	The Environment Act 2003 requires consultation with affected people, but does not require the proponent or the permitting authority to facilitate their informed participation.	regulations that require a project proponent to facilitate the informed participation of affected people in public consultations during an EIA process.
<b>Key element (2)</b> Ensure women's participation in consultation	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - (6) The Service shall request comments from any...person affected by or having expertise relevant to the proposed project or its environmental impact.	<b>Partial Equivalence.</b>  The Environment Act 2003 requires the Service to request comments from "any person" but does not specifically require women's participation in consultation.	Amend the Environment Act 2003 and/or issue EIA regulations that explicitly require the project proponent to facilitate women's informed participation.
<b>Key element (3)</b> Involve stakeholders, including affected people and concerned nongovernment organizations	<b>Environment Act 2003</b> 2. ... "Person" includes the Crown, or any Government department, Crown funded agency, or public authority (for example a statutory authority or board, an island State Government, or a Konitara Vaka);...  36. Environmental Impact Assessment - (6) The Service shall request comments from any...person affected by or having expertise relevant to the proposed project or its environmental impact.	<b>Partial Equivalence.</b>  The definition of 'person' in the Environment Act 2003 does not include non-governmental organizations.	Amend the definition of 'person' in section 2 of the Environment Act 2003 to read as follows: "Person" includes the Crown, or any Government department, Crown funded agency, or public authority (for example a statutory authority or board, an island State Government, or a Konitara Vaka) and any non-governmental organization;...
<b>Key element (4)</b> Involve stakeholders early in the project preparation process	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require consultation with affected people in all phases of the EIA process, beginning with scoping and screening.
<b>Key element (5)</b> Ensure that stakeholder views and concerns are made known to	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that explicitly require proponents to submit the input from public consultations with an EIA

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and understood by decision makers and taken into account.			report.
<b>Key element (6)</b> Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require proponents to continue consultations with stakeholders throughout project implementation as necessary to address issues related to the project's environmental performance.
<b>Key element (7)</b> Establish a grievance redress mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance.	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 to establish a grievance redress mechanism to facilitate resolution of affected people's concerns and grievances concerning environmental issues.  Amend the Environment Act 2003 and/or issue EIA regulations that require project proponents to establish a grievance redress mechanism to facilitate resolution of stakeholders' concerns and grievances concerning a project's environmental performance throughout project implementation.
<b>Policy Principle 6:</b> Disclose a draft environmental assessment (including the EMP) in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders.			

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<b>Key element (1)</b> Disclose a draft environmental assessment including the EMP	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - (5) The [National Environmental] Service shall undertake public consultation for the issuance of the project permit and in so doing... (b) make available copies of the environmental impact assessment report prepared by the project developer for review by the public;...	<b>Full Equivalence.</b>  The Environment Act 2003 is fully equivalent with the requirement to disclose a draft EIA report, which includes some elements of a comprehensive EMP.	None required  See Policy Principle 4, Key element 5.
<b>Key element (2)</b> Disclose a draft environmental assessment in a timely manner prior to appraisal.	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - (5) The [National Environmental] Service shall undertake public consultation for the issuance of the project permit and in so doing... (c) receive comments within 30 days from the date of public notice from the general public and other interested parties;...	<b>Full Equivalence.</b>	None required
<b>Key element (3)</b> Disclose a draft environmental assessment in an accessible place	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - (5) The [National Environmental] Service shall undertake public consultation for the issuance of the project permit and in so doing - (a) publish details of the project in such a manner that these become accessible to the affected public;...	<b>Full Equivalence.</b>	None required
<b>Key element (4)</b> Disclose a draft environmental assessment in a form and language(s) understandable to affected people and other stakeholders	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require every EIA report to be in a form and to be written in language(s) that are understandable to affected people and other stakeholders.
<b>Key element (5)</b> Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require the Service to publicly disclose the final EIA report and any subsequent updates.

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<b>Policy Principle 7:</b> Implement the EMP and monitor its effectiveness. Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports.			
<b>Key element (1)</b> Implement the EMP	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that explicitly require project proponents to implement the EMP as approved.
<b>Key element (2)</b> Monitor effectiveness of EMP	<b>Environment Act 2003</b> 36. Environmental Impact Assessment - ...(3) Every application for a project permit shall...include an environmental impact assessment, setting out details of... (b) ...the proposed plan to monitor environmental impacts arising out of the project;...	<b>Partial Equivalence.</b>  The Environment Act 2003 does not require an EMP, but it does require an EIA to set out a proposed plan for monitor environmental impacts arising out of a project.	Amend the Environment Act 2003 and/or issue EIA regulations that require project proponents to monitor the effectiveness of an EMP.
<b>Key element (3)</b> Document monitoring results, including the development and implementation of corrective actions	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require documenting monitoring results, including the development and implementation of corrective actions.
<b>Key element (4)</b> Disclose monitoring reports	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 and/or issue EIA regulations that require disclosing reports on monitoring the effectiveness of the implementation of an EMP.
<b>Policy Principle 8:</b> Do not implement project activities in areas of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function, (ii) there is no reduction in the population of any recognized endangered or critically endangered species, and (iii) any lesser impacts are mitigated. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available, (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated. Use a precautionary approach to the use, development, and management of renewable natural resources.			
<b>Key element (1)</b> Do not implement project activities	<b>Environment Act 2003</b> 37. Management Plans - (1) The Service shall...prepare a draft management plan for any area within the island, for all or any of the following purposes:	<b>Partial Equivalence.</b>  The Environment Act 2003 does not use the term 'critical habitats', but does enable protecting, conserving, and managing protected species	Amend the Environment Act 2003 and the Conservation Act 1986-87 to: ▪ define 'critical habitat';

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in areas of critical habitats <sup>5</sup> , unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function	(a) protection, conservation, and management of wildlife including protected species and the habitat of such wildlife and species;... (h) setting out restrictions to which the land and waters in the area shall be subject to [sic] in the interests of achieving the objectives of the plan... (5) In the preparation of the management plan, regard shall be had to the following objects: (a) the protection of special features, including objects and sites of...biological...interest...	and their habitat. It does not require conserving critical habitat, however, and does not explicitly restrict activities that would adversely impact critical habitats.	<ul style="list-style-type: none"> <li>▪ provide for conserving critical habitats outside of legally protected areas; and</li> <li>▪ prohibit activities in any area of critical habitat unless there are no measurable adverse impacts on the critical habitat that could impair its ability to function.</li> </ul> <p>Amend the Environment Act 2003 and/or issue EIA regulations that stipulate that areas of critical habitats must be included in the factors to be taken into account in the EIA process.</p>
<b>Key element (2)</b> Do not implement project activities in areas of critical habitats, unless... (ii) there is no reduction in the population of any recognized endangered or critically endangered species	See Policy Principle 8, Key element 1.	<b>Partial Equivalence.</b>  See Policy Principle 8, Key element 1.	See Policy Principle 8, Key element 1.  In addition: Amend the Environment Act 2003 and the Conservation Act 1986-87 to prohibit activities in areas of critical habitats unless there is no reduction in the population of any recognized endangered or critically endangered species.
<b>Key element (3)</b>	See Policy Principle 8, Key element 1.	<b>Partial Equivalence.</b>	See Policy Principle 8, Key

<sup>5</sup> ADB's Safeguard Policy Statement defines 'critical habitat' as "[a] subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or that are associated with key evolutionary processes or provide key ecosystem services ; and areas having biodiversity of significant social, economic, or cultural importance to local communities."

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Legal Provisions<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup></b>	<b>(D)</b> <b>Recommended Gap-filling Measures to Attain Full Equivalence</b>
Do not implement project activities in areas of critical habitats, unless... (iii) any lesser impacts are mitigated.		See Policy Principle 8, Key element 1.	element 1.  In addition: Amend the Environment Act 2003 and the Conservation Act 1986-87 to prohibit activities in areas of critical habitats unless any lesser impacts are mitigated.
<b>Key element (4)</b> If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area.	<p><b>Environment Act 2003</b> 41. (1) Where an Island Environmental Authority proposes to designate an area within its island...as a protected area...the Island Environmental Authority may cause to be issued in respect of that area a notification to that effect...</p> <p><b>Conservation Act 1986-87</b> 27. <u>National parks</u> - (1) The Queen's Representative may... proclaim...that any land, lagoon, reef, or island, or any Cook Islands waters, or portion of the sea-bed of those waters shall be required for a national park subject to this Act.</p> <p>28. <u>Reserves</u> - The Queen's Representative may... proclaim...that any land, lagoon, reef, or island, or any Cook Islands waters or portion of the sea-bed of those waters shall be a reserve subject to this Act...</p> <p>30. <u>Management plans</u> - (1) The Director shall from time to time prepare one or more draft management plans... (4) In the preparation of the management plan regard shall be had to the following objects: (a) In the case of a national park, the protection, conservation, and management of wildlife and natural features... (b) In the case of a reserve, the protection and regulation of the use of the reserve for the purpose for which it was declared; (c) The protection of special features, including objects and sites of biological, archaeological, geological, and geographical interest of those areas within the plan; (d) The protection of the water catchment values of those areas within the plan;</p>	<p><b>Partial Equivalence.</b></p> <p>The Environment Act 2003 provides for designating protected areas, on the basis of management plans that already exist, which specify restrictions that apply within the area of the management plan. But the Act does not address the issue of development within a protected area.</p> <p>The Conservation Act 1986-87 provides for proclaiming national parks and reserves. This Act's requirements for management plans are identical to those in the Environment Act 2003.</p> <p>Cook Islands is a Party to the Convention Concerning the Protection of the World Cultural and Natural Heritage.</p>	<p>Amend the Environment Act 2003 and the Conservation Act 1986-87 to require any activity located within a legally protected area to implement additional programs to promote and enhance the conservation aims of the protected area.</p> <p>Amend the Environment Act 2003 and/or issue EIA regulations that stipulate that protected areas must be included in the factors to be taken into account in the EIA process.</p>

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Legal Provisions<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup></b>	<b>(D)</b> <b>Recommended Gap-filling Measures to Attain Full Equivalence</b>
	(e) The protection, conservation, control and management of soil resources, erosion, related works, and coastal zones of those areas within the plan.		
<p><b>Key element (5)</b> In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available</p>	<p><b>Environment Act 2003</b> 37. Management Plans - (1) The Service shall...prepare a draft management plan for any area within the island, for all or any of the following purposes: (a) protection, conservation, and management of wildlife including protected species and the habitat of such wildlife and species;... (h) setting out restrictions to which the land and waters in the area shall be subject to [sic] in the interests of achieving the objectives of the plan...</p> <p>58. <u>Protection of wetlands</u> - (1) No excavation, dredging, clearing, paving, grading, ploughing, dumping, reclamation, removal of trees or other activity of any kind which may alter the natural configuration of the wetlands shall be undertaken on any wetlands, nor shall any building or structure be erected or altered on any wetlands, without the written consent of the permitting authority.</p>	<p><b>Partial Equivalence.</b> The Environment Act 2003 explicitly restricts conversion and degradation of wetlands. The Act provides for conserving and managing other types of natural habitats, and for setting out restrictions that apply to habitat under a management plan, but the Act does not provide parameters for development that impacts natural habitats other than wetlands.</p>	<p>Amend the Environment Act 2003 and the Conservation Act 1986-87 to provide for conserving natural habitats outside protected areas and, in particular, stipulate that, if an activity is implemented within an area of natural habitats, the decision to approve it must impose the condition there must be no significant conversion or degradation unless alternatives are not available.</p> <p>Amend the Environment Act 2003 and/or issue EIA regulations that stipulate that areas of natural habitats must be included in the factors to be taken into account in the EIA process.</p>
<p><b>Key element (6)</b> In an area of natural habitats, there must be no significant conversion or degradation, unless...(ii) the overall benefits from the project substantially outweigh the environmental costs</p>	<p>See Policy Principle 8, Key element 5.</p>	<p><b>Partial Equivalence.</b> See Policy Principle 8, Key element 5.</p>	<p>See Policy Principle 8, Key element 5.</p> <p>In addition: Amend the Environment Act 2003 and the Conservation Act 1986-87 to stipulate that, if an activity is implemented within an area of natural habitats, the decision to approve the activity must impose the condition there must be no significant conversion or degradation unless the overall benefits from</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions <sup>2</sup>	(C) Extent of Equivalence <sup>3</sup>	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			the activity substantially outweigh the environmental costs.
<p><b>Key element (7)</b> If a project is located within a legally protected area, there must be no significant conversion or degradation, unless...(iii) any conversion or degradation is appropriately mitigated.</p>	See Policy Principle 8, Key element 4.	<p><b>Partial Equivalence.</b> See Policy Principle 8, Key element 4.</p>	<p>See Policy Principle 8, Key element 4.</p> <p>In addition: Amend the Environment Act 2003 and the Conservation Act 1986-87 to stipulate that, if a project is located within a legally protected area, there must be no significant conversion or degradation, unless any conversion or degradation is appropriately mitigated.</p>
<p><b>Key element (8)</b> Use a precautionary approach to the use, development, and management of renewable natural resources.</p>	<p><b>Biosecurity Act 2008</b> 9. Prohibited imports – (3) In making a decision under this section, the Director... (c) may apply the precautionary principle. 25. Grant and refusal of biosecurity import clearance – ...(2) If [a biosecurity officer is] satisfied in respect of an article or consignment... (d) [the biosecurity officer] may apply the precautionary principle.</p> <p><b>Marine Resources Act 2005</b> 4. Principles and Measures - The Minister, or Secretary, as appropriate, when performing functions or exercising powers under this Act, shall take into account the following- (a) environmental and information principles in relation to achieving the sustainable use of fisheries and the need to adopt measures to ensure the long term sustainability of the fish stocks - (ii) the precautionary approach should be applied;...</p>	<p><b>Partial Equivalence.</b> The Biosecurity Act 2008 and the Marine Resources Act 2005 make applying the precautionary principle discretionary.</p>	<p>Amend the Environment Act 2003 to require applying the precautionary principle to the use, development, and management of renewable natural resources.</p> <p>Amend the Biosecurity Act 2008 and the Marine Resources Act 2005 to make applying the precautionary principle mandatory.</p>
<p><b>Policy Principle 9:</b> Apply pollution prevention and control technologies and practices consistent with international good practices as reflected in internationally recognized standards such as the World Bank Group's Environmental, Health and Safety Guidelines. Adopt cleaner production processes and good energy efficiency practices. Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous materials from their production, transportation, handling and storage. Avoid the use of hazardous materials subject to international bans or phaseouts. Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides.</p>			

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Legal Provisions<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup></b>	<b>(D)</b> <b>Recommended Gap-filling Measures to Attain Full Equivalence</b>
<b>Key element (1)</b> Apply pollution prevention and control technologies and practices consistent with international good practices	No corresponding legal provision.	<b>No Equivalence.</b>  There does not appear to be a national law or regulations that generally requires applying pollution prevention and control technologies that are consistent with international good practices.	Amend the Environment Act 2003 and the Prevention of Marine Pollution Act 1998 to require applying pollution prevention and control technologies and practices consistent with international good practices. <sup>6</sup>
<b>Key element (2)</b> Adopt cleaner production processes	No corresponding legal provision.	<b>No Equivalence.</b>  There does not appear to be a national law or regulations that govern industrial production.	Amend the Environment Act 2003 to require all persons to reduce all forms of pollution at the source, including by adopting cleaner production processes.
<b>Key element (3)</b> Adopt good energy efficiency practices.	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 to require implementing good energy efficiency practices.
<b>Key element (4)</b> Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions	No corresponding legal provision.	<b>No Equivalence.</b>  There does not appear to be a national law that governs air pollution.	Amend the Environment Act 2003 to introduce provisions governing air pollution.

<sup>6</sup> Cook Islands National Seabed Minerals Policy 2014

<sup>3</sup> Adherence to international standards of environmental protection

3.1 We will comply with applicable principles of international law targeting protection of the environment, including adoption of best environmental practice

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions <sup>2</sup>	(C) Extent of Equivalence <sup>3</sup>	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<b>Key element (5)</b> Avoid pollution, or, when avoidance is not possible, minimize or control waste generation	No corresponding legal provision.	<b>No Equivalence.</b>  The Environment Act 2003 penalizes littering, but does not require minimizing or controlling waste generation.	Amend the Environment Act 2003 to require minimizing and controlling waste generation, consistent with the National Sustainable Development Plan 2011-2015. <sup>7</sup>
<b>Key element (6)</b> Avoid pollution, or, when avoidance is not possible, minimize or control release of hazardous materials from their production, transportation, handling, and storage	<b>Environment Act 2003</b> 56. Disposal of toxic chemicals - Every person commits an offence against this Act who disposes of any toxic chemical or its waste in a manner likely to harm the environment.  <b>Prevention of Marine Pollution Act 1998</b> 2. Interpretation - (1) In this Act, unless the context otherwise requires... "pollutant" includes oil, hazardous substance...  19. Powers of Secretary in relation to marine casualties - (1) ... the powers conferred by this Part shall only be exercised and the measures shall only be taken where, as a result of - (a) marine casualty in Cook Islands Waters or on the High Seas; or (b) a pollution incident occurring on board a platform, it appears to the Secretary necessary to prevent, reduce or eliminate pollution from any oil or pollutant in or the risk of any such pollution to Cook Islands Waters, the coasts of the Cook Islands or related interests. (2). Where it appears to the Secretary that as a result of any marine casualty or any incident... a vessel or platform constitutes or is likely to constitute a serious risk of pollution... then, for the prevention, reduction or elimination of pollution, the Secretary may...	<b>Partial Equivalence.</b>  The Environment Act 2003 penalizes disposing of toxic chemicals in any way that is likely to harm the environment, but does not have any substantive provision on minimizing and controlling releases of hazardous materials.  The Prevention of Marine Pollution Act 1998 provides for <i>ad hoc</i> response to marine pollution incidents.  Cook Islands is a Party to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.	Amend the Environment Act 2003 to require minimizing and controlling releases of hazardous materials from their production, transportation, handling, and storage, consistent with the National Sustainable Development Plan 2011-2015. See Policy Principle 9, Key Element 5.

<sup>7</sup> The Cook Islands Te Kaveinga Nui National Sustainable Development Plan 2011-2015

How Will We Achieve Our Objectives?

To achieve our objectives we will embark on strategies that...

3. Implement Waste Minimisation Programmes and Provide appropriate Facilities and Incentives to Support these with the Purpose of Achieving Zero Waste

...develop and implement the appropriate policy, legislative and regulatory environment to ensure that all waste including hazardous and e-waste is minimised and better managed

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions <sup>2</sup>	(C) Extent of Equivalence <sup>3</sup>	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	(b) take any measures whatsoever with respect to the vessel or cargo, or both, or to the platform or operations relating thereto, or both...		
<b>Key element (7)</b> Avoid the use of hazardous materials subject to international bans or phaseouts	<b>Environment (Ozone Layer Protection) Regulations 2008</b> ...3. Prohibitions on importation 4. Prohibitions on the importation of certain goods 5. Exemptions in relation to imports 6. Prohibitions on exportation 7. Prohibition on manufacture 8. Prohibition on sales 9. Exemptions in relation to sales 10. General principles to be applied in relation to permits 11. Quarantine and pre-shipment permits 12. Healthy and safety permits 13. HCFC permits 14. General provisions in relation to permits 15. Goods for which no permit may apply... Schedule Controlled Substances	<b>Partial Equivalence.</b>  Cook Islands is a Party to: <ul style="list-style-type: none"> <li>▪ Stockholm Convention on Persistent Organic Pollutants</li> <li>▪ Vienna Convention for the Protection of the Ozone Layer</li> <li>▪ Montreal Protocol on Substances that Deplete the Ozone Layer</li> </ul> There does not appear to be a national law or regulations that implement the Cook Islands' obligations under the Stockholm Convention.	Adopt regulations under the Environment Act 2003 to implement Cook Islands' obligations under the Stockholm Convention on Persistent Organic Pollutants.
<b>Key element (8)</b> Purchase, use, and manage pesticides based on integrated pest management approaches	<b>Pesticides Act 1987</b> 10. <u>Pesticides not to be imported unless registration granted</u> - No person shall import any pesticide into the Cook Islands unless it has been registered pursuant to the provisions of this Act.  13. <u>Restricted use pesticide</u> - (1) The Board may for the purposes of this Act register any pesticide for restricted use only. (2) Every pesticide registered under this section shall be used only under such conditions that the Board may impose, and by a registered user. (3) Every person who imports any restricted pesticide shall not sell or give such pesticide to any person other than a person approved by the Board. (4) Every person who imports a restricted use pesticide shall maintain a register of all restricted use pesticides imported by him and a register of persons to whom that pesticide was sold or given. (5) Every pesticide registered under this section shall not be used for any purpose other than that approved by the Board.  15. <u>Register of pesticides</u> - (1) The Registrar shall keep a Register	<b>Partial Equivalence.</b>  The Pesticides Act 1987 provides for registering pesticides and restricting their sale and use, but does not require the use of integrated pest management approaches.	Amend the Pesticides Act 1987 to require buying, using and managing pesticides based on integrated pest management approaches.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions <sup>2</sup>	(C) Extent of Equivalence <sup>3</sup>	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>of Pesticides in which he shall enter the name of every pesticide registered under this Act, and the date on which it was registered....</p> <p>16. <u>Duty of Customs Officers</u> -... (2) Every pesticide imported into the Cook Islands shall remain under the control of Customs, unless a permit to import the pesticide has been issued by the Registrar in respect of that pesticide....</p> <p>17. <u>Sale of pesticides</u> - (1) No pesticide shall be sold in the Cook Islands unless it is packaged in a container that is first approved by the Board....</p> <p>23. <u>Offences</u> – Every person commits an offence against this Act who directly or indirectly...imports, sells, uses or supplies any pesticide contrary to this Act, or contrary to a condition imposed by the Board.</p>		
<b>Key element (9)</b> Reduce reliance on synthetic chemical pesticides	No corresponding legal provision.	<b>No Equivalence.</b>  The Pesticides Act 1987 does not provide for reducing reliance on synthetic chemical pesticides.	Amend the Pesticides Act 1987 to require reducing reliance on synthetic chemical pesticides.
<b>Policy Principle 10:</b> Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease. Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.			
<b>Key element (1)</b> Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease	<p><b>Employment Relations Act 2012</b> 70 Employers' and employees' duties (1) An employer must take all reasonably practicable steps to maintain a safe and healthy working environment for the employer's employees. (2) An employee must take all reasonably practicable steps to ensure their safety while at work and that no action or inaction of the employee while at work causes harm to any other person. (3) The Regulations may prescribe matters relating to health, welfare and safety of employees at work sites (for example by setting out a health, welfare and safety code).</p> <p>73 Dangerous machinery and occupations (1) If an employee operates dangerous machinery, the employee's</p>	<p><b>Partial Equivalence.</b></p> <p>The Employment Relations Act 2012 imposes a general duty on employers to provide a safe and healthy working environment. The Act requires reporting accidents and deaths, but does not explicitly require employers to take measures to prevent accidents, injuries, and disease.</p> <p>It appears that the Regulations enabled under section 70(3) of the Act have not yet been issued.</p>	Issue regulations pursuant to section 70(3) of the Employment Relations Act 2012, including provisions on prevention of accidents, injuries, and disease.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions <sup>2</sup>	(C) Extent of Equivalence <sup>3</sup>	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	employer must ensure the employee is given appropriate training in the safe use of the machinery before the employee operates the machinery....		
<b>Key element (2)</b> Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.	<b>Environment Act 2003</b> 53. <u>Emergency Provisions</u> – Whenever the Service is of the view that there is an imminent danger of loss of life or property due to serious environmental degradation, it shall immediately take necessary action to remove the cause of environmental degradation by itself, or direct any other relevant agency to do so...	<b>Partial Equivalence.</b>  The Environment Act 2003 provides for <i>ad hoc</i> response to emergencies but not for prevention and preparedness.	Amend the Environment Act 2003 to establish a system for prevention of and preparedness for response to environmental emergencies and measures to minimize adverse impacts and risks to the health and safety of local communities if and when such emergencies occur, consistent with the National Sustainable Development Plan 2011-2015. <sup>8</sup>
<b>Policy Principle 11:</b> Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment. Provide for the use of “chance find” procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.			
<b>Key element (1)</b> Conserve physical cultural resources and avoid destroying or damaging them	<b>Environment Act 2003</b> 37. Management Plans - (1) The Service shall...prepare a draft management plan for any area within the island, for all or any of the following purposes: (h) conservation and management of historical, archaeological and cultural sites...	<b>Partial Equivalence.</b>  The Environment Act 2003 enables conserving cultural sites, but there does not appear to be any national law or regulation that comprehensively governs conservation of physical cultural resources.	Amend the National Heritage Trust Act 1999 to require conservation of physical cultural resources.
<b>Key element (2)</b> Use field-based surveys that employ qualified and experienced	No corresponding legal provision.	<b>No Equivalence.</b>  The Environment Act 2003 enables any private or community organization or association that has expertise in environmental matters to the voluntarily register with the National Environment	Amend the Environment Act 2003 to specify that all experts participating in the EIA process must have qualifications and experience appropriate for the

<sup>8</sup> The Cook Islands Te Kaveinga Nui National Sustainable Development Plan 2011-2015

Priority Area 5: Resilience

Goal 5: Resilient and Sustainable Communities - 'A Cook Islands Where Our People Are Resilient To Disasters And Climate Change To Achieve Sustainable Livelihoods'

National Strategies: Enhance effective preparedness, response and recovery

<b>(A)</b> <b>ADB Safeguard Policy Statement</b>	<b>(B)</b> <b>Corresponding Legal Provisions<sup>2</sup></b>	<b>(C)</b> <b>Extent of Equivalence<sup>3</sup></b>	<b>(D)</b> <b>Recommended Gap-filling Measures to Attain Full Equivalence</b>
experts during environmental assessment.		Service, but does not require any type of registration for experts for EIA.	assessment tasks assigned to them.
<b>Key element (3)</b> Provide for the use of “chance find” procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation	No corresponding legal provision.	<b>No Equivalence.</b>	Amend the Environment Act 2003 to require that a mandatory EMP must provide for the use of “chance find” procedures for physical cultural resources, which include a pre-approved management and conservation approach for materials that may be discovered during project implementation.