REVIEW OF LEGISLATION, POLICIES, STRATEGIES AND PLANS RELATING TO THE DEVELOPMENT OF MARINE PROTECTED AREAS

FIJI

MACBIO

Marine and Coastal Biodiversity Management
in Pacific Island Countries

EFFECTIVE MANAGEMENT

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This review of the legal basis for effective marine management is part of MACBIO's support to its partner countries' national marine planning and management processes.

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REVIEW OF LEGISLATION, POLICIES, STRATEGIES AND PLANS RELATING TO THE DEVELOPMENT OF MARINE PROTECTED AREAS

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REPORT TO THE GOVERNMENT OF FIJI

Supported by the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project

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On behalf of:
Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
of the Federal Republic of Germany

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ACRONYMS, ABBREVIATIONS AND TERMS

BPoA	Barbados Programme of Action
Cap	Chapter
CBD	Convention on Biological Diversity
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Conservation of Migratory Species
CROP	Council of Regional Organisations in the Pacific
DoE	Department of Environment
DoL	Department of Lands
EEZ	Exclusive Economic Zone
EIA	Environmental impact assessment
EMA	Environment Management Act
FAME	SPC Division of Fisheries, Aquaculture and Marine Ecosystems
FAO	Food and Agricultural Organisation
FFA	Forum Fisheries Agency
FNBSAP	Fiji National Biodiversity Strategy and Action Plan
FPIC	Free, Prior and Informed Consent
GIS	Geographic information system
ICM	Integrated coastal management
ICMC	Integrated Coastal Management Committee
IMO	International maritime organisation
ISA	International Seabed Authority
iTaukei	Indigenous Fijians
IUCN	International Union for Conservation of Nature
LMMA	Local marine management area
MACBIO	Marine and Coastal Biodiversity Management in Pacific Island Countries project
MESCAL	IUCN Mangrove Ecosystems for Climate Change Adaptation Livelihood Project
MMA	Marine Management Area
MMP	Mine management plan
MOU	Memorandum of Understanding
MPA	Marine protected area
MSG	Melanesian Spearhead Group
MSWG	Marine Sector Working Group of the Council of Regional Organisations in the Pacific (CROP)
MWG	Marine Working Group
NBSAP	National Biodiversity Strategy Action Plan/Programme
NDS	National Development Strategy
NEC	National Environment Council
NES	National Environment Strategy
OFMD	Offshore Fisheries Management Decree
PA	Protected Area
PAC	Protected Area Committee
PICTs	Pacific Islands Countries and Territories
PIFACC	Pacific Islands Framework for Action on Climate Change
PIROP	Pacific Islands Regional Oceans Policy
PNA	Parties to the Nauru Agreement
PoWPA	Plan of Work on Protected Areas
qoliqoli	A *qoliqoli* is an area designated as a customary fishing rights area that are demarcated and whose owners are registered under the Register of *iTaukei* Customary Fishing Rights, a register kept by the *iTaukei* Fisheries Commission
SIDS	Small Island Developing States
SOPAC	Pacific Islands Applied Geoscience Commission (Division of SPC)
SPC	Pacific Community (formerly the Secretariat of the Pacific Community)
SPREP	Secretariat of the Pacific Regional Environment Programme
UN	United Nations
UNCBD	United Nations Convention on Biological Diversity
UNCLOS	United Nations Convention on Law of the Sea
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNFCCC	United Nations Framework Convention on Climate Change
VDS	Vessel Days Scheme
VMS	Vessel Management System
WCPF	Western and Central Pacific Fisheries
WCPFC	Western and Central Pacific Fisheries Commission
WHC	World Heritage Commission
WSSD	World Summit on Sustainable Development
WWF	World Wide Fund for Nature

EXECUTIVE SUMMARY

Fiji is committed to the sustainable use of its marine resources and conserving its marine biodiversity. This commitment has been ratified through Fiji's international responsibilities and obligations under the United Nations Convention on Biological Diversity (UNCBD).

To help meet this commitment, the Government of Fiji during the Small Island Developing States (SIDS) conference in 2005, and later in 2014, further committed that by 2020:

"at least 30% of Fiji's inshore (i qoliqoli) and offshore marine areas will have come under a comprehensive, ecologically representative network of marine protected areas, which are effectively managed and financed".

This has been reflected within Fiji's new Green Growth Framework and the draft 2015 National Biodiversity Strategy and Action Plan (NBSAP).

The current task to analyse and assess legislation, conventions, policies and strategies relating to marine protected areas in Fiji is part of the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project and will assist the government to achieve its targets for developing marine protected areas or, in fact, a marine spatial plan.

As part of the legislative and policy review a number of instruments were analysed and assessed that were considered relevant to the development and implementation of a system of marine protected areas (MPAs) or a marine spatial plan for Fiji. This process included reviewing legislation, policies, strategies and plans at the international, regional, national and provincial levels. Attachment 1 provides a list of legislative and policy instruments that were analysed.

Legislative and policy support

Fiji's legislation and policy provide some support for managing a wide range of marine spatial planning issues, including for implementing MPAs. However, there are gaps within the legislation and policies and in the range of instruments required to support integrated, marine spatial planning and a range of synergies between instruments; these are addressed in Section 3 of this report. The gaps in legislative and policy coverage will need to be more fully identified and addressed once the Government of Fiji decides (in detail) how it will approach the development of marine spatial planning to support marine protected area development.

In summary, none of the instruments reviewed provide a comprehensive legal basis for developing a network of MPAs either to provide for a system of multiple use MPAs or for MPAs aiming merely for biodiversity conservation[1]. Nor does there appear to be a specific instrument or policy which allows for the creation of a national system of MPAs or a marine spatial plan in Fiji. It may be necessary to develop a specific policy which supports a strategy that draws together each of these documents into a framework or plan which could be used to direct national efforts at developing the national system of MPAs.

Recommendations

The report recommends:

1. That a policy be developed by the Fiji Government to guide the development of MPAs and/or a marine spatial plan in Fiji. The policy should also consider options for coordinating the development of a national system of MPAs, including the development of relevant new legislation and the establishment of a Marine Parks/Protected Area Authority.
2. That the Government of Fiji consider developing new legislation that specifically provides for MPAs (including marine spatial planning more broadly) and links to existing legislation with marine resource management provisions, to allow for the incorporation and integration of their marine protected area planning and management provisions into any national approach. Such legislation should also include recognition of the local marine management area (LMMA) system in Fiji.

1 The Offshore Fisheries Management Decree does, however, provide, under section 6(g), for "protecting the biodiversity in the marine environment, especially habitats of particular significance for fisheries resources" and gives the Permanent Secretary the powers to designate marine protected areas.

3. That the Minister make regulations that will give effect to Section 8 (1) (b) and Section 9 (1) (i) of the Offshore Fisheries Management Decree (OFMD) that give the Permanent Secretary responsible for Fisheries the powers to designate marine protected areas, and the Director of Environment the power "to identify and recommend the designation of marine protected areas", respectively. The Decree or its subsequent regulations need/s to:
    a. Define MPAs;
    b. Define a process for designation of MPAs;
    c. Identify permitted and prohibited activities;
    d. Define management arrangements for MPAs;
    e. Define enforcement measures for MPAs; and
    f. Other related matters.
5. That a review of implementation of the National Environment Strategy be undertaken and consideration given to revising and updating the document.
6. That a review of the action plan (for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011) be undertaken as part of the development of any policy and/or strategy on the development of an MPA system through marine spatial planning.

1 INTRODUCTION

This work to review Fiji's legislation, policies, strategies and plans relating to development of marine protected areas (MPAs) and marine spatial planning is part of the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project.

MACBIO is funded by the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). The project is being implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, German Agency for International Cooperation) with technical support from the International Union for Conservation of Nature (IUCN) Oceania Regional Office and in close collaboration with the Secretariat of the Pacific Regional Environment Programme (SPREP).

The MACBIO project assists governments to strengthen the sustainable management of their marine and coastal resources and biodiversity. The objectives of the MACBIO project are to support governments to:

1. Consider the economic value of marine and coastal ecosystem services in national development planning;
2. Align exclusive economic zone-wide spatial planning frameworks with the requirements of sustainable ecosystem use and conservation;
3. Use and demonstrate best practices for the management of MPAs, including payments for environmental services, at selected sites; and
4. Disseminate concepts and instruments that have proven successful for the sustainable management of marine and coastal biodiversity regionally and internationally.

1.1 PURPOSE OF REVIEW

Fiji is committed to the sustainable use of its marine resources and conserving its marine biodiversity. This commitment has been ratified through Fiji's international responsibilities and obligations under the United Nations Convention on Biological Diversity (UNCBD).[2]

To help meet this commitment, the Government of Fiji, in 2005 and later in 2014, during the Small Island Developing States (SIDS), further committed that by 2020:

"at least 30% of Fiji's inshore (i qoliqoli'[3]) and offshore marine areas will have come under a comprehensive, ecologically representative network of marine protected areas (MPAs), which are effectively managed and financed".

This has been reflected within Fiji's new Green Growth Framework and the draft 2015 National Biodiversity Strategy and Action Plan (NBSAP).

This MACBIO review analyses and assesses the range of legislation, policies, strategies, plans and other instruments to identify the level of legislative and policy support for Fiji's commitments to MPA[4] and/or marine spatial plan development, including the application of a variety of zones[5] to any MPAs.

2 IUCN. 1994. A Guide to the Convention on Biological Diversity. IUCN – The World Conservation Union, Gland, Switzerland

3 A *qoliqoli* is an area designated as a customary fishing rights area that are demarcated and whose owners are registered under the Register of *iTaukei* Customary Fishing Rights, a register kept by the *iTaukei* Fisheries Commission

4 IUCN defines a protected area as "a clearly defined area, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values".

5 Zones are an important component of managing marine areas. Zones define the activities that can occur in particular locations or areas. The level of protection provided by zoning can range from general use zones to the most restrictive zones such as preservation or scientific research zones. Each zone has different rules for the activities that are allowed, activities that are prohibited and activities that require a permit. Zoning rules may also place restrictions on how some activities are conducted within zones.

1.2 REVIEW APPROACH

The analytical framework used to review legislation, policies, strategies and plans in support of the development of MPAs or a marine spatial plan in Fiji comprises three components:

1. Individual analysis of legislation, policies, strategies and plans (a list of instruments reviewed is at Attachment 1).

   Each of these instruments was analysed against a number of criteria as follows:

   1. Document Type (legislation, policy, strategy, plan or other)
   2. Source (regional, national, provincial or local government)
   3. Main objectives
   4. Main activities that are promoted, controlled and/or managed
   5. Main management tools (including incentives) used
   6. Geographic extent of jurisdiction (and whether formal or informal)
   7. Administration of Instrument (who is responsible)
   8. Bodies established under Instrument
   9. Regulatory and planning provisions established by Instrument
   10. Conflict or potential conflict
   11. Synergy or potential synergy
   12. Gaps of any kind
   13. Relevance of Instrument to development of integrated ocean management
   14. Other analytical dimensions as appropriate

   Based upon the analysis, each instrument was given a ranking of relevance of 1–High, 2–Moderate, 3–Low or 4–Not relevant to an oceans management policy, plan or network of MPAs for Fiji. The ranking has been used to prioritise the presentation of the results. Instruments ranked as 3 (low) or 4 (not relevant) have not been included in this report;

2. Integration of individual analyses into an assessment table for comparative analysis and assessment;
3. This report, which provides an assessment narrative based on the individual analyses and the information from the assessment table.

The report also provides recommendations (s4.2) based on the analysis and assessment of these instruments.

2 REVIEW OF ENVIRONMENTAL LEGISLATION, POLICIES, STRATEGIES AND PLANS

Legislative and policy instruments identified as having some relevance to MPA development through marine spatial planning in Fiji were analysed. Each of these instruments was analysed against a number of criteria (defined in the Terms of Reference for the project at Attachment 2) and given a ranking of relevance of 1–*high*, 2–*moderate*, 3–*low* or 4–*not relevant* to MPA development. The ranking has been used to prioritise the presentation of the results. Instruments ranked as 3 (*low*) or 4 (*not relevant*) have not been included in this report but have been listed in Attachment 1 for completeness.

As a legal principle, it should be noted that no legislation supersedes another unless specifically provided for in the legislation and no legislation is above the Constitution.

2.1 LEGISLATION

Constitution of the Republic of Fiji 2013

The Constitution is the supreme law of Fiji and is ***highly relevant*** to the government's commitment to creating its 30% MPA objective by 2020. The supreme law of the land empowers lawmakers to ensure the environmental rights provided under the Bill of Rights provisions of the Constitution. The need for an MPA legal regime may be justified through these provisions as they are binding on the legislative, executive, and judicial branches of the government at all levels and every person performing the functions of any public office.

The Constitution also ensures that the rights of *iTaukei*, Rotuman and the Banaban people to their resources (land and marine) are protected and therefore having *qoliqoli* areas as part of any proposal to designate MPAs is subject to their approval.

Relevance to development of MPAs

The Constitution is ***highly relevant*** to the development of MPAs in Fiji and makes provision for the following:

Right to equality and freedom from discrimination

26(8) A law, or an administrative action taken under a law, is not inconsistent with the rights mentioned in this section on the grounds that it –

(g) to the extent necessary and without infringing the rights or freedoms set out in any other section of this Chapter, gives effect to the communal ownership of iTaukei, Rotuman and Banaban lands and access to marine resources, or the bestowing of iTaukei, Rotuman and Banaban chiefly title or rank.

This section infers that any law or administrative action taken under law does not infringe on the right to equality and freedom from discrimination if it gives effect to the communal ownership of *iTaukei,* Rotuman and Banaban lands and access to marine resources. This puts great emphasis on undertaking prior consultation for any *qoliqoli* area to be protected under any legal regime or any administrative decision under any law. Any consultation should be framed around how a proposed MPA would impact access given to *iTaukei*, Rotuman and/or Banaban citizens, which is a constitutionally enshrined right.

Environmental rights

40. – (1) Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

(2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section.

This section empowers law makers to put in place laws that will protect Fiji's biodiversity. It promotes sustainable development through legislative and other measures. Hence, the need for an MPA legal regime may be justified through this constitutional provision.

Fisheries Act 1942

The main objective of the Fisheries Act is to make provision for the regulation of fishing within "*Fiji fisheries waters*" which means *"all waters appertaining to Fiji and include all internal waters, archipelagic waters, territorial seas and all waters within the exclusive economic zone".*

This legislation provides for the creation of protected areas within Fiji fisheries waters for sustainable fishery resources. However, although the jurisdiction for declaring protected areas is wide, the protection of the fish species is restricted to fish within the meaning given under the definition in the Act, which is: *"any aquatic animal whether piscine or not, and includes shellfish, sponges, holothurians, (bêche-de-mer), sea-urchins, crustaceans and turtles and their eggs"*[6].

Relevance to development of MPAs

In law, the Fisheries Act does not specifically support the development of MPAs. However, it is our opinion that the government has used a technicality in its interpretation of the Act to create marine reserves as described below. Therefore, the Fisheries Act is ***highly relevant*** to the development of MPAs in Fiji.

The Act empowers the Minister to make regulations prescribing areas and seasons within which the taking of fish is prohibited or restricted as outlined under Section 9(b*): The Minister may make regulations prescribing areas and seasons within which the taking of fish is prohibited or restricted, either entirely or with reference to a named species.* The Act further states under Section 9 (g): *The Minister may make regulations regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite.* Section 9 (g) is open to interpretation of that *"any other matter relating to the conservation, protection and maintenance of a stock of fish…."* could include the habitat and broader community of plants and animals within which they live and upon which they rely. It is our opinion that this interpretation has led to the creation of the marine reserves outlined below: [7]

1. *Regulations made in accordance with Section 9 (g): Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014 which protects shark species and marine organisms including coral within the marine reserve area (see Attachment 3).*
2. *Regulations made in accordance with Section 9 (g): Fisheries (Wakaya Marine Reserve) Regulations 2015 which protects species of fish, sharks, rays, cetaceans, sea turtles and all marine organisms including coral within the area (see Attachment 4).*
3. *Regulations made in accordance with Section 9 (g): Fisheries (Moratorium on Molesting, Taking or Killing of Turtles) Regulations (Legal Notice 62 of 2010) which protects turtles from being molested, taken or killed. The protection will expire on 31 December 2018.*
4. *Restricted Area under the Fisheries Act (Cap 158 Rev. 1985 Subsidiary Legislation) (Regulation 11): No person unless he is authorised in writing under the hand of the Commissioner of the Division in which the area described in the Fifth Schedule is situated shall, within such area, kill or take fish of any kind whatsoever, except by hand net, wading net, spear or line and hook.*

Of the four Regulations created and outlined above, the first two include both the protection of the stock of fish and the marine organisms within the marine reserve area. The latter two focus only on the stock of fish. It is our opinion that the creation of the marine reserves has gone beyond the objective of the Act which is merely for the regulation of the fishing industry and not the protection of the biodiversity or habitats that support fish stocks.

The Department of Fisheries intends creating marine reserves in several other locations in accordance with Section 9 (g) of the Act. At the time of writing (June 2016) we were advised that there are at least four draft Regulations to create marine reserves currently at the Attorney General's office for vetting.

The Act also establishes the *iTaukei* Fisheries Commission (formerly the Native Fisheries Commission) that has the potential to play a role in regularizing[8] the current management guidelines and process of LMMAs.

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6 It is useful to note that the Offshore Fisheries Management Decree 2012 defines "fish" more broadly, including plants, to mean "*any aquatic plant or animal, whether piscine or not, and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (bêche-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts*".

7 These are Regulations made under Section 9 (g) as confirmed by Margaret Tabunakawai of the Fisheries Department.

8 Regularizing refers to putting into law the management options or guidelines made available through the LMMA Network.

Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014

The purpose of the regulation is to create the Shark Reef Marine Reserve.

The Fisheries (Shark Reef Marine Reserve) (Serua) Regulations make provision for the declaration of the Marine Reserve and outlines its purpose:

3. – (1) The area marked in blue on the map set out in the Schedule is hereby declared a Marine Reserve to be known as the Shark Reef Marine Reserve – Serua for the purpose of conserving, protecting and maintaining shark species and marine organisms including coral within the area.

The Regulation declares the Shark Reef Marine Reserve and clearly outlines the area of the marine reserve (Regulation 3(1)). It also includes a map and coordinates that shows the area of the marine reserve as well as outlining which activities are allowed and which are prohibited.

The Fisheries (Shark Reef Marine Reserve) (Serua) Regulations provide for the Minister to issue guidelines for the proper management and monitoring of the areas within the marine reserve and the adjacent buffer zone. The Management and Monitoring Guideline for the Shark Reef Marine Reserve was issued on the 14th of October 2014 by the Minister responsible for Fisheries.

Relevance to development of MPAs

This Regulation creates a legal framework for a marine reserve which could be ***highly relevant*** to the creation of MPAs in Fiji. However, there are gaps that need to be addressed between the Fisheries Act and the Fisheries (Shark Reef Marine Reserve) Regulations; these are outlined below. Any further creation of marine reserves under the Fisheries Act need to be considered on this basis and these gaps addressed.

First, the objective of the Act is focused on the regulation of the fishing industry; it does not promote the conservation of biodiversity including the habitats of fishery resources.

Second, Section 9 of the Fisheries Act does not specifically require the Minister to create regulations for the declaration of a marine reserve or marine protected area. During consultations with the Department of Fisheries, we were informed that declaration of the marine reserves was made under Section 9 (g) of the Act. However, Section 9 (g), if applying a strict interpretation and taking into consideration the objective of the Fisheries Act, refers only to other matters relating to the conservation, protection, and maintenance of a stock of fish and not the biodiversity or habitat upon which the stock of fish is directly or indirectly reliant. The objective of the Fisheries Act is to regulate the activity of fishing; it is our opinion that any reserves declared under the Act as a result of conserving, protecting and maintaining a stock of fish should only be towards the taking of that fish and nothing else. Anything other than taking of fish within the declared area should be allowed to be compliant with the intent of the Fisheries Act.

Third, it is unclear why marine reserves are being declared under Section 9 (g) of the Fisheries Act when the OFMD makes provision for the Permanent Secretary to declare MPAs[9].

Fisheries (Wakaya Marine Reserve) Regulations 2015

The purpose of the Fisheries (Wakaya Marine Reserve) Regulations is to create a Wakaya Marine Reserve.

The Fisheries (Wakaya Marine Reserve) Regulations make provision for the declaration of the marine reserve and outline its purpose:

3. – (1) The area marked in blue on the map set out in the Schedule is hereby declared as a Marine Reserve to be known as the Wakaya Marine Reserve for the purpose of conserving, protecting and maintaining species of fish, sharks, rays, cetaceans, sea turtles and all marine organisms including coral within the area.

It declares the Wakaya Marine Reserve and clearly outlines the area of the marine reserve (Regulation 3(1)). It also includes a map and coordinates that shows the area of the marine reserve as well as outlining which activities are allowed and which are prohibited.

The Regulation makes provision for the Minister to issue guidelines for the proper management and monitoring of the areas within the marine reserve and the buffer zone, but they are yet to be issued.

9 Some clarification may need to be sought from the Department of Fisheries about which legislation takes precedence in declaring MPAs to avoid confusion in the future.

Relevance to development of MPAs

This Regulation creates a legal framework for a marine reserve which could be ***highly relevant*** to the creation of MPAs in Fiji. However, there are gaps that need to be addressed between the Fisheries Act and the Fisheries (Wakaya Marine Reserve) Regulations and any further creation of marine reserves under the Fisheries Act needs to take this into account. These gaps are discussed above in the Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014.

Offshore Fisheries Management Decree 2012 / Offshore Fisheries Management Decree Regulations 2014

The Offshore Fisheries Management Decree (OFMD) makes provisions for the management, development and sustainable use of fisheries and living marine resources of the republic of Fiji and for related matters. Section 5 specifically states that *"The objective of this Decree shall be to conserve, manage and develop Fiji fisheries to ensure long-term sustainable use for the benefit of the people of Fiji"* and the Ministry responsible for Fisheries has the principal function of and authority for the conservation, management and development of the fisheries resources in fisheries waters in accordance with this Decree.

The Decree applies to "*Fiji fisheries waters*" which are defined in the Decree to mean *"the internal waters, the archipelagic waters, the territorial sea, the exclusive economic zone and any other waters over which Fiji exercises its sovereignty or sovereign rights, and includes the bed and subsoil underlying those waters".*

The Decree provides for the designation of fisheries and the formulation of a Fisheries Management Plan for the management of each designated fishery in Fiji fisheries waters. This is relevant to MPA development in Fiji.

The Act creates two types of marine protection:

1. *Section 8 (1) (b): The Permanent Secretary shall – designate marine protected areas, while Section 9(1) (i) states that "the Director shall – identify and recommend the designation of marine protected areas".*
2. *Section 16: "The Minister shall by notice in the Gazette declare a fishery as a designated fishery where, having regard to scientific, social, economic, environmental and other relevant considerations, such fishery – (a) is important to the national interest; and (b) requires management measures for ensuring sustainable use of the fishery resource."*

Relevance to development of MPAs

The Decree is ***highly relevant*** to the development of MPAs in Fiji.

The Decree makes provision for the designation of MPAs (protection of a marine area) and the designation of a fishery (protection of species) and it not only regulates the fishing industry but also promotes fisheries conservation, management and development. While silent on the development of subordinate regulations describing zones to be applied to MPAs, it is possible for these to be developed. Each zone could prescribe which activities are and are not permitted within each marine protected area or part thereof.

The purpose in developing the OFMD, the draft Inshore Fisheries Decree and the Aquaculture Act was to replace the Fisheries Act with more up-to-date and relevant fisheries legislation, both inshore and offshore. However, to date only the OFMD is law while the Aquaculture Bill has been presented in Parliament but is yet to be passed as law.

Marine Spaces Act 1978

The objective of the Marine Spaces Act is to *"make provision for the demarcation of the marine spaces appertaining to Fiji, declaring the rights of Fiji in relation thereto; to regulate the exploitation of the resources*[10] *thereof and other activities therein and to make further provision for the regulation of fishing".* However, it should be noted that the OFMD repealed the following sections of the Marine Spaces Act:

a. Parts 111 and IV of the Marine Spaces Act.

b. Marine Spaces (Foreign Fishing Vessel) Registration.

Therefore, the Act is now limited to regulating the exploitation of the resources and other relevant activities as per the objective outlined. It therefore no longer regulates the registration of fishing vessels. The Act is implemented by the Ministry of Fisheries.

10 Resources are defined in the Decree as "*any fishery resource or the marine environment*".

The Act demarcates the marine spaces of Fiji and clearly defines the following waters:

a. Internal waters – *except where closing lines are drawn under the provisions of the Act the outer limits of the internal waters of Fiji shall be a line drawn along the low-water line of the coast of each island, provided nevertheless that in the case of islands situated on atolls or islands having fringing reefs the line shall be drawn along the seaward low-water line of the reef.*

b. Archipelagic waters – *generally the archipelagic waters of Fiji comprise all areas of sea contained within the baselines established under the provisions of the Act.*

c. Territorial seas – *generally the territorial seas of Fiji comprise all areas of sea having as their innermost limits the baselines established under the provisions of this Act and as their outermost limits a line measured seaward from those baselines every point of which is at a distance of twelve miles from the nearest point of the baselines.*

d. Exclusive economic zone – *generally the exclusive economic zone of Fiji comprises all areas of sea having, as their innermost limits the outermost limits of the territorial seas, and, as their outermost limits, a line drawn seaward from the baselines every point of which is at a distance of 200 miles from the nearest point of the appropriate baseline.*

The above waters are included in the definition of "*Fiji fisheries waters*" therefore the definitions are relevant to the Fisheries Act and the OFMD.

The Act also declares the rights of Fiji in relation to these waters, defines the application of the Continental Shelf Act (1970) and the legal character of marine spaces more generally.

Definition of these (and other) terms regarding marine spaces is provided in Attachment 5.

Relevance to development of MPAs

This legislation is ***highly relevant*** as far as the definition of the internal waters, archipelagic waters, territorial seas and exclusive economic zone (EEZ) are concerned. The waters, seas and EEZ are part of the definition of "*Fiji fisheries waters*". These are areas where the Permanent Secretary may designate MPAs in accordance with the OFMD.

General Regulation 11 d) (under Part II Marine Spaces) of the Marine Spaces Act prescribes measures for the protection and preservation of the marine environment of the EEZ and potentially provides for conservation measures to be applied, which in theory could include the development of MPAs or some form of spatial planning. However, this section is only applicable to the EEZ, therefore the Minister only has power to make measures for the protection of the marine environment within the EEZ.

Because the EEZ does not contain all the seas and waters that are defined in this Act, it may not be the best legislation to create protection of the marine environment. The Act is dated and the objectives do not reflect the need for marine resource protection and conservation. It will require revision. Additionally, the administration of the legislation for the creation of MPAs or MPA networks may not sit well within the Ministry of Foreign Affairs. The OFMD is better suited to creating MPAs as the Decree is quite clear that marine protected areas can be created by way of a declaration. In addition, the objective and principle of the Decree better support the creation of MPAs in Fiji.

Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order 1981

The Marine Spaces Order establishes the outer limits of the EEZ and provides baselines for the EEZ and Fiji Archipelago.

Relevance to development of MPAs

The Marine Spaces Order 81 is ***highly relevant*** to MPA development as it clarifies the baselines for archipelagic waters and the EEZ. It pinpoints the exact coordinates that correlate to the definitions provided under the Marine Spaces Act.

Continental Shelf Act 1970

The Act makes provision for the protection, exploration and exploitation of the natural resources of the continental shelf of Fiji and of areas within the territorial limits of Fiji and for matters connected with that purpose. Natural resources are defined in the Act as:

a. the mineral and other natural non-living resources of the seabed and subsoil; and

b. living organisms belonging to sedentary species, that is to say organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil.

The continental shelf is defined in the Act to mean:

"continental shelf" means the seabed and subsoil of those submarine areas adjacent to the coasts of the islands of Fiji, but beyond the territorial limits of Fiji, to a depth of two hundred metres below the surface of the sea, or, beyond that limit, to where the depth of the suprajacent waters admits of exploitation of the natural resources of those areas".

The Minister, from time to time, may designate areas in which where the State may exercise its right to explore and exploit natural resources in these areas as provided under Section 3 (1) of the Act. The Minister has made one order under the Act designating such an area by way of Regulations. This type of designation is not for protecting the resources within the designated area *per se* but rather an area where the State has the power to exploit the continental shelf and explore the resources (however under Section 10 (21) (g) the Minister may provide some form of protection from interference with conservation efforts in a designated area).

Relevance to development of MPAs

The Act is ***highly relevant*** to the conservation of marine resources generally, as the Minister may make regulations *"to prohibit or restrict exploration of any specified part of any designated areas or the exploitation of natural resources of the seabed or subsoil which could result in 'unjustifiable interference' […] with the conservation of the living resources of the sea"* (Section 10 (2) (g)). This means that within the designated area where the State has the power to explore the shelf and exploit the resources, the Minister may prohibit or restrict exploitation or the exploration of natural resources if it causes 'unjustifiable interference' to a conservation effort. If an MPA for conservation is established within the designated area, the Minister may make regulations to protect it including rules and conditions.

The Act has the mandate to protect designated areas within the continental shelf of Fiji by prohibiting exploitation of natural resources that will interfere with conservation efforts.

Environment Management Act 2005

The principles of sustainable use and development of natural resources and the matters of national importance are key areas of the Act.

There are two main activities that are controlled under the Act and which ensure the achievement of these principles:

- Waste management, which is done by way of a permitting system (Part 5); and
- Environment Impact Assessment process (Part 4) for developments that have a significant environmental and resource management impact.

The Act also empowers the Department of Environment (DoE), through the Resource Management Unit, to coordinate natural resource management activities in Fiji (Section 13(2) (c)). Therefore, the DoE plays a key role in the management of natural resources.

Relevance to development of MPAs

The Act establishes the following bodies (detailed overview is provided in Attachment 6):

- National Environment Council (NEC) (Section 7(1)) and provides for a range of functions including appointment of technical committees to advise on matters *"affecting environmental protection and resource management"*[11].
- Protected Areas Committee was established under Section 8(2).
- Integrated Coastal Management Committee (Section 8(3)).
- Resource Owners Committee (Section 8(4)).

11 The NEC has not met formally for a number of years.

The Act is ***potentially highly relevant*** to MPA development because:

a. For MPA development, the DoE may be well placed under the Act, at least in law, to be the lead agency because one of the functions under the Act that the NEC may require is *"to co-ordinate conservation and management of natural resources"* (Section 11(1) (f)). Furthermore, the Resource Management Unit is responsible for coordinating natural resource management activities under the DoE so would be natural choice to play a lead role in the protection and conservation of MPAs[12].

b. In terms of developing an MPA legal regime under the Act, it may be possible, by way of subsidiary regulations under Section 61(3) (e) which stipulates:

> *(3) The Minister may, after consulting the relevant Minister responsible for Fijian Affairs, land, mineral resources, agriculture, fisheries, or forestry, make regulations*
>
> > *(e) to establish guidelines, standards and procedures for the conservation, protection or rehabilitation of any land, river or marine area.*

State Lands Act 1978 (formerly Crown Lands Act 1946)

The State Lands Act relates to the control, administration and disposal of State land. The Act defines 'State land' to mean '*all public lands in Fiji, including foreshores and the soil under the waters of Fiji'.* The Act does not allow the sale, lease or licensing of State land unless it is done in accordance with the provisions of the Act.

The Act makes provision for the lease and licensing of State lands and this is outlined under Part IV of the Act. The Director of Lands is empowered under Section 10 of the Act to grant leases and licences of portions of State land for such purposes and subject to conditions such as forfeiture, renewal or otherwise as specified or prescribed under the Act or subsidiary legislations. The foreshore is included in the definition of State land but is not expressly defined in the Act. However, it is understood to mean the area of the shore between the average high-water mark and the average low-water mark. Part V of the Act makes provision for foreshore leases. The Act empowers the Minister to approve a State foreshore lease but the decision to grant such lease shall not be made unless the Minister declares that it will not create a substantial infringement of public rights. A foreshore lease or licence for the purpose of creating marine protected areas is not specifically provided for in the Act, even though the Minister has issued two foreshore licences for the purpose of creating MPAs. This is an issue which will need to be addressed.

Through research conducted by the Fiji Environmental Law Association that was presented at the Coastal Fisheries Legal Development Workshop, the Department of Lands and Survey advised that it had recently issued two licences for marine managed areas under the Act. Subsequent enquiries identified the following licences issued:

- **Namotu Island Resort (Malolo)** – this is a five-year licence that was issued to Namotu Island Resort, Malolo for the purpose of protecting the marine area located in the surrounds of the Island Resort;
- **Waivunia Marine Park (Savusavu)** – this is a five-year licence that was issued to Navotolu Cooperative Limited (which includes the customary owners) for the purpose of protecting the *qoliqoli* area.

However, at the time of writing this report, we cannot confirm the conditions of these licences as we could not obtain copies of them.

Relevance to development of MPAs

If the Department of Lands and Survey is currently issuing licences for creating marine managed areas, this is ***potentially highly relevant*** legislation save for the gap and potential conflict created when Section 21 is used to issue licences when legally the section only allows for leases to be issued.

12 Being the lead agency is more a political question rather than a legal one. The legal considerations are about whether the current Fisheries Act provides for the institutional framework that would allow the Fisheries Department to be a lead agency for MPA development and all responsibilities required afterwards. In its current form, the Fisheries Act does not provide for these responsibilities. If the Fisheries Department is required to be the lead agency for MPA development and management, the Fisheries Act will have to take this into consideration. Alternatively, if the Fisheries Act is repealed and replaced with the OFMD and incoming Inshore Fisheries Act, these two pieces of legislation will need to provide for the institutional framework for MPA development and management.

Forest Decree 1992

The purpose of the Forest Decree is to manage forests and forestry products and it is assumed that this includes mangrove forests. Although 'mangrove' is not specified in the Decree, by definition mangroves are a type of forest system.[13] [14]

The Decree provides for the declaration and management of forest reserves and nature reserves.[15]

Forest reserves are managed as permanent forests to provide, on a permanent basis, the optimum combination of benefits of protection and production of which they are capable. Nature reserves are managed for the exclusive purpose of permanent preservation of their environment, including flora, fauna, soil and water.

Relevance to development of MPAs

The Decree provides for the management of forests and forest produce and has been assumed to include mangroves, the most likely habitat relevant to MPA development in Fiji. The Decree also provides for the declaration of forest reserves and nature reserves, the latter exclusively for environmental preservation. Therefore, this legislation is ***potentially highly relevant*** to the development of MPAs in Fiji, subject to clarification of its relevance to the management of mangroves.

Rotuma Act 1978

The Rotuma Act applies to the island of Rotuma which is defined as: *"the island of Rotuma and its dependencies, that is to say all islands, rocks, reefs and fisheries lying between the twelfth degree and the fifteenth degree of south latitude and between the one hundred and seventy-fifth degree and the one hundred and eightieth degree of east longitude from the meridian of Greenwich"*. The Act refers to the applicability of the laws of Fiji in Rotuma. Unless the laws of Fiji expressly exclude Rotuma from its provisions, all laws of Fiji apply to Rotuma.

Relevance to development of MPAs

This Act is ***highly relevant*** as it confirms that the island of Rotuma is subject to the laws of Fiji meaning that fisheries and ocean-related issues of Rotuma are subject to fisheries and ocean-related laws of Fiji including legislation relevant to the development of MPAs.

Mining Act 1978

The purpose of the Mining Act is to repeal the mining ordinance and to make better provisions relating to prospecting for, and mining of, precious metals and other minerals. The Act interprets land to include water and land covered by water and does not distinguish between fresh and oceanic/coastal waters, leading to the view that the Act applies to offshore areas. The Act also provides for the development of two forms of site protection: protection areas and closed areas.

Relevance to development of MPAs

Land is defined in the Act to include water and land covered by water. This could be construed as applying to marine areas.

The Act provides for the declaration of government protection areas and closed areas – each of these could potentially be some form of MPA. Regarding whether the Mining Act might take precedence and issue exploration or mining licences in areas designated as MPAs through other legal instruments, all legislation operates in parallel to each other unless a legislative instrument specifically provides that in the case of an inconsistency, a particular legislation would take precedence. For example, if mining were to be proposed in an MPA created under the OFMD, there are measures that the Minister can put in place, based on Part 2 of the Decree, to protect the fisheries in Fiji not only from fishing activities and mining activities but activities that will have an impact on the biodiversity of the marine environment. The

13 Advice from Susanah Waqainabete-Tuisese

14 The Department of Forest Is responsible for managing and monitoring mangrove timber/firewood extraction while the Department of Fisheries manages the marine resource extraction from mangroves and the legal owner of mangrove resources is the Government of Fiji (Department of Lands). Communities have access rights to enter/extract resource from mangrove systems and that right is issued by the Department of Lands. The issue of such rights is often exercised in association with commercial extraction through licensing systems. Communities are not required to obtain licences for subsistence use of mangrove resources. The Department of Forest and the Department of Fisheries issue such licences.

15 The Act allows for the declaration of any of the following classes of land already reserved for another public purpose to be a forest reserve or a nature reserve: (a) unalienated State land; (b) land leases to the State; (c) unalienated native land, with the prior consent of the owner of the land and of the Native Land Trust Board.

Decree provides under Section 5(4) the provision *"to ensure that the objective, functions and authority provided under this Decree and Fiji's international and regional obligations are effectively discharged, the provision of this Decree shall prevail in the event of inconsistency or incompatibility with any other law or instrument having the force of law in Fiji"*. This makes protection of the marine environment under this legislation very relevant as the OFMD would take precedence over other conflicting legislation. In summary, no legislation trumps another unless specifically provided for in the legislation and no legislation is above the Constitution.

There are safeguards within the Act to ensure protection of the environment. EIAs are a requirement for mining activities.

Consequently, the Act is ***potentially moderately relevant*** to MPA development.

National Trust for Fiji Act 1970, National Trust of Fiji (Amendment) Act No. 40 of 1998

The purpose of the National Trust is:

a. to promote the permanent preservation for the benefit of the nation of lands (including reefs), buildings, furniture, pictures and chattels of every description having national, historic, architectural or natural interest or beauty;

b. to protect and augment the amenities of any such land or buildings and their surroundings and to preserve their natural aspect and features;

c. to protect animal and plant life; and

d. to provide for the access to and enjoyment by the public of such lands, buildings and chattels.

The Amendment Act provides for the development of a National Heritage Register, which may include *"an area of land (including reefs) […] as being of national historical, architectural or natural interest or beauty".*

Relevance to development of MPAs

The purpose of the Act makes it ***moderately relevant*** to MPA development. The preservation of land having national, historic, architectural or natural interest or beauty under the Act includes the preservation of reefs. However, the restriction of the relevance of this Act to MPA development is to reefs and those that have national, historic, architectural or natural interest or beauty.

The actual level of protection offered is not clear in the Act. The Act makes provision for by-laws that will provide for the protection of, the prevention of nuisances and the preservation of order upon, any lands or other property of the Trust.

Marine Transport Decree 2013

The Marine Transport Decree provides for the implementation of Fiji's obligations under the International Maritime Organisation (IMO) conventions, to ensure that participants in the maritime transport system are responsible for their actions and to consolidate related maritime laws including the protection of the marine environment and for related matters.

The main activities addressed by the Decree include:

- Maritime shipping;
- Salvage;
- Marine pollution prevention, management (including ballast water) and response including removal of wrecks; and
- Making marine protection regulations and taking other measures to protect the marine environment.

These activities include the preparation and review of the National Marine Spill Response Strategy and approval of draft municipality marine spill contingency plans.

Relevance to development of MPAs

This Decree is ***moderately relevant*** to MPA development as it deals with the impacts of shipping on marine environments and provides for implementing Fiji's obligations under the IMO Conventions, particularly pollution-related issues.

Land Conservation and Improvement Act 1985

This Act makes provision for the conservation and improvement of the land and water resources of Fiji, in particular, using conservation orders and closed area provisions. Its jurisdiction includes catchments that can affect coastal marine resources, and includes water resources such as creeks and rivers.

Relevance to development of MPAs

This Act is ***moderately relevant*** to MPA development because it provides for controls on catchment impacts from land use on coastal and estuarine MPAs using conservation orders and for the establishment of closed areas.

Endangered and Protected Species Act 2002

Fiji is a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) having acceded to the Convention on 30 September 1997; the Convention entered into force in Fiji on 29 December 1997. The Act is the national implementing legislation of the Convention in Fiji. Its purpose is *"to regulate and control the international trade, domestic trade, possession and transportation of species protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and for related matters".* An extract from the Act Schedules showing those species affected by the provisions of the Act is at Attachment 7.

Relevance to development of MPAs

The Act is not directly/currently relevant to MPA development. However, it may be ***potentially moderately relevant*** (although to what extent is unknown until amendments are incorporated) in terms of the types of species protected under this Act from trade without proper permits (particularly at-risk species) that are present within ecosystems in proposed MPAs, and whether these species form part of the justification for establishing a protected area.

The Act indirectly provides protection for listed species that are protected under the Act from being traded without the proper permits and that form part of marine ecosystems.

International Seabed Mineral Management Decree 2013

The Decree provides a law to govern Fiji's engagement in seabed mineral activities in the area beyond national jurisdiction, and for related matters.

The Decree allows for Fiji to participate as allowed under the United Nations Convention on the Law of the Sea (UNCLOS) (Part XI) to either directly, or in partnership with another body corporate, apply to the International Seabed Authority (ISA) to be issued a contract to conduct exploration or exploitation activities within the area[16] or sponsor an application by a body corporate to the ISA for a contract to conduct exploration or exploitation activities with the area.

The Decree regulates how Fiji participates in seabed mineral exploration or exploitation, whether directly or in partnership, and the process for sponsoring a body corporate.

The Decree has specific provisions on the implementation of Part XI of UNCLOS.

Relevance to development of MPAs

The Decree is slightly relevant to MPA development. Although the Decree applies to seabed mineral activities in the high seas or waters beyond Fiji's EEZ, the activities may have an impact on fisheries and conservation activities within Fiji's EEZ. The Decree makes provision for activities to cease if there is evidence that they may cause significant adverse impacts on fisheries and conservation activities. Therefore, the Decree makes provision for their protection from seabed mineral activities in the high seas for any transboundary MPA if Fiji decides to participate in establishing such an undertaking.

16 "Area" means the seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction, as defined in Article 1 (1) of the UN Convention on the Law of the Sea.

2.1.1 Bills and draft laws

The following bills/draft laws were assessed and are included here for information.

Draft Inshore Fisheries Decree (3rd draft for national consultations in 2011)

This is a draft Decree developed for the management, development and sustainable use of customary fisheries and inshore fisheries resources of Fiji; to repeal the Fisheries Act; and related matters. The objective of this Decree is the conservation, management and development of inshore fisheries to ensure their long-term sustainable use for the benefit of the people of Fiji.

The draft Decree is relevant to two specific areas:

- Customary fisheries management and development; and
- Inshore fishery.

Relevance to development of MPAs

This Decree has not yet become law. For MPA development in inshore fisheries areas, this legislation is ***potentially highly relevant*** if and when it does become law. This draft Decree/Bill is therefore not currently relevant. Section 7 (1) (b) allows for the recommendation to the Minister of aquatic protected areas to be designated. It also designates an inshore fishery. The main potential advantage of the draft Decree, with respect to MPA establishment, would be the provision for customary fisheries management and development plans, under Part IV, 12.

Aquaculture Bill 2016 (Bill No. 9 2016)

The objective of this Bill *"shall be the management and development of aquaculture to ensure long-term benefits to the people of Fiji"* (Section 4). The Bill also states that it is to regulate fresh water, brackish water and marine aquaculture and for related matters.

The first reading of the Bill in Parliament is scheduled during 2016, as indicated by Government Gazette No. 9 of 2016, which had not occurred at the time of writing (July 2016).

Relevance to development of MPAs

This Bill is ***not relevant*** until it becomes law. If it becomes law, it would be ***potentially highly relevant*** because it controls aquaculture activities within Fiji waters. The designated areas would clearly delineate which areas allow for aquaculture activities within Fiji waters. The Bill also allows the Minister to declare, by notice in the Gazette, areas where aquaculture or related activities are prohibited (Section 27 (3)) where a person may not engage in aquaculture activities or related activities (Section 27 (4)). The ability to make such a decision is supported by the principles of the Bill, but specifically relevant is Section 5 (f), which is to "*protect biodiversity in the aquatic environment, especially habitats of particular significance for fishery resources*".

Mineral (Exploration and Exploitation) Bill 2006

The Bill makes provision for the exploration for and exploitation of minerals on land[17], the health and safety of workers and others in or affected by mining and other activities, and other related matters. Those areas of the Bill particularly relevant to MPA development include:

- Reservation of minerals;
- Exclusion zones;
- Notices relating to certain land and customary fisheries;
- Exploration licences;
- Development licences;

17 "land" is defined in the Bill to include water and land covered by water.

- Mining leases;
- Life of mine overview strategy and mine management plan (MMP); and
- Restricted zones and protected areas.

Relevance to development of MPAs

This Act is ***moderately relevant*** to MPA development in Fiji because mining has the potential to directly impact on MPAs and as a broader catchment activity impact, which should be addressed through the EIA process (under the Environment Management Act 2005) and through the use of MMPs.

Bill No. 6 – Endangered and Protected Species (Amendment) 2016 (to amend the Endangered and Protected Species Act 2002)

The Endangered and Protected Species Act is the national implementing legislation of the CITES Convention in Fiji. This Bill includes an additional list of species to Schedules 1 and 2 of the Act.

The Bill is currently in Parliament and its purpose is to amend the Endangered and Protected Species Act 2002.

Relevance to development of MPAs

The Bill is not directly/currently relevant in terms of MPA development. However, it may be ***potentially moderately relevant*** (although to what extent is unknown until the amendment is incorporated) in terms of the types of species that are present within these ecosystems and that under the Endangered and Protected Species Act are protected from being traded without the proper permits.

2.2 POLICIES, STRATEGIES AND PLANS

The following national policies, strategies and plans are relevant to the development of MPAs in Fiji.

2.2.1 National

Green Growth Framework for Fiji: Restoring the Balance in Development that is Sustainable for Our Future 2014

The Green Growth Framework is intended to support and complement the People's Charter for Change, Peace and Progress and the 2010–2014 Roadmap for Democracy and Sustainable Socio-Economic Development.

The Green Growth Framework for Fiji is a tool to accelerate integrated and inclusive sustainable development that will inspire action at all levels, to strengthen environmental resilience, drive social improvement and reduce poverty, enhance economic growth and build capacity to withstand and manage the anticipated adverse effects of climate change.

To support the vision of the framework, and taking into consideration the global and regional developments in green growth, the guiding principles of this framework include *inter alia*:

- Reducing carbon 'footprints' at all levels;
- Improving resource use and productivity (simply put, doing more with less);
- Developing a new integrated approach, with all stakeholders collaborating and collectively working together for the common good. The cross-cutting nature of issues relating to sustainable development requires harmony and synergy in the formulation of strategies;
- Strengthening socio-cultural education of responsible environmental stewardship and civic responsibility;
- Supporting the adoption of sound environmental auditing of past and planned developments, to support to initiatives that not only provide economic benefits but also improve the environmental situation; and
- Incentivising investment in the rational and efficient use of natural resources.

Ten thematic areas have been identified to stimulate development and/or strengthening of an integrated and cross-cutting national enabling environment for future development which is sustainable and can be sustained in Fiji. The individual areas are grouped in alignment with one of the three pillars of sustainable development: environmental, social and economic sustainability. The environment pillar includes sustainable island and ocean resources.

Relevance to development of MPAs

The framework identifies the need to recognise the importance and potential of Fiji's vast marine ecosystem. In particular, the framework calls, in the short term, for government to continue to work with the community and civil society on initiatives such as the establishment of MPAs and community-based fish wardens, and, in the long term, to establish deep-water MPAs targeting 30% of offshore areas by 2020. (Note, it is unclear why inshore MPAs are not included.)

The Green Growth Framework is therefore ***highly relevant*** to the development of MPAs in Fiji as it provides part of the coordinating framework for whole-of-government action on a range of issues including oceans and coastal management.

Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011

The Action Plan (PoWPA) supports progress towards Aichi Target 11 to establish a system of protected areas. Based on ecological gap analysis and other assessments conducted under the PoWPA the national targets for Fiji for terrestrial and marine areas for Target 11 have been defined as 30% for marine areas and 20% for terrestrial areas, by 2020.

The PoWPA provides timelines and actions to achieve the objectives. However, achieving these objectives relies on cooperation from and among the various government instrumentalities.

Relevance to development of MPAs

The action plan is ***highly relevant*** to the development of MPAs in Fiji. It provides part of the blueprint and policy framework for developing MPAs in Fiji.

National Biodiversity Strategy and Action Plan (2007–2011)/NBSAP Implementation Framework 2010–2014 and Draft 2015 National Biodiversity Strategy and Action Plan

The Fiji NBSAP was developed by the DoE, endorsed by Cabinet in 2003 and formally published in September 2007. It is a nationally executed program of work required under Fiji's obligation to the CBD.

The goal of the 2007 NBSAP and the draft 2015 NBSAP is:

To conserve and sustainably use Fiji's terrestrial, freshwater and marine biodiversity, and to maintain the ecological processes and systems which are the foundation of national and local development.

Guiding principles were developed in support of this goal in the 2007 NBSAP and the draft 2015 NBSAP. These principles differed in presentation in each document, but include:

- The conservation and sustainable use of Fiji's biodiversity is the foundation for all development and for ensuring inter-generational equity.
- Biodiversity conservation is central to sustainable use of biological resources.
- Biodiversity is best conserved in those places where it naturally occurs (*in situ*).
- The establishment of a comprehensive and representative system of reserves and conservation areas at the national and local levels is critical to successful biodiversity conservation.

The Focus 3 section of the 2007 NBSAP is about developing protected areas. Objective 3.1 of this section is *to "establish a comprehensive and representative core protected areas system".*

Thematic Area 3 of the NBSAP 2010–2014 on inshore fisheries has strategies for maintaining existing protected areas (Strategy 3) and for designing new ecologically relevant inshore MPAs (Strategy 4) while Thematic Area 6 of the NBSAP 2010–2014 Implementation Framework provides details of a range of strategies and objectives for developing a national protected area network.

Focus Area 2 of the draft 2015 NBSAP deals with the development of protected areas. In particular, it focuses on Aichi Target 11 and states that:

By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.

The 2015 draft NBSAP contains proposed strategies and actions to give effect to this statement. In particular, the following proposed objective and related action gives effect to Fiji's 30% MPA commitment:

Objective PA1b: To develop an implementation plan to meet Fiji's 30% commitment to establish a representative marine protected area system with Fiji's inshore and EEZ to protect marine biodiversity and support community and livelihoods and national income.

Action Plans

PA1.5 Development of 30% MPA and marine management area objectives and conduct mapping of priority biodiversity areas.

Relevance to development of MPAs

The 2007 NBSAP and the 2010–2014 Implementation Framework are both ***highly relevant*** to the development of MPAs in Fiji as they provide the technical blueprint for developing a national system of MPAs. However, this importance is reduced by two issues: (1) the 2007 NBSAP is outdated and it is unclear how well it has been implemented under the 2010–2014 Implementation Framework; and (2) the replacement 2015 draft version is yet to be accepted by the government to provide the necessary updated national strategy for implementing the MPA commitments.

The draft 2015 NBSAP contains some details of implementation strategies and objectives and related actions and consequently already identifies the necessary basic implementation arrangements. However, the completion date for the Implementation Framework for 2015–2020, which will provide the implementation priorities and timelines (they are supposed to be produced every 5 years) has still not been set. This should be done as a matter of priority. Objective PA1b and Action Plan PA1.5 are both extremely relevant to meeting Fiji's commitment to developing a national representative system of MPAs and, in particular, to meeting Fiji's commitment to the 30% target.

Integrated Coastal Management Framework of the Republic of Fiji 2011

The 2005 Environment Management Act (EMA) stipulates the development of a coastal management plan under Section 3(8). The EMA defines the coastal zone as *"the area within 30 metres inland from the high-water mark and includes areas from the high-water mark up to the fringing reef or if there is no fringing reef within a reasonable distance from the high-water mark"*[18].

The Fiji Integrated Coastal Management (ICM) Framework is guided by the vision for the coastal zone to:

- Maintain ecological processes and services;
- Preserve, enhance and rehabilitate natural resources; and
- Improve health and wellbeing of the people in Fiji.

The framework has been produced by the Fiji DoE to review current coastal conditions in the context of tourism development, coral reef degradation, siltation and erosion, harvesting of marine resources, waste management, coastal reclamation and construction and natural disasters, among others, as well as to assess the current legal and institutional governing framework to recommend proposals for action and policy towards sustainable coastal resource management for Fiji.

Relevance to development of MPAs

The ICM Framework is ***highly relevant*** to MPA development in Fiji as it provides policy direction for ICM and the development of inshore MPAs as part of the national policy framework for MPAs.

National Environment Strategy 1993

The National Environment Strategy (NES) is the overarching principal policy instrument for natural resource management in Fiji. The NES provides a framework and action plan to implement national responsibilities, including for protected areas. The document also provides for an implementation framework.

The goal of the NES is to provide a framework which will enable government to assume management of the various emerging environmental issues from a policy and legal base and administrative structure which will provide a firm foundation for immediate and future action.

18 The 30 metre inland boundary definition is unlikely to assist with managing catchment impacts on the coastal zone and may need to be reconsidered to provide for catchment definitions to extend upward into coastal watersheds.

The NES provides the national policy and strategic directions for:

- Natural resource management
- Land use
- Forestry
- Fisheries
- Water supply
- Mining
- Energy
- Waste management
- Environmental management
- Protected area management.

Relevance to development of MPAs

The NES is ***highly relevant*** to the development of MPAs in Fiji as it provides the national strategic framework for environmental management of both inshore and offshore activities. It also identifies preliminary national sites of significance (which include marine sites) that could be considered in any marine planning process.

This document came into force in 1993 and is therefore quite dated. While it still appears to provide the necessary strategic basis for environmental management activities in Fiji, it would benefit from a review and update to reflect progress to date, emerging issues and new obligations and information on Fiji's environment.

Setting Priorities for Marine Conservation in the Fiji Islands Marine Ecoregion 2003

In December 2003, over 80 local and overseas stakeholders with knowledge and experience of the Fiji Islands Marine Ecoregion were convened by the World Wide Fund for Nature (WWF) to discuss the importance of, and gather information on, the biodiversity and associated threats to Fiji's marine environment.

This report provides an overview of the outcomes of that process and describes the agreed criteria for key areas of biodiversity. The report reflects information generated by groups of scientists, government and non-government organisation representatives, community members and marine enthusiasts who had a range of expertise. Both scientific and anecdotal knowledge were collated for selected areas, and the gaps in knowledge were identified. Areas were identified as important according to their unique biological, geological or cultural attributes. Community representatives were particularly important in identifying areas of cultural significance.

Thirty-five agreed priority conservation areas were identified. Five areas were ranked as globally important due to their uniqueness, endemism and high levels of diversity. Fifteen areas were considered of national importance and fifteen were identified as of sub-regional importance. These 35 areas capture the full range of marine biodiversity that makes the Fiji Islands unique and that if conserved will contribute to the maintenance of integrity of Fiji's marine systems.

The five global priority areas were

- Cakaulevu or the Great Sea Reef, Macuata Province, Vanua Levu
- Lomaiviti Triangle (Vatuira Channel–Ovalau–Makogai–Wakaya Channel)
- Namenalala
- Southern Lau Group
- Rotuma.

Relevance to development of MPAs

This report is ***potentially highly relevant*** to MPA development in Fiji as it identifies priority areas for conservation and provides part of the potential planning framework for site selection of candidate areas.

This report should be among those considered to support identification of candidate areas for a national system of MPAs in Fiji.

Filling the Gaps: Identifying Candidate Sites to Expand Fiji's National Protected Area Network (Outcomes Report from Provincial Planning Meeting, 20–21 September 2010)

The Fiji national Protected Area Committee (PAC) was established in 2008 under Section 8(2) of Fiji's EMA 2005 to advance Fiji's commitments under the CBD PoWPA. To date, the PAC has:

- established national targets for conservation and management;
- collated existing and new data on species and habitats;
- identified current protected area boundaries; and
- determined how much of Fiji's biodiversity is currently protected through terrestrial and marine gap analyses.

The objective of the Filling the Gaps report is to present a gap analysis comparing the current distribution of biodiversity with the distribution of established protected areas in Fiji. The analysis uses a geographic information system (GIS) to determine the degree to which species and ecosystems are under- or over-represented.

The report provides information and data on whether there is currently adequate protection for various habitats and species in Fiji through protected areas and makes recommendations on further action.

Relevance to development of MPAs

This work is ***highly relevant*** to MPA development as it provides a scientific underpinning for identifying and developing potential MPA sites.

The report identifies a range of potential candidate sites for both terrestrial and MPAs. The report recommended that *"following stakeholder consultation in each respective province, the confirmed list of priority sites should be mapped and distributed to government ministries to guide decisions for development."* We recommend that this be followed up to determine whether such a document has been completed and distributed.

Mangrove Management Action Plan 2013

The Mangrove Management Plan will act as a tool to administer, manage, facilitate and control development and management of mangroves within Fiji. The plan is intended for a range of audiences, including the mangrove management regulatory bodies, project proponents/developers, non-government agencies, Mangrove Management Committee, Integrated Coastal Management Committee, resource owners and the Fiji Government.

The approach adopted by the plan is to put in place a rigorous environmental impact assessment (EIA) procedure ensuring consultation will be undertaken to assess planned or proposed developments on a case-by-case basis. The plan provides an approach and EIA guidelines for this purpose.

The Mangrove Management Plan has not yet been formally endorsed by the government. It is recommended that the Department of Lands consider seeking official government endorsement of it as a priority.

Relevance to development of MPAs

As the plan relates to the protection of mangroves, it is (***potentially***) ***moderately relevant*** to the development of coastal MPAs. There is no provision specifically in the plan for declaration of MPAs but it does contain provisions for management plans and zoning.

National Climate Change Policy 2013

In Fiji, climate change is expected to bring about an increase in the frequency and intensity of extreme events such as flooding, droughts and cyclones. Threats to marine ecosystems (such as coral bleaching, increase in sea surface temperatures, beach erosion, ocean acidification) and terrestrial ecosystems (such as soil erosion, salt water intrusions in low lying coastal areas, reduced soil fertility, and increased pests and diseases) are also anticipated. While Fiji, as a very low emitter of greenhouse gases, is an insignificant contributor to climate change, the country is very vulnerable to its impacts.

The National Climate Change Policy provides guidelines for sectors to ensure that current and expected impacts of climate change are considered in their planning and implementation programmes. In addition, relevant sectors are encouraged to take up climate change policy mitigation initiatives as part of Fiji's contribution to global efforts to reduce greenhouse gas emissions.

This policy sets a platform for dialogue and collaboration among government agencies and stakeholders through organised planning and implementation of national and local climate change programmes. The policy will also support Fiji meeting its international commitments to the United Nations Framework Convention on Climate Change and other conventions such as the Convention on Biological Diversity and the United Nations Convention to Combat Desertification.

The policy defines objectives and accompanying strategies to facilitate mainstreaming of climate change issues into relevant sectors and to support the provision of necessary technical and financial resources to this end.

The policy implementation framework is included with the policy.

Relevance to development of MPAs

This policy is ***moderately relevant*** to the establishment of MPAs in Fiji.

Climate change mitigation and adaptation measures have the potential to deliver cross-sectoral benefits. For example, conservation and sustainable management of mangroves will protect a large carbon sink and reservoir, while providing physical foreshore protection, marine breeding grounds, and healthy coral reef systems.

Marine Resource and Management Guidelines for the Shark Reef Marine Reserve, Serua – Fiji 2015

This management plan provides guidelines for the management of the Shark Reef Marine Reserve including tourism, fishing, collecting, diving, and other activities.

Relevance to development of MPAs

The plan is ***moderately relevant*** to MPA development in Fiji as it provides an example of MPA site management arrangements.

Roadmap for Democracy and Sustainable Socio-Economic Development 2010–2014

The Roadmap for Democracy and Sustainable Socio-Economic Development 2010–2014 sets out a strategic framework to achieve sustainable democracy, good and just governance, socio-economic development and national unity.

The medium-term strategic focus of the roadmap is to strengthen good and just governance, increase economic growth and improve socio-cultural development. Under good governance, the key strategic priorities include formulation of a new Constitution, electoral reforms, strengthening law and justice, ensuring effective, enlightened and accountable leadership, enhancing public sector efficiency, effectiveness and service delivery, developing an integrated development structure at divisional level.

The main policy objective is that *"Fiji's environment is protected from unsustainable degradation and continues to provide for our current and future needs"* and strategies include:

- Continue the implementation of the Biodiversity Strategy and Action Plan and Endangered and Protected Species Act and the Ozone Depleting Substances Act 1998;
- Review and strengthen legislation which includes environmental management provisions; and
- Promote conservation and cultural resource development that emphasizes partnership with local resource owners and local institutions.

The primary management tools will be the strategies contained in the roadmap. These strategies will cover a range of sectors including marine and coastal resource management, in particular, fisheries-related resource management and cultural site management.

Relevance to development of MPAs

The roadmap is out of date and it is unclear whether it has been replaced or superseded by another initiative. As it stands now it is ***moderately relevant*** and we recommend that its future replacement arrangements be clarified.

Fiji Tuna Management and Development Plan (2014–2018)

The Tuna Management and Development Plan sets the policy framework for managing Fiji's offshore fishery, outlining the key priority issues and challenges in Fiji's tuna fishery. A set of key strategic policy interventions form the main thrust of the plan. Through its Offshore Fisheries Division, the Fisheries Department will implement the strategies and enforce management limits. Moreover, the plan will be the source document for preparing the department's annual work program including measuring implementation progress.

The main activities covered by the plan focus on Fiji's longline fishery and includes all "Fiji fishing vessels" active both in Fiji's EEZ and those authorised to fish in the high seas. The plan also extends to Fiji fishing vessels licensed through charters, joint ventures and licensed to fish in other EEZs. Fiji's purse seine fishery is managed under the multilateral treaty between the US and Certain Pacific Island States. The pole-and-line fishery is managed under Fiji-Japan Bilateral Agreement. The plan's scope does not extend to sport, recreational, test or exploratory fishing.

Relevance to development of MPAs

The plan is ***moderately relevant*** to MPA development in Fiji as it seeks to manage the impacts of tuna fishing on other species. However, the plan forms part of the broader policy framework for fisheries management in Fiji and in that context, is ***potentially highly relevant*** to MPA development.

Sea Cucumber Management Plan 2015

The Sea Cucumber Management Plan 2015 is yet to be tabled in Parliament. However, the plan (when approved) will provide policy guidance and direction on management of sea cucumber fisheries in Fiji. The plan applies to all animals belonging to the Class Holothuria, commonly known as sea cucumbers.

The purpose of the plan is to provide ecologically sustainable management and to establish an effective and enforceable management structure for the Fiji sea cucumber fishery.

The plan objectives are to:

- commence a logical adaptive approach to the management and sustainable use of sea cucumber resources;
- support and maintain a profitable and sustainable sea cucumber fishery ensuring the fishery benefits communities in Fiji;
- rebuild and maintain sea cucumber stocks at economically and ecologically sustainable levels for current and future generations; and
- protect diversity and resilience of the marine ecosystem against human and environment impacts.

Relevance to development of MPAs

The plan is about sustainable development/management of the sea cucumber fishery and consequently this contributes to broader marine biodiversity conservation efforts. The plan has several objectives that relate directly to MPA development, including s4 – Strategies for Achieving the Objectives, which contains a range of measures such as *g) closure of specified areas within fishery waters to allow sea cucumber stocks to recover from pressures of fishing*.

Consequently, it is ***moderately relevant*** to the development of MPAs.

2.2.2 Regional

The following regional policies, strategies and plans are relevant to the development of MPAs or a marine spatial plan in Fiji.

Framework for a Pacific Oceanscape: A Catalyst for Implementation of Ocean Policy (2010)

The framework document has been developed to support policy development by:

- providing a (baseline) review of the Pacific Island Region's ocean policy environment and the status of its institutional and operational framework;
- providing a summary of progress in implementation of ocean-related policy, in particular the Pacific Islands Regional Ocean Policy (PIROP), identified as a key priority initiative under the Pacific Plan in 2005, as well as key issues that need to be addressed; and
- presenting a Framework for a Pacific Oceanscape, drawing on the PIROP, its principles and aspirations, identifying critical and emerging priority issues and opportunities of strategic significance for ocean management and conservation.

The three components envisaged under the Pacific Oceanscape are:

- **Pacific Ocean arcs**: this component aims to foster development of terrestrial and MPAs, based on the natural archipelagic nature of some PICTs, including consideration of territorial domains associated with EEZs, and opportunities for protected areas beyond these EEZs, in the surrounding high seas. For many such archipelagos, the implementation of ocean arcs will necessitate a transboundary approach and associated collaboration between PICTs.
- **Climate change and ocean security:** this component recognises the emerging issues of impact to the ocean, including ocean acidification and increasing ocean temperatures. It also aims to investigate governance issues for the ocean including the security of EEZs and associated management and monitoring of high seas areas.
- **Leadership and learning:** this component cuts across the other two components in that it seeks to support learning across initiatives such as protected areas and to support targeted research, learning and leadership in key areas in both components.

Relevance to development of MPAs

The Framework for a Pacific Oceanscape was adopted by Pacific Island Forum Leaders in 2005 as the principal regional policy instrument for strengthening and deepening regional cooperation, regional integration and the regional provision of public goods and services, under three pillars of sustainable development: economic growth, governance and security. The framework was developed as part of the implementation of the Pacific Plan and relates significantly to the PIROP.

This document is therefore ***highly relevant*** to the development of marine spatial planning, including the development of MPAs. It provides a significant amount of information on oceans policy at the regional level to underpin national marine spatial planning efforts in a coordinated and harmonised way.

Pacific Island Regional Ocean Policy 2005

At their 1999 meeting in Tonga, Pacific Islands Forum Leaders endorsed a list of recommendations emerging from the Pacific Regional Follow-up Workshop on the Implementation of the Law of the Sea. Although most of the recommendations could only be implemented by national governments, one of the recommendations – that a regional ocean policy be produced – was adopted as a regional initiative. The Marine Sector Working Group (MSWG) of the Council of Regional Organisations in the Pacific (CROP) was tasked with developing the policy.

The PIROP is intended to promote the Pacific region as an ocean environment in support of sustainable development. It is not a legal document, but its guiding principles are founded on international law, as reflected in UNCLOS and other international and regional agreements.

These guiding principles are:

- improving our understanding of the ocean;

- sustainably developing and managing use of ocean resources;
- maintaining the health of the ocean;
- promoting the peaceful use of the ocean; and
- creating partnerships and promoting cooperation.

Relevance to development of MPAs

This is a ***highly relevant*** and useful reference document for developing national marine spatial planning and should be reviewed by to determine whether there should be any links with, or adoption of, the contents in the PIROP.

The level of implementation by Pacific Island Forum countries could have some bearing on how effective the PIROP is. If it is not used as a basis for developing national policy its effectiveness could be reduced.

Regional agreements, arrangements, conventions and treaties

Niue Treaty 1992

Fiji is a party to the Niue Treaty, signed on 11 August 1992 and ratified on 5 March 1996. This Treaty calls for cooperation by Pacific states to ensure monitoring/surveillance and protection of the seas and marine resources, mainly tuna. This could potentially be used to help address monitoring/surveillance of any zoning or spatial planning across national boundaries and within oceans management arrangements.

Niue Treaty Subsidiary Agreement 2012

Fiji has yet to ratify this agreement so it is ***not relevant*** at this stage. The subsidiary agreement will affect implementation of the Niue Treaty.

The Tokelau Arrangement 2014

Fiji is a member of the Pacific Islands Forum Fisheries Agency (FFA) which has sponsored the Tokelau Arrangement but Fiji is not yet a signatory to the arrangement so it does not yet apply to Fiji. The arrangement was established specifically to conserve and sustainably harvest Southern Pacific albacore tuna. Currently parties are requested to adapt a "target reference point" for the species, which is yet to be confirmed. Some parties are calling for a 70% target reference point.

South Pacific Forum Fisheries Agency Convention 10 July 1979

The Convention sets the basis for the FFA and for the work carried out by FFA

Multilateral Treaty on Fisheries Between Certain Governments of the Pacific Island States and the Government of the United States of America 1988

As a member of the FFA, Fiji is a party to this Treaty, which regulates the conditions for fishing by the U.S.A. in the Pacific Islands Parties' waters. The Pacific Island Parties and the U.S. Government and industry have been meeting to modify the economic assistance agreement and extend the Treaty and expected meetings to continue.[19] The U.S. Treaty renegotiations on 24 June 2016 (18th Renegotiations Session) secured a multi-year agreement although the United States Government has yet to rescind its withdrawal from the Treaty.[20]

Western and Central Pacific Fisheries Commission

The Western and Central Pacific Fisheries Commission (WCPFC) was established by the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention) which entered into force on 19 June 2004. The WCPF Convention draws on many of the provisions of the UN Fish Stocks Agreement while, at the same time, reflecting the special political, socio-economic, geographical and environmental characteristics of the western and central Pacific Ocean region. The Convention seeks to address

19 http://www.nmfs.noaa.gov/ia/agreements/LMR%20report/sptt.pdf

20 Media Release from 13th Ministerial Meeting of Pacific Islands FFA at http://www.pina.com.fj/index.php?p=pacnews&m=read&o=12306292577dc699c2f1b57b58c15c

problems in the management of high seas fisheries resulting from unregulated fishing, over-capitalization, excessive fleet capacity, vessel re-flagging to escape controls, insufficiently selective gear, unreliable databases and insufficient multilateral cooperation in respect to conservation and management of highly migratory fish stocks. A framework for the participation of fishing entities in the Commission which legally binds fishing entities to the provisions of the Convention, participation by territories and possessions in the work of the Commission, recognition of special requirements of developing states, and cooperation with other Regional Fisheries Management Organisations whose respective areas of competence overlap with the WCPFC reflect the unique geo-political environment in which the Commission operates.

Fiji is a member of the Commission and therefore a party to the WCPF Convention. In summary, the WCPFC regulates fishing activities in international waters/high seas outside of coastal state EEZs and is the mediating body for Distant Water Fishing Nations and Coastal States in the Pacific region.

Relevance to development of MPAs

Each of these instruments is at least ***potentially moderately relevant*** to MPA development as they define arrangements for managing/sharing regional fish stocks, an important issue for any large scale oceanic MPA or any transboundary MPA arrangement.

Secretariat of the Pacific Community[21], Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013–2016

The goal of the Secretariat of the Pacific Community (SPC) Division of Fisheries, Aquaculture and Marine Ecosystems (FAME), in line with the priorities of member countries and territories, is that:

"the fisheries resources of the Pacific Islands region are sustainably managed for economic growth, food security and environmental conservation."

The division focuses on fishery-induced threats to resources, while taking account of broader ecosystem management principles.

The FAME Strategic Plan relates to broad global and regional goals, but also incorporates many of the priorities identified by individual member countries and territories in the SPC Joint Country Strategy process over recent years.

It has also responded to changes in the work program requested by Heads of Fisheries and regional organisations. The strategic plan goes through a process of review and revision every two years.

SPC's Corporate Plan responds to the aspirations of its members for development outcomes in three key areas:

- sustainable economic development;
- sustainable human and social development; and
- sustainable natural resources and environmental management and development.

A fourth outcome calls for *'an efficient and effective organisation with the capability and partnerships required to provide optimum services to members'.*

The contribution of FAME to marine spatial planning including for MPAs relates mainly to the third key development outcome – sustainable natural resource management – but work by the division addresses all four outcomes.

Relevance to development of MPAs

The strategic plan has already been in effect for several years and is due for review and replacement in 2016. It would be useful to understand the outcomes of its review and revision into the next plan.

This is ***moderately relevant*** to marine spatial planning including for MPA development – fishery resource management is a high priority issue within oceans management and use.

21 SPC, formerly known as the South Pacific Commission and since renamed the "Pacific Community (PC)"

Pacific Regional Environment Program Strategic Plan, 2011–2015

The Pacific Regional Environment Program (SPREP) Strategic Plan is, as member countries and territories requested at the 2009 SPREP meeting, a single plan that identifies the priorities, strategies and actions for addressing challenges over a five-year period. It was formally adopted at the 21st SPREP meeting in Papua New Guinea in September 2010.

The plan is the framework that guides SPREP's annual work plans for five years.

The 2011–2015 Strategic Plan replaces the separate planning documents SPREP previously used: its action plan and its strategic programmes document. It is based on four strategic priorities identified and agreed to by members in the 2010 planning process:

- Climate change;
- Biodiversity and ecosystem management;
- Waste management and pollution control; and
- Environmental monitoring and governance.

Strategies to deliver the plan include:

- Pacific Islands Framework for Action on Climate Change;
- Action Strategy for Nature Conservation;
- Solid Waste Management Strategy for the Pacific Region;
- Regional Wetlands Action Plan;
- Review of Regional Meteorological Services; and
- Guidelines for Invasive Species Management in the Pacific.

Relevance to development of MPAs

This version of the SPREP Strategic Plan 2011–2015 is at the end of its useful life. However, the broad focus of the plan (thematic areas and approaches) are useful to consider in developing MPAs in Fiji, particularly the Action Strategy for Nature Conservation.

The strategic plan is therefore ***moderately relevant*** in its current form and it is recommended that the revised plan for the next planning period be used as a preferred reference in the development of MPAs in Fiji.

Pacific Community Strategic Plan 2016–2020

The Pacific Community Strategic Plan 2016–2020 sets out the organisation's strategic direction and priorities. The Pacific Community is the principal scientific and technical organisation supporting development in the Pacific region. It is an international organisation established by Treaty (the Canberra Agreement) in 1947 and is owned and governed by its 26 members including all 22 PICTs. The goals and activities of the plan include:

Goal 1: Pacific people benefit from sustainable economic development

1. Strengthen sustainable management of natural resources (fisheries, forestry, land use, agriculture, minerals, and water)
2. Improve pathways to international markets (mobility, private enterprises, phyto-sanitary and biosecurity standards supporting trade)
3. Strengthen sustainable transport and energy security

- Strengthen access to and use of development statistics in policy development and monitoring progress

Goal 2: Pacific communities are empowered and resilient

4. Improve multi-sectoral responses to climate change and disasters
5. Advance social development through the promotion of human rights, gender equality, cultural diversity and opportunities for young people

Goal 3: Pacific people reach their potential and live long and healthy lives

6. Improve multi-sectoral responses to non-communicable diseases and food security
7. Strengthen regional public health surveillance and response
8. Improve education quality

Relevance to development of MPAs

The plan is ***moderately relevant*** as it provides opportunities to engage with member countries on relevant activities such as GIS development, provision of scientific, technical and management advice to PICTs and regional agencies to support the sustainable management of oceanic, nearshore and coastal fisheries resources and by assisting in the delimitation of maritime zones, shared boundary solutions and extended continental shelf submissions.

Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008–2013 (Apia Policy)

The Apia Policy was developed in response to a directive by Pacific Islands Forum Leaders under an amendment made to the Pacific Plan for Strengthening Regional Cooperation and Integration (Pacific Plan) at their meeting in Tonga in 2007. This policy also accommodates the Vava'u Declaration on Pacific Fisheries Resources, which places high priority on *"the development and management of coastal/inshore fisheries and aquaculture to support food security, sustainable livelihoods and economic growth for current and future generations of Pacific people."*

The Pacific Plan aims to promote economic growth and sustainable development with the objectives of reducing poverty and improving natural resource and environmental management. The Apia Policy document also takes into account the situation and needs of PICTs as stated in the Strategic Plan for Fisheries Management and Sustainable Coastal Fisheries in Pacific Islands, which was endorsed by Heads of Fisheries in 2003.

The Apia Policy is the first regional mechanism developed to harmonise national policies and activities that address the long-term sustainability of coastal fisheries resources and maintenance of healthy marine ecosystems. It provides guiding principles for strategic action at national and regional levels to address the problems and challenges encountered by PICTs in managing their coastal fisheries.

Relevance to development of MPAs

Strategic actions identified under the Apia Policy will include the provision of technical assistance to PICTs to translate the international instruments and guidelines referred to in Section 2.3 below into harmonised policy directions that can be incorporated in national plans, national legislation, national economic development strategies, fisheries sector plans, environment management plans, etc. for local or national implementation. This technical assistance will take into consideration changes that may have occurred over time within coastal fisheries management. It will also identify and address external and internal factors, e.g., type of government structure, political history, national laws and regulations, influence of traditional authorities, and institutions such as customary and traditional rights within PICTs, that affect the policy formulation process.

However, the policy is currently out of date (it covers the period 2008–2013) and there is no evidence that it has been reviewed or revised.

Consequently, it is ***moderately relevant*** to MPA development – it provides an (outdated) regional policy framework for inshore fisheries management.

A new song for coastal fisheries: pathways to change

This strategy arose through SPC from a workshop report (workshop held in Noumea 3–6 March 2015) and aims for enhanced community-based ecosystem approaches to fisheries management. It was approved by Pacific Island Countries at the FFA Ministerial meeting held in Tuvalu in 2015.

The strategy calls for an enhanced focus on coastal fisheries management and related development activities in the Pacific region. To effectively implement the proposed actions, national governments and stakeholders will need to commit to substantial support for a community-driven approach to coastal fisheries management.

Relevance to development of MPAs

The workshop outcomes have been translated into an overarching strategy. The "New Song" is ***moderately relevant*** to MPA development from the perspective of community-based fisheries management as a legitimate approach to fishery resources management.

Roadmap for Inshore Fisheries Management and Sustainable Development 2014–2023 (draft 1 January 2015)

The leaders of the Melanesian Spearhead Group (MSG) countries gathered at the Leaders' summit in March 2012 and agreed to develop a roadmap for the protection of inshore fisheries. This document represents that management framework and regional roadmap for sustainable inshore fisheries which was developed by the MSG Secretariat in cooperation with representatives of the Fisheries Departments of the MSG countries and with the technical assistance of the SPC.

Relevance to development of MPAs

The roadmap is ***moderately relevant*** in that it potentially provides a framework for inshore fisheries management and a basis for developing MPAs for the protection of fishery resources.

Future of Fisheries: A Regional Roadmap for Sustainable Pacific Fisheries (FFA 2015)

This roadmap outlines seven clear goals for oceanic and coastal fisheries for the next ten years, as well as indicators that can be used to measure progress. To achieve these goals will require commitment to 11 strategies (including zoning) that will allow the region to take control of the future of the fisheries. As a regional roadmap, the strategies will be facilitated through regional agencies (primarily the FFA and the SPC) working together.

The roadmap sets goals and targets against which progress will be measured. An annual 'fishery report card' will be provided to the annual meeting of the Ministerial Forum Fisheries Committee. The report card will measure the relative success of each strategy in terms of the changes to the indicators that are set out for each goal.

Relevance to development of MPAs

This is ***moderately relevant*** in that it potentially provides a framework for tuna fisheries management and a basis for developing MPAs for protection of fishery resources under Fiji's fishery management legislation.

2.3 INTERNATIONAL CONVENTIONS[22] AND RELEVANT INITIATIVES

2.3.1 International conventions

Fiji is currently a signatory to several international conventions that are relevant to the development of MPAs. The following are the most relevant conventions.

UN Convention on the Law of the Sea (1982)

The third version of UNCLOS entered into force in 1994. UNCLOS establishes the broad legal framework for protection and governance of the oceans. Perhaps the most universally important feature of UNCLOS is its definition of national jurisdiction and sovereign rights over different areas of the sea.

An important aspect of UNCLOS is marine protection. Part XII (Articles 192–237), entitled 'Protection and Preservation of the Marine Environment,' deals with marine conservation. Certain provisions require nations to protect and preserve the marine environment (Article 192), and to prevent pollution from any source (Article 196). While UNCLOS strengthens the ability of nations to establish MPAs, no specific reference is made to protected areas.

Relevance to development of MPAs

UNCLOS is ***highly relevant*** to MPA development as it provides the basis for obligations to protect and preserve the marine environment, particularly from marine pollution.

United Nations Convention on Biological Diversity (1992)

The CBD came into force in 1993. The three main objectives are the conservation of biodiversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the use of genetic resources. One of the key recommendations under the CBD was for the establishment of national systems of protected areas or areas where special measures are needed to be taken to protect biological diversity.

The subsequent work programme for conservation of marine and coastal biodiversity was set out by the 1995 Conference of the Parties and the Jakarta Mandate on Marine and Coastal Biodiversity. The CBD Subsidiary Body on Scientific, Technical and Technological Advice on marine and coastal biodiversity has recognised that MPAs should be part of integrated marine coastal zone management frameworks. In addition, the CBD has constituted programs of work on various thematic and cross-cutting issues, including island biodiversity, marine and coastal biodiversity and protected areas.

Relevance to development of MPAs

The CBD is ***highly relevant*** to MPA development as it provides the foundation, and forms part of the framework, for the systematic development of protected area systems globally. In particular, the CBD is the basis for sustainable development strategies which incorporate environmental considerations and opportunities for mainstreaming these into other government programs.

Noumea Convention (1986)

The Convention on the Protection of Natural Resources and the Environment of the South Pacific Region (SPREP or Noumea Convention), entered into force in 1990. Broadly, it requires State Parties to prevent and regulate pollution, and to ensure proper environmental management and development of natural resources. Article 14 provides for the establishment of protected areas and the protection of wild flora and fauna. Importantly, the Noumea Convention implements the United Nations Environment Programme Regional Seas Programme in the Pacific Region. The Regional Seas Programme promotes the World Summit on Sustainable Development (WSSD) Plan of Implementation targets for establishing networks of marine and coastal protected areas.

22 Modified extract from Techera, E.J. and Troniak, S. (2009) Marine Protected Areas Policy and Legislation Gap Analysis: Fiji Islands, IUCN Regional Office for Oceania, Suva, Fiji.

Relevance to development of MPAs

The Convention is ***highly relevant*** to MPA development as it provides part of the regional program and policy framework for marine conservation including promoting targets for establishing a system of marine protected areas.

Ramsar Convention (1971)

The Convention on Wetlands of International Importance 1971 (Ramsar Convention) seeks to facilitate the conservation and wise use of all wetland areas through local, regional and national action and international cooperation. Fiji acceded to the Ramsar Convention in 2005. The definition of 'wetland' under this Treaty includes marine areas to a depth of 6 metres, applicable to both inshore and offshore waters. State parties are, upon ratification, required to nominate at least one site for international listing. Thereafter they must formulate and implement plans for conservation and wise use of listed wetlands and monitor and report changes. Importantly parties are also required to promote the conservation and wise use of wetlands whether they are listed. Fiji has one wetland area listed under the Ramsar Convention, though it does not involve a marine area. Fiji is currently working towards listing several additional Ramsar sites including Nasoata Island, the Great Sea Reef area[23] and Qoliqoli Cokovata of the Great Cakau Levu.

Relevance to development of MPAs

The Convention is ***moderately relevant*** to MPA development in Fiji as it provides the potential for declaring coastal wetland as MPAs (although this has not yet occurred).

World Heritage Convention (1972)

The United Nations Economic, Social and Cultural Organization (UNESCO) adopted the Convention Concerning the Protection of the World Cultural and Natural Heritage (the World Heritage Convention) in 1972. The main objective of the World Heritage Convention is to identify and conserve the world's cultural and natural heritage. Any cultural or natural site with outstanding scientific, conservation or aesthetic value may thus be designated on the World Heritage List. Marine and wetland environments are under-represented on the World Heritage List. As of 2006, only 28 of 144 sites represented coastal or marine environments.

Levuka town is Fiji's first listed site on the World Heritage List.

Relevance to development of MPAs

The Convention is ***moderately relevant*** to MPA development in Fiji as it provides the potential for justifying declaration of areas as MPAs if they possess outstanding cultural or natural heritage values, and could also be used as an overlay on existing MPAs that might meet the relevant criteria, providing an additional layer of protection.

Convention on International Trade in Endangered Species of Wild Fauna and Flora

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) is an international agreement between governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. Although CITES is legally binding on the signatory parties, it does not take the place of national laws. Parties therefore implement the Convention through their own national legislation.

Fiji joined CITES in 1997 and implements the Convention through the Endangered and Protected Species Act (2002) and the Endangered and Protected Species Regulations (2003). The Act aims to regulate and control the international trade, domestic trade, possession and transportation of species protected under CITES.

As well as species listed in the CITES Appendices, the Act contains Fijian species that are not listed in the Appendices, but which are instead protected under Schedules 1 and 2. Like the CITES-listed species, trade in these species must be authorised through permits. A species list in Schedule 1 or 2 can only be traded into or out of Fiji if the DoE has approved the trade and issued the relevant permit:

- Schedule 1 of the Act lists all species indigenous to the Fiji Islands that are not listed in Appendix I of CITES but which are believed to be threatened with extinction.
- Schedule 2 lists species indigenous to the Fiji Islands that are not listed in Appendix I, II or III or Schedule 1 of the Act.

23 Advice from the Marine Working Group of Fiji's Protected Area Committee (operating under the National Environment Council (NEC)

Relevance to development of MPAs

CITES is ***moderately relevant*** to the development of MPAs in Fiji as it provides the basis for considering species protection as part of the justification for declaring protected areas.

Convention on the Conservation of Migratory Species of Wild Animals

The Convention on the Conservation of Migratory Species of Wild Animals (CMS Convention) was adopted on 23 June 1979 in Bonn, Germany and entered into force on 1 November 1983. The main objective of the Convention is to protect the species of wild animals that migrate across or outside national boundaries. The Convention covers the following areas:

a. Endangered migratory species to be listed in appendix I;

b. Migratory species to be subject to agreements listed in appendix I;

c. International agreements to deal with those aspects of the conservation and management of the migratory species concerned which serve to achieve the object of protection;

d. A scientific council to be established to provide advice on scientific matters; and

e. A secretariat to be established.

Fiji became a party to the Convention when it entered into force in Fiji on 1 April 2013. Fiji became a signatory to the Memorandum of Understanding on Pacific Island Cetaceans (MOU) in 2006, seven years before it became a party to the Convention. The MOU was concluded in September 2006 in partnership with SPREP. The objective of the MOU is to achieve and maintain a favourable conservation status for all cetaceans and their habitats occurring in the region. The MOU includes plans to protect and conserve Pacific cetaceans and their habitats, including their migratory corridors.

Relevance to development of MPAs

The CMS Convention is ***moderately relevant*** to MPA development in Fiji as it provides the basis for considering transboundary arrangements for species protection and consequently the potential for Fiji to engage in transboundary protection arrangements through MPA development (there are numerous examples of transboundary parks elsewhere which demonstrate the value of this approach, including a range of MPAs in Australia such as the Solitary Islands Marine Park and the Great Australian Bight Marine Park).

2.3.2 Relevant initiatives

The following international initiatives are also relevant to the development of MPAs or a marine spatial plan in Fiji.

Agenda 21 (1992)

Agenda 21 is the program of action resulting from Rio Declaration and 1992 UN Conference on Environment and Development. Chapter 17 spells out requirements for protection of marine living resources and the marine environment, including the establishment of limitations on the use of marine ecosystems through the designation of protected areas and other means.

Relevance to development of MPAs

Agenda 21 is ***highly relevant*** to MPA development in Fiji as it provides part of the global program and policy framework from which national efforts to develop MPA systems are derived and supported.

Barbados Declaration and the Programme of Action (1994)

The Barbados Declaration and Programme of Action for the Sustainable Development of SIDS were produced at the first Global Conference on the Sustainable Development of Small Island States in 1994. The BPoA contains 14 priority areas plus actions and policies related to environment and development planning. Articles 21–25 highlight the actions required to ensure sustainable development of SIDS coastal and marine resources. In addition, Articles 41–45 highlight the special actions required at a national, regional and international level to protect and conserve biological diversity

including marine biodiversity. The Mauritius Strategy under UNESCO is the implementing strategy for the BPoA. Chapter IV on Coastal and Marine Resources encourages the strengthening of representative networks of MPAs.

Relevance to development of MPAs

The Barbados Declaration is ***highly relevant*** to MPA development in Fiji as it provides part of the global program and policy framework from which national efforts to develop MPA systems are derived and supported and is more specifically relevant to SIDS.

World Summit on Sustainable Development (2002)

The WSSD in 2002 resulted in an international commitment to establish networks of MPAs by 2012; nations agreed to *'maintain the productivity and biodiversity of important and vulnerable marine and coastal areas and to utilise a broad range of tools, including the establishment of MPAs.' The Implementation Plan of the WSSD aims to 'develop and facilitate the use of diverse approaches and tools, including … the establishment of MPAs consistent with international law and based on scientific information, including representative networks by 2012'*.

On 25 September 2015, countries adopted a new set of goals to end poverty, protect the planet, and ensure prosperity for all as part of a new sustainable development agenda. Each goal has specific targets to be achieved over the next 15 years.

Goal 14 of the WSSD goals developed in 2015 is to *"conserve and sustainably use the oceans, seas and marine resources"*. The 14 targets developed to achieve this include: [24]

- By 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution;
- By 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans;
- By 2020, conserve at least 10 per cent of coastal and marine areas, consistent with national and international law and based on the best available scientific information;
- By 2030, increase the economic benefits to SIDS and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism;
- Increase scientific knowledge, develop research capacity and transfer marine technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular SIDS and least developed countries; and
- Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of The Future We Want.

Relevance to development of MPAs

The WSSD is ***highly relevant*** to MPA development in Fiji as it provides part of the global program and policy framework from which national efforts to develop MPA systems are derived and supported, particularly in the context of sustainable development.

24 http://www.un.org/sustainabledevelopment/sustainable-development-goals/

3 ANALYSIS AND ASSESSMENT

Fiji is committed to the sustainable use of its marine resources and conserving its marine biodiversity and has demonstrated this through being party to a variety of international, regional, national and sub-national instruments. For example, this commitment has been ratified through Fiji's responsibilities and obligations under the CBD.

As part of its commitment to the CBD, the Fiji Government must deliver on several targets including Aichi Target 11 that states:

'By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape'.

In addition, the Fiji Government has, in different documents and at different forums, made a variety of commitments that relate to the management and protection of Fiji's coasts and oceans. In 2014, at the SIDS meeting, the Government of Fiji reinforced a 2005 commitment made at the SIDS meeting in Mauritius that by 2020:

'At least 30% of Fijis inshore (i qoliqoli) and offshore marine areas will have come under a comprehensive, ecologically representative network of marine protected areas (MPAs), which are effectively managed and financed'.

To help deliver on these commitments the government has prepared and implemented a broad range of management plans and strategies which have been analysed in detail in Section 2.

The following summarises these analyses and assessments of existing and proposed legislation, policies, strategies and management plans and identifies their relevance to achieving Fiji's MPA targets with regard to areas of conflict within and between these documents, the synergies that exist or could potentially exist among them, and whether there are gaps within legislation, or in the range of current legislation.

3.1 CONFLICT OR POTENTIAL CONFLICTS

3.1.1 Legislation

Constitution of the Republic of Fiji 2013

Like most constitutions of any state, any laws that conflict with the Constitution are usually declared as inconsistent to the extent of the inconsistency and the Constitution prevails in law.

Fisheries Act 1942

In 2010, the Department of Fisheries developed three draft laws – the Aquaculture Decree, Offshore Fisheries Management Decree and Inshore Fisheries Management Decree – with the intention of replacing the Fisheries Act. However, to date, the only draft law passed into law is the OFMD. The draft Aquaculture Decree was recently presented in Parliament as the Aquaculture Bill. The draft Inshore Fisheries Management Decree is still in its 2010 format and it is not clear at the time of writing if the Department of Fisheries will progress it into a Bill.

There are potential conflicts between the Fisheries Act and the OFMD as the Decree covers both inshore and offshore fisheries and the OFMD is clear that it takes precedence over any other law or instrument in force in Fiji in the event of inconsistency or incompatibility. While the OFMD has repealed certain sections of the Fisheries Act and Regulations and is proposed to repeal the remainder of the Fisheries Act, there is still the potential for confusion and misinterpretation of the application of the Fisheries Act and the OFMD until there is clarification on the status of the OFMD.

Offshore Fisheries Management Decree 2012 (Decree No. 78 of 2012)

The Decree is operating in parallel with the Fisheries Act. It has not been tested or proven but there may be areas where certain activities are regulated by both legislations and there are issues over which legislation takes precedence.

iTaukei Land Trust Act (Cap 134) (formerly known as the Native Land Trust Act).

There is potential conflict with the Land Use Decree (s7) which provides an alternative option to customary landowners as a way to register their land. The *iTaukei* Land Trust Act prescribes a process for identifying *iTaukei* land and its owners and the Land Use Decree says that native land, with the consent of the landowners, is to be designated into the Land Use Bank[25].

State Lands Act 1946 (formerly Crown Lands Act)

While there are no conflicts or potential conflicts with other laws, there is a risk that the Minister for Lands, in issuing foreshore licences, may have done so without any powers to do so under the Act. Upon further clarification with the Foreshore Unit, we were informed that licences have been issued under Section 21.

The Act makes provision under Section 21 for the Minister to issue foreshore leases (which does not provide for issuing licences, only leases). In fact, none of Part V mentions or makes provision for the Minister to issue foreshore licences. This makes Section 21 and Part V open for interpretation and identifies a potential gap in this Act. We note also that the term 'foreshore' is not defined under the Act (although it is defined under the EMA as meaning "*the shore of the sea, channels or creeks that is alternately covered and uncovered by the sea at the highest or lowest tides*").

Mineral (Exploration and Exploitation) Bill 2006

Mining as an activity will generally conflict with conservation efforts over the same area or adjacent areas, however the EIA process under the EMA should be able to address this issue.

Mining Act 1978

There is significant potential for conflict with conservation legislation and international obligations if mining leases or activities are allowed over marine areas considered to have high conservation value.

3.1.2 Policies, strategies and plans

Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011

Unless the timelines and actions proposed in the action plan are adopted by all stakeholders, progress towards achieving the Aichi targets may be affected. Success will require coordination and cooperation between those stakeholders undertaking implementation of actions under the plan.

National Climate Change Policy 2012

There are several major constraints or potential issues in addressing climate change in Fiji that relate to the development of MPAs. These include:

1. Institutional framework

i. Uncoordinated and highly sectoral development and implementation of climate change projects, and weak collaboration among government bodies, NGOs, and the private sector.

25 Land Use Decree 2010 s7 – "*There shall be a register known as the Land Use Bank keeping a record of all land utilised under the Decree*".

2. Supporting legislation

ii. Existing legislation and sectoral policies do not adequately consider climate change issues.

iii. Lack of effective enforcement of environment and resource management legislation that is contributing to climate change mitigation and adaptation measures.

3. National planning

iv. Inadequate consideration of climate change issues in land use planning, urban and rural planning, coastal zone planning and infrastructure development plans.

Mangrove Management Plan 2013

While the plan has not yet been formally endorsed by government, given the range of responsibilities related to mangroves some conflict could be expected if and when endorsed, particularly when extractive/development uses conflict with the plan's aim, which is to "*act as a tool to administer, manage, facilitate and control development and management of mangroves within Fiji*". This range of responsibilities includes:

- Under the Crown Lands Act (Cap 132) all mangrove as 'foreshore' is owned by the State and the Department of Lands (DoL) regulates the use of all State land – all applications for use, conversion or development are decided on by DoL;
- Under the Environmental Management Act 2005, any development proposal that impacts mangroves requires an EIA. DoE manages the EIA process, and delivers the decision to DoL and, if approved, specifies conditions if necessary. DoL is not bound to act on the advice of DoE unless the EIA is rejected. The Environmental Management Act is a modern law which binds all government departments;
- Under the Act, DoE is also charged with monitoring the conditions of approval of EIAs, preventing dumping and pollution, and monitoring the status of mangroves as a natural resource;
- Under the Forest Decree 1992, mangroves are '*forest*' and the Forests Department regulates the use and management of all forest resources, but the Forest Department only does so after DoL have approved an application for mangrove harvesting and the Forest Department therefore can only regulate harvesting. It does not have a continual monitoring role or presence; and
- The Fisheries Act (Cap 158) regulates a wide range of activities pertaining to fishing and marine life within Fiji's waters and therefore is relevant to mangroves.

Cabinet paper (CP 74(204)) instituted the right of traditional fishing rights owners to receive recompense for the loss of fishing rights which remains the sole basis for fishing rights compensation today.

Roadmap for Democracy and Sustainable Socio-Economic Development 2010–2014

This document is currently out of date so may conflict with other strategies and initiatives developed over recent years that may have superseded the provisions of the roadmap.

However, the roadmap provided the necessary policy framework for Fiji's development during its operational period and consequently had a synergistic relationship with a range of departmental plans and strategies.

Setting Priorities for Marine Conservation in the Fiji Islands Marine Ecoregion (Report 2003)

These recommendations/findings may not necessarily be agreed/endorsed by the Government of Fiji or other stakeholders.

Shark Reef Marine Reserve Management Guidelines 2015

There is potential conflict between divers and fishers over implementation of management provisions such as excluding taking of fish by fishermen.

3.2 SYNERGIES OR POTENTIAL SYNERGIES

3.2.1 Legislation

The following legislation provides either synergies, or potential synergies, with other legislation that is relevant to the development of MPAs or a marine spatial plan in Fiji.

Marine Spaces Act/Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order

The baselines are important for identifying maritime boundaries and national borders for the purposes of implementing and enforcing the Fisheries Act, the OFMD and other relevant marine-related legislation.

Fisheries Act 1942

There are synergies with the OFMD as the Fisheries Act has certain powers which the Decree does not carry. Both legislations play a role in regulating the fishing industry that complements each other, although the potential for conflict over whether the OFMD or the Fisheries Act has precedence needs to be resolved before these synergies are likely to be realised.

Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014/ Fisheries (Wakaya Marine Reserve) Regulations 2015

There are synergies with the EMA, in particular the definition of a "*development activity or undertaking*" and the OFMD.

Offshore Fisheries Management Decree 2012 (Decree No. 78 of 2012)

There is potential synergy with the Fisheries Act, Marine Spaces Act and related Regulations. See above.

Environment Management Act 2005

Under the Act, the NEC may also appoint technical committees to deal with specific environmental issues. To date, the following committees have been established:

- Fiji National Biodiversity Strategy and Action Plan Steering Committee advises and assists the DoE on the implementation of the Fiji NBSAP.
- National Protected Areas Committee was established in 2008 to carry out Fiji's commitment under the CBD's PoWPA. The PAC has also established terrestrial and marine working groups.
- Integrated Coastal Management Committee (ICMC) is responsible for the preparation of the Coastal Zone Management Plan of which the development of a ICMC framework is a part.
- The Mangrove Management Committee also is the official steering committee for the recently established IUCN Mangrove Ecosystems for Climate Change Adaptation Livelihood (MESCAL) Project which has already undertaken baseline studies of representative mangrove forests.
- The Climate Change Country Team was set up to link and coordinate national climate change initiatives.

These committees provide a significant opportunity to develop synergies between their various mandates and the relevant legislation, policies, strategies, plans and programs they represent. Theoretically, the work of these committees is harmonised through oversight by the NEC, but the NEC last convened in 2013.

There are synergies between the EMA and development-related legislation, as the environment impact assessment process is required for developments that may have significant environmental or resource management impact as defined under the Act. This has become a step in obtaining development approvals, including lease approvals, under the State (Crown) Lands Act and *iTaukei* Land Trust Act.

Furthermore, a development proposal, for the purposes of the EIA processing requirements, identifies a proposal that could harm or destroy designated or proposed protected areas as a Part 1 Proposal (meaning that it is a significant proposal requiring the EIA administrator to process the EIA application):

(n) a proposal that could harm or destroy designated or proposed protected areas including, but not limited to, conservation areas, national parks, wildlife refuges, wildlife preserves, wildlife sanctuaries, mangrove conservation areas, forest reserves, fishing grounds (including reef fisheries), fish aggregation and spawning sites, fishing or gleaning areas, fish nursery areas, urban parks, recreational areas and any other category or area designated by a written law.

There are also synergies with legislation that relates to business and industry operations as the waste permits under the Waste Regulations require facilities to obtain a permit for regulated activities. Permits are required for liquid waste and solid waste if a commercial or industrial facility is disposing or discharging waste from its site.

Natural resource management is one area of synergy with sectoral legislation that has jurisdiction over specific natural resources such as forests, fisheries, agriculture, State land and native land.

National Trust for Fiji Act 1970 (Cap 265)/National Trust of Fiji (Amendment) Act No. 40 of 1998.

There are potential synergies with the *iTaukei* Land Trust Act and the State (Crown) Lands Act. The National Trust is empowered under the Act to take on leases (Section 10 (a)). The *iTaukei* Land Trust Act allows for the Minister to make regulations for the conservation of any area of native land.

The National Trust has obtained conservation leases under the *iTaukei* Land Trust Act for Sovi Basin and Upper Navua Conservation Area.

iTaukei Land Trust Act (Cap 134) (formerly known as the Native Land Trust Act).

There are synergies with the Fisheries Act in that the *iTaukei* Fisheries Commission, under Section 14, determines customary fishing rights.

State Lands Act 1946 (formerly Crown Lands Act)

There are potential synergies between the foreshore lease provisions and the native customary fishing rights provisions under the Fisheries Act especially if the area specified in the foreshore lease application encroaches into a *qoliqoli* area. Any foreshore lease that encroaches into a *qoliqoli* area would require customary fishing rights owners' consent and, potentially, compensation.

International Seabed Mineral Management Decree 2013

There may not be any potential synergies as this Decree covers waters beyond Fiji's EEZ. However, seabed mineral activities of exploitation and exploration may have negative impacts on MPAs that may be set up within Fiji waters if the activities are not controlled properly. So, in the future, coordination between legislation (the Decree and any MPA related legislation) may be required to ensure that MPAs are safeguarded from any impacts from activities happening in the adjacent high seas.

Land Use Decree 2010

There are synergies embodied within the Decree with the:

- Native Land Trust Act [Cap 134];
- Agricultural Landlord and Tenant Act; and
- Agricultural Landlord and Tenant Ordinance 1966.

The synergies pertain to definitions where "Land" means Crown land as defined in the State Lands Act [Cap 132] and native land as defined in the Native Lands Act [Cap 133].

Marine Transport Decree 2013

There are synergies embodied within the Decree and the EMA 2005 in that marine pollution provisions also relate to EIA provisions of the EMA.

Mineral (Exploration and Exploitation) Bill 2006

There are synergies embodied within the Bill (if it passes through Parliament) with the:

- Native Lands Act (Cap 133);
- Rotuma Lands Act;
- Petroleum (Exploration and Exploitation) Act;
- Marine Spaces Act (Cap 158A); and
- Environment Management Act 2005.

These relate to the management of mining, land and the assessment of impacts through the EMA 2005.

3.2.2 Policies, strategies and plans

The following policies and strategies provide either synergies, or potential synergies, with other instruments that are relevant to the development of MPAs or a marine spatial plan in Fiji.

Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011

The action plan provides a mechanism for all stakeholders to work together to achieve national targets including Aichi Target 11 on 10% marine protected areas and, as such, is in synergy with government efforts towards the 30% MPAs. There do not appear to be any conflicts between this action plan and other instruments reviewed.

Green Growth Framework for Fiji: Restoring the Balance in Development that is Sustainable for Our Future 2014

This framework is intended to support and complement the People's Charter for Change, Peace and Progress and the 2010–2014 Roadmap for Democracy and Sustainable Socio-Economic Development and its successor national development documents.

The establishment of a high-level multi-stakeholder panel for sustainable development, provided for in the Green Growth Framework, will provide the necessary mechanism for government, the private sector, civil society, academia, communities and donor partners to work together, to ensure policies are well aligned, better coordinated and people-focused.

In these ways, the Green Growth Framework facilitates Fiji's MPA process, and is in synergy, and not conflict, with other legal and policy instruments.

Integrated Coastal Management Framework of the Republic of Fiji (Policy) 2011

The NEC has appointed technical committees to deal with particular environmental issues and, more specifically, has established a coastal zone management committee and a resource owners' committee. The ICMC is responsible for the preparation of the Coastal Zone Management Plan of which the development of the ICM Framework is a part.

These committees, and others established under the NEC, provide a significant opportunity to develop synergies/collaboration/cooperation between their various mandates and the relevant legislation, policies, strategies, plans and programs they represent.

Mangrove Management Plan 2013

The Mangrove Management Plan aims to harmonise management of mangroves across different legislation and jurisdictions. The plan will act as a tool to administer, manage, facilitate and control development and management of mangroves within Fiji and is intended for a range of audiences, including the mangrove management regulatory bodies, project proponent/developers, non-government agencies, Mangrove Management Committee, ICMC, resource owners and the Fiji Government.

National Environment Strategy 1993

The NES provides part of the foundation and framework for implementing national environmental management in Fiji and therefore provides the synergistic basis for relevant departments and organisations to collaborate and cooperate to deliver national environmental outcomes.

Fiji National Biodiversity Strategy and Action Plan (2007–2011)/NBSAP Implementation Framework 2010–2014/Fiji National Biodiversity Strategy and Action Plan 2015 draft

The current 2007 NBSAP (to be replaced by the draft 2015 NBSAP) was drawn up in the context of assessments, strategies, policies and plans existing at the time. The most important among these were:

- Fiji: State of the Environment;
- The National Environment Strategy;
- Sustainable Development Bill (1997); and
- Revised Sustainable Development Bill (1999).

The 2015 draft NBSAP is a national policy document required under the EMA and supports the following environment related Acts:

- Factories Act (Cap 99)
- Fisheries Act (Cap 158)
- Forest Decree 1992
- Ionizing Radiations Act (Cap 102)
- Litter Decree
- Marine Spaces Act (Cap 158A)
- Mining Act (Cap 18)
- Ozone Depleting Substances Act 1998
- Petroleum Act (Cap 190)
- Public Health Act (Cap 111)
- Rivers and Streams Act (Cap 136)
- Quarries Act (Cap 147)
- Sewerage Act (Cap 128)
- Town Planning Act (Cap 139)
- Water Supply Act (Cap 144)

Roadmap for Democracy and Sustainable Socio-Economic Development 2010–2014

The roadmap is currently out of date so its current effectiveness/efficacy is unknown although it could be expected that other initiatives have overtaken its relevance.

Setting Priorities for Marine Conservation in the Fiji Islands Marine Ecoregion Report (2003)

This is a useful report when considered along with other initiatives which are linked such as the protected area gap analysis, NBSAP, the PoWPA and the ICM Framework, which together form part of the framework for identifying potential priority areas for inclusion in any system of MPAs. While the report is dated, it does provide a method for identifying overall biodiversity conservation priorities which is still relevant.

Filling the Gaps: Identifying Candidate Sites to Expand Fiji's National Protected Area Network (Workshop Report/Strategy) 2010

The gap analysis provides a significant opportunity for various stakeholders to implement obligations under a range of legislation, polices and strategies related to marine resource conservation by contributing to knowledge and understanding of what the priorities might be for establishing MPAs in Fiji. The report is also part of the policy framework for establishing a system of MPAs along with other strategies and initiatives outlined here.

3.3 ANALYSIS OF GAPS

The following gaps have been identified in legislation that are relevant to the development of MPAs or a marine spatial plan in Fiji.

3.3.1 Legislation

Fisheries Act 1942

The Act focuses on the regulation of the fishing industry and regulates how fish are to be caught, size limits of catch, declares restricted areas of where fish are not to be caught by certain fishing gear, and creates marine reserves (but the Act is vague as to the intention of these measures). The objective of the Act is focused on regulating the fishing industry; the object of the Act is silent on conservation of biodiversity including the habitats or communities on which fishery resources rely. This appears to conflict with Section 9(b) and 9(g) of the Act, as discussed below.

This legislation also has the power to create protected areas within Fiji fisheries waters for sustainable fishery resources. Regulation 9 (b) allows the Department of Fisheries to declare a certain area as protected where fishing is either prohibited or restricted either entirely or with reference to any named species. The existing marine reserve (Shark Reef) declared under Regulation 9(b) is specifically for sharks but also includes *"marine organisms including coral within the area"*. A marine organism is not defined under the Act nor is it defined under the Fisheries (Shark Reef Marine Reserve) Regulations 2014 for which it is being used. Given that this is a regulation made under the Fisheries Act, restriction can only be applied to any fish as defined under the Act to mean *"any aquatic animal whether piscine or not, and includes shellfish, sponges, holothurians (bêche-de-mer) sea-urchins, crustaceans and turtles and their eggs"*.

Section 9 of the Fisheries Act pertaining to the making of regulations does not specifically require the Minister to create regulations for the declaration of a marine reserve. However, it does not prevent the Minister from creating regulations either. Section 9 (g) however stipulates allowing for *"regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed a requisite"*.

Finally, marine reserves are declared by the Minister under Section 9 (g) of the Fisheries Act while the OFMD makes provision for the Permanent Secretary to declare MPAs, which is a duplicate power for the same purpose. This can be understood considering our understanding that the intent was for the OFMD to replace (together with the Inshore Fisheries Decree) the Fisheries Act. This has not occurred because the Inshore Decree has not been passed.

Offshore Fisheries Management Decree 2012 (Decree No. 78 of 2012)

The Decree does not refer to the Fisheries Act except in the repeal and savings clause where it repeals Section 4 and subsection 4 of Section 5 of the Act. Both pieces of legislation regulate the fishing industry and operate in parallel with each other which raises the question of which legislation takes precedence when there are conflicting provisions. Nothing in the Decree states that the OFMD will take precedence if there is any conflict between the OFMD and the Fisheries Act.

In terms of implementation, apart from Section 8 (1) (b), the Decree does not have provision for a process that the Permanent Secretary will follow to designate MPAs. However, it does have provision for the Director of Fisheries to identify and recommend the designation of MPAs (Section 9 (1) (i)). The regulation making power of the Minister under Section 104 is silent on a regulation for the process to designate MPAs to support Section 8 (1) (b) and Section 9 (1) (i).

MPAs, although used in the Decree, are not defined in the Act so it is recommended that a definition be produced.

Environment Management Act 2005

The Act does not have a definition of protected areas or MPAs although it does refer to the conservation of marine areas by way of Section 61(3) (e).

National Trust for Fiji Act 1970 /National Trust of Fiji (Amendment) Act No. 40 of 1998

The Act was passed in 1970, two years before the World Heritage Convention (WHC) was adopted. It requires amendments to reflect the conservation purposes promoted by the WHC under Article 4:

Article 4

Each State Party to this Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage referred to in Articles 1 and 2 and situated on its territory, belongs primarily to that State. It will do all it can to this end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation, in particular, financial, artistic, scientific and technical, which it may be able to obtain.

The Act does not define the term "preservation" or "permanent preservation".

State Lands Act 1946 (formerly Crown Lands Act)

The term "foreshore" is not defined.

A foreshore lease or licence for the purpose of creating MPAs is not provided for specifically in the Act.

The Minister has previously issued two foreshore licences for the purpose of creating an MPA. However, it is unclear whether the Minister has the power under Section 21 to issue a foreshore licence.

The Act makes provision under Section 21 for the Minister to issue foreshore *leases*. However, none of Part V mentions or makes provision for the Minister to issue foreshore *licences*. This makes Section 21 and Part V open for interpretation and is also a gap in this Act.

Forestry Decree 1992

The Decree does not explicitly mention mangroves although it could reasonably be assumed that a mangrove forest could be subject to this legislation and its provisions.

Mining Act 1978

The Act does not contain any provisions for sustainability.

3.3.2 Policies, strategies and plans

The following gaps have been identified in policies, strategies and plans that are relevant to the development of MPAs or a marine spatial plan in Fiji.

Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011

The PoWPA plan does not appear to have been reviewed and evaluated – it would be useful to know how much has been achieved and whether the priorities, activities and timelines need to be re-evaluated.

Integrated Coastal Management Framework of the Republic of Fiji (Policy) 2011

The ICM Framework does not contain timelines for implementation. We recommend that timelines be prepared as part of developing an implementation strategy to allow for incorporation of the framework into any potential broader strategy to establish a national system of MPAs.

Fiji National Biodiversity Strategy and Action Plan (2007–2011)/NBSAP Implementation Framework 2010–2014/Fiji National Biodiversity Strategy and Action Plan 2015 draft

The 2007 NBSAP is considered in force until the draft 2015 NBSAP has been accepted by government. Until that time the 2007 NBSAP provides an out-of-date strategy for Fiji to meet its CBD commitments and obligations and the 2010–2014 Implementation Framework is also likely to be out of date to some extent (and will need to be revised to provide for implementation arrangements for the draft 2015 NBSAP).

Roadmap for Democracy and Sustainable Socio-Economic Development 2010–2014

The roadmap is currently out of date so its current effectiveness/efficacy is unknown; other initiatives may have overtaken its relevance.

Shark Reef Marine Reserve Management Guidelines 2015

The plan is simple and straightforward but does not have any provision for evaluation and review.

Day-to-day management powers are not spelled out in the plan and it is unclear how compliance and enforcement will be conducted. Both issues should be addressed.

3.4 DEVELOPING 30% MPAS FOR FIJI

The Fiji Government has, in different documents and at different forums, made commitments that relate to the management and protection of Fiji's coasts and oceans. These commitments have been ratified through Fiji's international responsibilities and obligations under the CBD.

The Fiji Government is obligated to deliver on targets including Aichi Target 11 that states:

'By 2020, at least 17 per cent of terrestrial and inland water areas and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscape and seascape'.

To further deliver on this commitment, the Government of Fiji in 2005 and later in 2014, at the SIDS, further committed that by 2020:

'At least 30% of Fijis inshore (i qoliqoli) and offshore marine areas will have come under a comprehensive, ecologically representative network of marine protected areas (MPAs), which are effectively managed and financed'.

3.4.1 Establishing objectives for MPA development

Using government documents describing marine resource management plans, commitments and strategies, the MACBIO project, on behalf of the Marine Working Group (MWG) of the Protected Area Committee (PAC), has identified objectives that relate to management of marine resources and MPAs. Together, these objectives build the vision and six key objectives for Fiji's 30% MPA network[26] which would be relevant to a marine spatial plan.

VISION

The vision for Fiji's network of MPAs is:

"A comprehensive, ecologically representative network of MPAs that restores and sustains the health, productivity, resilience, biological diversity and ecosystem services of coastal and marine systems, and promotes the quality of life for our communities who depend on them."

26 Marine Working Group of Fiji's Protected Area Committee 2016 Vision and Objectives for Fiji's 30% Network of Marine Protected Areas (MPAs) report. Internal Government Report prepared with the support of MACBIO (GIZ, IUCN, SPREP) Suva, Fiji.

MPA NETWORK OBJECTIVES

There six key objectives for Fiji's MPA Network are to

- Ensure food security
- Sustain livelihoods
- Restore and sustain the health and productivity of marine resources
- Minimise conflicts between uses
- Build resilience to climate change and disasters and
- Restore and conserve biological diversity and ecosystem services.

The objectives for the network and individual MPAs will influence the level of protection afforded to each MPA as well as the location and size.

3.4.2 Typology of MPAs in Fiji

For Fiji, in implementing its commitments to the CBD, and those made in public forums such as the SIDS meetings, it will be essential to have a small number of well-defined types of protected areas. These must have clear objectives and clear rules about what activities are, and are not, permitted within each protected area type. Only in this way will it be possible to establish protected areas which can be understood and complied with by resource users and the broader community.

Attachment 8 contains a summary of Fiji's existing marine protected/managed areas declared under legislation.

Following two workshops in late 2014 and March 2016 and additional consultations with users, stakeholders, the MWG of the PAC, the PAC itself and the MPA Technical Committee established by the Department of Fisheries, an MPA typology for Fiji was developed to guide the development of a system of MPAs for Fiji. For effective application, the zones of MPAs defined by Fiji have been interpreted and adapted to meet Fiji's biophysical, social/cultural and economic needs.

MPA TYPOLOGY

The draft MPA zones developed are as follows.

ZONE NAME	OBJECTIVE
Locally Managed Marine Zone	To benefit local communities by sustaining marine resource use and biodiversity protection as determined by *qoliqoli* owners.
Limited Use Zone	To protect local food security, livelihoods and biodiversity by allowing small-scale artisanal and subsistence fishing and promoting non-extractive activities.
Habitat Protection Zone	To protect the integrity of habitat structure by supporting small-scale artisanal and subsistence fishing as well as non-extractive activities that do not directly impact benthic habitat.
No-take Zone	To protect natural biodiversity along with its underlying ecological structure and supporting environmental processes, and to promote education and recreation by restricting all extractive uses.
Special, Unique Zone	To protect, conserve and restore particular species, habitats or cultural values of concern by eliminating the key threats.

COMPARISON OF MARINE TYPOLOGY WITH EXISTING MARINE MANAGED AREAS

All existing marine managed areas, including Shark Reef Reserve, the turtle protection regulation, Kalokolevu Restricted Area and MPAs designated under the OFMD, fit into one or more of the "new" zones. Marine managed areas that have no legal basis, for example LMMAs, the suggested seasonal ban on catching grouper, tourist resort MPAs and Namena Reserve, can also be accommodated in the proposed typology.

Cross reference check of existing marine managed areas and proposed zoning categories

EXISTING MARINE MANAGED AREA	LOCALLY MANAGED MARINE ZONE	LIMITED USE ZONE	HABITAT PROTECTION ZONE	NO-TAKE ZONE	SPECIAL/UNIQUE ZONE
Shark Reef Marine Reserve				✓	
LMMAs	✓				
Namena Reserve	✓				
Turtle protected area					✓
Kalokolevu Restricted Area			✓		
Grouper spawning aggregation – seasonal ban					✓
Shark nursery					✓
Tuna spawning areas					✓
Waitabu Marine Park	✓				
Wakaya				✓	
Tourist MPAs			✓	✓	

MPAs that may be designated under the OFMD can also be categorized under the zone typology because the Regulations are silent upon what types of MPAs should exist. This also applies to restricted areas under the Fisheries Act.

4 SUMMARY COMMENTS AND RECOMMENDATIONS

4.1 SUMMARY COMMENTS

An analysis of legislative and policy instruments (list at Attachment 1) was undertaken for each of the instruments that were identified as having some relevance to MPA development (through marine spatial planning) in Fiji. The following summarises the legislative and policy basis for MPA/MMA development, biodiversity conservation, marine spatial planning and implementation and coordination arrangements for MPA development.

LEGISLATIVE AND POLICY BASIS FOR DEVELOPING A SYSTEM OF MPAS/MMAS

The legislative basis for developing MPAs or a marine spatial plan in Fiji includes:

- The *Constitution of the Republic of Fiji 2013* makes provision for certain environmental rights for Fijians including that every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.
- The main objective of the *Fisheries Act 1942* is to make provision for the regulation of fishing within Fiji fisheries waters which means 'all waters appertaining to Fiji and include all internal waters, archipelagic waters, territorial seas and all waters within the EEZ'. This includes the creation of protected areas within Fiji fisheries waters for sustainable fishery resources. However, although the jurisdiction for declaring protected areas is wide, the protection of the fish species is restricted to fish within the meaning given under the definition in the Act.
- The *Offshore Fisheries Management Decree 2012* makes provision for the designation of MPAs and it not only regulates the fishing industry but it also promotes fisheries conservation, management and development.

The existing policy framework for developing MPAs or a marine spatial plan in Fiji includes:

- The *National Environment Strategy 1993* is ***highly relevant*** to the development of MPAs in Fiji as it provides the national strategic framework for environmental management for both inshore and offshore activities.
- The *Convention on Biological Diversity* came into force in 1993. The three main objectives of the CBD are conservation of biodiversity, sustainable use of its components, and fair and equitable sharing of benefits arising out of the use of genetic resources. One of the key recommendations under the CBD was for the establishment of national systems of protected areas or areas where special measures are needed to be taken to protect biological diversity.
- The *World Summit on Sustainable Development (WSSD)* in 2002 resulted in an international commitment to establish networks of MPAs by 2012. Nations agreed to *'maintain the productivity and biodiversity of important and vulnerable marine and coastal areas and to utilise a broad range of tools, including the establishment of MPAs.'* The Implementation Plan of the WSSD aims to *'develop and facilitate the use of diverse approaches and tools, including […] the establishment of MPAs consistent with international law and based on scientific information, including representative networks by 2012'.*
- The *Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011* supports progress towards Aichi Target 11 to establish a system of protected areas. Based on ecological gap analysis and other assessments conducted under the PoWPA the realistic national targets for Fiji for terrestrial and marine areas for Target 11 have been defined as 30% for marine areas and 20 % for terrestrial areas, by 2020. The plan provides timelines and actions to achieve the objectives.
- The *National Biodiversity Strategy and Action Plan (2007–2011),* the *NBSAP Implementation Framework 2010–2014* and *2015 Draft National Biodiversity Strategy and Action Plan* are all relevant to MPA development in Fiji. The Fiji National Biodiversity Strategy and Action Plan (FNBSAP) was developed by the DoE, endorsed by Cabinet in 2003 and formally published in September 2007. It is a nationally executed program of work required under Fiji's obligation

to the Convention on Biological Biodiversity or CBD. The 2007 NBSAP and the 2010–2014 Implementation Framework are both important to the development of MPAs in Fiji as they provide the technical blueprint for developing a national system of MPAs. The draft 2015 NBSAP contains some details of implementation strategies and objectives and related actions and consequently has the necessary basic implementation arrangements already identified.

- The *Integrated Coastal Management Framework of the Republic of Fiji 2011* was produced by the DoE to review current coastal conditions in the context of tourism development, coral reef degradation, siltation and erosion, harvesting of marine resources, waste management, coastal reclamation and construction and natural disasters among others as well as assess the current legal and institutional governing framework so as to recommend proposals for action and policy (including the development of MPAs) towards sustainable coastal resource management for Fiji.
- The report *Setting Priorities for Marine Conservation in the Fiji Islands Marine Ecoregion 2003* (WWF Report) is ***potentially highly relevant*** to MPA development in Fiji as it identifies ecoregions for conservation and provides part of the potential planning framework for site selection of candidate areas. This report should be among those considered to support site identification of candidate areas for MPAs and should be considered along with other initiatives such as the Filling the Gaps analysis, NBSAP, the PoWPA and the ICM Framework.
- The objective of the report *Filling the Gaps: Identifying Candidate Sites to Expand Fiji's National Protected Area Network (Outcomes report from provincial planning meeting, 20–21 September 2010)* is to present a gap analysis for Fiji which involves comparing the current distribution of biodiversity with the distribution of established protected areas, typically within a GIS, to determine the degree to which species and ecosystems are under- or over-represented. The report provides information and data on whether there is currently adequate protection for various habitats and species in Fiji through protected areas and makes recommendations on further action.
- The *PIROP 2005* is intended to promote the Pacific region as an ocean environment in support of sustainable development. It is not a legal document, but its guiding principles are founded on international law, as reflected in UNCLOS and other international and regional agreements.
- The *Pacific Regional Environment Program Strategic Plan, 2011–2015* identifies the priorities, strategies and actions for addressing challenges over a five-year period. This plan is the framework that guides SPREP's annual work plans for five years and focuses its vision towards the foreseeable future. The 2011–2015 Strategic Plan replaces the separate planning documents SPREP previously used: its action plan and its strategic programmes document. It is based on four strategic priorities:
  - Climate change
  - Biodiversity and ecosystem management
  - Waste management and pollution control, and
  - Environmental monitoring and governance.

BIODIVERSITY CONSERVATION

The legislative basis for biodiversity conservation through MPAs in Fiji includes:

- The *NES 1993*, which provides the national strategic framework for environmental management for both inshore and offshore activities.
- The *Offshore Fisheries Management Decree 2012,* which makes provision for the designation of a fishery (protection of species) and not only regulates the fishing industry but also promotes biodiversity protection, fisheries conservation, management and development.
- The *Fisheries Act 1992,* which makes provision for the regulation of fishing within Fiji fisheries waters. It also provides for the creation protected areas within Fiji fisheries waters for sustainable fishery resources.
- The *Continental Shelf Act 1970,* which makes provision for the protection, exploration and exploitation of the natural resources of the continental shelf of Fiji and of areas within the territorial limits of Fiji.
- The *Endangered and Protected Species Act 2002* and *Bill No. 6 – Endangered and Protected Species (Amendment) 2016*, may be relevant in terms of the types of species that are present within these ecosystems and which under this Act are protected from being traded without the proper permits. The Act indirectly provides protection for listed species that form part of marine ecosystems that are protected under the Act from being traded without the proper permits.

The existing policy framework for developing biodiversity conservation through MPAs in Fiji includes:

- The *Convention on Biological Diversity*, which came into force in 1993. The three main objectives of the CBD are conservation of biodiversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the use of genetic resources. One of the key recommendations under the CBD was for the establishment of national systems of protected areas or areas where special measures are needed to be taken to protect biological diversity.
- The *NBSAP (2007–2011), the NBSAP Implementation Framework 2010–2014 and 2015 Draft NBSAP* are all relevant to biodiversity protection through, among other things MPA development in Fiji. The FNBSAP was developed by the DoE, endorsed by Cabinet in 2003 and formally published in September 2007. It is a nationally executed program of work required under Fiji's obligation to the Convention on Biological Biodiversity or CBD.
- *The Integrated Coastal Management Framework of the Republic of Fiji 2011* has been produced by the DoE to review current coastal conditions to recommend proposals for action and policy (including the development of MPAs) towards sustainable coastal resource management for Fiji.
- The report *Setting Priorities for Marine Conservation in the Fiji Islands Marine Ecoregion 2003 (*WWF Report) is ***potentially highly relevant*** to biodiversity protection in Fiji as it identifies biologically significant areas to consider for conservation and provides part of the potential planning framework for site selection of candidate areas.
- The objective of the report *Filling the Gaps: Identifying Candidate Sites to Expand Fiji's National Protected Area Network (Outcomes report from provincial planning meeting, 20-21 September 2010)* is to present a gap analysis for Fiji which involves comparing the current distribution of biodiversity with the distribution of established protected areas, typically within a GIS, to determine the degree to which species and ecosystems are under- or over-represented. The report provides information and data on whether there is currently adequate protection for various habitats and species in Fiji through protected areas and makes recommendations on further action.
- The *Pacific Regional Environment Program Strategic Plan, 2011–2015* identifies the priorities, strategies and actions for addressing environmental challenges over a five-year period. This plan is the framework that guided SPREP's annual work plans for five years and focuses its vision towards the foreseeable future. The 2011–2015 Strategic Plan replaces the separate planning documents SPREP previously used: its action plan and its strategic programmes document. It is based on four strategic priorities:
  - Climate Change;
  - Biodiversity and Ecosystem Management;
  - Waste Management and Pollution Control; and
  - Environmental Monitoring and Governance.

IMPLEMENTATION AND COORDINATION ARRANGEMENTS

The legislative basis for developing implementation and coordination arrangements for MPAs or a marine spatial plan in Fiji includes:

- The *Offshore Fisheries Management Decree 2012*, which makes provision for the designation of MPAs (protection of a marine area) and the designation of a fishery (protection of species).
- The *Environment Management Act 2005*, which provides the principles of sustainable use and development of natural resources. The Act establishes coordinating bodies such as the NEC, the PAC and the ICMC. The DoE may be well placed to lead MPA development in Fiji; one of the functions under the Act that the NEC may require is "to co-ordinate conservation and management of natural resources" (Section 11(1) (f)).

The existing policy framework for implementation and coordination of MPAs in Fiji includes:

- The *Green Growth Framework for Fiji: Restoring the Balance in Development that is Sustainable for Our Future 2014* identifies the need to recognise the importance and potential of Fiji's vast marine ecosystem. In particular, the Green Growth Framework calls for government to continue to work with the community and civil society on initiatives such as the establishment of marine protected areas and community-based fish wardens in the short term, and in the longer term to establish deep-water MPAs targeting 30% of offshore areas by 2020.
- The *Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011* supports progress towards Aichi Target 11 to establish a system of protected areas. Based on ecological gap

analysis and other assessments conducted under the PoWPA the realistic national targets for Fiji for terrestrial and marine areas have been defined as 30% for marine areas and 20% for terrestrial areas by 2020. The plan provides timelines and actions to achieve the objectives.

- The *Integrated Coastal Management Framework of the Republic of Fiji 2011* has been produced by the DoE to review current coastal conditions to recommend proposals for action and policy (including the development of MPAs) towards sustainable coastal resource management for Fiji.

There is no single policy instrument that supports the development and implementation of marine spatial planning in general or for MPAs in particular in Fiji, nor does any single instrument support the necessary coordination arrangements. The development of a specific strategy and creation of a single coordinating organisation may need to be considered.

4.2 RECOMMENDATIONS

4.2.1 Policies

There is no single national policy on the development of MPAs or a marine spatial plan; therefore, such a policy should be developed to provide the framework for achieving Fiji's commitments. The policy would need to provide overarching, whole-of-government direction to achieve the Fiji's 30% MPA target by consolidating previous initiatives and action, and proposed/future government intentions to provide the basis for a strategic approach to development of a national system of MPAs. The policy should also give some consideration to options for coordinating the development of a system of MPAs, including previous recommendations by the Asian Development Bank and by Techera and Troniak[27] for the establishment of a Marine Parks Authority or Marine Protected Areas Authority.

RECOMMENDATION

1. That a policy be developed by the government to guide the development of MPAs in Fiji. The policy should also consider options for coordinating the development of a national system of MPAs, including the development of relevant new legislation and the establishment of a Marine Parks/Protected Area Authority.

4.2.2 Legislation

Techera and Troniak[28] identified that *"the gaps in Fijian law and policy largely relate to the fact that environmental considerations, and particularly protected area management, have developed over time. In this way, measures are added into existing legislation and strategic policies are developed as international law and best practice evolve. The need to implement international and regional obligations and also address community expectation whilst respecting cultural diversity is problematic. The issues of the translation of global standards into local action and the linkages between central government and the community are ones which trouble many countries."*

This leads to the conclusion that developing a national approach to the development of a network of MPAs in Fiji will require either changes to existing legislation (e.g. the Fisheries Act and/or the Environmental Management Act) or the development of new legislation that specifically provides for MPAs at the appropriate scale and for a multiple sector/use approach. Such legislation could link to existing legislative provisions in other Acts to provide a consolidated and integrated approach to MPA planning and allow, in the future, for broader marine spatial planning.

RECOMMENDATION

2. That consideration be given by the Government of Fiji to developing new legislation that specifically provides for MPAs (including marine spatial planning more broadly) and links to existing legislation with marine resource management provisions, to allow for the incorporation and integration of marine protected area planning and management provisions into any national approach. Such legislation should also include recognition of the LMMA system in Fiji.

27 Techera, E.J. and Troniak, S. (2009) Marine Protected Areas Policy and Legislation Gap Analysis: Fiji Islands, IUCN Regional Office for Oceania, Suva, Fiji

28 *ibid*

The OFMD 2012 makes provision for the designation of MPAs (protection of a marine area) and the designation of a fishery (protection of species) and it not only regulates the fishing industry but it also promotes fisheries conservation, management and development and allows the Minister to "protect biodiversity".

If, however, it is decided to use the existing suite of legislation to implement MPAs (through marine spatial planning) we propose the following recommendations.

RECOMMENDATION

3. That the Minister (with jurisdiction over the OFMD) make regulations that will give effect to Section 8 (1) (b) and Section 9 (1) (i) of the OFMD. The regulations need to:
    1. Define MPAs;
    2. Define a process for designation of MPAs;
    3. Identify permitted and prohibited activities;
    4. Define management arrangements for MPAs;
    5. Define enforcement measures for MPAs; and
    6. Other related matters.

4.2.3 Strategies and plans

The NES came into force in 1993 so is therefore dated. The NES provides the policy basis and administrative structure for management of emerging environmental issues. It was intended to provide a firm foundation for immediate and future management actions. While it still appears to provide the necessary strategic basis for environmental management activities in Fiji it would benefit from being reviewed and updated to reflect progress to date, emerging issues, and new obligations and information on Fiji's environment.

RECOMMENDATION

4. That a review of implementation of the NES be undertaken and consideration given to revising and updating the document.

The Action Plan for Implementing the Convention on Biological Diversity's Programme of Work on Protected Areas 2011 provides part of the blueprint and policy framework for developing MPAs in Fiji, but it does not appear to have been reviewed and evaluated. To understand what progress has been made in implementing the action plan it would be useful to know how much has been achieved and whether the priorities, activities and timelines need to be re-evaluated as the basis for revising and updating the plan.

RECOMMENDATION

5. That a review of the action plan be undertaken as part of the development of any policy and/or strategy on the development of an MPA system through marine spatial planning.

ATTACHMENTS

1. List of documents reviewed
2. Terms of Reference
3. Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014
4. Fisheries (Wakaya Marine Reserve) Regulations 2015
5. Boundary definitions
6. Committees established under the *Environment Management Act 2005*
7. *Endangered and Protected Species Act 2002* – extract from Schedules 1 and 2
8. Summary of existing marine managed areas declared under legislation

ATTACHMENT 1 LIST OF DOCUMENTS REVIEWED

NOTE 1 *Degree of relevance: 1 – High; 2 – Medium; 3 – Low; 4 – Not relevant*

	TYPE/NAME OF DOCUMENT	DEGREE OF RELEVANCE (SEE NOTE 1)	COMMENTS	PAGE # IN REPORT
NATIONAL LEGISLATION				
1	Constitution 2013	1		5, 33, 45
2	Continental Shelf Act	1		10, 46
3	State Lands Act (formerly Crown Lands Act)	1		11, 34, 37, 41
4	Environmental Management Act 2005	1		10-11, 36, 41, 47, 61-62
5	Fisheries Act Cap 158 Ed. 1992 (1942)	1		6, 33, 36-37, 40, 45, 46, 55
6	Fisheries (Shark Reef Marine Reserve) Regulations 2014	1		7, 36, 55-56
7	Fisheries (Wakaya Marine Reserve) Regulations 2015	1		7-8, 36, 57-58
8	Forestry Decree 1992	1		12, 41
9	International Seabed Mineral Management Decree 2013	1		14, 37
10	Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order (1981)	1		9
11	Marine Spaces Act 1978	1		8-9, 34, 36
12	Offshore Fisheries Management Fisheries Decree 2012	1		8, 34, 36, 40, 45, 46, 47
13	Mining Act 1978	2		12-13, 41
14	Endangered and Protected Species Act	2	And Amendment Act	14, 46
15	Land Conservation and Improvement Act 1985	2		14
16	Land Use Decree 2010	2		37
17	National Trust for Fiji Act 1970	2		13, 37, 41
18	Rotuma Act 1978	2		12
19	Marine Act 1986/Marine Amendment Act 2005	4		
20	Marine Transport Decree 2013	4		13, 37
21	Regulation of Surfing Areas Decree	4	Bill to repeal tabled	
22	iTaukei Land Trust Act	4		34, 37
23	Sea Ports Management Act 2005	4		

	TYPE/NAME OF DOCUMENT	DEGREE OF RELEVANCE (SEE NOTE 1)	COMMENTS	PAGE # IN REPORT
24	Ship Registration Decree 2013	4		
25	Bird and Game Protection Act	4		
26	Wreck and Salvage Act 2010	4		
27	Wreck and Salvage Act (Budget Amendment) Decree 2010	4		
	National bills and draft laws			
28	Aquaculture Bill 2016	1	Potentially highly relevant	15
34	Inshore Fisheries Decree (draft)	1	Potentially highly relevant	15
35	Mineral (Exploration and Exploitation) Bill 2006	2	Potentially moderately relevant	15-16, 34, 38
36	Bill No. 6 – Endangered and Protected Species (Amendment) 2016 (to amend the Endangered and Protected Species Act 2002)	2	Potentially moderately relevant	16
NATIONAL POLICIES, STRATEGIES AND PLANS				
37	Fiji National Biodiversity Strategy and Action Plan (2007–2011)/ Implementation Framework for the National Biodiversity Strategy and Action Plan (NBSAP), 2010–2014/draft 2015 NBSAP	1		17, 38, 42, 45, 47
38	Action Plan for Implementing the CBD Program of Work on Protected Areas, 2011	1		17, 34, 38, 45, 47, 49
39	Filling the gaps: identifying candidate sites to expand Fiji's national protected area network (Outcomes report from provincial planning meeting, 20–21 September 2010)	1		20, 40, 46, 47
40	Green Growth Framework for Fiji: Restoring the Balance in Development that is Sustainable for Our Future 2014	1		16-17, 38, 47, 48
41	Integrated Coastal Management Framework 2011	1		18, 38, 46, 47
42	National Environment Strategy for Fiji 1993	1		18-19, 39, 45, 46, 49
43	Setting Priorities for Marine Conservation in the Fiji Islands Marine Ecoregion 2003 (WWF Report)	1		19, 35, 38, 46, 47
44	Mangrove Management Plan 2013	2		20, 35, 38
45	Sea Cucumber Plan 2015	2	Plan yet to be accepted by government	22
46	Marine Resource and Management Guidelines for the Shark Reef Marine Reserve, Serua – Fiji 2015	2		21
47	Roadmap for Democracy and Sustainable Socio-Economic Development, 2010–2014	2		21, 35, 39, 42
48	National Climate Change Policy 2013	2		20-21, 34-35
49	Compliance and Enforcement for Coastal Fisheries Management in Fiji by Annabelle Minter LLB(Hons) BSc	3	Useful document of low relevance for developing MPAs (more relevant to implementation)	
50	Shark Conservation Management Plan	3	More a research plan/strategy	
51	FLMMA Operations Guide	4		
52	National Forest Policy Statement	4	Not relevant	
53	Seascape Framework for Fiji (Wildlife Conservation Society and other International NGOS)	4	Not relevant	
54	Strategy Review of Inshore Fisheries Policies and Strategies in Melanesia	4	Not relevant	
55	National Trust Strategic Plan 2008–2012	4	Not relevant	
56	Develop Implementation Strategies for the Republic of Fiji to Implement the Fisheries Legislation 2013[(Technical Report by AGRER)	4	Not relevant	
57	Fiji Tuna Management and Development Plan (2014-2018)			22
58	Sea Cucumber Management Plan 2015			22
59	Shark Reef Marine Reserve Management Guidelines 2015			35, 42

	TYPE/NAME OF DOCUMENT	DEGREE OF RELEVANCE (SEE NOTE 1)	COMMENTS	PAGE # IN REPORT
INTERNATIONAL CONVENTIONS				
57	Convention on Biological Diversity (Adopted at Rio de Janeiro on 5 June 1992, Acceded to by the Kingdom of Fiji on 19 May 1998)	1		29, 45, 47
58	World Heritage Convention	1		30
59	Noumea Convention	1		29-30
60	Agenda 21 (1992)	1		31
61	World Summit on Sustainable Development (2002)	1		32, 45
62	Convention on Wetlands (Ramsar) 1975	1		30
63	Barbados Declaration and the Programme of Action (1994)	1		31-32
64	Apia Convention	4	Operation suspended in 2006	
65	UNCLOS 16 November 1982	2		29
66	CITES 1 July 1975	2		30
67	MARPOL 2 October 1983	4	Not relevant	
68	Convention for the Regulation of Whaling 1946	4	Not relevant	
69	UNFCC	4	Not relevant	
70	UNCCD	4	Not relevant	
71	Convention on the Conservation of Migratory Species of Wild Animals			31
REGIONAL POLICIES, STRATEGIES, PLANS, AGREEMENTS, TREATIES, DECLARATIONS ETC.				
71	Framework for a Pacific Oceanscape: a catalyst for implementation of ocean policy (2010)	1		23
72	Pacific Island Regional Ocean Policy (PIROP) 2005	1		23-24, 42
77	SPC Division of Fisheries, Aquaculture and Marine Ecosystems (FAME) Strategic Plan, 2013–2016	2		25
78	Pacific Regional Environment Program Strategic Plan, 2011–2015	2		26, 42, 47
79	Pacific Community Strategic Plan 2016–2020	2		26-27
80	Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008–2013 (Apia Policy)	2		27
81	Niue Treaty 1992	2		24
82	Niue Treaty Subsidiary Agreement 2012	2		24
87	87. The Tokelau Arrangement 2014	2		24
88	United States Multilateral Fisheries Treaty 1988	2		24
89	South Pacific Forum Fisheries Agency Convention 10 July 1979	2		24
90	Western and Central Pacific Fisheries Commission (WCPFC) 2004	2		24-25
73	Pacific Islands Framework for Action to Climate Change (PIFACC)	4		
83	Forum Fisheries Agency Monitoring, Control and Surveillance Strategy (2010–2015)	4		
84	Forum Fisheries Agency Regional Tuna Management and Development Strategy	4		
85	Pacific Community Strategic Plan 2016–2020 (Sustainable Pacific development through science, knowledge and innovation)	4		26-27
86	Multilateral Treaty on Fisheries between Certain Governments of the Pacific Island States and the Government of the United States of America 1988			24
87	A New Song for Coastal Fisheries: Pathways to Change			28
88	Roadmap for Inshore Fisheries Management and Sustainable Development 2014-2023 (draft 1 January 2015)			28
89	Future of Fisheries: A Regional Roadmap for Sustainable Pacific Fisheries (FFA 2015)			28

ATTACHMENT 2 TERMS OF REFERENCE

LEGISLATIVE REVIEW ON MPAS FOR FIJI

Background

Fiji is signatory to the Convention on Biological Diversity and is working towards the Aichi targets to protect 10% of their territorial waters to achieve biodiversity protection. In 2005, at the second Small Island Developing States (SIDS) conference in Mauritius, the Fiji Government made a commitment to protect 30% of its seas by 2020. With Cabinet support, this commitment was reaffirmed at the third SIDS meeting in Samoa in September 2014.

This work will require, among other things, a clear understanding of the jurisdictional environment within which MPAs can be created. This work would also contribute to an IUCN project called Marine and Coastal Biodiversity Management in Pacific Island Countries and Atolls (MACBIO) which will be supporting the analysis.

Duties

To conduct an analysis of all relevant legislation, policies, plans and strategies, local, provincial, national and international, that pertain to any aspect of MPAs, of any kind, within Fiji. For the purposes of this consultancy, Fiji's ocean is defined as beginning at the high tide mark and extending out to Fiji's Exclusive Economic Zone. The consultant, together with the lead consultant for the Fiji Environmental Law Association, must:

- Collate all relevant legislation (laws and regulations), policies, strategies, plans, agreements, etc. at a local, provincial, national and international level that have relevance in terms MPAs in Fiji.
- File, sort and store electronically all these documents for easy access and retrieval.
- Create an analytical framework within which to conduct and organise the analysis. The framework must allow for, for each document analysed, the identification of:

Main objectives

- Main activities that are promoted, controlled and/or managed
- Main management tools (including incentives) used
- Geographic extent of jurisdiction (whether formal or informal) and
- Other analytical dimensions as mutually agreed

The analysis itself must be well written and must identify areas of:

- Conflict or potential conflict
- Synergy or potential synergy and
- Gaps of any kind.

An outline of the analytical report must be completed by 9 October 2015. A full draft of the analysis must be complete by

5 December 2015. The final report is due by 25 March 2016.

ATTACHMENT 3

FISHERIES (SHARK REEF MARINE RESERVE) (SERUA) REGULATIONS 2014

LEGAL NOTICE No. 41J

FISHERIES ACT
(CAP 158)

FISHERIES (SHARK REEF MARINE RESERVE) (SERUA)

Regulations 2014

In exercise of the powers conferred upon me by section 9 of the Fisheries Act (Cap 158), I hereby make these Regulations:

Short title and commencement

I. These Regulations may be cited as the Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014 and shall come into force on the date of its publication in the *Gazelle.*

Interpretation

2. In these Regulations, unless the context otherwise requires-

- "Act" means the Fisheries Act (Cap 158);
- "Buffer Zone" means the Buffer Zone declared under regulation 4;
- "Coastal Zone" for the purposes of these Regulations means the area within 2 kilometres inland from the high water mark and includes areas from the high water mark up to the Marine Reserve;
- "development activity or undertaking" means any activity or undertaking likely to alter the physical nature or the land in any way, and includes the construction of buildings or works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, sea grass or other substances, dredging, filling, land reclamation, mining or drilling for minerals, but does not include fishing;
- "indiscriminate fishing gear" means any fishing gear deployed that indiscriminately catches sharks, fish or any marine organism such as gill nets and handlines with steel wire leaders and even poison fishing where derris root extracts, chemicals or dynamite are used; and
- "Marine Reserve" means the Shark Reef Marine Reserve-Serua declared under regulation 3.

Shark Reef Marine Reserve-Serua

3. (1) The area marked in blue on the map set out in the Schedule is hereby declared a Marine Reserve to be known as the Shark Reef Marine Reserve-Serua for the purpose of conserving, protecting and maintaining shark species and marine organisms including coral within the area.

(2) Any person operating a vessel within the Marine Reserve shall use only the mooring provided within the Marine Reserve.

(3) A person shall not dispose of or throw rubbish or any other waste material within the Marine Reserve area.

(4) Any development activity or undertaking within the Coastal Zone of the Marine Reserve is prohibited except with the approval of the Department of Fisheries.

(5) Any fishing activity or activity consisting of the collection of any species of shark and marine organisms including coral within the Marine Reserve is prohibited.

(6) Any person who contravenes this regulation commits an offence and is liable upon conviction to a fine of not less than $500 and not exceeding $10,000 or imprisonment to a term not exceeding 6 months, or both.

(7) The Department of Fisheries may seize any marine organism, fishing equipment, conveyance including vehicles and vessels used for their transport, or other property involved in a breach of sub-regulation (5).

Buffer Zone

4. (I) The area marked in green on the map set out in the Schedule is hereby declared a Buffer Zone for the Marine Reserve.

   (2) The use of any form of indiscriminate fishing gear and any fishing equipment used to specifically target sharks within the Buffer Zone is prohibited.

   (3) Any person who contravenes sub-regulation (2) commits an offence and is liable upon conviction to a fine of not less than $500 and not exceeding $5,000 or imprisonment to a term not exceeding 6 months, or both.

   (4) The Department of Fisheries may seize any shark species or marine organism captured or any fishing equipment involved in a breach of sub-regulation (2).

Scientific Research

5. Notwithstanding regulations 3 and 4, the Minister may authorise activities otherwise prohibited under these Regulations for the purpose of scientific research.

Management Guidelines

6. The Minister may, by notice in the *Gazette,* issue guidelines for the proper management and monitoring of the areas within the Marine Reserve and the Buffer Zone.

Made this 13th day of August 2014.

I. B. SERUIRATU
Minister for Agriculture, Fisheries and Forests,
Rural & Maritime Development and National Disaster Management

SCHEDULE

SHARK REEF MARINE RESERVE-SERUA

Co-ordinates of boundaries of the Shark Reef Marine Reserve-Serua-marked in blue

NE Corner: 18’ 17’ 41.80” S; 178’ 00’ 42.53” E

SE Corner: 18’ 18’ 20.00” S; 178’ 00’ 52.04” E

NW Corner: 18’ 17’ 27.3 l” S; 178’ 01’ 30.61” E

SWCorner: 18’ 18’06.80”S; 178’01’41.3l”E

Co-ordinates of boundaries of the Buffer lone marked in green

NE Corner: 18’ 17’ 27.61” S; 177’ 59’ 27.29” E

SE Corner: 18’ 19’ 04.70” S; 177’ 59’ 58.63” E

NW Corner: 18’ 16’ 37.47” S; 178’ 02’ 15.79” E

SW Corner: 18’ 18’ 21.01” S; 178’ 02’ 59.72” E

ATTACHMENT 4

FISHERIES (WAKAYA MARINE RESERVE) REGULATIONS 2015

NO. 6

GOVERNMENT OF FIJI GAZETTE SUPPLEMENT

FRIDAY, 20TH FEBRUARY 2015

[LEGAL NOTICE NO. 38]

[LEGAL NOTICE NO. 40]
FISHERIES ACT
(CAP 158)

FISHERIES (WAKAYA MARINE RESERVE) REGULATIONS 2015

In exercise of the powers conferred upon me by section 9 of the Fisheries Act (Cap 158), I hereby make these Regulations:

Short title and commencement

1. These Regulations may be cited as the Fisheries (Wakaya Marine Reserve) Regulations 2015 and shall come into force on the date of their publication in the *Gazette*.

Interpretation

2. In these Regulations, unless the context otherwise requires, –

- "Act" means the Fisheries Act (Cap.158);
- "Buffer Zone" means the Buffer Zone declared under regulation 4;
- "coastal zone", for the purposes of these Regulations, means the area within 2 kilometres inland from the high water mark and includes areas from the high water mark up to the Marine Reserve;
- "development activity or undertaking" means any activity or undertaking likely to alter the physical nature of the land in any way, and includes the construction of buildings or works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation or other substances, dredging, filling, land reclamation, mining or drilling for minerals, but does not include fishing;
- "indiscriminate fishing gear" means any fishing gear deployed that indiscriminately catches fish or any marine organism, such as gillnets and handlines with steel wire leaders and poison fishing where derris root extracts, chemicals or dynamite are used; and
- "Marine Reserve" means the Wakaya Marine Reserve declared under regulation 3.

Wakaya Marine Reserve

3. (1) The area marked in blue on the map set out in the Schedule is hereby declared as a Marine Reserve to be known as the Wakaya Marine Reserve for the purpose of conserving, protecting and maintaining species of fish, sharks, rays, cetaceans, sea turtles and all marine organisms including coral within the area.

(2) Any person operating a vessel within the Marine Reserve shall use only the mooring provided within the Marine Reserve.

(3) A person shall not dispose of or throw rubbish or any other waste material within the Marine Reserve area.

(4) Any development activity or undertaking within the coastal zone of the Marine Reserve is prohibited except with the approval of the Department of Fisheries.

(5) Any fishing activity or activity consisting of the collection of any species of fish and marine organisms including coral within the Marine Reserve is prohibited.

(6) Any person who contravenes this regulation commits an offence and is liable upon conviction to a fine of not less than $500 and not exceeding $10,000 or imprisonment to a term not exceeding 6 months, or both.

(7) The Department of Fisheries may seize any marine organism, fishing equipment, conveyance including vehicles and vessels used for their transport, or other property involved in a breach of sub-regulation (5).

Buffer Zone

4. (1) The area marked in green on the map set out in the Schedule is hereby declared a Buffer Zone for the Marine Reserve.

   (2) The use of any form of indiscriminate fishing gear and any fishing equipment to target any species of fish, sharks, rays, cetaceans, sea turtles and any marine organisms within the Buffer Zone is prohibited.

   (3) Any person who contravenes sub-regulation (2) commits an offence and is liable upon conviction to a fine of not less than $500 and not exceeding $5,000 or imprisonment to a term not exceeding 6 months, or both.

   (4) The Department of Fisheries may seize any species of fish or marine organism captured or any fishing equipment involved in a breach of sub-regulation (2).

Scientific Research

5. Notwithstanding regulations 3 and 4, the Minister may authorise activities otherwise prohibited under these Regulations for the purpose of scientific research.

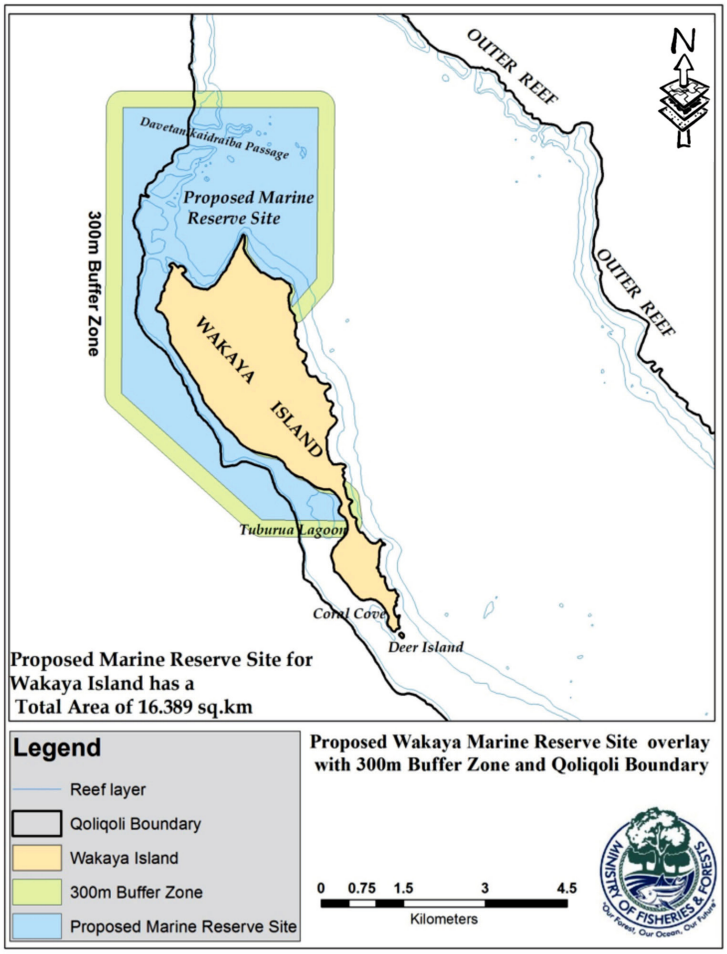
Management guidelines

6. The Minister may, by notice in the *Gazette*, issue guidelines for the proper management and monitoring of the areas within the Marine Reserve and the Buffer Zone.

Made this 3rd day of February 2015.

O. NAIQAMU
Minister for Fisheries and Forests

SCHEDULE



ATTACHMENT 5 BOUNDARY DEFINITIONS

Boundary definitions relevant to MACBIO MPA legislative review report – basis of definitions

NAME OF BOUNDARY/AREA	DEFINITION	SOURCE
Archipelagic waters of Fiji	means the archipelagic water of Fiji, as defined in section 4 as follows: 4.-(1) The archipelagic waters of Fiji comprise all areas of sea contained within the baselines established under the provisions of this section.	Marine Spaces Act 1978
Baselines for the EEZ	4. For the purposes of paragraph 3, the baselines for which the exclusive economic zone of Fiji has been determined are- (a) in the case of the Fiji archipelago, the straight baselines established in terms of paragraph 2 (see below); (b) in the case of the Island of Rotuma and its dependencies the straight baselines established by the Marine Spaces (Territorial Seas) (Rotuma and its Dependencies) Order; and (c) in the case of Ceva-i-Ra Island, a line drawn along the seaward low-water line of the reef.	Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order 1985
Baselines for the Fiji Archipelago	2. The points between which straight baselines are to be drawn for the purpose of determining the outermost limits of the archipelago waters of Fiji and the innermost limits of the territorial sea of the Fiji archipelago are declared to be the geographical coordinates, based on the World Geodetic System 1972(WGS72) datum, specified in the First Schedule, minus 7 seconds of latitude and 14 seconds of longitude in each case.	Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order 1985
Contiguous zone	The contiguous zone of the Kingdom shall be the area of sea between the territorial sea and a line every point of which is at a distance of 24 nautical miles from the nearest point of the baselines.	UNCLOS (Article 33)
Coastal zone	Means the area within 30 metres inland from the high-water mark up to the fringing reef or if there is no fringing reef within a reasonable distance from the high-water mark.	Environment Management Act 2005
Continental shelf	means the seabed and subsoil of those submarine areas adjacent to the coasts of the islands of Fiji, but beyond the territorial limits of Fiji, to a depth of two hundred metres below the surface of the sea, or, beyond that limit, to where the depth of the suprajacent waters admits of exploitation of the natural resources of those areas.	Continental Shelf Act 1970
Exclusive economic zone	means the exclusive zone of Fiji as defined in Section 6 as follows: 6.-(1) Subject to the following provisions of this section, the exclusive economic zone of Fiji comprises all areas of sea having, as their innermost limits the outermost limits of the territorial seas, and, as their outermost limits, a line drawn seaward from the baselines every point of which is at a distance of 200 miles from the nearest point of the appropriate baseline. (2) The Minister responsible for Foreign Affairs may by order, for the purpose of implementing any international agreement or the award of any international body, or otherwise, declare that the outer limits of the exclusive economic zone of Fiji extend to such line, any point of which may be at a distance of less than 200 miles from the nearest point of the appropriate baseline, as may be specified in such order. (3) Where the median line, as defined in subsection (4), is less than 200 miles from the nearest baseline, and no other line is for the time being specified under the provisions of subsection (2), the outer limits of the exclusive economic zone of Fiji extend to the median line. (4) The median line is a line every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial seas of Fiji and of any opposite or adjacent State or territory are measured.	Marine Spaces Act 1978
Fiji archipelago	means all islands forming part of Fiji, other than the Island of Rotuma and its Dependencies and the island of Ceva-i-Ra.	Marine Spaces Act 1978

NAME OF BOUNDARY/AREA	DEFINITION	SOURCE
Fiji waters	means all the waters comprising- (a) the territorial seas; (b) the archipelagic waters; and (c) the inland waters, of Fiji.	Marine Act 1986
Foreshore	Means the shore of the sea, channels or creeks that is alternately covered and uncovered by the sea at the highest or lowest tides.	Environment Management Act 2005
Internal waters	means the internal waters of Fiji, as defined in Section 3 as follows: 3.-(1) Except where closing lines are drawn under the provisions of subsection (2) the outer limits of the internal waters of Fiji shall be a line drawn along the low-water line of the coast of each island, provided nevertheless that in the case of islands situated on atolls or islands having fringing reefs the line shall be drawn along the seaward low-water line of the reef.	Marine Spaces Act 1978
Low-water line	means the line of low-water at mean low-water spring tides as depicted on the largest scale nautical chart of the area produced by any authority and for the time being held and used by the Minister responsible for marine affairs.	Marine Spaces Act 1978
Outer limits of the EEZ of Fiji	3. The outer limits of the exclusive economic zone of Fiji are declared to extend to a line drawn between, and joining in numerical sequence, the geographical coordinates, based on the World Geodetic System 1972 (WGS72) datum, specified in the Second Schedule.	Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order 1985
Territorial seas	means the territorial seas of Fiji as defined in Section 5 as follows: 5.-(1) The territorial seas of Fiji comprise all areas of sea having as their innermost limits the baselines established under the provisions of this section and as their outermost limits a line measured seaward from those baselines every point of which is at a distance of twelve miles from the nearest point of the baselines. (2) Where archipelagic baselines are drawn under the provisions of Section 4, those baselines shall be the baselines from which the breadth of the territorial sea of the Fiji archipelago and the Rotuma archipelago shall be measured. (Amended by 15 of 1978, s. 5.) (3) In all other cases the baseline from which the breadth of the territorial sea is measured is the line determining the outer limits of the internal waters of Fiji drawn under the provisions of Section 3.	Marine Spaces Act 1978

ATTACHMENT 6 COMMITTEES ESTABLISHED UNDER THE ENVIRONMENT MANAGEMENT ACT 2005

COMMITTEE NAME	FUNCTION	COMMENT
National Environment Council Established under Section 7(1))	The functions of the Council are: a. To approve the National Report b. To approve the National Environment Strategy c. To monitor and oversee the implementation of the National Environment Strategy d. To facilitate a forum for discussion of environmental issues e. To make resolutions on public and private sector efforts on environmental issues f. To ensure that commitments made at regional and international for a on environment and development are implemented g. To advise the government on international and regional treaties, conventions and agreements relating to the environment, and h. To perform any other functions conferred under this Act or any other written law. The NEC may also appoint any technical committee necessary to advise it on matters affecting environmental protection and resource management. The NEC may appoint a committee for coastal zone management to prepare a coastal zone management plan. The NEC shall establish a Resource Owners Committee to advice the Council on any environment matter affecting their resources.	The NEC is required to meet four times a year but has not formally met since 2013.
Protected Areas Committee Established under Section 8(2).	**TERMS OF REFERENCE FOR THE NATIONAL PROTECTED AREAS COMMITTEE (PAC)** **A TECHNICAL COMMITTEE FOR THE NATIONAL ENVIRONMENTAL COUNCIL** **Introduction** It has been widely agreed that in order to achieve national progress with protected areas, a forum or formal mechanism where stakeholders can consult and agree on how to implement activities is necessary at the national level. The National Environment Council is the appropriate forum where national-level discussions on protected areas can be carried out. To facilitate the work of the National Environment Council a national PAC has been recognised as a technical committee of the National Environment Council, under Section 8(2) of the *Environment Management Act 2005*, which states that: 'The National [Environment] Council may appoint any technical committee necessary to advise it on matters affecting environmental protection and resource management.' **Purpose** The general purpose of National PAC is to advise the council on protected area issues and to fulfil their functions. **Functions of the Committee** The functions of the National PAC are: ▪ to advise the National Environment Council on protected area policies and priorities; ▪ to support the establishment of an adequate and representative national protected area system, consistent with national and international policy commitments; ▪ to facilitate consensus on national priority areas for conservation, including terrestrial, freshwater and MPAs; ▪ to identify gaps in the existing protected area system, including the extent of protected areas, the state of scientific knowledge and the adequacy of existing management measures; ▪ to identify actions for the establishment and effective management of protected areas, to be implemented by government, non-government organisations and the private sector; ▪ to identify options for to resource protected area management, and to support efforts to secure financial resources for protected area management activities; and ▪ to facilitate the exchange of information and data sharing between stakeholders. **Membership of the Committee** The National PAC membership should include, at a minimum: ▪ a representative of the National Trust of Fiji; ▪ a representative of the Environment Department; ▪ a representative of the Forestry Department; ▪ a representative of the Fisheries Department; ▪ a representative of the Department of Culture and Heritage; ▪ a representative of the Native Land Trust Board; and ▪ six representatives from non-government organisations, academia and the private sector.	PAC meets quarterly with specific dates submitted to members beginning of each year.

COMMITTEE NAME	FUNCTION	COMMENT
Integrated Coastal Management Committee Established under Section 8(3)	The Integrated Coastal Management Committee was established on 15 September 2009, as a technical advisory committee to the NEC. It is composed of representatives of relevant government departments, NGOs and other institutions. The committee discusses priority national coastal issues including issues arising from the demonstration site, the direction of projects and policy matters. It is also a forum for discussion of national-level inter-sectoral issues such as coastal development planning, management of liquid waste and required changes in national policy. **DRAFT TERMS OF REFERENCE FOR ICMC** **Background** Although legal requirement of integrated coastal management was introduced in Fiji through the Environment Management Act 2005 (EMA 2005), coastal management work and activities have been ongoing since the 1990s. Section 8 (3) of the EMA clearly stipulates the establishment of a committee that will be responsible for the development of an Integrated Coastal Management Plan within its first year of operation. **1.** Purpose of the Integrated Coastal Management Committee, hereafter referred to as ICMC, as stipulated under the EMA (2005) Act 8 (3) is to facilitate the preparation of a national coastal zone management plan. **A. Functions** **2.** The Integrated Coastal Management Committee will carry out the following functions: **2.1** To act as an advisory committee to the NEC on communicating priorities and their relevance to reflect the overall NEC approved priorities and polices. **B. Membership** **3.** The members of the Integrated Coastal Management Committee will comprise of the following members: ▪ Representative from the Department of Environment ▪ Director of Town and Country Planning Department ▪ Conservator from the Forestry Department ▪ Director from Fisheries Department ▪ Representative from the Ministry of Health ▪ Representative from the Land Conservation and Improvement Board ▪ Representative from the National Wetland Committee ▪ Representative from the Native Land and Fisheries Commission ▪ Representative from the Tourism Department ▪ Two representatives from the provincial administration, one from a terrestrial province and one from a coastal province ▪ A representative from an environmental NGO with offices in Fiji ▪ A representative from a Pacific Academic institution with a campus in Fiji whose charter includes coastal management issues (with representative on rotational basis where there is more than one institution that qualifies). In addition, the representatives from the following organisations should be included if the council sees appropriate. ▪ A representative from the Ports Authority ▪ A representative from the Finance Ministry.	The draft ToR are from 2009. The Integrated Coastal Management Committee aims to meet at least twice every year.
National Resource Owners Committee (NTROC) Established under Section 8(4)	The members of the *iTaukei* resource owner's committee are *iTaukei* resource owner representatives from each of the 14 Provinces of Fiji. The resource owner representatives are supported by the Roko Tuis and the Ministry of *iTaukei* Affairs who hold non-voting status. The NTROC aims to work towards: improving national coordination between government and communities; encourage collaboration and partnership for national development; and promote capacity development and active participation of the *iTaukei* community in the sustainable management of their natural resources. Some of the agreed core functions of the committee include: ensuring the implementation of the FPIC (Free, Prior, and Informed Consent) process; supporting the effective monitoring and enforcement of EIAs; promoting information exchange on best practices and lessons learnt within provinces and across the country; strengthening capacities to respond to climate change impacts and disaster risks; and ensuring the participation of *iTaukei* resources owners in REDD+ implementation and/or consultation processes.	

ATTACHMENT 7 ENDANGERED AND PROTECTED SPECIES ACT 2002 – EXTRACT FROM SCHEDULES 1 AND 2 FOR MARINE SPECIES

Extract from Schedules of flora and fauna listed under Schedules I and 2 relevant to marine resource management.

SCHEDULE I

(Section 3)

INDIGENOUS SPECIES NOT LISTED IN APPENDIX I

PART 1 – FISHES

SPECIES	*COMMON NAME*
Bryanninops diannoea	
Ecsenius figiensis	
Mesoprisles kneri	Reve
Plagiotremus laudandus flavus	
Plectranthias fijiensis	
Rotuma lewisi	
Thamnaconus fijiensis	

PART 3 – SEABIRDS

Fregata ariel	Lesser frigatebird
Nesofregetta albigularis	Polynesian storm-petrel
Phethon lepturus	White-tailed tropicbird
Procelsterna cernula	Blue noddy
Pseudobulweria macgillivrayi	Fiji petrel
Pseudobulweria rostrata	Tahiti petrel
Puffinus inherminieri	Audubon's shearwater
Sula dactylatra	Masked booby
Sula leucogaster	Brown booby
Sterna anaethetus	Bridled tern
Sterna bergii	Crested tern
Sterna fuscata	Sooty tern

SCHEDULE 2

(Section 3)

INDIGENOUS SPECIES NOT LISTED IN APPENDICES I TO III OR SCHEDULE I

PART 1 – FISHES

SPECIES	*COMMON NAME*
Bathygobius petrophilus	
Cheilinus undulates	Humphead wrasse
Epinephalus lanceolatus	Giant grouper
Hippocampus kuda	Spotted seahorse
Lairdina hopletupus	
Meicanthus bundoon	
Parmops echinites	
Redigobius leveri	
Redigobius sp	
Signus uspi	

ATTACHMENT 8 SUMMARY OF EXISTING MARINE MANAGED AREAS DECLARED UNDER LEGISLATION

MMA/MPA TYPE	NAME	LEGISLATIVE BASIS FOR DECLARATION	HAS IT BEEN IMPLEMENTED?	WHERE?
Nature Reserve	Shark Reef Marine Reserve	Fisheries Act Section 9: The Minister may make regulations: (g) regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite.	Yes – through the Department of Fisheries under the powers of the Minister of Fisheries in Section 9 of the Fisheries Act, the following marine reserve was declared under the Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014 (LN 41/2014). Under Regulation 6, *"the Minister may, by notice in the Gazette, issue guidelines for the proper management and monitoring of the areas within the Marine Reserve and the Buffer Zone".* The Marine Resource and Management Guidelines for the Shark Reef Marine Reserve was issued by the Minister on 14 October 2014. However, we do not have a copy of the Legal Notice giving effect to this notice as required by Regulation 6.	Shark Reef Marine Reserve in Serua. Side comment: The Department of Fisheries advises that Cabinet Papers on the following Marine Reserves are currently with the Attorney General's Office: Naiqoro Passage Tabukasivi Wakaya Nacula.
Nature Reserve	Wakaya Marine Reserve	Fisheries Act Section 9: The Minister may make regulations: (g) regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite.	Yes – through the Department of Fisheries under the powers of the Minister of Fisheries in Section 9 of the Fisheries Act, the following marine reserve was declared under the Fisheries (Wakaya Marine Reserve) Regulations 2015. Under Regulation 6, *"the Minister may, by notice in the Gazette, issue guidelines for the proper management and monitoring of the areas within the Marine Reserve and the Buffer Zone".* The Marine Resource and Management Guidelines for the Wakaya Marine Reserve have not been issued yet.	Off Wakaya Island, off Viti Levu near Ovalau See side comment above.
Multiple use category	Conservation of Fishery (Protection of Turtles)	Fisheries Act Section 9: The Minister may make regulations: (g) regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite.	Yes. By way of regulations, protection has been provided for the protection of turtles within Fiji fisheries waters. Regulation 20 of the Fisheries Regulations (Section 9): Regulation 20 (1) states – *"No person shall at any time dig up, use, take or destroy turtle eggs of any species or in any way molest, take or kill any turtle the shell of which is less than 455 mm in length. No person during the months of January, February, November or December in any year shall in any way molest or take or kill any turtle of any size. This regulation shall not apply to turtles kept as pets or in aquaria".* Regulation 20 (2) states – *"No person shall be in possession of, sell, offer or expose for sale or export any turtle shell the length of which is less than 455 mm".* The Fisheries Act also has a regulation that was enforced to further define the protection of turtles – Fisheries (Protection of Turtles) Amendments Regulations 2010	Applied in Fiji fisheries waters as defined under the Fisheries Act.
Multiple use	Restricted Area	Fisheries Act Section 9: The Minister may make regulations: (b) Prescribing areas and seasons within which the taking of fish is prohibited or restricted, either entirely or with reference to a named species.	Yes – Regulation 11 of the Fisheries Regulations made under Section 9 of the Fisheries Act: *"No person, unless he is authorized in writing under the hand of the Commissioner of the Division in which the area described in the Fifth Schedule is situated shall, within such area, kill or take fish of any kind whatsoever, except by hand net, wading net, spear or line and hook".*	The restricted area is outlined under the Fifth Schedule of the Regulations.

MMA/MPA TYPE	NAME	LEGISLATIVE BASIS FOR DECLARATION	HAS IT BEEN IMPLEMENTED?	WHERE?
Multiple use – need to get regulations established for this	Designated Marine Protected Areas	Offshore Fisheries Management Decree Section 8 (1) (b): The Permanent Secretary shall – designate MPAs.	The Decree does not outline how the Permanent Secretary will carry out the designation of MPAs.	Unknown at this stage.
Multiple use – need to get regulations established for this	Designated fishery	Offshore Fisheries Management Decree Section 16: *"The Minister shall by notice in the Gazette declare a fishery as a designated fishery where, having regard to scientific, social, economic, environmental and other relevant considerations, such fishery –* *(a) is important to the national interest; and* *(b) Requires management measures for ensuring sustainable use of the fishery resource."*	We are aware that there is a Tuna Management Plan for Fiji but we are not aware if a formal designation has been made.	It is not area specific. For the Tuna Management Plan the designated fishery would be offshore but exact area is not known at this stage.
Multiple Use This sits with MRD	Protection and Preservation of the Natural Resources of the seabed and ocean floor	International Seabed Mineral Management Decree The Fiji International Seabed Authority has the powers under Section 10(1) (b) of the Decree to "formulate rules, regulations and procedures incorporating applicable standards for the – (ii) protection and preservation of the natural resources of the area and the prevention of damage to the flora and fauna of marine environment."	Unknown at this stage whether Regulations have been formulated.	Unknown at this stage whether Regulations have been formulated.
Unique management areas – need to consider specific geographical sites and purpose of protection	Designated Aquatic Protected Areas	Draft Inshore Fisheries Decree/Bill [Third draft for national consultations in 2011] Section 7 (1): The Permanent Secretary shall exercise such functions and authorities as are provided under this Decree, including to: b) Recommend to the Minister aquatic protected areas to be designated.	No	
Multiple use/ Unique management area need to consider specific geographical sites and purpose of protection	Designation of Inshore Fishery	Draft Inshore Fisheries Decree/Bill [Third draft for national consultations in 2011] Section 14	No	
Unique management areas	Protection of Customary Fishing Areas	Draft Inshore Fisheries Decree/Bill [Third draft for national consultations in 2011] Section 12	No	
Possibly multiple use or unique management area. This can also be attached to existing terrestrial laws/policies under Forestry or TLTB Act	Ramsar site	Ramsar Convention No local legislation	Yes – Rivers Fiji is the first Ramsar site for Fiji and the second is currently being processed.	Navua River, Fiji.

NOTE: *Tabu* areas in *qoliqoli* can currently be protected by the Fisheries Department's licensing conditions as they outline the specific fishing areas as part of the licence. This will restrict the fisherman and enable prosecution for non-compliance

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