



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

FIJI

SUMMARY REPORT



Marine and Coastal Biodiversity Management
in Pacific Island Countries

SUMMARY REPORT TO THE GOVERNMENT OF FIJI

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

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Marine and Coastal Biodiversity Management
in Pacific Island Countries



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

of the Federal Republic of Germany



BACKGROUND

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 (CBD).

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

“at least 30% of Fiji's inshore (i qoliqoli¹) 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 report summarises the main findings of an analysis and assessment² of 85 instruments including legislation, policies, strategies, plans and other instruments to identify the level of legislative and policy support for Fiji's commitments to MPA³ development, including the application of a variety of zones⁴ to any MPAs. The review 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. The approach to the review involved an analytical framework comprising three components:

1. Individual analysis of legislation, policies, strategies and plans;
2. Integration of individual analyses into an assessment table for comparative analysis and assessment; and
3. A report that provides an assessment narrative based on the individual analyses and the information from the assessment table.

RESULTS OF THE REVIEW

The review analysed 85 legislative and policy instruments that were identified as having some relevance to multiple-use MPA development (through marine spatial planning) in Fiji. Fiji's legislation and policy provide some support for addressing 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 well as a range of synergies between instruments. 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 primarily for biodiversity conservation⁵. Nor does there appear to be a specific instrument or policy which allows for the creation of a national system of MPAs 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 or a marine spatial plan more broadly.

1 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

2 Muldoon J, Muavesi M-G and Fernandes L (2016) Review of legislation, policies, strategies and plans relating to the development of marine protected areas in Fiji. Report to the Government of Fiji. MACBIO (GIZ, IUCN, SPREP), Suva

3 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”.

4 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.

5 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.

Legislative basis for developing a system of marine protected areas

The following legislation and bills are of highest relevance to developing a system of MPAs or a marine spatial plan in Fiji.

Constitution of the Republic of Fiji

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.

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 includes all internal waters, archipelagic waters, territorial seas and all waters within the EEZ'. This legislation provides for the creation of protected areas within Fiji fisheries waters for sustainable fishery resources but is silent on conservation of biodiversity including the habitats or communities on which fishery resources rely. 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 following regulations also provide useful information regarding the establishment of MPAs in Fiji: *Fisheries (Shark Reef Marine Reserve) (Serua) Regulations* and *2014 Fisheries (Wakaya Marine Reserve) Regulations 2015*.

Offshore Fisheries Management Decree 2012

The Offshore Fisheries Management Decree (OFMD) 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 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.

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.

Marine Spaces Act 1978 and Marine Spaces (Archipelagic Baselines and Exclusive Economic Zone) Order 1981

The Marine Spaces Act demarcates the marine spaces of Fiji, including the internal waters, archipelagic waters, territorial seas and exclusive economic zone (EEZ). The waters, seas and EEZ are part of the definition of Fiji fisheries waters. These are areas where the Permanent Secretary of Fisheries may designate MPAs in accordance with the OFMD. However, 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.

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

Continental Shelf Act 1970

The Continental shelf 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. 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. For example, if an MPA for conservation is established within the designated area, the Minister may make regulations to protect it including rules and conditions.

Environment Management Act

The Environment Management Act regulates waste management and establishes the environmental impact assessment process in Fiji. It empowers the Department of Environment, through the Resource Management Unit, to coordinate natural resource management activities in Fiji, and it establishes the National Environment Committee and the Protected Areas Committee, among others, as national coordinating mechanisms for environmental and resource management. These committees provide a significant opportunity to develop synergies between their various mandates and the relevant legislation, policies, strategies, plans and programs they represent.

The Act does not include a definition of protected areas or MPAs although it does refer to the conservation of marine areas.

Aquaculture Bill 2016 (Bill No. 9 2016)

The Aquaculture Bill is one of three laws drafted to replace the Fisheries Act 1942. Its objective is the management and development of aquaculture to ensure long-term benefits to the people of Fiji. If it becomes law, it would be potentially **highly relevant** for MPAs in Fiji because it controls aquaculture activities within Fiji waters. Designated areas would clearly delineate where aquaculture activities are allowed within Fiji waters. The Bill also allows the Minister to declare areas where aquaculture or related activities are prohibited to protect biodiversity in the aquatic environment, especially habitats of particular significance for fishery resources.

For an assessment of the relative relevance and nature of other legislation reviewed, please refer to the full report.

Existing policy framework for developing MPAs in Fiji

The following national and regional policies are of highest relevance to developing a system of MPAs in Fiji.

NATIONAL POLICIES

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

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.

The Green Growth Framework therefore 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 CBD 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 Action Plan (PoWPA) supports progress 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 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. This provides part of the blueprint and policy framework for developing MPAs in Fiji. However, the PoWPA does not appear to have been reviewed and evaluated since 2011 – it would be useful to know how much has been achieved and whether the priorities, activities and timelines need to be re-evaluated.

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

The Fiji National Biodiversity Strategy and Action Plan (NBSAP) was formally published in September 2007. It is a nationally executed program of work required under Fiji's obligation to the Convention on Biological Biodiversity. 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.

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. 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 has the necessary basic implementation arrangements already identified. 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.

Integrated Coastal Management Framework of the Republic of Fiji 2011

The Integrated Coastal Management (ICM) Framework was produced 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 so as to recommend proposals for action and policy (including the development of MPAs) towards sustainable coastal resource management for Fiji.

The 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.

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 and protected area management. It 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.

REGIONAL POLICIES

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

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 Pacific Island Regional Ocean Policy (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

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 the United Nations Convention on the Law of the Sea and other international and regional agreements.

For an assessment of the relative relevance and nature of other policies reviewed, please refer to the full report.

Implementation and coordination arrangements

The legislative basis for developing implementation and coordination arrangements for MPAs in Fiji includes the following instruments.

Offshore Fisheries Management Decree 2012

The Decree makes provision for the designation of MPAs (protection of a marine area) and the designation of a fishery (protection of species).

Environment Management Act 2005

The Environment Management Act provides the principles of sustainable use and development of natural resources. The Act establishes coordinating bodies such as the National Environment Council, the Protected Area Committee and the Integrated Coastal Management Committee. The Department of Environment may be well placed to lead MPA development in Fiji; one of the functions under the Act that the National Environment Council may require is “to coordinate conservation and management of natural resources”.

The existing policy framework for implementation and coordination of MPAs in Fiji includes the following.

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

The Green Growth Framework 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.

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

The 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 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.

Integrated Coastal Management Framework of the Republic of Fiji 2011

The ICM Framework has been produced by the Department of Environment 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.

RECOMMENDATIONS

Legislation

A previous review of gaps in policy and legislation related to MPAs in Fiji⁶ found 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 or, in fact, a marine spatial plan 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, and/or a marine spatial plan for broader marine spatial planning.

RECOMMENDATION 1

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 Local Marine Management Area system in Fiji.

The OFMD 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.

⁶ Techera, E.J. and Troniak, S. (2009) Marine Protected Areas Policy and Legislation Gap Analysis: Fiji Islands, IUCN Regional Office for Oceania, Suva, Fiji

RECOMMENDATION 2

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:

- Define MPAs;
- Define a process for designation of MPAs;
- Identify permitted and prohibited activities;
- Define management arrangements for MPAs;
- Define enforcement measures for MPAs; and
- Other related matters.

Policies

There is no single national policy on the development of MPAs and marine spatial planning more broadly; therefore, such a policy should be developed to provide the framework for achieving Fiji's commitments to MPA development or a marine spatial plan. 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 for the establishment of a Marine Parks Authority or Marine Protected Areas Authority.

RECOMMENDATION 3

That a policy be developed by the government to guide the development of MPAs 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.

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.



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