



REVIEW OF LEGISLATION,
POLICIES, STRATEGIES AND PLANS
RELATING TO THE USE AND
MANAGEMENT OF THE OCEAN

TONGA

SUMMARY REPORT



Marine and Coastal Biodiversity Management
in Pacific Island Countries

SUMMARY REPORT TO THE GOVERNMENT OF TONGA

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

On 22 July 2015, Tonga's Cabinet decided to initiate a project to develop a holistic spatial plan for Tonga's ocean (Cabinet Decision 716).

As a contribution to spatial planning this report summarises the findings of an analysis and assessment¹ of 91 instruments including legislation, policies, strategies and plans relevant to sustainable use and management of Tonga's oceans. The project to review the Tonga legislation, policies, strategies and plans relating to oceans management is part of the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project.

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 which provides an assessment narrative based on the individual analyses and the information from the assessment table.

RESULTS OF THE REVIEW

The review found that the policy settings necessary for developing an oceans plan for Tonga already exist and that a wide range of legislation, policies and strategies support implementation of an oceans plan. However, there is no overarching legislation or policy to provide the necessary coordination of all legislation and policies for oceans management.

LEGISLATIVE SUPPORT FOR OCEANS MANAGEMENT

There is significant legislative support for a wide range of oceans management issues. The following are the main pieces of legislation that are **highly relevant** for oceans management.

Act of the Constitution of Tonga

The Act establishes the Crown's ownership of the beach frontage including all the area from fifty feet above high-water mark, to allow for the government to lease any portion of the beach frontage for erecting a store, jetty or wharf. In particular, the Act provides the potential to establish a restricted use zone around coastal areas of the Kingdom. The Act also potentially impacts on maritime transport and trade through the potential development of jetties and wharves and other maritime infrastructure within nearshore areas.

¹ Muldoon J, Bing R, Fonua E and Fernandes L (2016) Review of legislation, policies, strategies and plans relating to the use and management of the oceans of Tonga. Report to the Government of Kingdom of Tonga. MACBIO (GIZ, IUCN, SPREP), Suva

Maritime Zones Act 2013

The Maritime Zones Act establishes the maritime zones of the Kingdom and in the exercise of the sovereign rights of the Kingdom, and the exploration, exploitation, protection, preservation, conservation and management of those zones, and for matters concerned with those purposes. The Act defines zones such as archipelagic waters, contiguous zone, exclusive economic zone, continental shelf, historic waters, internal waters and the territorial sea. The Act also provides for the designation of sea lanes to be used by foreign ships and aircraft in passage through or over any archipelagic waters, historical waters, territorial sea and internal waters and to prescribe traffic separation schemes to be observed by ships in passage through narrow channels in the sea lanes.

The proclamation on 15 June 1972 concerning Tonga's sovereignty over Telekitonga² and Telekitokelau remains an issue between Tonga and neighbouring Fiji.

Although some legislation has been re-aligned to be consistent with the Maritime Zones Act in respect of defining Tonga's sovereign territory, other legislation is inconsistent and conflicts may arise with application and interpretation. This Act was brought into force on 26 July 2013.

The definition of "natural resources" also differs in various legislation; it is also defined in this Act. Again, conflicts may arise due to differences in interpretation.

National Spatial Planning and Management Act 2012

The National Spatial Planning and Management Act provides a framework for spatial planning for the use, development, management and protection of land in the Kingdom in the public interest and for related purposes. The Act defines the term "land" as including land covered with water and a "spatial plan" to mean a sustainable management plan prepared for any area under the Act.

This Act is potentially **highly relevant** to marine spatial planning in that this is a principal Act that prescribes the legal framework for spatial planning. Although there is some uncertainty as to its application to ocean-based activities and development, the Act sets a precedent for spatial planning in Tonga.

Clarification is required to determine whether, and to what extent, the Act applies to non-land, marine activities. It is worthwhile considering whether this Act may be amended to incorporate specific application to marine spatial planning.

Petroleum Mining Act 1969

The Petroleum Mining Act provides for the issue of exploration licences and petroleum agreements regarding exploration, prospecting and mining for petroleum in the Kingdom of Tonga and related matters. However, there is no express provision concerning the ownership of petroleum resources.

Fisheries Management Act 2002

[including the Fisheries Management (Amendment) Act 2009, Fisheries (Conservation and Management) Regulations 1994, Fisheries (Conservation and Management) (Amendment) Regulations 2013, Fisheries (Conservation and Management) (Amendment) Regulations 2014, Fisheries Management (Conservation) Regulations 2008, Fisheries (Local Fishing) Regulations 1994, Fisheries (Coastal Communities) Regulations 2009, Special Management Area Order 2004 and Fisheries Regulations 1992]

The Fisheries Management Act and related Regulations provide for the conservation, management, sustainable use and development of fisheries resources in the Kingdom and the fisheries waters. However, while the Act provides for a wide range of matters specifically related to fisheries, there are few regulations promulgated under the Act.

² There are various spellings of this location including Telekitinga, Teleki Toga and Telekitonga Island.

Aquaculture Management Act 2003

[including the Aquaculture Management (Amendment) Act 2005 and the Aquaculture Management (Amendment) Act 2009]

This Act provides for the control, management and development of aquaculture and related activities, whether on land or in any aquatic area including marine areas of the Kingdom. The Act is **highly relevant** to oceans planning, policy and management, and has relevance for marine spatial planning through provision for buffer zones and aquaculture areas. The Act also has provisions for environmental protection and environmental impact assessment.

Conflict may arise between the Aquaculture Management Act and the Land Act on the designation of aquaculture areas both on land and the foreshore area. The authorities of the Minister of Lands and the Minister of Fisheries appear to overlap, although there are provisions for consultation between those ministries.

Aquaculture areas and buffer zones are mentioned but are not defined. Tenure and access to land or sea for aquaculture activities is not defined. The precautionary approach is not prescribed as an environmental protection tool.

Environment Management Act 2010

[including the Environment Management (Amendment) Act 2010]

The Act establishes the Ministry of Environment and Climate Change, now known as the Ministry of Meteorology, Energy, Information, Disaster Management, Climate Change and Communications (MEIDECC), to ensure the protection and proper management of the environment and the promotion of sustainable development.

The Act is the principal legislation for environment management in Tonga including:

- a. climate change;
- b. ozone depletion;
- c. the movement or disposal of hazardous wastes and chemicals;
- d. desertification and drought relief;
- e. the preservation of wetlands and the management and protection of coastal areas;
- f. the conservation of endangered species;
- g. the preservation of biological diversity, including management of living modified organisms; and
- h. aspects of the environmental management of international waters.

One of the functions of MEIDECC prescribed by the Act is to conduct all matters necessary for the observance of the international and regional conventions to which the Kingdom is a party, including those listed in the Schedule to the Act.

Conflict may arise when considering marine resource use and their sustainable management if there are spatially overlapping and therefore competing development-driven activities such as transportation, infrastructure, fisheries, tourism and deep-sea mining.

Parks and Reserves Act 1976 (revised 1988)

The Parks and Reserves Act was enacted in 1976 and revised in 1988. It provides for the establishment of a Parks and Reserves Authority and for the establishment, preservation and administration of parks and reserves (including marine protected areas). Until the Parks and Reserves Authority is established, the Authority is the Minister of Lands.

Although the Act states the general purpose of marine parks and reserves, as well as referring to conditions and restrictions on access and activities, there is no monitoring or enforcement or active administration of this Act.

Marine Pollution Prevention Act 2002

[including the Marine Pollution Prevention (Amendment) Act 2009]

The Marine Pollution Prevention Act provides for the prevention of, and response to, marine pollution and the dumping of wastes and other matters and to give effect to international marine pollution Conventions and applies to:

- all vessels in Tongan waters;
- all Tongan vessels; and
- all other potential sources of marine pollution incidents in Tongan territory.

Seabed Minerals Act 2014

The Seabed Minerals Act provides for the management of the Kingdom's seabed minerals, and the regulation of exploration and mining activities within the Kingdom's jurisdiction or under the Kingdom's control outside of national jurisdiction, in line with the Kingdom's responsibilities under international law. The Act prescribes the use of the precautionary approach, in accordance with Principle 15 of the 1992 Rio Declaration on Environment and Development. The Act (s2) defines reserved areas and recognises protected areas, as defined by the Convention on Biological Diversity. The Act also provides for conducting marine scientific research (Part 9 s95) subject to conditions.

Transport Services Act 2008

The Transport Services Act establishes the Ministry of Transport to integrate and reform the transport sectors in the Kingdom under a single administration, including sea transport.

For an assessment of the relevance of other legal instruments, please refer to the full report.

Policy support for oceans management and marine spatial planning

The most relevant national and regional policies are presented below.

NATIONAL POLICIES

Tongan Strategic Development Framework 2015–2025

At a national level, the Tongan Strategic Development Framework 2015–2025 aims to “enhance our inheritance”, of which a large component is marine and coastal resources. Sustainable development of Tonga's natural assets is a key component of forward planning for the nation. All seven of the national outcomes identified in the framework require sustainability.

The vision of sustainable and inclusive economic growth may conflict with the productive sectors that are driven by income/profit generation. In addition, the government is not always able to provide the enabling environment that non-government stakeholders expect or anticipate.

There is no implementation plan to provide guidance and direction on the specific programs and activities that are to be prioritised and funded under the National Budget.

National Biodiversity Strategy and Action Plan

(Including the Kingdom of Tonga's Fifth National Report to the Convention on Biodiversity 2014)

The NBSAP 2006 outlines a set of objectives, strategies and actions to conserve and sustainably use Tonga's biodiversity. It is part of Tonga's obligations under the Convention on Biological Diversity. The objectives for marine ecosystems in the NBSAP are to:

- minimise the adverse impact of land-based activities on coastal and marine species and ecosystems.
- expand the existing network of protected areas to effectively conserve major coastal and marine ecosystems and habitats of biological and socio-economic value.
- promote the use of environmentally sound practices in the management of marine resources.
- promote scientific research and regular monitoring of critical marine ecosystems, and the proper management of scientific data to support the conservation and sustainable management of marine ecosystems.
- enhance public knowledge and understanding of Tonga's marine ecosystems and of issues related to their conservation as a means of fostering public support for marine conservation objectives.

In addition, Tonga aims to mainstream biodiversity conservation across all levels of government and community, with the objectives to:

- integrate concepts of conservation and sustainable use of biodiversity into all relevant sectoral policies, programmes and plans.
- improve and strengthen multi-sectoral collaboration among all relevant sectors and stakeholders in support of biodiversity conservation and natural resources management.
- ensure that environmental and social impacts of all proposed major projects and activities are thoroughly assessed using approved EIA guidelines and standards prior to their implementation.
- encourage the quantification of benefits derived from the use of biodiversity and from other ecosystem services to support the full integration of biodiversity conservation into sustainable development planning and decision making.

The 2014 NBSAP Review Report provides an overview of the Kingdom's marine ecosystems. The report stated that *"the status of the marine ecosystem has yet to be fully explored even though there is information available on fisheries and coral reefs. Lack of resource assessment is the key issue for the marine ecosystem, however only few selected fisheries are known i.e. sea cucumbers, seaweed [...]"*

It is apparent from the report that there is a need for a comprehensive resource assessment of the Kingdom's marine ecosystems.

Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015

The Climate Change Adaptation and Disaster Risk Management Action Plan has six goals that are supported by specific objectives and outcomes:

- Improved governance for climate change adaptation and disaster risk management (mainstreaming, decision making, organisational and institutional policy frameworks)
- Enhanced technical knowledge base, information, education and understanding of climate change adaptation and effective disaster risk management
- Analysis and assessments of vulnerability to climate change impacts and disaster risks
- Enhanced community preparedness and resilience to impacts of all disasters
- Technically reliable, economically affordable and environmentally sound energy to support the sustainable development of the Kingdom
- Strong partnerships, cooperation and collaboration within government agencies and with civil society, non-government organisations and the private sector.

The joint action plan focuses on gaps to add value to numerous existing initiatives already established by the government and to increase the pace of climate change adaptation. In addition, it was decided not to duplicate existing efforts but to concentrate on priority issues where additional or new resources are required for strengthening Tonga's resilience to climate change and natural disaster impacts.

The implementation period for this plan (2010–2015) has now expired with no revised/new plan in place.

Fisheries Sector Plan 2016–2026

The Fisheries Sector Plan provides the detailed programs and actions for fisheries management in the Kingdom. It has the following purposes:

- a. Identify priority areas for investment that will maximise the sustainable contribution of the fisheries sector to food security and economic growth;
- b. Present and cost specific programs/activities to achieve these priorities;
- c. Identify possible sources of financing for the specific programs/activities; and
- d. Provide a framework for implementation and to monitor progress in the short to medium term.

Tonga Deepwater Fisheries Management Plan 2014–2016

The Deepwater Fisheries Management Plan was developed in accordance with the Fisheries Management Act objective to promote the conservation, management, sustainable use of Tonga's fisheries resources, and to exercise control of any Tongan fishing vessels fishing on the high seas. The plan focuses on Tonga's deep-water fisheries to ensure responsible fishing, participation by stakeholders, sustainable use and an economically viable fishing sector for Tonga. The plan covers the fisheries activities and entities that engage in the Tongan drop line bottom, deep-water drop line and deep-water snapper fisheries and includes exploratory and test fishing and marine scientific research.

The Deepwater Fisheries Management Plan appears to be aligned with the current Tonga Strategic Development Framework for sustainable development of key productive sectors which includes fisheries.

Although the precautionary approach and co-management approach are promoted by the plan, there is no reference to the ecosystem approach to fisheries management.

The enforcement measures will require a rigorous approach to ensure that the plan is being implemented effectively.

Tonga National Tuna Fisheries Management and Development Plan (2015–2017)

The National Tuna Fisheries Management and Development Plan meets the requirements of the Fisheries Management Act, which provides for the conservation, management and sustainable use and development of the fisheries resources in Tongan fisheries waters and ensures the implementation of management and development.

The plan's goal is to manage Tonga's tuna fisheries resources through an ecosystem-based, precautionary and rights-based approach to maximise the benefits to Tonga people while ensuring the biological and economic sustainability of the fishery.

Coastal Community Management Plans

[For 'O'ua Island, 'Atataa Island, 'Eueiki Island, Ovaka Island, Felemea Village, Nomuka Island, Taunga Island and Fafa Island. Also includes Special Management Area Order [Gazette Supplement 20 of 2004 - made under section 13(1) of the Fisheries Management Act 2002 for Teleki Tonga (South Minerva Reef) and Teleki Tokelau (North Minerva Reef)]

Coastal Community Management Plans (CCMP) are made under the *Fisheries Management Act 2002* and *Fisheries (Coastal Communities) Regulations 2009*. The CCMP statutory objective is to implement any fishery plan for the conservation, management, sustainable use and development of fisheries resources in a Special Management Area (SMA). All SMAs have developed a CCMP except for Teleki Tonga and Teleki Tokelau.

Each CCMP aims to increase the amount of marine resources in the SMA waters and to improve fish catch by promoting sustainable fishing practices in the inshore area.

Environmental Management Plan for Fanga'uta Lagoon System

The Environmental Management Plan (EMP) for Fanga'uta Lagoon System was prepared following local community concerns raised over the future of the lagoon system. The EMP was developed to manage these impacts by regulating use through zoning. The EMP provides an example of marine spatial planning which could either be replicated elsewhere or provide lessons on how this approach could be improved.

REGIONAL POLICIES

Regional policies, strategies and plans have been developed that are relevant to Tonga's marine resource management efforts. Some of these are directly relevant.

The Pacific Plan for Strengthening Regional Cooperation and Integration 2007

The Pacific Plan was endorsed by Leaders at the Pacific Islands Forum (PIF) meeting in October 2005. This revised version of the Pacific Plan follows decisions taken by Leaders at the Forum meeting in October 2007. The Pacific Plan provides a broad framework for regional cooperation on sustainable development. Its goal is to enhance and stimulate economic growth, sustainable development, good governance and security for Pacific countries through regionalism.

Pacific Island Regional Ocean Policy 2005

The Pacific Island Regional Ocean Policy 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.

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.

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.

Pacific Islands Framework for Action on Climate Change 2006–2015

Pacific Island Leaders adopted the Pacific Islands Framework for Action 2006–2015 (PIFACC) in 2005 and directed SPREP to develop an action plan to implement the policy.

The main structure of the policy outlines a vision: *“Pacific island people, their livelihoods and the environment resilient to the risks and impacts of climate change”*. The PIFACC has six guiding principles:

- Implementing adaptation measures;
- Governance and decision making;
- Improving our understanding of climate change;
- Education, training and awareness;
- Contributing to global greenhouse gas reduction;
- Partnerships and cooperation.

This instrument is at least potentially **moderately relevant** to development of an oceans plan as it defines the arrangements for building resilience to the risks and impacts of climate change, an important issue for any marine spatial planning process.

CONCLUSIONS

Oceans planning and management

This review has found that the policy settings necessary for developing an oceans plan for Tonga already exist and that a wide range of legislation, policies and strategies support implementation of an oceans plan. However, there is no overarching legislation or policy to provide the necessary coordination of all legislation and policies for oceans management. In addition, holistic and integrated forward planning for, and sustainable development of, Tonga's marine and coastal resources, from the high-water mark out to the EEZ, is lacking. In July 2015 Cabinet addressed this issue and approved the development of a marine spatial plan for Tonga³.

There is no central controlling authority for oceans management and planning. Tonga should consider the identification or establishment of an agency/entity with the specific mandate of oceans planning and management. This entity could be empowered by a specific new Act setting out the provisions that are key to oceans planning and management as well as centralising this mandate to overcome the current duplication/overlap/conflict between different ministries. An example could be the recently established National Spatial Planning Authority which is the responsibility of the Minister for Lands.

Finally, while the legislation and policy foundations for oceans management in Tonga currently exist they by no means constitute the entire legislative and policy framework required to successfully and sustainably manage Tonga's marine resources and ecosystems. A strategic view and approach that combines the various responsibilities and mandates with visionary leadership is required to achieve long-term and sustainable success in securing the future of Tonga's oceans.

Marine managed areas or marine protected areas

Tonga currently faces challenges with both managing existing and establishing new marine managed areas (MMAs) or marine protected areas (MPAs). These challenges include:

- lack of management plans for some MMAs;
- weak enforcement with no enforcement measures or compliance incentives in place;
- the Parks and Reserves Authority is the Minister of Lands but the capacity, expertise and budget/resources is with the other agencies responsible for environment, fisheries or tourism;
- management and protection measures are not detailed/articulated in the Parks and Reserves Act;
- many of the sites have not been declared/designated under the principal legislation [*Parks and Reserves Act 1976 (revised 1988)*]. The sites are recorded in reports and policies but the formal instruments establishing these sites are not easily found; and
- lack of community involvement and engagement.

The process to establish a regime for marine spatial planning will need to address these issues and define arrangements for developing MMA/MPAs including data/information management, centralised datasets, and consistency of approach to establish any MMA/MPA and coordination of management implementation arrangements.

³ Cabinet Submission CSP/OPM of 14 July 2015

RECOMMENDATIONS

The review recommends the following options be considered to strengthen Tonga's capacity and capability regarding marine spatial planning.

1. That a principal Act be drafted to specifically mandate, administer and manage marine spatial planning (as is the case with the *National Spatial Planning and Management Act 2012*).
2. That a dedicated executive/government agency/authority be established with the appropriate mandate and authority to administer and manage oceans affairs (including marine spatial planning) within one of the ministries represented on the Oceans 7 Technical Working Group.
3. That the appropriate amendments be incorporated into the suite of relevant principal Acts already in force to give legal effect to marine spatial planning (e.g. Fisheries Management Act, Environment Management Act, Shipping Act, National Spatial Planning and Management Act, Parks and Reserves Act).
4. Revise the *Parks and Reserves Act 1976* (revised in 1988) to properly establish and effectively manage MMA/MPAs. Because the Act was enacted in 1976 and only updated in 1988, a review is timely and necessary. Key issues that should be considered in the legislative review are:
 - a. Objectives, purpose and guiding principles
 - b. Administering body or authority – functions and responsibilities
 - c. Advisory body
 - d. Powers under the Act
 - e. Leases, licenses, permits and easements
 - f. Classification and categorisation
 - g. Procedures for creation/establishment and declaration
 - h. Planning and management
 - i. Regulation of activities
 - j. Research, monitoring and reporting
 - k. Interaction with other legislation
 - l. Consultation with agencies and public
 - m. Regulations and offences
 - n. Compliance and enforcement measures.
5. That Tonga consider becoming a signatory to the following Conventions:
 - Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1 July 1975
 - Convention on Wetlands (Ramsar) 1975
 - Convention for the Regulation of Whaling 1946.

While Tonga is not yet a signatory to these Conventions they are all relevant to the maintenance of healthy coastal and oceanic ecosystems and consequently are **highly relevant** to Tonga's aspirations to manage its oceans.

6. That clarification be sought whether, and to what extent, the *National Spatial Planning and Management Act 2012* applies to non-land, marine activities. It is worthwhile considering whether this Act may be amended to incorporate specific application to marine spatial planning.



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