TONGA

Environment Legislation (provisional review) and Miscellaneous Issues

On the basis the work of the International Waters Programme will be in four principal areas; marine protected areas and sustainable coastal fisheries, the protection and conservation of freshwater and the management of community-based waste, a pilot project established under the Tongan national component of the International Waters Programme has the potential to interact with several Government ministries responsible for various legislation.

In an attempt to understand public service responsibilities for the administration and management of activities in these four focal areas, a brief review of current legislation, including responsibilities for its implementation, was undertaken during the first visit of the International Waters Project Coordination Unit to Tonga in June 2001. The resulting summary, presented here, was based on several reviews of environment legislation (Pulea, 1992; Sevele, 1998).

While gaps in this brief review are inevitable, it is the intention of the Project Coordination Unit, that once the IWP is established in Tonga, the information presented in this report – the result of a 5-day visit, will be reviewed, updated and, where necessary, corrected.

Constitution

The Constitution for the Kingdom, under His Majesty King Taufa’ahau Tupou IV and his heirs, establishes a Government comprising:

- The King, Privy Council and Cabinet
- The Legislative Assembly, and
- The Judiciary

The Privy Council, appointed by the King, is composed of Cabinet, the two Governors (one each for Ha’apai and Vava’u) and any others considered by the King as being able to contribute to the work of the Council. The Cabinet consists of the Prime Minister, Ministers for Foreign Affairs, Lands, Police plus any others appointed by the King. Governors, appointed by the King, also hold seats in the Legislative Assembly.

The Legislative Assembly, appointed for three year terms, consists of Privy Councilors and nine Cabinet Ministers, who sit as nobles, plus elected representatives of the people.

The judicial power of the Kingdom rests with the Court of Appeal, the Supreme Court, the Magistrates Court and the Land Court. The Chief Justice is appointed by the King with the support of the Privy Council. The Supreme Court has jurisdiction over all law and equity arising from the Constitution and the Laws of Tonga (except indictable offenses where the accused elects to be tried by jury and in relation to land disputes
which are determined by the Land Court subject to an appeal to the Privy Council and all matters relating to foreign treaties, and Ministers and Consuls and all Maritime Cases).

Law, (embracing one subject, clearly identified in its title, at a time) in Tonga is enacted through a process of review by the Legislative Assembly (three readings) following which it is presented to the King for his signature and subsequent publication. Law relating to the King’s family can only be discussed by nobles sitting in the Legislative Assembly. The Chief Justice can suspend any law passed by the Legislative Assembly or the Privy Council, considered to be at variance with the Constitution, until the next sitting of the Assembly. No laws can be passed or any important matter decided upon by the Privy Council unless there are three or more members presiding with the King. The King and the Privy Council may meet between meetings of the Legislative Assembly and pass Ordinances:

- Enacting regulations,
- At the request of the Chief Justice, suspending any law until the next meeting of the Assembly,
- To give effect to a treaty made by Tonga with foreign countries.

The Government Act (1903) provides for District Officers to make regulations concerning village plantations and other matters relating to the welfare of the village. Such regulations only enter into force following approval by Cabinet and the subsequent endorsement of the Prime Minister. A similar approval process is required of chiefs or nobles holding a hereditary estate who are authorized to make regulations for residents of the estate.

Land

Since at least 1852 all land in Tonga has legally belonged to the King. The Constitution states that the King may grant nobles and titular chiefs or matapule one or more estates to become their hereditary estates. Under the Interpretation Act 1903, several types of estates are established – Royal Estates belonging to the King, Royal Family Estates held jointly by the Royal Family, Hereditary Estates belonging to nobles and a few matapule and Government Estates under the direct control of the Minister of Lands (who is also the Registrar General of Lands). Every Tongan male aged 16 years and over is entitled to a small town allotment (not more than 1618.7 sq. m.) and 8.25 acres (3.3387 ha.) of agricultural land (a tax allotment) that is hereditary to the male line. Land may be leased but not sold – for terms not exceeding 99 years.

Steady population growth on Tongatapu and the limited availability of land has resulted in environmentally-sensitive land, such as coastal lowlands and mangroves, being allocated for residential use. The loss of mangrove habitat is an issue of priority environmental concern to many in Tonga.

With the consent of Cabinet, the Minister for Lands may reserve portions of Crown Land for public purposes (roads, schools, public health purposes, for use by Government, etc.).
Such allocated land can be reacquired by the King, with the consent of the Privy Council. Compensation for improvements on the leased land may be payable in such instances.

The *Land Act* 1936 makes provision for control over development within the littoral zone. Under this Act foreshore is defined as “land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of tides, and all areas adjoining it and lying with 15-24 meters of the high water mark of ordinary tides”.

The *Land (Removal of Sand) Regulations* 1936 prohibits the taking or removal sand from the littoral zone. There are no reported prosecutions under this Act. The *Tourist Act* 1976 also makes provision for the Minister responsible to license tourist facilities and activities in coastal areas.

The Seventh Strategic Development Plan identifies land as an issue requiring significant review: in terms of improved transferability and increased security.

**Physical Planning and Assessment**

Although a *Land Use, Natural Resources and Environment Planning* Bill was first drafted in 1982, it remains in draft form. As a result, Tonga does not have a single piece of legislation which addresses physical or environmental planning. Physical planning and the impacts of development on environmental management are addressed through a number of separate laws.

The control of land use and development (other than those buildings of Tongan native materials as defined in the *Town Regulations Act* 1903) within 2 miles of the Post Office of major towns (Nuku’alofa, Pangai, and Neiafu) is vested in Cabinet and the Medical Officer for Health. The *Public Health (Building) Regulations* governs the proximity of buildings to each other and other issues such as building height.

Except in limited circumstances, there have been few requirements to assess development activities’ impact on the environment. An EIA policy that has been in place since 1985 enables the Central Planning Department to seek advice from the Environmental Planning Section of the Ministry of Lands, Survey and Natural Resources (separated to a separate Department under the Ministry of Works in 2001). The draft *Land Use, Natural Resource and Environmental Planning Act* makes provision for an EIA to be conducted before consideration is given to Development Applications.

**Agriculture**

Reflecting Tonga’s reliance on agriculture for its important contribution to foreign exchange earnings and local subsistence, the agriculture sector is regulated by at least 10 pieces of separate legislation, some of it drafted almost 100 years ago.

The importation of plant, plant material and soil, through designated ports of entry, is controlled under the *Plant Quarantine Act* 1981, as amended. The Act establishes
importation procedures, including inspection and quarantine requirements and the promulgating of emergency regulations in the event of an infestation.

The *Diseases of Plants Regulations* 1964 supplements the Act in relation to the importation of trees, shrubs and plants. The *Noxious Weeds Act* 1903, as amended, empowers the Minister responsible, with the consent of the Privy Council, to proclaim any plant to be a noxious weed.

The *Rhinoceros Beetle Act* 1912 as amended, empowers the Prime Minister to declare any insect to be a pest and any place to be a prohibited place.

The *Animal Diseases Act* 1979 empowers the Minister responsible to control animal diseases, including, with the consent of the Minister of Lands, to declare any land a quarantine ground for the detention of imported animals. The Act covers importation and quarantine procedures for animal products packing material, fittings or fodder. However, both the *Plant Quarantine Act* and the *Animal Diseases Act* have been criticized for the lack of implementing regulations that can be applied in support of them (Sevele, 1998).

The *Pounds and Animals Act* 1903 seeks to protect soil and vegetation from wandering animals. Police are empowered to kill wandering animals under the Act, which also requires animal owners to ensure animals in their care are securely fenced.

The *Pesticides Act* 1976 requires all imported chemicals (but not growth regulators), and details concerning their composition and intended use, to be registered with the Registrar of Pesticides (the Director of Agriculture and Forests). A review by FAO in 1989 (Lunn, 1989) noted that the current legislation would benefit from review, particularly in relation to the extent it covers developments in the agriculture chemical sector during the last 15 years. Contamination of groundwater resources and the impact of agricultural chemicals on the environment are two priority issues of concern in Tonga.

**Forestry**

Tonga’s remaining natural forest is estimated at less than 4000 ha. with little potential for commercial exploitation. Increasing population pressure, particularly in respect of the collection of firewood and building materials threatens Tonga’s timber resources in the long term.

The *Forests Act* 1961 provides for the King, in Council, to declare unalienated land as a “forest reserve” or “forest area” within which activity is regulated. In addition, a District Officer, with the approval of the Minister of Agriculture and Forests, may demarcate unalienated land in a village as a forest area. Such demarcations are to be registered with the Department of Agriculture and Forests.

Regulations may be promulgated to protect, control and manage forest reserves and encourage growth of forest produce. Prohibitions relating to the harvesting of forest produce, and agricultural and livestock access, the keeping and taking of animals, birds,
insects, fish or any eggs or spawn, may also be regulated. Regulations for licensing activities in forests, including for felling trees or collecting or removing any forest produce, and the establishment of nurseries, are also provided for.

The only regulation promulgated is the *Forest Produce Regulation* 1979 that describes approval procedures for the export of forest produce.

**Fisheries**

The *Fisheries Act* 1989, as amended in 1996, repealed the *Fisheries Protection Act* 1973 and the *Whaling Industry Act* 1935 and provides the statutory basis for “the development and management fisheries in Tonga – and other matters incidental thereto”. The same Act established fisheries as a new Ministry – transferring the fisheries-related functions from the Ministry of Agriculture, Fisheries and Forestry.

The area of application for the *Fisheries Act* is the fisheries waters of Tonga including the territorial waters, internal waters including lagoons and other such waters over which the Kingdom of Tonga claims sovereign rights or jurisdiction with respect to the marine living resources by legislative enactment or by Royal Proclamation.

An issue on the fisheries agenda in the Kingdom at present is the accurate description of Tonga’s EEZ. Tongan authorities continue to consider Tonga’s waters as those described within the rectangle declared by Royal Proclamation in 1885. However, although an area of dispute with Fiji in relation to Minerva Reef remains to be resolved on the western border, most concede that accurate definition of the maritime boundaries to the south (particularly in respect of extending jurisdiction beyond 200 miles due the potential of successfully declaring an extended continental shelf), and equidistant boundaries with Niue, Samoa and the United States (in respect of American Samoa) offers an opportunity for increasing the size of sovereign waters within Tonga’s EEZ. Under the definitions of the Act “fish” means:

“…any aquatic animal whether piscine or not and includes any mollusk, crustacean, coral (living or dead), sponge, holothurian or other echinoderm, and turtle and their young and eggs”.

In addition to controlling fishing activity, including by foreign vessels, licensing, the designation of prohibited fishing methods and research, the Act requires the Director of Fisheries to progressively prepare and keep under review plans for the conservation, management and development of Tongan fisheries.

The Plans, to be developed through broad consultation with all stakeholders (local and fishermen’s committees can be established for this purpose), are required to indicate the present state of exploitation of the resources the subject of the Plan, the information that is required to be generated to assist with management of the fishery and regulatory arrangements.
In support of Management Plans, the Minister responsible, by order published in the Gazette, declare any area of the fisheries waters to be a reserved area for subsistence fishing subject to prescribed fishing methods and gears.

The Minister responsible can also make Regulations in support of the Act relating to licensing, prescribed fisheries management and conservation measures, prohibition of fishing on whales and other marine mammals, SCUBA, spear fishing, fish aggregation devices, closed seasons for mullet, fish fences, aquaculture and target fisheries for coral and aquarium fish. Such Regulations were promulgated in 1994.

It was noted by Pulea (1992) that the absence of, or weak enforcement of, Regulations have resulted in some loss of habitat and species protection that was in place prior to repeal with the enactment of the *Fisheries Act*. Identified deficiencies included the apparent lack of protection for whales and other marine mammals, and regulations for activities in protected areas (such as the erection of fish fences and trawling).

New fisheries legislation, draft with the assistance of FAO, was in the final stages of preparation in late 2001. To be known as the Fisheries Management Act 2001, the new law will provide for:

- the need to ensure the long term conservation and sustainable use of fishery resources, and to this end adopt management measures which promote the objective of optimum utilisation and to achieve economic growth, human resource development, employment creation and sound ecological balance;
- the need to ensure that management measures are based on the best scientific evidence available;
- the application of the precautionary approach at no less standard than set by criteria in the Fish Stocks Agreement or any other fisheries management agreement;
- the need to conserve aquatic living resources and protect biodiversity in the marine environment for present and future generations;
- the need to protect the ecosystem as a whole and the general aquatic environment and adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon target stocks;
- the need to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost effective fishing gear and techniques;
- the need to take measures to prevent or eliminate over-fishing and access fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources;
- the interests of artisanal and subsistence fishers;
- the need to collect and share in a timely manner and in accordance with fisheries management agreements and international law, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non
target species and fishing effort, as well as information from national and international research programmes;
• the need to promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management;
• the need to implement and enforce conservation and management measures through effective monitoring, control and surveillance;
• the need to promote, to the extent practicable, broad and accountable participation in the management and conservation of fisheries resources and understanding for the need for conservation and sustainable development of aquatic living resources;
• any relevant obligations of Tonga under applicable rules of international law and international agreements.

The fisheries legislation is supplemented by supplementary legislation, currently in the form of a Bill, dealing explicitly with aquaculture, the Aquaculture Management Bill. The Bill addresses:

• the need to promote the responsible development and management of aquaculture, based on the best available scientific information;
• the need to ensure that aquaculture development is ecologically sustainable and to allow for the rational use of natural resources shared by aquaculture and other activities;
• the need to ensure that the livelihoods of local communities, and their access to fishing grounds are not negatively affected by aquaculture developments;
• the need to protect the ecosystem as a whole, the genetic bio-diversity and the aquatic environment in order to minimise adverse ecological changes and related economic and social impacts, if any, which may result from the development of aquaculture;
• the need to promote, to the extent practicable, broad and accountable participation in the management and development of aquaculture;
• any relevant obligations of Tonga under applicable rules of international law and international agreements.

**Mining and Minerals**

All minerals are deemed to be the property of the Crown. Where minerals are found on land other than Crown land, the Minister responsible has authority to determine appropriate royalties and compensation to landowners.

The *Minerals Act* restricts mining licenses and leases to Tongan or British subjects or Tongan companies and British companies registered somewhere in the Commonwealth.

The *Petroleum Mining Act* 1960 governs activities relating to the exploration and mining for petroleum. *Petroleum Mining Regulations* 1985 require any company exploring for petroleum to adopt all possible precautions to prevent pollution of high seas or coastal waters. In the event of a spill, the Regulations require the responsible company to remove the pollution and minimize damage to the environment.
Under the *Land Act*, the King, with the consent of the Privy Council, may make regulations relating to the removal of sand, stone, metal, and materials on and from any Crown land or any other holding. The *Land (Removal of Sand) Regulations 1936* prohibits the taking or removal sand from the littoral zone within the limits of a harbour without written permit signed by the Minister of Lands. On Tongatapu and Vava‘u most sand is mined by the Ministry of Lands, Survey and Natural Resources and then sold to the public. Limestone rock is used for road construction and sand aggregate is used for cement. Quarrying in any form is prohibited on rural agricultural (tax) allotments.

**Water**

With the exception of surface water on ‘Eua and Niuatoputapu, freshwater supplies on Tonga are sourced from groundwater. Various development plans have noted significant threats to the sustainable supply of freshwater including:

- Over-pumping of lenses leading to saltwater intrusion;
- Ineffective application of existing regulations in relation to water use; and
- Limited legislation relating to standards for protection and sanitation.

Three government authorities have a role in the management and conservation of Tonga freshwater resources:

- The Department of Public Health, Ministry of Health (responsible for water supplies in rural areas in conjunction with the Village Water Committee in each village);
- The Hydrogeology Section of the Ministry of Lands, Survey and Natural Resources (responsible for the management of groundwater resources by controlling drilling, the rate of pumping, monitoring and water quality); and
- The Tonga Water Board (responsible for water supply in the four urban centers of Nuku‘alofa, Pangia-Hihifo, ‘Eua and Neiafu).

The regulation and control of water supplies are detailed in the *Water Supply Regulations* which provide the Tongan Water Board as the sole authority responsible for the sale of water. The regulations stipulate that that fouling or pollution of water is an offence with responsibility for water quality monitoring resting Director of Health who has the power to inspect water supplies and equipment and recommend remedial action to the Tongan Water Board.

The Tongan Water Board has initiated a review of the Public Health Act to vest responsibility of all water supplies in Tonga in the Water Board.

**Waste and Pollution**

There is no waste management or waste management policy in Tonga.

The Ministry of Health is responsible for the management of municipal solid waste, including waste collection, dumping and the maintenance of dump sites. There are currently no regulations concerning materials that can be deposited at dump sites.
The *Garbage Act* 1949, as amended, defines garbage to include household and trade refuse and waste, but not sewerage. It also provides

The *Public Health Act* 1913 and associated regulations define “refuse”, allow the Minister to declare certain places dumping grounds and provides remedial action in the event of environmental problems under the law of public nuisance.

The *Mosquito Control Regulations* 1938 also have provisions for the control of waste disposal.

There is no legislation concerning hazardous waste.

Pulea (1992) recommended the following in relation to waste:

- Develop categories of waste to be defined with stringent controls placed over disposal facilities such as sludge dryingbeds and hazardous waste disposal areas.
- Amend *Public Health (Dumping Grounds) Regulations* to include the requirement for environmental impact assessment to be carried out before designating a dumping site, and set restoration measures for the closure of an old dumping site.
- Enact a hazardous materials Act.
- Amend regulations of the *Public Health Act* to allow for the control and security of waste disposal sites from animals and humans.
- Consider the adoption of an Act to deal with littering.

The proposed Land Use, Natural Resource and Environment Planning Bill was intended to address some of these recommendations.

*Conservation*

The *Parks and Reserves Act* 1976 establishes an authority to protect, manage and develop natural (both terrestrial and marine) areas in the Kingdom. Subject to conditions established by the relevant Authority, every park, land reserve or marine reserve “shall be administered for the protection, preservation and maintenance of any valuable feature of such reserve and activities therein and entry thereto shall be strictly in accordance with any restrictions and conditions”. The Act provides for the clear demarcation of such areas.

The Act provides for the establishment of a Parks and Reserves Authority whose members are appointed by the Privy Council. In the absence of an Authority, the Minister of Lands is to serve in the name and on behalf of the Authority. In this respect, the Authority is tasked with making regulations relating to:
• Prescribing conditions and restrictions the Authority considers necessary for the protection, preservation and maintenance of natural, historic, scientific or other valuable features of any park or reserve;
• Prescribing fees and charges for admission;
• Providing for the employment of patrons for any purpose for which the Authority may consider necessary (it may be possible to appoint rangers under this provision); and
• Any other matters necessary to give full effect to the Act.

To date no regulations have been enacted.

In 1979, the Act declared five parks and reserves:

• Hakau Mama’o Reef Reserve,
• Pangai Motu Reef Reserve;
• Monuafe Island Park and Reef Reserve;
• Ha’atafu Beach Reserve; and
• Malinoa Island Park and Reef Reserve.

Other areas that have been set aside include:

• The Ha’amonga Trilithon Historic Park (announced by the King in 1972 but yet to be gazetted);
• The Fanga’uta lagoon and Fangakakau lagoon (set aside in 1974); and
• The Muihopohoponga (Niutoua) Beaches (set aside in conjunction with the Trilithon in 1972).

Principally utilizing the provisions of the Preservation of Objects of Archaeological Interest Act 1969, and amended in 1988, 26 other sites have also been identified (but not gazetted or formally declared).

The Birds and Fish Preservation Act 1934 as amended in 1988, is an Act to “make provision for the preservation of wild birds and fish”. However, an amendment to the Act in 1989, which came into force on the same day as the new fisheries legislation, deleted reference to fish. AS it stands at present, the Act protects birds and provides for the establishment of protected areas.

The Act defines protected area to mean “any area comprising land, and water, or land and water as specified in the 2nd schedule hereto”. The 2nd Schedule declares the whole of the lagoon of Tongatapu, known as Fanga’uta and Fanga Kakau as a protected area. Without the written permission of the Prime Minister, prohibitions within a protected area under the Act include:

• The discharge of effluent and noxious substance;
• Building works;
• Mangrove removal;
• The erection of fish fences, traps or trawling; and
• Drilling and dredging.
Under the Act, ‘protected birds’ are defined to include any such bird, whether imported or indigenous. There are 11 birds listed in the schedule, all but two of which, the Land Bird and the Wild Pigeon, of which have year-round protection.

Tonga is not currently a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Heritage

Preservation of Objects of Archaeological Interest Act 1969, and amended in 1988 defines objects of interest to be:

“Any structure, erection, memorial, tumulus, cairn, place of internment, pit dwelling, trench, fortification, irrigation work, mound, excavation, cave, rock, rock drawing, painting, sculpture, inscription, monolith, or any remains thereof, fossil remains of man or animals or plants or any bed or beds containing such fossil remains thereof, or any object (or remains thereof) which is or are of archaeological, palaeontological, anthropological, ethnological, prehistoric, or historic interest”.

The definition includes sites where any of the objects of interest are discovered or exits and, where necessary, any adjoining lands and means of access to any site.

The Act establishes a Committee on Tongan Traditions, appointed by the King, in Council (gazetted in 1954). The Committee is responsible for permitting any activity in relation to objects of interest, including removal. Limited protection against the removal of cultural items of significant interest is found in the 2nd Schedule of the Customs and Excise Act – however this does not cover all artifacts and antiquities.

Pulea (1992) noted that legislation in Tonga is weak in terms of the protection of archaeological sites and historic buildings.