

Analysis of environment-related legislation in Tonga

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Abbreviations

CITES	The Convention on International Trade in Endangered Species of Wild Flora and Fauna.
EEZ	exclusive economic zone
GEF	Global Environment Facility
IWP	International Waters Project
SPREP	Secretariat of the Pacific Regional Environment Programme
§	section
TOP	Tongan paanga

Executive summary

The International Waters Project (IWP) aims to strengthen the management and conservation of marine, coastal and freshwater resources in the Pacific Islands region. It is financed through the International Waters Programme of the Global Environment Facility, implemented by the United Nations Development Programme, and executed by the Secretariat of the Pacific Regional Environment Programme (SPREP), in conjunction with the governments of the 14 participating independent Pacific Island countries.

In implementing the IWP in Tonga, a comprehensive inventory of natural resource and environment-related laws in Tonga has been undertaken, in order to identify legislative and institutional arrangements relevant to the management of Tonga's environmental resources (see Powell 2006). The relevant features of that review are reproduced in this analysis, which constitutes an assessment an analysis of Tonga's laws to determine gaps, overlaps and conflicts. This includes:

- an analysis of the strengths and weaknesses of existing legislation and institutions (including legislation that has not yet been enacted, such as draft bills and regulations);
- an assessment of the efficacy of the legislation and institutions in supporting the government and community to responsibly manage the environment and ensure the sustainable use and conservation of natural resources;
- identification of barriers to the effective implementation and enforcement of existing legislation and to the work of existing institutions; and
- identification of how particular gaps and areas of overlap and conflict can be addressed (including amendments to existing legislation or the enactment of new laws).

Summary of observations about the current status of Tonga's laws

Waste management

The laws of Tonga make quite extensive provision in relation to matters associated with the management of wastes. Until now this has not been the result of any formal policy formulation and implementation. The provisions of the Public Health Act 1992 are generally useful but to a large degree they are simply a restatement of the provisions that apply under the obsolete Garbage Act.

There are no provisions in any law that deal with or promote recycling of wastes or other processes such as composting.

The proposal for a Waste Authority has merit. The Authority may be empowered and vested with responsibilities under its own Act or by delegation of authority to apply and enforce provisions of the Public Health Act, or by a combination of these approaches.

The Draft Environment (Littering and Dumping of Wastes) Regulations would effectively implement a number of the recommendations made in the review of Tonga's environment-related laws undertaken in 1992 (Pulea 1992). The establishment of these regulations is dependent upon enactment of the Environment Management Bill.¹ Prior to finally enacting the regulations, they should be reviewed in the light of the legislation drafted to establish the Waste Authority. The definition of "authorised dump site" for example will need modification.

The AusAID Solid Waste Project presents a timely opportunity for policy development in this context. It is only in this way that waste management issues can be effectively determined and

¹ Editor's note: The Bill was passed as Act 1 of 2005.

applied under the Environment Impact Assessment Act. Significant policy development and the determination of procedural matters are needed to properly apply the provisions of the environmental impact assessment (EIA) regime, which has received the endorsement of Tonga's Parliament. Such a regime may have beneficial applications in the context of waste management and can be applied to all development projects falling under the EIA law. Particular attention should be given to developments involving land fill and land reclamation. These do not appear to be regulated under any law that currently applies in Tonga.

The absence of any formal system of local or village governance in the statutes of Tonga restricts opportunities for the effective involvement of the community in such matters. There are no laws in Tonga to currently facilitate community involvement in law enforcement or the implementation of government policies in any meaningful way. These issues are considered separately.

The management of Tonga's water resources

There is no comprehensive law in Tonga dealing with the ownership, management and protection of water resources, despite the fact that the need for such legislation was clearly highlighted in the 1992 review. Provision is made in relation to pollution of water in a number of laws and these laws involve a range of government agencies.

The Ministry of Health has clear responsibility in relation to water quality in accordance with its enabling Act. A range of matters are provided for in this regard. However the Act does not specify the water quality standards that are to be applied and does not deal with the publication of test results.

The Water Board has the function of supplying water in its areas of authority. The Ministry of Health retains this responsibility in rural areas. Both these functions are currently performed under appropriate legislative arrangements. There is no provision in any relevant law dealing with community participation or public awareness in this context, however. There is no right of access to information about water standards and the results of water testing, despite the fact that there are no grounds for keeping such information confidential. Indeed, it is in everyone's interest that such matters are known and that current information be made public.

The concept of an operational plan provided for under the Water Board Act and applied on a three yearly basis has clear merit. There is, however, no community involvement built in to the planning process or included as an integral feature of the required plan.

The Department of Environment may play a role in relation to Tonga's water resources but the proposed Environment Management Act makes no specific reference to identified responsibilities relevant to the nation's water resources.

Protection of Tonga's coastal waters

A number of Tonga's laws contain provisions relating to the protection, conservation and management of coastal waters. There are effective laws dealing with other matters of relevance to coastal zones, such as regulating the extraction of sand, rock and coral from such areas.

The Marine Pollution Act was recently passed in Tonga, thereby filling a significant gap in Tonga's environment-related laws. Much has been achieved by the passing of this law. A range of international and regional conventions have been incorporated into Tonga's laws and an effective regime dealing with marine pollution and pollution responses can now be put in place with a sound legislative basis. This law includes provisions that deal effectively with the issues of dumping and incinerating of wastes at sea.

The draft Model Biosecurity Bill would prohibit the dumping of wastes and the discharge of ballast waters by vessels. There do not appear to be any laws dealing with the disposal of solid and human waste from yachts and pleasure craft in Tongan waters.

Aspects of community involvement in waste management and water resource issues

There are few legislative provisions in Tonga that facilitate effective community participation in environment-related issues. The absence of any legislation that establishes and empowers formal local or village government structures contributes to this.

The recently drafted Biosafety Bill attempts to make provision for community participation in relation to the control of genetically modified living organisms. It proposes the formation of Divisional Biosafety Advisory Committees.

The draft Environment Management Bill 2005 obliges the Department of Environment to undertake awareness campaigns and to facilitate community participation in environment-related issues. This might be best achieved by the formulation of a Community Participation and Consultation Policy by the Department. Such a policy should have a focus on community involvement in waste and water issues.

The structure, role and capacity of government agencies involved with the management of wastes in Tonga.

The role of the Ministry of Health is firmly and properly entrenched in the Public Health Act 1992. Some aspects may need to be reviewed in drafting the proposed law to establish and empower the Waste Authority.

The Department of Environment's role in this context can be accommodated in regulations made under the proposed Environment Management Act.

As noted above there are no formal local or village government structures in Tonga's laws. The role of District Officers and Town Officers should not be overlooked, as they could play a role in environmental related matters.

Recommended actions

General

- 1) Early enactment of the Environment Management Bill will have many advantages for the enhancement of environmental management in Tonga.
- 2) A general review of the fines prescribed in Tonga's environment-related laws is warranted. Consideration should be given to implementing the device of penalty units in the place of monetary penalties stated in paanga. Such legislation has been successfully used in Australia and Samoa and permits a periodic general review of monetary penalties.

Waste management

- 3) The formulation and adoption of a comprehensive waste management policy and/or strategy would facilitate the effective application of laws relating to waste management. The AusAID-Tonga Solid Waste Management Project presents a timely opportunity for this to be undertaken. The policy could focus on matters such as community involvement in waste issues through recycling, composting and other appropriate means. It should also cover matters relating to land fills and reclamation and other development projects that are to be regulated under the Environment Impact Assessment Act.
- 4) The establishment of a Waste Authority has merit. When the necessary legislation is drafted the Garbage Act should be repealed and certain provisions of the Public Health Act should be reviewed with a view to making substantive provision in the Waste Authority Act. The requirement for a three-year operational plan under the Water Board Act has merit and should be included in the Waste Authority legislation. Specific mention should be made for the plan to cover matters relating to community

participation and public awareness. There should be community involvement in the formulation of the plan and its subsequent review every three years.

- 5) After the enactment of the Environment Management Bill and the preparation of the Waste Authority legislation the Draft Environment (Litter and Dumping of Wastes) Regulations should be reviewed to ensure consistency, and then applied as soon as possible.

The management of Tonga's water resources

- 6) The formulation of comprehensive water resources legislation would be extremely advantageous, as was noted in the 1992 Review. This could formalise the current arrangements involving the Ministry of Health and the Water Board and may permit some involvement by the Department of Environment. It need not affect the current distribution of responsibilities relating to water testing and pollution control responsibilities. It could formalise the setting, monitoring and reporting on water standards.

Its key features may comprise the following:

- ownership of the water resource by the Crown;
 - the right of the Crown to control the water resources;
 - the rights of the Water Board and other State utilities to access water resources;
 - the regulation of other means of access to the water resources and the rights to use the resources;
 - determination of matters involving competing claims to the water resource;
 - imposing water restrictions and drought control measures;
 - regulation of any activity likely to affect the water resources;
 - powers to order the cessation of any activities likely to affect the water resources; and
 - offences in relation to water pollution and contamination and for other breaches of this law.
- 7) The requirement under the Water Board Act for a three-year operational plan has merit. There is no mention in the relevant provision of the Act for community involvement in the formulation of the plans, or for the plans to cover matters such as community involvement and public awareness in this context. Some amendment to the relevant provision should be considered. This would reflect the current arrangements whereby some reliance is placed upon village water committees in the areas where the Ministry of Health discharges the water supply function.

Protection of Tonga's coastal waters

- 8) The recently enacted Marine Pollution Act fills a large gap in Tonga's environment-related laws. In due course it may be necessary to review this law in the light of the amendments that are proposed to the SPREP Protocols relating to marine pollution response and to dumping of wastes at sea.
- 9) Consideration should be given to the Draft Model Biosecurity Bill. This is a useful draft and can be adapted to Tonga's circumstances with little difficulty. In its draft form it makes provision to regulate the discharge of wastes and ballasts from vessels, including yachts and pleasure craft in Tongan waters, and this would be a useful provision to include.

Aspects of community involvement in waste management and water resource issues

- 10) The Department of Environment should give priority to the formulation of a Community Participation and Consultation Policy. Such a policy should have a focus on community involvement in waste and water issues. This policy would enable the Department to discharge its responsibilities stated in the Environment Management Bill relating to public awareness and education, and the involvement of non-government organisations.
- 11) Consideration might be given under the Consultation Policy to processes permitting villages and communities to propose environment-related regulations affecting their particular areas. The District and Town Officers should be involved in such processes; enforcement arrangements involving village and community representatives, District and Town Officers and Environment Officers could be devised.

The Structure, role and capacity of government agencies involved with the management of wastes in Tonga

- 12) The proposed drafting of a Waste Authority Bill necessitates the review of relevant laws that currently apply. The waste management provisions of the Public Health Act need to be considered in relation to the possible transfer or sharing of certain responsibilities. The proposed Environment (Litter and Dumping of Wastes) Regulations will need some further review to ensure consistency. Finally, the role of District and Town Officers should not be overlooked in this context.

Observations and options for other relevant issues

Observations and legislative options for the other relevant issues reviewed in Part 4 are noted there. These relate to the following issues:

- 4.1 Obligations under international treaties generally
- 4.2 Community involvement in coastal fisheries management
- 4.3 Protection of whales and other animals
- 4.4 Marine pollution
- 4.5 Transboundary movements of hazardous wastes
- 4.6 Dumping of wastes at sea
- 4.7 Climate change/protection of the ozone layer
- 4.8 Environmental impact assessments
- 4.9 Protection of migratory species
- 4.10 Extraction of sand, corals etc
- 4.11 Regulation of aquaculture, fish processing etc.

1 Background

1.1 The International Waters Project (IWP)

The International Waters Project (IWP)² is a 7-year, USD 12 million initiative concerned with management and conservation of marine, coastal and freshwater resources in the Pacific islands region, and is specifically intended to address the root causes of environmental degradation related to trans-boundary issues in the Pacific. The project includes two components: an Integrated Coastal and Watershed Management (ICWM) component, and an Oceanic Fisheries Management component (the latter has been managed as a separate project). It is financed by the Global Environment Facility (GEF) under its International Waters Programme. The ICWM component is implemented by the United Nations Development Programme (UNDP) and executed by the Secretariat of the Pacific Regional Environment Programme (SPREP), in conjunction with the governments of the 14 independent Pacific Island countries: Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. The ICWM component focuses on integrated coastal watershed management, and supports national and community-level actions that address priority environmental concerns relating to marine and fresh water quality, habitat modification and degradation and unsustainable use of living marine resources through a 7-year phase of pilot activities, which started in 2000 and will conclude at the end of 2006.

1.2 IWP activities

The IWP has sought to combine the following activity areas.

- Integrated conservation and management of coastal resources, including fresh water resources.
- Integrated conservation and sustainable management of oceanic resources
- Prevention of pollution through the integrated management of land based or marine based wastes.
- Monitoring and analysis of shore and near-shore environments to determine vulnerability to environmental degradation.

These activities reflect the National Environment Management Strategies prepared for Pacific Island countries between 1990 and 1996, which describe strategies for achieving environmental objectives relating to:

- the integration of environmental consideration in economic development;
- improved environmental awareness and education;
- the management and protection of natural resources; and
- improved waste management and pollution control.

1.3 Advancing IWP in Tonga

In Tonga IWP has targeted pilot projects that address waste management with a view to improving freshwater and marine resources management. The aims of IWP in Tonga have been pursued in part through the following.

- 1) Undertaking a comprehensive inventory of natural resource and environment related laws in Tonga to identify legislative and institutional arrangements relevant to the

² IWP is formally titled Implementation of the Strategic Action Programme of the Pacific Small Islands Developing States.

management of environmental resources in Tonga. This has been completed, with the relevant features of the review reproduced in this analysis (see Powell 2006).

- 2) An assessment of the identified legislation and institutions and an analysis of Tonga's laws to determine gaps, overlaps and conflicts. This analysis includes:
 - a) an analysis of the strengths and weaknesses of existing legislation and institutions (including legislation that has not yet been enacted, such as draft bills and regulations);
 - b) an assessment of the efficacy of the legislation and institutions in supporting the government and community to responsibly manage the environment and ensure the sustainable use and conservation of natural resources;
 - c) identification of barriers to the effective implementation and enforcement of existing legislation and to the work of existing institutions; and
 - d) identification of how particular gaps and areas of overlap and conflict can be addressed (including amendments to existing legislation or the enactment of new laws).

1.4 The 1992 legislative review

As noted in the inventory of legislation, a very useful review of a similar nature was undertaken for Tonga in 1992 (see Pulea 1992). Significant reliance has been placed on this publication, although it has been necessary to update the review to cover legislative reforms enacted since that review was completed.

The 1992 Review made a range of recommendations for legislative action. In Parts 3 and 4 (below) the relevant recommendations are noted, and this may provide some guidance as to the priority that might be applied to the recommendations made in this analysis.

2 Analysis of legislation

2.1 Major focus areas

As noted above, the areas of principal concern to Tonga in the context of the IWP are:

- 1) waste management;
- 2) management of Tonga's water resources;
- 3) protection of Tonga's coastal waters;
- 4) aspects of community involvement in waste management and water resource issues; and
- 5) the structure, role and capacity of government agencies involved with the management of wastes in Tonga.

The current and proposed laws of Tonga are therefore analysed in Part 3 of this Report under the above categories.

2.2 Other laws considered in the context of IWP

Some other areas relevant to the IWP are noted in Part 4 of this Report. These do not relate directly to the issues of major concern to Tonga with respect to the IWP, but are important areas where comment about the state of the laws of Tonga is considered warranted. The observations are not detailed, but are intended to provide some assistance to the relevant agencies in Tonga in determining and prioritising further areas of legislative reform. Particular attention is given to areas where international obligations arise.

The areas noted in Part 4 are:

- Obligations under international treaties generally

- Community involvement in coastal fisheries management
- Protection of whales and other wildlife
- Marine pollution
- Transboundary movements of hazardous wastes
- Dumping of wastes at sea
- Climate change/protection of the ozone layer
- Environmental impact assessments
- Protection of migratory species
- Extraction of sand, corals etc
- Regulation of aquaculture, fish processing etc.

In many of these areas it is noted that Tonga's laws are modern and appropriate.

3 Legislative analysis in areas of principal concern

3.1 Waste management issues

Legislative provisions in the current laws

The current and proposed laws in Tonga contain the following relevant provisions.

Public Health Act 1992

The waste management provisions of this Act apply only to the towns, villages and areas determined by the Minister and published in the Gazette (section (§) 90).

The Minister is responsible for making arrangements for the collection, transport and disposal of domestic, commercial and trade wastes (§91). The Minister is also responsible for making arrangements for the cleaning and efficient functioning of latrines and receptacles for sewage (§92). The Minister may make arrangements for the cleaning of streets and other public places (§95). The Minister may delegate responsibility for these matters under §15.

Detailed provision is made in §93 in relation to the storage and collection of garbage. Further regulations in this respect may be made under §96. These regulations may deal with charges for garbage collection and disposal services.

No toxic or hazardous waste may be imported into the Kingdom (§98) and regulations may be made in relation to the declaration of hazardous wastes and matters relating to their storage and disposal. The powers of delegation under §15 do not extend to the power to make regulations.

Garbage Act (Cap. 101)

This law dates back to 1949 and its operative provisions have been largely reflected in §93 of the Public Health Act 1992. The fees for garbage collections under this law are set at between .5–2 Tongan paanga (TOP) per month.

As the Principal Board of Health was constituted under a repealed law, and because most of these provision have been restated and vested under different authority in the Public Health Act 1992, it may be argued that this law has been repealed by implication by virtue of §16 of the Interpretation Act (Cap. 1). For all practical purposes this law may be overlooked and the provisions of the Public Health Act 1992 should be applied.

Other applicable laws

- Other laws make it an offence to discharge or deposit wastes in certain areas.
- The Harbours Act (Cap. 137) makes it an offence to deposit rubbish in harbours.

- The Parks and Reserves Act (Cap. 89) makes it an offence to deposit rubbish in declared parks and reserves.
- The Birds and Fish Preservation Act (Cap. 125) makes it an offence to discharge noxious liquids and substances in protected areas.

Draft Environment (Litter and Dumping of Wastes) Regulations

These regulations have been drafted in response to a clear perception by government and the community that addressing littering and the dumping of wastes in public areas is a matter of clear priority. They have been drafted in anticipation of the enactment of the Environment Management Bill 2005. Some public consultations have been held in relation to these draft regulations.

The following matters are addressed in this draft law.

- Offences are prescribed in relation to littering.
- Offences are prescribed in relation to the dumping of hazardous and noxious wastes (which are defined).
- Owners and occupiers are obliged to keep their premises clean.
- Owners and occupiers have a duty to remove wastes from their land.
- Environment Officers are empowered to issue notices to clean premises and infringement notices. Fines and community work obligations may be imposed.
- Environment Officers may order that wastes be cleared and disposed of as directed.
- Employers are liable for the acts of their employees.
- “Authorised dumping sites” are defined.

A Proposed Waste Authority Law

The Tonga Solid Waste Management Project is a partnership between the Governments of Tonga and Australia. It seeks to address all aspects of the management of solid wastes in Tonga and has a particular focus on the collection and disposal of solid wastes.

It is proposed that these matters shall become the responsibility of a Waste Authority and Cabinet’s approval for the establishment of a Waste Authority has been obtained. It is proposed that a law be drafted to establish the Authority and to define its powers and responsibilities.

Recommendations made in the 1992 Review

The following relevant recommendations were made in the 1992 Review:

Recommendation 18. “It is recommended that categories of waste be specifically defined (e.g. abandoned motor vehicles, wrecks, hazardous wastes) with stringent controls imposed over disposal facilities such as sludge dikes and dumping grounds”.

Recommendation 19. “It is recommended that the Public Health (Dumping Grounds) Regulations be amended to include the requirement for an environmental impact assessment to be carried out before a dumping site is declared and that restoration measures be made a specific requirement when a disposal site is declared closed”.

Recommendation 20. “It is recommended that consideration be given to the enactment of a Hazardous Materials Act”.

Recommendation 21. “It is recommended that Regulations to the Public Health Act be expanded to include more control with regard to securing waste disposal sites from animals and unauthorised human intrusions”.

Recommendation 24. “It is recommended that an Act specifically dealing with litter be considered. Littering in public places such as streets, public grounds, shopping areas and other public places should be made an offence”.

Observations about the current status of Tonga’s laws

The laws of Tonga make quite extensive provision in relation to matters associated with the management of wastes. Until now this has not been the result of any formal policy formulation. The provisions of the Public Health Act 1992 are generally useful but to a large degree they are simply a restatement of the provisions that apply under the obsolete Garbage Act.

There are no provisions in any law that deal with or promote recycling of wastes or other processes such as composting.

The proposal for a Waste Authority has merit. The Authority may be empowered and vested with responsibilities under its own Act or by delegation of authority to apply and enforce provisions of the Public Health Act, or by a combination of these approaches.

The Draft Environment (Littering and Dumping of Wastes) Regulations would effectively implement a number of the recommendations made in the 1992 Review. The establishment of these regulations is dependent upon the enactment of the Environment Management Bill. Prior to being finalised, the regulations should be reviewed in light of the legislation drafted to establish the Waste Authority. For example, the definition of “authorised dump site” will need to be modified.

The AusAID-Tonga Solid Waste Management Project presents a timely opportunity for policy development in this context. It is only in this way that waste management issues can be effectively determined and applied under the Environment Impact Assessment (EIA) Act. Significant policy development and the determination of procedural matters is needed to properly apply the provisions of the EIA regime, which has the endorsement of Tonga’s Parliament. Such a regime may have beneficial applications in the context of waste management and can be applied to all development projects falling under the EIA law. Particular attention should be given to developments involving land fill and land reclamations. These do not appear to be regulated under any law currently applying in Tonga.

The absence of any form of local or village governance in Tonga restricts opportunities for the effective involvement of the community in such matters. There are no laws in Tonga that currently facilitate community involvement in any meaningful way. These issues are considered under 3.4

Recommended actions

1. The formulation and adoption of a comprehensive waste management policy and/or strategy would facilitate the effective application of waste management-related laws. The Solid Waste Management Project presents a timely opportunity for this to be undertaken. The policy could focus on matters such as community involvement in waste issues through recycling, composting and other appropriate means. It should also cover matters relating to land fills and reclamation and other development projects which are to be regulated under the Environment Impact Assessment Act.
2. The establishment of a Waste Authority has merit. When the necessary legislation is drafted the Garbage Act should be repealed and certain provisions of the Public Health should be reviewed with a view to making substantive provision in the Waste Authority Act. The requirement for a three year operational plan under the Water Board Act has merit and should be included in the Waste Authority legislation. Specific mention should be made for the plan to cover matters relating to community participation and public awareness. There should be community involvement in the formulation of the plan every three years.

3. After the enactment of the Environment Management Bill and the preparation of the Waste Authority legislation the Draft Environment (Litter and Dumping of Wastes) Regulations should be reviewed to ensure consistency and then applied as soon as possible.

3.2 The management of Tonga's water resources

Legislative provisions in the current laws

The current and proposed laws in Tonga make the following relevant provision in relation to Tonga's freshwater resources, mostly concerning the provision of water supplies.

Tonga Water Board Act 2000

- Establishes a Water Board charged with principal responsibility for the provision and management of water supplies in designated areas.
- The Board must operate in accordance with a plan prepared every 3 years.
- Provision is made in relation to water supply issues including the right to take water from waterworks, water restrictions and powers to enter land.
- Regulations may be made in support of the activities of the Board.

Public Health Act 1992

- Makes comprehensive provision in relation to water quality issues.
- The Minister for Health is responsible for determining which sources of water are suitable for public water supplies. Regular steps must be taken to ensure the adequacy and wholesomeness of water supplies.
- All premises must have a sufficient water supply.
- Authorised Officers are required to examine all sources of water including wells, boreholes, rain water storages and streams.
- Potable water supplies must be certified under this Act and no person may use a source of water for public water supply without certification.
- Village water committees must be given advice on measures for ensuring supplies of safe drinking water and the prevention of contamination. Closure of unsafe water supplies and other corrective measures may be ordered.
- Piped water supplies are regulated.
- The Ministry must carry out regular sampling of water including a physical and chemical analysis, examination for harmful microorganisms and radioactive content.
- The Water Supply Regulations 1963 are saved by the Public Health Act 1992 and deemed to be made under the new Act. This reflects the continuing role of the Ministry of Health in relation to the provision of rural water supplies

Recommendations made in the 1992 Review

The following relevant recommendations were made in the 1992 Review:

Recommendation 16 "It is recommended that legislation be considered to clearly detail the responsibilities of the Ministry of Lands, Surveys and Natural Resources to control and protect water resources".

Recommendation 17 "It is recommended that the recommendations made in the *Tonga Water Supply Master Plan* to improve the present institutional arrangements and to amend the legislation should be considered with a view to implementation".

Observations about the current status of Tonga's laws

There is no comprehensive law in Tonga dealing with issues of the ownership, management and protection of water resources. This is so despite the fact that the need for such legislation was clearly highlighted in the 1992 Review. A number of laws contain provisions relating to water pollution, and these laws involve a range of government agencies.

The Ministry of Health has clear responsibility in relation to water quality in accordance with its enabling Act. A range of matters are provided for in this regard. However the Act does not specify the water quality standards that are to be applied and does not deal with the publication of test results.

The Water Board has the function of supplying water in its areas of authority. The Ministry of Health retains this responsibility in rural areas. Both these functions are currently performed under appropriate legislative arrangements. It should be noted, however, that there is no provision in any relevant law dealing with community participation or awareness in this context. There is no right of access to information about water standards and the results of water testing, although there are no grounds for keeping such information confidential. Indeed, it is in everyone's interest that current information is made public.

The concept of an operation plan provided for under the Water Board Act and applied on a three yearly basis has clear merit. There is no provision for community involvement in the planning process or as an integral feature of the required plan.

The Department of Environment may play a role in relation to Tonga's water resources but the proposed Environment Management Act makes no specific reference to such matters.

Recommended action

The following actions are recommended.

- 1) The formulation of comprehensive water resources legislation would be extremely advantageous, as was noted in the 1992 Review. This could formalise the current arrangements involving the Ministry of Health and the Water Board and may permit some involvement by the Department of Environment. It need not affect the current distribution of responsibilities relating to water testing and pollution control responsibilities. It could formalise the setting, monitoring and reporting on water standards. Its key features may comprise the following:
 - a) ownership of the water resource by the Crown;
 - b) the right of the Crown to control the water resources;
 - c) the rights of the Water Board and other State utilities to access water resources;
 - d) the regulation of other means of access to the water resources and the rights to use the resources;
 - e) determination of matters involving competing claims to the water resource;
 - f) imposing water restrictions and drought control measures;
 - g) regulation of any activity likely to affect the water resources;
 - h) powers to order the cessation of any activities likely to affect the water resources; and
 - i) offences in relation to water pollution and contamination and for other breaches of this law.
- 2) The requirement, under the Water Board Act, for a three year operational plan, has merit. There is no mention in the relevant provision of the Act for community involvement in the formulation of the plans, or for the plans to cover matters such as community involvement and public awareness in this context. Some amendment to the relevant provision should be considered. This would reflect the current

arrangements whereby some reliance is placed upon village water committees in the areas where the Ministry of Health discharges the water supply function.

3.3 Protection of Tonga's coastal waters

Legislative provisions in the current laws

Marine Pollution Act 2004

Comprehensive provision is made in relation to marine pollution prevention and response.

- Provision is made for liability and compensation issues.
- Dumping and incineration of wastes at sea are regulated
- A general power to enact regulations is provided for.

Ports Authority Act 1998

It is an offence to throw, discharge or deposit harmful substances into the waters of a port. Fines of up to TOP 25,000 apply.

Powers are given to make Regulations, Standing Orders and Codes of Practice which may deal with issues related to keeping waters and port facilities clean.

Ports Management Act 2001

It is an offence to throw, discharge or deposit harmful substances into the waters of a port. Fines of up to TOP 25,000 apply. Offences are also prescribed in relation to smoke and other pollutants, and noise pollution by vessels. Fines of up to TOP 10,000 apply.

Continental Shelf Act (Cap. 63)

Prohibits the discharge of oil from pipelines or exploration activities.

Petroleum Mining Regulations 1985

All petroleum explorers must adopt all practical precautions to prevent pollution of the high seas and coastal waters. In the event of a pollution incident all specified measures must be undertaken to minimise damage to the environment.

Aquaculture Management Act 2003

Notice must be given of an intention to use chemicals, pesticides, pharmaceuticals and bio-remediation products, and such substances may be restricted or prohibited.

Fisheries Management Act 2002

This is a modern and comprehensive law dealing with all aspects of the conservation, management and sustainable utilisation and development of Tonga's fisheries.

Recommendations made in the 1992 Review

The following relevant recommendations were made in the 1992 Review –

Recommendation 13 “It is recommended that the prohibition with respect to fish fences, fish traps and trawling in the protected areas not be overlooked in the Fisheries Regulations.”

Observations about the current status of Tonga's laws

A number of laws applying in Tonga make appropriate provision in relation to the protection, conservation and management of the coastal waters. Indeed there are effective laws dealing with other matters of relevance to coastal zones such as regulating the extraction of sand, rock and coral from such areas.

The Marine Pollution Act was recently passed in Tonga, thereby filling a significant gap in Tonga's environment-related laws. A great deal has been achieved by the passing of this law. A range of international and regional conventions have been incorporated into Tonga's laws and an effective regime dealing with marine pollution and pollution responses can now be put

in place with a sound legislative basis. This law includes provisions that deal effectively with the issues of dumping and incinerating of wastes at sea.

The draft Model Biosecurity Bill would prohibit the dumping of wastes and the discharge of ballast waters by vessels. There do not appear to be any laws dealing with the disposal of solid and human waste from yachts and pleasure craft in Tongan waters.

Recommended action

- 3) The recently enacted Marine Pollution Act fills a large gap in Tonga's environment related laws. In due course it may be necessary to review this law in the light of the amendments which are proposed to the SPREP Protocols relating to marine pollution response and to dumping of wastes at sea.
- 4) Consideration should be given to the draft Model Biosecurity Bill. This is a useful draft and can be adapted to Tonga's circumstances with little difficulty. In its draft form it makes provision to regulate the discharge of wastes and ballasts from vessels, including yachts and pleasure craft in Tongan waters, and this would be a useful provision to include.

3.4 Community Involvement in Waste Management and Water Resource Issues

Legislative provisions in current and proposed laws

Environment Management Bill 2005

Clause 6 The objectives of the proposed Act are stated. These include:

- To promote meaningful public involvement in relation to issues of environmental management.
- To promote understanding, management, conservation and protection of biological diversity.

Clause 7 The proposed functions of the Department are comprehensively stated. These include:

- Preparing environment plans and policies and monitoring impacts on the environment.
- Facilitating, conducting and participating in environmental research.
- Promoting public awareness and education of environment related issues.
- Facilitating the participation of NGO in this context.

Clause 15 Provides for the proposed appointment and roles of Environment Committees.

Fonos Act (Cap. 50)

This is the only other law in Tonga that addresses public participation and awareness. It provides for compulsory attendance at all forms of Fonos. It is, however, unlikely to have direct application or benefit in this context.

Recommendations made in the 1992 Review

No relevant recommendations were made in the 1992 Review.

Observations about the current status of Tonga's laws

There are few legislative provisions in Tonga that facilitate effective community participation in environment-related issues. The absence of any formal local or village government structures established under legislation contributes to this.

The recently drafted Biosafety Bill attempts to make provision for community participation in relation to the control of living modified organisms. It proposes the formation of Divisional Biosafety Advisory Committees.

The draft Environment Management Bill 2005 obliges the Department of Environment to undertake awareness campaigns and to facilitate community participation in environment related issues. This might be best achieved by the formulation of a Community Participation and Consultation Policy by the Department. Such a policy might focus on specific involvement in waste and water issues.

Recommended action

- 1) The Department of Environment should give priority to the formulation of a Community Participation and Consultation Policy. Such a policy should focus on community involvement in waste and water issues. This policy would enable the Department to discharge its responsibilities stated in the Environment Management Bill relating to public awareness and education, and the involvement of non-government organisations.
- 2) Consideration might be given under the Consultation Policy to processes that permit villages and communities to propose environment-related regulations to have effect in their particular areas. The District and Town Officers should be involved in such processes and enforcement arrangements involving village and community representatives, District and Town Officers and Environment Officers could be devised.

3.5 The structure, role and capacity of government agencies involved with the management of wastes in Tonga

Legislative provisions in the current laws

The current and proposed laws in Tonga include the following relevant provisions:

The role of the Ministry of Health under the Public Health Act 1992

The waste management provisions of this Act apply only to the towns, villages and areas determined by the Minister and published in the Gazette (§90).

The Minister is responsible for:

- Making arrangements for the collection, transport and disposal of domestic, commercial and trade wastes (§91).
- Making arrangements for the cleaning and efficient functioning of latrines and receptacles for sewage (§92).
- Make arrangements for the cleaning of streets and other public places (§95).

The Minister may delegate responsibility for these matters under §15.

Detailed provision is made in §93 in relation to the storage and collection of garbage. Further regulations in this respect may be made under §96. These regulations may deal with charges for garbage collection and disposal services.

No toxic or hazard waste may be imported into the Kingdom (§98) and regulations may be made in relation to the declaration of hazardous wastes and matters relating to their storage and disposal. The powers of delegation under §15 do not extend to the power to make regulations.

The proposed role of the Waste Authority

The Tonga Solid Waste Management Project is a partnership between the Governments of Tonga and Australia. It seeks to address all aspects of the management of solid wastes in Tonga and has a particular focus on the collection and disposal of solid wastes.

It is proposed that these matters shall become the responsibility of a Waste Authority and Cabinet's approval for the establishment of a Waste Authority has been obtained. It is proposed that a law shall be drafted to establish the Authority and to define its powers and responsibilities.

The proposed role of the Department of Environment

The Environment (Littering and Dumping of Wastes) Regulations have been drafted in anticipation of the enactment of the Environment Management Bill 2005.

The following matters are addressed in this draft law:

- Offences are prescribed in relation to littering.
- Offences are prescribed in relation to the dumping of hazardous and noxious wastes (which are defined).
- Owners and occupiers are obliged to keep their premises clean.
- Owners and occupiers have a duty to remove wastes from their land.
- Environment Officers are empowered to issue notices to clean premises and infringement notices. Fines and community work obligations may be imposed.
- Environment Officers may order that wastes be cleared and disposed of as directed.
- Employers are liable for the acts of their employees.
- "Authorised dumping sites" are defined.

Recommendations made in the 1992 Review

Recommendation 16 "It is recommended that legislation be considered to clearly detail the responsibilities of the Ministry of Lands, Surveys and Natural Resources to control and protect water resources".

Recommendation 17 "It is recommended that the recommendations made in the *Tonga Water Supply Master Plan* to improve the present institutional arrangements and to amend the legislation should be considered with a view to implementation".

No recommendations specifically dealt with the institutional arrangements apply to waste issues.

Observations about the current status of Tonga's laws

The role of the Ministry of Health is firmly and properly entrenched in the Public Health Act 1992. This may, however, be reviewed in some respects in the drafting of the proposed law to establish and empower the Waste Authority.

Any appropriate role in this context for the Department of Environment can be accommodated in regulations made under the proposed Environment Management Act.

As noted above there are no formal local or village government structures in Tonga. The role of District Officers and Town Officers should not be overlooked in this context.

Recommended action

1. The proposed drafting of a Waste Authority Bill necessitates the review of current laws applying in this context. The waste management provisions of the Public Health Act need to be considered in relation to the possible transfer or sharing of certain responsibilities. The proposed Environment (Litter and Dumping of Wastes) Regulations will need further review to ensure consistency; the role of District and Town Officers should not be overlooked in this context.

4 Other relevant legislative areas considered

4.1 Obligations under international treaties generally

Relevance to IWP

Protection of Tonga's environment can be greatly facilitated by the enactment of appropriate laws and application of effective regulatory regimes in areas covered by a wide range of international conventions and regional agreements.

Current state of Tonga's laws

A principal purpose and focus of the Environment Management Bill 2005 is the implementation of all aspects of all international environment-related conventions relevant to Tonga. The role of the Department of Environment in this regard will be formalised. The specific responsibilities of the Department are clarified in considerable detail in this draft law.

In recent times a great deal of work has been undertaken in Tonga to give effect to certain international obligations which Tonga has assumed. A draft law providing for the implementation of all aspects of the Cartagena Protocol has been prepared in the context of biosafety and the control of genetically modified living organisms. The issues of ozone layer protection and the control of ozone depleting substances under the Montreal Protocol have also been addressed in drafted laws. Work has commenced in relation to the control of persistent organic pollutants in accordance with the Stockholm Convention and this should lead to the drafting of appropriate legislation in due course.

Legislative reform options

The area of the implementation of Tonga's international obligations under environment-related conventions is being adequately addressed under a range of draft laws which are in a final stage of completion. The early enactment of the Environment Management Bill will greatly facilitate this and the enactment of these and future necessary laws. The Bill is ready to proceed to Parliament during the course of this year.

4.2 Community involvement in coastal fisheries management

Relevance to IWP

The empowerment of communities to become involved in the management of their marine resources is a key feature of the IWP.

Current state of Tonga's laws

The Fisheries Management Act 2002 is a comprehensive law applying to all aspects of the management and conservation of Tonga's fisheries resources. Section 15 of the Act permits the Minister to consult with "coastal communities" responsible for "Special Management Areas" and may make regulations in relation to the conservation and management of the fisheries in such areas. Restrictions apply to the granting of licences affecting such areas. There is a requirement that relevant coastal communities be consulted before any such licence is granted.

Legislative reform options

The provisions noted above are not as comprehensive as comparable provisions in other jurisdictions (namely Samoa, and those proposed for Niue). It has not been ascertained whether these provisions have been usefully applied in Tonga since the enactment of the Fisheries Management Act in 2002. For the time being at least these provisions may be considered to be adequate. The implementation of arrangements involving coastal communities shall indicate whether further legislative provision is required.

4.3 Protection of whales and other wildlife

Relevance to IWP

The protection of wildlife is a key element of a country's environment protection regime. Tonga shares the privilege of visits by migratory whale species with other countries in the region. It is important that laws guarantee the safety of whales and provide an environment that is conducive to their periodic migration through Tonga's waters.

Recommendations made in the 1992 Review

Recommendation 10 "It is recommended that the protection of whales under the repealed Whaling Industry Act be incorporated in the proposed Fisheries Regulations. It is further recommended that consideration be given to a stand-alone legislation to protect marine animals such as a marine Mammals Protection Act".

Recommendation 11 "It is recommended that legislative mechanisms be considered to regulate whale watching".

Recommendation 12 "It is recommended that specific protection be considered for turtles in the Fisheries Regulations".

Recommendation 29 "It is recommended that the list of protected birds be updated".

Recommendation 30 "It is recommended that consideration be given for the Kingdom of Tonga to become a party to the CITES Convention³".

Recommendation 32 "It is recommended that the title and substance of the Birds and Fish Preservation Act be amended to include animals".

Current state of Tonga's laws

As noted in the 1992 Review, Tongan law appears to include no current provision that affords protection to whales and marine mammals. The Birds [and Fish] Preservation Act no longer deals with issues relating to the protection and conservation of fish. It covers only a limited range of birds and the remedial action recommended for its provisions in the 1992 Review have not been undertaken in any respect.

Legislative reform options

The Birds [and Fish] Preservation Act should be reviewed and possibly replaced with regulations made under the Environment Management Act when this law is enacted. Alternatively it could be made a new and comprehensive law dealing with the protection of all wildlife and might incorporate provisions relevant to the control of trade in endangered species under CITES. The role of police constables and fisheries officers as the enforcement officers for the current law might be transferred to environment officers.

Guidance might be taken from other jurisdictions as to the most appropriate regulatory regime to be applied to the protection of whales in Tongan waters. Regard may be given to the laws of the Australian states of Victoria and Queensland. Consultations with commercial and community representatives in Niue should be undertaken.

4.4 Marine pollution

Relevance to IWP

Applying criminal sanctions to persons and vessels responsible for causing pollution from oil spills and discharge is a critical feature of a nation's environment protection regime. Many international conventions that address shipping and environmental protection require adequate

³ The Convention on International Trade in Endangered Species of Wild Flora and Fauna.

legislation in this regard. The capacity of government agencies to respond to pollution emergencies arising from oil spills is also an important obligation.

Proposed amendments to the Protocol to the SPREP Convention dealing with responses to marine pollution incidents would necessitate the inclusion of a number of matters in relevant domestic laws in Tonga. The SPREP Protocol states the need for cooperation in combating pollution in cases of emergency and requires Parties to take all necessary measures to prevent, reduce and control marine pollution, or the threat of pollution.

Recommendations made in the 1992 Review

Recommendation 23 “It is recommended that the *Marine Pollution Bill* be given urgent consideration with a view to implementation”.

Current state of Tonga’s laws

There are a range of legislative provisions dealing with marine pollution:

- Offences are prescribed under the Ports Authority Act 1998 and regulation-making power is provided for. These powers may only be exercised in relation to port areas under the control of the Ports Authority.
- More extensive, but similar, provision is made under the Ports Management Act 2001. These powers may only be exercised in relation to port areas under the control of the Ministry.
- Section 7 of the Continental Shelf Act deals with oil discharges in designated areas, other than discharges from ships.

The Model Marine Pollution Bill prepared in 2000 for Pacific Island countries was adapted for Tonga and enacted as the Marine Pollution Act 2004.

Legislative reform options

The recent enactment of the Marine Pollution Act is a very significant step, and a number of international and regional conventions are now given the force of law in Tonga. Provision is made in relation to regulating the dumping and incineration of wastes at sea. Recent changes proposed to the SPREP Pollution and Dumping Protocols should be considered, and a review of the Marine Pollution Act 2004 may need to be undertaken in due course, with a view to incorporating the changes made to the SPREP Protocols.

4.5 Transboundary movements of hazardous wastes

Relevance to IWP

The *Basel Convention* regulates the movement of hazardous wastes and other wastes on a global basis. The annexes to the Convention specify the criteria for assessing hazardous wastes. The Parties are obliged to prohibit the export of hazardous wastes or other wastes if the State of import does not consent to the specific import, or has prohibited the import of such wastes. The Convention prescribes measures to apply to the proposed import or export of wastes. Parties are required to implement their own national legislation regulating hazardous wastes and to inform the Basel Secretariat of such information. A competent authority and a focal point must be designated.

Under the *Waigani Convention* each Party must ban the importation of all hazardous wastes and radioactive wastes from outside the Convention area. They must also prohibit the dumping of hazardous wastes and radioactive wastes at sea. The Parties are to cooperate to ensure that no illegal import of hazardous wastes and radioactive wastes from a non-Party enters areas under the jurisdiction of a Party.

The scope of the *Waigani Convention* includes radioactive wastes and domestically prohibited goods. It prohibits the import of hazardous wastes into its Convention Area.

Current state of Tonga's laws

While there are a range of laws in Tonga dealing with transboundary movement issues, none of these relate directly to the movement of hazardous wastes through Tonga's jurisdiction. They are aimed at matters relating to customs control, quarantine, food standards, drug control and aquaculture management.

There is a general provision in the Public Health Act 1992 (§98) which prohibits the import of toxic or hazardous wastes into Tonga. A fine not exceeding \$10,000 applies. There is also a power under §35 and §36 of the Customs and Excise Act to prohibit or restrict prescribed imports and exports.

Legislative reform options

While some use may be made of the current provisions of the Public Health Act and the Customs and Excise Act to control transboundary movements of hazardous wastes, there is a need to consider comprehensive legislation to give effect to the relevant international and regional obligations. The absence of applicable territorial seas legislation in Tonga requires that consideration be given to drafting specific legislation dealing with these issues.

4.6 Dumping of wastes at sea

Relevance to IWP

Proposed amendments to the Protocol to the SPREP Convention dealing with the dumping of wastes at sea may necessitate the inclusion of the following matters in relevant domestic laws in Tonga:

- adoption of the Precautionary Principle;
- a reverse listing approach (having a "White List" of relatively inert materials that may be considered for dumping, rather than a "Black List" of prohibited materials);
- standardisation of annexes and their contents;
- adoption of the "Polluter Pays Principle";
- standardisation of definitions; and
- provision for prohibition of incineration of wastes at sea.

Current state of Tonga's laws

As noted above there are provisions in the Ports Authority Act and the Ports Management Act that deal with the dumping of wastes within port areas. There is no current law dealing with this issue in Tonga's maritime waters. The Marine Pollution Act 2004 makes very useful provisions in this regard. There is now a current law dealing with the issue of incinerating wastes at sea.

Legislative reform options

Appropriate provision is made in relation to regulating the dumping and incineration of wastes at sea in the Marine Pollution Act 2004. These provisions might be reviewed in the light of the proposed changes to the relevant SPREP Protocol in due course.

4.7 Climate change/protection of the ozone layer

Relevance to IWP

There is a clear obligation under the Montreal Protocol to enact legislation to impose a regulatory regime in relation to ozone depleting substances. The following are matters about which legislative provision is required to give effect to Tonga's obligations in relation to ozone depleting substances:

- Prohibitions on importation
- Prohibitions on the importation of certain goods
- Exemptions in relation to imports
- Prohibitions on exportation
- Prohibitions on manufacture
- Prohibitions on sales
- Exemptions in relation to sales
- General principles to be applied in relation to permits
- Quarantine and pre-shipment permits
- Medical permits
- Base year permits
- General provisions in relation to permits
- Goods for which no permit may apply
- Environment officers
- Powers of environment officers
- Seizure of substances and goods
- Forfeiture of seized substances and goods
- Call-up of substances and goods
- Offences and penalties

Current state of Tonga's laws

There are no laws applying specifically in the context of climate change issues. These matters are clearly stated to be an area of focus under the Environment Management Bill and a range of provisions of that law will confirm and clarify the role of the Department of Environment in relation to the implementation of these obligations. Regulations will be able to be made under this Law when it is enacted to deal with these issues with a degree of flexibility and promptness.

A law dealing with the implementation of the Montreal Protocol and the prohibition or restriction of ozone depleting substances has been drafted for Tonga (both the an Act and associated regulations).

Legislative reform options

There is no immediate need to legislate in this context. These matters do highlight the benefits of achieving early enactment of the Environment Management Bill.

4.8 Environmental Impact Assessments

Relevance to IWP

The effective assessment of environmental impacts from development activities is a key feature of an environmental protection regime.

Recommendations made in the 1992 Review

Recommendation 2 “As the *Land Use, Natural Resources and Environmental Planning Bill* contains provisions for EIA’s, it is recommended that, in the interim, EIA Guidelines be developed to secure the integration of environmental measures in the decision making process for projects...”

Recommendation 8 “It is recommended that EIA provisions be included within the *Forests Act*.”

Recommendation 14 “It is recommended that the *Minerals Act* be reviewed for the purpose of enacting amendments to incorporate environmental controls, such as requirements for EIA’s”.

Current state of Tonga’s laws

Tonga’s Environment Impact Assessment Act was passed in 2003 but it is not clear that it has been brought into effect by Royal Assent. It is a workable law and should meet most expectations in the context of assessing the impact of development projects on the environment.

Legislative reform options

Administrative processes need to be devised and made ready for implementation to ensure an effective application of the Environment Assessment Act when it is brought into effect.

4.9 Protection of migratory species

Relevance to IWP

The protection of migratory fish species is an area that is becoming increasingly important in the region with the recent entry into force of the Convention for the Conservation and Management of Highly Migratory Species in the Central and Western Pacific. Tonga will need to have the capacity to meet its obligations, conserve its resources and regulate vessels operating under its flag.

Current state of Tonga’s laws

No Tongan laws have been identified that may give specific effect to matters associated with the protection of migratory fish species, or the regulation of Tongan nationals and vessels that fish beyond Tonga’s jurisdictional limits.

Legislative reform options

This is a specialist field. It appears likely that consideration needs to be given to the implementation of Tonga’s international obligations in this context through the enactment of appropriate legislation.

4.10 Extraction of sand, corals etc

Relevance to IWP

The extraction of sand and corals from coastal areas can have a clear adverse effect on the environment. Controls can be effectively exercised by an agency empowered to grant permits for such activities and to require the restoration of affected areas.

Current state of Tonga’s laws

A number of laws in Tonga control the extraction and sand and other coastal resources. These include the following:

- Section 22 of the Land Act permits regulations to be made in this context.
- Permission is needed under §114 of the Land Act to cut and remove stone from the foreshore. Fines are limited to TOP 10.
- The Land (Removal of Sand) Regulations restrict the taking of sand. Fines of up to TOP 100 may be imposed.
- Restrictions are placed on petroleum prospectors under the Petroleum Mining Regulations.
- The permission of the harbour master must be obtained for the taking of stones,

coral and sand from within harbours (§24 of the Harbours Act).

- The Environment Management Bill refers specifically to issues relating to wetlands and aspects of international waters and permits regulations to be made.

Legislative reform options

The level of fines is very low under many laws in Tonga and this must mitigate against their effectiveness, including in this case. Apart from a review of penalties, which applies generally to Tonga's laws, there is no apparent need to make further legislative provisions regarding extraction of sand, corals, etc.

4.11 Regulation of aquaculture, fish processing etc.

Relevance to IWP

In most jurisdictions the commercial exploitation of fisheries resources is the subject of detailed statutory regulation. This is aimed at conserving the resource and maximizing returns from its exploitation.

Current state of Tonga's laws

Tonga has a modern and comprehensive Aquaculture Management Act, which was passed in 2003 and came into effect on the 18 November 2003.

Fish processing establishments are regulated under §33 of the Fisheries Management Act 2002. Section 35 of that Act places controls over the export of fish. General regulation-making power is provided for in §101 and significant fines can be imposed for breaches of the regulations.

Legislative reform options

There does not appear to be a need to make additional legislative provisions with respect to aquaculture and fish processing.

5 A brief review of fines

The inventory of Tonga's environment-related and natural resources laws compiled in conjunction with this analysis indicates that many of the monetary penalties imposed under some laws are out-dated and inadequate. This has some important implications, including:

- Insufficient fines remove any deterrent element from the law. In many cases breaches may be expected from commercial enterprises, which may see some comparative economic advantage in ignoring their legal obligations.
- Comparatively smaller fines in this jurisdiction may attract undesirable persons and enterprises to Tonga in the expectation that their breaches of the law will not result in the level of fine that would be applied in other countries.
- Law enforcement officers are discouraged from resorting to prosecution, as the level of penalty does not justify the time and expense devoted to enforcement. Laws then fall into disuse.
- The sentencing courts are deprived of an opportunity to apply a range of fines commensurate with the actual unlawful action leading to a prosecution. First offenders may be penalised in the same way as repeat offenders, as there is little latitude offered to the courts due to the small fines that are prescribed.
- The cost of recovering the fines may exceed the amount that has been ordered to be paid.

Table 1 indicates a range of fines that apply under Tonga's current laws (note that this is not a complete list of fines).

Table 1. List of fines that apply under current Tongan law

Law	Section	Offence	Fines (TOP)
Garbage Act	§15	Any breach of the Act	1–10
Fonos Act	§7	Failing to attend a fono	1–3
Town Regulations Act	§8	Failing to clean town premises	5
	§9	Depositing rubbish	50
Public Health Act	§93	Any offence relating to garbage	50 & 5/day
Birds and Fish Preservation Act	§5	Offences related to protected birds	50
District and Town Officers Act	§8	Any breach of the Act	100
Land (Removal of Sand) Regs	Reg 4	Any breach of the regulations	100
Plant Quarantine Act	§44	Any breach of the Act	2,000
Continental Shelf Act	§6	Any breach of the Act or conditions	2,000
Public Health Act	§94	Breach of waste-related regulations	5,000
Environment Management Bill	§20	Breach of Regulations	20,000
Ports Authority Act	§42	Throwing harmful substances into the waters of a port	25,000
Aquaculture Management Act	§33	Any breach of the Act	100,000
Fisheries Management Act	§101	Breaches of Regulations	250,000

5.1 The concept of the penalty unit

In the 1980's some jurisdictions in Australia enacted laws replacing references to fines in laws expressed in dollar amounts with penalties expressed as penalty units. Each penalty unit was then prescribed by law to be equal to \$100 Australian dollars. In this way fines can be generally reviewed and easily increased by the changing the amount of the penalty unit.

A similar law was passed in Samoa in the late 1990's and has found ready acceptance. At the time the law was passed each Ministry and Department was given the opportunity to increase the level of fines for any offences falling under their jurisdiction. In this way all fines were made relevant as of the enactment of that law; they can be kept up-to-date by raising the amount of the penalty unit, when this is felt to be warranted in the future.

A similar approach might be considered in Tonga.

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