MACBLUE
Management and Conservation of Blue Carbon Ecosystems

TOWARDS RESILIENT BLUE CARBON ECOSYSTEMS

A Legislative Review for the Republic of Fiji

SPREP
Secretariat of the Pacific Regional Environment Programme

Pacific Community
Communauté du Pacifique

giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Supported by:

Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection

based on a decision of the German Bundestag

IKI INTERNATIONAL CLIMATE INITIATIVE

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July 2025

Supported by:

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This report was published through the Management and Conservation of Blue Carbon Ecosystems (MACBLUE) project jointly implemented by the Secretariat of the Pacific Regional Environment Programme (SPREP), the Pacific Community (SPC) and the Deutsche Gesellschaft für internationale Zusammenarbeit GmbH (GIZ) in close cooperation with their four partner governments Fiji, Papua New Guinea, Vanuatu and Solomon Islands.

The MACBLUE project is funded by the German Federal Ministry for Environment, Nature Conservation, Nuclear Safety and Consumer Protection (BMUV) through its International Climate Initiative (IKI).

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FOREWORD

It gives me great pleasure as the Permanent Secretary for Environment and Climate Change to present the Legal Review of the legislation and policies that address the use and management of mangrove and seagrass ecosystems in Fiji. I would like to acknowledge the GIZ project MACBLUE – Management and Conservation of Blue Carbon Ecosystems, for providing the technical and financial support to the Government of Fiji to assess how the most common threats to the mangrove and seagrass ecosystems can be addressed legally and institutionally so that these ecosystems can be more resilient in the face of climate change and other anthropogenic impacts.

Fiji has a plural governance system, and the Legal Review provides a detailed explanation of the legal and governance systems in Fiji in the context of the customary governance framework. It explains how State legislation can be implemented in line with customary laws and qoliqoli user rights to strengthen the protection of mangroves and seagrass meadows. The Environmental Rule of Law Approach is used which seeks to address whether current laws are adequate, whether they are being enforced and if they promote participatory decision-making.

This is a very timely document given the private sector-led developments in tourism and light industries which has resulted in the accelerated loss of mangrove forests and seagrass meadows. The Government has the difficult task of balancing economic development with the conservation of these ecosystems which provide a host of services to associated species and to coastal communities. It is anticipated that this document will prove to be an important decision-making tool by all Government Ministries mandated with the management of Fiji's coastal ecosystems. It is also my hope that this review will encourage a whole-of Government approach in the management of these important ecosystems.

As Fiji continues to lead in climate action and sustainable ocean management, this review is an important step forward. It will help guide future decisions and make sure that our legal systems support the protection of mangroves and seagrass, which are vital not only for the environment but also for the wellbeing of our people.

I would like to thank my dedicated Ministry staff, development partners and stakeholders for their continued support in ensuring that Fiji's natural capital remains healthy for the benefit of future generations. The Legal Review was conducted by local legal practitioners, James Sloan and Emily Samuela of Siwatibau and Sloan, whose expertise of Fiji's legal systems and traditional governance helped ensure that this review is practical, relevant, and rooted in our local context. Their work has helped identify areas where our laws can be improved and better aligned with traditional practices, particularly around the use and management of qoliqoli areas.

As Fiji continues to lead in climate action and sustainable ocean management, this review is an important step forward. It will help guide future decisions and make sure that our legal systems support the protection of mangroves and seagrass, which are vital not only for the environment but also for the wellbeing of our people. I encourage all government ministries, community leaders, and partners to use this review as a tool for planning and decision-making.

S Michael

DR. SIVENDRA MICHAEL
Permanent Secretary for Environment and Climate Change
Republic of Fiji

INTRODUCTION

Seagrass and mangrove ecosystems are vital components of Fiji's coastal environments, providing essential ecosystem services such as carbon sequestration, coastal protection, and habitat for diverse marine species. These ecosystems are pivotal for the socio-economic well-being of Fiji's coastal communities, playing a role in supporting fisheries, protecting shorelines, enhancing water quality, and contributing to the livelihoods of coastal communities. Over 90 percent of Fiji's population lives within 10 km of the coast.

Seagrass meadows and mangrove ecosystems, also called blue carbon ecosystems, are increasingly recognized globally for their exceptional capacity to capture and store carbon, making them vital assets in the global effort to reduce greenhouse gas emissions. Seagrass beds in Fiji are distributed across the country, playing a crucial role in stabilizing sediment and serving as breeding grounds for many marine species. Mangrove forests are equally important, with extensive stands found particularly in the Rewa, Ba, and Nadi River deltas. Despite their importance, these ecosystems are under pressure from (among others) development activities, run-off from land-use (agriculture, road construction), urbanization, and deforestation, which have led to significant losses over the years.

Fiji's Coalition Government recognizes the important role blue carbon ecosystems play in hosting the country's unique biodiversity, supporting the health of its fisheries and being an intrinsic part of the cultural heritage of Fijians and other Pacific Islanders. Being signatories to the Ramsar Convention on Wetlands of International Importance, of the United Nations Convention on Biodiversity (UNCBD) Global Biodiversity Framework, and the United Nations Framework Convention on Climate Change (UNFCCC) Paris Agreement, the Government under the Ministry of Environment and Climate Change and its Department of Environment is committed to the conservation and preservation of its biodiversity. The launch of Fiji's first Wetlands Directory underscores this commitment and shows the special value Fiji's blue carbon ecosystems hold.

The regional project "Management and Conservation of Blue Carbon Ecosystems" (MACBLUE), jointly implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, the Secretariat of the Pacific Regional Environment Programme (SPREP), and the Pacific Community (SPC), is supporting Fiji's Department of Environment in these efforts. By mapping both ecosystems at the national level, collecting and analysing data on *carbon stocks, ecosystem services* and threats as well as assisting in assessing the current policy framework, the project assists Fiji's Department of Environment along its priorities and strategies.

This legislative review builds the basis for enhancing Fiji's legal and institutional frameworks to better conserve and protect its blue carbon ecosystems and to support the communities who care for and depend on them. It reviews the current system of law and governance and assesses whether the laws in place are adequate to address the most common threats to seagrass and mangrove ecosystems and associated species. It further looks at the decision making processes and the deterrence and compliance functions of Fiji's environmental laws.

The Legal Review provides practical recommendations in light of the finance, human capital, and technology deficits that constrain the Government. The Review proposes avenues that promote an Environmental Rule of Law approach and align with Fiji's law and governance system to improve the legal and institutional response to the threats to seagrass and mangrove ecosystems and increase their resilience. Efforts to update and strengthen the legal and regulatory framework are essential to enhance the protection and sustainable management of Fiji's seagrass and mangrove ecosystems, ensuring that these vital habitats continue to provide crucial ecological, social, and economic benefits.

LIST OF ABBREVIATIONS/ACRONYMS

CBD	United Nations Convention on Biological Diversity
CCA	Climate Change Act
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CSPR	Carbon Sequestration Property Rights
DPP	Director of Public Prosecutions
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EMA	Environment Management Act
EMMP	Environmental Management and Monitoring Plan
FMOU	Fiji Mitigation Outcome Units
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
LMMA	Locally Managed Marine Area
MACBIO	Marine and Coastal Biodiversity Management in Pacific Island Countries
MACBLUE	Management and Conservation of Blue Carbon Ecosystems
MCS	Monitoring, Control and Surveillance
MECC	Ministry of Environment and Climate Change
MPA	Marine Protected Area
NEC	National Environment Council
NOP	National Ocean Policy
PAC	Protected Areas Committee
PEA	Preliminary Environmental Assessment
SDG	Sustainable Development Goal(s)
SPC	The Pacific Community
SPREP	Secretariat of the Pacific Regional Environment Programme
UNCLOS	United Nations Convention on the Law of the Sea
UNFCCC	United Nations Framework Convention on Climate Change

GLOSSARY

Blue Carbon	Carbon stored in coastal and marine ecosystems, such as mangroves, seagrasses, and salt marshes, which help mitigate climate change by absorbing and storing CO_2.
Bundle of Rights	Theory that rights to land and resources may embrace a great many rights, such as the right of access, the right of withdrawal, the right of management, the right of exclusion and the right of alienation (Schlager and Ostrom 1992).
Carbon stocks	Total amount of carbon stored in a given system, such as forests, soils, oceans, or the atmosphere.
Common law	Legal system based on judicial precedents rather than statutory laws. It is developed through court decisions, where judges interpret and apply legal principles to specific cases. Over time, these rulings establish consistent legal doctrines that guide future judgments.
Compliance	Act of following rules, regulations, laws, and standards set by governments, industry bodies, or organizations. It ensures that businesses, individuals, and institutions operate within legal and ethical frameworks.
Customary Marine Tenure	Traditional system where communities hold and manage marine areas, regulating access, use, and conservation based on customary rights and indigenous practices.
Deterrence	Practice of discouraging individuals or groups from engaging in certain behaviors—especially illegal or harmful actions—by imposing penalties or creating a fear of consequences.
Doctrine of precedent	Rule, that a legal principle that has been established by a superior court should be followed in other similar cases by that court and other courts.

Ecosystem Services	Benefits that humans derive from natural ecosystems. These services support life, enhance well-being, and contribute to economic and social stability.
Environmental Rule of Law	The principle that integrates environmental sustainability into legal frameworks, ensuring accountability, enforcement, public participation, and access to justice in environmental governance (see chapter 1.3)
iQoliqoli	Traditional fishing grounds
iTaukei	Indigenous person of Fiji
Mataqali	An iTaukei clan or landowning unit. A mataqali is made up of Tokatoka, which are groups of closely related families.
Natural justice	Fundamental legal principles that ensure fairness, equity, and due process in decision-making. It is based on the idea that legal and administrative procedures should be just, impartial, and transparent.
Plural legal system	A system where multiple forms of law coexist, such as state law, international law, customary law, and religious law. Plural legal systems are common in former colonies, where the law of the former colonial authority may exist alongside traditional legal systems.
Precedence	Principle in common law systems where past judicial decisions influence future rulings. This doctrine ensures consistency, predictability, and fairness in legal judgments.
Statutory law	Derives its authority from legislation passed by the legislative body and is written in statutes, codes, regulations, or ordinances.
Yavusa	A district or group of villages – several mataqali make up a yavusa

EXECUTIVE SUMMARY

This legislative review for Fiji is part of a review conducted in four Pacific Island Countries – Fiji, Solomon Islands, Papua New Guinea and Vanuatu. The four reviews evaluate and analyse the laws, regulations, and policies governing mangrove and seagrass ecosystems in the participating countries. The aim is to build the basis for enhancing each country's legal and institutional frameworks to better conserve and protect these vital ecosystems and to support the communities that care for and depend on them.

Mangrove and seagrass ecosystems exist in coastal and nearshore areas. Thus, a core issue for all four countries is to have clarity and agreement around tenure (ownership) of these areas. Each of the four countries is, to some extent, grappling with customary ownership versus State ownership of coastal and nearshore areas, a legacy of colonial-era laws. Customary practices traditionally treat the sea as an extension of land, while colonial systems vested foreshore and seabed ownership in the State.

The four countries have plural legal systems – written laws and customary laws – and have embraced the English common law judicial system and its *doctrine of precedent*. An environmental Rule of Law lens is adopted to assess the adequacy of the laws and consider how the decision making and compliance processes may be improved towards ensuring that customary and other rights holders are adequately engaged and being supported in their efforts to manage these areas and receive equitable benefits from these coastal ecosystems.

For Fiji, the question of how to share benefits and responsibilities is paramount for the success of any project, whether for protection or for development of a coastal area. The question of ownership and rights of use of Fiji's foreshore and nearshore areas is complex and involves customary and other stakeholders and is beyond the scope of this Review. In Fiji, while the ownership of nearshore and foreshore

Doctrine of precedent

Rule, that a legal principle that has been established by a superior court should be followed in other similar cases by that court and other courts.

areas is vested in the State, customary laws extend land ownership to the marine area surrounding it. This is recognized in law through the establishment of customary fishing grounds known as the iqoliqoli. There is a mechanism for the leasing of foreshore land that includes a well-established process of consultation with customary fishing rights holders and the payment of compensation.

In light of tenure issues surrounding nearshore and foreshore areas, a bundle of rights approach is proposed, where there are shared responsibilities and pooling of resources towards effective regulation and protection of coastal ecosystems. Adequate and integrated consultation processes are required that ensure participation of the customary owners and rights holders/users as well as with the relevant government agencies. Finally, the implementation of laws and decision making must support and align with customary owners and other rights holders/users, who are most dependent on these coastal areas for their livelihoods. The recommendations provide possible approaches to addressing these needs within the context of the existing challenges of limited finances, capacity and technology.

Chapter 1 outlines the purpose, scope and methodology of the Review and provides detail on the environmental Rule of Law approach taken for this Review (see chapter 1.3).

The environmental Rule of Law recognizes the fundamental importance of healthy ecosystems to human health and provides a framework for assessing the gaps between written law and what is done in practice. It can therefore assist in responding to the question of how the laws and institutions may enable decision making that is aligned with customary laws, ownership and rights. Fiji's common law system provides opportunities for adopting an environmental Rule of Law approach. The common law system relies on the independent judiciary to interpret and apply the laws equally and promotes good decision making processes that are sufficiently adaptable to accommodate customary laws and rights, property rights, and interests.

Chapter 2 discusses mangrove and seagrass ecosystems in the Fiji context and considers the challenges for regulation of nearshore/ foreshore areas.

Fiji hosts approximately 42,000 hectares of mangrove forests while seagrasses are estimated to cover 6000 hectares of the country's shallow marine habitats. Termed *Blue Carbon* ecosystems due to their proximity to the ocean and their unparalleled ability to sequester large amounts of carbon, mangrove and seagrass ecosystems play integral roles in supporting people's livelihoods and providing critical ecosystem services. They stabilize sediment, protect shorelines, and provide essential breeding grounds for numerous marine species, supporting fisheries and the livelihoods of Fijis population. Fiji has made international commitments to 100 percent protection of its mangrove

Bundle of Rights

Theory that rights to land and resources may embrace a great many rights, such as the right of access, the right of withdrawal, the right of management, the right of exclusion and the right of alienation (Schlager and Ostrom 1992).

Blue Carbon

Carbon stored in coastal and marine ecosystems, such as mangroves, seagrasses, and salt marshes, which help mitigate climate change by absorbing and storing CO_2.

ecosystems and expanding marine protected areas to cover 30 percent of its Exclusive Economic Zone by 2030 and this is articulated in Fiji's National Development Plan.

Mangroves and seagrass ecosystems are subject to competing demands from multiple sectors and are also at risk from many of these uses. Some of these competing demands include subsistence use e.g. harvesting crabs and fish for food, and wood for timber and firewood; tourism and tourism developments; aquaculture and agriculture; upstream businesses and commercial ventures, and human settlements (which contribute to pollution of coastal areas through improper waste management). Different government ministries and agencies are responsible for regulation of the different sectoral activities in coastal areas. This results in regulatory overlaps and conflicts. This Legal Review identifies the different responsible government agencies and approving authorities and explores how they can be supported to use the legal and governance framework to implement coastal ecosystem management and regulation in alignment with each other and with customary and other rights holders.

Chapter 3 provides an explanation of Fiji's system of law and governance, including traditional rights and ownership that are of paramount importance in the good regulation and governance of coastal ecosystems.

Fiji has developed an intricate governance system that incorporates traditional rights within a centralized governance system and includes institutions like the iTaukei Affairs Board and the iTaukei Lands Trust Board that act as a bridge between communities and their rights and the State. While this favors more State control and consistency in decision making, there are concerns that communities are not benefitting equitably from their resources. This is likely because key government agencies are not adequately resourced (financial and personnel) to undertake their regulatory obligations.

Chapter 4 provides a summary of the laws and policies that are relevant to decision making in the regulation of coastal ecosystems management in Fiji.

The key regulatory approaches for coastal ecosystem management in Fiji are:

1. Sustainable development of coastal areas.
2. Establishment of protection areas (e.g. designating certain areas of biological significance as protected in accordance with the law and meeting international commitments).
3. Environmental conservation (including meeting international targets for biodiversity conservation).
4. Pollution prevention and damage control (regulating industries or sectors of the economy that may affect coastal areas).
5. Linking coastal ecosystem protection and management with sustainable financing opportunities – carbon sequestration and blue carbon credits opportunities.

Fiji's Environment Management Act 2005 (EMA) administered by the Department of Environment provides overarching environmental management regulations, which include control of development via decision making tools such as Environmental Impact Assessments, and regulation of pollution. Fiji does not have specific protected areas legislation in place, although there are options for subsidiary legislation (Regulations) for marine reserves under fisheries legislation and for forest reserves under forestry legislation. Any legislation for protected areas must align with traditional rights holders. The current draft Mangrove Regulations prepared by the Department of Environment are considered in this context.

There is the need for more integrated guidance from the Department of Environment to all government approving agencies/decision makers for activities that may adversely affect coastal ecosystems and the people who rely on them.

There is potential with Fiji's Climate Change Act for the State and traditional rights holders to benefit via joint agreements for carbon sequestration projects. Fiji's tourism sector also has a role to play in adopting and promoting more sustainable tourism that protects the coastal ecosystems that it relies on. However, its track history to date suggests it has missed opportunities.

Chapter 5 provides an analysis of Fiji's laws and governance framework against the political ideal of the environmental Rule of Law.

Fiji's law and policy framework is comprehensive and aligns with traditional ownership of coastal areas, but implementation via inclusive and consultative decision making processes that accord with common law standards is essential. So is the need to provide more information and raise awareness amongst traditional owners and other rights holders relating to the importance of increasing protection of coastal ecosystems, including mangrove and seagrass, and aligning that need with government aims and international commitments. At the very least, government decision making should not undermine customary efforts to protect and preserve their coastal ecosystems.

There is a need to address the regulatory overlaps across different regulating government agencies and develop more integrated approaches to enable inclusive decision making for coastal ecosystems. Government agencies will need clear guidance on such approaches.

Fiji's Constitution and legal and governance structure recognizes customary rights of use in coastal and foreshore areas. There is regulation of coastal land use in terms of how and to whom it can be leased and provision for a compensation mechanism for customary rights holders. However, there are gaps and it is acknowledged that achieving clarity and agreement around tenure (ownership) of foreshore and nearshore areas is a core issue. Clarity around tenure may also avoid conflict, promote efficient solutions and enable both State and community resources to be pooled to assist with protection, resource management and climate change adaptation.

Chapter 6 of the Review makes several recommendations:

- Strengthen legal protections and expand conservation measures by enhancing protected area designations, improved coastal development regulations, and pollution and environmental legislation enhancements.
- Institutional strengthening and better inter-ministerial coordination by streamlining mandates and strengthening collaboration mechanisms.
- Enhanced community and customary owner participation by improving customary involvement and public engagement and education.
- Building enforcement capacity and improving deterrence.
- Monitoring and adaptive management for long-term resilience by establishing a framework for ongoing monitoring and a mechanism for adaptive policy and legal adjustments based on monitoring results.
- Equitable sharing of benefits of protection, particularly in relation to carbon sequestration projects.

1. SCOPE AND PURPOSE OF THE LEGAL REVIEW

1.1. Purpose

This Legal Review for Fiji is part of a four-country study undertaken in Fiji, Papua New Guinea, Solomon Islands and Vanuatu. It evaluates and analyses the laws, regulations, and policies governing mangroves and seagrasses in Fiji using an environmental Rule of Law approach.

The Review was initiated to improve understanding on how to legally and institutionally address the most common threats to seagrass and mangrove ecosystems and associated species in Fiji and increase their resilience. It builds the basis for enhancing Fiji's legal and institutional frameworks to better conserve and protect its blue carbon ecosystems and to support the communities that care for and depend on them.

Detailed consideration is given to traditional/customary governance frameworks to explore how the State may implement its laws and make lawful decisions to align with customary law, customary owners, and rights holders to promote more protection of vital coastal ecosystems. The intent of the Legal Review is to promote the alignment of State law with customary law and governance and ensure that implementation of the law promotes and protects coastal ecosystems by supporting customary governance initiatives. This acknowledges that it is the customary owners and rights holders who lead local management efforts in coastal ecosystems, and it is imperative that national laws and decision making support and do not undermine those efforts.

Environmental rule of law

A principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to environmental laws that are publicly promulgated, equally enforced, and independently adjudicated. These laws are consistent with international human rights norms and standards and aim to protect the environment, promote sustainable development, and ensure justice, accountability, and transparency in addressing environmental challenges.

The Objectives of this Legal Review are to:

- promote understanding of the plural legal and governance systems and relevant laws and policy governing seagrass and mangrove ecosystems in Fiji;
- promote recognition of the paramount importance of working and aligning with customary owners who rely on healthy coastal ecosystems when promoting greater protection of coastal ecosystems in line with international legal commitments;
- make recommendations based on the environmental Rule of Law to promote closer alignment between government agencies and customary owners and rights holders in the implementation of laws and decisions by government agencies; and
- propose options within the current legal framework and beyond to enhance protection and sustainable management of seagrass and mangrove ecosystems.

1.2. Scope

The Legal Review considers practical recommendations in light of the existing deficits that constrain the government in terms of finances, human capital, and technology challenges.

Achieving clarity and understanding of the duties and responsibilities of both the State and customary owners and rights holders is essential for alignment of protection efforts and this requires clarity and agreement around tenure (ownership) of foreshore and nearshore areas (where mangrove and seagrass ecosystems are). Clarity of understanding of tenure may also avoid conflict, promote efficient solutions and enable both State and community resources to be pooled to assist with protection, resource management and climate change adaptation.

The Review aims to provide a good understanding of Fiji's plural legal and governance system to assist anyone working in this area, and particularly donors. It provides avenues that promote an Environmental Rule of Law approach and align with Fiji's law and governance system to improve the legal and institutional response to the threats to seagrass and mangrove ecosystems and increase their resilience. **The short point is that even for a protection or conservation initiative, the question of how to share benefits and responsibilities becomes paramount. To ensure any project is successful there must be adequate consultation with the customary landowners, resource users and rights holders as well as the relevant government agencies.**

It reviews the current system of law and governance and assesses whether the laws are adequate to address the most common threats to seagrass and mangrove ecosystems and associated species. It further reviews and analyses decision making processes as well as the deterrence and compliance functions of Fiji's environmental laws, putting an emphasis on customary ownership and rights (this includes an annex of case authorities).

1.3. Methodology and Report Overview

The review methodology involved (i) a literature review; (ii) an analysis of the legal and governance system based on the environmental Rule of Law; and (iii) consultative workshops. The literature review involved compilation of relevant laws and policies as well as recent documents and project reports analyzing Fiji's governance and legislation pertinent to coastal ecosystems. Two intergovernmental consultative workshops were conducted in October 2023 and April 2024 to share the purpose of the legal review, present and discuss initial findings and receive input and feedback on governance and legislation from government agencies, NGOs

and academia groups involved in coastal resource management and conservation protection. This report is structured along a three-part approach. Firstly, the legal review provides a detailed overview of Fiji's legal setup, including the plural legal system, governance structures and relevant laws, policies and international commitments that impact coastal ecosystems. Secondly, it assesses the adequacy of the legal and institutional framework to successfully protect coastal ecosystems following the environmental rule of law approach, specifically looking at provisions for conservation and sustainable management, enforcement capacity and inclusion of customary owners in decision making. Lastly, the legal review offers pathways for strengthening conservation and sustainable management under the current framework and beyond.

The review methodology is based on the following overarching considerations common to all the four participating countries:

1. An overriding need for **efficient solutions** – there is no point recommending laws or legal approaches that rely on capacity which does not exist.
2. Solutions that rely, to the maximum extent possible, on **engaging local stakeholders/customary owners and rights holders** in protecting mangroves and seagrass for outcomes that align with State and community interests.
3. The **State and customary owners and rights holders must share the same aims and objectives** to ensure:
    a. State decisions support and do not undermine local community protection efforts; and
    b. Local communities can access the resources of the State to enforce laws and promote consistent decision making.

The analysis of the legal and governance system applied the lens of the environmental Rule of Law to assess the effectiveness of current laws and their application and compliance. This is discussed in detail below.

Theory of change for the Legal Review – the Environmental Rule of Law and the plural legal system

The review applies an **environmental Rule of Law approach** to assess how the law and institutions of a country may assist in aligning State and customary and other rights holders' interests in use and management of coastal ecosystems.

The environmental Rule of Law is a relatively new concept that describes when "environmental laws are widely understood, respected, and enforced and the benefits of environmental protection are enjoyed by people and the planet. ***It offers a framework for addressing the gap between environmental laws on the books and in practice."*** (UNEP 2019).

The environmental Rule of Law is premised on the understanding that the Rule **of Law** is being applied by the laws and institutions in the country. The Rule of Law is fundamental to all common law systems and at its most basic, means that the law applies to every person, including the government – there is a system of laws that are understood and apply to everyone and are implemented and enforced by institutions. For the Rule of Law to be effective, there is the expectation of separation of powers, participation in decision making, and procedural and legal transparency. This means that a wider definition of the Rule of Law includes concepts of democracy, justice and human rights, which by extension, includes concepts such as the supremacy of law, equality before the law, accountability, and fairness.

RULE OF LAW

a. the role of Parliament to implement laws in line with international and regional obligations and the supreme laws of the Country;
b. the roles and responsibilities of the executive government to implement the laws passed by Parliament;
c. the role of the Judiciary to hold all those obliged to implement or follow the law to account (including government itself); and
d. the responsibilities of all persons (including companies) to follow the law.

The **environmental Rule of Law** recognizes the fundamental importance of healthy ecosystems to human health (and overall economic and social well-being). In other words, healthy ecosystems are central to human well-being. It can therefore assist in responding to the question of how the laws and institutions may enable decision making that is aligned with customary laws, ownership and rights. The constituent elements of the environmental Rule of Law include **adequate and implementable laws, access to justice and information, public participation, accountability, transparency, liability for environmental damage, fair and just enforcement, and human rights.**

Two distinguishing features of the environmental Rule of Law have been proposed:

Intergenerational equity – the concept that the current generation acts as trustees for future generations (beneficiaries) and therefore, has duties as trustees.

The precautionary principle – a tool for decision making in the face of scientific uncertainty.

The environmental Rule of Law provides an ideal to strive for and these core elements are being added to as the concept evolves. **It shows what needs to be done to uphold environmental laws and standards, but also how decisions should be made that take into account customary law and rights. This is essential in the context of the four countries participating in this review because those customary owners and rights holders are the people whom the laws and institutions should be supporting to implement greater protection measures for the vital coastal environments on which they rely and, to varying degrees, "own".**

Adopting an environmental Rule of Law approach also has the advantage that a large body of laws and principles within plural legal systems can be assessed against this ideal. **In short, is the country meeting the standards set by an environmental Rule of Law approach, and if not, what should they do about it?**

Figure 1. Core elements of the environmental Rule of Law (Source: UNEP 2019)

For the purposes of this Legal Review, the authors have distilled the various core components into the following two broad approaches to help assess the status of the national laws pertaining to regulation of mangrove and seagrass ecosystems and identify how these may be improved (Figure 2).

The First Approach – Assess whether the laws are adequate to meet the challenge.
The Legal Review explores the relevant laws, legal system and customary governance system and assesses whether the current laws are adequate. It further explores the alignment between the roles and responsibilities of government agencies and how implementation of the existing laws in the plural legal system context may assist customary owners and rights holders to protect their coastal ecosystems in their respective jurisdictions.

The Second Approach – How the laws and legal systems can be applied with the plural legal system context of the country to promote inclusive decision making and compliance.
The fundamental principle of the Rule of Law is that laws apply equally to all, including government agencies and decision makers. In all four participating Pacific island countries, the laws, and particularly development approvals that may impact coastal ecosystems and communities, are implemented by government agencies. The Legal Reviews consider how the national laws and institutions include participation of customary owners and rights holders in their efforts to protect and benefit from the vital coastal ecosystems and how the judiciary supervises and oversees government in these efforts.

The decisions that are particularly relevant to coastal ecosystems are decisions to:

1. Develop coastal areas or approve development in coastal areas;
2. Regulate industries or sectors of the economy that affect coastal areas; or
3. Designate certain areas as protected in accordance with the law.

To comply with the Rule of Law and common law systems, the government agency/decision maker must:

a. Ensure that they have the **power to make the decision in law** (Parliament provides that power in primary legislation). In other words, the decision is legal.
b. Follow any **statutory decision making process** – i.e. comply with any express consultation requirements contained in the law from which the decision maker derives its power.
c. Take into account all relevant considerations and this means **competing interests and rights in coastal ecosystems** (including customary ownership and rights and customary practices and interests), commercial interests, and the best available science.

The role of the Judiciary in each of the four countries is to supervise government agencies/decision makers to ensure that they act in accordance with the Rule of Law/common law. The Judiciary may nullify any decisions made by a government agency if:

1. The decision conflicts with laws designed to protect coastal ecosystems – in this situation the Court may declare the decision null and void.
2. A decision that fails to take into account existing legal rights (including customary ownership or ownership/use rights).

3. The government agency fails to exercise any legal duty it has to act to stop or reverse the degradation of coastal ecosystems – in this situation the Court may make an order of "mandamus" that requires the relevant government agency to exercise its lawful duty.

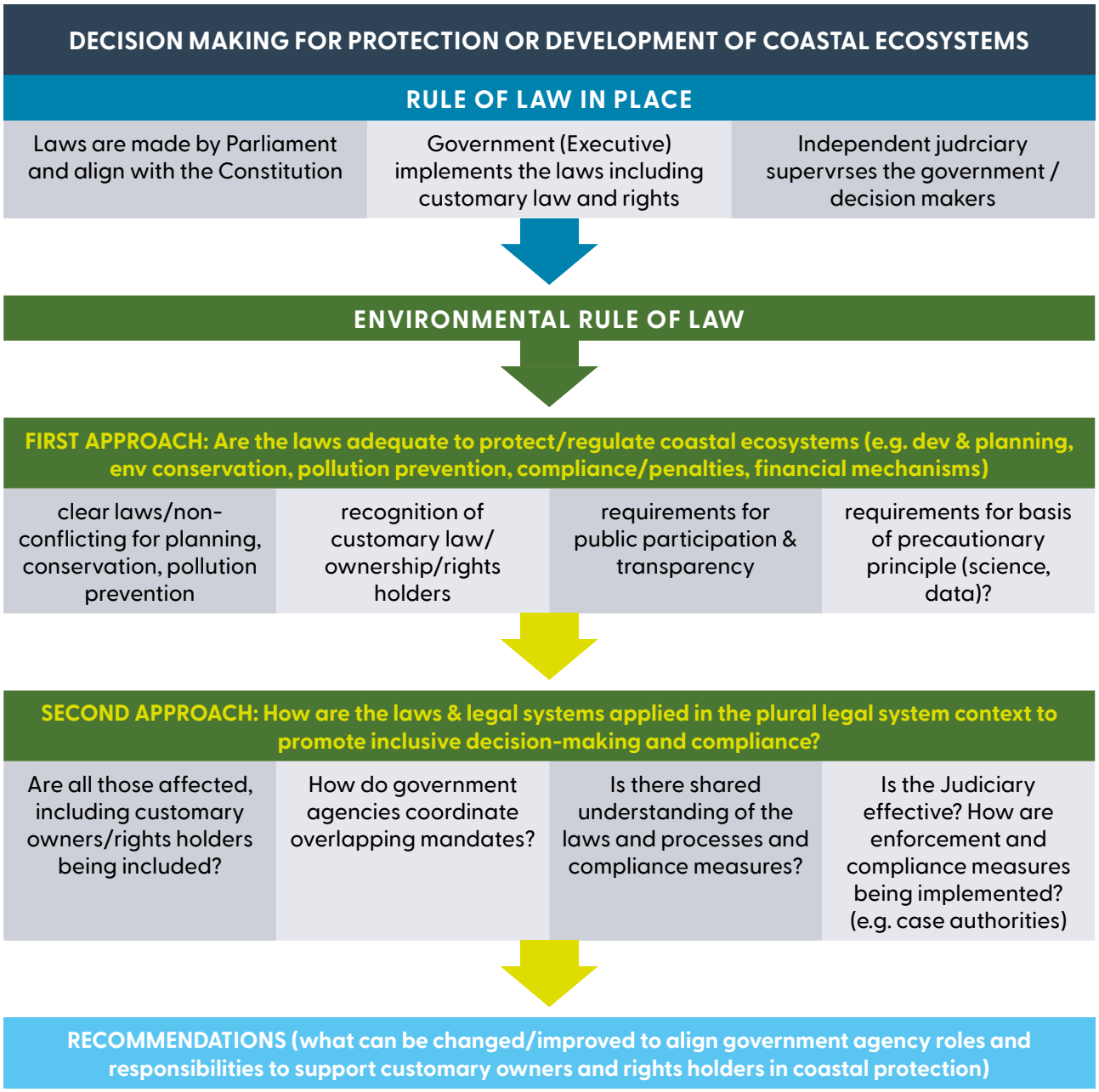


Figure 2. Theory of change for the Legal Review

2. FIJI'S BLUE CARBON ECOSYSTEMS

2.1. National Context

The Republic of Fiji is an independent sovereign State having gained independence from the British in 1970. Fiji exercises territorial sovereignty over 332 islands with a total land area of 18,272 km^2, Internal Waters (25,558 km^2), expansive archipelagic waters (130,470 km^2) and Territorial waters (45,375 km^2) that include 10,000 km^2 of coral reefs. In accordance with the United Nations Convention on the Law of the Sea (UNCLOS), Fiji has exclusive sovereign rights in relation to resources in and under 1,290,000 km^2 of the ocean within its large Exclusive Economic Zone (EEZ).[1]

2.2. Blue Carbon Ecosystems in Fiji

Fiji hosts approximately 42,000 hectares of mangrove forests, which are critical to the ecological balance and socio-economic fabric of the country (FJ Wetlands Directory 2024). Latest extent estimations suggest seagrasses cover approximately 6000 hectares of the country's shallow marine habitats.[2] Studies suggest that spatial extent and rate of extraction of both mangrove and seagrass may be greater than currently understood; this is being validated by Fiji's Department of Environment and Ministry of Forestry with assistance of the Pacific Community (SPC) under the MACBLUE project.

The country's mangrove forests are predominantly distributed along the sheltered coastal regions, estuaries, and river mouths. Nearly 60 percent of the total mangrove extent of Fiji is found on its two biggest islands, Viti Levu and Vanua Levu. Smaller islands also host significant mangrove coverage, though on a lesser scale. Fiji has nine species of mangroves, with *Rhizophora stylosa* and *Rhizophora x selala* forming a scrubby seaward fringe, replaced further inland

1 By virtue of the United Nations Convention on the Law of the Sea (UNCLOS) to which Fiji was the first signatory, and the Marine Spaces Act, Cap 158, 1977, Fiji has sovereignty over its land territory, internal waters, archipelagic waters, and territorial seas as well as to the seabed and subsoil thereunder (section 9(1) of Marine Spaces Act). Fiji also has sovereign rights within its Exclusive Economic Zone for the purposes of exploring, exploiting, conserving and managing the natural resources, whether living or non-living of the seabed and subsoil and the superjacent waters (section 9(2) of the Marine Spaces Act. By section 9(3) of the Marine Spaces Act, Fiji exercises its sovereignty and sovereign rights subject to the rules of international law.

2 McKenzie et al. 2020

by a mixed forest of *Bruguiera gymnorrhiza, Excoecaria agallocha, Lumnitzera littorea,* and *Xylocarpus granatum. Rhizophora samoensis* is scattered throughout.

Seagrass meadows in Fiji are distributed across various habitats, including estuaries, barrier and patch reefs, fringing reefs, bays, lagoons, and deeper waters exceeding 10 metres. Five seagrass species and 1 subspecies are reported to be present in Fiji. These include *Halodule pinifolia, Halodule uninervis, Halophila ovalis, Halophila decipiens and Syringodium isoetifolium*

Almost 90 percent of Fiji's population of 884,887 people[3] live on or near the coast in cities, towns, settlements and villages, and depend on these coastal ecosystems, which are indispensable to their livelihoods, providing critical ecosystem services that support fisheries and aquaculture, which are primary sources of food and income. According to a recent study across the Ba and Rewa deltas [4], up to 45 percent of community members visit mangroves on a day-to-day basis for their livelihoods, including both subsistence use and commercial sale of wood, fish, crabs and a diversity of fishes and other crustaceans. In addition to commodities sourced from mangroves, food crops planted in mangrove communities are also consistent sources of economic value.

The Fijian Bureau of Statistics assesses that fisheries contribute significantly to food security, with fish constituting about 60 percent of the animal protein intake for Fijians. The annual per capita fish consumption in Fiji is approximately 37.5 kg, significantly higher than the global average of 20.5 kg.[5] Mangrove and seagrass ecosystems play a crucial role in sustaining this high level of fish consumption by supporting the life cycles of many fish species that are central to the diet of coastal communities.[6]

It is estimated that between 60 percent and 80 percent of Fiji's coastal fish species use mangroves as nursery grounds at some stage of their lifecycle.[7] Seagrass meadows also support the fishing industry by providing habitat for commercially important fish species such as emperor fish (Lethrinus spp.), which are vital for both subsistence and market trade.[8]

Both mangroves and seagrasses hold significant cultural value for Fijian communities. Traditional uses of mangroves include materials for construction, firewood and medicinal purposes. Seagrasses are culturally important for their role in supporting marine species that are integral to local customs and diets.[9] The connection to these ecosystems is often reflected in traditional knowledge and practices, which play a crucial role in the sustainable management of these resources.[10]

The economic contribution of mangroves and seagrasses to Fiji is substantial. Mangrove forests provide coastal protection, reducing the impact of storm surges and coastal erosion, which helps to safeguard infrastructure and properties. This protective service is estimated to save millions of dollars annually in potential damages.[11] Additionally, healthy mangrove and seagrass ecosystems attract tourism, particularly eco-tourism, which is a growing sector in Fiji's economy. Tourists are drawn to the natural beauty and biodiversity of these areas, contributing significantly to local and national revenue.[12]

3 2017 Population and Housing Census, Bureau of Statistics
4 Avtar et al. 2021
5 2017 Population and Housing Census, Bureau of Statistics
6 Ibid.
7 (Conservation International, Fiji Blue Carbon Project: Drivers of Deforestation and Degradation and Causes of Loss in Mangroves).
8 (McKenzie et al. 2020)
9 McKenzie et al. 2020
10 Fiji Wetlands Directory 2024
11 (Conservation International, 2023)
12 McKenzie et al. 2020

Mangroves and seagrasses play a crucial role in maintaining coastal integrity and water quality. Mangrove roots stabilize shorelines, preventing erosion, while their dense canopies dissipate wave energy. Seagrasses trap sediments and nutrients, enhancing water clarity and quality. These functions are critical for protecting coral reefs from sedimentation and pollution, thereby supporting overall marine biodiversity.

Blue Carbon ecosystems are also vital in the context of climate change mitigation. Mangroves and seagrasses are effective carbon sinks, sequestering significant amounts of carbon dioxide in their biomass and sediments, a process known as blue carbon sequestration. Seagrass meadows play a key role in global carbon cycling and are responsible for storing between 10 percent and 18 percent of the total ocean carbon mass each year.[13] Research has also established that seagrass carbon storage rates are up to 35 times greater than that of tropical rainforests.[14],[15] This capability helps in offsetting carbon emissions, thus contributing to global efforts to combat climate change.

2.3. Current threats to mangrove and seagrass ecosystems in Fiji

Mangrove and seagrass ecosystems in Fiji face significant degradation due to both natural and human-induced threats. Tropical cyclones are a leading cause of mangrove loss, responsible for around 77 percent of destruction between 2001 and 2018.[16] Human activities, however, also contribute heavily; tourism development, coastal reclamation, industrial estates, squatter settlements, and agriculture have led to extensive mangrove habitat loss, leaving coastlines more vulnerable to erosion and storm surges. Additionally, the harvesting of mangroves for fuelwood and construction by local communities gradually reduces mangrove coverage and health.[17] Reduced freshwater flow can lead to increased salinity levels in mangrove areas, which may not be suitable for certain mangrove species and can reduce overall mangrove health and productivity.[18]

Seagrass meadows experience similar pressures. Key threats include sediment and nutrient runoff from altered catchments affected by agriculture, forestry, and mining, along with direct habitat loss from coastal development, such as resort construction and channel excavation.[19],[20] These activities increase turbidity and sedimentation, smothering seagrass beds and reducing light essential for photosynthesis.[21] Urban and agricultural runoff also introduces excess nutrients, leading to algal blooms that further deplete seagrass habitats. Overfishing, habitat destruction, and invasive species disrupt the ecological balance in both mangrove and seagrass systems, exacerbating their degradation.[22]

13 Singh S., Lal M., Southgate P.C., Wairiu M. and Singh W. 2022. Blue carbon storage in Fijian seagrass meadows: First insights into carbon, nitrogen and phosphorus content from a tropical southwest Pacific Island. Marine Pollution Bulletin. 176:113432. https://doi.org/10.1016/j.marpolbul.2022.113432

14 Ibid

15 Fourqurean J.W., Duarte C.M., Kennedy H., Marba N., Holmer M., Mateo M.A., Apostolaki E., Kendrick G.A., Jensen D.K., McGlathery K.J. and Serrano O. 2012. Seagrass ecosystems as a globally significant carbon stock. Nature Geoscience 5(7):505–509. https://www.nature.com/articles/ngeo1477

16 Conservation International, Drivers of Degradation in Mangroves

17 Conservation International 2023

18 (Cameron et al. 2021).

19 (McKenzie and Yoshida 2010,

20 Mangubhai et al. 2019)

21 (Singh 2019)

22 (McKenzie et al., 2020)

The resilience of these ecosystems, despite facing numerous threats, underscores their importance in both local and global environmental health.

MANGROVE THREATS	SEAGRASS THREATS
Natural: Tropical Cyclones **Direct Habitat Loss:** Tourism development, coastal reclamation, industrial estates, squatter settlements, **Subsistence harvesting:** firewood, construction **Upstream changes:** reduced freshwater flow, increased salinity	**Direct Habitat Loss:** Coastal developments **Smothering:** Agricultural and urban run-off, forestry and mining activities **Disruption of ecological balance:** habitat destruction, overfishing, invasive species

2.4. Regulatory challenges for Coastal Ecosystems in Fiji

As Fiji endeavours to address the threats coastal ecosystems (including mangrove areas and seagrass meadows) face and to increase their protection and resilience, it must navigate significant regulatory challenges. The complex interplay of competing demands of multiple sectors of the economy, and the need to balance state laws with customary rights complicate efforts to protect and manage these vital areas effectively. These result in overlapping jurisdictional responsibilities and are exacerbated by limited resources within government agencies. Overcoming these obstacles is essential for implementing successful conservation strategies and ensuring the sustainable use of coastal resources in Fiji.

Uses and pressures of different sectors of the economy

Fiji's coastal ecosystems face several competing demands and pressures from multiple sectors of the economy. The sectors of the economy include extractive activities for renewable and non-renewable resources, as well as for subsistence and farming purposes; construction, ports, and wharves; tourism related activities; and education, public sector and research and development.

Overlapping jurisdictions

There are legal and regulatory overlaps across several different government entities and approving agencies that have a role in regulating and partly competing uses of coastal areas mentioned above. This overlapping jurisdiction often leads to regulatory fragmentation, with different agencies enacting policies that may conflict or lack coordination. Additionally, ecosystems like mangroves and seagrasses exist at the interface between land and sea, creating further complexity in defining regulatory boundaries. Aligning these overlapping responsibilities is critical to creating an effective, cohesive regulatory framework that balances environmental health with economic priorities.

Customary ownership

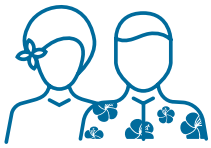
Mangrove and seagrass ecosystems exist in coastal and nearshore areas – a core issue is to have clarity and agreement around tenure (ownership) of these areas. In Fiji, despite relatively clear ownership laws relating to indigenous (iTaukei) and State and Freehold land, this clarity does not

extend to foreshore and nearshore areas and the resources therein. This is because of inherited colonial era laws that split or distinguished ownership of land from ownership of the foreshore or seabed. These laws were largely borrowed from the British system that itself vests all foreshore and seabed within national jurisdiction in the Crown/State.

In Fiji, at the time of Cession, the British colonial powers acknowledged customary laws that were in existence from time immemorial and that this customary law did not distinguish ownership of land from ownership of the foreshore and sea. Customary law treated the ownership of the sea along customary boundaries as a natural extension of customary ownership from the land. There is thus, a complex arrangement whereby the indigenous landowning groups have user rights to the sea adjacent to their land, however, the State maintains ownership of these areas. These areas of fishing rights are the iqoliqoli and are discussed in detail in Chapter 3. Fiji is currently examining its legal framework and laws with a view to change the balance of ownership. The current government is examining customary ownership of nearshore areas with a review of the Regulation of Surfing Areas Act 2010 that favored State ownership and control of nearshore areas.

Who owns the foreshore and nearshore areas is a crucial question. If it remains unresolved or not carefully considered, there is confusion over tenure. This confusion can lead to conflict or non-alignment of efforts between the relevant government agencies, customary groups, and others with user rights, and this may result in poor governance. Any conflict may assist external private sector interests to take advantage of the situation and engage in unchecked exploitation that contributes to political instability and poor governance outcomes.

Resolving the question of tenure and apportioning management responsibilities is within the remit of the government and should be handled via careful consultation with a view to maximize opportunities for alignment and pooling of resources between government agencies and customary owners and rights holders. While government agencies lead the implementation of laws and decision making for activities and industry, they rely on local communities for any implementation involving protection, resource management and climate change adaptation. It is the local communities who live in areas that are frequently remote, inaccessible and beyond the effective control of States, and it is the local communities who make a significant contribution to the capacity of management efforts.



ITAUKEI

Indigenous people to Fiji

Many communities rely on healthy mangrove and seagrass ecosystems for their livelihood. Local communities may undertake local projects and management efforts but they need the State's resources to provide a legal framework and resources for monitoring, control, surveillance and enforcement of laws (including, but not limited to, environmental laws and standards). The State role may assist with consistency of decision making[23] for any private sector venture that could undermine local efforts or breach international commitments. A further significant government role is to protect individual communities from exploitation by private sector interests. Good governance by the relevant government agencies in this respect means ensuring the same environmental standards are applied to all via an integrated government approach in line with international commitments, national law and policy.

23 "consistency of decision making" refers to making decisions based on a complete understanding of the consequences/impact of a proposed action. This often relies on access to information/data and scientific and economic analyses.

Therefore, both the State and local communities should be aligned in decision making for development activities affecting coastal ecosystems, take into account customary law and rights while ensuring alignment with common law and statutes, and should be aligned to pool their resources for good governance and management outcomes.

Resource constraints

The key challenge in Fiji is that almost every sphere of governance operates under severe financial constraints and deficits. This includes capacity deficits in terms of finances (not enough budget to implement laws), human capital (not enough staff to fulfil duties of each agency) and technical (the personnel who are on-board do not have sufficient opportunities to access adequate training), and there are often deficits in necessary technology, such as laboratories, and satellite surveillance.

At the community level, customary owners and rights holders have the capacity to implement local protection and management efforts in line with traditional knowledge. However, they rely on the capacity of government agencies to support these efforts (e.g. through monitoring and surveillance and ensuring compliance with the laws by external interests). Government agencies, furthermore, must ensure they align with these efforts and do not undermine them. The State's wider role in terms of upholding the Rule of Law for certainty of decision making and compliance with relevant laws is also essential but is an area that is challenged by constraints.

This Review considers these regulatory challenges in terms of the existing laws and current practices and identifies gaps and opportunities in line with an environmental Rule of Law approach to protecting mangrove and seagrass ecosystems in Fiji.

There are three overarching considerations in terms of protecting and promoting mangrove and seagrass ecosystems in Fiji (as for other Pacific Island Countries). These are:

1. An overriding **need for efficient solutions** – there is no point recommending laws or legal approaches that rely on financial resources which do not exist.
2. **Solutions must rely, to the maximum extent possible, on engaging local stakeholders/customary owners** and rights holders in protecting mangroves and seagrass for outcomes that align with State and community interests.
3. **The State and customary owners and rights holders must share the same aims and objectives** to ensure State decisions support and not undermine local community protection efforts, and the local communities are supported by the State to enforce laws and promote consistent decision making.

2.5. Fiji's International Commitments and International Law Obligations relating to coastal ecosystems

Healthy coastal ecosystems are internationally significant because the benefits they produce are transboundary; these include the ecosystem services they provide and their contribution to the international framework to respond to the effects of climate change. Mangrove and seagrass ecosystems are of immense importance to the international community due to their role in climate change mitigation, biodiversity preservation, and coastal protection. These ecosystems store significantly more carbon in their soils—and at faster rates—than tropical rainforests, with

mangroves sequestering 394–650 tonnes of carbon per hectare and seagrasses contributing up to 18 percent of oceanic carbon storage despite covering only 0.1 percent of the ocean floor.[24] [25] In addition to carbon sequestration, they serve as vital nurseries for fisheries, supporting both local and global food security, and provide critical resilience to coastal communities by reducing storm surge impacts by up to 70 percent.[26] Protecting and restoring these ecosystems is essential for achieving international climate and biodiversity goals.

Fiji, as a Small Island Developing State (SIDS), faces unique environmental and economic pressures due to its high vulnerability to climate change, particularly from rising sea levels, increased cyclone intensity, and coral reef degradation, which threaten both ecosystems and local livelihoods.[27] Fiji has been at the forefront of international climate negotiations, positioning itself as a strong advocate for climate resilience and environmental protection among Pacific Island nations. It was the first country to ratify the Paris Agreement and has consistently used its platform to call for greater global action on emissions reductions and climate financing for vulnerable countries.[28] Fiji is signatory to all five international conventions and policy processes most relevant to mangrove and seagrass ecosystems according to the Policy Framework for Blue Carbon Ecosystems: UNFCCC Paris Agreement, UNCBD Montreal-Kunming Global Biodiversity Framework, 2030 Agenda and the Sustainable Development Goals, Ramsar Convention on Wetlands of International Importance.[29] Through these commitments, Fiji underscores its dedication to environmental sustainability and the urgent need for global solidarity in addressing climate challenges that disproportionately impact SIDS[30]

While there are several international legal principles and conventions that apply, most notably the Convention on Biological Diversity, there is no single framework that binds States to conserve or protect coastal ecosystems, including mangroves and seagrass. Furthermore, none of the relevant international commitments, instruments or standards will amount to anything unless there is effective implementation at national level via effective legislation. Fiji's obligations to these international conventions, treaties and agreements are closely tied to its broader goals in terms of biodiversity conservation, climate action and sustainable development. The country's commitments to protecting mangroves and seagrass ecosystems are most extensively addressed under the UNFCCC Paris Agreement and its Nationally Determined Contributions (NDCs), where Fiji commits to 100 percent protection of mangrove ecosystems and expanding marine protected areas to cover 30 percent of its Exclusive Economic Zone by 2030. The UNCBD Kunming-Montreal Global Biodiversity Framework and Fiji's National Biodiversity Strategy and Action Plan (NBSAP) also emphasize conserving at least 30 percent of coastal areas, enhancing mangrove restoration, and protecting seagrass as key carbon sinks. Fiji's National Development Plan (NDP) aims to protect 100 percent of its mangrove ecosystems and expand Marine Protected Areas (MPAs) to cover 30 percent of its Exclusive Economic Zone by 2030, with a focus on using mangroves and seagrass beds for climate resilience, biodiversity conservation, and sustainable coastal management. Under the Ramsar Convention, Fiji focuses on the wise use of wetlands, preventing degradation of mangroves and seagrass beds, and protecting Ramsar sites. A list of the relevant international treaties is provided in Table 1.

24 The Mangrove Alliance

25 UNEP - UN Environment Programme

26 Pacific Ark, Pacific Climate Change Portal

27 Government of Fiji, World Bank, and Global Facility for Disaster Reduction and Recovery. 2017. "Fiji 2017: Climate Vulnerability Assessment - Making Fiji Climate Resilient." World Bank, Washington, DC, http://www.ourhomeourpeople.com.

28 Government of Fiji (2019). Fiji National CC Policy 2018 - 2030

29 Policy Framework for Blue Carbon Ecosystems

30 WWF (2024) Living Planet Report 2024 – A System in Peril. WWF, Gland, Switzerland, https://wwflpr.awsassets.panda.org/downloads/2024-living-planet-report-a-system-in-peril.pdf

Fiji is a signatory to other international treaties that have less direct relevance to coastal ecosystems however, their implementation at national level may have implications on the management and protection of mangroves and seagrasses, including overlaps across agencies. Some treaties to which Fiji is a signatory, also have a certain significance to the tenure of coastal ecosystems; however, Fiji has not developed specific national objectives or targets tied to these ecosystems. These are also included in the Table.

For international commitments, instruments or standards to be meaningful, they need to be implemented at the national level via effective legislation. Fiji is obliged to meet its commitments under these agreements through development and implementation of national frameworks, policies and legislation. This is consistent with the international law framework that recognizes the sovereignty of each State.

Further to this, Fiji, like every sovereign State, needs to consider international law principles and standards in national decision making in accordance with the recognition of state sovereignty. Some of the obligations that Fiji must meet include, but are not limited to, not causing transboundary harm; applying the precautionary principle to decision making; enforcing the polluter pays principle; implementing sustainable development; recognizing intergenerational equity; providing public access to information; and enabling public participation in relation to environmental decision making and access to environmental justice. These are further elaborated in Box 1.

Table 1. International Treaties of relevance to coastal ecosystems to which Fiji is Party

Treaty name	Key points, effect and relevance to coastal ecosystem protection
Ramsar Convention on Wetlands of International Importance (1971)	- Establishes a list of wetlands of international importance - Each Contracting Party must designate at least one site to be included in the Ramsar list and plan for conservation of that site - Promotes "wise use" of wetlands within their territory, meaning sustainable use to maintain natural properties of the ecosystem - Reporting requirements at COP - Encourages designation of sites for threatened ecosystems and therefore applies to coastal ecosystems like mangroves and seagrass
United Nations Educational, Scientific and Cultural Organization Convention Concerning the Protection of the World Heritage (1972)	- Establishes a list for cultural and natural sites including mangroves, and coral reefs – meaning that the same coastal sites could be listed in this and the Ramsar convention. - Promotes protection of listed sites and sites may be removed if damaged/failure of protection. - Enables sites that are threatened to be listed as a World Heritage in Danger and may focus the state to do more to introduce national level protection measures/conservation responses.

Treaty name	Key points, effect and relevance to coastal ecosystem protection
Convention on Biological Diversity (CBD) (1993)	- Requires Parties to establish a system of protected areas and restore ecosystems that have been degraded; and to include biodiversity considerations into decision making as well as plans, programmes and policies - Incentives for conservation - Measures to avoid or minimize adverse impacts on biological diversity - The **Kunming-Montreal Global Biodiversity Framework** includes targets that were adopted at the CBD COP in 2022 and are relevant to coastal ecosystem protection, for example: **TARGET 1** [through inclusive and effective management] bring the loss of areas of high biodiversity importance, including ecosystems of high ecological integrity, close to zero by 2030, while respecting the rights of indigenous peoples and local communities. **TARGET 2** by 2030 at least 30 percent of areas of degraded terrestrial, inland water, and marine and coastal ecosystems are under effective restoration, in order to enhance biodiversity and ecosystem functions and services, ecological integrity and connectivity. **TARGET 3** Effective conservation and management of at least 30 per cent of terrestrial and inland water areas, and of marine and coastal areas through ecologically representative, well-connected and equitably governed systems of protected areas and other effective area-based conservation measures.
Climate Change Frameworks - United Nations Framework Convention on Climate Change (UNFCCC) - the Paris Agreement	- Nationally Determined Contributions (NDCs) implemented via the Paris Agreement include the carbon capture potential of coastal marine ecosystems and this includes mangroves and seagrass and have been included in countries NDCs and adaptation strategies - Increased coastal ecosystem protection for mangroves and seagrass may also contribute to national emission reduction commitments - REDD+ developed by the parties to the UNFCCC enables participating countries to receive results-based payments for conserving and sustainably managing their forest by demonstrating carbon stocks in accordance with the mechanism

United Nations Convention on the Law of the Sea (UNCLOS)	Part X11 of UNCLOS concerns the protection and preservation of the marine environment. This includes but is not limited to:
	- Article 192 obliges States to protect and preserve the marine environment. Article 192 provides: States have the obligation to protect and preserve the marine environment.
	- Article 194 obliges States to take measures to prevent, reduce and control pollution of the marine environment from "any source" and this includes but is not limited to:
	  · Release of pollution from land-based sources
	  · Pollution from vessels or installations
	  · Cooperating with other States
	  · Take measures to preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life

Treaty name	Key points, effect and relevance to coastal ecosystem protection
The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973)	CITES controls the trade in endangered wild fauna and flora and includes in its Appendices species living in marine and mangrove ecosystems.
The Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, (Nouméa Convention) (1986)	A regional agreement that provides a framework for the protection of the marine and coastal environment, including marine pollution, the protection of wild fauna and flora and the establishment of specially protected areas.
Treaties whose implementation may impact on coastal ecosystems and/or tenure issues	
Sendai Framework for Disaster Risk Reduction	Recognizes and emphasizes the role of natural ecosystems in reducing vulnerabilities to climate-related hazards
International Maritime Organization's Convention for the Safety of Life at Sea (SOLAS)	Specifies minimum standards for the construction, equipment and operation of ships, compatible with their safety.
International Convention for the Prevention of Pollution from Ships (MARPOL)	For prevention of pollution of the marine environment by ships from operational or accidental causes.
United Nations Convention to Combat Desertification (UNCCD)	Focuses on addressing land degradation and drought through integrated planning approaches to water resource/catchment management and land and coastal use.
Stockholm Convention on Persistent Organic Pollutants	Management of these pollutants on land has implications for human and environmental health, including coastal ecosystems
Montreal Protocol of the Vienna Convention (on Ozone Depleting Substances – includes fishing vessels)	

BOX 1. International law principles and standards that apply to decision making for all states

BOX 1. International law principles and standards that apply to decision making for all States

The obligation not to cause transboundary harm – which forms the basis for States to include Environmental Impact Assessments (EIA) as part of their national decision making legal framework in order to assess the potential for transboundary harm which may, for example, occur from marine pollution or coastal damage from a transboundary source (States have the right to exploit their own resources in accordance with their national environment policies but are obliged to ensure their activities do not cause harm to the environment of other states or to areas beyond their national jurisdiction).

The precautionary approach / principle – a tool for decision making where there is risk and/or uncertainty, and relevant because of the well-known challenge of remediating coastal ecosystems including mangroves and the serious consequences of their damage or removal including but not limited to loss of coastal protection, erosion and carbon emissions as well as the potential impact of climate change.

The Polluter Pays Principle – adopted as a legal principle at both international and national level to ensure that the person who causes the pollution is liable/responsible for the harm caused both to seek remediation but also to incentivize more responsible conduct.

Sustainable development and intergenerational equity – relevant because it encourages nations to "integrate environmental protection, degradation, and restoration costs in decision making at the outset." (Agenda 21) and this is particularly relevant for the protection of coastal ecosystems, and meeting SDG including Goals 13, 14 and 15. For example, Goal 14 includes a target to manage and protect marine and coastal ecosystems.

The cooperation principle – which includes obligations for states to notify other states of activities that could have a significant impact in terms of transboundary effects. Particularly relevant because this principle forms the basis of the principle of common but differentiated responsibility recognized by the international climate change regime and the creation of mechanisms for emission reductions from deforestation and the trading in carbon offsets.

Public access to information/public participation in relation to environmental decision making and access to environmental justice – These are the 3 general requirements of good governance and the rule of law recognized by SDG 16. Public access to information requires that environmental information is publicly available and guaranteed by national legislation. Public participation in environmental decision making requires effective public participation prior to the decision where a decision could have a significant impact on the environment. Access to environmental justice requires access to an impartial review before an independent court of law, ensure it is not prohibitively expensive and provide access to appropriate remedies. The effectiveness of this part relies on holding governments accountable for their decisions.

The non-regression principle – a principle adopted at Rio+20 meaning that countries should not backtrack from their environmental commitments, particularly relevant for climate adaptation measures which could, if not implemented with protection for the coastal environment in mind lead to further coastal ecosystem deterioration.

3. FIJI'S LEGAL & INSTITUTIONAL SYSTEM GOVERNING COASTAL ECOSYSTEMS

This section provides an overview of Fiji's system of law and governance relevant to the regulation of coastal ecosystems. It introduces Fiji's common law system and explains how laws and government decisions are made that impact or regulate coastal ecosystems. This section discusses Fiji's landownership system, customary law and rights, and provides a legal analysis of how customary law is integrated within Fiji's common law system.

Fiji has made international legal commitments to protect its environment, has climate change adaptation and mitigation at the forefront of development planning and has comprehensive environmental laws, including Constitutional protections, natural resource laws/pollution laws, and Environmental Impact Assessment decision making tools. There are some gaps, which are highlighted below, but with the focus on implementation of existing laws in the context of financial and other constraints.

Understanding the foundations of Fiji's legal and governmental system is crucial to developing effective conservation strategies. Fiji's legal and governmental framework is deeply rooted in principles introduced during its colonial past. When Fiji was ceded, iTaukei chiefs and the British agreed that land and reefs, communally owned under customary law, could not be transferred under Western property law. Throughout the colonial administration, the mutual understanding of land and resource ownership was largely respected, while a system of common law and constitutional democracy was introduced.

Common Law

Unwritten law based on a judge's decision. It derives its authority from judicial decisions and court precedents, which establish legal principles and interpretations that guide future cases.

Within Fiji's adopted common law system, customary law, rights and governance were, to a significant extent, embedded within Fiji's legal framework and governance structure. Planned measures to sustainably manage or conserve mangrove and seagrass ecosystems need to thus align with both formal legal structures and the customary rights of local communities. This understanding further underscores that coastal communities in Fiji are not only custodians but primary managers of coastal ecosystems.

3.1. Plural legal framework in Fiji

Fiji's legal and governmental framework is deeply rooted in principles introduced during its colonial past. The colonial administration introduced to Fiji the common law and the principles of the "Westminster System" to include Parliamentary sovereignty and a clear division of powers between the legislature (Parliament), the executive (government), and the independent Judiciary. The Constitution of the Republic of Fiji (2013) is the "supreme law of the country and provides the framework for the conduct of Government and all Fijians".

Fiji's Parliament (the legislature) makes the legislation/laws; the government (executive) implements the law; and the independent Judiciary has a supervisory jurisdiction to ensure that the government acts in accordance with those laws and this must be consistent with the provisions of the Constitution. These are discussed in detail in subsequent sections.

Parliament via legislation (Statutes/Acts), delegates powers to government ministries departments, including relevant authorities/agencies to regulate all sectors of the economy and areas under its control, and these include coastal areas and their various competing uses. Those powers delegated by legislation must be exercised within the parameters of the legislation and in accordance with common law principles that advocate due process/natural justice to anyone adversely affected by a decision made by an authority on behalf of the State.

Within Fiji's adopted common law system, customary law, rights, and governance are, to a significant extent, embedded in the legal framework and governance structure and remain to be recognized and upheld today [12] (see Box 2). The Government has developed an intricate governance system that incorporates traditional rights within a centralized governance system and includes institutions like the iTaukei Affairs Board and the iTaukei Lands Trust Board that act as a bridge between communities and their rights and the State.

In relation to coastal ecosystems and decisions that will affect them and the spatial areas in which they occur, the adopted common law system requires the government or government agencies to follow a fair and inclusive process that must take into account any person whose interests will be adversely affected by the decision, and this includes, but is not limited to, customary legal rights holders.

3.2. Application to Coastal Ecosystems

In Fiji, ownership and governance of foreshore and nearshore areas combine historical customs with modern legal frameworks, creating a unique system that balances State ownership with Indigenous customary rights. This is because the country has inherited colonial era laws that split or distinguished ownership of land from ownership of the foreshore or seabed. These laws were largely borrowed from the British system that itself vests all foreshore and seabed within national jurisdiction in the Crown/State. State ownership of the ocean in most Pacific Island countries arose as a result of colonial claims (laws of colonial administrations adopted the same system as that applied in Britain/France), not later established UNCLOS.

This imposed system was markedly different from customary laws in existence in Fiji from time immemorial. Customary law did not distinguish ownership of land from ownership of the foreshore and sea. Customary law treated the ownership of the sea along customary boundaries as a natural extension of customary ownership from the land.

Fiji was ceded to Great Britain on 10 October 1874 and remained a British colony until it gained independence on 10 October 1970. During its colonial period the British colonizers administered Fiji in accordance with Fiji's traditional rights and customs. At the time Fiji was ceded to Britain, it was mutually understood by the iTaukei chiefs and the British government that the land and the reefs could not be ceded in the Western understanding of property law because they did not belong to the chiefs in a feudal sense. Rather, in customary law, the people belonged to the land and sea, and all resources of those areas were held on a communal basis. Traditional customs determined land boundaries and usage, and it was considered inalienable, meaning it could not be sold or permanently transferred outside the community.[31] By and large, during the colonial administration period, mutual understanding of ownership of land and resources was respected, and the system of common law and constitutional democracy was introduced.

However, the adopted system differentiates between land and foreshore rights. **Land ownership** is divided into three types: Indigenous (iTaukei) land, Freehold land, and Crown or State land. Fiji's common law system recognizes and records in law (including in the Constitution and other laws) the supremacy of iTaukei (through landowning units, mataqali) to own iTaukei land, which comprises roughly 87% of all land in Fiji. This land remains inalienable and is managed under the iTaukei Land Trust Board. This arrangement is legally binding and provides a formal structure within which iTaukei land rights are preserved. Landowning units, primarily the mataqali, are recognized legally as landowners, and decisions about land use typically require consultation with and consent from these traditional groups.[32]

In terms of the **foreshore and nearshore areas**, regardless of who owns the adjoining terrestrial land, the **State Lands Act** defines that all area (water and seabed) below the mean high-water mark is owned by the State. As noted earlier, this is a result of the adoption of the Western common law system, which separates the ownership of land from ownership of the spatial areas of foreshore, sea and seabed. This separation of "ownership" conforms with the international legal regime for maritime spaces in UNCLOS (Figure 4). The **Marine Spaces Act 1977** implements boundaries that split or distinguish ownership of land, and the vesting of maritime areas takes place at the high-water mark on the foreshore. This is in accordance with UNCLOS,

31 Lasaqa I. 1984. The Fijian People: before and after Independence 1959–1977. Canberra, A.C.T. : Australian National University Press, 1984. 231p : ill ; 22cm.

32 FBoS Release. (2021). No. 4 Preliminary Report on the Household Income and Expenditure Survey (HIES) 2019-20.

which recognizes that from the high-water mark, maritime zones are demarcated from baselines[33] to maritime zones where territorial sovereignty applies (in Fiji this includes the archipelagic waters and territorial waters) and is taken to be "State ownership" as maritime areas "vest" in the State. State land is administered and controlled by the Ministry of Lands. Thus, mangroves, seagrass areas, and the seabed is State-owned and come under the jurisdiction of the Ministry of Lands.

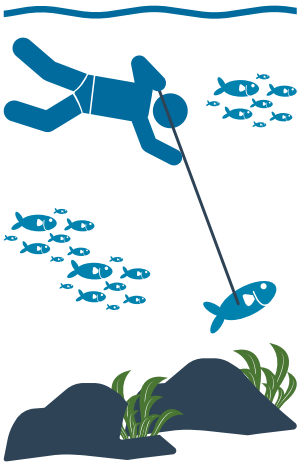
From a **traditional pre-colonial perspective**, there are not the same clear boundaries or jurisdiction of "ownership" of the foreshore. The reason the traditional perspective remains relevant for Fiji is that it has a plural legal system. The adopted common law system supports and codifies in law the supremacy of iTaukei land rights that also extends to property rights in foreshore and nearshore areas.

Fiji's adopted common law systems and laws (notably the Constitution and the Fisheries legislation) recognize and record customary legal rights within nearshore coastal areas as an addition to iTaukei primacy in relation to land rights. Further, customary law, including social systems of rules, continue to be given effect by coastal communities themselves in nearshore areas, particularly in areas outside urban centres.

This is underscored by the establishment and recognition of resource use/customary rights relating to traditional fishing grounds (**iqoliqoli**). Fiji's unique recorded and mapped iqoliqoli areas are a result of pre-colonial customary rights being recorded by its colonial administration and ensures traditional fishing rights from the high-water mark to the outer reef based on customary rights (see BOX 2). However, there is a divergence of views in the way that customary law views "ownership" of nearshore and foreshore areas and the way that the Fiji legal system views it.

Respect for the traditional system and recognition of how deeply communities, customs, and rights are tied to the land and sea remains strong in Fiji, and "the history and strength of traditional laws and customs must be kept in mind while trying to understand why certain governance conditions exist the way they do, or why certain decisions are made."[34]

This setup is rooted in Fiji's pre-colonial traditions, adapted through colonial influences, and maintained within its current legal system to support both national and community interests in coastal resources. While this favours more State control and consistency in decision making, there is recognition of customary rights within the legal framework. However, there are concerns that communities are not benefitting sufficiently from their resources.



Iqoliqoli

Traditional fishing grounds ensuring indigenous Fijians (iTaukei) customary rights to fish for subsistence from the high-water mark to the outer reef. These areas are vital for food security and livelihoods, with any commercial fishing requiring government licenses to ensure sustainable management.

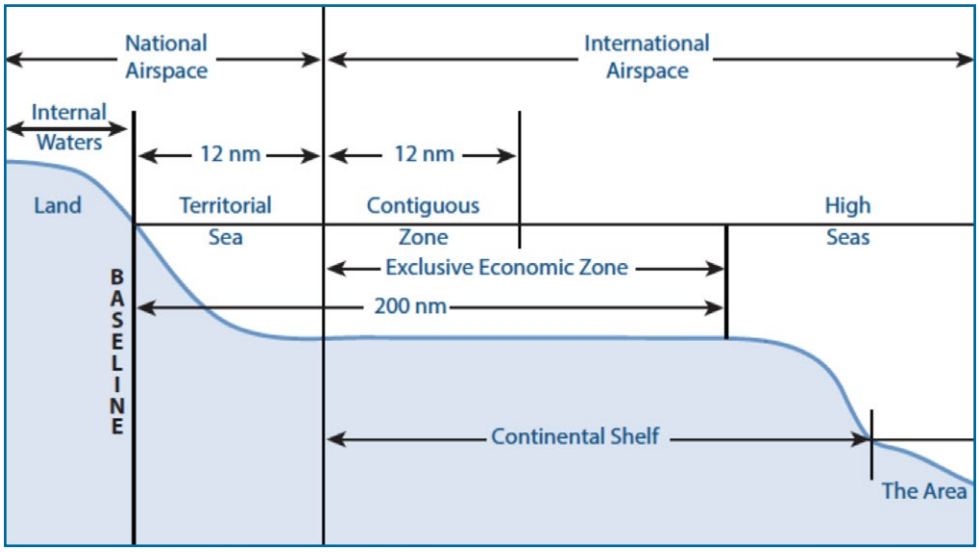
33 "baseline" in the Marine Spaces Act means the line from which the width of the territorial sea is measured.

34 Sloan and Chand 2015.

Fijian Plural Legal System

Mangroves, seagrass areas, and the seabed is State-owned and come under the jurisdiction of the Ministry of Lands. The adopted common law systems and laws (notably the Constitution and the Fisheries legislation) recognize and record customary legal rights within nearshore coastal areas. Fiji's unique recorded and mapped iqoliqoli areas are a result of pre-colonial customary rights being recorded by its colonial administration and ensures traditional fishing rights from the high-water mark to the outer reef based on customary rights.

Despite this foundation, the evolving nature of governance allows for the possibility of future changes. The principle of Parliamentary Sovereignty means that Fiji's Parliament may, in time, decide to alter its laws and change that balance subject to the protections recorded in its supreme law – the 2013 Constitution.



nm: Nautical Mile **Legal boundaries of the Oceans and Airspace**

Figure 3. How land ownership is separated from maritime zones under UNCLOS
Source: https://brill.com/view/title/61330

Notably, in maritime areas where territorial sovereignty applies (within the archipelagic waters and territorial seas), State (Fiji) laws apply in totality as a natural extension of the concept of territorial sovereignty. Beyond maritime areas of State sovereignty, there are EEZs, where States like Fiji have asserted "ownership" of exclusive sovereign rights to explore and exploit the resources of the EEZ or its seabed.

The following section explains the divergence of views on "ownership" of foreshore/nearshore areas before setting out how the common law system can merge these two divergent views and ensuring that both points of view are accommodated via inclusive decision making processes.

3.3. Customary Ownership and its Influence on Coastal Governance

In Fiji, ownership and governance of foreshore and nearshore areas combine historical customs with modern legal frameworks, creating a unique system that balances State ownership with Indigenous customary rights. This setup is maintained within its current legal system to support both national and community interests in coastal resources

The Constitution includes points of relevance relating to law and governance in foreshore and nearshore areas including recognizing resource rights registered to iTaukei landowning groups such as "Freedom from compulsory or arbitrary acquisition of property". This provides that adequate compensation should be paid if the State acquires any property compulsorily and is highly relevant for the governance of coastal and nearshore areas. There is also provision for the rights of landowners (customary or freehold) to a fair share of royalties for extraction of minerals on land or sea, and this applies also to those with traditional rights in iqoliqoli (registered customary fishing rights) (See Box 2).

In practice, this sensitive issue has created political division. However, in terms of recommending responses on how Fiji's legal and governance systems can operate more effectively to address threats faced by important coastal ecosystems and increase their protection and resilience, Fiji has the advantage of an integrated governance system which has the potential to be most effective if the State/government agencies and community leaders work together to implement better decision making for coastal ecosystems. This requires that governments agencies understand and properly incorporate consideration of traditional or customary rights and practices with implementation of the common law.

Fiji's common law system is sufficiently adaptable to provide a way to ensure the continued application and practice of customary law and rights in coastal areas is integrated or merged with a State-led planned or coordinated approach to coastal use and development.

BOX 2.The Fisheries Act and the iQoliqoli – the plural legal system in action

BOX 2. The Fisheries Act and the iQoliqoli – the plural legal system in action

Under Fiji's colonial administration laws were passed by Parliament that embedded the supremacy of iTaukei to land and resources, and this included Fiji's Fisheries Act, 1941. Fiji's traditional fishing grounds (iqoliqoli) were mapped and recorded through a legal process established by the Fisheries Act, 1941. This process was led by the iTaukei Fisheries Commission (previously the Native Land and Fisheries Commission) and the iqoliqoli maps are held within the iTaukei Affairs Board.

The resource use rights that subsist are recognized in the Fisheries legislation and are held by indigenous Fijian (iTaukei) landowning groups (generally the yavusa). From a legal perspective, the registered iqoliqoli areas and the rights that they include in the foreshore or nearshore areas of Fiji are a type of property right. These property rights have been respected by successive Fiji governments in various ways but foremost via the compensation payable to the appropriate landowning group in exchange for a "waiver of fishing rights", where development of the foreshore is approved by the Ministry of Lands. The payment of compensation to the relevant Fijian landowning group (i.e. the yavusa) is made by the developer.

This is entirely separate from the legal arrangements in place for the leasing of iTaukei land, which is administered by the iTaukei Lands Trust Board with separate land legislation confirming iTaukei supremacy in relation to land ownership.

Figure 4. Fiji's recorded iqoliqoli areas

Careful decision making processes that accord with common law standards of due process must be utilized for any development or protection initiative relating to use of foreshore or nearshore areas to ensure that the shared property rights in these areas between the State and customary users are respected. Following the prescribed processes (see Figure 6) will ensure proper consultation in line with shared property rights and provide a fair opportunity for communities to understand the proposals and for concerns to be raised.[15] Adopting a 'bundle of rights' thinking to shared property rights is suggested as a solution to aligning State and local communities in decision making for development activities and ensure that community and government resources are pooled for good governance and management outcomes. See also BOX 3 for further discussion on the bundle of rights approach.

This special approach of shared property rights in foreshore and nearshore areas between the State and customary groups requires that careful decision making processes that accord with common law standards of due process must be utilized for any development or protection initiative relating to use of foreshore or nearshore areas. By adhering to due process (e.g. inclusivity, free prior informed consent, transparency, etc), any potential conflicts between development and the preservation of communal resources can be carefully balanced, ensuring that both legal and customary interests are properly considered and safeguarded.

BOX 3. The Bundle of Rights Approach to Managing Coastal Ecosystems

BOX 3. Addressing ownership issues and the 'bundle of rights' approach

Who owns the foreshore and nearshore areas is a crucial question. If it remains unresolved or not carefully considered, there is confusion over tenure. This confusion can lead to conflict or non-alignment of efforts between the relevant government agencies and Customary groups and other rights holders, which may result in poor governance. Any conflict may assist external private sector interests to take advantage of the situation and engage in unchecked exploitation that contributes to political instability and poor governance outcomes.

Resolving the question of tenure and apportioning management responsibilities is within the remit of the government and should be handled via careful consultation with a view to maximize opportunities for alignment and pooling of resources between government agencies and customary owners and rights holders. While government agencies lead the implementation of laws and decision making for activities and industry, they rely on local communities for any implementation involving protection, resource management, and climate change adaptation. It is the local communities who live in areas that are frequently remote, inaccessible, and beyond the effective control of States that make a significant contribution to the capacity of management efforts.

Local communities for their part, may undertake local projects and management efforts but they need the State's resources to provide a legal framework and resources for monitoring, control, surveillance, and enforcement of laws (including but not limited to environmental laws and standards). The State role may assist with consistency of decision making for any private sector venture that could undermine local efforts or breach international commitments. A further significant government role is to protect individual communities from exploitation by private sector interests.

Good governance by the relevant government agencies in this respect means ensuring an integrated government approach where the same environmental standards are applied to all in line with international commitments, national law, and policy.

Therefore, both the State and local communities should be aligned in decision making for development activities and should be aligned to pool their resources for good governance and management outcomes.

To promote solutions, a country may benefit from thinking about property ownership as a bundle of rights, rather than absolute ownership vesting in an either/or situation.

An understanding of a shared ownership approach may promote understanding between the government agencies and customary owners regarding where their roles and responsibilities lie. For those interested in working in this area, and particularly donors, for any protection or conservation initiative the question of how to share benefits becomes paramount. If a project involves increasing protection for coastal ecosystems, then ways must be found for the customary owners and the State to share benefits and resources.

3.4. Governance Structure & Legal Framework

Fiji's legal and governance system is highly centralized with little or no devolved law-making powers below Ministerial/Cabinet level. Central government decision making is therefore crucial to address the threats faced by coastal ecosystems and increase their resilience.

The Constitution establishes and provides the roles, responsibilities and powers of the Legislature (Parliament), The Executive (government), and the Judiciary.

The relevance of Fiji's centralized system of governance and decision making to the regulation of coastal ecosystems is as follows:

a. Parliament is supreme and can therefore make laws that may change or alter the relative balance of shared rights in foreshore and nearshore areas (iqoliqoli);
b. The decision making for laws or regulations including decisions to designate marine protected areas are made via Regulation under primary legislation and as administrative decisions, should accord with an inclusive common law process of good decision making;
c. All laws, regulations and decisions made under laws must accord with and respect the Constitution and property rights – this includes the requirement for compensation in return for any loss of property rights.

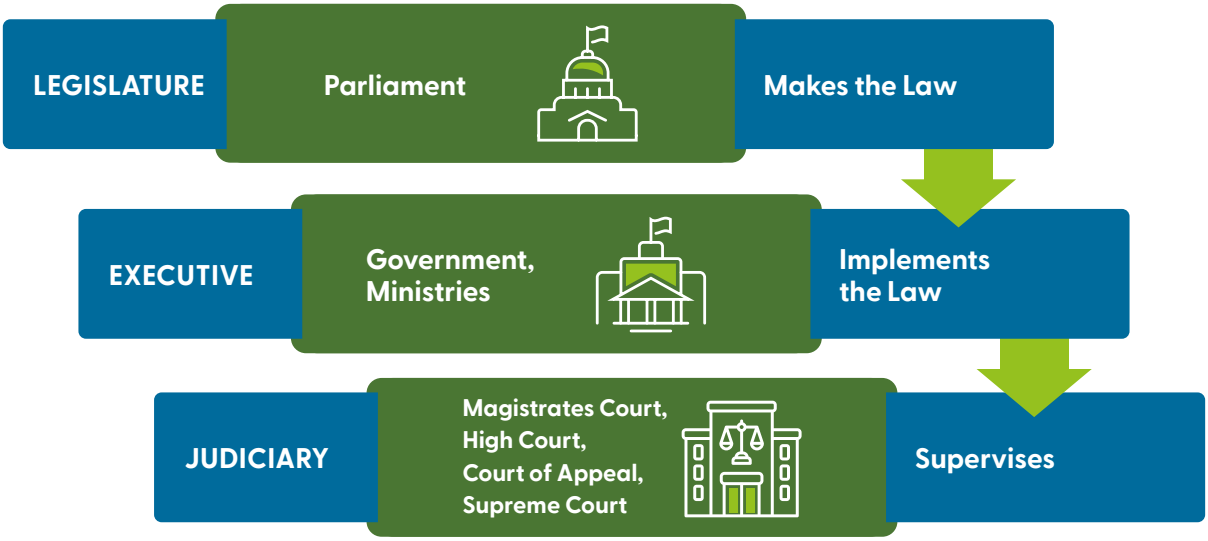


Figure 5. Separation of powers in Fiji's governance structure

Fiji's Legislation is made by the Fiji Parliament

Fiji's laws are made by Parliament. Fiji's Parliament is the legislative body whose elected members (50 elected Members of Parliament – MPs, who sit for 4 years between general elections [19]) enact Bills that become Acts/Statutes once passed by Parliament and after following all procedures. The Constitution (section 46(2)) provides that Fiji's Parliament is supreme and **primary legislation in the form of Acts of Parliament/Statutes can only be made by Parliament.** Laws are passed by simple majority meaning that if the government holds a majority of MPs in Parliament, laws proposed by the government are more likely than not to be passed. The supremacy of Parliament means that it can make laws that may change or alter the relative balance of shared rights in foreshore and nearshore areas (iqoliqoli).

Once a law is passed by Parliament the Constitution makes it clear that the President's role is largely ceremonial as the President does not have a veto power in relation to laws passed by Parliament. The Constitution provides the President with 7 days to assent to any law passed by Parliament and if the President does not do so within 7 days the law is automatically passed.

The Executive (Government) and Ministries implement the legislation

The Executive (or the government) is represented by the President of Fiji who is vested with the Executive authority of the State. In turn, the President acts on the advice of the Cabinet or a Minister, and so, in all meaningful ways, the government is the Executive with decisions either made at Cabinet (a group of chosen government ministers selected by the Prime Minister) or by individual ministers pursuant to delegated powers provided by legislation. The Prime Minister is the head of the government and the person who appoints and dismisses ministers. The Attorney General is the lead legal adviser to the government.

Each ministry has a Permanent Secretary and a Director who report to the Minister and are responsible for implementing day to day activities in line with the law. The permanent secretaries are influential and perform a function similar to the chief executive officer of a company. They report to Parliament and have a general accountability for the budget granted to their ministry. Permanent secretaries in Fiji tend to provide impetus to follow government policy and play an influential role in terms of implementation of their ministry's vision.

Statute law and government policy is implemented by ministries on behalf of the government (Executive) in accordance with the Rule of Law. **Secondary legislation (Regulations) can only be made by an authority delegated through the primary legislation. The Constitution recognizes that Regulations/secondary laws that have the force of law may be made** and provides in section 50(2) that the person (usually a Minister): "must, so far as practicable, provide reasonable opportunity for public participation in the development and review of the law before it is made."

The various ministries are provided with delegated decision making power by Parliament and must exercise those powers in accordance with Fiji's Constitution and common law system. In relation to coastal ecosystems, **this means in accordance with all laws (including but not limited to environmental laws)**. It also means following the principles of common law decision making. This includes, but is not limited to, ensuring that there is a consultative and inclusive decision making process that includes customary law and rights before decisions are made that will adversely affect the interests of coastal communities who rely on healthy coastal ecosystems. An example of this can be found in Box 4.

BOX 4. Example of decision making under the Common law

BOX 4. Example of decision making under the common law

Under Fiji's Fisheries Legislation the Ministry of Fisheries can designate Marine Protected Areas (MPAs) in any area of Fiji's fisheries waters. In accordance with common law decision making principles, if the Ministry of Fisheries is considering the designation of an MPA within a foreshore/nearshore area (iqoliqoli) it must first consult with the appropriate customary rights holding group (likely to be a yavusa), and ensure that the views of the yavusa are taken into account before the decision to designate is made. A failure to consult in this way, may make the decision to designate the MPA susceptible to legal challenge before Fiji's High Court for not taking into account the customary rights and interests. Error! Reference source not found. shows an example of the application of compulsory acquisition of freehold land:

Figure 6. Process for the application of compulsory acquisition of freehold land in Fiji

The regulation of coastal ecosystems involves multiple government ministries and decision makers. In line with Fiji's governance system, key decisions that will affect the rights and interests of the State and customary rights holders in foreshore and nearshore areas (iqoliqoli) will be made by these key agencies. Where the decision has far-reaching implications, for example, a change in the laws, a decision will be made by Cabinet, and legislation drafted and presented to Parliament for vetting and approval in line with Parliamentary process. The roles of ministries and agencies that have key decision making responsibilities relating to coastal ecosystems are discussed below.

Judiciary

Fiji has an independent Judiciary based on the common law model that, in line with normal democratic principles, acts as a check and balance in relation to the exercise of government powers. The independent Judiciary comprises: the Magistrates Courts, High Court, Court of Appeal and the Supreme Court.

The Supreme Court is the final court of appeal and appeals are only allowed if leave is granted by the Supreme Court (section 98 of the Constitution).

Tribunals have also been established by Acts/Statutes and include the Employment Tribunal, the Environmental Tribunal (created by EMA) and the Tax Tribunal.

In terms of development or protection initiatives in coastal areas and the common law systems that should be implemented, the High Court is most relevant as it has inherent jurisdiction to review decisions of Ministers/government exercising delegated powers in line with normal common law/public law principles and in line with the Constitution (Section 50(2)). This is relevant because any development or protection proposals that do not follow lawful approval processes and/or fail to consult with all rights holders (including traditional rights holders) may be subject to legal challenge.

The Magistrates Court and High Court have criminal divisions and will hear prosecutions of all criminal offences including, but not limited to, environmental law or fisheries offences[27].
The Environment Tribunal is established to, amongst other things, hear any approval of an Environmental Impact Assessment made pursuant to the Environment Management Act for a development.

Law Enforcement

Director of Public Prosecutions

The Director of Public Prosecutions (DPP) is established by and appointed in accordance with the Constitution (section 117). The DPP's role is to prosecute any criminal offences committed in breach of Fiji's laws.

Fiji's Police Force

The Fiji Police Force is a Disciplined Force in accordance with section 129 of the Constitution, and under the command of the Commissioner of Police. The Fiji Police Force is established by the Police Act, Cap 85 and its role is to maintain law and order, preserve peace, and the prevention and detection of crime and the enforcement of all laws and regulations with which it is directly charged.

The Police Force is required to operate within the law and this includes exercising its enforcement powers in accordance with the law[30]. The rights of arrested and detained persons are set out in section 13 of the Constitution, and this includes, but is not limited to, the right to remain silent, the right to legal representation, and the right to be brought before a court "as soon as reasonably possible, but not later than 48 hours after the time of arrest or as soon as possible thereafter".

3.4.1. Key Ministries and Agencies Relevant to Coastal Ecosystem Governance

Fiji's coastal ecosystems house significant resources, from coral reefs to mangrove forests, and support key industries, including tourism, fisheries, and agriculture. Various ministries and agencies are tasked with regulating these resources but overlapping mandates and sometimes contradictory policies lead to management challenges, particularly where competing uses such as resource extraction, conservation, land development, and traditional use rights intersect. A lack of coordination among these ministries can complicate enforcement and often exacerbate conflicts over coastal management.

Understanding the roles, responsibilities, and interconnections of these entities is essential for crafting a sustainable and cohesive regulatory approach to coastal ecosystem management.

At the heart of coastal governance is the **Ministry of Lands and Mineral Resources**, which holds administrative control over all state land, including foreshore areas and the seabed, under the State Lands Act. Through the Director of Lands, this ministry issues leases for foreshore land use and regulates sand mining, both of which are essential for coastal development projects. However, these activities can degrade coastal habitats, impacting biodiversity and the health of marine ecosystems managed by other ministries. The Ministry of Lands also plays a significant role in authorizing mangrove clearance for land development, a process that can conflict with other conservation-driven mandates (State Lands Act).

The Conservator of Forests under the **Ministry of Fisheries and Forestry** manages forests, including mangrove ecosystems along the coast, under the *Forest Decree 1992*. Mangroves are critical for coastal resilience, providing storm protection and supporting fish habitats. The Ministry of Forestry's mandate includes promoting sustainable forest use, yet it also allows for controlled extraction of mangrove resources, which can conflict with conservation objectives.

The Director of Fisheries operates under the Fisheries Act and has jurisdiction over all fishing activities in Fijian waters, including in coastal areas and nearshore ecosystems. This ministry oversees sustainable fishing practices, issues fishing licenses, and can declare marine protected areas (MPAs) to conserve biodiversity. Additionally, it plays a significant role in managing the iqoliqoli, or traditional fishing grounds, which are culturally essential to iTaukei communities. The Director of Fisheries' mandate for sustainable fishing can conflict with the Conservator of Forests' use of coastal areas for timber or mangrove extraction, as mangrove removal directly impacts fish populations and marine health (Fisheries Act, Cap 158).

The **Ministry of iTaukei Affairs** protects the rights of indigenous Fijians to manage their traditional lands and iqoliqoli under the *iTaukei Land Trust Act*. This ministry supports customary fishing rights and collaborates with Provincial Offices to ensure that iTaukei communities can exercise control over their resources. The ministry collaborates closely with **Provincial Conservation Officers** and the **National Resource Owners Council (NROC)**, which represents the 14 provinces, ensuring that the traditional rights and conservation interests of iTaukei

communities are considered in national policies. However, when national conservation regulations from the Ministry of Environment or fishing restrictions from Ministry of Fisheries limit traditional access to these areas, the lack of formal interagency coordination can undermine efforts by iTaukei Affairs to protect indigenous rights and local conservation initiatives (iTaukei Land Trust Act).

The **Ministry of Tourism and Civil Aviation** promotes sustainable tourism development under the *Tourism Development Plan*, which includes developing resorts and other infrastructure in coastal areas that attract significant tourist traffic.

The **Ministry of Environment and Climate Change** (MECC) enforces the *Environment Management Act 2005 (EMA)*, requiring Environmental Impact Assessments (EIAs) for projects that could harm coastal ecosystems. MECC has a broad mandate, focusing on conservation, pollution control, and waste management to protect Fiji's natural resources. Through the *Endangered and Protected Species Act 2002*, it also regulates activities in protected areas and monitors endangered species, which is particularly relevant to coastal and marine ecosystems.

Further to this, the Attorney-General is the chief legal advisor to the government, and the Office of the Solicitor General gives independent legal advice to the government and to the holder of a public office upon request. The Solicitor-General also provides draft laws upon the request of the Cabinet and maintains a publicly accessible register of all written law.

Major conflicts of interest between these ministries arise around three core areas: resource extraction vs. conservation, tourism development vs. environmental protection, and traditional rights vs. national regulations.

Fiji has made strides toward interagency coordination in coastal ecosystem management through several existing platforms and committees, which bring together different ministries to address these overlapping mandates. One such mechanism is the **National Environment Council** (NEC), established under the *Environment Management Act 2005 (EMA)*, which brings representatives from various ministries to oversee environmental policies and encourage cohesive implementation of environmental regulations across sectors. Additionally, the **Protected**

Areas Committee, chaired by the Ministry of Environment, works to facilitate discussions around MPAs and coordinate conservation planning. This committee provides a platform for input from other sectors, ensuring that conservation efforts are integrated with broader national development goals.

Another key initiative is the **Mangrove Management Committee**, which aims to promote sustainable mangrove management and protection through inter-ministerial collaboration. The committee brings together the different ministries and agencies that have a stake in mangrove management, as well as other stakeholders to ensure that mangrove policies align with environmental goals and community needs. Through these committees, Fiji has made progress in promoting cross-ministerial dialogue and laying a foundation for more integrated approaches to coastal management.

However, despite these positive steps, decision making in Fiji's coastal management remains predominantly siloed, with each ministry operating independently according to its own legislative mandate. For example, the **Ministry of Lands and Mineral Resources** holds substantial authority over foreshore land and seabed areas under the *State Lands Act*, where the Director of Lands can issue leases for coastal land use and sand mining permits with minimal formal consultation from other ministries. This sector-specific control is beneficial for streamlining decisions within the ministry, but it can create significant issues when projects impact areas managed by other agencies, such as sensitive marine habitats overseen by the Ministry of Environment (State Lands Act).

4. FIJI'S LAWS, REGULATIONS AND POLICIES RELEVANT TO COASTAL ECOSYSTEMS

The above sections have described who the key decision makers are for the regulation of coastal ecosystems in Fiji, and how those decisions should be taken to include customary rights holders. This section discusses Fiji's laws in terms of their relevance to the various aspects of regulation of coastal ecosystems. It explores the legal powers under which decisions are taken relating to the regulation of development activities or protective initiatives relating to coastal ecosystems.

The main decisions relating to the regulation of activities in coastal areas are:

1. Sustainable **development** of coastal areas.
2. Establishment of **protection areas** (e.g. designating certain areas of biological significance as protected in accordance with the law and meeting international commitments).
3. Environmental **conservation** (including meeting international targets for biodiversity conservation).
4. **Pollution prevention and damage control** (regulating industries or sectors of the economy that may affect coastal areas).
5. Linking coastal ecosystem protection and management with **sustainable financing opportunities** – carbon sequestration and Blue Carbon credits opportunities.

Fiji's laws are comprehensive, and they operate within a legal and governance system that has embedded customary law and rights within it. There is thus scope for Fiji's laws to be applied in line with its plural and common law system to coastal ecosystems. Fiji's laws include the regulation of land use, planning, and environmental law that provides protection for coastal ecosystems and other areas, including catchments such as rivers and forests. They include requirements for Environmental Impact Assessments (EIAs) as part of assessing development decisions and impose regulatory standards for pollution. Seagrasses are also accorded some protection from land-based development activities under the EIA requirements of the

Environment Management Act 2005 (EMA). Processes for consultation of resource owners and customary rights holders are outlined in the legislation. The laws are comprehensive and operate within a legal and governance system that has embedded customary law and rights within it.

Fiji does not have specific protected areas legislation in place, although there are options for subsidiary legislation (Regulations) for marine reserves under fisheries legislation and forest reserves under forestry legislation. Any legislation for protected areas must align with traditional rights holders, and the current draft Mangrove Regulations developed by the Department of Environment are considered in this context. The EMA, administered by the Department of Environment, provides for control of development via decision making tools like EIAs, and regulation of pollution. There is need for more integrated guidance from the Department of Environment to all government approving agencies/decision makers for activities that may adversely affect coastal ecosystems and the people who rely on them.

There is potential with Fiji's Climate Change Act for the State and traditional rights holders to benefit via joint agreements for carbon sequestration projects. Fiji's tourism sector also has a role to play in adopting and promoting more sustainable tourism that protects coastal ecosystems that it relies on, however, its track history to date has missed these opportunities[35].
Given the existing and well understood resource constraints that Fiji faces, it is the view of the Legal Reviewers, and as was approved during consultations, that the pressing needs in relation to Fiji's legal framework for regulating coastal ecosystems are:

1. The effective implementation of the existing legal framework; and
2. Addressing finance gaps to meet resource shortfalls within government implementing agencies.

4.1. The Environment Management Act 2005

The Environment Management Act 2005 (EMA) provides an overarching governance for the various regulatory decisions relating to coastal areas and the environment in general. The Act is implemented by the Ministry of Environment, whose primary responsibilities include the protection of natural resources, the control and management of industrial and agricultural development, and waste management and pollution control. The EMA applies to all areas of Fiji's territorial sovereignty and therefore includes the archipelagic and territorial waters, and Fiji's EEZ. Environment is defined widely in the EMA and means air, land or water, all layers of the atmosphere, all organic or inorganic matter or living organisms, the interacting natural or human system that include components of the above. Land is defined including the foreshore, seabed and anything resting on the seabed.

The EMA addresses key issues relevant to environmental protection and sustainable development in coastal areas through several core provisions:

Sustainable Development: The Ministry regulates development in Fiji through decision making processes that include the use of EIAs. The Environment Tribunal established by the EMA has jurisdiction to hear challenges to EIA decisions that should follow a transparent, inclusive process and meet the requirements of the EMA. The EMA mandates that EIAs be conducted for projects likely to have significant environmental

35 https://www.theguardian.com/world/2023/dec/13/fiji-magrove-destruction-why-tourism-restoration-plan-importance-the-price-of-paradise

impacts. It establishes a clear process for EIA approval, including public consultation, impact assessment, and mitigation measures, ensuring that developments consider environmental health and community well-being (please see 4.3). "Development activity or undertaking" means "any activity or undertaking likely to alter the physical nature of the land in any way, and includes the construction of buildings or works, the deposit of wastes or other material from outfalls, vessels or by other means, the removal of sand, coral, shells, natural vegetation, seagrass or other substances, dredging, filling, land reclamation, mining or drilling for minerals, but does not include fishing".

Environmental Tribunal: The EMA created the Environment Tribunal, which allows for appeals and challenges to EIA decisions, ensuring that these decisions meet the Act's transparency, inclusivity, and compliance standards. This provides a formal mechanism for stakeholders to question EIA outcomes and hold decision-makers accountable.

Pollution Control: The EMA requires the creation of the Waste and Pollution Control Unit and a Resource Management Unit, among others, in the Department of Environment, to coordinate regulatory activities relating to waste management and pollution and natural resource management (please see 4.6).

Coordinating body: The EMA establishes the National Environment Council (NEC), recognizes the traditional owners of Fiji's resources and the relationship of iTaukei with their ancestral lands, waters, and sacred areas. The NEC is responsible for ensuring that Fiji meets its commitments under regional and international environmental agreements. The NEC has, in accordance with the EMA, established the Protected Areas Committee (PAC). PAC has a marine working group and is tasked with providing technical advice, coordination, leadership, and support to the government towards meeting its 2005 commitment to protect 30 percent of its maritime areas.

Community and Stakeholder Involvement: The Act mandates public involvement in the environmental decision-making process, including EIA consultations, allowing communities, NGOs, and stakeholders to provide input. This inclusive approach respects indigenous rights and promotes community engagement in conservation and sustainable practices.

Under the EMA, DOE with support by WWF is currently developing Mangrove Regulations to address perceived gaps in relation to the Environment Management Act 2005 and Environment Management (EIA Process) Regulations 2007. The draft Mangrove Regulations, at present, include wide powers to the Minister of Environment: to declare Mangrove Protected Areas (MPA) together with a Register for these areas and a process for communities to express interest in having areas declared as MPAs (note the declaration of a MPA triggers an obligation for the Department to develop and implement the Plan for that mangrove area) and establish a Mangrove Management Committee comprised of various government personnel. The Mangrove Management Committee is proposed to have various responsibilities including that EIA reports will be subject to the Mangrove Management Committee's oversight. Further the proposed Mangrove Regulations will create criminal offences which include the taking of any plant from within a Mangrove Protected Area and for any proponent of a development who fails to implement the Management Plan.

4.2. Sustainable Development of Coastal Areas

4.2.1 Planning and Land Use

Fiji exercises State control over land, including how it may be developed. The regulation of development falls within the domain of planning and environmental law.[36]

The Fiji government, on behalf of the State and in the public interest, exercises legal control and regulates land in a variety of ways and this includes, but is not limited to:

- How land may be owned or held (tenure) – Fiji has 3 main types of land tenure: freehold title, crown/State lease and iTaukei (native) title and all may be leased or sub-leased in accordance with the legal process.
- How parcels of land are created (subdivided).
- How land ownership may be transferred so that the State guarantees the title – Fiji has the Torrens Title System where the State guarantees the accuracy of the title.37
- How land may be developed in accordance with planning and environmental standards, and the enforcement against unlawful development (planning and environmental law).
- The standards that must be followed when buildings are built on land (the building code is under the Public Health Act).
- Various land taxes and other regulations.

The type of tenure of the land will influence which government department or ministry is primarily responsible to regulate that land.

Mangroves and seagrass ecosystems occur either in foreshore or nearshore areas, which are areas of land designated as State land. State land is administered by **Fiji's Department of Lands** within the Ministry of Lands. This department is responsible for the administration and oversight of all development of State Land/Crown Land in Fiji under the **State Lands Act 1945.**

The responsibilities of the Department of Lands include the issuance of foreshore leases and the exploration and mining of minerals on all State Land, which would include mangrove areas, foreshores, inland waters.

A potential method to develop or to protect foreshore areas is to seek a lease of foreshore land that extends across tidal mudflats close to shore pursuant to the State Lands Act. This is known as a wet lease and is granted by the Department of Lands[42]. A wet lease may be suitable for certain development projects, tourism projects, aquaculture ventures or as part of an initiative to protect certain areas from development. A wet lease is not granted for a specific purpose and may be granted for either development or conservation purposes. The process will require the lessee to consult with and provide compensation to the customary rights holders of the iqoliqoli over which the wet lease is granted. During consultations for this Review, the Director of Lands outlined several steps that are taken before the issuance of a foreshore lease. Figure 7 sets out the legal process to obtain a foreshore/ lease.

36 For a fuller explanation of Fiji's planning system please see: "Fiji Planning law: Fiji's government has announced new Town …." 1 Jul. 2019, http://www.sas.com.fj/ocean-law-bulletins/fiji-planning-law-fijis-government-has-announced-new-town-planning-schemes-may-be-adopted-for-suva-lautoka-and-nadi-an-opportunity-for-good-d-15616938. Accessed 29 May. 2020.

37 "The Court of Appeal has upheld the Torrens title system by …." 18 Sep. 2017, http://www.sas.com.fj/commercial-law-updates/a-recent-court-of-appeal-judgment-has-upheld-the-torrens-title-system-by-confirming-indefeasibility-of-title-includes-a-volunteer-under-a-will.

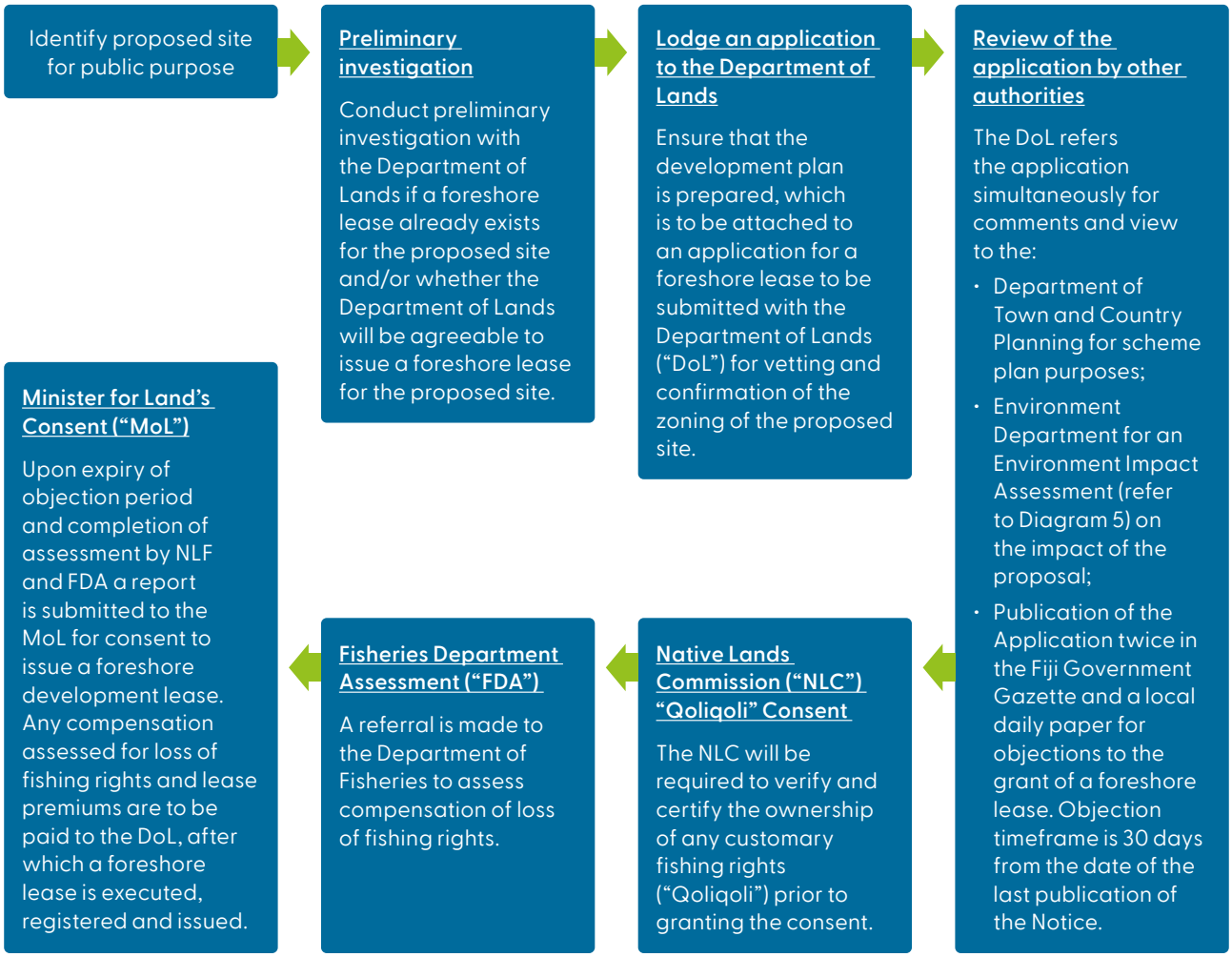


Figure 7. Process for obtaining foreshore/wet lease through Department of Lands

As noted earlier (3.3), Fiji's Constitution provides protection of private property rights: Section 27 of the Constitution provides for the "Freedom from compulsory or arbitrary acquisition of property", meaning that a person cannot be arbitrarily deprived of property and if is deprived, must be provided with fair compensation.

Other relevant Acts relating to Planning and Land use are:

- The **Land Conservation and Improvement Ac**t empowers the Land Conservation Board to issue orders prohibiting clearing, grazing, burning or cultivation in an area for conservation purposes.
- The **National Trust for Fiji Act** that empowers the National Trust to enter into binding conservation covenants with landowners, to purchase land for conservation purposes, adopt by-laws for trust properties and to maintain a register of nationally significant areas.

4.2.2 Environmental Impact Assessment

The Ministry of Environment plays a significant role in providing essential support to the viability of any proposals to develop or protect mangrove or seagrass areas, and when reviewing a development proposal, must consider any adverse environmental effects caused to these coastal ecosystems and the people who rely on them. A failure to take such adverse effects into account could support a legal challenge against the Ministry of Environment decision to approve the development before the Environment Tribunal/Courts of Fiji.

The EIA process in accordance with the EMA is outlined in Figure 8. At the first stage of the EIA process, the approving authority for the development must assess whether an EIA is required. Section 27 of the Act sets out the duties for that assessment and requires that the approving authority must determine whether the development is *"likely to cause significant environmental or resource management impact."* In making this decision, the approving authority is required to consider (among others): the nature and scope of the development, the scale of the impact on the environment, what would mitigate that impact, the level of public concern. Further, in a recent amendment, the Act requires the approving authority to consider greenhouse gas emissions and ensure that development is compatible with the objectives and principles of the Climate Change Act, 2021.

If the approving authority determines that the activity or undertaking is likely to cause a significant environmental or resource management impact, or may result in material greenhouse gas emissions or could be adversely affected by the impacts of climate change, the development proposal must be subject to the EIA process.

In addition, s33(1) of the EMA requires certain development proposals must have an EIA and approval by the EIA administrator. Schedule 2 to the EMA includes a list of development proposals and this includes proposals relevant to coastal ecosystems such as mangroves and seagrass. Development proposals in coastal and marine areas are likely to meet the criteria in Schedule 2. Table 2 provides some examples.

Table 2. Types of development proposals that could require an EIA in accordance with Schedule 2 of EMA

A proposal that could result in erosion of any coast, coastline, beach or foreshore
A proposal that could result in the pollution of any marine waters, ground water, freshwater body or other water resource
A proposal that could alter tidal action, wave action, currents or other natural processes of the sea, including but not limited to reclamation of the sea, bridge
A proposal that could jeopardize the continued existence of any protected, rare, threatened or endangered species or its critical habitat or nesting grounds
A proposal that could deplete populations of migratory species including, but not limited to, birds, sea turtles, fish, marine mammals

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

A proposal that could destroy or damage an ecosystem of national importance, including, but not limited to, a beach, coral reef, rock and gravel deposit, sand deposit, island, native forest, agricultural area, lagoon, sea-grass bed, mangrove swamp, natural pass or channel, natural lake or pond, a pelagic (open ocean) ecosystem or an estuary

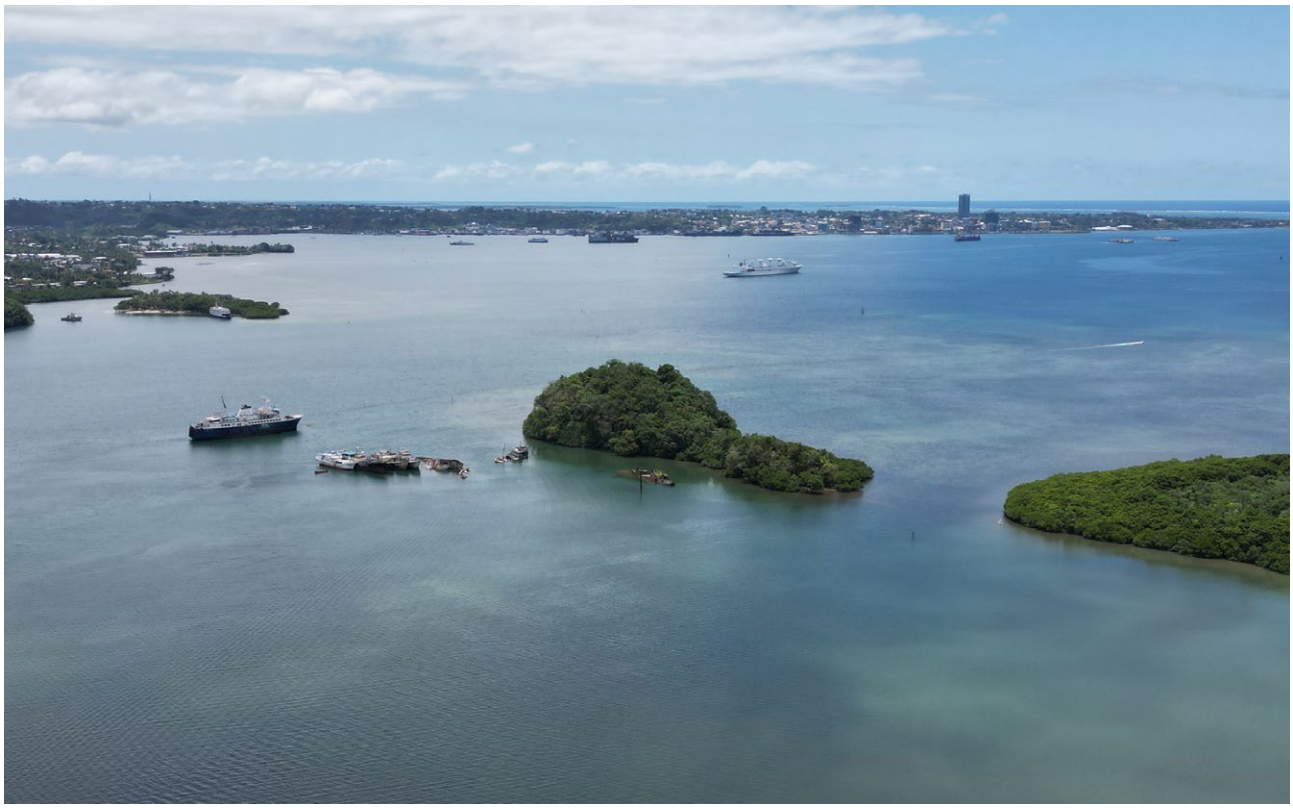
A proposal for the construction of a landfill facility, composting plant, marine outfall or waste water treatment plant a proposal that involves dredging or excavating a river bed

A proposal that is controversial from an environmental standpoint, or is not supported for environmental or resource management reasons by a significant number of representatives from the local community, local government, churches, villages and other groups

A proposal that could lead to the depletion of non-renewable resources

A proposal that could challenge or contravene established customary controls over the use of natural resources

A proposal that could result in any trans-boundary movement of wastes that could have an impact on human health, the environment or natural resources in any neighbouring country a proposal financed by an international or local development finance institution and which requires an EIA as a condition of the finance.



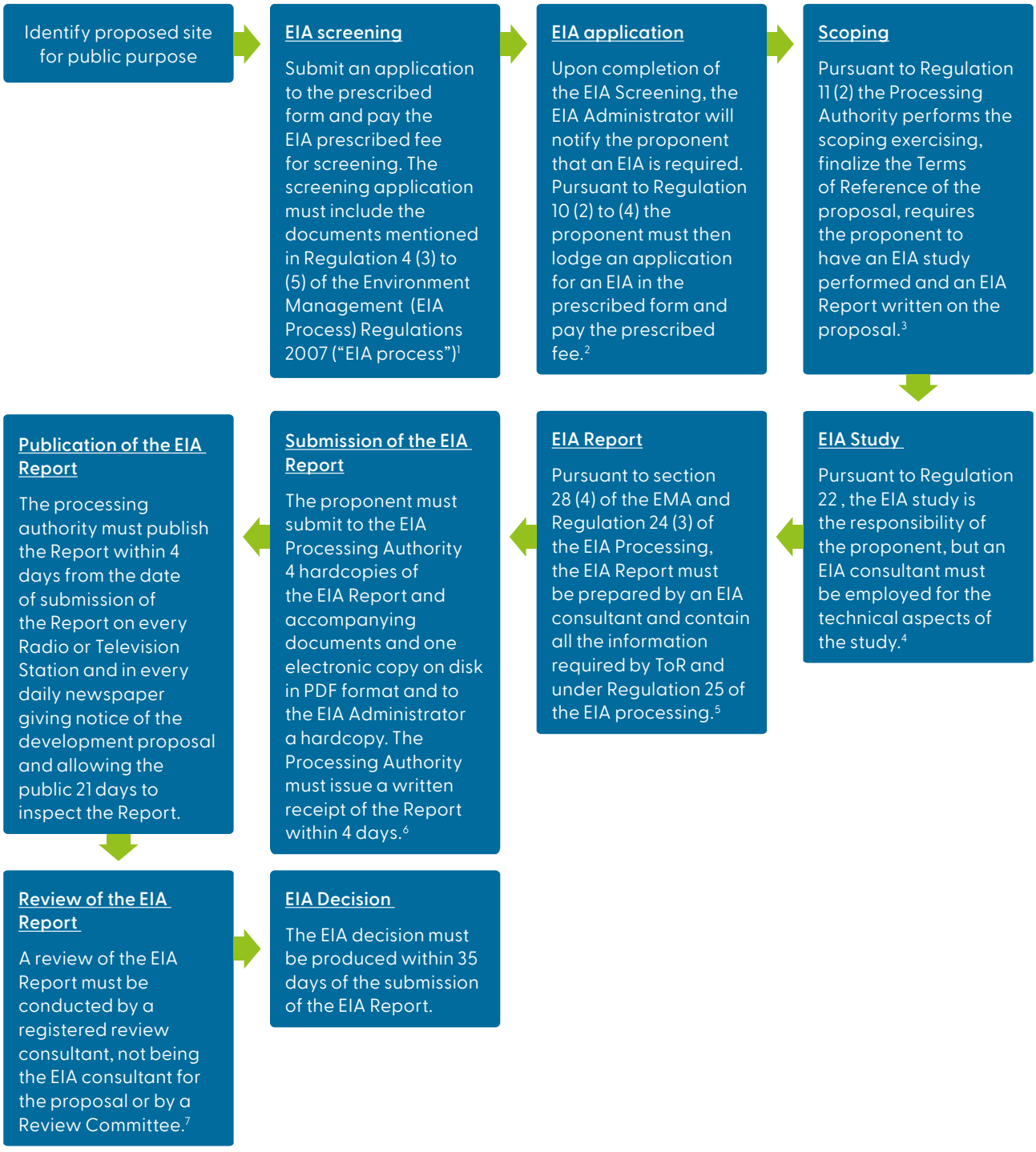


Figure 8. The Environmental Impact Assessment (EIA) Process as outlined in the Environment Management Act 2005

4.2.3 Mining & Offshore Industry

The mining industry is primarily regulated by the **Mining Act & Regulations**, although there are supporting statutes, such as the **Quarries Act** and the **Explosives Act.** These Acts are administered by the Mines Section and the Mines Inspectorate within the Mineral Resources Department (MRD) of the Ministry of Lands. Mining licences are subject to conditions and monitored to meet acceptable pollution standards. There is also provision to enable artisanal, small, and medium scale mining; and for every mining licence, the requirement to report to the Director of Mines in terms of the nature of the deposit and the scheme for mining, although most of this is directed at ensuring the mining company has the appropriate means to meet its operations.

In terms of mangrove or seagrass areas (coastal ecosystems), any extractive industry that adversely affects those areas would be regulated under Fiji's national legislation, including but not limited to the Mining Act. This would involve the Director of Lands and the Environment Management Act.

The Environment Management Act requires all mining operations to have an EIA with an Environment Management Plan (EMP) to mitigate environmental issues highlighted in the EIA report. All costs are borne by the mining project developer. Waste permits may be required, and the environmental division of the Mineral Resources department will inspect to ensure that waste emissions meet the guidelines. Any mining developer is also required by law to provide a refundable banker's guarantee, in an amount determined by the Mineral Resources department in consultation with the Ministry of Environment and fixed to meet the risks of any project. This bond is then held against any damage caused by the mining that cannot be remedied. This is in line with the Government's Sustainable Development Policy. The environmental bond or a portion of it may be paid to affected landowners in the event environmental damage is caused. Licence conditions may also hold the mining company to account to remediate the land.

The Constitution refers to "minerals" as all minerals extracted from land or the seabed and includes natural gases. It also includes the Right of Landowners to receive a fair share of royalties for the extraction of minerals. Section 30 of the Constitution provides guidance on the ownership of minerals on land or sea (by State) with the provision that the owners of the land (customary or freehold) are entitled to receive a fair share of the benefits (see Box 2).
It is noted that the National Ocean Policy identifies prospects for deep sea mining as an emerging challenge for Fiji. However, a proposed 10-year moratorium on deep seabed mining that was included as part of the Draft Climate Change Bill was removed from the Climate Change Act.

4.2.4. Compensation and sharing of Royalties

The Constitution recognises resource rights registered to iTaukei landowning groups and gives provisions for compensation of compulsory acquisition of property by the State and a share of royalties for rights holders for the extraction of minerals. Freedom from compulsory or arbitrary acquisition of property as per Section 27 provides that if the State acquires any property compulsorily adequate compensation should be paid.

This is highly relevant for the governance of coastal and nearshore areas, because, as explained above t*he recorded customary rights in foreshore and nearshore areas (iqoliqoli) are a type of property right in law.* As noted, successive Fiji government's have, in line with policy adopted in 1970s, overseen a mechanism administered by the Ministry of Lands to grant compensation for any foreshore development that removes "fishing rights". This well-established practice involves the Director of Lands who oversees a process of consultation with the relevant landowning group (normally the Yavusa). If approval is provided by the Yavusa or other relevant landowning group[38] this culminates with a "waiver of fishing rights" from the relevant Yavusa or other landowning group, and the payment of compensation from the proponent from the development project.

In terms of mining and Offshore Industry, while the State owns all minerals beneath land and water (including natural gases), the **Constitution** guarantees customary landowners a fair share of royalties from mineral extraction on or near their lands, including coastal areas. The reason that these guarantees have been made is because while iTaukei owns iTaukei land, the minerals beneath the surface of the earth belong to the State.

In terms of mangrove or seagrass areas (coastal ecosystems) any extractive industry that adversely affects those areas would be regulated under Fiji's national legislation, including but not limited to the **Mining Act**. This would involve the Director of Lands and the **Environment Management Act.** Mining operations in Fiji are governed primarily by the **Mining Act & Regulations** and supported by additional laws, including the **Quarries Act**, the **Petroleum Act**, and the **Environment Management Act (EMA).** These laws set the framework for regulating mining activities, establishing requirements for minimizing environmental impact and protecting public and customary rights.

For any mining project, an **Environmental Impact Assessment (EIA)** is mandatory, along with an **Environment Management Plan (EMP)**, which outlines specific measures to address and mitigate environmental impacts identified in the EIA. Projects that could affect coastal ecosystems must also secure waste permits, comply with pollution guidelines, and undergo inspections by the Mineral Resources Department in coordination with the Ministry of Environment. These inspections ensure that emissions and waste discharges meet national environmental standards to minimize impacts on surrounding marine and coastal habitats. The stakeholder consultation processes under the EMA (see 4.1, 4.3.1) ensure that community concerns are heard, particularly regarding any potential impact on their traditional fishing grounds or nearshore ecosystems, which play a crucial role in local livelihoods.

Mining developers are also required to provide an **environmental bond**, a refundable guarantee set by the Mineral Resources Department in consultation with the Ministry of Environment. This bond is intended to cover potential damages from the mining project that cannot be readily mitigated. If environmental harm does occur, the bond can be used to pay for remediation efforts or to compensate affected landowners. This financial safeguard aligns with Fiji's sustainable development policy, holding mining companies accountable for long-term environmental stewardship and responsibility in coastal and marine areas.

38 Note in some cases smaller close to shore iqoliqoli may be vested at Mataqali level. In this case it would be the Mataqali and not the Yavusa who must be consulted. The short point, is that if any project whether it be for development or for protection is considered in any nearshore area the correct landowning group with with traditional rights extending into the foreshore/nearshore area must be identified with the assistance of the iTaukei Affairs Board for consultation purposes.

4.3. Establishment of Protected Areas

At present, there is no specific protected areas legislation in Fiji.

To date, there has been a piecemeal approach (with no overall planning) to protected areas, with different legislation containing and conferring the ability to different ministries to designate protected areas for specific purposes, most notably, forestry reserves under the Forest legislation that confers power to the Minister of Forests to control commercial felling; and to declare a forest reserve for areas of mangrove, subject to a consultative process with any customary group with traditional rights in the mangrove area. The Fisheries legislation (the **Fisheries Act, 1941**) is the only legislation that provides the ability to designate a marine reserve or marine protected area (MPA) in nearshore waters.

Establishing either a forest reserve or marine reserve under primary legislation (the Forest Act or the Fisheries Act) requires that the process comply with common law decision making and be subject to thorough consultation with any person or group who will be adversely affected by the decision to make secondary legislation (Regulations) to create a forest or marine reserve. There is no set process in the legislation itself beyond the requirement to comply with common law principles of natural justice. The obligation on the relevant government agency on behalf of the relevant Minister is to ensure that:

a. The primary legislation provides sufficient delegated authority or power to declare the Forest or Marine reserve;
b. Any person or group of persons whose interests will be adversely affected by the new regulations is consulted adequately and has the opportunity to have their say; and
c. The final decision to create the regulation has been taken with full consultation and taking into account any points raised by any affected person or group of persons.

More detail on the Fisheries legislation and the Forest Act is provided below.

In relation to both forest and marine reserves, the persons most likely to be affected are traditional land owners and/or rights holders and any existing commercial interests or other property rights holders.

Further to these, other frameworks allow for some sort of protection of coastal areas.

Native land leases

Native land in Fiji, which makes up about 91% of the country's land, is owned collectively by iTaukei (indigenous) landowning groups called Yavusa. This land cannot be sold, but it can be leased, providing a means for land use while keeping ownership within the Yavusa. The iTaukei Land Trust Board (TLTB) under the **iTaukei Land Trust Act** manages these leases, ensuring that land use aligns with the interests of landowners, supporting economic development, conservation, and community projects. Native land leases can be used for agriculture, residential and commercial development, conservation and forestry and extraction. After receiving approval from the Yavusa, the TLTB manages lease agreements, ensuring compliance with relevant laws and providing financial benefits to landowners.

Native land leases can be and have been issued to conservation-minded NGOs that then use the Lease to conserve forest areas, but this requires the NGO or person to pay for the lease. Lease payments are calculated in accordance with the relevant law, and specific legal advice should be sought as part of considering this option.

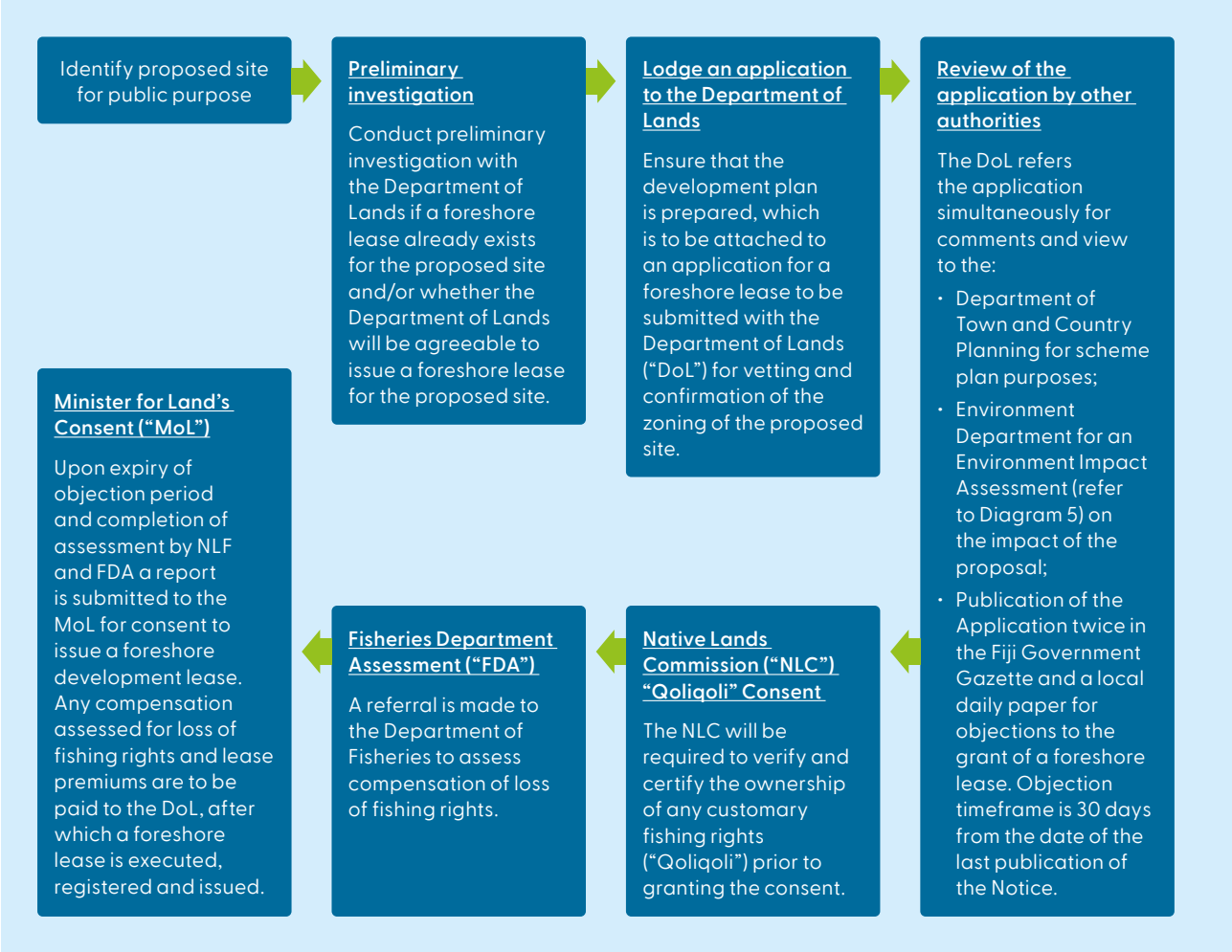
Wet leases

A foreshore or "wet" lease provides a legal pathway for protecting foreshore areas and sensitive coastal ecosystems in Fiji, such as mangrove and seagrass habitats. Issued under the **State Lands Act** by the Department of Lands, wet leases cover foreshore land extending across tidal mudflats nearshore and offer options for both development and conservation purposes.

Mangrove and seagrass ecosystems—often in foreshore or nearshore zones designated as State land—are managed by the Department of Lands within the Ministry of Lands under the State Lands Act. The Department oversees all development on State land, including issuing foreshore leases and regulating mineral exploration and mining on State land, which covers areas like mangroves, foreshores, and inland waters.

To develop or protect foreshore areas, entities can apply for a "wet lease" for foreshore land extending across tidal mudflats near the shore under the State Lands Act. The Department of Lands grants wet leases for development or conservation purposes, supporting projects such as tourism, aquaculture, or environmental protection.[42] Securing a wet lease requires consulting with and compensating customary rights holders in the local iqoliqoli (traditional fishing grounds).

BOX x: Process for Obtaining Foreshore/Wet Lease



Further to this,

The **Land Conservation and Improvement Act** empowers the Land Conservation Board to issue orders prohibiting clearing, grazing, burning or cultivation in an area for conservation purposes.

The **National Trust for Fiji Act** that empowers the National Trust to enter into binding conservation covenants with landowners, to purchase land for conservation purposes, adopt by-laws for trust properties and to maintain a register of nationally significant areas.

4.3.1. Fisheries legislation

The Ministry of Fisheries is the government agency responsible for implementing Fisheries legislation with aims that include but are not limited to the sustainable management of Fiji's fisheries. The Fisheries Legislation includes two Statutes (Acts) and are: The **Offshore Fisheries Management Act 2012 and Regulations, and the Fisheries Act 1941 and Regulations.**

The Offshore Fisheries Management Act, 2012 applies to all areas of Fiji's Fisheries Waters, including the inshore, archipelagic, territorial waters, and EEZ. It is modern fisheries legislation with primary management tools of licences, conditions, and prohibited methods.

The Fisheries Act 1941 and Regulations are outdated (and the subject of a current review by the Fiji government), but the Act includes the statutory process that led to the designation of iqoliqoli areas. The Fisheries Act 1941 and Regulations are currently only applied to iqoliqoli areas[39].

Both the Offshore Fisheries Management Act and the Fisheries Act delegate power to the Minister of Fisheries to designate Marine Reserves/MPAs in coastal/nearshore areas in accordance with Fiji's common law system and via creation of a Fisheries Regulation. There is a process provided to designate a Marine Reserve/MPA in nearshore areas. This involves a recommendation by the Director of Fisheries followed by drafting of the Regulation by the Solicitor General's Office and, once approved, made in the name of the Minister for Fisheries, and gazetted. To date, only four MPAs have been designated under this legislation.

It is noted that this process for designating Marine Reserves/MPAs does not refer to community established "tabu" areas that are a form of MPA. These tabu areas are designated by communities and are not established by legal regulation and therefore do not have the "force of law". Community-based protection areas are discussed further in this Review.

4.3.2. The Forest Act 1992

The **Forest Act 1992** prohibits the felling or extraction of timber without a licence, with exclusions for customary usufructuary rights (essentially subsistence use), including the collection of firewood for villages/household use. It empowers the Ministry of Forests to issue logging licences and declare strict nature reserves, although the Minister must only declare a forest reserve on the recommendation of the Forestry Board and can only remove or modify a nature reserve on the recommendation of the Forestry Board.

39 personal communication with the Ministry of Fisheries

Mangroves fit under the definition of forests and as such, it has been confirmed in consultation with the Conservator of Forests, that the Ministry has the power to declare mangroves on State land as forest reserves, meaning that any removal of mangrove from a declared forest reserve needs to be approved by the Ministry. In addition, the Conservator confirmed that the commercial harvesting of mangroves has been banned.

The Forest Act 1992 describes nature reserves are strict reserves that must 'be managed for the exclusive purpose of permanent preservation of their environment, including flora, fauna, soil and water'. Forest reserves may be used for multiple purposes, including the felling and extraction of timber. Forest reserves must 'be managed as permanent forest in order to provide on a permanent basis the optimum combination of benefits of protection and production'.

Once declared as a nature reserve it is an offence to log, clear, burn, build, plant, graze, hunt or fish in a nature reserve. Logging licences must not be issued in declared nature reserves. Mining leases can only be issued in nature reserves with the approval of the Conservator for Forests.

The main issues affecting Fiji's forests relate to the regulation of extractive practices and ensuring that the rights of landowners are considered. The majority of forests occur on iTaukei land and this means that a lease should be granted in accordance with the law; thus, consent must be provided by both the iTaukei Lands Board and the relevant landowning group (yavusa or mataqali). If the land is State land, then a lease must be granted by the Department of Lands (like a foreshore lease) and if freehold/private land, from the landowner.

Timber licences are also required for extraction, and these are issued by the Forest Department and may be issued subject to licence conditions. There are further obligations including the provision of a logging plan and complying with the **forest harvesting code of practice**. Failing to comply with the code is a criminal offence that may lead to revocation of the licence and a US$5000 fine. In relation to forestry, the **Environment Management Act 2005** (EMA) may require Environmental Impact Assessments (EIAs), and the **Endangered and Protected Species Act 2002** (EPS) must also be followed.

Native land leases have been issued to conservation-minded NGOs that then use the Lease to conserve forest areas, but this requires the NGO or person to pay for the lease. Lease payments are calculated in accordance with the relevant law, and specific legal advice should be sought as part of considering this option.

Forestry officers and police are responsible for enforcing forestry laws. Forestry officers have powers of entry, seizure, and arrest. Courts may impose penalties (including fines and prison sentences) and make compensation and forfeiture orders.

4.3.3. Community-based protection of coastal areas

In the absence of specific protected area legislation and within iqoliqoli areas there has been a rapid expansion of the Fiji Locally Managed Marine Network (FLMMA) network that has, amongst other things, led to the adoption of community-based approaches with tabu areas/ MPAs being designated within iqoliqoli areas. Figure 9 is an example of the traditional tabu areas within the iQoliqoli Cokovata in Macuata Province in Vanua Levu.

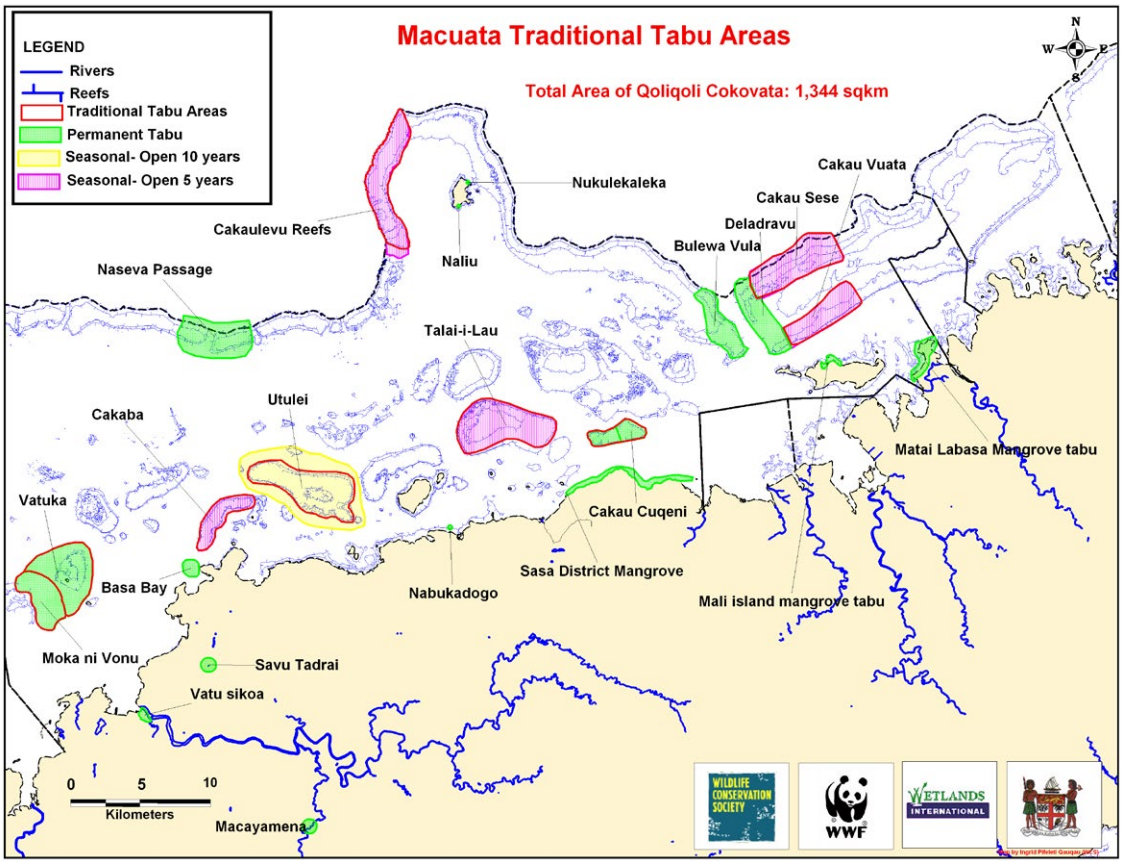


Figure 9: Map showcasing marine and mangrove protected areas in the Qoliqoli Cokovata of Macuata Province in Vanua Levu.
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The Qoliqoli Cokovata is Fiji's largest iqoliqoli area and is an amalgamation of the iqoliqoli of five provinces under the leadership of one yavusa led by Tui Macuata, who is also the current President of Fiji. The establishment of tabu areas is undertaken by customary rights holders only and does not involve the State. As such, these tabu areas have no legal status. However, the Ministry of Fisheries may choose to include the tabu areas as "no fishing areas" in the conditions of any commercial fishing licences issued under fisheries legislation. This provides some State regulatory oversight of tabu areas, but only if the fishing licence includes the specific condition mentioned above.

4.4. Environmental Conservation

4.4.1. Draft Mangrove Regulations

The Department of Environment has engaged a consultant to draft new Mangrove Regulations to address perceived gaps in relation to the Environment Management Act 2005 and Environment Management (EIA Process) Regulations 2007.

At the time of writing (January 2024), the Mangrove Regulations are in draft only and will be subject to further consultation and then review by the Attorney General's Chambers in 2024. The draft Mangrove Regulations, at present, include wide powers to the Minister of Environment to declare Mangrove Protected Areas; require a Register for these areas; and

a process for communities to express interest in having areas declared as protected areas. The declaration of a mangrove protected area triggers an obligation for the Department to develop and implement the Plan for that mangrove area. The draft Regulations also proposes a Mangrove Management Committee comprised of various government personnel. The Mangrove Management Committee would have various responsibilities including that EIA reports will be subject to oversight by the Mangrove Management Committee. Further, the proposed Mangrove Regulations will create criminal offences, which include the taking of any plant from within a Mangrove Protected Area for any proponent of a development who fails to implement the Management Plan.

The draft Mangrove Regulations currently state that they will be made in accordance with powers "conferred … by section 61(2), (3)(d) & (e) of the Environment Management Act 2005." (BOX 5).

While the draft Mangrove Regulations will be carefully considered by Fiji government lawyers in the Attorney General's Chambers, it is unclear on a plain reading of section 61(3)(e) of the EMA whether the draft Mangrove Regulations as currently drafted are within the powers (intra vires) conferred by this section. This is because section 61 (set out in BOX 5) provides that:

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

There is a need to implement national legislation for protected areas in line with international commitments, but it is also essential that legislative change is efficient and cost effective and should rely, to the maximum extent possible, on engaging local stakeholders/customary owners and rights holders in protecting mangroves and seagrass for outcomes that align with State and community interests. The draft Mangrove Regulations as they are currently drafted raise concerns that they are outside the powers of the EMA and may not align with the aims and needs of traditional rights holders.

There is opportunity to modify the current draft Mangrove Regulations to issue (pursuant to section 61(3) of EMA) guidelines, standards and procedures to all government decision makers in relation to the approval or otherwise of activities or development proposals that may have adverse impacts on coastal ecosystems (including mangroves) and upon the traditional rights holders who rely on them. Such guidelines would enable the stricter implementation of standards for potentially harmful developments and amount to a type of development control. They would also be in accordance with section 61(3)(e) of EMA and align with Fiji's common law system of decision making. The use of guidelines, standards and procedures would provide an integrated approach to government decision making across government agencies and also inform the private sector on what is acceptable (and what isn't) in terms of development proposals.

For example, such guidelines, standards and procedures would assist:

- any EIA process that involves coastal ecosystems including mangroves;
- the Ministry of Forests in exercising its powers to declare a forest reserve over mangrove areas to stop or control extraction or felling;
- the Director of Lands in its determination whether to grant leases and on what conditions in areas where mangroves are likely to be situated; and
- the Department of Mineral Resources in relation to any application for extractive industry that may affect mangroves.

Finally, the adoption of formal guidance under section 61 of EMA, would provide an opportunity to draw on and update the Mangrove Management Plan dating back to 1985.

BOX 5. Section 61 excerpt from the environment management act

Section 61 excerpt from the Environment Management Act.

Regulations

61. (1) The Minister may make regulations to give effect to the provisions of this Act, and in particular:

(a) to prescribe forms, fees and charges for the purposes of this Act;
(b) to provide for procedures relating to taking of samples under this Act;
(c) to regulate mediation and arbitration for the purposes of this Act;
(d) to prescribe other procedures and rules for the Tribunal;
(e) to prescribe minimum educational and professional requirements for any inspector, analyst, environmental auditor or laboratory required to perform any function under this Act;
(f) to regulate the accreditation of environmental consultants, auditors, mediators, remediation experts, analysts and laboratories;
(g) to regulate other matters relating to environmental audit;
(h) to prescribe procedures for environmental impact assessment in respect of any particular class of development proposal and procedures for the preparation of, or criteria for, approval of an EIA report;
(i) to prescribe the format or contents of any report or plan required under this Act;
(j) to prescribe information to be contained in an order to stop work on any development activity or undertaking or an order to restore or improve an area;
(k) to amend Schedule 1 or Schedule 2.

(2) Any regulation made under this Act may prescribe penalties not exceeding $10,000 or for a term of imprisonment not exceeding 2 years or both for an offence created under the regulation.

(3) The Minister may, after consulting the relevant Minister responsible for Fijian Affairs, land, mineral resources, agriculture, fisheries, or forestry, make regulations:

(a) to provide procedures for formulation, implementation and review of the Natural Resource Inventory and the National Resource Management Plan;
(b) to implement the National Resource Management Plan;
(c) to establish a system of approval or permit required for any natural resource area under the National Resource Management Plan;
(d) to establish enforcement mechanisms;
(e) to establish guidelines, standards and procedures for the conservation, protection or rehabilitation of any land, river or marine area.

4.4.2. Protected Species legislation

The E**ndangered and Protected Species Act 2002** as **amended in 2017** (EPS Act) is enforced by the Ministry of Environment. The EPS Act regulates the domestic and international trade of endangered species by requiring application for a permit before any endangered species can be traded within Fiji or internationally. The EPS Act is the Fiji legislation that implements the multilateral treaty CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora). The EPS Act notably includes two Schedules, which list species not listed in CITES that Fiji's lawmakers consider need further protection and are thought to be indigenous to Fiji. The EPS Act has increased the number of non-CITES species listed in Schedule 1 and 2 to the EPS Act, meaning that these species are now protected and regulated by the EPS Act (as amended) despite not being included in CITES.
The Offshore Fisheries Management Decree and Regulations also incorporate protection for species listed in CITES. The Bird and Game Protection Act provides protection in relation to the killing of certain species.
It is worth noting that parties to CITES are required to prove a positive "non detrimental finding" (NDF) before they can commence trade of certain CITES-listed species. The NDF is an assessment process aimed at confirming that the national population of the species is robust enough to survive harvest for trade. The relevance of this to seagrass and mangrove ecosystems is that some CITES-listed species may be reliant on these ecosystems for breeding and/or food.

4.4.3 Water Supply Act

The **Water Supply Act** provides that a Minister may declare any area to be a water supply catchment area, and any pollution of the water in this area is a criminal offence. The Minister for Public Infrastructure may declare any area to be a water catchment area. It is an offence to commit any act which causes pollution of water within a declared catchment area. The maximum penalty for this offence is $100.19.

Logging licences must not be issued in a declared water catchment area and mining leases can only be issued in a declared water catchment area with the approval of the Commissioner for Water Supply.

The Minister must publish notice of his/her intention to declare a protected catchment area in the Gazette. The notice must describe the proposed catchment area, and allow at least two months for any owner, lessee or licensee of the area to object in writing to the proposed declaration. The Minister must consider any such objections before making a decision about declaration of the area.

If any person wants the Minister to declare a water catchment area, this should be discussed with the Ministry of Public Works and Utilities. It may be useful to submit a written proposal to the Minister, highlighting the conservation values of the area and providing evidence of support from the landowners and the TLTB. Only the Minister for Water may remove or modify a declared catchment area.

4.5. Climate Change Management

Fiji's Parliament passed the **Climate Change Act 2021** (CCA) on 23 September 2021 with the express aim to achieve "net zero", aiming to balance the amount of greenhouse gases emitted with an equivalent amount removed from the atmosphere. It is the Fiji government's legislative approach to the threat of climate change caused by human activity. The CCA creates a legal framework for "a whole of government approach" relating to reduction of greenhouse gases, sequestration of carbon, responding to climate change, securing and coordinating sustainable climate financing, and improving "the health and security of Fiji's oceans for a number of reasons including the role of the ocean in mitigating the effects of climate change". Section 22 of the CCA requires that EIAs include consideration of climate change and s104 provides for third party enforcement.

The CCA creates a governance structure for implementation, including placing the overall burden on the Minister responsible for Climate Change ("the Minister") to make decisions to create appropriate regulations (secondary legislation). A whole of government approach is proposed. The Minister appoints and is supported by a Director of the Climate Change and International Cooperation Division ("Director") and by a Committee established by section 12 comprising Fiji's Permanent Secretaries and the Director.

Section 82 establishes the **National Ocean Policy Steering Committee (NOPSC)** chaired by an employee of the Climate Change Division within the Ministry of Economy and appointed by the Minister. The NOPSC comprises:

- representatives of the ministries responsible for finance, environment, maritime development, education, defence, lands, iTaukei affairs, foreign affairs, fisheries, transport, the Office of the Prime Minister and the Office of the Solicitor-General, as appointed by the ministers responsible for those ministries and offices;
- a representative from the Fijian Navy, as appointed by the Commander of the Republic of Fiji Military Forces; and
- 2 scientific advisors from academic institutions with relevant expertise, as appointed by the Chair of the National Ocean Policy Steering Committee (NOPSC).

Part 13 includes a framework for oceans and further decisions that will be taken in line with Fiji's international oceans commitments, including Fiji's commitment to **ensure all its maritime zones will be 100 percent sustainably and effectively managed and to designate 30 percent of its maritime zones as marine protected areas (MPAs).**

Section 84 provides the Minister, through appropriate consultation, with powers to implement further regulations, policies and actions with the purpose of c**onservation and restoration of all Fiji's maritime areas and coastal environments** including for protecting stores of blue carbon; sustainable management of oceans and reducing anthropogenic stresses on marine and coastal ecosystems; and fiscal incentives and education campaigns supporting alternatives to non-biodegradable and non-ecofriendly materials.

Section 84 requires regulations, policies, measures and actions to use a **science-based and data-driven approach**, and that the Minister must consult with Ministers responsible for environment and fisheries to the extent that the management of fisheries may be impacted. This provides wide powers to implement a number of further measures.

At the present time, it is not known whether the Fiji government and relevant Minister consider that this power extends to the protection of mangrove or seagrass areas. Although it is respectfully suggested that additional regulations could fit within the following parts of section 84: "for the purpose of conservation and restoration" and "for the sustainable management of oceans and reducing anthropogenic stresses on marine and coastal ecosystems".

Section 85 of the Act provides the Minister with the power to make (following consultation, if there would be an impact on the management of fisheries) regulations, policies and implement measures to **enhance the mitigation potential of oceans** including:

- enhancing blue carbon;
- developing offshore renewable energy generation; and
- increasing energy efficiency in maritime services.

Part 14 of the CCA is relevant because it provides a framework for the management and coordination of **sustainable climate financing**. This includes the aim to improve Fiji's ability to attract climate change finance and to manage and coordinate the use of that finance. The Minister responsible for Finance plays a pivotal coordination role between sources of funding (e.g. the Green Climate Fund, Adaptation Fund, and multilateral development banks) and ensuring funding is coordinated to align with the National Climate Change Policy.

The "whole of government approach" proposed by the CCA encourages an integrated, inter-agency approach and may help address current overlaps across various Acts and Ministries. "The Committee" established under section 12 (see above) is composed of Fiji's Permanent Secretaries and the Director of Climate Change. The Committee is required to meet with other relevant State entities including the National Environment Council (NEC) established under the Environment Management Act (EMA) and the State entity responsible for national security on an annual basis to promote a whole of government approach to implement the Act. This includes mainstreaming action on climate change in national government, local governments and via Provincial administrations. The Committee has powers to seek assistance from other State entities, form technical working groups and convene consultative meetings with various stakeholders, including NGOs. The whole of government action is promoted via section 13 and the requirement for each Permanent Secretary to appoint a focal point within their ministry to promote the objectives and principles of the Act with an obligation to report to the Director of Climate Change in relation to implementation within their ministry.

In terms of coastal ecosystems, there will be a need for the NOPSC to coordinate with the Committee and with other existing government structures, including the NEC, to ensure that decision making fully considers the various issues relating to regulation of seagrass and mangrove ecosystems.

The CCA provides specific powers to enable the Minister to make secondary legislation (Regulations) to implement the aims and objectives of the CCA, but **section 84 seems most relevant in terms of the protection of coastal ecosystems.** The short points that emerge from this high-level review of the CCA are as follows:

- The CCA provides a comprehensive framework for a coordinated decision making process within and between government ministries.
- This framework may implement protection measures in coastal areas after considering State, commercial and customary rights and interests.

- This process may enable determination of which legislation should be used to implement additional protection measures in coastal areas and determine whether different approaches to decision making processes and laws should be used in iqoliqoli areas.

This framework exists within Fiji's common law system and for this reason the onus is on the government to ensure that prior to any final designation decisions/Regulations being made, there is a comprehensive and participatory consultation process that addresses any concerns, suggestions or objections.

As noted, all final decisions are for the Fiji government, however, technical and other support to create the comprehensive processes to improve decision making and therefore, the chances of successful implementation, is likely to be of critical importance.

BOX 6. Carbon Sequestration/Blue carbon projects under the CCA – an opportunity for the State and customary rights holders to benefit from increased protection of coastal ecosystems

Carbon Sequestration/Blue carbon projects under the CCA – an opportunity for the State and customary rights holders to benefit from increased protection of coastal ecosystems

The Asian Development Bank (ADB) is assisting the Fijian government with funding and technical legal analysis to operationalize the provisions of Part 10 of the CCA, that is, preparing Regulations, which will regulate:

1. Registration of Carbon Sequestration Property Rights ("CSPR").
2. Fiji Carbon Methodologies and project types.
3. Creation and recording of Fijian Mitigation Outcome Units ("FMOU").
4. Transfer of FMOUs and opportunities to engage with voluntary markets.
5. Benefit sharing.

Fiji's position in terms of CSPR is the common law default position that the legal owner of the land is by default the owner of the rights with respect to the parcel of land, whether above or below the land. Part 10 clarifies this position and creates the CSPR as a statutory right.

The ADB assistance is identifying technical legal issues relating to carbon sequestration, including determining what form in law the CSPR will take, and the consent processes for each type of land tenure.

The project has not focused on opportunities for the State. However, the State, being the owner of State land is also the default owner of the CSPR. As this Legal Review explains, State land includes the foreshore and nearshore areas, and therefore the State may become a beneficiary in relation to carbon rights. Depending on the project, the State may decide to share the benefits with customary rights holders in nearshore or coastal areas. To take this opportunity the State will need to:

1. Obtain approval for the Project from the regulator, which in this instance is the Climate Change Division ("CCD").
2. Obtain approval from the relevant customary rights holders in the relevant area of the qoliqoli.
3. Register the CSPR on its land.

For any carbon sequestration project on foreshore or nearshore areas, the project will have to sequester carbon and therefore, increased protection or rehabilitation for those areas in terms of seagrass and mangroves is required. This will necessarily involve customary rights holders and require their consultation, agreement, and assistance. A further point is that in line with the shared property rights approach as set out in this Legal Review, if the carbon sequestration project provides a financial benefit in return for increased protection for coastal ecosystems, then those benefits should be shared between the State and the relevant customary owners in accordance with equitable benefit sharing arrangements. This will not only require thorough consultation in accordance with common law principles, but it will also likely require the creation of an appropriate community governance structure to receive the payment and oversee the management/protection of the mangrove and coastal ecosystems.

Although there are logistical and technical legal issues to be determined, once Part 10 of the CCA is in force, there is a potential opportunity for the Fiji government (representing State interests) and the relevant customary rights holding group(s) to work together on blue carbon sequestration projects in foreshore and nearshore areas. This would also increase coastal ecosystem protection through mangrove and seagrass management. The relevant government agencies led by the Director of Lands will need to consult and work with relevant customary rights holders to ensure the governance arrangements are in place for equitable benefit sharing as well as to ensure a mutual understanding of the responsibilities, obligations and restrictions that additional protection will entail.

4.6. Pollution and Damage Control

4.6.1 Pollution, Dumping, & Accidents

Mangroves and seagrass ecosystems are at risk from pollution and dumping of waste through activities such as shipping; land-based activities such as industrial, agricultural, and household wastes; overuse of plastics and their careless disposal; dumping of wastes at sea; and offshore activities such as deep sea mining, the effects of which seem to be unknown at this point in time. Various legislation is in place to regulate these activities.

The EMA is the primary source of regulation for industrial or commercial pollution and has oversight and regulation of pollution incidents extending to Fiji's waters including its exclusive economic zone (EEZ).

The EMA defines a "pollution incident" as "the introduction, either directly or indirectly, of a waste or pollutant into the environment, which results in harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of water, air or soil, reduction of amenities or the creation of a nuisance".

Industrial pollution is controlled through the need for a permit which may be issued subject to conditions and in accordance with section 35 of the EMA. Without a permit, it is an offence to *"discharge any waste or pollutant into the environment; handle, store, process, or control any hazardous substance; produce or generate any waste, pollutant or hazardous substance; or*

engage in any activity that may have an adverse impact on human health or the environment." Part 6 (Waste Disposal and Recycling) of the Environment Management Regulations provides the conditions that attach to permits as well as allowing wide scope to the appropriate officer in the Ministry of Environment to include additional permit conditions. The Ministry of Environment is required to establish a public register and this should, amongst other things, include publicly available information related to any waste permits that have been issued and the conditions under which the permits have been issued. The Regulations also provide for the issuance of permits that regulate waste from various commercial and industrial waste facilities and prescribe penalties and other consequences for non-compliance.

The EMA contains criminal offences with appointed officers having powers to investigate/enter/stop and search and serious offences for failure to comply with the Act and its Regulations: Failure by a regulated industry/commercial entity to hold a permit is an offence and may result in various adverse consequences including, but not limited to, liability to inspections and taking remedial actions, and a fine not exceeding $100,000. Breaches of the permit itself may lead to a maximum fine of $10,000 and 2 years in prison.

A maximum penalty for pollution offences for individuals upon conviction for a first offence is $250,000 and/or 3 years imprisonment. For a second or subsequent offence, $750,000 and/or 10 years. For a body corporate – 5 times the fine for individuals.

Section 45(2) provides severe punitive consequences for polluters who intend to pollute or who are reckless and whose actions cause a pollution incident, which is defined above. Section 45(2) of the EMA provides: "*For a person who knowingly or intentionally or with reckless disregard to human health, safety or the environment causes a pollution incident that results in harm to human health or safety, or severe damage to the environment, commits an offence and is liable on conviction to a fine not exceeding $1,000,000 and to life imprisonment or both.*"

Further, in accordance with section 47 of the EMA, and in addition to penalties imposed, the Court may make a range of orders aimed at compelling the offensive act to stop and undertake restorative or remedial work at the offender's costs. Section 40 empowers the Minister of Environment to make an Environmental Emergency Declaration. Such a Declaration occurred in early 2015 when there was an incident that led to a massive leak of raw sewage into the Suva harbour area.[54] The EMA provides a list of relevant Acts in Schedule 1, which support or enable the enforcement of the Act. These include the Water Supply Act, the Forest Decree, the Fisheries Act and the Sewerage Act.

4.6.2 Maritime and Shipping (pollution)

For Pacific Island countries, including Fiji, the shipping industry is a vital means of transportation and trade. However, pollution from the shipping industry in Fiji has been an issue and is being primarily addressed with more public awareness of the damage that marine pollution is causing.

The **Maritime Transport Act 2013**, defines "harmful substance" widely to meet international standards and covers everything harmful to the environment. It is spatially wide-reaching, prohibiting discharges within the EEZ as well as to the seabed below it, and areas beyond the outer limits of the EEZ and the continental shelf of Fiji. The discharge of harmful substances into the sea has penalties of imprisonment of up to two years or fines up to $200,000 in addition to paying the costs of cleaning up the discharge.

Once there has been a discharge of a harmful substance into the sea, it is a requirement under the Maritime Transport Act that immediate notice be given to the Maritime Safety Authority of Fiji (MSAF), the Director of the Ministry of Environment and either the provincial council or the municipality in whose boundary the discharge occurred.

Fiji has enacted comprehensive legislation to regulate the operation of ships in Fiji's waters including its EEZ. Given the importance of clean and healthy oceans to Fiji's national wellbeing, it is imperative that ships are aware of the law and regulations and comply with them.

A common theme for Fiji and its regulatory efforts to secure compliance with environmental legislation is the practical difficulty that its regulatory agencies face. Fiji waters (including archipelagic and territorial seas and ocean spaces in EEZ and above the Continental Shelf) constitute a vast area of the Pacific Ocean and for that reason it is a big challenge to monitor the activities of ships at sea. Resources are also limited. Since the enforcement of marine anti-pollution laws can become a resource– and time-consuming exercise, it requires a collaborative effort between the relevant authorities mentioned at the outset as well as the general public in reporting incidents of marine pollution.

4.7. Alignment of Fijis International Commitments and National Policies

4.7.1 National Policies Related to Coastal Ecosystems

Fiji has many policies, plans and strategies to guide the Fiji government's approach towards sustainability and climate change. However, there is no national policy for coastal ecosystems.

In general, Fiji's policies summarize a general intention to act in a particular manner to implement Fiji's international sustainability and climate commitments, but they do not provide specific guidance to the government or its agencies on how to implement their legal and regulatory obligations. It has been noted above that there is scope to provide central government guidance for better decision making in relation to coastal ecosystem protection.

The most significant policy development, relevant to coastal ecosystems, is Fiji's National Oceans Policy that backs up Fiji's commitment: "to establish an overarching national legal framework, which would cover how all activities in the ocean are to be carried out" and is therefore a significant and noteworthy development that supports Fiji's steps towards an integrated oceans management policy. The National Oceans Policy provides a summary of Fiji's policies, plans and strategies.

The development of Fiji's National Oceans Policy follows various commitments Fiji has made at an international level[36], including to the outcomes of the:

- United Nations Conference on the Environment and Development (1992)
- World Summit on Sustainable Development (2002)
- United Nations Conference on Sustainable Development (2012)
- United Nations Conferences on Small Island Developing States (1994, 2004, 2014)
- 2030 Agenda for Sustainable Development as adopted in September 2015.

At the regional level, Fiji is part of the Pacific Islands Forum Secretariat (PIFS), the Western and Central Pacific Tuna Commission (WCPFC), and the Forum Fisheries Agency (FFA). Membership of these regional bodies relates to offshore fisheries management, but there is increasingly an understanding or movement at regional level towards a vision for the Pacific blue economy as Large Ocean States sharing the vast areas of the Pacific Ocean. Aspects of this are captured in the Pacific Islands Regional Ocean Policy (2002) that sets out the framework for an integrated strategic action on the Oceans; the Framework for a Pacific Oceanscape in 2010; and the 2050 Strategy for the Blue Pacific Continent (2022). There is also a discernible trend towards more understanding of the importance of coastal fisheries at a regional level and Fiji is working with and as part of regional organizations including the Melanesian Spearhead Group (MSG) of which Fiji is a prominent member. The MSG has a roadmap for inshore fisheries management and sustainable development 2015–2024.

Other Fiji national government policies, plans and strategies that have some relevance to oceans are listed in Annex A.

Through the Prime Minister's Office, Fiji has the "The People's Charter for Change, Peace and Progress" that makes commitments towards sustainability. In relation to climate change, Fiji has adopted the: Fijian National Adaptation Plan and the National Climate Change policy that aims to take Fiji towards a net zero emissions economy. This has been succeeded by the Climate Change Act 2021.

Fiji's draft national ocean policy (NOP) refers to and follows the National Climate Change Policy 2018–2030. The draft NOP highlights Fiji's actions to mitigate national emissions through its Nationally Determined Contributions (NDC) and National Climate Change Policy and links rapid global reduction of greenhouse gas (GHG) emissions as vital to the long-term sustainability of the ocean. It also notes that the scope of the NOP extends to climate change and associated impacts such as ocean acidification. The inclusion of climate change is important given Fiji's past roles as President of the UNFCCC COP23 but also as a matter of practice in light of the interconnectedness of climate change and ocean health.

In addition to government adopted policy, there are also many other initiatives underway that are undertaken by NGOs and funded via donor organizations and who work with traditional communities, Fiji government ministries, and academia to implement change and aim to promote sustainable management of Fiji's natural resources. Some of these are highlighted in Figure 10.

The role of the National Ocean Policy is to help support these current initiatives, to identify and implement more effective practices for future initiatives, and to see synergies among the Fijian government and all actors and institutions involved in the common future of the Ocean.

The Marine Atlas for Fiji has compiled over one hundred datasets from countless data providers and for the first time makes this marine and coastal information accessible and usable, providing a support tool for decision makers on the value of marine ecosystems and the importance of spatial planning in managing these ecosystems. (Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO), IUCN).

A Maritime Economy Plan was adopted by Government to enable further sustainable development of Fiji's Ocean resources (Commonwealth Marine Economies Programme, UK Government).

Cost analysis of running a national Marine Protected Area network and potential sustainable financing mechanisms (Fiji Protected Area Committee, supported by IUCN, WCS and WWF).

Mapping of the entire vertical and multi-level governance structures to see where effective coastal management bottlenecks exist and determine how to assist stakeholders in addressing them (Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO), IUCN).

Ecosystem and Socio-economic and Resilience Analysis and Mapping provided options for ecosystem-based adaptation in Taveuni (Pacific Ecosystems-based Adaptation to Climate Change Project, SPREP).

Sustainable fisheries – the seafood-supply sector was transformed through working with a variety of partners along the seafood supply chain, which built a firmer foundation for sustainable fisheries (WWF).

Value-chain analysis and advances on science for management of key fisheries, such as sea cucumbers have supported further control by the Government (WCS).

Benefit sharing – transdisciplinary approaches to benefit sharing have been used to predict, harness and share equitably environmental, socioeconomic and cultural benefits from Ocean conservation and sustainable use (One Ocean Hub, the University of the South Pacific, UK Government).

Figure 10. Sustainable resource management initiatives underway in Fiji through NGOs and other funding agencies [Source: draft NOP]

4.8. Financing for increased conservation under existing legal framework

It is recognized that increased protection for coastal ecosystems has knock-on benefits for other industries that benefit Fiji's GDP (gross domestic product). These include tourism and fisheries, and it is further recognized that issues like coastal protection or food security can be improved. However, as with other small island developing countries, Fiji has the persistent challenge of finding adequate resources to implement and regulate its laws, particularly in relation to the regulation of environmental and natural resource laws. The challenge Fiji faces is how to provide sufficient budget allocations to each government ministry or agency to discharge its comprehensive legal and regulatory responsibilities in the context of Fiji's GDP and current debt levels. This challenge is exacerbated by the fact that increasing the protection for coastal ecosystems, ocean or any aspect of the natural environment will restrict development or commercial opportunities. The Fiji government ministries and agencies that work with the private sector understand these challenges and are also, understandably, tasked with enhancing Fiji's economic growth, not restricting it.

There is therefore a pressing need to identify sustainable financing options that are linked to ocean management and increased protection for coastal ecosystems, particularly at a community level. There are various options being considered and regional initiatives are underway. There is potential for blue carbon sequestration benefits based on equitable benefit sharing arrangements, and Fiji is in the early stages of considering financial incentives for ocean and carbon credit initiatives (see above discussion on Climate Change Act and Carbon Sequestration).

In relation to how financing within the Fiji government is determined and allocated, chapter 7 of the Constitution sets out how Fiji as a State may raise and expend revenue or monies. This includes, for example, the requirement that written law is needed for raising tax revenue. All revenue raised or received for the purpose of the State or Government must be paid into one Consolidated Fund. Any funds paid out of the Consolidated Fund must be approved by either law or the Minister responsible for Finance and is used for the "ordinary services of Government". Every year, the Minister responsible for Finance/Economy must prepare a budget and lay this budget before Parliament (section 144) and this should reflect the estimates of revenue and of capital and current expenditure for the year. Section 146 requires all public money to be dealt with and accounted for.

Fiji's financial management arrangements are regulated by the Financial Management Act 2004 (as amended). The funding for each government ministry and department is made from the Consolidated Fund and each year this may vary depending on the amount available and needs as determined by the Minister responsible for Finance/Economy.

The Fiji government is keen to attract foreign investment into Fiji, and this is likely to become more important than ever in the wake of COVID-19 and the damage to Fiji's tourism sector that represented 40 percent of GDP.

The Ministry of Finance provides fiscal or tax concessions assessed on a case by case basis for foreign investors –this particularly applies in the mining sector but could apply to other new industries. For example, in the past this was applied to the film industry. Fiji's legal framework, including environmental laws are supposed to protect Fiji's environment and Fiji has a Mineral Policy that is promoted by its Mineral Resource Department. However, this fiscal policy is more aimed at providing investors with peace of mind that Fiji is a stable place to invest.

5. ASSESSING THE EFFECTIVENESS OF FIJI'S EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK FOR COASTAL ECOSYSTEM MANAGEMENT

The preceding chapter has outlined the various laws of relevance to the management and/or regulation of coastal ecosystems. This chapter now considers whether these laws are in fact, adequate to meet the challenges of protecting and managing coastal ecosystems. It further considers how the laws are applied in decision making processes. In particular, the focus is on understanding how government agencies include customary owners and other rights holders in the decision making process and, where there are gaps, how this can be improved. The assessment also looks at how the laws are applied to facilitate deterrence and compliance.

The theory of change for this analysis and a comprehensive discussion on the environmental Rule of Law and the "two approaches" is provided in section 1.3. The environmental Rule of Law provides an ideal to strive for in decision making relating to coastal (and other) ecosystems. It recognizes the fundamental importance of healthy ecosystems to human health and, by extension, requires that customary laws and user rights to the natural environment are adequately addressed in decision making relating to environmental regulation; this Review distils the many components of the environmental Rule of Law to these three questions to help assess the status of the laws in Fiji pertaining to regulation of mangrove and seagrass ecosystems and identify how these may be improved.

1. Are Fiji's laws adequate to meet the challenges faced by coastal ecosystems?
2. How may decision making be improved in line with Fiji's legal framework to promote more protection for coastal ecosystems?
3. The deterrence and compliance function of Fiji's environmental laws.

It is noted overall that opportunities are provided by adopting an environmental Rule of Law approach that relies on the independent judiciary of Fiji to interpret and apply the laws equally. The common law system also promotes good decision making processes that are sufficiently adaptable to accommodate customary laws and rights, property rights, and interests.

5.1. Adequacy of existing legal framework

The previous chapter has discussed how Fiji's law and governance framework integrates customary law and rights within a common law system, and sets out the comprehensive laws, regulations and policies that apply to Fiji's coastal ecosystems. Based on this discussion, **Fiji's laws and legal framework is adequate and fit for purpose in terms of addressing the most common threats to seagrass and mangrove ecosystems and associated species in Fiji and increasing their resilience in line with the environmental Rule of Law, including recognizing customary laws and rights.**

Fiji laws and legal framework include:

i. Providing the Constitutional right to a healthy environment.
ii. Regulating coastal land use in terms of how and to whom it can be leased and provide for a compensation mechanism for customary rights holders.
iii. Development control via the Environment Management Act 2005 that requires an EIA before any decision in favour of a development that could have an impact on the coastal environment.
iv. The regulation of pollution under the Environment Management Act 2005.
v. The control and regulation of commercial fishing activity in nearshore/coastal waters.
vi. The control of forestry activity, including requiring a licence to remove mangroves and the ability to declare forest reserves.
vii. The control and regulation of mining activities.

The Constitution and other laws (Fisheries Act) recognise and record customary legal rights within nearshore coastal areas as an addition to iTaukei primacy in relation to land rights. Additionally, customary law including social systems of rules continue to be given effect by coastal communities themselves in nearshore areas - particularly in areas outside urban centres. While Fiji has the advantage of such an integrated governance system, effective governance and a planned approach can only happen if the State/government agencies and Community leaders work together to implement better decision making for coastal ecosystems. Fiji's common law system is sufficiently adaptable to provide a way to ensure the continued application and practice of customary law and rights in coastal areas is integrated or merged with a State led planned or coordinated approach to coastal use and development. This can be achieved by ensuring that government agencies understand and take into account traditional or customary rights and practices in accordance with the environmental Rule of Law.

An obvious legislative gap is that Fiji does not have specific protected area legislation that could create a protected area to cover coastal ecosystems[40]. While forestry or fishing activity can be limited or prohibited in certain areas, **there is no specific protected areas legislation that would enable the declaration of a legally protected area comprising nearshore/foreshore** and thus, cover both mangroves and seagrass ecosystems. It is noted that such legislation does exist in other jurisdictions, such as Solomon Islands. However, it is also questionable whether such legislation is required or even practical in Fiji's law and governance context. This is because ***the declaration of a protected area in a nearshore and/or foreshore area risks removing underlying customary laws/rights from the customary group to which they are currently assigned.*** The removal of customary laws and rights would involve the payment of compensation in line with the Constitution and could contribute to political tension. It is possible that via thorough consultation

40 This means that Fiji is not meeting its obligations as a party to the Convention of Biological Diversity

in line with Fiji's common law system that coastal protected area legislation may be accepted; however, this is unknown. Further, there is already a mechanism for the leasing of foreshore land that includes a well-established process of consultation with customary rights holders and the payment of compensation. This mechanism may be appropriate in certain circumstances and can provide exclusive control of foreshore/nearshore areas.

While government agencies lead the implementation of laws and decision making for activities and industry, they rely on local communities for any implementation involving protection, resource management and climate change adaptation. It is the local communities who live in areas that are frequently remote, inaccessible and beyond the effective control of States. It is the local communities that make a significant contribution to the capacity of management efforts. Resolving the question of tenure and apportioning management responsibilities of coastal areas is within the remit of the respective governments and should be handled via careful consultation with a view to maximise opportunities for alignment and pooling of resources between government agencies and customary owners and rights holders.

The Fiji Locally Managed Marine Area (FLMMA) network has successfully worked with all 411 iqoliqoli areas in Fiji to introduce community-based management of nearshore fisheries. This demonstrates that **communities are already taking an active role in the sustainable management of their resources** as they are intimately aware of how changing land use patterns, and other activities have impacted their environment. However, **there is currently no legislative protection for community-based management and limited legal means of enforcemen**t (i.e. where the Ministry of Fisheries can include the tabu/community managed areas as "no fishing areas" in the conditions of any commercial fishing licences issued under fisheries legislation. This provides some State regulatory oversight of tabu areas but relies on the specific condition being included in the fishing licence).

This Legal Review, therefore, finds:

1. Fiji's laws and legal framework is largely adequate and fit for purpose particularly because it recognizes and supports customary laws and rights.
2. Fiji's coastal ecosystems may be regulated in a balanced and democratic way that prioritizes their protection by the current legal framework, provided that this legal framework is fully implemented. However, there exists a valid question relating to whether key government agencies are adequately resourced to undertake their regulatory obligations.
3. Any changes to the current laws and legal framework around foreshore/nearshore coastal areas must be carefully considered given the potential to create political tension associated with the removal of customary rights – any legal changes should first be considered by a technical group of experts, including Fiji based environmental lawyers working with relevant government agencies and the Office of the Solicitor General.
4. There is an opportunity to promote more knowledge and awareness of Fiji's existing laws amongst all stakeholders, including all government agencies, ensuring coastal communities are informed of their rights and responsibilities with existing laws.

These findings are based on the experience of the Legal Reviewers and were presented to and supported by the Management and Conservation of Blue Carbon Ecosystems (MACBLUE) Legal Review Workshop held in Suva on 20 October 2023. The workshop included representatives from GIZ, Ministry of Lands, Ministry of Environment, Ministry of Fisheries, Ministry of Forestry, iTaukei Affairs Board, Department of Mineral Resources, Ministry of Trade, Fiji Environmental

Law Association, the Pacific Community, Wildlife Conservation Society, International Union for Conservation of Nature – Oceania Regional Office, University of the South Pacific, and Conservation International.

During the joint reflection on the findings of the Legal Review there was general support for the approach that Fiji's laws and legal framework is already adequate, and fit for purpose, particularly because it recognizes customary laws and rights. However, there is a need for clearer policy guidance on the responsibilities of relevant government agencies to ensure that their decisions support and enhance existing community initiatives to increase the protection of coastal ecosystems in a democratic manner. This point is further discussed below.

5.2. Decision making processes

This section considers administrative decisions and the decision making processes taken by different government ministries or agencies that impact the health of coastal ecosystems and the people who rely on these ecosystems. These administrative decisions are central government decisions that impact on coastal ecosystems or remove or restrict the customary rights of the customary rights holders. This includes decisions that would affect existing customary rights by:

- approving a development in coastal areas for any reason;
- granting extractive licences;
- granting foreshore leases;
- designating certain areas as protected (thereby restricting development) in accordance with the law; and
- administering and approving EIAs.

Inclusive decision making processes are required in the laws and legal framework

Fiji's current laws and legal frameworks set out the process that must be followed for such decisions and provide for the possibility of a right of appeal in relation to coastal ecosystems. The law provides the government (via its ministries and agencies) with powers and duties to make decisions that will grant legal approval to certain activities that may adversely affect coastal ecosystems and the people who rely on them or enjoy customary rights. However, before making the decision to approve, the government must follow inclusive decision making processes that accord with the law and provide an opportunity for any party who will be adversely affected by the decision to be heard – this must include customary rights holders, given Fiji's plural legal system context. A failure to provide decision making processes in accordance with the law may result in a successful legal challenge against the government decision because a fundamental tenet of the Rule of Law is that nobody is above the law and the government can be held to account by Fiji's independent Judiciary if it does not follow the law.

Lack of integration across the different regulating Ministries

Coastal ecosystems exist in areas where there are many competing demands and pressures, including commercial interests. The decision maker within government changes depending on the activity. This means that there is legal and regulatory overlap across the different sectors of the economy. This regulatory overlap creates challenges for integrated and consistent decision making that prioritizes the health of coastal ecosystems. The lack of integration has been recognized within government and there have been attempts by the government to reform its own system, however, so far these proposals have not been implemented.

Lack of central government guidance on integrated decision making

There is currently no central government guidance or policy to assist the various government agencies to make decisions in an integrated way that also recognizes and prioritizes the importance of healthy coastal ecosystems for Fiji's economy and for the people who rely on them. The development of a central government guidance policy would be consistent with Fiji's common law system and provide essential guidance to assist with the democratic process of decision making in line with the existing legal framework. It would ensure that agencies act within the law and consider the interests of anyone who may be impacted adversely by decisions relating to coastal ecosystems. To be effective, such a policy would need to be applicable to all relevant government agencies.

Clear central government guidance on inclusive decision making will provide the best opportunity to address the most common threats to seagrass and mangrove ecosystems and associated species in Fiji and increase their resilience, in line with Fiji's legal and governance framework.

Limited understanding by communities and government agencies on people's rights

Improved understanding on people's rights under the existing legal and governance system coupled with clear guidance for government agencies on decision making processes for coastal ecosystems will resolve many of the concerns that were raised during the consultations for this Legal Review (Box 7).

BOX 7. Concerns relating to current decision making processes regarding coastal ecosystems

Concerns raised during consultation with key stakeholders in Fiji relating to decision making processes for coastal ecosystems

- Government departments treating EIAs as final approvals rather than as a tool to aid decision making*.
- Concerns relating to whether communities and customary rights holders fully understand their legal rights, the decision making process and provide full, free, prior and informed consent.
- The logistical and practical difficulties associated with attending consultations particularly for communities.
- Quality of EIA practitioners and consultants and whether they perform their roles independently and to required standards.
- The logistical and practical difficulties of appealing or challenging administrative decisions, particularly within tight timeframes that communities face and the legal challenge can be quite technical requiring expert reports.
- The time and costs associated with appealing decisions (one example provided an appeal case to the Environmental Tribunal against a decision of the Department of Environment has been before the Tribunal for more than 4 years).
- The bringing of a legal challenge can "burn bridges" and spoil good relations with government agencies that everyone wants to work with and support.
- Some of the national legislation committees are inactive and this can be one of the reasons that legal issues arise.

- There can be a lack of priority within government for environmental issues and legal advice within government is limited.
- Government agencies can wrongly prioritise development for commercial interests in their decision making, seeing resources to be exploited rather than considering the benefits from protection and alternative income streams particularly related to carbon sequestration.
- Broader concerns relating to fairness, transparency and equity in government Ministries in terms of regulatory approach.
- Concerns relating to the Climate Change Act, 2021 and its effect when it comes into force – how will this impact or change things?

*The Secretariat of the Pacific Regional Environment Programme (SPREP) has been leading the introduction of context specific EIA legal requirements and legislation within the region. SPREP has observed the need for improved capacity in a number of countries to "learn how to use the tool to maximum effect; especially within the context of staffing, financial and technical resource constraints; and in terms of the need to comprehensively assess and address the social impacts of development and the potential impacts the environment may have on development."

The Recommendations in Chapter 6 expand on how central government policy guidance on decision making may assist with this Second Approach, but in brief, the following should also be considered:

1. Promoting understanding of Fiji's existing laws and legal and governance framework and how decisions should be taken to accord with the interests of all, including but not limited to, customary rights holders.
2. Working with the Judiciary to support it with appropriate training in relation to the application of the Rule of Law to government decision making concerning coastal ecosystems this could include:
    a. The role of Constitution and administrative law principles to decision making for coastal ecosystems.
    b. The importance of urgency in determining applications for its jurisdiction in this area both for the good administration of justice and to prevent irreparable harm to the environment.
    c. The potential role of injunctive relief to preserve the environment while the substantive legal application is determined.
3. Including civil society in all approaches so that they are aware of the role of citizens and communities within this Rule of Law context and in particular in relation to being involved in the decision making processes that affect coastal ecosystems for more democratic outcomes.

This Second approach also reveals broader ways to assist government agencies to legally/institutionally address threats to coastal ecosystem by:

4. Promoting a planned use of coastal areas, identifying the most important and significant areas of mangroves and seagrass ecosystems and taking measures to protect them in law but taking into account that any decision to protect must accord with the environmental Rule of Law.
5. Ensuring government agencies that have legal duties to protect coastal ecosystems are aware of these duties and implement them. This is because a failure to meet those duties can itself be a breach of the environmental Rule of Law.

6. Promoting more coordination between the various regulatory agencies responsible for regulating the competing uses that involve different sectors of the economy in coastal ecosystems and ensuring that there is a clear and inclusive decision making process that takes into account the pre-existing rights (including traditional rights) when making development decisions that also balance the importance of protection.

It is suggested that this Second Approach is best considered via a series of targeted and inclusive training exercises at various levels to include all stakeholders.

During the consultations, various stakeholders made other recommendations that are worth noting:

7. Improve access to justice services in terms of provisions of lawyers to the rural areas to enable families that cannot afford lawyers to receive justice that they deserve.
8. Include the Fijian diaspora in decision making.
9. This Legal Review itself should promote understanding and provide recommendation on the laws – the findings from this report should help inform implementation of certain environmental laws.

5.3. Enforcement and deterrence

This section considers how the environmental Rule of Law can be applied when citizens, private sector entities or government agencies fail to follow the law and destroy coastal ecosystems. This includes, but is not limited to, illegal actions (for example destroying coastal ecosystems without proper approval) but it may also relate to causing pollution or damage via negligent actions. Therefore, it involves both the possibility of criminal and civil liability, and in some cases both. The theory behind adverse legal consequences for illegal behaviour is that it should deter similar future conduct and thus protect coastal ecosystems in the longer term.

However, despite the damage being done, potential legal consequences may include the requirement to rehabilitate, restore or remedy the environmental harm. In some cases, this may be practically possible, although it is not always ideal. In addition, there is the possibility that the Courts can act quickly to make interim orders/injunctions to stop the environmental harm from happening or being made worse.

The EMA includes criminal offences for illegal or unauthorized development and for pollution offences. However, although the EMA has been in force from 1 January 2008, formal enforcement action within the court system has taken some time to emerge. More recently, there has been a high-profile prosecution, including sentencing, in the High Court for an illegal foreshore development that destroyed coastal ecosystems including mangroves, foreshore, and coral reef. Annex A includes a summary of existing case authorities that are establishing Fiji's environmental law jurisprudence and uphold the environmental Rule of Law.

However, during consultations with stakeholders, concerns arose in relation to this type of regulatory and enforcement work in practice in terms of upholding the environmental Rule of Law. These are discussed here with possible solutions.

1. **Government agencies are under resourced and prosecution cases take time and require technical and other resources. These challenges are compounded if the breaches of the law occur in more remote areas of Fiji.**

   Solution: Working with the Judiciary to increase awareness of the importance of coastal ecosystems and environmental law crimes in general, and the importance of serious criminal penalties to reflect the importance of the Rule of Law to coastal ecosystems, as well as the importance of speedy justice to ensure injunctions can be put in place to protect against further damage. Identify cost-effective ways to make available lawyers and legal advice to more remote communities.

2. **There is a lack of legal advice and support within government to assist with enforcement work.**

   Solution: Promoting knowledge and awareness of environmental laws and the adverse legal consequences for failing to follow the law. This could include publishing case reports and creating regular meetings between the various national institutions responsible for regulating coastal areas to include reports on the environmental importance and health of coastal ecosystems, what is trying to be achieved and include updates on monitoring, control, surveillance, and enforcement of any breaches of the laws.

3. **Enforcement work is technical and requires training and support for compliance and enforcement officers who must be familiar with the law.**

   Solution: Providing targeted training and resources to appropriate authorities to improve monitoring control and enforcement of environmental laws via investigation and prosecution training – this training should be in line with modern MCS, and enforcement work similar to work being undertaken by regional institutions in the fisheries sector, where early detection can help stop illegal behaviour before the damage occurs.

6. RECOMMENDATIONS: AVENUES FOR INCREASING PROTECTION AND SUSTAINABLE CONSERVATION

This Legal Review was tasked with identifying how Fiji's laws and institutional governance system can assist with improving protection and management of the country's blue carbon – mangrove and seagrass – ecosystems and best support the communities that care for depend on them. The preceding chapters have identified several insights based on the environmental Rule of Law approach. This final chapter brings these findings together in a series of broad recommendations.

In order to ensure participatory decision making and adequate application of the laws and regulations, research and consultations have identified the following needs:

- more understanding among government and all stakeholders of Fiji's plural law and governance system and how it integrates customary law and rights in relation to decisions that adversely affect coastal ecosystems;
- more awareness within government Ministries and agencies of the importance of an integrated, inclusive, transparent and consultative approach to decision making that prioritises the health of coastal ecosystems - and the need to adopt central government policy guidance that captures this awareness;
- more awareness among communities and civil society in Fiji relating to environmental and law, rights and decision making processes that relate to coastal ecosystems;
- more funding/resources for government Ministries and agencies responsible for the regulation of coastal, nearshore and foreshore areas;
- more access to legal advice and guidance to support an integrated approach to the implementation of the laws and regulations relevant to coastal ecosystems, this would include the following key agencies:
- Key Ministries (for environment, fisheries, forestry, lands)
- Judiciary - holding decision makers accountable and for environmental crimes
- DPP - prosecution of environmental crime/pollution

On the basis of these identified needs this Legal Review makes a number of respectful recommendations for action or activities to address the identified needs.

Increase awareness and understanding

1. Increase understanding among government and all stakeholders of Fiji's plural law and governance system on integrating customary law and rights in relation to decisions that adversely affect coastal ecosystems.

> **Recommendation 1**: Design a series of **structured interactive information sessions** to be delivered in public workshops and available online to improve understanding among government and all stakeholders of Fiji's plural governance system and on integrating customary law and rights in decision-making for coastal ecosystems. Attendees should include relevant government agencies, relevant CROP agencies, NGOs, academia and Civil society, resource and rights owners. The course should cover, among others:
>
> - Fiji's international legal commitments and the importance of coastal ecosystems
> - Environmental Rule of law
> - Laws and legal context applicable to coastal ecosystems
> - Customary law and rights in the foreshore and nearshore areas
> - Fiji's existing law and policy framework
> - Existing initiatives and concerns from consultations

2. Improve understanding of **resource owners and customary rights holders** (and other owners) of their rights and decision-making processes regarding coastal ecosystems in the context of the environmental Rule of Law and improve access to justice.

> **Recommendation 2:** Identify opportunities to provide "train the trainer" type programmes to support provincial councils, civil society and community groups (including leadership councils, women's groups, youth groups) to share information on people's rights and decision-making processes relating to coastal ecosystems in the context of the environmental Rule of Law.

Streamline decision making

3. Adopt a more integrated and planned approach towards government decision-making for coastal ecosystems through a central government policy guide for government Ministries and agencies to encourage an integrated, inclusive, transparent and consultative approach.

Recommendation 3: Develop a **comprehensive policy guide** for all relevant government agencies that will enable a more integrated and planned approach within government in decision-making for coastal ecosystems in accordance with the environmental Rule of Law. It is proposed to convene an expert team to review and consider Fiji's draft mangrove policy to apply to all coastal ecosystems including seagrass and mudflats, and ensure that this comprehensive policy:

- Aligns with Fiji's existing legal and governance system
- Recognises customary rights and meets expectations of customary rights holders
- Is drafted in a way that guides integrated government decision-making across agencies to implement Fiji's international commitments and prioritises healthy ecosystems and those who depend on them
- Includes or is based on robust scientific research to inform the policy. Research on subjects such as economic valuation of goods and services provided by mangroves and seagrass systems, carbon assessments, mangrove replanting so as to improve survival rates.

Increase resources for effective conservation

4. Raise finance or increase availability of government finance to resource the management of coastal ecosystems in accordance with Fiji's legal and governance context and promote good decision-making and more protection for coastal ecosystems.

Recommendation 4: Design a programme or study to determine how the relevant government agencies representing State interests may collaborate with customary rights holders to benefit from carbon sequestration property rights registered in foreshore and nearshore areas. This should ensure benefit sharing between the State and Customary rights holders that is built on adopting management plans for more protection of coastal ecosystems.

This should result in establishment of at least one pilot project that:

- Registers, following appropriate consultations, carbon sequestration property rights over an area of foreshore/nearshore;
- Trades in accordance with Fiji's legal framework carbon on the international market;
- Sets out in an agreement how the benefits are shared between the State and the customary rights holders from carbon sales;
- Creates a governance structure for customary rights holders to distribute funds received on their behalf;
- Adopts a binding management plan for the State and Customary rights holders to manage the area that is subject to the carbon sequestration –based on the most updated government policy for mangrove/coastal ecosystems management; and
- Provides a design document that sets out how to replicate this model.

5. Adequate resourcing for relevant government Ministries and agencies to carry out their regulatory role in accordance with the environmental Rule of Law.
   There is an ongoing need to identify and allocate adequate resources so government agencies can effectively carry out their tasks. This requires understanding the actual needs of each ministry/agency in implementing their duties and powers in relation to coastal ecosystems and decision-making and/or MCS or enforcement, and where support is required to make up the shortfall.

Recommendation 5: A technical study by expert team of local economists to determine the level of resource gap that exists in the government agencies or Ministries that have regulatory duties or powers relating to coastal ecosystem decision-making and to identify opportunities for coordinating financial support and capacity building. This study would be coordinated with existing regional and national organisations with information in relation to this and target the key Ministries including but not limited to Ministry of Environment, Ministry of Forests, Ministry of Fisheries, Ministry of iTaukei Affairs, MSAF, Ministry of Lands, Ministry of Justice.

The technical study would identify:

- Staffing (human resource) and capacity building requirements
- Financial requirements and shortfall
- How to coordinate financial support in relation to upholding the environmental Rule of Law
- Where technical support or training should be prioritised.

Improve access to legal advice

6. Improve access to legal advice and guidance to support an integrated approach to enforcement and compliance of the laws and regulations relevant to coastal ecosystems. This would include key Ministries (for environment, fisheries, forestry, lands), Judiciary – holding decision makers accountable and for environmental crimes, and DPP – prosecution of environmental crime/pollution.

Recommendation 6(a): Design a dedicated online course that provides technical legal training related to specific monitoring, control, surveillance and enforcement work for officers tasked with statutory duties, including but not limited to Environmental officers, Fisheries officers, Policy, Customs/Navy.

Recommendation 6(b): Design a targeted training course, in coordination with the appropriate regional and national organisations, that provides a series of training sessions for the judiciary. This could involve the Fiji Law Society in conjunction with suitable and available training institutions from outside Fiji.

7. Promote environmental Rule of Law more generally in Fiji in line with Fiji's legal and governance context via a dedicated group of lawyers committed to promoting and upholding the environmental Rule of Law.

Recommendation 7: Establish an environmental Rule of Law group of lawyers affiliated to or within the Fiji Law Society that would work with government and stakeholders to support more implementation of all aspects of the environmental Rule of Law, including but not limited to:

- Raising awareness and undertaking training activities
- Promote good decision-making within government
- Keep Fiji environmental legislation under review and suggest changes or updates where applicable
- Work with all CROP agencies and regional bodies to assist the implementation of Fiji's commitments.

These recommendations are aimed to increase the understanding and knowledge of Fijis legal system, to strengthen inter-ministerial coordination and collaboration, to enhance community and customary owner awareness, legal literacy and access and participation. Further to this and in light of attracting international and private sector funds through carbon trading or other offsetting schemes, mechanisms to ensure that customary owners and rights holders will benefit equitably from protection measures should be explored. Customary owners and rights holders are the groups that consider they own the areas, implement the projects and have the most to gain from increased protection and healthy ecosystems. They also have the capacity and knowledge to implement solutions that work best in their context, but will be assisted if their government agencies work with them.

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ANNEX A – FIJI CASE AUTHORITIES

Freesoul Cases

1. **State v Freesoul Real Estate Development (Fiji) Pte Ltd [2021] FJMC 22; Criminal Case 208 of 2019**

   Freesoul Real Estate Development (Fiji) Pte Ltd ("Freesoul") was charged with two counts of undertaking unauthorised developments contrary to section 43(1) of the Environment Management Act **("EMA")** and one count of failure to comply with a prohibition notice contrary to sections 21(4) and 46 of EMA. The first two counts were based on the particulars that Freesoul carried out development activity on dry land and foreshore at Malolo without an approved EIA Report. The third count was based on the failure by Freesoul to comply with a Prohibition Notice issued against the Company prohibiting it from undertaking foreshore and any construction activity at Malolo Levu Island. The Court found Freesoul guilty of the first two counts after determining that while no person is allowed to carry out any development activity or undertaking which is subject to the EIA process without an EIA report, Freesoul had intentionally carried out a development activity or undertaking, namely the digging of an artificial underwater channel, which was subject the EIA process without an approved EIA Report.

2. **State v Freesoul Real Estate Development (Fiji) Pte Ltd [2022] FJHC 38; Criminal Misc No. HAM 178 of 2021**

   The aggrieved third party, Woody Jack and Ratu Jona Joseva, sought to intervene in the sentence hearing before the High Court to seek compensation for loss or damage to their property against the company and its directors. The applicants were lessees of a piece of land on Malolo island which ends towards the edge of the foreshore facing Wacia, one of the

locations whereby Freesoul was found guilty of unauthorised development. They had plans to build eco-friendly accommodation on their land from 2015 to cater for visiting surfers and other tourists. However, the application was dismissed on the basis that:
"the applicants have no legal right over the property upon which they have based their claim for compensation. The foreshore subject of the claim was never leased to the applicants. The foreshore belongs to the State and the rightful aggrieved party to any damage done to the foreshore is the State and not the applicants".

3. State v Freesoul Real Estate Development (Fiji) Pte Ltd [2022] FJHC 201; Criminal Case No. HAC 282 of 2021

Following the conviction of Freesoul in the Magistrates Court, the case was transferred to the High Court for sentencing.

After a consideration of various matters including the significant harm caused to the environment by the unauthorized development and the purpose of the Sentencing and Penalties Act which is for deterrence, rehabilitation and denunciation of the crime, the High Court sentenced Freesoul and made the following orders, amongst other things:

(a) The offender is fined an aggregate sum of $1m for two counts of carrying out unauthorized developments.
(b) The offender is to post a refundable environmental bond of $1.4m with the Department of Environment and rehabilitate the affected areas to the satisfaction of the Department of Environment at its own expenses. Once the affected areas have been rehabilitated to the satisfaction of the Department of Environment the bond may be refunded to the offender.

4. Ratu Jona Joseva & Another v iTaukei Land Trust Board & Others [2023] FJHC 139; Civil Action No. HBC 257 of 2018

This was an application made by the Fourth Defendant, Freesoul Real Estate Development (Fiji) Pte Ltd for a dissolution of orders made against it on 9 April 2019 restraining it from interference with Plaintiff's land and also carrying out any development works on the foreshore area, until further order of the court.

Section 50 of the Environment Management Act 2005 was considered in this case. It states:

"**50**.-(1) A person who has suffered loss which **includes** contracting health-related problems as a result of any **pollution incident** may institute a civil claim for damages in a court, which may include a claim for-

(a) **economic loss** resulting from the pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;
(b) **loss of earnings arising** from damage to any natural resource;
(c) loss to or of any natural environment or resource;
(d) costs incurred in any inspection, audit or investigation undertaken to determine the nature of any pollution incident or to investigate remediation options.

(2) A claim under this section may be set off against any compensation paid under section 47(2)."

Section 50 allows a civil suit which includes a 'health related problems' to seek compensation including economic loss, but the compensation paid in civil suit 'may be' set off by compensation paid under Section 47(2) of the said Act. This also shows that compensation paid under Section 47(2) of the Act is not an impediment or bar for civil suits, but a complementary provision.
This application for dissolution of orders was rejected on the basis that it was unconscionable to expect the fourth Defendant to destroy natural environment including mangrove, foreshore and also to dig sea, that resulted in criminal conviction, and also seek approval of such activity thereafter. The Court held that if such approval was granted to the fourth Defendant, it would create a very bad precedent for future developers.

TOTAL (Fiji) Limited Cases

5. Ramendra Prasad (t/a Farmers Freeway Service Station) v Total (Fiji) Ltd [2018] FJHC 782; Civil Action no. HBC 131 off 2011

The plaintiff's case is that he and the defendant entered into a fuel supply agreement on 12th November, 1997 and the defendant's negligence caused damages to him. The key terms of the agreement were:

- The defendant would be the exclusive supplier of petroleum or fuel products to the plaintiff;
- The defendant would provide to the plaintiff equipment for the storage and supply of fuel and petroleum products;
- The equipment provided by the defendant and listed in the agreement would remain the property of the defendant at all times.

Amongst other things, the plaintiff sought the following reliefs from the defendant:

- Damages for contamination of land (July 2008 to January 2009)
- Damages for continued contamination of land February 2009 to date)
- Economic losses to the plaintiff resulting from the pollution incident including loss of business and reduction in trading capabilities – in accordance with section 50 of the Environment Management Act – (December 2008 to July 2009)
- Damage for nuisance incurred due to the defendant's refusal to remove its underground fuel tanks from the land – in accordance with section 50 of the Environment Management Act
- Exemplary and punitive damages for reckless conduct;

The Court determined that the main issue was whether there was an oil leakage and held as follows:

1. The action of the plaintiff is dismissed.
2. The plaintiff is ordered to pay the defendant $15,000.00 as costs (summarily assessed) of this action.
3. The counterclaim of the defendant is dismissed.

6. Ramendra Prasad (t/a Farmers Freeway Service Station) v Total (Fiji) Ltd [2020] FJCA 26; Civil Appeal No. ABU 90 of 2018

The above judgment of the High Court was appealed on six grounds. Amongst other things, the Court of Appeal considered the following:

- definitions of "land", "pollutant", "pollution incident" and "protecting the environment" - held that the definitions in the Act indicated the extensive meanings given to environmental pollution, so as to capture within the reach of the Act a wide variety of activities and persons.
- section 50 of the Environmental Management Act ("EMA") is a reflection of the "polluter pays principle", and is meant to act as a deterrent and ensure all-round concern for human life, as well as the environment.
- the fuel leakage is recognized as a 'pollution incident' under the Act.

After a careful look at the expert evidence and the leading case law from both the Fijian and English jurisdictions the Court of Appeal determined that TOTAL was negligent in relation to the leaking fuel. Further, in accordance with the EMA, the Court of Appeal found that TOTAL's negligence had caused a pollution incident that it was liable for. The appeal was therefore allowed and the matter sent to the Master to determine the quantum of damages due to the Appellant.

This determination by the Court of Appeal represents a significant step forward for environmental jurisprudence in Fiji and for environmental good governance. The judgment upholds the international standard of environmental law and the principle that the "polluter pays".

7. Total (Fiji) Limited v Ramendra Prasad (t/a Farmers Freeway Service Station); Civil Petition no. CBV 0007 of 2020

The judgment of the Court of Appeal, above, was further taken up to the Supreme Court of Fiji where the Petitioner made an application for special leave to appeal the said judgment.

One of the matters raised in the Supreme Court related to loss claimable pursuant to section 50(1) of EMA which states:

Civil claims and damages

50. (1) A person who has suffered loss which includes contracting health-related problems as a result of any pollution incident may institute a civil claim for damages in a court, which may include a claim for:

(a) economic loss resulting from the pollution incident or from activities undertaken to prevent, mitigate, manage, clean up or remedy any pollution incident;
(b) loss of earnings arising from damage to any natural resource;
(c) loss to or of any natural environment or resource;
(d) costs incurred in any inspection, audit or investigation undertaken to determine the nature of any pollution incident or to investigate remediation options.

The Court referred to the long title of the EMA which stipulates the application and scope of the Act

For the protection of the natural resources and for the control and management of developments, waste management and pollution control and for the establishment of a national environment council and **for related matters.**

Further, it showed that the protection of pollution control and related matters were some of the intentions of the legislature in enacting the Act and it was therefore necessary to give wide meaning to the provisions of the Act in interpreting the same in order to achieve the intentions of the legislature.

The Court was on the view that a person can claim for loss under that section irrespective of whether that person has "contracted health-related problems as a result of any pollution incident" or not and that to think otherwise would be to defeat the intention of the legislature. Further, those words were intended to show that loss as a result of ill-health could be claimed in addition to the various heads of loss set out in the section.

The application for special leave was therefore refused.
Note: the judgment of the Supreme Court is further being reviewed in the Supreme Court upon the application of the Petitioner (Total).

Other cases:

8. Tuisawau v Suva City Council [1995] FJLawRp 13

The Plaintiff sought the abatement of an alleged public nuisance – the stinking landfill of the Suva CC.

The second defendant (Fiji AG) moved to have the action dismissed on the ground that it should have been brought in the name of the Attorney-General – called a 'relator action'

COURT HELD: The relator action has no place in Fiji's legal system

Court instead upheld the standing of a Fijian Chief to bring a civil action to abate a public nuisance even though he personally did not suffer over and above others.

This is a substantial departure from UK law on public nuisance.

Court quoted section 103 of the (then) Constitution - "Until such time as an Act of Parliament otherwise provides, Fijian customary law shall have effect as part of the Laws of Fiji: provided that this sub-section shall not apply in respect of any customs, traditions, usage of values that is and to the extent that it is inconsistent with a provision of this Constitution or a statute repugnant to the general principles of humanity".

"In the present case the only evidence and submissions were from the Plaintiff who is an intelligent and educated traditional high chief. What better person could there be to tell the Court that in Fijian customary law the role of the high chief was to protect his people, by all means possible, from dangers to their health and wellbeing?

For the Relator argument based objections to succeed would entail the curious and anomalous result that in the Republic of Fiji public nuisances cannot be restrained at the instance of a high chief acting under Fiji traditional law but only at the instance of the Attorney-General acting on behalf of a non existent *parens patriae*."

9. Safari Lodge v Tiki (2013)

The parties were 2 neighbouring tourist hotels on the beach.

The defendant undertook earth works on the beach and in the lagoon. The claimant sued for **public nuisance.**

This case never went to trial, the hearing was to extend a Mareva injunction.

Court quoted almost the whole Tuisawau v Suva City Council case report with approval and reserved the full consideration of the issue of standing for trial.

Note that in this case there was no chiefly or customary law requirement, merely a rejection of the need for the AG to bring a relator action.

Conclusion > Fijian courts may be more receptive to civil action for public nuisance than UK or Australia. This is largely untested.

10. Fiji Fish Marketing Group Ltd v Pacific Cement Ltd [2017] FJHC 252

Cement factories in Suva have to receive an imported material called "clinker". Clinker is hazardous, and when being unloaded and transported can result in a great deal of dust. Claimant has business exported high-value fish products that are subject to certification for food safety. Employs 300 people. Clinker dust contaminated the claimant's premises, their machinery and threatened their whole business due to risk of loss of certification. "delay in processing is costing them more than $35,000 per day and the loss to the equipment and machinery is over $100,000."

Court heard defendant had approvals from Maritime Safety Authority of Fiji (MSAF) and Fiji Ports Limited to transport the clinker, but the approval was in the name of a 3rd party.

The Department of Environment had informed the Defendant (via email) that they had no role to play – the Court made clear that was not the case and the transport of clinker was covered by the Environmental Management Act.

Court found that a nuisance action was available to the claimant.
Court granted an interim injunction. Court invoked the Polluter Pays Principle in justifying why the Defendants should bear the cost burden. Court in noted that there was a substantial public benefit granting the injunction

11. Richard Watling and Samabula and Tamavua North Resident Group V Sandeep K Singh (1st Respondent) and Ministry of Environment (2nd Respondent) - Environment Tribunal Action No. 05 of 2019 - 13 December 2023

This was a successful challenge to a decision made by the Respondents to approve, subject to conditions, the Environmental Impact Assessment **(EIA)** in respect of the proposed container yard and bond shed for Hunters Investment Limited **(HIL)** in Suva, Fiji.

The appeal was brought in accordance with the right to challenge a decision of the Respondents to approve the development in accordance with the Environment Management Act, 2005 (EMA). The appeal alleged that there were defects in the EIA report, that the deadlines in EMA were not followed and that the Respondents had failed to consider relevant information and evidence that showed the development poses a significant risk to public safety including landslip or soil liquefaction both during construction and operation of the development. In addition, the developer had not included an inventory of avifauna (bird) species within the project area focusing on their ecological significance and population status in Fiji.

The Appellants were residents who lived above the development on raised ground on Princes Road, Suva and were concerned primarily about the danger that the development could cause to landslips placing their properties and themselves in danger.

The decision of the Environment Tribunal noted the history of the matter, and previous complaints made by the appellants pointing to damage to the cliff and hillside that their houses were built upon. The historical data showing fault lines and geological instability were also pointed to. As well as the excavation works, heavy machinery would be involved in the construction that could exacerbate already existing geological conditions. The Environment Tribunal also noted previous non-compliance by the developer.

The Environment Tribunal found that the Respondents had failed in their statutory duties under EMA and in particular had failed to consider:

- The significant earthquake hazard in the area and the risks associated with the development
- The public concern relating to the development taking place and operating with an industrial use in that site
- A cost benefit analysis which must include professional estimation of the loss of residential property values affected by the development
- Undertaking of a noise study of a commercial container yard, to determine likely levels that will be encountered at the boundary of the proposed development site and noise, vibration and emissions levels to be expected of the proposed development once fully operational on the project area and the surrounding environment.

In addition, the EIA that the Respondents approved was found not to meet the Terms of Reference, and of particular concern was the risk caused by geological hazards in the area and public concern.

Finally it was found that the decision to approve the EIA report was made in violation of section 30(4) of the EMA in that the decision was not made within 21 days after the period specified in subsection 30(3) of the EMA had expired. The Respondents were also in breach of regulation 31 of the Environment Management (EIA Process) Regulations 2007 by failing to prepare a review report within 35 days of the submission of the EIA report.

The Respondents had denied issues with the EIA, but ultimately the Environment Tribunal sided with the Appellants, and found

"While the Respondents claim to have addressed these issues in the EIA, the detailed examples provided by the Applicants cast doubt on the report's comprehensiveness. In my mind, it establishes a strong case for an inadequate and potentially flawed EIA."

In terms of the breaches of the statutory deadlines in EMA the Environment Tribunal found no excuse for the failure to meet them and found this to be a "legal violation".

The Environment Tribunal found that the Respondents decision was unreasonable, determined that the EIA approved by the Respondents was inadequate, breached statutory timelines, and failed to address the violations and shortcomings highlighted by the Appellants.

The Appeal against the Respondents was determined wholly in the Appellants' favour with costs of FJ$6000 awarded to the Respondents.

ANNEX 4 - FOOTNOTES

[1] This Legal Review is based on desk top research and consultations as detailed in the course of this Legal Review

[2] Both the Fisheries Act, 1941 and the Offshore Fisheries Management Act, 2012

[3] For more information on the 2 recently designated MPAs and the manner in which they were designated in accordance with the law, please see: "Fiji's Minister for Fisheries has created two new Marine ...." 30 Jan. 2018, http://www.sas.com.fj/ocean-law-bulletins/fijis-minister-for-fisheries-has-created-two-new-marine-reserves-with-regulations-made-under-powers-conferred-by-section-9-of-the-fisheries-act-1941.

[4] For a comprehensive review of nearshore fisheries governance, and how customary law fits within Fiji's common law system please see: "A Review of Near Shore Fisheries Law & Governance in Fiji ...." https://www.packard.org/insights/resource/a-review-of-near-shore-fisheries-law-governance-in-fiji/:

[5] "Fiji Locally Managed Marine Areas." http://www.itaukeiaffairs.gov.fj/index.php/divisions/development-services-division/fiji-locally-managed-marine-areas.

[6] "Minister of iTaukei Affairs." http://www.itaukeiaffairs.gov.fj/index.php/35-pm-welcome/116-pm-welcome.

[7] "Ministry of Fisheries." http://www.fisheries.gov.fj/.

[8] In terms of Offshore MPAs, and particularly MPAs within Fiji's EEZ it seems likely that traditional communities do not have recognized traditional rights although we are aware of cultural mapping exercises that may reveal traditional connections that should be taken into account. However, the main objection at the present time to designation of offshore MPAs pursuant to existing Fisheries Law is the fishing industry pointing out that any designations must be made on the basis of data and science. This requires more sharing and transparency from the Fiji government to share this information to enable informed decisions.

[9] "Protecting Fiji's most important marine areas | IUCN." https://www.iucn.org/news/oceania/202006/protecting-fijis-most-important-marine-areas. Accessed 9 Jun. 2020.

[10] "2050 strategy for the blue pacific continent: a sea change?." 25 Dec. 2019, https://www.islandsbusiness.com/component/k2/item/2657-2050-strategy-for-the-blue-pacific-continent-a-sea-change.html.

[11] "Fiji's first National Ocean Policy Analysis and Submission." 20 May. 2020, http://www.sas.com.fj/ocean-law-bulletins/fijis-first-national-ocean-policy-analysis-and-submission.

[12] "A Review of Near Shore Fisheries Law & Governance in Fiji ...." 14 May. 2015, https://www.packard.org/insights/resource/a-review-of-near-shore-fisheries-law-governance-in-fiji/.

[13] "The evolution of fisheries law in Fiji - an overview of the law ...." 28 Feb. 2017, http://www.sas.com.fj/ocean-law-bulletins/the-evolution-of-fisheries-law-in-fiji-an-overview-the-law-and-governance-systems-as-they-apply-to-inshore-fisheries.

[14] "An analysis of property rights in the Fijian qoliqoli ...." https://www.sciencedirect.com/science/article/pii/S0308597X16300847.

[15] "Marine Protected Areas in Fiji waters: The law and ...." 30 Apr. 2019, http://www.sas.com.fj/ocean-law-bulletins/marine-protected-areas-in-fiji-waters-the-law-and-governance-context-requires-careful-consideration-and-transparent-decision making.

[16] Some Acts of Parliament have in recent years included a non-review clause removing the role of the Judiciary to review government/Executive decisions, but these exceptions are not relevant to coastal ecosystems and development/protection initiatives.

[17] "Constitution of the Republic of Fiji - PacLII." http://www.paclii.org/fj/Fiji-Constitution-English-2013.pdf.

[18] Prior to the 2013 Constitution the common usage of "Fijians" was understood to refer to indigenous Fijians (iTaukei) only, and this change remains a sensitive political issue. Fiji citizens are made up of iTaukei (54% approximately), descendents of indentured labourers transported from India by the British colonial administration to work predominantly in the sugar cane industry (40% approximately), Rotumans and other Pacific Islanders, and immigrants from many places but most predominantly from China, India, Europe, and Australia and New Zealand. This has given rise to another group of mixed race Fijians who are frequently described as part-European, or part Chinese but may self-identify closely with iTaukei and/or Fiji.

[19] "Members of Parliament - Parliament of the Republic of Fiji." http://www.parliament.gov.fj/members-of-parliament/.

[20] "Office of the Prime Minister: Welcome to the Prime Minister's ...." http://www.pmoffice.gov.fj/welcome-to-the-prime-ministers-official-website/.

[21] "MINISTRY OF ECONOMY WEBSITE." http://www.economy.gov.fj/index.php/component/mailto/?tmpl=component&template=rt_corvus&link=b0ba9178fb02ba89bb04b60ee7d06c2fffb029c2.

[22] "Ministry of Economy - Fiji Climate Change Portal." http://fijiclimatechangeportal.gov.fj/link/ministry-economy.

[23] "Ministry of Foreign Affairs." http://www.foreignaffairs.gov.fj/.

[24] "Ministry of Waterways and Environment: MOWE." http://www.mowe.gov.fj/.

[25] "Ministry of Fisheries." http://www.fisheries.gov.fj/.

[26] "Minister of iTaukei Affairs." http://www.itaukeiaffairs.gov.fj/index.php/35-pm-welcome/116-pm-welcome.

[27] More information can be provided Fiji's fisheries legislation if requested. We have undertaken detailed analysis of the offences and enforcement powers and this includes existing case law such as: State v Hong Kuo Hui [2005] FJHC 732; HAC40.2004 (2 May 2005), where the High Court Judge, Mr Justice Winter was asked to rule whether the offence of fishing inside Fiji Fisheries waters without a licence was a strict liability or absolute liability offence under the Fisheries Act. This case was heard before the Offshore Fisheries Management Act, 2012 came into force that has a comprehensive fisheries regime including serious offences with high penalties of up to US$500,000.

[28] While iTaukei land is inalienable (Constitution) it has been divided up into parcels/titles that are registered to iTaukei groups known as Mataqali - loosely translated as a clan. The Mataqali or clan then decides what to do with its land and may rent or lease it out if 60% of the Mataqali agree AND the iTaukei Lands Trust Board (ITLB) also consents. The iTaukei Lands Trust Board is a statutory body that exists to safeguard the use of iTaukei land and in effect holds all iTaukei land in trust for the iTaukei people. It is notable that iTaukei rights in their fishing grounds are based on their ownership of land, but those traditional rights are not registered to the Mataqali but are usually registered to the level above Mataqali - Yavusa - meaning tribe. Although some smaller iqoliqoli may be registered to a Mataqali, this is less usual. The short point is that before any site based initiative is commenced, the proper customary rights group with rights in the foreshore/nearshore area must be established. It is also notable that customary or iTaukei ownership rights in foreshore and nearshore areas are not administered by the ITLB but by the iTaukei Affairs Board and the Director of Lands - reflecting the fact that foreshore and nearshore areas are State land.

[29] "A Review of Near Shore Fisheries Law & Governance in Fiji ...." 14 May. 2015, https://www.packard.org/insights/resource/a-review-of-near-shore-fisheries-law-governance-in-fiji/.

[30] Kaloumaira v Fiji Police Force [2008] FJHC 385; HC HBC472.2004 (31 December 2008)

[31] "Fiji Fisheries Regulation and the enforcement of minimum ...." 10 Jun. 2019, http://www.sas.com.fj/ocean-law-bulletins/fiji-fisheries-regulation-and-the-enforcement-of-minimum-sizes-for-mud-crabs.

[32] "Fiji Fisheries: Economic and other opportunities from ...." 6 Jun. 2019, http://www.sas.com.fj/ocean-law-bulletins/fiji-fisheries-economic-and-other-opportunities-for-regulation-of-fisheries-in-archipelagic-and-territorial-waters.

[33] "Designating all fisheries officers in Fiji "authorized officers ...." 30 Aug. 2017, http://www.sas.com.fj/ocean-law-bulletins/designating-all-inshore-fisheries-officers-authorized-officers-may-assist-with-inshore-fisheries-enforcement.

[34] "Fiji's first National Ocean Policy Analysis and Submission." 21 May. 2020, http://www.sas.com.fj/ocean-law-bulletins/fijis-first-national-ocean-policy-analysis-and-submission.

[35] "Towards an integrated oceans management policy for Fiji ...." https://d3n8a8pro7vhmx.cloudfront.net/edonsw/pages/5411/attachments/original/1511403416/171013_Integrated_Oceans_Management_Fiji.pdf?1511403416.

[36] As noted by the draft National Oceans Policy: "Implementation of Part XI of UNCLOS, Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, International Maritime Organization's Convention for the Safety of Life at Sea (SOLAS), International Convention for the Prevention of Pollution from Ships (MARPOL), Convention on Biodiversity, United Nations Framework Convention on Climate Change, United Nations Convention to Combat Desertification, International Labour Organization Convention, United Nations

Educational, Scientific and Cultural Organization Convention Concerning the Protection of the World Cultural and National Heritage, Convention on Trade in Endangered Species (CITES), Stockholm Convention, Montreal Protocol of Vienna Convention (on-Ozone depleting substances – includes fishing vessels), Paris Agreement." Further: "There are two regional environmental conventions that help establish a regional framework for environmental governance. Fiji is a party to both the Noumea Convention for the Protection of the Natural-Resources and Environment of the Pacific Region (1986) and the Waigani Convention (1995) on trans-boundary movement of hazardous waste within the Pacific.

The Pacific has a number regional strategies, plans and annual or biennial meetings that coordinate actions on Ocean-related activities including for environment, fisheries, transport, meteorology and tourism."

[37] For more information on regional fisheries management please see: "The Importance of regional cooperation between Pacific …." 27 Apr. 2020, http://www.sas.com.fj/ocean-law-bulletins/the-importance-of-regional-cooperation-between-pacific-island-countries-for-fisheries-management-and-to-increase-the-benefits-for-pacific-islanders. Accessed 28 May. 2020.

[38] "Glossary beginning with E - Fiji Climate Change Portal." http://fijiclimatechangeportal.gov.fj/resource/glossary.

[39] "pacific adaptation to climate change fiji islands report of in …." http://fijiclimatechangeportal.gov.fj/sites/default/files/documents/FijiReport_NationalPACCReport_Final_0.pdf.

[40] "HON. PM's REMARKS AT THE HIGH-LEVEL PANEL ON …." 24 Sep. 2019, http://www.pmoffice.gov.fj/remarks-at-high-level-panel-on-sustainable-oceans-economy-fiji-norway-kenya-portugal/.

[41] Note, this is taken from the draft of the National Oceans Policy

[42] Department of Lands – all foreshore areas are vested in the State. This means that "ownership" of foreshores, coastlines, mudflats and coastal areas that extend into the sea up to a certain point that could (but don't always) extend to the reef, vest in the Fiji State. These foreshore areas are administered by the Department of Lands on behalf of the Fiji government. The Department of Lands can provide more information about the extent of any foreshore area, and issue a foreshore lease upon an approved application by a person or entity. This is relevant for any development that takes place in Fiji's foreshore areas. When a foreshore lease is issued the Department of Lands will consult with the relevant iTaukei rights holders from the relevant Yavusa (rights holding group or in some cases Mataqali) and the lease would only proceed once a waiver of fishing rights is granted in return for an amount in compensation that would be assessed by the Department of Lands.

[43] CITES is a multilateral treaty that includes 3 appendices (Appendix I, II, and III) which list endangered species and provide varying levels of protection for those species. Appendix 1 lists species that are threatened with extinction and contains approximately 1200 species, and all trade in these species is illegal and only permitted in exceptional circumstances. Appendix II lists around 21,000 species that may become threatened with extinction if their trade is not regulated via export permits. Appendix III includes around 170 species that are added after a request to the CITES parties to include a species that the member country needs assistance to regulate via export permit. CITES requires permits for the import, export, re-export and introduction from the sea species via a permit and licensing system.

[44] For more information on the EPS Act and its operation and amendment please see: "Humphead Wrasse and other species in Appendix I and II ...." 17 Mar. 2017, http://www.sas.com.fj/ocean-law-bulletins/humphead-wrasse-and-other-species-in-appendix-i-and-ii-cites-have-been-fully-protected-by-law-in-fiji-from-2014. Accessed 29 May. 2020.

[45] For a fuller explanation of Fiji's planning system please see: "Fiji Planning law: Fiji's government has announced new Town ...." 1 Jul. 2019, http://www.sas.com.fj/ocean-law-bulletins/fiji-planning-law-fijis-government-has-announced-new-town-planning-schemes-may-be-adopted-for-suva-lautoka-and-nadi-an-opportunity-for-good-d-156-16938. Accessed 29 May. 2020.

[46] "The Court of Appeal has upheld the Torrens title system by ...." 18 Sep. 2017, http://www.sas.com.fj/commercial-law-updates/a-recent-court-of-appeal-judgment-has-upheld-the-torrens-title-system-by-confirming-indefeasibility-of-title-includes-a-volunteer-under-a-will.

[47] For more information please see: "How does the law protect rivers in Fiji from pollution?." 15 Jun. 2017, http://www.sas.com.fj/ocean-law-bulletins/how-does-the-law-protect-rivers-in-fiji-from-pollution.

[48] For more information please see "How does the law protect mangroves in Fiji?." 14 Feb. 2017, http://www.sas.com.fj/ocean-law-bulletins/how-does-the-law-protect-mangroves-in-fiji. Accessed 29 May. 2020.

[49] "A law change to building permit applications in Fiji will ...." 4 Aug. 2017, http://www.sas.com.fj/ocean-law-bulletins/a-law-change-to-building-permit-applications-in-fiji-will-increase-efficiency-but-what-are-the-impacts-for-good-decision making-and-fijis-natural-resources.

[50] A recent case of a vessel owner being fined is reported in: "The Fiji Times » Polluting vessel fined $20k." https://www.fijitimes.com/polluting-vessel-fined-20k/.

[51] For more detail in relation to this part please see: "Fiji Marine Pollution Law Series - Pollution from Ships." 6 Jul. 2018, http://www.sas.com.fj/ocean-law-bulletins/fiji-marine-pollution-law-series-pollution-from-ships. Accessed 29 May. 2020. The information provided in this part is abridged from this earlier legal bulletin published by our firm.

[52] Our firm has provided a number of legal bulletins expressly related to pollution and marine pollution, the information here is adapted from this series, for example: "Fiji Marine Pollution Law Series - industrial pollution." 9 Jul. 2018, http://www.sas.com.fj/ocean-law-bulletins/fiji-marine-pollution-law-series-industrial-pollution.

[53] "Landmark Fiji Environmental Law Judgment finds TOTAL ...." 2 Mar. 2020, http://www.sas.com.fj/commercial-law-updates/landmark-fiji-judgment-total-negligence-means-it-is-liable-for-pollution-incident-upholding-fijis-environment-management-act-and-the-princ-1583113896759.

[54] "Environmental Emergency declaration lifted - Fijivillage." 3 Mar. 2015, https://fijivillage.com/news/Environmental-Emergency-declaration-lifted-r25k9s.

[55] "Fiji calls for sea-bed mining moratorium as Nautilus restructures." 14 Aug. 2019, https://www.islandsbusiness.com/breaking-news/item/2531-fiji-calls-for-sea-bed-mining-moratorium-as-nautilus-restructures.html.

[56] "Calls for a Deep Seabed Mining Moratorium Grow - Deep Sea ...." 19 Aug. 2019, http://www.savethehighseas.org/2019/08/19/calls-for-a-deep-seabed-mining-moratorium-grow/.

[57] "Seabed mining - how is it intended to be regulated and what ...." 26 Nov. 2019, http://www.sas.com.fj/ocean-law-bulletins/deep-seabed-mining-how-is-it-intended-to-be-regulated-and-what-are-the-risks-for-states-sponsoring-states-who-seek-a-licence-from-the-interna-1574720750697.

[58] "Deep Seabed mining in the Pacific, a recent lecture prompts ...." 6 Aug. 2019, http://www.sas.com.fj/ocean-law-bulletins/deep-seabed-mining-in-the-pacific-a-recent-lecture-prompts-the-question-who-bears-the-legal-risk-under-the-legal-framework-for-seabed-mining-15650521.

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NOTES

SPREP
Secretariat of the Pacific Regional Environment Programme

Pacific Community
Communauté du Pacifique

giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH

Supported by:

Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection

based on a decision of the German Bundestag

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