

NATIONAL PROTECTED AREAS LEGISLATION FOR THE REPUBLIC OF FIJI ISLANDS

KEY ISSUES AND PRELIMINARY RECOMMENDATIONS

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1.0. INTRODUCTION

The terrestrial, coastal and marine ecosystems of the Fiji Islands (**Figure 1.1**) support a remarkable diversity of plants and animals, including many endemic species. These diverse ecosystems play a vital role in meeting basic human needs, supporting sustainable livelihoods and contributing to national development. Rural communities in Fiji are highly reliant on natural resources, especially coastal fisheries, and are vulnerable to ecosystem degradation, natural disasters and climate change.²

For centuries, traditional governance systems have regulated the use of natural resources in Fiji. However, economic development and rapid population growth have placed considerable pressure on local governance structures and natural ecosystems.³ Clearing for subsistence and commercial agriculture and poorly regulated logging have resulted in widespread loss of forest cover. Degradation of water catchment areas has had significant impacts on freshwater ecosystems. Mangroves, coral reefs and coastal fisheries have been affected by coastal development, sedimentation, destructive fishing practices and over-exploitation.⁴

Establishment of protected areas offers diverse benefits for nature conservation and national development, including: supporting sustainable management of natural resources; protecting biodiversity; protecting natural and cultural heritage; enhancing resilience to climate change impacts; maintaining healthy river catchments, with associated benefits for water supply and flood risk management; providing opportunities for sustainable local enterprise; and, recognising and supporting community-based conservation initiatives.⁵

Existing protected areas in Fiji vary in their size and ecological value, and do not yet form an adequate or representative protected area system. The legal status of these areas varies, including: strict nature reserves declared under national forestry legislation; heritage sites owned or leased by the National Trust; conservation leases held by individuals and businesses; and, increasingly, community-declared conservation areas. These areas are not generally covered by management plans and are rarely subject to active management.

In recent years, recognition of the central role of traditional governance systems in the management of natural resources and ecosystems has resulted in a strong shift in towards community-based natural resource management in Fiji. There has been rapid growth in the number of community conserved areas, especially in the coastal marine environment. The

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² Asian Development Bank (2005) *Republic of the Fiji Islands: Country Environmental Analysis* (TA: 6039-REG), ADB, Manila.

³ Veitayaki J (1997) Traditional marine resource management practices used in the Pacific Islands: an agenda for change. *Ocean & Coastal Management* 37:123-136.

⁴ Asian Development Bank (2005) *Republic of the Fiji Islands: Country Environmental Analysis* (TA: 6039-REG), ADB, Manila.

⁵ Clarke, P. and Erasito, E. (2008) *NEC Discussion Paper: Proposal to Establish a National Protected Areas Committee*. IUCN (2008) *Ecosystem-based adaptation: An approach for building resilience and reducing risk for local communities and ecosystems*. Soudamini Dasa and Jeffrey R. Vincent (2009) 'Mangroves protected villages and reduced death toll during Indian super cyclone' *PNAS* vol. 106 no. 18 7357-7360. Green AL, Lokani P, Sheppard S, Almany J, Keu S, Aitsi J, Karvon JW, Hamilton R, Lipsett-Moore G (2008) *Scientific design of a resilient network of marine protected areas*. Kimbe Bay, Papua New Guinea: The Nature Conservancy. Pacific Island Countries Report No 2/07, 60 pp. Hale, L. et al (2009) *Ecosystem-based Adaptation in Marine and Coastal Ecosystems*, The Nature Conservancy, <www.nature.org>, accessed 30 September 2009.

number of locally managed marine areas has grown from 1 site in 1997 to 217 sites in 2009.⁶ This rapid expansion of community conservation areas raises important questions regarding interaction, and potential conflict, between national laws and local governance systems.

Legal recognition of traditional resource tenure and decision-making processes can enhance the effectiveness of community-based natural resource management. Conversely, failure to recognise traditional resource tenure and decision-making processes may lead to resource conflict and, when combined with limited government capacity, can result in poor resource management outcomes.⁷

The absence of a coherent legal framework for protected areas presents challenges for effective protected area management. Existing legal mechanisms, such as nature reserves and restricted areas, tend to be inflexible, with no opportunity for resource owners to develop management rules, or to modify those rules over time.⁸ There is a pressing need to develop legislation that provides for management of protected areas by local communities, in collaboration with government agencies and civil society organisations.⁹

This paper provides a brief overview of the international and national policy context, describes the current legal and institutional framework for protected area management in Fiji, and outlines key issues and options for the development of protected areas legislation that is appropriate to the national legal, institutional, social and cultural context.

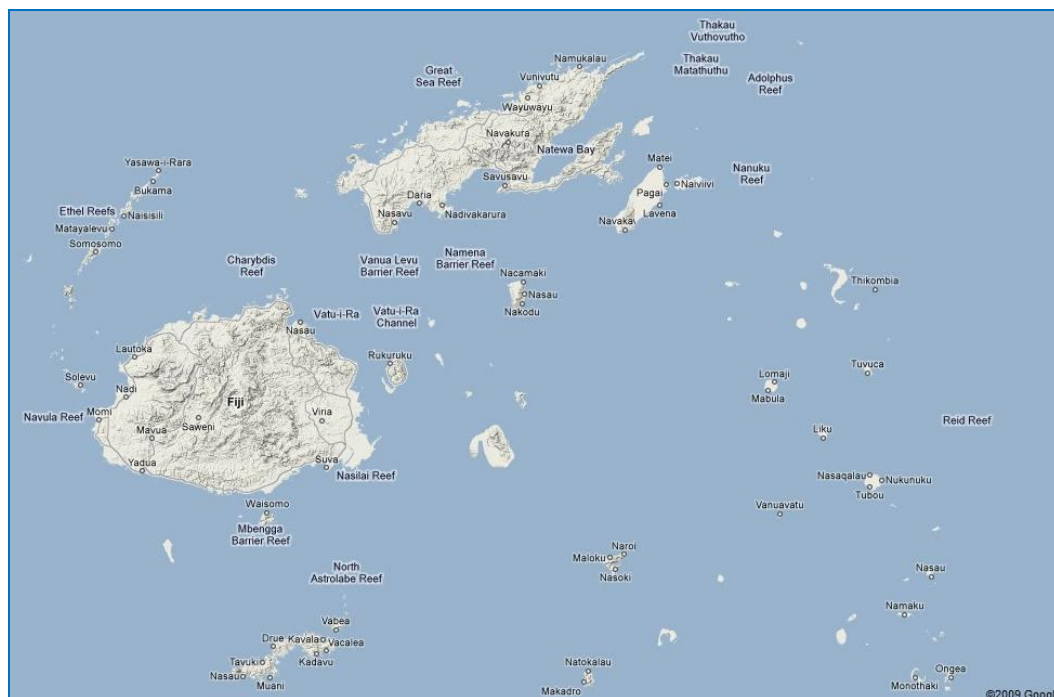


Figure1.1. Fiji Islands

⁶ Govan H, et al (2009) Status and potential of locally-managed marine areas in the South Pacific: meeting nature conservation and sustainable livelihood targets through wide-spread implementation of LMMAs. SPREP/WWF/WorldFish-Reefbase/CRISP.

⁷ Reti I (1993) The role of custom in environmental management and law in the Pacific. In: Boer B (ed) Strengthening environmental legislation in the Pacific Region Workshop Proceedings. South Pacific Regional Environment Program;

⁸ Clarke, P. and Gillespie, T. (2007) *Legal Mechanisms for the Establishment and Management of Protected Areas in Fiji Islands*, IUCN Regional Office for Oceania.

⁹ Clarke, P. and Jupiter, S. (in press) Law, Custom and Community Based Natural Resource Management in Kubulau District, Fiji Islands. *Environmental Conservation*, Cambridge University Press.

2.0. INTERNATIONAL POLICY CONTEXT

The Government of Fiji has signed and ratified a number of multilateral environmental agreements relevant to the establishment and management of protected areas, including:

- 1971 *Convention on Wetlands of International Importance*
- 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage*
- 1986 *Convention on the Protection of Natural Resources and the Environment of the South Pacific*
- 1992 *Convention on Biological Diversity*.

By ratifying these treaties, the Government of Fiji has made an undertaking to the international community to protect its natural and cultural heritage and to conserve and sustainably manage its biological diversity using appropriate means, including the establishment and management of protected areas.

2.1. RAMSAR CONVENTION

The 1971 *Convention on Wetlands of International Importance* ('Ramsar Convention') aims 'to stop the loss of wetlands and to promote their conservation and wise use'. Parties to the Convention are required to identify wetlands of international importance within their territory and designate such wetlands for inclusion on an international list established under the Convention. Parties are required to maintain the ecological character of listed wetlands, and to report on the status of listed wetlands within their territory. In addition, each party undertakes to promote the conservation of wetlands (listed and unlisted) by establishing and managing wetland reserves. Fiji currently has one Ramsar listed wetland, located in the upper catchment of the Navua River.

2.2. WORLD HERITAGE CONVENTION

The 1972 *Convention Concerning the Protection of the World Cultural and Natural Heritage* ('World Heritage Convention') is concerned with identifying cultural and natural heritage sites of 'outstanding universal value', and with promoting cooperation amongst nations to contribute effectively to the protection of these areas. Parties to the Convention are required, inter alia, 'to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage'. Fiji does not yet have any listed World Heritage sites.

2.3. NOUMEA CONVENTION

The 1986 *Convention on the Protection of Natural Resources and the Environment of the South Pacific* ('Noumea Convention') requires parties to 'take all appropriate measures to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat'. To this end, parties are required, as appropriate, to establish protected areas, and prohibit or regulate any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are designed to protect.

2.4. CONVENTION ON BIOLOGICAL DIVERSITY

The objectives of the 1992 *Convention on Biological Diversity* ('CBD') are 'the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources'. Parties to the Convention are required to develop national strategies, plans or programs for the conservation and sustainable use of biodiversity, or to adapt existing plans or programs for this purpose.

The Convention defines a protected area as 'a geographically defined area, which is designated or regulated and managed to achieve specific conservation objectives'.¹⁰

In relation to protected areas, parties are required, as far as possible and as appropriate, to:

- establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity;
- develop guidelines for the selection, establishment and management of protected areas or areas where special measures need to be taken to conserve biological diversity;
- regulate or manage biological resources important for the conservation of biological diversity whether within or outside protected areas, with a view to ensuring their conservation and sustainable use; and
- promote environmentally sound and sustainable development in areas adjacent to protected areas with a view to furthering protection of these areas.¹¹

In 2004, the CBD Conference of the Parties adopted a comprehensive *Programme of Work on Protected Areas*, with the objective of supporting the establishment and maintenance of comprehensive, effectively managed, and ecologically representative systems of protected areas.¹² The programme of work sets out a series of goals and suggested activities, including legislative and policy reform.

In 2007, the Global Environment Facility (GEF) launched a funding program to support the implementation of thirteen 'critical' activities identified in the CBD *Programme of Work on Protected Areas*. In 2008, Fiji secured funding to undertake the following activities:

- Complete a national protected area system gap analysis to inform the development of an adequate and representative system of terrestrial and marine protected areas;¹³ and
- Identify, and effectively address, legislative and institutional gaps and barriers that impede the effective establishment and management of protected areas.¹⁴

¹⁰ *Convention on Biological Diversity*, Article 2.

¹¹ *Convention on Biological Diversity*, Article 8.

¹² Decision VII/28.

¹³ PoWPA Activity 1.1.5.

¹⁴ PoWPA Activity 3.1.1.

2.5. IUCN PROTECTED AREA CATEGORIES

The IUCN World Commission on Protected Areas (WCPA) has defined a 'protected area' as:

a clearly defined geographical space recognized, dedicated and managed, through legal and other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.¹⁵

The WCPA has established seven categories of protected areas (**Appendix 1**), which have been widely applied by protected area managers around the world. The seven categories are: strict nature reserve, wilderness area, national park, natural monument, habitat/species management area, protected landscape/seascape, and managed resource protected area.

IUCN recognises four broad types of governance of protected areas, which can be associated with any protected area category: governance by government; shared governance; private governance; and, governance by indigenous peoples and local communities. The latter category is defined to include:

protected areas where the management authority and responsibility rest with indigenous peoples and/or local communities through various forms of customary or legal, formal or informal, institutions and rules.¹⁶

In recent years, there has been increasing interest in community conservation areas, and an awakening to their importance in fulfilling global biodiversity conservation objectives. In Fiji, local communities have emerged as leaders in the establishment of marine protected areas, with the number of community conserved areas growing each year.¹⁷

3.0. NATIONAL POLICY CONTEXT

3.1. NATIONAL ENVIRONMENT STRATEGY

The 1993 *National Environment Strategy* identified 140 sites of national environmental significance, and recommended the adoption of protected areas legislation to enhance protection of these sites.¹⁸

3.2. NATIONAL BIODIVERSITY STRATEGY AND ACTION PLAN

Consistent with its obligations under the CBD, the government of Fiji has developed a national biodiversity strategy and action plan (NBSAP). The strategy was drafted in 1999, reviewed in 2003 and 2006, and published in 2007. The goal of the *Fiji Biodiversity Strategy and Action Plan* is:

To conserve and sustainably use Fiji's terrestrial, freshwater and marine biodiversity, and to maintain the ecological processes and systems which are the foundation of national and local development.¹⁹

¹⁵ Dudley, N. (ed.) (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: IUCN. x + 86pp.

¹⁶ Ibid.

¹⁷ Govan H, et al (2009) Status and potential of locally-managed marine areas in the South Pacific: meeting nature conservation and sustainable livelihood targets through wide-spread implementation of LMMAs. SPREP/WWF/WorldFish-Reefbase/CRISP.

¹⁸ Watling, D. and Chape, S. (1993) *National Environment Strategy*, Government of Fiji.

¹⁹ Ministry of Tourism and Environment (2007) *Fiji Biodiversity Strategy and Action Plan*, p.23.

In relation to protected areas, the strategy states that: '[t]he establishment of a comprehensive and representative system of reserves and conservation areas at the national and local levels is critical to successful biodiversity conservation'.²⁰ The strategy describes Fiji's existing system of protected areas as 'rudimentary' and calls for action to achieve the following objectives:

- establishment of a comprehensive and representative core protected area system;
- establishment of protected areas in addition to the core protected area system;
- effective management of existing protected areas; and
- adequate funding for protected area management.²¹

The strategy recognises that '[c]ontrol of local resources by traditional resource owners and users is critical to the success of biodiversity conservation'²² and calls for action to:

- secure nationally significant sites through arrangements with resource owners;
- encourage and assist resource owners to establish their own protected areas;
- encourage resource owner participation in management of protected areas; and
- provide equitable remuneration to resource owners for establishing and managing protected areas.²³

The strategy highlights the importance of terrestrial conservation, stating that '[t]he conservation and sustainable management of Fiji's natural forests is the single most important means of conserving the vast majority of Fiji's endemic fauna and flora'.²⁴

3.3. NATIONAL FOREST POLICY STATEMENT

In 2007, the Government of Fiji released the *Fiji Forest Policy Statement*. This statement establishes a new policy framework for the management of Fiji's forests. It envisions 'a permanent forest cover, including a protected forest area network'.²⁵

It highlights the serious threats to forest biodiversity in Fiji, and states that 'the system of protected forest areas needs review, being insufficient in size and too scattered to provide for effective conservation'.²⁶

The policy statement proposes the establishment and management of a 'protected area system for the conservation of representative sites of Fiji's indigenous forest types with their typical flora and fauna'.²⁷

²⁰ *Ibid.*, Guiding Principle IX. p.23.

²¹ *Ibid.*, p.30-2.

²² *Ibid.*, Guiding Principle V. p.23.

²³ *Ibid.*, p.30-2.

²⁴ *Ibid.*, Guiding Principle IX. p.23.

²⁵ Ministry of Fisheries and Forests (2007) *Fiji Forest Policy Statement*. p.19.

²⁶ *Ibid.*, p.15.

²⁷ *Ibid.*, p.15, 26.

The policy statement recognises the need to encourage the direct involvement of resource owners and communities in sustainable forest management. In the policy statement, the Forestry Department undertakes:

- to work with landowners and other stakeholders to establish a system of conservation areas;
- to assist resource owners to manage these conservation areas consistent with local needs;
- to work with the Department of Environment and non-government organisations to deliver environmental awareness programmes for resource owners and resource users; and
- to assist interested resource owners to protect forests with significant conservation values.²⁸

3.4. PROTECTED AREAS COMMITTEE

In 2008, the National Environment Council established a Protected Areas Committee, charged with, *inter alia*, developing national legislation to provide for the establishment and management of terrestrial and marine protected areas.

4.0. LEGAL AND INSTITUTIONAL CONTEXT

Natural resource management in Fiji takes place within a pluralist legal and institutional context, in which national laws and institutions interact with local governance systems in diverse ways. Local governance institutions represent a fusion of traditional, colonial and contemporary influences, and continue to be sites of contested authority and legitimacy.

4.1. CUSTOMARY LAW

Most national constitutions in the Pacific have provisions recognising custom, but the extent of this recognition, and the place of custom in the legal hierarchy, varies from country to country.²⁹ In Fiji, the Constitution does not formally recognise custom as a source of law, but requires Parliament to ‘make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes’.³⁰

Respect for customary law and institutions is an integral feature of most rural communities, where the overwhelming majority of disputes are resolved by customary means. In remote areas, life is almost entirely governed by custom and customary processes, and even where state institutions do exist at the local level, they co-exist with customary institutions in a state of legal and institutional plurality.³¹

4.2. LAND LAW

The overwhelming majority of land in Fiji (87%) is native land, held under customary title by indigenous landowning clans.³² Consequently, an understanding of the legislative framework dealing with the ownership, use and management of native land is essential to the design of any proposed protected areas legislation.

²⁸ *Ibid.*, pp.15, 29-30.

²⁹ New Zealand Law Commission (2006) *Converging currents: Custom and human rights in the Pacific*. Study Paper 17. New Zealand Law Commission, Wellington, New Zealand 312

³⁰ Constitution Amendment Act 1997, s.186.

³¹ Corrin Care, J, Zorn, JG (2001) Legislating Pluralism: Statutory Developments in Melanesian Customary Law. *Journal of Legal Pluralism & Unofficial Law* 46: 51.

³² Native Land Trust Board, <www.nltb.org.fj>, accessed 29 November 2009.

4.2.1. Customary Land Tenure

Prior to colonisation, social hierarchies and land tenure systems varied significantly throughout the Fiji Islands. These systems were standardised and simplified during the colonial era, based on an 'orthodox' version of the traditional social hierarchy.³³

The basis of this standardised hierarchy is patrilineal descent. At the apex is the *vanua*, formed of the patrilineal descendants of a common ancestor or ancestor god. Each *vanua* is made up of one or more tribes (*yavusa*), and each *yavusa* is in turn made up of several clans (*mataqali*). Within each *mataqali* are one or more extended families (*tokatoka*).

In the standardised model of traditional land tenure, each house site (*yavu*) was owned by the household and cultivated areas (*qele*) were held by the *tokatoka*, while uncultivated areas, including forest (*veikau*), were held collectively by the *mataqali*. Rights to crops remained with the individual who planted them. Decisions about allocation and use of land were made primarily at the *mataqali* level, by the head of the clan (*turaga ni mataqali*).³⁴

4.2.2. Native Lands Act

The *Native Lands Act* recognises and maintains customary ownership of 'native land' and provides for the allocation and use of native lands according to 'native custom and usage'.³⁵

The Native Lands and Fisheries Commission maintains a register of land titles and boundaries, and is empowered to resolve disputes in relation to customary land rights.³⁶

Statutory recognition of traditional communal ownership of native lands provides a legal basis for community level decision-making about the use and conservation of natural resources on native land.

4.2.3. Native Land Trust Act

The *Native Land Trust Act* vests control of native land in the Native Land Trust Board (NLTB).³⁷ Native land must not be sold, granted or transferred, except to the Crown, and must not be transferred, charged or encumbered without the consent of the NLTB. Any legal instrument which seeks to transfer, charge or encumber any native land without the consent of the Board shall be null and void.³⁸

The NLTB may grant leases or licenses over portions of native land.³⁹ Leases and licenses over native land are made in the name of the Native Land Trust Board, and executed under the seal of the Board.⁴⁰ Native land may be leased for such purposes, and subject to such terms, conditions and covenants as the Board deems proper, subject to the *Native Land*

³³ Ward, R.G. (1995) Land, law and custom: diverging realities in Fiji. In: Ward, RG, Kingdon, E (eds) (1995) *Land, custom and practice in the South Pacific*, Cambridge University Press.

³⁴ Scarr, D.(ed)(1983) *The Three Legged Stool: Selected Writings of Ratu Sir Lala Sukuna*, MacMillan Education.

³⁵ *Native Lands Act*, s.3.

³⁶ *Native Lands Act*, ss.4, 8.

³⁷ *Native Lands Trust Act* [Cap 134], s.4(1).

³⁸ *Native Lands Trust Act* [Cap 134], s.5.

³⁹ *Native Lands Trust Act* [Cap 134], ss.8-9. See also *Native Lands Trust Act* [Cap 134], s.7: No native land may be leased, and no license in respect of native land may be granted, except in accordance with the provisions of the *Native Land Trust Act*, or subject to the provisions of the *Crown Acquisition of Lands Act*, *Forest Act*, *Mining Act* or *Petroleum (Exploration and Exploitation) Act*.

⁴⁰ *Native Lands Trust Act* [Cap 134], ss.8.

Trust (Leases and Licenses) Regulation.⁴¹ The regulations set out (a) standard conditions applying to all leases on native land, and (b) conditions applying to leases for particular purposes (for example, residential, agricultural, gardening, grazing and quarrying purposes).

NLTB has adopted a policy of obtaining the consent of the majority of *mataqali* members before granting any lease or licence, but retains its central role in negotiating the terms and conditions of native land leases. Consequently, NLTB plays a key role in decisions about use and development of native land by third parties, including activities such as agriculture, forestry, mining and tourism.

The Board may enter into leases for non-specified ‘special purposes’, subject to such terms and conditions as the Board deems appropriate.⁴² This power has been used by the Board to enter into leases for conservation purposes in a number of locations, including the Upper Navua Conservation Area and the Namena Island Nature Reserve.⁴³

4.3. HERITAGE CONSERVATION

The National Trust is a statutory trust established by the *National Trust for Fiji Act 1970*.⁴⁴ The purposes of the Trust are:

- to promote the permanent preservation of lands (including reefs), buildings, and objects of national historic, architectural or natural interest;
- to protect and augment the amenities of any such land or buildings and their surroundings and to preserve their natural aspect and features;
- to protect animal and plant life; and
- to provide for the enjoyment by the public of such lands, buildings and chattels.⁴⁵

For the purpose of achieving these objects, the Trust is empowered to acquire, purchase and hold land and other property and to deal with property vested in it upon such terms as it deems fit.⁴⁶ The Trust currently administers eight sites of natural or cultural significance. These sites are held under freehold, Crown leases and native leases.

The *National Trust Act 1970* endows the Trust with certain special powers, including: (a) the power to enter into binding covenants with landholders; and, (b) the power to make by-laws for the regulation and protection of Trust properties.

4.3.1. Conservation Covenants

The Trust may enter into voluntary agreements with landholders, placing binding restrictions on the use or development of the land.⁴⁷ These restrictions may apply for a fixed term or in perpetuity. The restrictions are binding on the landholder, lessees or subsequent owners.

⁴¹ *Native Lands Trust Act* [Cap 134], ss.10.

⁴² *Native Land Trust (Leases and Licenses) Regulations*, r.33.

⁴³ Clarke, P. and Gillespie, T. (2007) *Legal Mechanisms for the Establishment and Management of Protected Areas in Fiji Islands*, IUCN Regional Office for Oceania.

⁴⁴ Section 4, *National Trust for Fiji Act 1970*.

⁴⁵ Section 3, *National Trust for Fiji Act 1970*.

⁴⁶ Section 4, *National Trust for Fiji Act 1970*.

⁴⁷ Section 10(c), *National Trust for Fiji Act 1970*.

Conservation covenants may apply to freehold land, crown land and native lands. However, any conservation covenant on native land would require the consent of the NLTB.⁴⁸ Provided that compliance with the covenant is included as a condition of subsequent native land leases, breach of the covenant would provide grounds for terminating the lease.

Conservation covenants are a flexible – and, to date, underutilised – mechanism for long-term protection of natural and cultural heritage values. The Trust has not yet used its power to enter into conservation covenants with landowners, but has resolved to develop a model conservation covenant, drawing on international examples, and to formulate a strategy for promoting the adoption of conservation covenants by landholders.

4.3.2. *By-laws*

The Trust Council is empowered to make by-laws for the protection and management of Trust properties.⁴⁹ To date, the Council has not yet adopted any such by-laws.

By-laws offer a flexible mechanism for the conservation and management of Trust properties. However, Trust by-laws are subject to a significant limitation: as Trust by-laws only apply to ‘lands or other property of the Trust’, cancellation of a lease held by the Trust will make any by-laws applying to the leased property null and void.

4.3.3. *National Heritage Areas*

The Council may, with the approval of the Minister, declare an area of land (including reefs) to be a National Heritage Area.⁵⁰ The declaration of a National Heritage Area has no legal effect, but does provide a formal means of recognising the national significance of an area.

4.4. FORESTRY LAW

The *Forest Decree 1992* aims to: regulate the felling and extraction of timber, the taking of non-timber forest products and the clearing of land; establish a licensing regime; and, provide for the establishment of multiple use forest reserves and strict nature reserves.

The decree prohibits the felling or extraction of timber without a license or authority, and prohibits the taking of non-timber forest produce and the clearing of land on Crown land and unalienated native land without an authority or license.⁵¹

4.4.1. *Customary Rights*

The decree does not prohibit or restrict the exercise of customary rights to hunt, fish or collect fruits and vegetables growing wild, and allows the cutting or removal of timber for certain traditional purposes, including the construction of village buildings and houses.⁵²

⁴⁸ *Native Lands Trust Act* [Cap 134], s.5.

⁴⁹ Section 18, *National Trust for Fiji Act 1970*.

⁵⁰ Section 20, *National Trust for Fiji Act 1970*.

⁵¹ *Forest Decree 1992*, s.8

⁵² *Forest Decree 1992*, s.21(1)

4.4.2. Protected Areas

The Minister may, on the recommendation of the Forestry Board, declare a forest reserve or nature reserve on Crown land, land leased by the Crown or unalienated native land.⁵³ In the case of native land, the Minister must obtain the consent of landowners and the Native Land Trust Board before declaring the establishment of the forest reserve or nature reserve.⁵⁴

Forest reserves are intended to be utilised for multiple uses, including the felling and extraction of timber. The decree provides that forest reserves 'shall be managed as permanent forest in order to provide on a permanent basis the optimum combination of benefits of protection and production of which they are capable'. Licensing officers may issue licenses authorising a range of activities in forest reserves, including logging, collection of non-timber forest products, grazing, hunting and fishing. The licensing officer may specify such conditions in the license as they think fit, in accordance with good logging practice.

Nature reserves established under the decree must 'be managed for the exclusive purpose of permanent preservation of their environment, including flora fauna, soil and water'. The decree does not provide for the issuing of licenses in relation to nature reserves. As a result, nature reserves are essentially strict reserves in which logging, collection of non-timber forest products, grazing, hunting and fishing are prohibited absolutely.

The provisions in the decree which allow the exercise of customary rights to hunt, fish and collect non-timber forest products do not apply to forest reserves or nature reserves. For this reason, nature reserves are not an appropriate mechanism for establishing protected areas in cases where native landowners wish to maintain traditional harvesting activities.

4.5. MARINE RESOURCES

4.5.1. Customary Tenure

In the Pacific islands, most coastal communities developed systems of customary marine tenure, with ownership, use and management rights exercised by defined groups over a defined area of sea.⁵⁵ Customary marine tenure systems varied significantly throughout the Fiji Islands. In most cases, customary tenure over traditional fishing grounds (*qoliqoli*) was exercised collectively by the *yavusa* or the *vanua*.⁵⁶ Customary marine tenure included the right to exclude others from entering the *qoliqoli* and defined protocols for obtaining permission to fish within the *qoliqoli*. Outsiders traditionally sought permission from the chief of the *yavusa* or *vanua*, and traditional use rights (*kana vei curumaki*) could be granted to outside clans on a long-term basis. Traditional conservation mechanisms included no take zones, seasonal bans, temporary closures, effort controls, gear controls and catch limits.⁵⁷

⁵³ *Forest Decree 1992*, s.6

⁵⁴ *Forest Decree 1992*, s.6

⁵⁵ Johannes R.E. 1978. Traditional marine conservation methods in Oceania and their demise. *Annual Review of Ecology and Systematics* 9:349–364.

⁵⁶ Kunatuba, P. 1983. Traditional knowledge of the marine environment in Fiji, Institute of Marine Resources, University of the South Pacific, Suva.

⁵⁷ Aalbersberg, W, Tawake, A and Parras, T (2005) Village by Village: Recovering Fiji's Coastal Fisheries. In: *The Wealth of the Poor: Managing Ecosystems to Fight Poverty*. United Nations Development Programme, United Nations Environment Programme, the World Bank and World Resources Institute.

4.5.2. Fisheries Act

The *Fisheries Act* provides for registration of the boundaries of *qoliqoli* areas by the Native Lands and Fisheries Commission, and recognises the subsistence fishing rights of traditional resource owners within their *qoliqoli* area. It does not, however, recognise other customary marine tenure rights, including the right to directly control access to the *qoliqoli* and the right to establish and enforce management measures, including *tabu* areas.

Fishing for 'trade or business' without a licence is an offence under the *Fisheries Act*. The Department of Fisheries will only issue a licence to fish within an *qoliqoli* once they have received a 'letter of consent' from the relevant chief. The Minister for Fisheries may adopt conservation and management measures, including the establishment of 'restricted areas', by publishing regulations in the gazette.

To improve fisheries monitoring and enforcement, the Permanent Secretary may appoint community fish wardens to enforce the *Fisheries Act*. Fish wardens have the power to board and search vessels and, if they suspect that an offence has been committed, take the vessel, gear and catch to the nearest police station or port.

The treatment of customary marine tenure in the national legal system differs markedly from that applied to customary land tenure. This difference reflects the historical collision of traditional approaches to the ownership and management of marine resources with 'open access' traditions imported from Britain during the colonial era.⁵⁸

4.6. ENVIRONMENTAL IMPACT ASSESSMENT

The commencement of the *Environment Management Act 2005* on 1 January 2008 represents a major milestone in the development of environmental law in Fiji. The Act provides, *inter alia*, for the environmental assessment and approval of development activities. Environmental assessment of proposed development activities is an important tool for identifying and managing the impacts of development on protected areas.

The Act applies to 'development activities or undertakings', which are defined to include:

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, sea grass or other substances, dredging, filling, land reclamation, mining or drilling for minerals, but does not include fishing.⁵⁹

The Act requires the assessment of 'development proposals', defined as:

a proposal for a development activity or undertaking submitted to an approving authority for approval under any written law.⁶⁰

⁵⁸ Lam M. 1998. Consideration of customary marine tenure system in the establishment of marine protected areas in the South Pacific. *Ocean and Coastal Management*, 39 (1-2): 97-104.

⁵⁹ Section 2, *Environment Management Act 2005*.

⁶⁰ Section 2, *Environment Management Act 2005*.

For this purpose, an ‘approving authority’ means:

a Ministry, department, statutory authority, local authority or person authorised under a written law to approve the proposal.⁶¹

Under the Act, an approving authority must (a) examine every development proposal received by it; and (b) determine whether the proposed activity or undertaking is likely to cause significant environmental impacts.⁶²

If the approving authority determines that the activity or undertaking will cause a significant environmental impact, the development proposal must be made subject to the EIA process required under the Act.⁶³

The Act sets out three broad classes of development proposal:

1. proposals that must be processed by the Department of Environment;⁶⁴
2. proposals that must be processed by the approving authority;⁶⁵ and
3. proposals that may not require environmental impact assessment.⁶⁶

Development proposals that must be processed by the Department of Environment include:

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.⁶⁷ [emphasis added]

The Act sets out a variety of offences, imposes strong penalties for key offences, and provides a flexible array of court orders to deter breaches and remedy environmental harm. The court, when convicting a person for an offence under the Act, may make any order that it considers appropriate in the circumstances, including restoration and remediation orders.

4.7. OTHER RELEVANT LEGISLATION

Other laws relevant to the establishment and management of protected areas include:

- *Land Conservation and Improvement Act*
- *Water Supply Act*
- *Bird and Game Protection Act*

The features of legislation relevant to protected areas are summarised below (**Table 5. 1**).

⁶¹ Section 2, *Environmental Management Act 2005*.

⁶² Section 27(1), *Environment Management Act 2005*.

⁶³ Section 27(4), *Environment Management Act 2005*. See Part 4, Environmental Impact Assessment.

⁶⁴ Schedule 2, Part 1, *Environment Management Act 2005*.

⁶⁵ Schedule 2, Part 2, *Environment Management Act 2005*.

⁶⁶ Schedule 2, Part 3: construction of certain residential dwellings, construction of traditional structures and emergency actions.

⁶⁷ Schedule 2, Part 1, para (n), *Environment Management Act 2005*.

Table 1. Selected national legislation relevant to terrestrial and marine protected areas.

Legislation	Key Features	Responsible Agency
<i>Native Lands Act</i>	Recognises and maintains communal ownership of native lands.	Native Lands Commission
<i>Native Land Trust Act</i>	Empowers NLTB to enter into land leases on behalf of native landowners	Native Lands Trust Board
<i>National Trust for Fiji Act</i>	Empowers Trust to enter into binding conservation covenants with landowners, purchase or lease land for conservation purposes, adopt by-laws for trust properties and maintain a register of nationally significant areas.	National Trust
<i>Fisheries Act</i>	Provides for registration of traditional fishing grounds (<i>qoliqoli</i>). Recognises resource owners' subsistence fishing rights. Prohibits fishing for 'trade or business' without a licence. Empowers Minister to establish restricted areas and adopt management measures. Empowers the Permanent Secretary to appoint honorary fish wardens.	Department of Fisheries
<i>Forestry Decree 1992</i>	Prohibits felling or extraction of timber without a licence. Exempts certain customary uses (e.g. firewood, village houses). Empowers forestry licensing officers to issue logging licences. Empowers the Minister for Forests to declare forest reserves and strict nature reserves.	Department of Forests
<i>Environment Management Act 2005</i>	Environmental impact assessment (EIA) and approval required for development proposals that are likely to have a significant impact on the environment. Proposals that are likely to harm designated or proposed protected areas require approval from Department of Environment.	Department of Environment. Various 'approving authorities'.
<i>Land Conservation and Improvement Act</i>	Empowers the Land Conservation Board to issue orders prohibiting clearing, grazing, burning or cultivation of an area for land conservation purposes.	Land Conservation Board
<i>Water Supply Act</i>	Minister may declare any area to be a water supply catchment area. Pollution of water within a declared catchment area is an offence.	Department of Water Supply
<i>Bird and Game Protection Act</i>	Prohibits taking of native bird species, and regulates hunting of listed game bird species. Allows declaration of game reserves and appointment of game wardens.	Department of Primary Industries

5.0. LIMITATIONS OF EXISTING LEGAL MECHANISMS

The absence of a coherent legal framework for protected areas presents challenges for effective site-based conservation. In particular, existing laws do not provide for the active involvement of resource owners in the identification, establishment and management of protected areas. Existing legal mechanisms, such as nature reserves and restricted areas, tend to be inflexible, with no opportunity for resource owners to develop management rules, or to modify those rules over time.⁶⁸

There is a pressing need to develop protected areas legislation that provides for management of protected areas by local communities, in collaboration with government agencies and civil society organisations. Mechanisms for fair and equitable distribution of economic benefits from conservation areas must be trialed and replicated to reduce local conflict and increase long-term management effectiveness.⁶⁹

Ultimately, effective resource management is likely to rely on the emergence of hybrid models of governance, which respect local traditions, practices and resource rights and share responsibility for planning, implementation and enforcement of management measures between communities and government institutions, taking into account their respective strengths and limitations.⁷⁰

6.0. KEY ISSUES FOR DEVELOPMENT OF PROTECTED AREAS LEGISLATION

This section identifies key issues for consideration by the Protected Areas Committee during the development of protected areas legislation. The discussion draws on IUCN guidelines (**Appendix 2**),⁷¹ and builds on previous legislative gap analyses.⁷²

6.1. TYPE OF INSTRUMENT

There are three broad options available for protected areas legislation: subsidiary legislation under an existing Act; amendment of an existing Act; or, adoption of a new Act.

6.1.1. *Subsidiary Legislation*

Subsidiary legislation includes, *inter alia*, regulations and by-laws.⁷³ Subsidiary legislation must not exceed the scope of the empowering Act,⁷⁴ must be prepared in accordance with the requirements set out in the empowering Act, and must be published in the Gazette before taking effect.⁷⁵

⁶⁸ Clarke, P. and Gillespie, T. (2007) *Legal Mechanisms for the Establishment and Management of Protected Areas in Fiji Islands*, IUCN Regional Office for Oceania.

⁶⁹ Lal, P. (2005) Information, Institutions and Conflict Management in the Natural Resource Sector. Peace Building and Conflict Prevention Workshop, Nadi, 25-27 April 2005.

⁷⁰ Reti I (1993) The role of custom in environmental management and law in the Pacific. In: Boer B (ed) *Strengthening environmental legislation in the Pacific Region Workshop Proceedings*. South Pacific Regional Environment Program; Cinner JE, Marnane MJ, McClanahan TR (2005) Conservation and community benefits from traditional coral reef management at Ahus Island, Papua New Guinea. *Conservation Biology* 17:14-1723; McClanahan TR, Marnane MJ, Cinner JE, Kiene WE (2006) A comparison of marine protected areas and alternate approaches to coral reef management. *Current Biology* 16: 1408-1413; Aswani, S, Albert S, Sabetian A, Furusawa T (2007) Customary management as precautionary and adaptive principles for protecting coral reefs in Oceania. *Coral Reefs* 26:1009-1021.

⁷¹ Lausche, B. (2009) *Guidelines for Protected Areas Legislation*, Working Draft 3, IUCN Environmental Law Centre, Bonn, Germany. Dudley, N. (ed.) (2008). *Guidelines for Applying Protected Area Management Categories*. IUCN, Gland, Switzerland.

⁷² Clarke, P. and Gillespie, T. (2007) *Legal Mechanisms for the Establishment and Management of Protected Areas in Fiji Islands*, IUCN Regional Office for Oceania. Techera, E. and Troniak, S. (2008) *Marine Protected Areas Policy and Legislative Gap Analysis: Fiji Islands*.

⁷³ Section 2, *Interpretation Act 1967*: 'subsidiary legislation' means any legislative provision ... made in exercise of any power in that behalf conferred by any written law by way of by-law, notice, order, proclamation, regulation, rule, rule of court or other instrument; 'written law' means all Acts and all subsidiary legislation.

⁷⁴ Section 25(b), *Interpretation Act 1967*.

⁷⁵ Section 21, *Interpretation Act 1967*.

Unless the contrary intention appears in the empowering Act, the maximum penalty that may be set by subsidiary legislation is \$400 and/or six months imprisonment.⁷⁶

Regulation and by-law making powers relevant to protected areas include:

- The Council of the National Trust may make by-laws ‘for the purpose of carrying out the functions of the Trust’, including ‘regulation and protection of ... any lands or other property of the Trust’ (maximum penalty: \$400 and/or 6 months prison).⁷⁷
- The Minister for Forests may make regulations for the purposes of the *Forest Decree*, including regulations prohibiting the issue of logging licences in respect of specified areas (maximum penalty: \$10,000 fine and/or 12 months prison).⁷⁸
- The Minister for Fisheries may make regulations ‘prescribing areas ... within which the taking of fish is prohibited or restricted’ or ‘regulating any other matter relating to the conservation, protection and maintenance of a stock of fish’ (maximum penalty: \$400 and/or 6 months).⁷⁹
- The Minister for Environment may, after consulting the Ministers responsible for indigenous affairs, land, agriculture, fisheries, forestry and mining, make regulations ‘to establish guidelines, standards and procedures for the conservation, protection or rehabilitation of any land, river or marine area’ (maximum penalty: \$10,000 fine and/or 2 years prison).⁸⁰

The *Environment Management Act* appears to provide the broadest scope and the most robust penalties, but ambiguity about the scope of the phrase ‘guidelines, standards and procedures’ may expose protected areas regulations adopted under that Act to legal challenge.

6.1.2. Amendment to existing legislation

There is no substantive difference between amending an existing Act and enacting new legislation.

6.1.3. Enacting new legislation

Most countries have stand alone protected areas legislation. Enacting new legislation provides the greatest security and, in ordinary circumstances, provides an opportunity for parliamentary debate. Following the 2006 coup, the interim cabinet has adopted a practice of adopting decrees. Decrees adopted by previous post-coup regimes have been recognised as a source of law, unless repealed by a subsequent parliament.⁸¹

On balance, enacting new legislation appears to offer the most flexible and robust approach.

6.2. APPLICATION

The legislation should apply to all land and waters, including the exclusive economic zone. It should be binding on government, and prevail to the extent of any inconsistency with existing legislation.

⁷⁶ Section 25(e), *Interpretation Act 1967*.

⁷⁷ Section 18, *National Trust for Fiji Act*.

⁷⁸ Section 38, *Forest Decree 1992*.

⁷⁹ Section 9, *Fisheries Act*.

⁸⁰ Section 61, *Environment Management Act 2005*.

⁸¹ Section 194, *Constitution (Amendment) Act 1997*.

6.3. DEFINITIONS

Key terms must be defined clearly. Ideally, these terms should be defined by reference to existing national policies⁸² and legislation,⁸³ as well as international treaties,⁸⁴ decisions⁸⁵ and guidelines.⁸⁶

Terms that may need to be defined include: environment, protected area, community conservation area, locally managed marine area, resource owner, management entity, management plan, approving authority, authorised officer, permit, licence, significant impact, and traditional activities.

IUCN protected area guidelines provide a useful source of internationally recognised definitions, including categories of protected areas.⁸⁷

6.4. PURPOSE

The purposes of the Act should be clearly stated, and any person performing a function under the Act should be required to give effect to these purposes. The purposes of the Act may reflect a synthesis of international principles and national priorities, and could include:

- establishment of a comprehensive and representative system of protected areas
- effective management of protected areas in accordance with management principles
- conservation of terrestrial, freshwater and marine biodiversity
- conservation of habitats, ecosystems and ecosystem processes
- conservation of ecological communities, species and genetic diversity
- conservation of significant landforms, landscapes and natural features
- conservation of places of social, cultural, historical or archaeological significance
- promoting public understanding and enjoyment of nature and cultural heritage.⁸⁸

6.5. INSTITUTIONS

Institutional responsibilities for protected areas should be clearly defined in the legislation. It is important to identify a mechanism for national level coordination of protected area policy, while allowing for delegation of administrative, scientific, management, enforcement, financial, advisory and consultative functions, as appropriate to the national context.

6.5.1. High Level Policy Body

It is important to identify or establish a high level policy body with responsibility for national coordination and oversight of protected area management.

The National Environment Council (NEC) would be a suitable high level policy body.⁸⁹ The functions of the NEC are set out in the *Environment Management Act 2005*. Its functions are broadly defined, and may be extended to include 'any other functions conferred under ... a written law'.⁹⁰

⁸² e.g. *National Biodiversity Strategy and Action Plan*.

⁸³ e.g. *Interpretation Act, Native Lands Act, Endangered and Protected Species Act 2002, Environment Management Act 2005*.

⁸⁴ e.g. *Convention on Biological Diversity*.

⁸⁵ e.g. *CBD Conference of the Parties*.

⁸⁶ e.g. *IUCN Best Practice Protected Areas Guidelines Series, CBD Technical Series*, <www.cbd.int/ts>, accessed 29 November 2009.

⁸⁷ Dudley, N. (ed.) (2008). *Guidelines for Applying Protected Area Management Categories*. Gland, Switzerland: IUCN. x + 86pp.

⁸⁸ Adapted from *National Biodiversity Strategy and Action Plan, CBD Programme of Works on Protected Areas, National Parks and Wildlife Act 1970* (New South Wales, Australia).

⁸⁹ The members of the NEC include: Chief Executive Officer of the Ministry responsible for environment (Chairperson); Chief Executive Officers for the Ministries responsible for land, mineral resources, agriculture, fisheries, forests, indigenous affairs, health and tourism;

The Act should set out the executive powers of the NEC in relation to protected areas. These functions could include:

- approval of the national protected areas system plan
- designation of protected areas
- designation of site management entities.

6.5.2. *Advisory Bodies*

The legislation should provide for the establishment of advisory bodies, as necessary, to provide advice relevant to the management of the protected area system or a specific protected area. An advisory body may perform one or more of the following functions:

- providing technical or scientific advice, included research and monitoring;
- providing representation and expertise from a range of interests and stakeholders; and
- providing a regular channel for open dialogue, interaction and involvement of stakeholders.

Membership of an advisory body should reflect its assigned function(s).

In 2008, the Protected Areas Committee (PAC) was established as a technical advisory committee to the NEC, pursuant to the *Environment Management Act*.⁹¹ The terms of reference for the PAC are:

- to advise the National Environment Council on protected area policies and priorities;
- to support the establishment of an adequate and representative national protected area system, consistent with national and international policy commitments;
- to facilitate consensus on national priority areas for conservation, including terrestrial, freshwater and marine protected areas;
- to identify gaps in the existing protected area system, including the extent of protected areas, the state of scientific knowledge and adequacy of existing management measures;
- to identify actions for the establishment and effective management of protected areas, to be implemented by government, non-government organisations and the private sector;
- to identify options for resourcing protected area management, and to support efforts to secure financial resources for protected area management activities; and
- to facilitate the exchange of information and data sharing between stakeholders.⁹²

The members of the PAC include representatives from government agencies, non-government organisations, academia and the private sector. The PAC is chaired by the Director of the National Trust, and the National Trust acts as the PAC Secretariat.

General Manager of the Native Land Trust Board; President of the Local Government Association; one representative each for the business community, manufacturing industries, academia and non-governmental organisations. The Director of Environment is the NEC Secretary.

⁹⁰ Section 8, *Environment Management Act 2008*.

⁹¹ Section 8(2), *Environment Management Act 2008*.

⁹² Clarke, P. and Erasito, E. (2008) *NEC Discussion Paper: Proposal to Establish a National Protected Areas Committee*.

6.5.3. *Lead Agency*

The legislation should identify a lead agency ('protected area authority') with responsibility for operational activities related to coordination and oversight of the protected areas system. The legislation should clearly define the functions of the protected area authority, and may identify an individual position with responsibility for exercising relevant decision-making powers.

The NEC has invited the National Trust to act as the lead agency for protected areas. The legislation should formalise this role, with the Director of the National Trust exercising relevant statutory powers under the Act.

6.5.4. *Site Management Entities*

It is important to identify a site management entity for each protected area. The site management entity will be responsible for preparing and implementing the management plan for the protected area. The management entity may be a government agency, a local community, a resource owning group, a non-government organisation, a private entity, an individual, or a combination of these.

Formal designation of site management entities by the NEC, on the recommendation of the PAC, would provide a structured mechanism for recognising and legally empowering these entities. The process for designating management entities should be efficient and sufficiently flexible to cater for a range of tenure and governance types, yet provide adequate safeguards to protect the rights and interests of resource owners and other stakeholders. This issue is discussed further below.

6.6. IDENTIFICATION OF PROTECTED AREAS

Protected areas legislation should set out principles for the progressive development of a national protected areas system, and establish a process for the identification of individual protected areas.

Preparation of a national protected areas plan provides a basis for prioritising allocation of resources by government agencies, donors and non-government organisations.⁹³

Nomination of protected areas by the public, including resource owners, would provide a structured mechanism for considering protected area proposals. This issue is discussed further below.

6.7. RESOURCE TENURE

Resource tenure is a fundamental consideration for protected area management. The legislation should be sufficiently flexible to allow for the establishment of protected areas on Crown land, native land, freehold land, internal waters, coastal marine areas and offshore marine areas.

It will be necessary to adopt different procedures for the establishment and management of protected areas on different tenure types.

⁹³ For guidance on the design of protected network systems, refer to: Davey, A. (1998) *National System Planning for Protected Areas*. IUCN Protected Areas Guideline Series No. 1. Langhammer, et al (2007) *Identification and Gap Analysis of Key Biodiversity Areas: Targets for Comprehensive Protected Area Systems*. IUCN Protected Area Guidelines Series No. 15. Langhammer, Gland, Switzerland: IUCN.

6.8. ESTABLISHMENT OF PROTECTED AREAS

The process for establishing protected areas should be efficient, transparent and sufficiently flexible to cater for a range of tenure and governance types.

6.8.1. *Nomination*

The legislation could establish a process for public nomination of protected areas. Key features of this nomination process could include:

1. any person may submit a protected area nomination to the protected areas authority;
2. the protected areas authority must review the nomination to ensure that it satisfies relevant statutory requirements (see below);
3. if satisfied that the nomination meets the statutory requirements, the protected area authority must invite public comments on the nomination;
4. the protected areas authority must submit the nomination, together with any public comments, to the PAC for consideration;
5. the PAC must review each nomination received, and submit written recommendations to the NEC in relation to each nomination; and
6. the NEC may, on the advice on the PAC, designate a protected area under the Act.

The statutory requirements for the content for a nomination should include:

- boundaries of the proposed protected area
- conservation values of the proposed protected area
- proposed governance arrangements, including site management entity
- written consent from relevant resource owners and management agencies
- evidence of consultation with interested stakeholders, including lessees and licensees
- proposed protected area management category.

Designation of a protected area, and establishment of a site management entity, has significant implications for the use and management of the relevant site. Consequently, procedures for obtaining the consent of relevant resource owners and management agencies (**Table 7.1**) must be clearly defined and strictly adhered to. In particular, it would be appropriate to consult with the NLTB and Native Lands and Fisheries Commission to determine appropriate procedures for obtaining the prior informed consent of indigenous resource owners.

Table 7.1. Resource owners and management agencies by tenure type.

Resource Tenure	Resource Owner	Management Agency
Freehold Land	Registered land owner	-
Crown Land	Department of Lands	Department of Lands
Native Land	Registered landowning clan	Native Land Trust Board
Customary fishing ground	Registered resource owning clan	Fisheries Department
Other marine areas	-	Fisheries Department

The designation of the site management entity will be a critical component of the nomination. The site management entity will be responsible for preparing and implementing the management plan for the protected area. The designation of the management entity will determine whether the site is government managed, co-managed, community managed or privately managed (**Table 7.2**).

Table 7.2. Selected examples of potential site management entities.

Protected Area	Management Type	Management Entity
Nature Reserve	Government	Forest Department
Conservation Lease	Private	Lessee
Conservation Lease	Co-managed	Lessee, landowners
Community Conservation Area	Community	Chief, village representatives
Locally Managed Marine Area	Community	Chief, village representatives
Locally Managed Marine Area	Co-managed	Chief, NGO, Fisheries Department
Marine Protected Area	Government	Fisheries Department

6.8.2. Public Participation

The legislation should require adequate, timely public notice of each nomination to ensure that interested parties have a meaningful opportunity to comment. The public participation provisions of the *Environment Management Act 2005* provide a useful model.⁹⁴ It may be appropriate to require different levels of public participation for different protected area types (ie. broad participation for protected areas on Crown land, limited participation for community conserved areas on native land).

6.8.3. Coordination and Consultation

The PAC and NEC provide a platform for inter-agency coordination and consultation in relation to protected area nominations. Relevant government agencies should also be invited to comment during the public consultation period.

6.8.4. Interim Protection

Interim protection is a useful mechanism for ensuring that the conservation values of a proposed protected area are maintained pending a final decision on the nomination. If the protected area authority determines that a nomination meets the statutory criteria outlined above, the area should be entered on a register of 'proposed protected areas' until the NEC makes its final decision. The protected areas authority should be empowered to determine the types of activities that may be permitted or prohibited during the interim protection period, consistent with the nomination.

6.8.5. Designation

The legislation should define criteria for inclusion of protected areas in the national system. If the NEC decides to designate a protected area, the details of the protected area should be published in the Government Gazette. Relevant government agencies and stakeholders should be informed in writing, and details of the protected area should be entered on a public register of protected areas.

⁹⁴ For example: Reg. 30, *Environment Management (EIA Process) Regulation 2007*.

6.9. MANAGEMENT CATEGORIES

Upon designation, each protected area should be assigned to a protected area category. The IUCN *Protected Area Management Categories* provide a systematic, internationally recognised system for categorisation of protected areas, and should be considered during the legislative drafting process.

Management principles for each category should be defined in legislation. Management entities must exercise their functions, including management planning, in accordance with these principles.

6.10. MANAGEMENT PLANNING

Management planning is a central feature of contemporary protected area management. The legislation should require the preparation of a management plan for each designated protected area. The legislation should set out provisions dealing with:

- preparation of draft management plans
- public participation, consultation and coordination
- approval of final management plans
- periodic review, revision and amendment of management plans.

The legislation should set out the required content for management plans, including:

- the area to which the plan applies
- the conservation values of the area
- the boundaries of management zones, if any
- prohibited or restricted activities
- procedures for approval of restricted activities
- other measures to be taken to protect, conserve, enhance or present the area.

Each management plan should be prepared by the designated site management entity, and approved by the national protected area authority. Management plans should be made legally binding, with penalties for breach set out in the legislation. Government decisions made in breach of an approved management plan should be subject to judicial review.

Each approved management plan, together with any subsequent amendments, should be recorded on a public register of management plans.

6.11. REGULATION OF ACTIVITIES

Two complementary mechanisms for identifying activities that are prohibited or restricted within a protected area are (a) standard prohibitions and restrictions that apply to all protected areas in a particular management category, contained in the legislation; and (b) site specific prohibitions and restrictions, contained in the site management plan. Prohibitions and restrictions may vary between management zones within a single protected area. The legislation or management plan may set out exemptions, including special provisions for local communities and resource owners as appropriate.

The legislation or management plan may allow for approval of certain activities by the protected area authority, site management entity or other approving authority. Importantly, management plans may be used to establish approval processes that reflect traditional decision-making processes. For example, the management plan recently adopted by local communities in Kubulau District allows specified chiefs to temporarily open restricted fishing areas, consistent with traditional practice.

6.12. ENVIRONMENTAL IMPACT ASSESSMENT

The EIA provisions of the *Environment Management Act* are sufficiently broad to capture most development activities that are likely to have a significant impact on a designated protected area.

However, to ensure full coverage, it would be prudent to enact legislative provisions that require the approval of the management entity for any activity that is likely to have a significant impact on the conservation values of a protected area, or requires approval pursuant to the plan of management for a protected area.

Enacting these provisions will make the site management entity an ‘approving authority’ for the purposes of the *Environment Management Act*, and will trigger the EIA procedures under that Act.

If a proposed development activity is likely to damage or destroy a designated or proposed protected area, the proposal will need to be referred to the Department of Environment for assessment and approval. Consequently, it will not be necessary for the protected area authority or site management entities to have the capacity to manage the EIA process in their own right.

6.13. ENFORCEMENT

The compliance and enforcement provisions of the *Environment Management Act* provide a useful model for protected areas legislation. In particular, these provisions deal with: appointment of authorised officers, powers of inspection and entry, powers to issue notices, stop work orders, emergency declarations, fixed penalty notices, criminal prosecution, civil claims and damages, corporate liability, remediation and compensation orders, and third party enforcement.⁹⁵

In light of the broad public interest in the proper conservation and management of protected areas, it may be useful to adopt broad third party enforcement provisions, modeled on the *National Parks and Wildlife Act 1974* (NSW), which states that ‘any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.’⁹⁶

To support community involvement in surveillance and enforcement, it may be useful to provide for the appointment of ‘community rangers’ for protected areas, with search, seizure and detention powers analogous to community fish wardens appointed under the *Fisheries Act*.⁹⁷

⁹⁵ *Environment Management Act 2005, Environment Management (EIA Process) Regulations 2007, Environment Management (Waste Disposal and Recycling) Regulations 2007.*

⁹⁶ Section 176A, *National Parks and Wildlife Act 1974* (NSW).

⁹⁷ Section 3, *Fisheries Act* [Cap 158].

7.0. CONCLUSION

The Government of Fiji has made an undertaking to the international community to take appropriate measures to protect its natural and cultural heritage, including the establishment and management of protected areas. The establishment of protected areas contributes to biodiversity conservation and national development, and is identified as a priority in a number of national policy instruments.

The establishment of a national protected areas committee, charged with developing national protected areas legislation, presents an important opportunity to develop a statutory framework for protected area planning and management that is suited to Fiji's distinctive national circumstances.

This paper has outlined a series of recommendations for the establishment of a flexible mechanism for the identification, designation and management of protected areas across a range of ecosystem and tenure types, using a range of governance approaches, including public, private, shared and community governance.

Ultimately, effective resource management is likely to rely on the emergence of hybrid models of governance, which share responsibility for planning and implementation of management measures between local communities, government agencies and civil society organisations, taking into account their respective strengths and limitations.

National laws and institutions must recognise the legitimate and enduring role of local communities in natural resource management.⁹⁸ To do otherwise ignores the realities of resource management in the Pacific islands, and overlooks the opportunity to build on the region's rich and ancient heritage of community-based resource management.

Word count: 8043 words.

⁹⁸ Lindsay, J. (1998) Designing legal space: Law as an enabling tool in community based management. International workshop on Community-Based Natural Resource Management (CBNRM), Washington D.C., USA, 10-14 May 1998. Lynch, O. (1998) Law, pluralism and the promotion of sustainable community-based forest management, *Unasylva* 194.

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LEGISLATION

Constitution Amendment Act 1997

Crown Acquisition of Lands Act

Environmental Management Act 2005

Environment Management (EIA Process) Regulation 2007

Environment Management (Waste Disposal and Recycling) Regulations 2007

Fisheries Act

Forest Decree 1992

Interpretation Act 1967

Mining Act

National Parks and Wildlife Act 1974 (NSW)

National Trust for Fiji Act 1970

Native Lands Act

Native Land Trust Act

Native Land Trust (Leases and Licenses) Regulations

Petroleum (Exploration and Exploitation) Act

APPENDIX 1 – IUCN PROTECTED AREA CATEGORIES

CATEGORY IA: STRICT NATURE RESERVE

An area of land and/or sea possessing outstanding or representative ecosystems, geological or physiological features and/or species, available primarily for scientific research and/or environmental monitoring.

CATEGORY IB: WILDERNESS AREA

Large area of unmodified or slightly modified land, and/or sea, retaining its natural character and influence, without permanent or significant habitation, which is protected and managed so as to preserve its natural condition.

CATEGORY II: NATIONAL PARK

Natural area designated to (a) protect the integrity of one or more ecosystems for present and future generations (b) exclude exploitation or occupation inimical to the purposes of designation of the area, and (c) provide for spiritual, scientific, educational, recreational and visitor opportunities, all of which must be environmentally and culturally compatible.

CATEGORY III: NATURAL MONUMENT

Area containing one, or more, specific natural or natural/cultural features which is of outstanding or unique value because of its inherent rarity, representative or aesthetic qualities or cultural significance.

CATEGORY IV: HABITAT/SPECIES MANAGEMENT AREA

Area of land and/or sea subject to active intervention for management purposes so as to ensure the maintenance of habitats and/or to meet the requirements of specific species.

CATEGORY V: PROTECTED LANDSCAPE/SEASCAPE

Area where the interaction of people and nature over time has produced an area of distinct character with significant aesthetic, ecological and/or cultural value, and often with high biological diversity. Safeguarding the integrity of this traditional interaction is vital to the protection, maintenance and evolution of such an area.

CATEGORY VI: MANAGED RESOURCE PROTECTED AREA

Area containing predominantly unmodified natural systems, managed to ensure long term protection and maintenance of biodiversity, while providing at the same time a sustainable flow of natural products and services to meet community needs.

APPENDIX 2 – IUCN PROTECTED AREA GUIDELINES SERIES

National System Planning for Protected Areas. No. 1. Adrian G. Davey, 1998, x + 71pp.

Economic Values of Protected Areas: Guidelines for Protected Area Managers. No. 2. Task Force on Economic Benefits of Protected Areas of the World Commission on Protected Areas (WCPA) of IUCN, in collaboration with the Economics Service Unit of IUCN, 1998, xii + 52pp.

Guidelines for Marine Protected Areas. No. 3. Graeme Kelleher, 1999, xxiv + 107pp.

Indigenous and Traditional Peoples and Protected Areas: Principles, Guidelines and Case Studies. No. 4. Javier Beltrán, (Ed.), IUCN, Gland, Switzerland and Cambridge, UK and WWF International, Gland, Switzerland, 2000, xi + 133pp.

Financing Protected Areas: Guidelines for Protected Area Managers. No. 5. Financing Protected Areas Task Force of the World Commission on Protected Areas (WCPA) of IUCN, in collaboration with the Economics Unit of IUCN, 2000, viii + 58pp.

Evaluating Effectiveness: A Framework for Assessing the Management of Protected Areas. No. 6. Marc Hockings, Sue Stolton and Nigel Dudley, 2000, x + 121pp.

Transboundary Protected Areas for Peace and Co-operation. No. 7. Trevor Sandwith, Clare Shine, Lawrence Hamilton and David Sheppard, 2001, xi + 111pp. Reprinted in 2003.

Sustainable Tourism in Protected Areas: Guidelines for Planning and Management. No. 8. Paul F. J. Eagles, Stephen F. McCool and Christopher D. Haynes, 2002, xv + 183pp.

Management Guidelines for IUCN Category V Protected Areas: Protected Landscapes/Seascapes. No. 9. Adrian Phillips, 2002, xv + 122pp.

Guidelines for Management Planning of Protected Areas. No. 10. Lee Thomas and Julie Middleton, 2003, ix + 79pp.

Indigenous and Local Communities and Protected Areas: Towards Equity and Enhanced Conservation. No. 11. Grazia Borrini-Feyerabend, Ashish Kothari and Gonzalo Oviedo, 2004, xvii + 112pp.

Forests and Protected Areas: Guidance on the use of the IUCN protected area management categories. No. 12. Nigel Dudley and Adrian Phillips, 2006, x + 58pp.

Sustainable Financing of Protected Areas: A global review of challenges and options. No. 13. Lucy Emerton, Joshua Bishop and Lee Thomas, 2006, x + 97pp.

Evaluating Effectiveness: A Framework for Assessing Management Effectiveness of Protected Areas 2nd Edition. No. 14. Marc Hockings, Sue Stolton, Fiona Leverington, Nigel Dudley and José Courrau, 2006, xiv + 105pp.

Identification and Gap Analysis of Key Biodiversity Areas: Targets for Comprehensive Protected Area Systems. No. 15. Langhammer, P.F. et al, 2007, Gland, Switzerland: IUCN.

Guidelines for Applying Protected Area Management Categories. No. 16. Dudley, N. (Editor) (2008). Gland, Switzerland: IUCN. x + 86pp.