



Photo: © Tom Vleris



SUMMARY OF LEGISLATIVE AND REGULATORY MECHANISMS FOR THE PROTECTION OF CORAL REEFS AND ASSOCIATED ECOSYSTEMS

FIJI

With the support of



Government Offices of Sweden
Ministry of the Environment and Energy

SUMMARY OF LEGISLATIVE AND REGULATORY MECHANISMS FOR THE PROTECTION OF CORAL REEFS AND ASSOCIATED ECOSYSTEMS

FIJI

The summary proposed in this document is an inventory at a given time and might be non-exhaustive.
It was produced by Dr. P. Ricard - pascale.ricard@univ-amu.fr
For any comments, send your questions/comments to fstaub@icriforum.org

GENERAL OVERVIEW

CONTEXT OF THE STUDY

This study is conducted in the context of the implementation of the ICRI Plan of Action 2018-2020, and more particularly in the frame of the first theme, which is to *"promote effective and adaptable solutions to improve the protection of coral reefs"*. Its aim is to underline good practices of the Fiji, which is a pilot country in this project, as regards the direct and indirect protection of coral reefs.

Those good practices are to be found, first, in the legislation of the country, but also in the other means of implementation of the several international and regional instruments important in this issue. The purpose of the study is not to assess and evaluate the efficiency of the action of the country, but only to point out the positive elements collected as well as to identify the potential lacks.



Photo: © Amanda Cotton

LAWS AND REGULATIONS DIRECTLY OR INDIRECTLY PARTICIPATING IN THE PROTECTION OF CORALS

The legislation of Fiji is pretty developed as regards coral protection, especially in the context of fisheries, protection of the environment, exploration and exploitation of mineral resources and as regards marine transport, and could serve as a model for other countries. Some recent regulations tackle very important issues as the plastic pollution, and a network of marine protected areas is progressively being developed, also through the participation of civil society. A detailed and comprehensive obligation to conduct environmental impact assessments is also provided by different instruments, as the Environmental Management Act and also the Petroleum Act.

Some lacks or partial lacks could be mentioned, as for instance the absence of regulation on sunscreens to protect the coral, the fact that the environmental impact assessment obligation does not apply to fisheries, and the absence of a specific disposition on underwater noise and on exotic invasive species introduction. The integral protection of certain species could be strengthened, as the protection of deep-water corals for instance or ornamental species fishing.

GOOD PRACTICES AND OTHER OBSERVATIONS

Good practices noted are, among others, the participation of civil society and the consultation of pertinent stakeholders for the adoption of conservation measures, as shown by the case of customary Locally Managed Marine Areas, although no obligatory legal mechanism provides for this cooperation. The policy strategies and documents fixing objectives in a context of sustainable development is a testimony of the dynamism of the Government and public actors and allows the legal framework to evolve rapidly. The fight against climate change is also conducted in a rather integrated way, whereas adaptation might be strengthened. Some elements, moreover, could be expanded in order to enhance the conservation of coral, coral reefs, and of biodiversity more generally, through, for instance, the right of citizens to a healthy and clean environment.

ANTHROPOGENIC DRIVERS OF CHANGE		EXISTENCE OF POLICY OBLIGATIONS
THEME	ACTIVITY	
Climate change	Activities resulting in emissions of greenhouse gases in the atmosphere	Yes
Production from living resources	Harvesting of living resources by large-scale/industrial operators	Yes
	Harvesting of living resources by small-scale and/or subsistence operators	Yes
	Harvesting of living resources by recreational operators	Partial
	Hunting and collecting of living resources for other purposes (including 'bioprospecting')	No
	Coastal aquaculture (including 'ranching', seaweed cultivation)	Partial
	All activities related to production from living resources	Partial
Generation of land-based sources of pollution	Production and disposal of plastics	Partial
	Waste treatment and disposal	Partial
	Urban or industrial activities	No
	Agriculture	Partial
	All activities generating marine pollution	Yes
Extraction of non-living resources	Extraction of minerals (e.g. sand, coral mining)	No
	Extraction of oil and gas (including infrastructure)	Yes
	Extraction of water (i.e. desalination)	No
Production of energy	Transmission of electricity and communications (cables)	-
	Renewable energy generation (wind, wave and tidal power), including infrastructure	Partial
Physical restructuring of the coastline, rivers or seabed	Coastal land claim (e.g. mangrove loss)	No
	Canalization and other watercourse modifications	No
	Coastal defense and flood protection	Yes
	Restructuring of seabed morphology, including dredging and depositing of materials	No
Tourism and recreation	Tourism and recreation activities (e.g. resulting in anchor use on reefs, vessel groundings, diving and snorkeling)	Partial
	Tourism and recreation infrastructure	Partial
	Marine biota souvenirs to sell to tourists, exporters	Partial
Transport	Transport – shipping	Yes
	Transport - infrastructure	Yes

Table 1. Table of principal Reef Relevant Policy Obligations per Human Activity Driving Changes in Coral Reef Ecosystems, inspired by the *Analysis of Global and Regional Policy Instruments Related to the Conservation and Sustainable Management of Warm Water Coral Reef Ecosystems*. Research Team, Nicholas Institute for Environmental Policy Solutions, Duke University On behalf of the United Nations Environment Programme November, 2018.

	CONVENTIONS RATIFIED BY FIJI	Signature / Ratification	Entry into force
REGIONAL	Agreement establishing the South Pacific Regional Environment Programme (SPREP)	16/06/93	31/08/95
	Noumea Convention on the protection of natural resources and environment in the South Pacific	18/09/89 (S)	
	Apia Convention on conservation of nature in the South Pacific	08/09/89 (S)	
	Convention for the prohibition of fishing with long driftnets in the South Pacific	18/01/94 (R)	
	Niue Treaty on cooperation in fisheries surveillance and law enforcement in the South Pacific region	05/03/96 (R)	
	Honolulu Convention on the conservation and management of highly migratory fish stocks in the Western and Central Pacific ocean	13/03/01 (R)	
GLOBAL	Convention on biological diversity	09/10/92 (S) 25/02/93 (R)	29/12/93
	Cartagena Protocol	02/05/01 (S) 05/06/01 (R)	11/09/03
	Nagoya Protoco	24/10/12 (A)	12/10/14
	UNCLOS Part XI implementing Agreement UN Fish Stocks Agreement	10/12/82 (R) 28/07/95 (R) 12/12/96 (R)	16/11/96 28/07/96
	FAO (constitution) Agreement on Port State Measures to Prevent, Deter and Eliminate IUU Fishing	16/10/45 13/02/19	01/01/48
	IMO (constitution)	14/03/83	
	Convention for the Prevention of Pollution from Ships (MARPOL)	08/03/16	08/06/16
	Convention on Civil Liability for Oil Pollution Damage (CLC)	15/08/72	19/06/75 Denunciation 30/11/00
	International Convention for the Safety of Life at Sea (SOLAS)	10/06/48	19/11/52
	International Regulations for Preventing Collisions at Sea (COLREG)	04/03/83	04/03/83
	Ballast Water Management Convention (BWM)	08/03/16	08/09/17

	CONVENTIONS RATIFIED BY FIJI	Signature / Ratification	Entry into force
GLOBAL	Vienna Convention on the protection of the ozone layer	23/10/89 (R)	
	Montreal Protocol on Substances that Depletes the Ozone Layer	23/10/89	
	United Nations Framework Convention on Climate Change (UNFCCC)	09/10/92 (S) 25/02/93 (R)	
	Kyoto Protocol to the UNFCCC	17/09/98	
	Paris Agreement on climate change	22/04/16	04/11/16
	Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)	30/09/97 (A)	29/12/97
	UNESCO Convention for the Protection of the World Cultural and Natural Heritage	21/11/90 (R)	
	Convention on the Wetlands of International Importance Especially as Waterfowl Habitat (RAMSAR)	11/04/06	11/08/06
	Stockholm Convention on Persistent Organic Pollutants (POPs)	14/06/01 (S) 20/06/01 (A)	17/05/04

Table 2. Conventions ratified by Fiji

REGULATIONS AND LEGISLATIONS RELATED TO CORALS AND CORAL REEFS PROTECTION

Several instruments could have a direct or indirect impact on corals' protection. They are referred to by themes, following Table 1.

Main sources used:

- <http://www.paclii.org/countries/fj.html>
- http://www.paclii.org/fj/indices/legis/Consolidation_1985_%28Alpha%29.html
- <https://www.laws.gov.fj/>
- <http://www.fao.org/faolex/country-profiles/general-profile/fr/?iso3=FJI>



Photo: © Martin Colognoli

1. GENERAL AND TRANSVERSAL REGULATIONS

CONSTITUTION OF THE REPUBLIC OF FIJI

2013

www.paclii.org/fj/Fiji-Constitution-English-2013.pdf

Right to a clean and healthy environment, Chapter 3 (Bill of Rights), Article 40(1): *“Every person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures”.*

MARINE SPACES ACT

21 April 1978

www.paclii.org/fj/legis/consol_act/msa132/index.html

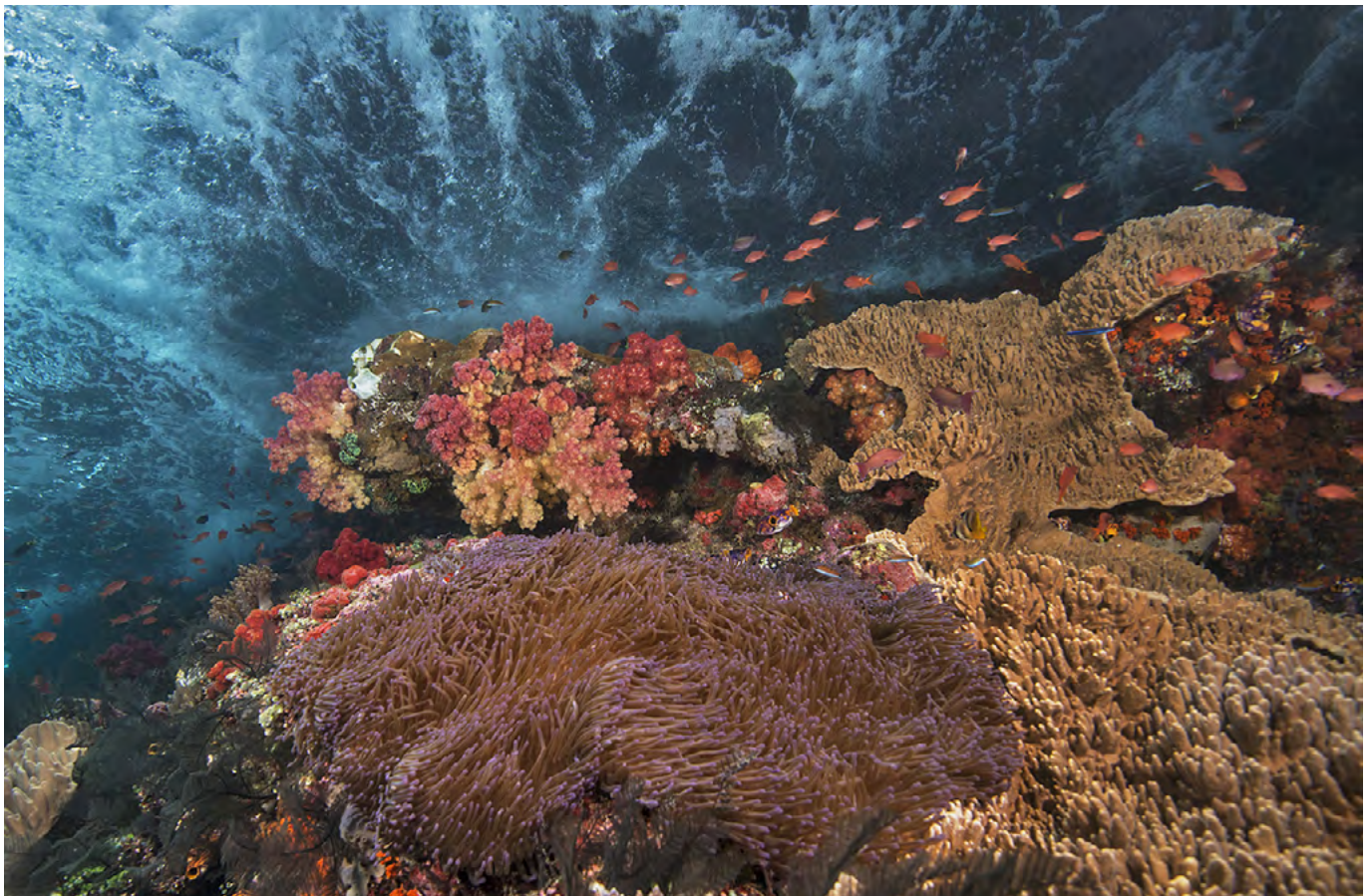
This Act is a transposition of the dispositions of UNCLOS.

For instance, **Articles 11(2), 14(3)(r) and 22(1)(h)** deal with the ability of the Minister to adopt measures necessary to protect the marine environment in the EEZ and conserve / manage fisheries resources, and Article 3 with pollution: *“no living organism, article or substance, other than fishing equipment or bait, that is likely (a) to cause harm to any fish or marine mammal; or (b) to obstruct fishing equipment, or (c) to become a hazard to navigation, shall be put or released into the sea of the exclusive economic zone from a foreign fishing vessel”.*

Part IV deals with the control of licensed vessels in the EEZ and Part V is about enforcement.

Article 19, moreover, provides for port inspection on entry and before leaving the zone.

Photo: ©Jayne Jenkins



2. CLIMATE CHANGE

OZONE DEPLETING SUBSTANCES ACT

N° 26 of 1998

www.google.com

This Act gives effect to obligations of Fiji under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer.

Article 3 declares that this Act shall apply to any aircraft, ship or thing while in Fiji's territory and any person in Fiji irrespective of the person's nationality or citizenship and Article 5 provides for a large definition of the term 'environment', as *"the components of the earth" including "(a) air, land and water; (b) all layers of the atmosphere; (c) all organic and inorganic matter and living organisms; and (d) the interacting natural systems that include components referred to in paragraphs (a) to (c)".*

The Minister must establish, within the Department responsible for the environment, the **Ozone Depleting Substances Unit**, to assist the Director of Environment in the performance of his or her functions. According to Article 8 to 10, the Ozone Depleting Substances Unit is settled, with a Director in charge of *"establish a regular monitoring and audit process for data collection concerning the use of controlled substances, and monitor compliance with the phase-out date specified in the National Policy"*.

Article 12 establishes an "Ozone Layer Protection Fund". The Minister must formulate a National Policy for the Protection of the Ozone Layer and ensure that the formulation of the National Policy is undertaken through the broadest possible consultation and participation (Article 13). **Article 14** provides for the phasing out of controlled substances, whereas section 15 concerns the management of controlled substances. Articles 19 to 22 prescribe offences, penalties and measures of enforcement. Regulation making powers of the Minister are set out in Article 25.

ENVIRONMENT AND CLIMATE ADAPTATION LEVY (PLASTIC BAGS)

Regulations L.N. n° 61 of 2017

<http://extwprlegs1.fao.org/docs/pdf/fij177395.pdf>

These regulations, made under section 17 of the Environment and Climate Adaptation Levy Act 2015, introduce Levy charged with plastic bags.

According to **Article 4(1)**, *"The Environment and Climate Adaptation Levy charged with plastic bags must be collected by a cashier at the point at which a plastic bag is provided by the business to a consumer"*.

It shall then be paid to the Chief Executive Officer and Commissioner of Inland Revenue (CEO). The CEO may, in any particular case, require that the Environment and Climate Adaptation Levy be paid within a period of less than one month. A business must display a notice informing consumers. *"The accountable person must— (a) ensure that the Environment and Climate Adaptation Levy is collected in accordance with subregulation (1) [...] (c) provide together with such payment a report in respect of the month in which the Environment and Climate Adaptation Levy is collected, setting out the (i) number of plastic bags stocked by the business at the beginning of that month; (ii) number of plastic bags provided to consumers in that month; (iii) number of plastic bags remaining in the stock of the business at the end of that month; and (iv) amount of Environment and Climate Adaptation Levy collected in that month"* 'Article 4(2)).

LITTER PROMULGATION, N° 21 OF 2008

www.google.com

This law makes provision for the control of littering and the appointment and registration of "Litter Prevention Officers" by Public Authorities. It defines offences and prescribes penalties for such offences.

CIVIL AVIATION ACT,

Laws of Fiji, Chapter 174, 3rd September 1976

http://www.paclii.org/fj/legis/consol_act/caa154/

Contains nothing about CO2 emissions.

3. PRODUCTION FROM LIVING RESOURCES

ENVIRONMENT MANAGEMENT ACT

17 March 2005, n° 1 of 2005

<http://extwprlegs1.fao.org/docs/pdf/fij88449.pdf>

This Act makes provision for the protection of the environment in Fiji in general, including in the Exclusive Economic Zone of Fiji (Article 3). Its general purpose is to *"apply the principles of sustainable use and development of natural resources"* (Article 3).

It gives a **very large definition of the "environment"** covered by it: according to Article 2, *"environment" means: (a) air, land or water; (b) all layers of the atmosphere; (c) all organic or inorganic matter or living organisms; or (d) the interacting natural or human system that includes components referred to in paragraphs (a) to (c)".*

Part 2 of the Act deals with the implementation of these principles. The **National Environment Council** is created in order to monitor and approve the **National Environment Strategy**. It must meet at least every four times a year and works in coordination with the Department, which has a more technical function. The Department is divided in units, as for instance an Environmental Impact Assessment Unit and a Resources Management Unit. The latter is in charge of formulating and reviewing the Natural Resource Inventory, formulating, monitoring and reviewing the **National Resources Management Plan**. A Waste Management and Pollution Control Unit and an Environmental Management Unit are also created. **Inspectors are appointed to control the implementation of the Act**, and their powers defined in Article 19 and 20.

The National Environment Council has established, moreover, a Protected Areas Committee.

According to **Part 3, Environment Reports and Plans are to be published at least every 5 years and a National Environment Strategy elaborated** just after.

Part 4 is dedicated to **Environmental Impact Assessment (EIA)** and proceeds, in a very elaborated way, in different phases:

- following Article 27, first, an approving authority *"must examine any development proposal received by it"* and *"determine whether the activity or*

undertaking in the development proposal is likely to cause significant environmental or resource management impact".

- Second, an EIA will be conducted if the approving authority determines that the activity or undertaking will cause *"a significant environmental or resource management impact"*. Guidance is also given as regards the EIA process and content.
- Finally, for the activity to be conducted, it is necessary that the report be approved, with or without conditions (Article 31).

According to **Part 5**, permits are necessary to discharge waste or pollutants. Penalties are provided in case of breaching of the permit. Part 6 details the offences and penalty regime.

An **Environmental Trust Fund and an Environmental Tribunal are implemented** according to Part 7, which defines offences.

FISHERIES ACT

Law of Fiji, Chapter 158, 1 January 1942 modified in 1991

http://www.paclii.org/fj/legis/consol_act/fa110/

Fish is defined as *"any aquatic animal whether piscine or not, and includes shellfish, sponges, holothurians (bêche-de-mer), sea urchins, crustaceans and turtles and their eggs"*.

This Act contains nothing apparently on bycatch and on coral.

A licence and registration system is developed (**Section 5**). One of the conditions of the offshore licences is following **Section 4B**: the Minister is competent to set the total allowable catch, on the basis of the best available information; he *"may prohibit fishing for species listed under a fishery category described by the Seventh Schedule in certain areas by certain classes of Fiji fishing vessel"* (2). Moreover, in order to facilitate the transfer of information and transparency, *"Details of the weight of each species caught at each geographical location on each day of fishing, and any other details requested by the Director of Fisheries, shall be returned monthly to the Fisheries Division by the offshore licence holder"* (4).

Section 9. "The Minister may make regulations:

- (a) prohibiting any practices or methods, or employment of equipment or devices or materials, which are likely to be injurious to the maintenance and development of a stock of fish;
- (b) prescribing areas and seasons within which the taking of fish is prohibited or restricted, either entirely or with reference to a named species;
- (c) prescribing limits to the size and weight of fish of named species which may be taken;
- (d) prescribing limits to the size of nets or the mesh of nets which may be employed in taking fish either in Fiji fisheries waters or in any specified part thereof;
- (e) regulating the procedure relating to the issue of and cancellation of licences and the registration of fishing boats and prescribing the forms of applications and licences therefore and the conditions to be attached thereto;
- (f) prescribing the fees to be charged upon the issue of licences and the registration of fishing vessels which fees may differ as between British subjects and others;
- (g) regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite. (Section amended by 7 of 1966, 17 and 22 of 1977, s2)"

Before the adoption of the Offshore Fisheries Management Decree, the Fisheries Act was the legal basis for MPA adoption.

OFFSHORE FISHERIES MANAGEMENT DECREE

n° 78 of 2012, 11 December 2012

<http://www.fao.org/faolex/results/details/fr/c/LEX-FAOC138492>

The definition of "fish" is large enough and includes explicitly corals: "any aquatic plant or animal, whether piscine or not, and includes any oyster or other mollusc, crustacean, coral, sponge, holothurian (beche-de-mer), or other echinoderm, turtle and marine mammal, and includes their eggs, spawn, spat and all juvenile stages and any of their parts".

The Offshore Fisheries Management Decree contains, moreover, strong "objective" (Article 5) and "principles and measures" (Article 6) clauses:

Article 5(1) "The objective of this Decree shall be to conserve, manage and develop Fiji fisheries to ensure long-term sustainable use for the benefit of the people of Fiji. (2) The Ministry responsible for Fisheries shall have the principal function of and authority for the conservation, management and development of the fisheries resources in fisheries waters in accordance with this Decree. [...]"

Article 6 "The Minister, Permanent Secretary or Director, as appropriate, when performing functions or exercising powers under this Decree, shall adopt:

- measures to ensure the long-term sustainability of fisheries resources and promote the **objective of their optimum utilization**;
- ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore, where appropriate, target stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, taking into account fishing patterns, the interdependence of stocks and any generally recommended minimum international standards;
- for specific target stocks to which the application of subsection (b) would not otherwise apply, ensure that measures applied to such stocks are considered appropriate to achieve the purpose of this Decree;
- apply the **precautionary approach** in accordance with this Decree;
- **assess the impacts of fishing**, other human activities and environmental factors on target stocks, non-target species and species belonging to the same ecosystem or dependent upon or associated with target stocks;
- adopt measures to minimise waste, discards, catch by lost or abandoned gear, pollution originating from fishing vessels, catch of non-target species and impacts on associated or dependent species, in particular endangered species and promote the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- **protect biodiversity in the marine environment, especially habitats of particular significance for fisheries resources**;
- take measures to prevent or eliminate over-fishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fisheries resources;
- take into account the interests of artisanal, subsistence fishers and local communities including ensuring their participation in the management of fisheries;
- maintain traditional forms of sustainable fisheries management;
- ensure broad participation by Fiji nationals in activities related to the sustainable use of fisheries resources;
- collect and share, in a timely manner, complete and accurate data concerning fishing activities on, inter alia, vessel position, catch of target and non-target species and fishing effort, as well as information from national and international research programmes;
- and **implement and enforce conservation and management measures through effective monitoring, control and surveillance**".



Photo: ©Fabrice Dudenhofer

The **designation of marine protected areas** is provided by **Article 8(1)(b)** and is the competence of the Permanent Secretary. He also has powers to establish advisory committees.

According to Article 16, *"The Minister shall by notice in the Gazette declare a fishery as a designated fishery where, having regard to scientific, social, economic, environmental and other relevant considerations, such fishery (a) is important to the national interest; and (b) requires management measures for ensuring sustainable use of the fishery resource"*.

A Fishery management plan is to be prepared as regards those objectives. Details on the Fisheries management plan are given in the Decree.

Article 20 deals with commercial issues and restrictions and Article 33 and followings with licences and authorizations. Article 68 is dedicated to the observers and the Fiji Observer Programme, which is responsible for collecting, recording and reporting reliable and accurate information for scientific, management, and compliance purposes including (a) the species, quantity, size, age, and condition of fish taken;

- (b) the methods used and areas and depths at which fish are taken;
- (c) the effects of fishing methods on fish and the environment;
- (d) all aspects of the operation of any vessel;
- (e) processing, transportation, transshipment, storage, or disposal of any fish;
- (f) monitoring the implementation of management measures and applicable international conservation and management measures; or
- (g) any other matter that may assist the Permanent

Secretary to obtain, analyse, or verify information regarding fisheries for scientific, management, and compliance purposes.

Finally, the Minister shall, by the means of regulations and according to **Article 21**, give effect to *"(a) international conservation and management measures adopted by regional fisheries management organisations; or (b) treaty or arrangements to which Fiji is a member"*.

Several marine protected areas have been created, as the Fiji government has made a bold commitment to designate marine protected areas (MPAs) across 30% of its ocean spaces:

1. **Locally Managed Marine Areas (LMMAs)**

are informal marine protected areas, which combine customary traditional knowledge and practices with modern scientific expertise and management. The Namena Marine Reserve is the largest Fiji's no-take LMA (see *infra*, II(2)).

2. The **Qoliqoli Cokovata** is a RAMSAR Site (n° 2331), the second of Fiji. This site is part of the Great Sea Reef, which is the third longest continuous barrier reef system in the world¹.

3. **Fisheries (Wakaya Marine Reserve) Regulations 2015: 20 February 2015.**

<http://extwprlegs1.fao.org/docs/pdf/fij152205.pdf>

Article 3(1) enshrines the creation of the Wakaya Marine Reserve *"for the purpose of conserving, protecting and maintaining species of fish, sharks, rays, cetaceans, sea turtles and all marine organisms including coral within the area"*. The other dispositions of the Regulation deal with the prevention of pollution (prohibition of disposal

1. « Exceptional new coastal Ramsar Site for Fiji », Ramsar Home, 15 February 2018.

or throwing of rubbish or any other waste, Article 3(3)), the prohibition of any activity except with a permit delivered by the Department of Fisheries (3(4)), and **the prohibition of “any fishing activity or activity consisting of the collection of any species of fish and marine organisms including coral within the Marine Reserve” (3(5)).**

Finally, **paragraphs 6 and 7** deal with enforcement: “(6) any person who contravenes this regulation commits an offence and is liable upon conviction to a fine of not less than \$500 and not exceeding \$10,000 or imprisonment to a term not exceeding 6 months, or both. (7) The Department of Fisheries may seize any marine organism, fishing equipment, conveyance including vehicles and vessels used for their transport, or other property involved in a breach of sub-regulation (5)”.

Following **Article 4(1) and (2)**, a **buffer zone** is surrounding the reserve. In this area, the use of any form of indiscriminate fishing gear and any fishing equipment to target any species of fish, sharks, rays, cetaceans, sea turtles and any marine organisms is prohibited.

4. Fisheries (Shark Reef Marine Reserve) (Serua), Regulations n° 41 of 2014.

<http://extwprlegs1.fao.org/docs/pdf/fij152490.pdf>

This Regulation establishing the Serua Marine Reserve contains exactly the same provisions than the 2015 Regulation for the Wakaya Marine Reserve. Article 3(1) sets its “purpose of conserving, protecting and maintaining shark species and marine organisms including coral within the area”.

ENDANGERED AND PROTECTED SPECIES ACT

n° 29, 23 December 2002

https://www.ffa.int/system/files/Endangered_and_Protected_Species_Act_2002.pdf

This Act is **implementing the CITES Convention**. It applies, according to **Part 2** and Art 3, “to any endangered or protected species listed” in the Appendixes I, II and III of the CITES Convention.

Part 3 establishes the Fiji Islands CITES Management Authority and the Fiji Islands CITES Scientific Council. The functions of the Authority are, notably, to “advise the Government on its obligations under the CITES”, to “prepare CITES annual report for the Fiji Islands”, “advise the Minister on any action to implement or enforce the obligations under the CITES” (Article 6). The Council, besides, has an advisor function for the Management Authority on import and export of species, measures to be taken to ensure the protection of species, monitor the permits (Article 7).

Part 4 is dedicated to import and export permits, Part 5 to transit and transshipment, Part 6 to registration and possession and Part 7 to enforcement.

4. GENERATION OF LAND-BASED SOURCES OF POLLUTION

PESTICIDES ACT

Laws of Fiji, 1 April 1972

http://www.paclii.org/fj/legis/consol_act/pa120/

Article 4 provides for an obligation of registration, possibly with conditions: “No pesticide may be used, offered for sale or sold in Fiji unless such pesticide has been registered with the Registrar”. Moreover, an obligation of publication is provided, according to **Article 6**: “The Registrar shall cause the trade name, chemical identity of the active ingredients, the name of the manufacturers and the registered number of any pesticide registered under this Act to be published in the Gazette as soon as practicable after registration”.

PETROLEUM (EXPLORATION AND EXPLOITATION) ACT

Laws of Fiji, chapter 148, 6th October 1978, revised 1985

http://www.paclii.org/fj/legis/consol_act/paea439/index.html

Article 62(1) “Every holder of an exploration licence or production licence shall [...] (vii) prevent the pollution of any water-well, spring, stream, river, lake, estuary, harbour, the high or territorial seas and shoreline by oil or any drilling fluid or substance which might contaminate the water or shore line or which might cause harm or destruction to marine life”.

5. EXTRACTION OF NON-LIVING RESOURCES

PETROLEUM (EXPLORATION AND EXPLOITATION) ACT

Laws of Fiji, chapter 148, 6th October 1978, revised 1985

http://www.paclii.org/fj/legis/consol_act/paea439/index.html

The expression "Natural resources" is not defined by the Act. As the expression "marine life" is also used, it is likely that the "natural resources" design only non-living resources. But coral being at the same time "sedentary species", they are included in the definition of natural resources of the continental shelf (see the Continental shelf Act thereafter).

The following dispositions of the Petroleum Act are of indirect interest as regards the conservation of coral and coral reefs:

- **Article 8(2)** provides for the inspection regime applicable in case of "(ii) unreasonable interference with navigation or fishing; (iii) pollution of any water-well, spring, stream, river, lake, reservoir, estuary or harbour, the high or territorial seas or shoreline by petroleum or mud or any other fluid, gas or substance which might contaminate the sea; water or shoreline or cause harm or destruction to marine life".
- **Article 67(1)** "The holder of any licence may, at any time, on payment of the prescribed fee, surrender (vii) he has made provision to the satisfaction of the Minister for the **conservation and protection of the natural resources** in that area".
- **Article 70(1)** "Upon the expiration, **prior surrender or cancellation** of any licence as to the whole or any part of the area the subject of such licence the Minister may, by notice in writing served on the person who is or was the holder of such licence direct such person [...] (c) to make provision to the satisfaction of the Minister for the **conservation and protection of the natural resources** in that area".
- **Article 83** "Every person carrying on any operations in a designated area under the authority of any licence shall carry on those operations **in such a manner as not to interfere with [...] (c) the conservation of the natural resources of the sea or seabed**".
- **Article 100(1)** The Minister may make regulations in order to "(m) conserving and preventing the waste of, the natural resources, whether petroleum or otherwise, within any designated area".

Requirements for environmental statements or impact assessment are provided by Articles 7 and 8: "An application for the grant of a production licence shall [...] be accompanied by (e) a written statement to the satisfaction of the Minister **assessing potential environmental impact of the proposed production development programme**, including a description of any proposed guards". The same requirement is provided as regards the application for or a variation of a pipeline licence (Article 10)

CONTINENTAL SHELF ACT

Laws of Fiji, Chapter 149, 30 December 1970

http://www.paclii.org/fj/legis/consol_act_OK/csa182/

Article 2 fits with the UNCLOS definition of natural resources, as "(a) the mineral and other natural non-living resources of the seabed and subsoil; and (b) **living organisms belonging to sedentary species**, that is to say organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or subsoil".

More importantly, according to Article 10(2), the Minister may make regulations "for any of the following purposes: [...] (c) **prescribing measures to be taken in a safety zone for the protection of the living resources of the sea and the natural resources of the seabed and subsoil from harmful agents**; [...] (g) **prohibiting or restricting exploration of any specified part of any designated area or the exploitation of the natural resources of the seabed or subsoil thereunder which in the opinion of the Minister could result in unjustifiable interference with navigation, fishing or the conservation of the living resources of the sea** or could interfere with national defence or with oceanographic or other scientific research or with submarine cables or pipelines".

6. TRANSPORT

MARITIME TRANSPORT DECREE

Government of Fiji, n° 20 of 2013

http://www.paclii.org/cgi-bin/sinodisp/fj/promu/promu_dec/mtd2013246/mtd2013246.html

The Maritime transport Decree contains **very detailed and complete legislation, especially as regards marine pollution**. Article 20 provides for an obligation of notification of all accident, incident and mishap and Article 21 for an obligation of reporting dangers to navigation.

Part 10 is dedicated to marine pollution prevention and management. Important measures are the prohibition of discharge of any harmful substance, including in the EEZ and the extended continental shelf (Article 129). Article 131 deals with the duty to report any discharge or escape of harmful substances. Article 137(1) concerns the discharge of plastics, dunnage, lining, and packaging materials within Fiji waters from any ship, which is prohibited. Ballast water exchange with marine water is also mentioned, and *“may be carried out by a ship or offshore installation, at least 200 nautical miles from the nearest land and in water at least 200 meters in depth or where this is not possible, then at least 50 nautical miles from shore and in water at least 200 meters in depth”* (Article 138). Finally, Article 140 sets that *“Pollution incidents within the internal waters and territorial sea must be noticed to the authority in charge”* and an investigation in case of any discharge or escape of any harmful substance is planned (Article 144).

Part 11 is centred on plans and responses to protect the marine environment from marine spills. It creates a Marine Spill Pollution Advisory Committee, to give advice to the executive authority in the field of marine oil spill and pollution, in order to implement the spill contingency plans (Article 155).

Noteworthy is also **Part 15 on the making of marine protection regulations and taking of other measures to protect the marine environment**. The Minister may, following Article 231(1), *“make marine protection regulations for any or all of the following purposes*

- *to implement Fiji's obligations under any marine protection Convention;*
- *to make such Regulations as may be necessary to enable Fiji to become a party to any international Convention, protocol, or agreement relating to the protection of the marine environment;*
- *to implement such international practices or standards relating to the protection of the marine environment as may, from time to time, be recommended by the International Maritime Organisation”.*
- According to Article 233 he also has power to make regulation for *“prescribing areas of ships where harmful substances, or any specified harmful substance, or ballast water, may not be held”, and “prescribing the maximum quantities of harmful substances, or any specified harmful substance, that may be held on ships or any class of ship”.*

He may also take regulations in case of emergency, *“necessary to alleviate or minimise any damage to the marine environment or threat of imminent damage to the marine environment”* (Article 234).



Photo: © Mike Markovina

See also the

SHIP REGISTRATION DECREE

Government of Fiji, n° 19 of 2013

<http://extwprlegs1.fao.org/docs/pdf/fij137134.pdf>

This Decree contains several interesting provisions. Article 21(1) sets the powers of the Minister as regards IUU fishing: he may “give directions to the Registrar to deregister a name from the Register if he or she has reasons to believe that a ship has been registered in contradiction to section 19(2). If the Registrar receives directions from the Minister under subsection (1), he or she shall immediately remove the name from the Register. (3) **The Registrar shall deregister a ship that is engaged in illegal, unreported or unregulated fishing**”.

“Unregulated fishing” is defined comprehensively as “**any fishing activity** (a) in the area of application of a relevant regional fisheries management organisation **that are conducted** by ships without nationality, or by those flying the flag of a State not party to that organisation, or by a fishing entity, **in a manner that is not consistent with or contravenes the conservation and management measures of that organisation**; or (b) in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted **in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law**”.

PORT AUTHORITY OF FIJI ACT

Laws of Fiji, 1 November 1975

http://www.paclii.org/fj/legis/consol_act/paofa281/

Nothing about living resources or pollution as well as in the [Sea Ports Management \(Amendment\) Act, n° 5 of 2016](#).

OTHER INITIATIVES AND GOOD PRACTICES FOR THE PROTECTION OF CORALS

PUBLIC POLICIES AIMED AT PROMOTING SUSTAINABLE DEVELOPMENT

5-year and 20-year National Development Plan 2017

1 November 2017

<http://www.fao.org/faolex/results/details/fr/c/LEX-FAOC175621>

Through this policy document, the Government of Fiji declares that *"Our pristine natural environment will be protected, and the economy will be made more climate-resilient"* (p. 5). To that aim, some measures are adopted as the creation of a reliable data-gathering framework to track the level of catch and fish stock on a regular basis and thus to ensure better management of coastal and inshore fisheries (see p. 113). The revitalisation and conservation of mangroves and coral is also at the centre of the objectives of the report (p. 119).



Photo: © Erik Lukas

Green Growth Framework for Fiji: Restoring the Balance in Development that is Sustainable for Our Future

Report of 1 August 2014

<http://www.fao.org/faolex/results/details/fr/c/LEX-FAOC164896>

This document sets the existing framework, challenges and actions (short term, medium term as well as long-term) to be conducted as regards blue growth. Thematic Area 1 is dedicated to climate change, focusing on adaptation and mitigation. Other important themes are the waste management system or civil responsibility toward the environment.

In the field of coral protection, the Report recalls: *"In 2000 and again in 2002, Fiji's reefs suffered a temperature-related mass bleaching event with subsequent loss of 40-80% of stony corals. At this time, the Global Coral Reef Monitoring Network Fiji node was formed to coordinate the collection of a variety of data about current reef health both from Fiji and around the region. Annual monitoring of up to 15 national sites has shown a faster than expected recovery from coral bleaching and by 2011, the national average hard coral cover and diversity was higher than before the event, demonstrating the great resilience of Fiji's reef systems. Whilst the national average coral cover in 2011 was over 50%, 28% on Viti Levu's Coral Coast fringing reefs and on the deep-water pinnacles of the Vatu-i-Ra Passage up to 70%".* Challenges and actions are then proposed: to raise awareness, establish marine protected areas, including deep water MPAs targeting 30% of offshore areas, to develop a mechanism to access data on state of the environment and natural resources used to facilitate proper decision-making, and to favourite partnerships and capacity building.

As regards the energy sector, the revised National Energy Policy 2014-2020 sets out the Government's vision and strategic direction for achieving sustainable energy for all. The overarching vision for the policy is *"a resource efficient, cost effective and environmentally sustainable energy sector"*. The three major objectives of the policy are to:

- Provide all Fijians with access to affordable and reliable modern energy services;
- Establish environmentally sound and sustainable systems for energy production, procurement, transportation, distribution and end use;
- To increase the efficiency of energy use, in particular through the utilization of indigenous energy sources in order to reduce the financial burden and insecurity of energy imports.

Promoting energy efficiency and enhancing waste management in the **tourism sector and manufactured industries** is also essential for the greening objective, as coastal development and tourism are increasing.

CIVIL SOCIETY AND PRIVATE INITIATIVES

The CORAL Reef Alliance

<https://coral.org/where-we-work/fiji/#overview>

It is an NGO focusing since 2001 on the protection and management of coral reefs, healthy fisheries for reefs, ecosystems, and science adaptation initiatives. Its work is centred on the **Namena Marine Reserve**, which is the largest Fiji's no-take LMMA.

An *ecosystem-based management plan* has been developed with the help of the organization in 2012 for this reserve. A Law enforcement protocol was developed jointly with the Kubulau community (the community living in the Namena reserve). Finally, the organization extended its work in 2016 to new sites: Oneata, Waivunia and Ra Province.

Towards an effective legal framework for marine protected areas in Fiji. **Policy and Law Discussion Paper.**

<https://www.sprep.org/attachments/VirLib/Fiji/effective-framework-marine-protected-area-fiji.pdf>

How can MPAs be established under existing legislation and what are the possible scenarios for future regulation? Fiji Environmental Law Association and EDO NSW, The University of South Pacific Press, 2017, 109 p².

This study aims at supporting the development of a comprehensive legal framework for the establishment and management of MPAs. Indeed, MPAs are “not only aimed at limiting fishing activities, but promote a wide range of activities and critical issues such as food security, resilience to natural disasters and adaptation to climate change” (p. 9).





Photo: © The Ocean Agency

The document stresses the strength of the several mechanisms permitting the creation of MPAs (Offshore Fisheries Decree, etc.). It also studies the **weaknesses of the existing MPAs mechanisms**, which includes inter alia (referred p. 11):

- Lack of a comprehensive ocean or marine protected areas policy
- Harmonization issues
- Limited institutional options (no option to create an independent MPAs agency)
- Scope to strengthen and extend the function and powers of the Protected Areas Committee
- No effective and mandatory requirements for coordination and consultation between relevant stakeholders in the establishment and management of MPAs No formal recognition of voluntary conservation areas (LMMAs, Tabu areas)
- No sustainable financing arrangements for MPAs
- Failure to establish a network of MPAs and a lack of system planning and strategic planning
- No allowance for compensation of customary fishing rights owners
- Scope to strengthen the EIA process.

The comprehensive study also proposes options in order to fill the gaps, which are

- To make comprehensive MPA regulations,
- To amend the existing primary regulation,
- To make new legislation as regards MPA framework.

The authors suggest developing a clear reform roadmap, in consultation with all stakeholders.

James Sloan, "Marine Protected Areas and Decision-making – an administrative law perspective"
Ocean Law Bulletin, February 21, 2017
<https://coral.org/where-we-work/fiji/#overview>

James Sloan also refers to all pertinent legislations enabling the establishment of MPAs (Fisheries Act and Offshore Fisheries Management Decree), recalling the welcomed and ambitious target of Fiji: to designate across 30% of its ocean spaces as MPAs, which represents 390 000 km². Fiji's major asset in this field is, according to the author, **the ability to take into account all the pre-existing rights and interests of stakeholders as regards the MPA process**. Indeed, this process helps to reach acceptability of the conservation measures.

A "Coral gardening program"
<https://www.abc.net.au/news/2019-01-15/fiji-turns-to-coral-gardening-to-save-tourism/10708280>

This program has been implemented by a marine biologist, Dr Bowden-Kerby in order to maintain the tourism activities of the Fiji. This practice involves "propagating healthy coral and raising it in nurseries before transplanting it to the degraded reefs"³. Tourism resorts are partnering with him to restore coral.

2. A study has also been realized by Jean-Pierre Beurier, Bleuenn Guilloux, Karolina Zakovska, *Marine biodiversity law in Fiji, Solomon and Vanuatu islands*, Final Report on Legal aspects related to the valorization of marine active substances, The Initiative for the Protection and Management of Coral Reefs in the Pacific (CRISP), December 2009, but the legislation has evolved since.

3. Catherine Graue, « Fiji turning to coral gardening to save its lucrative South Pacific reefs from bleaching », ABC News, 14 January 2019.

**SUMMARY OF LEGISLATIVE
AND REGULATORY MECHANISMS
FOR THE PROTECTION OF CORAL REEFS
AND ASSOCIATED ECOSYSTEMS**

Photo: © Topi Vieri

FIJI

With the support of



Gouvernement Princier
PRINCIPAUTÉ DE MONACO