

Law and Policy Review in Support of Marine Spatial Planning in Samoa

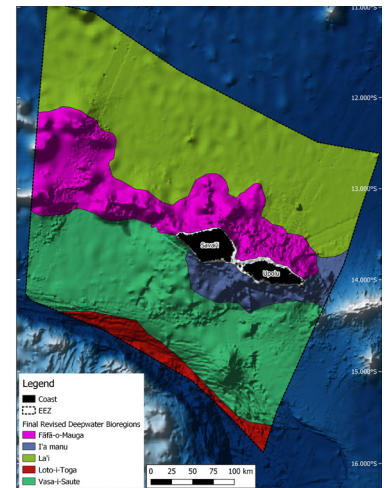


Marine Spatial Planning (MSP) is an internationally recognized planning tool that applies information about the natural resources and human uses of a particular ocean area to develop a comprehensive ocean management system.

UNESCO defines MSP as a “public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process.”

Typically, MSP establishes and applies zoning within the ocean space; each defined zone has permitted uses and restrictions.

In developing these laws, it is both typical and advisable to first review existing law and policy governing fisheries management, marine and coastal protected areas, maritime safety and border security, shipping, coastal planning and land use, protected species, marine pollution and dumping, coastal forestry, offshore mining and energy, as well as relevant constitutional provisions and administrative arrangements.



The legal review assists Samoa's MSP process by:

- Summarising in a single document laws and policies affecting ocean governance in a given jurisdiction;
- Identifying existing permitting and licensing processes involving various uses of the ocean, as well as any existing sectoral zoning processes for ocean areas;
- Identifying gaps in existing legislative regimes arising either from international treaty commitments yet to be implemented, or more broadly in terms of good ocean governance; and
- Suggesting a range of broad options through which MSP may be formalised in a manner consistent with local legal and administrative contexts, as well as stated policy goals

Administrative and Constitutional Arrangements

Relevant Constitutional Provisions

- » For the purposes of this review, the most important articles of the Constitution are 104 and 101

Administrative Arrangements.

- » MSP relies upon effective inter-agency coordination. The agencies below have mandate or jurisdiction over Samoa's ocean spaces.

Ministry of Natural Resources and Environment (MNRE)

Ministry of Agriculture and Fisheries (MAF)

Ministry of Works, Transport and Infrastructure (MWTI)

Ministry of Customs and Revenue

Ministry of Foreign Affairs and Trade (MFAT)

Ministry of Finance (MOF)

Ministry of Prime Minister and Cabinet (MPMC)

Findings and Recommendations

	FINDINGS	RECOMMENDATIONS
1.1	One of the fundamental foundations of MSP are laws that provide a range of categories of marine protected area that can account for the diverse circumstances of marine conservation. Particularly in Pacific Island countries, this involves including mechanisms to recognise co-managed and community-based conservation efforts. Passage of the EMC Bill will enable this.	Stakeholders progress passage of the EMC Bill, thus establishing a broader range of marine protected area categories.
1.2	The criteria in subsection (2) of s43 of the EMC Bill will restrict the sites to which the provision may apply, possibly to the overall detriment of community-based marine conservation in Samoa.	Stakeholders review subsection (2) of s43 of the EMC Bill to ensure it will not unnecessarily limit the sites to which ss43 and 44 might otherwise apply.
2.1	The EMC Bill as drafted includes the pivotal term “significant environmental impact” defined in a manner that introduces uncertainty regarding interpretation and application by administrators and courts. This may require further consideration and review by stakeholders , especially regarding interaction with the compliance, enforcement and offence provisions of the Bill.	Stakeholders consider replacing the phrase “significant environmental impact” in the EMC Bill with multiple defined terms that separate the task of defining “environmental impact / harm” from determinations made regarding degrees of seriousness or significance.
2.2		Stakeholders consider including offence provisions for causing various defined degrees of environmental harm in the EMC Bill.
3	Samoa has ratified but not yet fully implemented the Nagoya Protocol in legislation. Draft legislation has been prepared (Part 4 of the EMC Bill) to fulfil this need.	Stakeholders progress passage of the EMC Bill thus establishing a regulatory framework for access and benefit from sharing of genetic resources in compliance with the Nagoya Protocol.
4	Samoa has ratified but not yet fully implemented the Cartagena Protocol in legislation. Draft legislation has been prepared (Part 5 of the EMC Bill) to fulfil this need.	Stakeholders progress passage of the EMC Bill, thus establishing a regulatory framework for biosafety in compliance with the Cartagena Protocol.
5	Samoa has ratified the Minamata Convention on Mercury and completed a Minamata Initial Assessment Report identifying specific (and relatively minor) regulatory actions required to ensure full conformity with the Convention’s obligations.	Samoa's marine environment will receive greater protection from the threat posed by mercury contamination upon implementing the regulatory reform identified in the Minamata Initial Assessment Report for Samoa, Annex 2.
6	The Samoa Ocean Strategy identifies governance of seabed minerals as requiring specific regulatory oversight, including commitment to establish a process of review and reform.	Stakeholders progress Integrated Management Solution 11 of the Samoa Ocean Strategy, “Review existing policies and establish legislation where appropriate to manage risks posed by deep-sea and seabed exploration”, as planned and scheduled.
7	The Samoa Ocean Strategy identifies the need to integrate ecosystem-based approaches to climate change as requiring inclusion in planning and EIA legislation, including commitment to establish a process of review and reform.	Stakeholders progress Integrated Management Solution 10 of the Samoa Ocean Strategy in reviewing and revising the relevant legislation to expressly include considerations relating to coral reefs and ecosystem-based approaches to climate change.
8	The Samoa Ocean Strategy identifies the need to strengthen policy and legislation for Coastal Ecosystem Services protection including commitment to establish a process of review and reform.	Stakeholders progress Integrated Management Solution 9 of the Samoa Ocean Strategy in reviewing and revising legislation relating to coastal management and coastal ecosystem services protection.
9	Although National Marine Sanctuary is mentioned in regulation 14A of the Marine Wildlife Regulations, the legal effect of this provision is uncertain.	If an intent to establish a National Marine Sanctuary remains, stakeholders should consider and clarify the effect of this, if any, in law.
10	To ensure effectiveness, MSP should be formalised in law as a whole-of-jurisdiction marine planning process, the outcomes of which are enforceable. A necessary component of an MSP is a national marine protected area network. The Samoa Ocean Strategy includes both MSP and a strengthened MPA network as Integrated Management Solutions 5 and 7 respectively. Of the four options identified and discussed in Section Five of this report, option 4 – adjusting the Environmental Management and Conservation Bill to include MSP – is recommended.	The Environmental Management and Conservation Bill should be adjusted to incorporate MSP and a national MPA network, prior to enactment.