



REVIEW OF LEGISLATION,  
POLICIES, STRATEGIES AND PLANS  
RELATING TO THE USE AND  
MANAGEMENT OF THE OCEAN

**TONGA**



Marine and Coastal Biodiversity Management  
in Pacific Island Countries



## EFFECTIVE MANAGEMENT



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# REVIEW OF LEGISLATION, POLICIES, STRATEGIES AND PLANS RELATING TO THE USE AND MANAGEMENT OF THE OCEAN **TONGA**

## REPORT TO THE GOVERNMENT OF TONGA

*Supported by the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project*

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**2016**



On behalf of:  
 Federal Ministry  
for the Environment, Nature Conservation,  
Building and Nuclear Safety  
of the Federal Republic of Germany

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Marine and Coastal Biodiversity Management  
in Pacific Island Countries



On behalf of:  
  
of the Federal Republic of Germany

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## ACRONYMS AND ABBREVIATIONS

<b>BMUB</b>	German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety
<b>CBD</b>	Convention for Biological Diversity
<b>CCMP</b>	Coastal Community Management Plans
<b>CITES</b>	Convention on International Trade in Endangered Species
<b>CMS</b>	Convention on the Conservation of Migratory Species of Wild Animals
<b>COP21</b>	Council of Parties 21st Meeting (Paris)
<b>CROP</b>	Council of Regional Organisations in the Pacific
<b>EEZ</b>	Exclusive Economic Zone
<b>EIA</b>	Environmental impact assessment
<b>EMP</b>	Environmental management plan
<b>FAME</b>	SPC Division of Fisheries, Aquaculture and Marine Ecosystems
<b>FAO</b>	Food and Agricultural Organisation
<b>FFA</b>	Forum Fisheries Agency
<b>GIZ</b>	German Agency for International Cooperation
<b>INDC</b>	Intended Nationally Determined Contributions
<b>IUCN</b>	International Union for the Conservation of Nature
<b>IUU</b>	Illegal, unregulated and unreported
<b>LDC</b>	Least Developed Countries
<b>MACBIO</b>	Marine and Coastal Biodiversity Management in Pacific Island Countries project
<b>MARPOL</b>	International Convention for the Prevention of Pollution from Ships
<b>MCS</b>	Monitoring, Control and Surveillance
<b>MEA</b>	multilateral environment agreements
<b>MEIDECC</b>	Ministry of Meteorology, Energy, Information, Disaster Management, Climate Change and Communications
<b>MMA</b>	Marine Managed Area
<b>MPA</b>	Marine protected area
<b>NBSAP</b>	National Biodiversity Strategy Action Plan
<b>NECC</b>	National Environment Coordinating Committee
<b>PICTs</b>	Pacific Islands Countries and Territories
<b>PIF</b>	Pacific Islands Forum
<b>PIFACC</b>	Pacific Islands Framework for Action on Climate Change
<b>PIROP</b>	Pacific Islands Regional Oceans Policy
<b>POPs</b>	Persistent Organic Pollutants
<b>POWPA</b>	Plan of Work on Protected Areas
<b>SC-SPTB</b>	Sub-Committee for South Pacific Tuna and Billfish Fisheries
<b>SMA</b>	Special Management Area
<b>SOPAC</b>	Pacific Islands Applied Geoscience Commission (Division of SPC)
<b>SPC</b>	Secretariat of the Pacific Community
<b>SPREP</b>	South Pacific Regional Environmental Programme
<b>TVMA</b>	Te Vaka Moana Arrangement
<b>UNCCD</b>	United Nations Convention to Combat Desertification
<b>UNCLOS</b>	United Nations Convention on Law of the Sea
<b>UNESCO</b>	United Nations Education, Scientific and Cultural Organisation
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>WCPFC</b>	Western and Central Pacific Fisheries Commission
<b>WHC</b>	World Heritage Commission

# EXECUTIVE SUMMARY

On 22 July 2015, Tonga's Cabinet decided to initiate a project to develop a holistic spatial plan for Tonga's ocean (Cabinet Decision 716). It was decided that the relevant ministries would collaborate to implement the marine spatial plan. The National Environment Coordinating Committee (NECC) was identified to oversee the process and the Department of Environment has established a Marine Spatial Planning Technical Working Group, comprised of technical experts within relevant ministries of the NECC, to progress the Cabinet decision.

This review of Tonga's legislation, policies, strategies and plans relating to oceans management is part of the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project and will assist the government to implement the Cabinet decision on marine spatial planning. The MACBIO project aims to help strengthen the sustainable management of marine and coastal resources and biodiversity.

This review analyses and assesses legislative and policy instruments that are relevant to the development and implementation of a holistic marine spatial plan for Tonga. This process included reviewing international, regional, national and provincial legislation, policies, strategies and plans. Attachment 1 provides a list of legislative and policy instruments that were analysed; a summary of the legislation, policies, strategies and plans that support the development and implementation of a marine spatial plan is at Attachment 2.

## Oceans management and planning

The national Tongan Strategic Development Framework 2015–2025 aims to “*enhance our inheritance*” of which a large component is Tonga's marine and coastal resources. Sustainable development of Tonga's natural assets is a key component of forward planning for the nation. All seven of the national outcomes identified in the Strategic Development Framework require sustainability.

Regionally, Tonga has participated in a range of initiatives, in particular the development of the Pacific Islands Regional Ocean Policy and Framework for Integrated Strategic Action. This regional policy is intended to promote the Pacific region as an ocean environment in support of sustainable development. It is not a legal document, but its guiding principles are founded on international law as reflected in the United Nations Convention on the Law of the Sea (UNCLOS) and other international and regional agreements. These guiding principles are: improving our understanding of the ocean; sustainably developing and managing use of ocean resources; maintaining the health of the ocean; promoting the peaceful use of the ocean; and creating partnerships and promoting cooperation.

The Kingdom of Tonga ratified the Convention on Biological Diversity (CBD) in May 1998. This confirmed Tonga's commitment to implement national actions to conserve, sustainably use and protect its biological diversity as its contribution to the conservation and protection of global biodiversity. However, holistic and integrated forward planning for, and sustainable development of, Tonga's marine and coastal resources from the high-water mark to the outer boundary of the exclusive economic zone is lacking. The July 2015 Cabinet decision addressed this issue in approving the development of a marine spatial plan for Tonga.

This report summarises the legislative and policy frameworks (both national, regional and international) that support the development of a marine spatial plan to contribute to ecologically sustainable development of Tonga's oceans and to meet Tonga's international and regional commitments.

## Legislative and policy support

While the analysis did not identify any legislation or policy that provided a specific foundation for the development of an integrated marine spatial plan for oceans management there is significant legislative support for addressing a range of broad oceans management issues, including marine spatial planning.

Attachment 2 shows a comprehensive breakdown of the relevance of various legislative and policy instruments against a range of issues. However, there are gaps within the legislation and policies and in the range of instruments required to support integrated, spatial oceans management, as well as a range of synergies between instruments (see sections 3.2, 3.3 and 3.4). The gaps in legislative and policy coverage will need to be more fully identified and addressed once decisions are made about how the Government of Tonga decides how it will approach (in detail) the development of any oceans policy, plan or other management instruments.

## Coordination of future oceans management

The lack of a central controlling authority for oceans management and planning issues raises the question of whether Tonga should consider the identification or establishment of an agency/entity with the specific mandate of oceans planning and management. This entity would be empowered by a specific new Act setting out the provisions that are key to oceans planning and management as well as centralising this mandate to overcome the current duplication/overlap/conflict among different ministries. An example could be the recently established National Spatial Planning Authority (which is the responsibility of the Minister for Lands).

## Summary comment and recommendations

While the legislation and policy foundations for oceans management in Tonga currently exist they do not constitute the entire legislative and policy framework required to successfully and sustainably manage Tonga's marine resources and ecosystems. A strategic view and approach that combines the various responsibilities and mandates with visionary leadership is required to achieve long-term and sustainable success in securing the future of Tonga's oceans.

The following options are recommended to strengthen Tonga's capacity and capability for marine spatial planning:

1. Draft a principal Act specifically to mandate, administer and manage marine spatial planning (as is the case with the *National Spatial Planning and Management Act 2012*).
2. Establish a dedicated Executive/Government agency/authority with the appropriate mandate and authority to administer and manage oceans affairs (including marine spatial planning) within one of the ministries represented on the Oceans 7 Technical Working Group.
3. Incorporate the appropriate amendments to the suite of relevant principal Acts already in force to give legal effect to marine spatial planning (e.g., the Fisheries Management Act, Environment Management Act, Shipping and Maritime Transportation Act, National Spatial Planning and Management Act, Parks and Reserves Act).
4. Revise the *Parks and Reserves Act* to properly establish and effectively manage marine managed areas/marine protected areas. The Parks and Reserves Act was enacted in 1976 and revised in 1988, and a review is timely and necessary. Key issues that should be considered in the legislative review are:
  - a. Objectives, purpose and guiding principles
  - b. Administering body or authority – functions and responsibilities
  - c. Advisory body
  - d. Powers under the Act
  - e. Leases, licenses, permits and easements
  - f. Classification and categorisation
  - g. Procedures for creation/establishment and declaration
  - h. Planning and management
  - i. Regulation of activities
  - j. Research, monitoring and reporting
  - k. Interaction with other legislation
  - l. Consultation with agencies and public
  - m. Regulations and offences
  - n. Compliance and enforcement measures
5. That Tonga considered becoming a signatory to the following Conventions:
  - a. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1 July 1975;
  - b. Convention on Wetlands (Ramsar) 1975; and
  - c. Convention for the Regulation of Whaling 1946.
6. Seek clarification whether, and to what extent, the *National Spatial Planning and Management Act 2012* applies to marine activities. It is worthwhile considering whether this Act may be amended to incorporate specific application to marine spatial planning.

# 1 INTRODUCTION

The task to review Tonga's legislation, policies, strategies and plans relating to oceans management is part of the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project.

MACBIO is funded by the German Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety (BMUB). It is being implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, German Agency for International Cooperation) with technical support from the International Union for the Conservation of Nature (IUCN) Oceania office and in close collaboration with the Secretariat of the Pacific Regional Environment Programme (SPREP).

The MACBIO project assists governments to strengthen the sustainable management of their marine and coastal resources and biodiversity. In particular, the objectives of the MACBIO project are to support governments to:

1. Consider the economic value of marine and coastal ecosystem services in national development planning;
2. Align exclusive economic zone-wide spatial planning frameworks with the requirements of sustainable ecosystem use and conservation (where this review fits in);
3. Use and demonstrate best practices for the management of marine protected areas, including payments for environmental services, at selected sites; and
4. Disseminate concepts and instruments that have proven successful for the sustainable management of marine and coastal biodiversity regionally and internationally.

## 1.1 PURPOSE OF REVIEW

On 22 July 2015, Tonga's Cabinet decided to initiate a project to develop a holistic spatial plan for Tonga's ocean (Cabinet Decision 716). It was decided that the relevant ministries would collaborate to implement the marine spatial plan (marine spatial planning). The National Environment Coordinating Committee (NECC) was identified to oversee the process, and the Department of Environment has established a Marine Spatial Planning Technical Working Group, comprised of technical experts within relevant ministries of the NECC to progress this Cabinet decision.

The Tongan culture and society is strongly tied to the ocean. Nearly all of Tonga (98%) is ocean. The Tonga Strategic Development Framework II aims to "*enhance our inheritance*", of which a large component is marine and coastal resources. In fact, sustainable development of Tonga's natural assets is a key component of forward planning for the nation. All seven of the national outcomes identified in the Strategic Development Framework require sustainability.

Yet most government planning discussions lack holistic and integrated forward spatial planning for, and sustainable development of, Tonga's marine and coastal resources from the high-water mark to the outer boundary of the exclusive economic zone (EEZ). Development of a marine spatial planning will address this omission.

The government is extremely supportive of finding sustainable ways to develop Tonga's economy and a marine spatial planning would enable those efforts to better include the ocean and its resources.

As a contribution to developing a marine spatial plan, this report provides an analysis and assessment of legislation, policies, strategies and plans relevant to sustainable use and management of Tonga's oceans.

## 1.2 REVIEW APPROACH

The analytical framework used to undertake the review of legislation, policies, strategies and plans in support of the development of oceans planning and management in Tonga comprises three components:

1. Individual analysis of legislation, policies, strategies and plans (a list of instruments reviewed is at Attachment 1);

An analysis was undertaken of each of the instruments identified as having some relevance to oceans use and management in the Tonga and therefore of relevance to development of a national integrated spatial ocean resource management plan. Each of these instruments was analysed against a number of criteria as follows:

1. Document Type (legislation, policy, strategy, plan or other)
2. Source (regional, national, provincial or local government)
3. Main objectives
4. Main activities that are promoted, controlled and/or managed
5. Main management tools (including incentives) used
6. Geographic extent of jurisdiction (and whether formal or informal)
7. Administration of Instrument (who is responsible)
8. Bodies established under Instrument
9. Regulatory and planning provisions established by Instrument
10. Conflict or potential conflict
11. Synergy or potential synergy
12. Gaps of any kind
13. Relevance of Instrument to development of integrated ocean management
14. Other analytical dimensions as appropriate.

Based upon the analysis, each instrument was given a ranking of relevance of 1–*High*, 2–*Moderate*, 3–*Low* or 4–*Not relevant* to an oceans management policy or plan for Tonga. The ranking has been used to prioritise the presentation of the results. Instruments ranked as 3 (*low*) or 4 (*not relevant*) have not been included in this report.

2. Integration of individual analyses into an assessment table for comparative analysis and assessment (a summary is at Attachment 2); and
3. This report, which provides an assessment narrative based on the individual analyses and the information from the assessment table.

## 2 REVIEW OF RELEVANT LEGISLATION, POLICIES AND STRATEGIES

### 2.1 NATIONAL LEGISLATION

#### Act of the Constitution of Tonga

The Act establishes the Crown's ownership of the beach frontage including all the area from fifty feet above high-water mark, to allow for the government to lease any portion of the beach frontage for erecting a store, jetty or wharf.

##### *Relevance to development of an oceans plan*

The Act of the Constitution is **highly relevant** to the development of oceans management. In particular, the Act provides the potential to establish a restricted use zone around coastal areas of the Kingdom. The Act also potentially impacts on maritime transport and trade through the potential development of jetties and wharves and other maritime infrastructure within nearshore areas.

#### Maritime Zones Act 2013

The Maritime Zones Act establishes the maritime zones of the Kingdom and in the exercise of the sovereign rights of the Kingdom, and the exploration, exploitation, protection, preservation, conservation and management of those zones, and for matters concerned with those purposes. The Act defines zones such as archipelagic waters, contiguous zone, exclusive economic zone, continental shelf, historic waters, internal waters and the territorial sea. The Act also provides for the designation of sea lanes to be used by foreign ships and aircraft in passage through or over any archipelagic waters, historical waters, territorial sea and internal waters and to prescribe traffic separation schemes to be observed by ships in passage through narrow channels in the sea lanes.

A full explanation of relevant definitions in this Act and other legislation is shown in Attachment 3.

##### *Relevance to development of an oceans plan*

The Act is **highly relevant** as it relates to:

- Global and regional environmental conventions and agreements (multilateral environmental agreements, MEAs)
- Maritime boundaries
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Non-living resources (oil, gas and minerals)
- Energy resources (gas hydrates, wave and ocean thermal)
- Pollution and waste management
- Security (defence, surveillance, monitoring and enforcement)
- Maritime transport
- Traditional knowledge and intellectual property
- Governance and management
- Science and technology
- Marine spatial planning

## National Spatial Planning and Management Act 2012

The National Spatial Planning and Management Act provides a framework for planning the use, development, management and protection of land in the Kingdom in the public interest and for related purposes.

The Act contains the following objectives:

- a. provide for the fair, orderly, economic and sustainable use, development and management of land including the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;
- b. enable land use and development planning and policy to be integrated with environmental, social, cultural, economic, conservation and resource management policies at national, regional, district, village and site specific levels;
- c. create an appropriate urban structure and form for the development of the Kingdom to provide equitable and orderly access to transportation, recreational, employment and other opportunities;
- d. secure a pleasant, efficient and safe working, living and recreational environment for people in the Kingdom;
- e. protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community;
- f. balance the present and future interests of all persons; and
- g. provide increased opportunity for public participation in planning and assessment.

The Act defines the term “land” as including land covered with water and a “spatial plan” to mean a sustainable management plan prepared for any area under the Act.

### *Relevance to development of an oceans plan*

On the face of it, the provisions of the Act appear to apply only to land-based spatial planning and development. However, the definition of land for the purposes of the Act includes land covered by water. It was confirmed by the National Spatial Planning Agency that the Act applies to seabed activities (but it is unclear whether it applies to activities in the water column above the seabed).

This Act is ***potentially highly relevant*** to marine spatial planning in that this is a principal Act that prescribes the legal framework for spatial planning. Although there is some uncertainty as to its application to ocean-based activities and development, the Act sets a precedent for spatial planning in Tonga.

Clarification is required to determine whether, and to what extent, the Act applies to non-land, marine activities. It is worthwhile considering whether this Act may be amended to incorporate specific application to marine spatial planning.

## Petroleum Mining Act 1969

The Petroleum Mining Act provides for the issue of exploration licences and petroleum agreements regarding exploration, prospecting and mining for petroleum in the Kingdom of Tonga and related matters. Under the Act:

- “off-shore land” means all submerged lands lying within the archipelagic waters, internal waters, territorial sea, historical waters and exclusive economic zone of the Kingdom.
- “foreshore” means the land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of the tides and all land adjoining thereunto lying within 50 feet of the high-water mark of the ordinary tides.

### *Relevance to development of an oceans plan*

The Act is ***highly relevant*** as it relates to:

<ul style="list-style-type: none"><li>▪ Marine biodiversity and conservation</li><li>▪ Living resources (inshore and oceanic fisheries and genetic material)</li><li>▪ Monitoring, control and surveillance</li><li>▪ Non-living resources (oil, gas and minerals)</li><li>▪ Pollution and waste management</li><li>▪ Coastal systems</li></ul>	<ul style="list-style-type: none"><li>▪ Maritime transport</li><li>▪ Natural and environmental disasters</li><li>▪ Governance and management</li><li>▪ Science and technology</li><li>▪ Financial resources – mechanisms</li><li>▪ Marine spatial planning</li></ul>
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## Fisheries Management Act 2002

*[including the Fisheries Management (Amendment) Act 2009, Fisheries (Conservation and Management) Regulations 1994, Fisheries (Conservation and Management) (Amendment) Regulations 2013, Fisheries (Conservation and Management) (Amendment) Regulations 2014, Fisheries Management (Conservation) Regulations 2008, Fisheries (Local Fishing) Regulations 1994, Fisheries (Coastal Communities) Regulations 2009, Special Management Area Order 2004 and Fisheries Regulations 1992]*

The Fisheries Management Act and related Regulations provide for the conservation, management, sustainable use and development of fisheries resources in the Kingdom and the fisheries waters.

In the Act, “fish” is defined as “any aquatic animal, whether piscine or not and includes any cetacean, mollusc, crustacean, coral (living or dead) and other coelenterates, sponge, aquatic plants, holothurians (*bêche-de-mer*) or other echinoderm, and turtle, and their young and eggs” and “fisheries waters” are defined as “the territorial waters of the Kingdom, internal waters including lagoons, and such other waters over which the Kingdom of Tonga from time to time claims sovereign rights or jurisdiction with respect to the marine living resources by legislative enactment or by Royal Proclamation”.

Management of fisheries resources includes:

- a.** the need to ensure the long-term conservation and sustainable use of fishery resources, and to this end adopt management measures which promote the objective of optimum use and to achieve economic growth, human resource development, employment creation and sound ecological balance;
- b.** the need to ensure that management measures are based on the best scientific evidence available;
- c.** the application of the precautionary approach at no less standard than set by criteria in the Fish Stocks Agreement or any other fisheries management agreement;
- d.** the need to conserve aquatic living resources and protect biodiversity in the marine environment for present and future generations;
- e.** the need to protect the ecosystem as a whole and the general aquatic environment and adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon target stocks;
- f.** the need to minimise pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species and impacts on associated or dependent species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;
- g.** the need to take measures to prevent or eliminate overfishing and access fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with sustainable use of fishery resources;
- h.** the interests of artisanal and subsistence fishers;
- i.** the need to collect and share in a timely manner and in accordance with fisheries management agreements and international law, 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;
- j.** the need to promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management;
- k.** the need to implement and enforce conservation and management measures through effective monitoring, control and surveillance;
- l.** the need to promote, to the extent practicable, broad and accountable participation in the management and conservation of fisheries resources and understanding for the need for conservation and sustainable development of aquatic living resources; and
- m.** any relevant obligations of Tonga under applicable rules of international law and international agreements.

### *Relevance to development of an oceans plan*

The Act is **highly relevant** as it relates to:

- MEAs
- Maritime boundaries
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Pollution and waste management
- Coastal systems
- Security (defence, surveillance, monitoring and enforcement)
- Natural and environmental disasters
- Traditional knowledge and intellectual property
- Governance and management
- Knowledge management and exchange
- Capacity building (training, education and awareness)
- Science and technology
- Marine spatial planning including Special Management Areas<sup>1</sup>

## **Aquaculture Management Act 2003**

*[including the Aquaculture Management (Amendment) Act 2005 and the Aquaculture Management (Amendment) Act 2009]*

This Act provides for the control, management and development of aquaculture and related activities, whether on land or in any aquatic area including marine areas of the Kingdom. Aquaculture is defined as “...any operation involving husbandry, cultivation, propagation or farming of fish, during the whole or part of its life cycle and includes any operation in preparation for any aquaculture or other related activity.” “Fish” is defined in the Act as meaning “...any fish and includes any aquatic animal or plant, mollusc, crustacean, coral (living or dead) and other coelenterates, sponge, holothurian (bêche-de-mer) or other echinoderm, and turtle, and their young and eggs.”

The Act also provides for the establishment of buffer zones and aquaculture areas (although these areas are not well defined in terms of what they are supposed to achieve), both of which are forms of marine managed area (MMA). It is assumed that an aquaculture area is to enable aquaculture operations and is to be managed by “designated communities”. However, it is unclear what the buffer zone is intended for. A Gazette Notice (Tonga Aquaculture Areas and Coordinates) dated 14 January 2016 describes and demarcates the legal boundaries of 56 aquaculture areas. There is no distinction in the gazetted areas between a buffer zone and an aquaculture area.

### *Relevance to development of an oceans plan*

The Act is **highly relevant** to oceans planning, policy and management, and has relevance for marine spatial planning through provision for buffer zones and aquaculture areas. Other relevant provisions include:

- Environmental protection – “...shall take all reasonably practical measures to avoid or minimize pollution and any harmful environmental impact caused by aquaculture or related activity, including the discharge of effluent and the disposal of sludge”.
- Environment impact assessment must be undertaken by the licensee where there is reasonable belief that there may be a detrimental impact on the environment.

## **Environment Management Act 2010**

*[including the Environment Management (Amendment) Act 2010]*

The Act establishes the Ministry of Environment and Climate Change, now known as the Ministry of Meteorology, Energy, Information, Disaster Management, Climate Change and Communications (MEIDECC), to ensure the protection and proper management of the environment and the promotion of sustainable development.

The Act is the principal legislation for environment management in Tonga including:

- a. climate change;
- b. ozone depletion;

<sup>1</sup> Special Management Areas are declared under the Act for the purposes of coastal community management, application of certain conservation and management measures, subsistence fishing operations or other specified purpose.

- c. the movement or disposal of hazardous wastes and chemicals;
- d. desertification and drought relief;
- e. the preservation of wetlands and the management and protection of coastal areas;
- f. the conservation of endangered species;
- g. the preservation of biological diversity, including management of living modified organisms; and
- h. aspects of the environmental management of international waters.

One of the functions of MEIDECC prescribed by the Act is to conduct all matters necessary for the observance of the international and regional conventions to which the Kingdom is a party, including those listed in the Schedule to the Act (these Conventions are discussed elsewhere in the report).

#### *Relevance to development of an oceans plan*

The Act is **highly relevant** to oceans policy and management as it relates to:

<ul style="list-style-type: none"> <li>▪ Development of environmental policies and plans</li> <li>▪ MEAs</li> <li>▪ Marine biodiversity and conservation</li> <li>▪ Pollution and waste management</li> <li>▪ Natural and environmental disasters</li> </ul>	<ul style="list-style-type: none"> <li>▪ Governance and management</li> <li>▪ Knowledge management and exchange</li> <li>▪ Capacity building (training, education and awareness)</li> <li>▪ Science and technology</li> <li>▪ Climate change and sea-level rise</li> </ul>
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## **Parks and Reserves Act 1976 (revised 1988)**

The Parks and Reserves Act was enacted in 1976 and revised in 1988. It provides for the establishment of a Parks and Reserves Authority and for the establishment, preservation and administration of parks and reserves (including marine protected areas). Until the Parks and Reserves Authority is established, the Authority is the Minister of Lands. When areas are declared as a reserve, subject to any conditions and restrictions which the Authority may impose, they are administered for the protection, preservation and maintenance of any valuable feature of such reserve, and activities and entry are in accordance with any conditions and restrictions (e.g. through a management plan).

The Authority may from time to time with the consent of Cabinet make regulations for all or any of the following matters:

- a. prescribing conditions and restrictions the Authority may consider necessary for the protection, preservation and maintenance of natural, historical, scientific or other valuable features of any park or reserve; or
- b. providing such other matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

#### *Relevance to development of an oceans plan*

The Act is **highly relevant** as it relates to:

- Marine biodiversity and conservation
- Living resources
- Coastal systems
- Marine spatial planning including marine protected areas.

## **Marine Pollution Prevention Act 2002**

*[including the Marine Pollution Prevention (Amendment) Act 2009]*

The Marine Pollution Prevention Act provides for the prevention of, and response to, marine pollution and the dumping of wastes and other matters and to give effect to international marine pollution Conventions and applies to:

- all vessels in Tongan waters;
- all Tongan vessels; and
- all other potential sources of marine pollution incidents in Tongan territory.

This protection relates to the following international maritime Conventions, including any protocols, annexes, appendices and addenda, which are incorporated into, and have the force, of law in Tonga:

- Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, 1990 (SPREP Convention) and its Protocol for the Prevention of Pollution of the South Pacific by Dumping (SPREP Dumping Protocol) and Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region (SPREP Pollution Emergencies Protocol);
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) as amended by the Protocol of 1996 (London Convention);
- International Convention for the Prevention of Pollution from Ships (1973) as amended by the Protocol of 1978 (MARPOL 73/78);
- International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
- International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention);
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (OPRC Convention);
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1992 (FUND 92); and
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil, 1973 (INTERVENTION Convention).

#### *Relevance to development of an oceans plan*

The Act is **highly relevant** as it relates to:

▪ MEAs	▪ Science and technology
▪ Marine biodiversity and conservation	▪ Governance and management
▪ Pollution and waste management, including discharge of ballast water	▪ Financial resources – mechanisms
▪ Maritime transport	▪ Development of policies and plans

## Seabed Minerals Act 2014

The Seabed Minerals Act provides for the management of the Kingdom's seabed minerals, and the regulation of exploration and mining activities within the Kingdom's jurisdiction or under the Kingdom's control outside of national jurisdiction, in line with the Kingdom's responsibilities under international law. The Act prescribes the use of the precautionary approach, in accordance with Principle 15 of the 1992 Rio Declaration on Environment and Development. The Act (s2) also recognises:

#### RESERVED AREAS

- *The Authority shall not designate as an area or areas of the Kingdom's Continental Shelf to be released for the purpose of Seabed Mineral Activities any area or part of an area declared to be a Marine Reserve or Protected Area.*
- *If there is no Title over a particular area of the Kingdom's Continental Shelf, the Authority may, by Gazette Notice declare the area to be a reserved area.*
- *Areas may be reserved by the Authority for purposes inter alia of marine spatial management, environmental protection, or for tender.*
- *While a reserved area declaration under sub-section (2) is in force, the Authority shall not tender or grant a Title over any block or blocks contained in that reserved area.*

#### PROTECTED AREA

- *Protected Area means any area or areas within the Kingdom established as a protected area within the meaning of the Convention on Biological Diversity (opened for signature at the Earth Summit in Rio de Janeiro on 5 June 1992, entered into force on 29 December 1993, and to which Tonga acceded in 1998);"*

The Act also provides for conducting marine scientific research (Part 9 s95) subject to conditions.

### *Relevance to development of an oceans plan*

The Act is **highly relevant** as it relates to:

- MEAs
- Maritime boundaries
- Marine biodiversity and conservation
- Science and technology (marine scientific research)
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Non-living resources (minerals)
- Pollution and waste management
- Coastal systems
- Trade (globalisation and trade liberalisation)
- Natural and environmental disasters
- Governance and management
- Capacity building (training, education and awareness)
- Financial resources – mechanisms
- Development of policies and plans
- Marine spatial planning

## **Transport Services Act 2008**

The Transport Services Act establishes the Ministry of Transport to integrate and reform the transport sectors in the Kingdom into a single administration. The functions of the Ministry are to:

administer integration of the land, sea and air transport sectors in the Kingdom;

ensure that the services relating to the integrated transport sector in the Kingdom are maintained;

regulate the integrated transport sector in the Kingdom; and

undertake any other function prescribed under any other Act relating to land, sea or air transportation.

### *Relevance to development of an oceans plan*

The Act is **highly relevant** as it relates to:

- MEAs
- Maritime boundaries
- Security (defence, surveillance, monitoring and enforcement)
- Maritime transport
- Governance and management
- Capacity building (training, education and awareness)
- Science and technology
- Financial resources – mechanisms
- Development of policies and plans
- Marine spatial planning

## **Environment Impact Assessment Act 2003**

*(including the Environment Impact Assessment Regulations 2010)*

The Environmental Impact Assessment Act provides for the application of environmental impact assessment (EIA) to the planning of major development projects.

Schedule 1 of the Act lists the types of major projects as:

- Marinas (comprising pontoons, jetties, piers, dry storage, moorings) for more than 20 vessels primarily for pleasure or recreation;
- Farms for the propagation of marine, estuarine or freshwater organisms;
- Mining, being an activity that disturbs the surface of the land in excess of one hectare<sup>2</sup>;
- Sand or gravel extraction from any beach within 50 metres of the high-tide mark;
- Removal of trees (including mangroves) or natural vegetation of any area in excess of half a hectare;
- Construction of roads, wharves, barrages, embankments or levees which affect the flow of tidal waters;
- Tourist or recreational resorts, buildings or facilities, involving a total building floor area of greater than 1,000 square metres or a potential total overnight accommodation level (visitors and staff combined) more than 20 persons;

2 The term "land" in this Act includes all land covered by water or not.

- Seabed mineral mining;
- Seabed mineral exploration that is considered likely to cause serious harm to the environment; and
- Where, in the opinion of the Minister, any matter referred to in section 8(2) (e) of the Act is likely to occur to a significant degree, the project shall be deemed to be a major project and the prescribed procedures in the Regulations shall apply.

This Act applies to sand and gravel removal from any beach within 50 metres of the high-water mark, whereas the Constitution states that the beach frontage is 50 feet above the high-water mark and the Land Act states that the foreshore is the land lying within 15.24 metres of the high-water mark. These differences in application of legislation relating to the high-water mark could lead to some confusion in their application.

#### *Relevance to development of an oceans plan*

The Act is **moderately relevant** as it relates to:

- MEAs
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Non-living resources (oil, gas and minerals)
- Energy resources (gas hydrates, wave and ocean thermal)
- Water resources management
- Tourism
- Pollution and waste management
- Coastal systems
- Natural and environmental disasters
- Governance and management
- Science and technology
- Climate change and sea-level rise

## Biosafety Act 2009

The Act regulates living modified organisms and the application of biotechnology within the Kingdom. In particular, the Act:

- implements the Cartagena Protocol on Biodiversity 2000 and the Advanced Informed Agreement Procedure in the Kingdom;
- compels the application of the precautionary approach by all persons and agencies in the exercise and discharge of their responsibilities under the Act to ensure the minimisation of adverse effects or impact on biological diversity or risk to human health;
- specifies that no living modified organism may be imported into, or transited through, the Kingdom unless notice of transboundary movement has been given and approval granted by competent authority; and
- sets out procedures for notice, scientific risk assessment, approval, confidentiality of information and exemption.

The Act regulates and controls the development, use, handling and transboundary movement of living modified organisms and applications of modern technology.

#### *Relevance to development of an oceans plan*

The Act is **moderately relevant** to marine spatial planning as it contributes to the protection of Tonga's marine biodiversity as well as highlighting the role of science and technology in biodiversity protection, which provides part of the underpinning and contribution to decision making in marine spatial planning.

## Renewable Energy Act 2008

The Act regulates the use of renewable energy in the Kingdom and related matters by:

- promoting the development of the renewable energy industry in the Kingdom including wave and wind energy;
- researching and developing opportunities of renewable energy in the Kingdom;
- regulating the technical and safety standards for renewable energy technologies;
- regulating the licensing of persons involved in the design, research, installation and management of renewable energy projects;
- regulating renewable energy operators; and
- supporting the engagement of the private sector in renewable energy projects in the Kingdom.

### *Relevance to development of an oceans plan*

The Act is **moderately relevant** as it relates to:

- MEAs
- Energy resources (gas hydrates, wave and ocean thermal)
- Governance and management
- Science and technology
- Development of policies and plans
- Marine spatial planning

## **Ports Authority Act 1998**

The Act establishes a Ports Authority to manage and operate certain ports in the Kingdom of Tonga and makes provisions for related matters. The Nuku'alofa Port and ports area is under the management and operational authority of the Ports Authority. The outer islands harbours and wharves are managed and operated by the ministry responsible for transport (Ministry of Infrastructure).

### *Relevance to development of an oceans plan*

The Act is **moderately relevant** and relates to:

- MEAs
- Living resources (inshore and oceanic fisheries and genetic material)
- Pollution and waste management
- Coastal systems
- Maritime transport
- Security (defence, surveillance, monitoring and enforcement)
- Natural and environmental disasters
- Governance and management
- Marine spatial planning

## **Ports Management Act 2001**

The Ports Management Act provides for the management of harbours and harbour areas and wharves and areas except for Tongatapu. The Ports Authority is the management and operational authority of the Nuku'alofa Port and port areas (Tongatapu). The Ministry of Infrastructure is responsible for the harbours and wharves in the outer islands.

### *Relevance to development of an oceans plan*

The Act is **moderately relevant** as it relates to:

- MEAs
- Living resources (inshore and oceanic fisheries and genetic material)
- Pollution and waste management
- Coastal systems
- Maritime transport
- Security (defence, surveillance, monitoring and enforcement)
- Natural and environmental disasters
- Governance and management
- Marine spatial planning

## **Harbours Act 1903**

*(including Regulations made under the Harbours Act e.g. Nuku'alofa Harbour Regulations 1929 and the Vava'u Harbour Regulations 1936)*

The Act provides for the management of harbours and for levying dues. In particular, the Act prohibits:

- use of explosives;
- throwing rubbish, ballast, earth or refuse into any harbour;
- fishing within some harbours; and
- removal from the beach or any part of the harbour stones, coral, sand, earth or other material as ballast or for any other purpose without the permission of the harbour master.

The Act (s2) also allows the Prime Minister to declare a place to be a harbour, which could potentially form the basis for a MMA or marine protected area.

### *Relevance to development of an oceans plan*

The Act is **moderately relevant** as it relates to:

- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Pollution and waste management
- Coastal systems
- Maritime transport
- Security (defence, surveillance, monitoring and enforcement)
- Natural and environmental disasters
- Governance and management
- Potential for marine spatial planning (s2 relates to declaration of harbours)

## **Shipping Act 1973**

*[including the Shipping (Amendment) Act 1999, Shipping (Amendment) Act 2001, Shipping (Amendment) Act 2002 and the Shipping (Registration) Regulations 2002]*

The Act relates to shipping and navigation by implementing international standards and practices into Tongan law.

### *Relevance to development of an oceans plan*

The Act is **moderately relevant** as it relates to:

- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Pollution and waste management (including removal of wrecks through s181)
- Coastal systems
- Maritime transport
- Security (defence, surveillance, monitoring and enforcement)
- Natural and environmental disasters
- Governance and management
- Marine spatial planning

## **Land Act 1927**

The Land Act is the principal legislation concerning land tenure and land administration in the Kingdom. The Act determines that the foreshore is the property of the Crown and defines the “foreshore” as “*the land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of the tides and all adjoining land lying within 15.24 meters of the high-water mark of the ordinary tides*”. The Act permits only public developments/infrastructure undertaken for marine transportation and trade – specifically stores, jetties or wharves. This Act extends permits for residential purposes.

### *Relevance to development of an oceans plan*

The Act is **moderately relevant** as the definition of “foreshore” has implications for defining boundaries in any MPA/MMA in the coastal zone and as it relates to:

- Maritime transport;
- Natural and environmental disasters; and
- Marine spatial planning.

## **Tonga Tourism Authority Act 2012**

The Act provides for the establishment and administration of the Tonga Tourism Authority and for matters relating to the development of tourism in the Kingdom including:

- to enhance stronger tourism growth that facilitates sustainable economic, social/cultural, and environmental development that would deliver benefits for all Tongans; and
- to increase Tonga’s competitiveness in the tourism market through the active inclusion of Tongan culture and traditions in appropriate tourism-related activities and through strategies and programs which enhance cultural preservation and development.

A “tourism business” has been defined in the Act to include any business in the Kingdom which provides:

- tourism accommodation services;
- water-based tourism-related activities;
- attractions and activities;
- tourism operations providing *inter alia* adventure and other recreational tours, activities and attractions; and
- whale watching or related activities.

“Water-based activities” means any type of water and marine activities in the oceans, rivers, and waters of the Kingdom.

The Act provides guiding principles to promote the development of the tourism sector:

- Tourism must be sustainable in the long-term and for the general benefit of the people of this Kingdom;
- Tourism should be consistent with the Tongan culture and traditions;
- Environmental impacts from tourism developments are to be minimised, and due regulatory processes are to be applied to ensure the protection and conservation of biodiversity, water resources and terrestrial and marine environments;
- Adverse and undesirable impacts of tourism are to be addressed by effective controls over criminal activity, the generation of wastes, the introduction of diseases, and the imitation of traditional artefacts to intellectual property; and
- Public safety and security are to be preserved.

There are no specific provisions in the Act relating to mitigating the undesirable impacts from tourism on whales or other species or habitats from various activities. However, the Minister may invoke regulation-making powers to make specific provision for environmental protection by prescribing specific areas as special areas for licensing purposes. Additionally, s22 of the Maritime Zones Act provides for the development of regulations which could protect biodiversity (s22 1 {m}).

The Whale Watching and Swimming Act 2009 and the Whale Watching and Swimming Regulations 2013 are also relevant (see below).

#### *Relevance to development of an oceans plan*

The Act is **moderately relevant** as it relates to:

- Tourism;
- Governance and management;
- Development of policies and plans; and
- Marine spatial planning.

## **Whale Watching and Swimming Act 2009**

*(including the Whale Watching and Swimming Regulations 2013)*

The Act establishes the licensing requirements for the regulation of whale watching and the whale swimming industry and related matters.

The Whale Watching and Swimming Regulations 2013 provide for:

- the management and licensing of commercial services; and
- the protection, conservation, and management of whales by:
- regulating human contact or behaviour with whales either by service providers or other persons, in order to prevent adverse effects on and interference with whales; and
- prescribing appropriate behaviour by service providers and other persons seeking to encounter whales.

#### *Relevance to development of an oceans plan*

The Act and Regulations are **moderately relevant** and relate to:

▪ MEAs	▪ Maritime transport
▪ Marine biodiversity and conservation	▪ Governance and management
▪ Living marine resources	▪ Marine spatial planning and policy development
▪ Tourism	

## 2.2 INTERNATIONAL CONVENTIONS

Tonga is a signatory to a range of international Conventions which have been identified here either separately (s2.2.1) or as obligations under the *Environment Management Act* (Schedule 1) (s2.2.2). There are also several international Conventions that relate to marine spatial planning, to which Tonga is not signatory; these have been included here for information (s2.2.3).

### 2.2.1 Conventions to which Tonga is a signatory<sup>3</sup>

#### United Nations Convention on the Law of the Sea 16 November 1994

The 1982 United Nations Convention on the Law of the Sea (UNCLOS) comprises 320 articles and nine annexes governing all aspects of ocean space. Among other things it enables coastal states to;

- define delimits of maritime zones such as internal waters, territorial seas, contiguous and exclusive economic zones and an extended continental shelf claim;
- address navigational rights and rights of usage in maritime zones;
- explore and exploit, conserve and manage living (fisheries and genetic matter) and non-living (oil, gas and minerals) natural resources;
- apply jurisdiction over the protection and preservation of the marine environment as well as marine scientific research, economic and commercial activities, transfer of technology; and
- define the settlement of disputes relating to ocean matters.

UNCLOS obliges governments to take measures to prevent, reduce and control pollution of the marine environment from land-based sources (see particularly Articles 194 and 207).

#### UN Fish Stocks Agreement 11 December 2001

The 1995 Agreement under UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the UN Fish Stocks Agreement) entered into force generally in December 2001. The Agreement's principal objective is to ensure the long-term conservation and sustainable use of straddling and highly migratory fish stocks. The Agreement elaborates on provisions of UNCLOS and aims to greatly improve the international management of fishing on the high seas. In particular, the Agreement strengthens the legal regime for conservation and management of highly migratory and straddling fish stocks implemented through global, regional and sub-regional fisheries management organisations.

#### London Convention 1972

The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 (the London Convention), is one of the first global Conventions to protect the marine environment from human activities and has been in force since 1975. Its objective is to promote the effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter.

State Parties to UNCLOS are legally bound to adopt laws and regulations and take other measures to control pollution by dumping, and they must be no less effective than the global rules and standards (article 210), which are considered to be those of the London Convention 1972. States are also obliged to enforce such laws and regulations in accordance with article 216 of UNCLOS. This is an important consequence since many State Parties to UNCLOS are not Contracting Parties to the London Convention 1972.

Regulations covering the various sources of ship-generated pollution are contained in the six Annexes of the London Convention and are updated regularly. Annexes I and II, governing oil and chemicals are compulsory but annexes III, IV, V and VI on packaged materials, sewage, garbage and air pollution are optional.

<sup>3</sup> Drawn from "Framework for a Pacific Oceanscape: a catalyst for implementation of ocean policy" by Cristelle Pratt and Hugh Govan November 2010

Synergies need to be further explored between the London Convention and Protocol and the Convention on Biological Diversity (CBD) and the UN Framework Convention on Climate Change (UNFCCC), such as the legal and scientific issues relating to ocean fertilization. Under the precautionary approach embodied in the protocol such activities would most likely be prohibited unless the protocol is expressly amended. Parties to the London Protocol have already amended the protocol to allow for sub-seabed sequestration of carbon dioxide as a means of dumping this carbon dioxide.

## London Protocol 1996

The London Protocol was agreed in 1996 to further modernise the London Convention and, eventually, to replace it. Under the protocol all dumping is prohibited, except for possibly acceptable wastes on the so-called “reverse list”. The protocol entered into force on 24 March 2006.

## International Convention for the Prevention of Pollution from Ships

The International Convention for the Prevention of Pollution from Ships (MARPOL) was adopted on 2 November 1973 at the International Maritime Organisation and covered pollution (by oil, chemicals, harmful substances in packaged form, sewage and garbage) of the marine environment by ships from operational or accidental causes. It is a combination of two treaties adopted in 1973 and 1978 and has been amended through the years.

In 1978, a protocol was introduced that relates to the MARPOL Convention and the 1974 Convention on the Safety of Life at Sea. It included measures for tanker design and operation in response to a spate of oil tanker accidents in 1976–1977 and introduced stricter regulations for the survey and certification of ships. The 1978 MARPOL Protocol entered into force in 1983. It absorbed the parent MARPOL Convention, and the Convention and Protocol are to be read as one instrument which is referred to as MARPOL 73/78.

### *Relevance to development of an oceans plan*

There are numerous international and regional MEAs that are relevant to addressing the region’s aspirations under Pacific Islands Regional Oceans Policy (PIROP) (see 3.2.1) for a healthy ocean that sustains the livelihoods and aspirations of its peoples. Those international and regional agreements and conventions that are relevant for the PIROP and for a Framework for a Pacific Oceanscape (see 3.2.1) are **highly relevant** at a regional level to Tonga’s development of oceans management<sup>4</sup>.

## 2.2.2 Conventions identified in the Environment Management Act – Schedule 1

Schedule 1 of the Environment Management Act identifies the following international and regional conventions to which the Kingdom is a party.

### Convention on Biological Diversity

*(Adopted at Rio de Janeiro on 5 June 1992, acceded to by the Kingdom on 19 May 1998)*

The CBD has three main goals: conservation of biodiversity; sustainable use of biodiversity; and the fair and equitable sharing of benefits arising from the use of genetic resources. Its overall objective is to encourage actions which will lead to a sustainable future. It also covers biotechnology including through the Cartagena Protocol on Biosafety (see below).

There are synergies among the Rio Conventions (CBD, UNFCCC and the United Nations Convention to Combat Desertification, UNCCD). The CBD has signed memorandums of cooperation/understanding (MoC/MoU) and joint work programs with the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Ramsar Convention and the Convention on the Conservation of Migratory Species of Wild Animals (CMS) and a MoC with the Convention for the Regulation of Whaling.

<sup>4</sup> *ibid*

## **United Nations Framework Convention on Climate Change**

*(Adopted at New York on 9 May 1992, acceded to by the Kingdom on 20 July 1998)*

The UNFCCC sets an overall outline for intergovernmental efforts to tackle the challenge posed by climate change. It recognises that the climate system is a shared resource whose stability can be affected by industrial and other emissions of carbon dioxide and other greenhouse gases. The Convention enjoys near universal membership, enabling governments to gather and share information on greenhouse gas emissions, national policies and best practices, launch national strategies for addressing greenhouse gas emissions and adapting to expected impacts, including the provision of financial and technological support to developing countries, and cooperate in preparing for adaptation to the impacts of climate change.

UNFCCC is a key Rio international agreement. State Parties to the UNFCCC, CBD and UNCCD recognise the necessity to identify synergies and collaborate to ensure the effective implementation of these agreements. Given that climate change cuts across the sustainable development spectrum, there are synergies and scope for collaboration with other MEAs which should be actively sought.

## **Vienna Convention for the Protection of the Ozone Layer**

*(Adopted at Vienna on 22 March 1985, acceded to by the Kingdom on 29 July 1998)*

The Vienna Convention for the Protection of the Ozone Layer was agreed at the Vienna Conference of 1985 and entered into force in 1988. It is one of the most successful treaties of all time, having been ratified by 197 states (all United Nations members as well as the Holy See, Niue and the Cook Islands) as well as the European Union.

It acts as a framework for international efforts to protect the ozone layer. However, it does not include legally binding reduction goals for the use of chlorofluorocarbons, the main chemical agents causing ozone depletion. These are laid out in the accompanying Montreal Protocol.

## **Montreal Protocol**

*(Adopted at Montreal on 16 September 1987, acceded to by the Kingdom on 29 July 1998)*

The Montreal Protocol on Substances that Deplete the Ozone Layer is an international treaty designed to protect the ozone layer by phasing out the production of numerous substances that are responsible for ozone depletion. It was agreed on 16 September 1987, and entered into force on 1 January 1989, followed by a first meeting in Helsinki, May 1989. Since then, it has undergone eight revisions, the most recent in 2007 (in Montreal).

## **United Nations Convention to Combat Desertification**

*(Adopted at Paris on 17 June 1994, acceded to by the Kingdom on 25 September 1998)*

The UNCCD is a convention to combat desertification and mitigate the effects of drought through national action programs that incorporate long-term strategies supported by international cooperation and partnership arrangements.

The Convention, the only convention stemming from a direct recommendation of the Rio Conference's Agenda 21, was adopted in Paris, France on 17 June 1994 and entered into force in December 1996. It is the only internationally legally binding framework set up to address the problem of desertification. The Convention is based on the principles of participation, partnership and decentralization – the backbone of good governance and sustainable development.

## **Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Waste and to Control the Transboundary Movement and Management of Hazardous Waste within the South Pacific Region**

*(Adopted at Waigani, Papua New Guinea on 16 September 1995, ratified by the Kingdom on 22 May 2002)*

The Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region, also known as Waigani Convention, entered into force in 2001.

The objective of the Convention is to reduce and eliminate transboundary movements of hazardous and radioactive waste, to minimise the production of hazardous and toxic wastes in the Pacific region and to ensure that disposal of wastes in the Convention area is completed in an environmentally sound manner. The Waigani Convention is modelled on the Basel Convention and constitutes the regional implementation of the international hazardous waste control regime (Basel, Rotterdam and Stockholm Conventions). There are, however, some differences between the two Conventions: the Waigani Convention covers also radioactive wastes and extends to the EEZ (200 nautical miles) rather than the territorial sea (12 nautical miles) limit defined under the Basel Convention.

The Convention is also strongly related to the London Convention.

## **Cartagena Protocol 11 September 2003**

*(Adopted at Montreal on 29 January 2000, acceded to by the Kingdom on 18 September 2003)*

The Cartagena Protocol is a supplementary agreement to the CBD and seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology. It establishes an advance informed agreement procedure for ensuring that countries are provided with the information necessary to make informed decisions before agreeing to the import of such organisms into their territory. The protocol also establishes a Biosafety Clearing House to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the protocol.

The protocol contains reference to a precautionary approach and reaffirms the precaution language in Principle 15 of the Rio Declaration on Environment and Development.

## **World Heritage Convention 1972**

*(Adopted at Paris on 23 November 1972, acceded to by the Kingdom on 30 April 2004)*

The most significant feature of the 1972 World Heritage Convention (WHC) is that it links together in a single document the concepts of nature conservation and the preservation of cultural properties. The Convention recognises the way in which people interact with nature, and the fundamental need to preserve the balance between the two.

The WHC works closely, under signed memorandums of cooperation, with the CBD and the Ramsar Convention and has provisions for strengthening synergies with other agreements, including the other biodiversity-related conventions.

## **Kyoto Protocol 16 February 2005**

*(Adopted at Kyoto on 11 December 1997, acceded to by the Kingdom in January 2008)*

The major feature of the Kyoto Protocol, which is closely linked to the UNFCCC is that it sets binding targets for 37 industrialised countries and the European Community to reduce greenhouse gas emissions. The reductions amount to an average of five per cent against 1990 levels over the period 2008–2012. The protocol places a heavier burden on developed nations under the principle of “common but differentiated responsibilities.”

The major distinction between the Kyoto Protocol and the UNFCCC is that while the Convention encouraged industrialised countries to stabilise greenhouse gas emissions, the protocol commits them to do so.

## **Stockholm Convention on Persistent Organic Pollutants**

*(Adopted at Stockholm, on 23 May 2001, ratified by the Kingdom on 23 October 2009)*

The Stockholm Convention on Persistent Organic Pollutants is an international environmental treaty, signed in 2001 and effective from May 2004, that aims to eliminate or restrict the production and use of persistent organic pollutants (POPs).

Key elements of the Convention include the requirement that developed countries provide new and additional financial resources and measures to eliminate production and use of intentionally produced POPs, eliminate unintentionally produced POPs where feasible, and manage and dispose of POP wastes in an environmentally sound manner.

Precaution is exercised throughout the Stockholm Convention, with specific references in the preamble, the objective, and the provision on identifying new POPs.

## Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal

(Adopted at Basel in March 1989, acceded to by the Kingdom on 26 March 2010)

The Basel Convention is an international treaty that was designed to reduce the movements of hazardous waste between nations, and specifically to prevent transfer of hazardous waste from developed to less developed countries (LDCs). It does not, however, address the movement of radioactive waste. The Convention is also intended to minimise the amount and toxicity of wastes generated, to ensure environmentally sound management as closely as possible to the source of generation, and to assist LDCs in environmentally sound management of the hazardous and other wastes they generate.

The Convention was opened for signature on 22 March 1989, and entered into force on 5 May 1992. As of January 2015, 182 states and the European Union are parties to the Convention.

## Rotterdam Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade

(Adopted at Rotterdam in September 1998, acceded to by the Kingdom on 31 March 2010)

The Rotterdam Convention is a multilateral treaty to promote shared responsibilities in relation to importation of hazardous chemicals. The Convention promotes open exchange of information and calls on exporters of hazardous chemicals to use proper labelling, include directions on safe handling, and inform purchasers of any known restrictions or bans. Signatory nations can decide whether to allow or ban the importation of chemicals listed in the treaty, and exporting countries are obliged to make sure that producers within their jurisdiction comply.

### *Relevance to development of an oceans plan*

Each of these Conventions relates to an aspect of oceans management and Tonga is bound by legislation to abide by them. Consequently they are **highly relevant** in some cases (e.g. the CBD) and **moderately relevant** in other cases to oceans management in Tonga.

### **2.2.3** Relevant Conventions to which Tonga is not a signatory

While Tonga is not a signatory to the following Conventions they are relevant to the development of marine spatial planning and consequently the Kingdom should consider whether they should be adopted.

#### Convention on International Trade in Endangered Species of Wild Fauna and Flora 1 July 1975

CITES aims to ensure that international trade in specimens of wild animals and plants does not threaten their survival.

Objective 5.1 of the CITES Strategic Vision (2000–2005) is “*to ensure an optimal working relationship with UNEP [United Nations Environment Programme], as well as close coordination and synergy with CBD and other relevant multilateral environmental agreements*”. It has signed memorandums of cooperation and joint work programs with the CBD and CMS and specifically mentions strengthening of links with the Convention for the Regulation of Whaling.

#### Convention on Wetlands (Ramsar) 1975

The “Ramsar Convention” commits member countries to maintain the ecological character of their wetlands of international importance and to plan for the wise or sustainable use of all of the wetlands in their territories, under three pillars of: ensuring the conservation and wise use of wetlands the Convention has designated as wetlands of international importance; including as far as possible the wise use of all wetlands in national environmental planning; and consulting with other parties about implementation of the Convention, especially in regard to transboundary wetlands, shared water systems, and shared species. The Convention uses a broad definition of the types of wetlands covered in its mission, including lakes and rivers, swamps and marshes, wet grasslands and peatlands, oases, estuaries, deltas and tidal flats, nearshore marine areas, mangroves and coral reefs, and human-made sites such as fish ponds, rice paddies, reservoirs, and salt pans.

The Ramsar Convention has signed MoCs with the CBD, CMS, UNCCD, WHC, UNFCCC and various regional conventions and basin commissions.

## Convention for the Regulation of Whaling 1946

The purpose of the Convention is to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry. Measures that govern the conduct of whaling throughout the world are laid down in the Schedule to the Convention and include, among others, provision for the complete protection of certain species, designation of specified areas as whale sanctuaries, setting limits on the numbers and size of whales which may be taken, prescribing open and closed seasons and areas for whaling, and prohibiting the capture of suckling calves and female whales accompanied by calves.

Close coordination between the Convention for the Regulation of Whaling and the CBD, CMS and CITES is necessary given cross-cutting issues that are generic to each of these instruments. For example, CITES resolution 11.4 specifically calls for strengthening of collaboration with the International Whaling Commission and the Convention regarding the conservation and the trade with cetacean specimens.

### *Relevance to development of an oceans plan*

While Tonga is not yet a signatory to these Conventions they are all relevant to the maintenance of healthy coastal and oceanic ecosystems and consequently are **highly relevant** to Tonga's aspirations to manage its oceans. Consequently, we recommend that Tonga consider becoming a signatory to these Conventions as part of the process of developing oceans management in Tonga.

## 2.3 POLICIES, STRATEGIES AND PLANS

### 2.3.1 Regional policies, strategies and plans

Regional policies, strategies and plans have been developed that are relevant to Tonga's marine resource management efforts. Some of these are directly relevant while some are **marginally** or **not relevant**. The following initiatives are highly or **moderately relevant** and are included to provide a regional context for the development of oceans policy, planning and management, including marine spatial planning, in Tonga.

#### The Pacific Plan for Strengthening Regional Cooperation and Integration 2007

The Pacific Plan was endorsed by Leaders at the Pacific Islands Forum (PIF) meeting in October 2005. This revised version of the Pacific Plan follows decisions taken by Leaders at the Forum meeting in October 2007.

The goal of the Pacific Plan is to enhance and stimulate economic growth, sustainable development, good governance and security for Pacific countries through regionalism. The Pacific Plan identifies initiatives within an implementation framework that extends to 10 years. It provides a framework for effective and enhanced engagement between PIF countries and Pacific territories and with their non-state actors and development partners. It does not limit the sovereign right of PIF member countries to determine their own national goals and priorities. It may also guide but does not restrict bilateral development programs and activities.

### *Relevance to development of an oceans plan*

The Pacific Plan provides a broad framework for regional cooperation on sustainable development among other things and is therefore considered to be **highly relevant** to Tonga's oceans planning. The Framework for a Pacific Oceanscape document stated that "*The pre-eminent regional policy guidance on oceans and resource management are the Pacific Plan and the Pacific Island Regional Ocean Policy*".

#### Pacific Island Regional Ocean Policy 2005

At their 1999 meeting in Tonga, PIF Leaders endorsed a list of recommendations emerging from the Pacific Regional Follow-up Workshop on the Implementation of the Law of the Sea. Although most of the recommendations could only be implemented by national governments, one of the recommendations – that a regional ocean policy be produced – was adopted as a regional level initiative. The Marine Sector Working Group of the Council of Regional Organisations in the Pacific (CROP) was tasked with developing the policy.

The PIROP is intended to promote the Pacific region as an ocean environment in support of sustainable development. It is not a legal document, but its guiding principles are founded on international law, as reflected in UNCLOS and other international and regional agreements.

These guiding principles are:

- improving our understanding of the ocean;
- sustainably developing and managing use of ocean resources;
- maintaining the health of the ocean;
- promoting the peaceful use of the ocean; and
- creating partnerships and promoting cooperation.

#### *Relevance to development of an oceans plan*

This is a **highly relevant** and useful reference document for developing a national oceans policy and plan and should be reviewed by the oceans policy drafting group to determine whether there should be any linkages with, or adoption of, the contents in the PIROP.

The level of endorsement by PIF member countries could have some bearing on how effective the PIROP is. If not endorsed and adopted, its effectiveness could be low.

### **Framework for a Pacific Oceanscape: a catalyst for implementation of ocean policy (2010)**

The Framework for a Pacific Oceanscape document has been developed to support policy implementation by:

- providing a (baseline) review of the Pacific Island Region's ocean policy environment and the status of its institutional and operational framework;
- providing a summary of progress in implementation of the ocean-related policy, in particular, the PIROP, identified as a key priority initiative under the Pacific Plan in 2005, as well as key issues that need to be addressed; and
- presenting a Framework for a Pacific Oceanscape, drawing on the PIROP, its principles and aspirations, identifying critical and emerging priority issues and opportunities of strategic significance for ocean management and conservation.

The three components envisaged under the Pacific Oceanscape are:

- Pacific Ocean Arcs: this component aims to foster development of terrestrial and marine protected areas (MPAs), based on the natural archipelagic nature of some Pacific Island Countries and Territories (PICTs), including consideration of territorial domains associated with EEZs, and opportunities for protected areas beyond these EEZs, in the surrounding high seas. For many such archipelagos, the implementation of Ocean Arcs will necessitate a transboundary approach and associated collaboration between PICTs.
- Climate change and ocean security: this component recognises the emerging issues of impact to our ocean, including ocean acidification and increasing ocean temperatures. This component also aims to investigate governance issues for our ocean including the security of EEZs and associated management and monitoring of high seas areas.
- Leadership and learning: this component cuts across the first two components in that it seeks to support learning across initiatives such as protected areas and to support targeted research, learning and leadership in key areas for both the other components.

#### *Relevance to development of an oceans plan*

The Pacific Plan was adopted by Pacific Island Forum Leaders in 2005 as the principal regional policy instrument for strengthening and deepening regional cooperation, regional integration and the regional provision of public goods and services, under four pillars of sustainable development; economic growth; governance and security. The framework was developed as part of the implementation of the Pacific Plan and relates significantly to the PIROP.

This framework document is therefore **highly relevant** to the development of an oceans policy and plan in Tonga. It provides a significant amount of information on oceans policy at the regional level to underpin national efforts in a coordinated and harmonised way.

## Pacific Islands Framework for Action on Climate Change 2006-2015

Pacific Island Leaders adopted the Pacific Islands Framework for Action 2006–2015 (PIFACC) in 2005 and directed SPREP to develop an action plan to implement the policy.

The main structure of the policy outlines a vision: “*Pacific island people, their livelihoods and the environment resilient to the risks and impacts of climate change*”. The PIFACC has six guiding principles:

- Implementing adaptation measures;
- Governance and decision making;
- Improving our understanding of climate change;
- Education, training and awareness;
- Contributing to global greenhouse gas reduction;
- Partnerships and cooperation.

The Pacific Climate Change Roundtable is responsible for monitoring and evaluating the PIFACC. It meets annually and comprises multiple stakeholders including PICTs, regional and international implementing agencies, civil society, non-government organisations and donor partners. The main objectives of the roundtable are:

- To help update the PICTs on regional and international actions undertaken in support of the PIFACC and its action plan;
- To provide a clear overview of ongoing and planned activities at the national and regional levels, with responsible agencies or entities, and agree on mechanisms for measuring progress, identifying difficulties, and addressing actions needing special attention;
- To assist donors to understand climate change initiatives in the region and allow for better targeted assistance to gaps in the action plan;
- To share lessons learned from best practices in the implementation of climate change programmes;
- To engage a wide range of stakeholders and regional organisations;
- To provide an opportunity to prepare for international meetings of the UNFCCC; and
- To disseminate information on new and existing funding modalities and opportunities.

It is widely acknowledged that disaster risk reduction and climate change adaptation share a common focus in that they are both concerned with reducing the vulnerability of communities and contributing to sustainable development. Consequently, efforts are underway to address how best to integrate risk reduction and adaptation initiatives at local, national, regional and international levels.

### *Relevance to development of an oceans plan*

This instrument is at least potentially ***moderately relevant*** to development of an oceans plan as it defines the arrangements for building resilience to the risks and impacts of climate change, an important issue for any marine spatial planning process.

## Secretariat of the Pacific Community Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013-2016

The goal of the Fisheries, Aquaculture and Marine Ecosystems (FAME) Division of the Secretariat of the Pacific Community (SPC), in line with the priorities of member countries and territories is that:

*“the fisheries resources of the Pacific Islands region are sustainably managed for economic growth, food security and environmental conservation.”*

The Division focuses on fishery-induced threats to resources, while taking account of broader ecosystem management principles.

The plan relates to broad global and regional goals, but also incorporates many of the priorities identified by individual member countries and territories in the SPC Joint Country Strategy process over recent years.

It has also responded to changes in the work program requested by Heads of Fisheries and regional organisations. The FAME Strategic Plan is reviewed and revised every two years.

SPC's corporate plan responds to the aspirations of its members to see key development outcomes in three areas:

- sustainable economic development;
- sustainable human and social development; and
- sustainable natural resources and environmental management and development.

A fourth outcome calls for '*an efficient and effective organisation with the capability and partnerships required to provide optimum services to members*'.

The contribution of FAME relates mainly to the third key development outcome – sustainable natural resource management – but work by the Division addresses all four outcomes.

#### *Relevance to development of an oceans plan*

The FAME Strategic Plan is due for review and replacement in 2016. It would be useful to understand the outcomes of its review and revision into the next plan.

This is ***moderately relevant*** to oceans management in Tonga. Fishery resource management is a high priority issue within oceans management and use. While this strategy is regional it should be compatible and aligned with national strategies, which are the more relevant for Tonga's oceans policy.

### **Pacific Regional Environment Program Strategic Plan, 2011-2015**

The SPREP Strategic Plan is, as member countries and territories requested at the 2009 South Pacific Regional SPREP Meeting, a single integrated plan that identifies the priorities, strategies and actions for addressing challenges over the next five years. It was formally adopted at the 21st SPREP Meeting in Papua New Guinea in September 2010.

This plan is the framework guides SPREP's annual work plans and focuses its vision for five years.

The 2011–2015 Strategic Plan is based on four strategic priorities identified and agreed to by members in the 2010 planning process:

- Climate change;
- Biodiversity and ecosystem management;
- Waste management and pollution control; and
- Environmental monitoring and governance.

A number of strategies are being used to deliver the plan. These strategies include:

- Pacific Islands Framework for Action on Climate Change;
- Action Strategy for Nature Conservation;
- Solid Waste Management Strategy for the Pacific Region;
- Regional Wetlands Action Plan;
- Review of Regional Meteorological Services; and
- Guidelines for Invasive Species Management in the Pacific.

#### *Relevance to development of an oceans plan*

This version of the SPREP Strategic Plan is at the end of its useful life. However, the thematic areas and approaches are useful to consider in developing Tonga's approach to marine spatial planning.

The SPREP Strategic Plan is therefore ***moderately relevant*** in its current form and it is recommended that the revised strategic plan for the next planning period be used as a preferred reference in the development of a national oceans plan.

## SPC SOPAC Strategic Plan 2011-2015

The goal of the Applied Geoscience and Technology Division (formerly SOPAC, now the Geoscience Division) of SPC is to apply geoscience and technology to realise new opportunities for improving the livelihoods of Pacific communities.

The purpose of the Strategic Plan is to ensure that PICTs are better able to:

- Monitor and assess natural resources, systems and processes;
- Develop, manage and govern their natural resources; and
- Manage vulnerability and risks in their countries.

SOPAC has identified key issues facing its members as:

- coastal development, urbanisation and vulnerability;
- maritime boundaries;
- climate change and adaptation;
- natural resource development; and
- information management and analysis.

### *Relevance to development of an oceans plan*

The current SOPAC Strategic Plan expired in 2015, and is **moderately relevant** in its current form. It is recommended that the revised plan for the next planning period be used as a preferred reference.

## Pacific Community Strategic Plan 2016-2020 (Sustainable Pacific development through science, knowledge and innovation)

The Pacific Community Strategic Plan expresses SPC's resolve to enhance its performance by focusing on the quality of its expertise, the effectiveness of its interventions, the strength of its partnerships, and on innovation. The plan has several goals that are relevant to MPA development in Tonga:

- Pacific people benefit from sustainable economic development.
  - Strengthen sustainable management of natural resources (fisheries, forestry, land use, agriculture, minerals, water)
  - Improve pathways to international markets (mobility, private enterprises, phytosanitary and biosecurity standards supporting trade)
  - Strengthen sustainable transport and energy security
  - Strengthen access to and use of development statistics in policy development and monitoring progress.
  - Strengthen the sustainable management of natural resources.
    - **Fisheries:** SPC provides scientific, technical and management advice to PICTs and regional agencies to support the sustainable management of oceanic, nearshore and coastal fisheries resources for economic growth, food security and environmental conservation. SPC is the region's centre for tuna fisheries science and information.
    - **Land and deep-sea minerals:** SPC assists PICTs in the development of legislation for the regulation and management of land and deep-sea minerals across the Pacific. This includes providing assistance in the delimitation of maritime zones, shared boundary solutions and extended continental shelf submissions. SPC supports the development of marine cadastre systems that is required for PICTs to exercise their jurisdictional rights and responsibilities over ocean space.
    - **Water resources:** SPC supports water resource management strategies, including through capacity building, awareness raising and advocacy, monitoring, assessment and resource protection, with a focus on water resources in climatic extremes (such as droughts and flooding).

### *Relevance to development of an oceans plan*

The Pacific Community Strategic Plan is **moderately relevant** to oceans planning and management as it enables Tonga to seek technical and resourcing assistance from the SPC for activities that fall within the strategy. Tonga can therefore align its implementation plans and identify/prioritise activities to be supported by SPC.

## Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008-2013 (Apia Policy)

The Apia Policy was developed in response to a directive by PIF Leaders under an amendment made to the Pacific Plan at their meeting in Tonga in 2007. This policy also accommodates the Vava'u Declaration on Pacific Fisheries Resources, which places high priority on *'the development and management of coastal/inshore fisheries and aquaculture to support food security, sustainable livelihoods and economic growth for current and future generations of Pacific people'*.

The Apia Policy considers the situation and needs of PICTs as stated in the *'Strategic plan for fisheries management and sustainable coastal fisheries in Pacific Islands'*, which was endorsed by Heads of Fisheries in 2003.

The Apia Policy is the first regional mechanism developed to harmonise national policies and activities that address the long-term sustainability of coastal fisheries resources and maintenance of healthy marine ecosystems. It provides guiding principles for strategic action at national and regional levels to address the problems and challenges encountered by PICTs in managing their coastal fisheries.

Strategic actions identified under the Apia Policy include provision of technical assistance to PICTs to translate international instruments and guidelines into harmonised policy directions that can be incorporated in national plans, national legislation, national economic development strategies, fisheries sector plans, environment management plans, etc. for implementation at a local or national level. This technical assistance may consider changes that may have occurred over time within coastal fisheries management. It also identifies and addresses external and internal factors, such as government structure, political history, national laws and regulations, influence of traditional authorities, and institutions such as customary and traditional rights within PICTs, that affect the policy formulation process.

However, the policy is currently out of date and there is no evidence that it has been reviewed or revised.

### *Relevance to development of an oceans plan*

Because it is out of date, the Apia Policy is **moderately relevant** to an oceans management policy and plan in Tonga – it provides an (outdated) regional policy framework for inshore fisheries. Its main value lies in the endorsement by Heads of Fisheries Departments; it is still likely to be a useful guideline for how fisheries management might be incorporated into oceans planning.

## 2.3.2 Regional agreements, arrangements, conventions and treaties

### Niue Treaty 1992

Tonga is a party to the Niue Treaty. This treaty calls for cooperation by Pacific states to ensure monitoring/surveillance and protection of the seas and marine resources, mainly tuna, is undertaken. The Ministry of Fisheries is the Tongan Government's technical focal point for the Niue Treaty.

### Niue Treaty Subsidiary Agreement 2012

Tonga has yet to ratify this Agreement so it is **not relevant** at this stage. The subsidiary agreement will affect implementation of the Niue Treaty.

### The Tokelau Arrangement 2014

Tonga is a signatory to the Tokelau Arrangement. This Arrangement was established to conserve and sustainably harvest southern Pacific albacore tuna. Currently parties are requested to adapt a "target reference point" for this species, which is yet to be confirmed (some parties are calling for a 70% target reference point).

### South Pacific Forum Fisheries Agency Convention 10 July 1979

This Convention sets the basis for the Forum Fisheries Agency (FFA) and for the work carried out by FFA.

## United States Multilateral Fisheries Treaty 1988

Tonga is a party to the U.S. Multilateral Fisheries Treaty, which regulates the conditions for fishing by the U.S.A. in the Pacific Islands Parties' waters. The treaty was extended until 2013 but we are unable to confirm whether it has been renewed.<sup>5</sup>

## Western and Central Pacific Fisheries Commission 2004

Tonga is a state party to the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean that establishes the Western and Central Pacific Fisheries Commission (WCPFC). The WCPFC regulates fishing activities in international waters/high seas outside of coastal state EEZs. It is the mediating body for distant-water fishing nations and coastal states in the Pacific region.

## Te Vaka Moana Arrangement

Tonga is a party to the Te Vaka Moana Arrangement (TVMA). Cooperation between Polynesian countries (Cook Islands, New Zealand, Niue, Samoa, Tokelau and Tonga) was formalised through the establishment and signing of the TVMA in January 2010. The arrangement builds on previous work and provides a foundation to design and implement initiatives to improve collaboration in a range of fisheries sectors, including fisheries management, science, industry cooperation, and monitoring, control and surveillance (MCS). Specific projects include the development of a subsidiary arrangement under the Niue Treaty on Surveillance and Law Enforcement and the progression of a Polynesian Fisheries Development Package. New Zealand officials are developing a concept note that will guide program design on a program of support for TVMA initiatives. The arrangement will enable participants to achieve a set of common objectives, including:

- strengthening cooperative relationships among the participants, based on mutual trust and understanding, to further shared goals, such as increasing the economic benefits from fisheries resources and protecting the contribution they make to the food security of communities;
- assisting with ongoing capacity development and enhancing sub-regional capability by sharing resources, including MCS resources;
- promoting information sharing among participants on fisheries policy, management, development, and science as well as fishing industry-related issues, MCS, and other areas of technical expertise;
- enhancing the ability of participants to cooperate and promote the interests of the sub-region in regional organisations and international forums dealing with fisheries issues, including in collaboration with FFA and SPC;
- promoting cooperation among participants on MCS, both domestically and on the high seas, including by seeking to increase the value of fisheries through countering illegal, unregulated and unreported (IUU) fishing; and
- supporting and strengthening fisheries development initiatives, such as through links between the fishing industry sectors.

The arrangement will provide numerous strategic benefits, especially by strengthening the Polynesian voice within FFA and WCPFC processes.

### *Relevance to development of an oceans plan*

Each of these instruments is at least potentially ***moderately relevant*** to an oceans management policy and/or plan as they define arrangements for managing/sharing regional fish stocks, an important issue for any oceans policy process.

5 WWF Factsheet 2011 – Offshore Fisheries – Ensuring the Sustainability of Pacific Tuna – US Treaty

### 2.3.3 National policies, strategies and plans

The following national policies, strategies and plans are relevant to Tonga's efforts to develop ocean policy, planning and management, including marine spatial planning.

#### Tongan Strategic Development Framework 2015–2025

The Tongan Strategic Development Framework 2015–2025 provides an overarching framework for the long-term development of Tonga. The framework:

- is embedded within the National Motto and understanding of culture;
- analyses and identifies the high-level societal results required to improve the quality of life of Tongan citizens;
- provides a cascading structure for the discussion of results;
- informs all national stakeholders and development partners of the broad organisational outcomes that are needed to support the national outcomes and impacts;
- guides the formulation of sector plans, corporate plans (of ministries, departments and agencies) and the medium-term budgetary framework through which resources are allocated;
- guides the development of Government of Tonga external economic relations and the country strategies and assistance programs of development partners; and
- provides indicators, with targets, to facilitate monitoring and measurement of progress.

The plan is structured into national outcomes and pillars which are grouped into organisational outcomes.

National Outcome F (Land, Environment and Climate) is particularly relevant to oceans planning and management. This outcome focuses on a more inclusive, sustainable and effective land administration and environment management, with resilience to climate change and risk. The plan acknowledges that Tonga has experienced many examples of short-term growth based on the non-sustainable exploitation of renewable resources, which could have provided a steady income stream if better managed. These have included both marine and land-based resources. In addition, since Tonga is highly sensitive to severe natural events that are likely to become worse with ongoing climate change, it is essential that Tonga seeks to use its resources in a sustainable manner and build greater resilience to extreme natural events and the dangers from climate change to ensure ongoing growth and development. The damage wrought by severe natural events can be particularly damaging to isolated communities and vulnerable groups. To protect the quality of life, special attention to their needs will be built into environmental assessments and disaster management response.

#### *Relevance to development of an oceans plan*

The Plan is **highly relevant** as it relates to:

<ul style="list-style-type: none"><li>▪ MEAs</li><li>▪ Marine biodiversity and conservation</li><li>▪ Living resources (inshore and oceanic fisheries and genetic material)</li><li>▪ Monitoring, control and surveillance</li><li>▪ Non-living resources (oil, gas and minerals)</li><li>▪ Energy resources (gas hydrates, wave and ocean thermal)</li><li>▪ Water resources management</li><li>▪ Tourism</li><li>▪ Pollution and waste management</li><li>▪ Coastal systems</li><li>▪ Security (defence, surveillance, monitoring and enforcement)</li></ul>	<ul style="list-style-type: none"><li>▪ Maritime transport</li><li>▪ Trade (globalisation and trade liberalisation)</li><li>▪ Natural and environmental disasters</li><li>▪ Traditional knowledge and intellectual property</li><li>▪ Governance and management</li><li>▪ Knowledge management and exchange</li><li>▪ Capacity building (training, education and awareness)</li><li>▪ Science and technology</li><li>▪ Climate change and sea-level rise</li><li>▪ Financial resources – mechanisms</li><li>▪ Development of policies and plans</li><li>▪ Marine spatial planning</li></ul>
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## Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010-2015

The Climate Change Adaptation and Disaster Risk Management Action Plan has six goals that are supported by specific objectives and outcomes:

1. Improved governance for climate change adaptation and disaster risk management (mainstreaming, decision making, organisational and institutional policy frameworks)
2. Enhanced technical knowledge base, information, education and understanding of climate change adaptation and effective disaster risk management
3. Analysis and assessments of vulnerability to climate change impacts and disaster risks
4. Enhanced community preparedness and resilience to impacts of all disasters
5. Technically reliable, economically affordable and environmentally sound energy to support the sustainable development of the Kingdom
6. Strong partnerships, cooperation and collaboration within government agencies and with civil society, non-government organisations and the private sector.

It was decided that the joint action plan will focus on gaps to add value to numerous existing initiatives already established by the government and to increase the pace of climate change adaptation. In addition, it was decided not to duplicate existing efforts but to concentrate on priority issues where additional or new resources are required for strengthening Tonga's resilience to climate change and natural disaster impacts. The decision acknowledges that some concerns and initiatives, such as water and sanitation, early warnings, meteorological services capacity building and community-based vulnerability and adaptation among others, are already covered by existing and planned government initiatives.

### *Relevance to development of an oceans plan*

Although the joint action plan is at the end of its implementation period it is still **highly relevant** until a review is conducted and a revised plan prepared, as it incorporates the following sectors:

- MEAs
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Non-living resources (oil, gas and minerals)
- Energy resources (gas hydrates, wave and ocean thermal)
- Water resources management
- Coastal systems
- Natural and environmental disasters
- Governance and management
- Knowledge management and exchange
- Capacity building (training, education and awareness)
- Science and technology
- Climate change and sea-level rise
- Financial resources – mechanisms
- Development of policies and plans
- Marine spatial planning

## Fisheries Sector Plan 2016-2026

A new Fisheries Sector Plan was released in 2016, but a copy was not available at the time of completing the report. What is known, however, is that the plan has the following purposes:

- a. Identify priority areas for investment that will maximise the sustainable contribution of the fisheries sector to food security and economic growth;
- b. Present and cost specific programs/activities to achieve these priorities;
- c. Identify possible sources of financing for the specific programs/activities; and
- d. Provide a framework for implementation and to monitor progress in the short to medium term.

### *Relevance to development of an oceans plan*

While details of the plan were not available at the time of writing, it is expected that the plan is **potentially highly relevant** to oceans management in Tonga as it is intended to provide the detailed programs and actions for fisheries management in the Kingdom.

## Coastal Community Management Plans

[For 'O'ua Island, 'Atataa Island, 'Eueiki Island, Ovaka Island, Felemea Village, Nomuka Island, Taunga Island and Fafa Island. Also includes Special Management Area Order [Gazette Supplement 20 of 2004 - made under section 13(1) of the Fisheries Management Act 2002 for Teleki Tonga (South Minerva Reef) and Teleki Tokelau (North Minerva Reef)]

Coastal Community Management Plans (CCMP) are made under the *Fisheries Management Act 2002* and *Fisheries (Coastal Communities) Regulations 2009*. The CCMP statutory objective is to implement any fishery plan for the conservation, management, sustainable use and development of fisheries resources in a Special Management Area (SMA). All SMAs have developed a CCMP except for Teleki Tonga and Teleki Tokelau.

Each CCMP aims to increase the amount of marine resources in the SMA waters and to improve fish catch by promoting sustainable fishing practices in the inshore area.

The objectives of the CCMPs are all similar with minor variations:

- Minimize the decline of fish and other marine organisms in the inshore area
- Protect and conserve biodiversity and other natural values of the SMA
- Ban the use of destructive fishing methods
- Limit the number of outsiders fishing in the area
- Restore the health of the fish habitat allowing the marine organisms to recover
- Sustainably harvest and manage the fisheries that are exclusive to the area
- Ban/prohibit specific, destructive fishing activities
- Promote/increase awareness and enforce compliance of fisheries laws and the use of sustainable fishing and harvesting methods
- Manage pollution in the community
- Develop alternative and sustainable income generating activities
- Establish effective monitoring of both biological and socio-economic impacts
- Establish good partnerships between government agencies, non-governmental organisations, the community and other stakeholders
- Support related sectors such as tourism (Fafa Island Resort) and maritime boundaries/sovereignty (Telekitonga and Telekitokelau islands)

### Relevance to development of an oceans plan

The mechanism to establish SMAs under the *Fisheries Management Act 2002* and *Fisheries (Coastal Communities) Regulations 2009* is **highly relevant** as it relates to:

- MEAs
- Maritime boundaries
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Tourism
- Pollution and waste management
- Coastal systems
- Natural and environmental disasters
- Traditional knowledge and intellectual property
- Governance and management
- Knowledge management and exchange
- Capacity building (training, education and awareness)
- Science and technology
- Financial resources – mechanisms
- Development of policies and plans
- Marine spatial planning

## National Biodiversity Strategy and Action Plan

(Including the Kingdom of Tonga's Fifth National Report to the Convention on Biodiversity 2014)

The objectives for marine ecosystems in the NBSAP are:

Objective 2.1 – Managing impacts of land-based activities

To minimise the adverse impact of land-based activities on coastal and marine species and ecosystems.

Objective 2.2 – Marine conservation areas

To expand the existing network of protected areas to effectively conserve major coastal and marine ecosystems and habitats of biological and socio-economic value.

Objective 2.3 – Sustainable management of marine biodiversity

To promote the use of environmentally sound practices in the management of marine resources.

Objective 2.4 – Information, research and monitoring

To promote scientific research and regular monitoring of critical marine ecosystems, and the proper management of scientific data to support the conservation and sustainable management of marine ecosystems.

Objective 2.5 – Public awareness and education

To enhance public knowledge and understanding of Tonga's marine ecosystems and of issues related to their conservation as a means of fostering public support for marine conservation objectives.

The objectives for mainstreaming biodiversity conservation are:

Objective 7.1 – Legislation, policies and plans

To integrate concepts of conservation and sustainable use of biodiversity into all relevant sectoral policies, programmes and plans.

Objective 7.2 – Multi-sectoral collaboration

To improve and strengthen multi-sectoral collaboration among all relevant sectors and stakeholders in support of biodiversity conservation and natural resources management.

Objective 7.3 – Environmental impact assessment

To ensure that environmental and social impacts of all proposed major projects and activities are thoroughly assessed using approved EIA guidelines and standards prior to their implementation.

Objective 7.4 – Economic valuation

To encourage the quantification of benefits derived from the use of biodiversity and from other ecosystem services to support the full integration of biodiversity conservation into sustainable development planning and decision making.

Each of these objectives is supported by a range of strategies and actions.

### *Relevance to development of an oceans plan*

The NBSAP and report are **highly relevant** as they incorporate the following sectors:

- MEAs
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Pollution and waste management
- Coastal systems
- Natural and environmental disasters
- Traditional knowledge and intellectual property
- Governance and management
- Knowledge management and exchange
- Capacity building (training, education and awareness)
- Science and technology
- Climate change and sea-level rise
- Financial resources – mechanisms
- Development of policies and plans
- Marine spatial planning (including protected areas)

## Environmental Management Plan for Fanga'uta Lagoon System

The Environmental Management Plan (EMP) for Fanga'uta Lagoon System was prepared following local community concerns raised over the future of the lagoon system:

- Catching smaller and fewer fish
- Rubbish and litter
- Loss of mangroves and erosion that threatens properties
- Loss of seagrass
- Sedimentation
- Pollution
- Loss of species and habitats.

The EMP was developed to manage these impacts by regulating use through zoning. The EMP was designed to improve existing conditions in the lagoon and to ensure that the lagoon provides the maximum goods and services in the future.

The eight proposed zones, their allowed and excluded uses are shown in Table 1.

**TABLE 1** Proposed zoning of Fanga'uta Lagoon System

ZONE	ACTIVITIES
<b>Zone 1: Lagoon Entrance Fisheries Area</b>	The purpose of the zone is to allow for subsistence and limited commercial fishing and aquaculture that does not require feeding of stock. At the same time, this zone is designed to preserve the migration routes of all fishes that spawn outside of the lagoon, and those whose juveniles use the lagoon as a nursery. Activities that could damage the habitats in this region of the lagoon, such as dredging, reclamation and reef or seagrass damage, have been prohibited to help ensure that fishes continue to use the area to migrate.
<b>Zone 2: Lagoon Subsistence Fisheries Area</b>	This zone encompasses the most important patches of mangroves remaining in the lagoon, near Nukuhetulu and at Nukunukumotu Island, plus those in some smaller patches around the lagoon. The areas of water beneath mangrove trees are included in this zone. Within this zone, no commercial fisheries are allowed, but subsistence fisheries are allowed.
<b>Zone 3: Conservation Areas</b>	The purpose is to create areas of mangrove forest that are set aside to function fully as fish habitats and part of the lagoon's cleaning system. Apart from recreation and research, each to be carried out without any harm to the mangrove system, no fishing, collecting or harvesting of wood, mangrove roots or medicines are allowed in these areas.
<b>Zone 4: Sustainable Mangrove Use Area</b>	All remaining mangrove areas in the lagoon are classified in Zone 4. This zone allows for sustainable use of the mangrove resources, including for wood, dyes and medicines. It also allows for collection of fishes and other animals within the mangroves.
<b>Zone 5: Village and Agricultural Uses</b>	This zone covers most of the lagoon system watershed. It allows for village settlements as well as agricultural uses of the land. The focus of lagoon management in this area is on minimising the movements of nutrients, mud, sewage and chemicals into the lagoon via the groundwater, any drainage systems or run-off. It is also focused on proper rubbish disposal.
<b>Zone 6: Village Special Resource Use Areas</b>	This area has been specially allocated at the request of some of the village communities. The Village Special Use Zone is specific to each village and sets aside exclusive use of the lagoon's resources in the area bound by the shoreline in front of a village and out to a line 50 m into the lagoon from mean low-water mark.
<b>Zone 7: Urban Use Area</b>	This zone covers about half of the urban area of Nuku'alofa. It allows for urban settlement, industrial uses, and limited reclamation and seawalls.
<b>Zone 8: Special Public Use Areas</b>	Zone 8 has been included to allow the public of Nuku'alofa access to the foreshores of the lagoon system for recreational, educational and other purposes.

### *Relevance to development of an oceans plan*

The EMP provides an example of marine spatial planning which could either be replicated elsewhere or provide lessons on how this approach could be improved. The EMP is **highly relevant** to oceans planning in Tonga because of this.

## Tonga Deepwater Fisheries Management Plan 2014-2016

The Deepwater Fisheries Management Plan was developed in accordance with the Fisheries Management Act objective to promote the conservation, management, sustainable use of Tonga's fisheries resources, and to exercise control of any Tongan fishing vessels fishing on the high seas. The plan focuses on Tonga's deep-water fisheries to ensure responsible fishing, participation by stakeholders, sustainable use and an economically viable fishing sector for Tonga. The plan covers the fisheries activities and entities that engage in the Tongan drop line bottom, deep-water drop line and deep-water snapper fisheries and includes exploratory and test fishing and marine scientific research.

The goals of the plan are:

### **Goal 1:**

- To achieve maximum economic yield by improving/increasing the return of the fishery to fishers, processors and exporters.
- Conserve the fish resources by limiting the amount of fishing – annual total allowable catch
- Encourage economic efficiency of vessels and maximise the export revenue in the fishery
- Protect a number of seamounts (and banks) as a safety valve for stock sustainability and for protecting juvenile fish

### **Goal 2:**

- Implement good governance to ensure that all the requirements of the management plan are met.
- Develop effective co-management arrangements
- Provide stakeholders with formalised regulations
- Develop effective monitoring and evaluation to track the performance of management
- Develop effective MCS

### *Relevance to development of an oceans plan*

The plan is **highly relevant** as it relates to:

▪ MEAs	▪ Maritime transport
▪ Maritime boundaries	▪ Trade (globalisation and trade liberalisation)
▪ Marine biodiversity and conservation	▪ Natural and environmental disasters
▪ Living resources (inshore and oceanic fisheries and genetic material)	▪ Governance and management
▪ Monitoring, control and surveillance	▪ Knowledge management and exchange
▪ Non-living resources (oil, gas and minerals)	▪ Capacity building (training, education and awareness)
▪ Pollution and waste management	▪ Science and technology
▪ Coastal systems	▪ Development of policies and plans
▪ Security (defence, surveillance, monitoring and enforcement)	▪ Marine spatial planning

## Tonga National Tuna Fisheries Management and Development Plan (2015-2017)

The National Tuna Fisheries Management and Development Plan meets the requirements of the Fisheries Management Act, which provides for the conservation, management and sustainable use and development of the fisheries resources in Tongan fisheries waters and ensures the implementation of management and development.

The plan's goal is to manage Tonga's tuna fisheries resources through an ecosystem-based, precautionary and rights-based approach to maximise the benefits to Tonga people while ensuring the biological and economic sustainability of the fishery through:

- Determining allowable level of fishing, participatory rights and imposing licensing fees;
- Promoting economic benefits from fisheries development;
- Deriving economic benefits from outside the fishery; and
- Promoting an effective MCS strategy.

The objectives of the plan are:

- Ensuring that the use of Tonga's tuna longline fisheries resources is compatible with the sustainable development measures;
- Maximising economic benefits and ensuring ownership of the fisheries resources to the people of Tonga from optimum use of its tuna resources, including fishing, processing and value-adding;
- Ensuring that any tuna legislation facilitates support of national priorities and interests, and all necessary requirements of regional and international binding frameworks and measures;
- Exploring alternative management arrangements that generate economic benefits;
- Providing clear and transparent licensing procedures;
- Ensuring that non-target species are not discarded or dumped;
- Promoting the use of mitigation measures to minimise bycatch of endangered threatened and protected species; and
- Contributing to capacity building, technology transfer and the food security of Tongans.

*Relevance to development of an oceans plan*

The plan is **highly relevant** as it relates to:

<ul style="list-style-type: none"><li>▪ MEAs</li><li>▪ Maritime boundaries</li><li>▪ Marine biodiversity and conservation</li><li>▪ Living resources (inshore and oceanic fisheries and genetic material)</li><li>▪ Monitoring, control and surveillance</li><li>▪ Non-living resources (oil, gas and minerals)</li><li>▪ Pollution and waste management</li><li>▪ Security (defence, surveillance, monitoring and enforcement)</li></ul>	<ul style="list-style-type: none"><li>▪ Maritime transport</li><li>▪ Trade (globalisation and trade liberalisation)</li><li>▪ Natural and environmental disasters</li><li>▪ Governance and management</li><li>▪ Knowledge management and exchange</li><li>▪ Capacity building (training, education and awareness)</li><li>▪ Science and technology</li><li>▪ Development of policies and plans</li><li>▪ Marine spatial planning</li></ul>
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## **Tonga National Sea Cucumber Fishery Management and Development Plan (undated)**

The Sea Cucumber Plan relates to the sea cucumber fishery in Tonga and is comprised of three components – fishing activities, processing activities and exporting industries including the export product that is known as *bêche-de-mer*.

The objectives for the conservation, sustainable and the development of the sea cucumber fishery in Tonga are to:

- Ensure that a fishery for sea cucumbers is managed to ensure the sustainability of natural sea cucumber resources;
- Develop access right to the resources in a manner that is transparent, fair and creates economic growth and employment opportunities for Tongan nationals, particularly those living in remote communities;
- Manage flexibly and with the best scientific advice available and in a manner that causes no degradation or damage to the broader marine environment; and
- Ensure that a precautionary approach is applied to the fishery when and if considered necessary by the ministry.

The area covered by the sea cucumber management plan includes Tongatapu, Ha'apai, Vava'u, 'Eua, and Niuatoputapu. Tele-ki-Tonga and Teleki-ki-Tokelau are covered under the SMA arrangement.

*Relevance to development of an oceans plan*

The plan is **moderately relevant** and relates to:

<ul style="list-style-type: none"><li>▪ Marine biodiversity and conservation</li><li>▪ Living resources (inshore and oceanic fisheries and genetic material)</li><li>▪ Monitoring, control and surveillance</li><li>▪ Trade (globalisation and trade liberalisation)</li></ul>	<ul style="list-style-type: none"><li>▪ Governance and management</li><li>▪ Knowledge management and exchange</li><li>▪ Financial resources – mechanisms</li><li>▪ Development of policies and plans</li><li>▪ Marine spatial planning</li></ul>
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## Tonga National Aquaculture Management and Development Plan (2014-2019)

The plan was designed to be used as a guideline for the Fisheries Division and future stakeholders to establish commercial aquaculture in Tonga.

The plan establishes mechanisms for the development of a licensing procedure and selection, licensing criteria and establishment of committees.

The main objectives of the plan are:

1. The aquaculture industry will contribute to the economic development and social well-being of the people of Tonga.
2. The aquaculture industry will be environmentally sustainable.
3. The aquaculture industry will be managed in a manner that considers and balances economic and social gains against environmental costs.
4. The aquaculture industry will be managed within a transparent and explicit regulatory framework.
5. There will be broad community consultation about aquaculture developments that have potential to impact on specific communities.
6. Aquaculture product grown for human consumption will be safe and disease-free.

*Relevance to development of an oceans plan*

The plan is **moderately relevant** as it relates to:

<ul style="list-style-type: none"><li>▪ Marine biodiversity and conservation</li><li>▪ Living resources (inshore and oceanic fisheries and genetic material)</li><li>▪ Marine biodiversity and conservation</li><li>▪ Coastal systems</li></ul>	<ul style="list-style-type: none"><li>▪ Trade (globalisation and trade liberalisation)</li><li>▪ Governance and management</li><li>▪ Development of policies and plans</li><li>▪ Marine spatial planning</li></ul>
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## National Plan of Action (Shark-Plan) (2014-2016)

The Shark Plan provides the policy guidelines that:

- ensures conservation and management of oceanic sharks in the Kingdom's fisheries waters;
- promotes long-term sustainability and optimum use of sharks in Tonga's Tuna longline fishery in accordance to national development policy frameworks;
- identifies the special needs and requirements to develop and commercialise its fisheries; and
- minimises any adverse environmental effects of fishing on oceanic shark species.

*Relevance to development of an oceans plan*

The plan is **moderately relevant** as it relates to:

<ul style="list-style-type: none"><li>▪ MEAs</li><li>▪ Marine biodiversity and conservation</li><li>▪ Living resources (inshore and oceanic fisheries and genetic material)</li><li>▪ Monitoring, control and surveillance</li><li>▪ Governance and management</li></ul>	<ul style="list-style-type: none"><li>▪ Knowledge management and exchange</li><li>▪ Capacity building (training, education and awareness)</li><li>▪ Science and technology</li><li>▪ Development of policies and plans</li><li>▪ Marine spatial planning</li></ul>
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## Marine Aquarium Fishery Management Plan (Undated)

This is a plan to be used by the Fisheries Division, licence holders and other stakeholders to manage the nation's marine aquarium fishery. The scope of the plan covers all forms and types of fishing for the aquarium industry in all reefs and fishing area of Tongatapu. The objectives of the plan are:

- To avoid any significant degradation of marine habitat and any significant disruption of marine ecosystem structure or processes;
- To ensure that Tonga benefits economically and socially; and
- To ensure that in the absence of best scientific evidence fisheries management uses the precautionary approach.

The plan promotes the precautionary approach in support of sustainable development through:

- Ecological integrity, specifically referring to ecosystem diversity, their resilience and balance;
- Economic efficiency, implying the replacement of the conventional concept of economic growth with that of ecologically responsible economics which fully recognises and considers the natural and ecological resources consumed by human activity (ecosystem approach to fisheries management); and
- Social equity, essentially safeguarding the rights and other values of today as well as preserving the rights and values of future generations.

### *Relevance to development of an oceans plan*

The plan is **moderately relevant** as it relates to:

▪ Marine biodiversity and conservation	▪ Trade (globalisation and trade liberalisation)
▪ Living resources (inshore and oceanic fisheries and genetic material)	▪ Governance and management
▪ Marine biodiversity and conservation	▪ Development of policies and plans
▪ Coastal systems	▪ Marine spatial planning

## Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012-2013)

The National Marine Seaweed Plan meets the requirements of the Fisheries Management Act, which provides for the conservation, management and sustainable use and development of the fisheries resources in the fisheries waters and ensures the implementation of management and development.

The main purpose of the plan is to provide clear objectives and measures for the overall management and development of Tonga's Limu Tanga'u Fisheries. The plan is formulated to give direction to the development of the sector with a view to improving the sub-sector through:

- Ensuring the long-term conservation and sustainable use of the resources;
- Ensuring there are no short- or long-term threats to the ecosystem from which they are harvested;
- Achieving optimum economic development, human resource development and employment creation;
- Ensuring fair and transparent access to the resources;
- Minimising pollution, waste and discarding;
- Recognising and enhancing the interests of subsistence fishers;
- Increasingly relying on improved data quality and scientific knowledge as the basic for management;
- Developing rigid quality standards and an international reputation as the basis of an industry that supplies consistently high-quality products; and
- Consistency with any relevant obligations under international law and international agreements.

### *Relevance to development of an oceans plan*

The plan is **moderately relevant** as it relates to:

- MEAs
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Pollution and waste management
- Coastal systems
- Trade (globalisation and trade liberalisation)
- Governance and management
- Capacity building (training, education and awareness)
- Science and technology
- Development of policies and plans
- Marine spatial planning

## **National Invasive Species Strategy and Action Plan 2013-2020**

The Invasive Species Strategy aims to guide Tonga's efforts to protect its natural heritage and people's livelihoods from the negative impacts of invasive species. The two-pronged strategy tackles the issue by:

- preventing new invasive, or potentially invasive, species from arriving and establishing; and
- acting against existing priority invasive species at priority sites.

The strategy aims to assist the work of government, business, and civil society to work in a coordinated manner in protecting the natural heritage and livelihoods of the people of the Kingdom of Tonga from the negative effects of priority invasive species.

### *Relevance to development of an oceans plan*

The strategy and action plan are **moderately relevant** as they incorporate the following sectors:

- MEAs
- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Natural and environmental disasters
- Governance and management
- Knowledge management and exchange
- Capacity building (training, education and awareness)
- Science and technology

## **Climate Change Policy 2016 - A Resilient Tonga by 2035**

The purpose of the Tonga Climate Change Policy is to provide a clear vision, goal and objectives to direct responses to climate change and disaster risk reduction over the next five years.

The policy and associated revised Joint National Action Plan for Climate Change Adaptation and Disaster Risk Management are not intended to replace or duplicate sector-specific policies and plans. Rather, the policy is intended to provide an overarching context and guiding framework with policy objectives that for the most part will require multi-sector coordination. This recognises that climate change is the single biggest issue that will determine the future of Tonga over coming decades and will require a 'whole of Tonga' level of cooperation and coordination.

The policy aims to achieve targets that would enable a resilient Tonga by 2035:

- To fully mainstream the goal of a resilient Tonga into government legislation, policies, and planning at all levels;
- To implement a coordinated approach to the collection, monitoring, management and use of all relevant data and information, and to develop a coordinated, multi-sectoral approach to research for building a resilient Tonga;
- To develop the capability for resilience-building responses throughout government, the private sector, and civil society;
- To implement actions that are designed to build a resilient Tonga by 2035 at national, island, and community level;
- To secure and mobilise the required finances and resources to build a resilient Tonga by 2035; and
- To develop and maintain strong regional and international partnerships and to contribute fully to all relevant negotiations aimed at the required transformation to a resilient and sustainable future.

The policy aims to achieve the following outcomes:

- Every coastal community has a SMA and protected coastal environment
- Redesigned, resilient, roads, coastal areas, buildings, and other infrastructure
- 100 percent renewable energy
- Resilient low chemical input or organic farming systems
- Fully protected and enhanced native biodiversity
- The capacity for food self-sufficiency in times of crisis, and significantly reduced reliance on imported food
- Well managed water resources and sufficient water for all in times of shortage
- Development and full implementation of a zero-waste policy
- Strengthened parliamentary and institutional capacities working towards achieving resilience targets.

#### *Relevance to development of an oceans plan*

The policy is **moderately relevant** as it incorporates the following sectors:

<ul style="list-style-type: none"><li>▪ MEAs</li><li>▪ Climate change and sea-level rise</li><li>▪ Natural and environmental disasters</li><li>▪ Marine biodiversity and conservation</li><li>▪ Governance and management</li><li>▪ Knowledge management and exchange</li></ul>	<ul style="list-style-type: none"><li>▪ Capacity building (training, education and awareness)</li><li>▪ Science and technology</li><li>▪ Financial resources – mechanisms</li><li>▪ Development of policies and plans</li><li>▪ Marine spatial planning</li></ul>
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## **Offshore<sup>6</sup> Aggregate Extraction in Tongatapu 2005 - Technical Report**

The report was commissioned by the Government of Tonga because the management of offshore aggregates dredging was relatively new in Tonga. It was considered important that the proper coordination and management of all dredge activities should be developed and maintained to ensure sound environmental management and a cost-effective and productive operation. Offshore dredge sites were selected on a day-to-day basis by the master of the dredge and occurred around Tongatapu, North Atata and Fukave. The report explains the current dredging operations in Tongatapu, presents the results of the sediment analysis for the samples collected from the dredge sites, and provides detail of activities that are envisaged to improve dredging operations in Tonga.

A plan of action accompanies the report and aims to:

- Improve the overall operation, the proper management of various arms of the operation;
- Ensure dredging is viable and environmentally friendly;
- Highlight the areas of dredging operation that require improvements;
- Propose appropriate actions to ensure maximum benefits can be achieved; and
- Identify key stakeholders' responsibilities including relevant regional organisations that have been defined in support of an integrated approach and to achieve a practical action plan for dredging in Tonga.

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6 The only definition of the term 'offshore land' found seems to have been under the *Petroleum Mining Act 1988* as meaning "all submerged lands lying within the internal waters, territorial sea and exclusive economic zone as described in the Territorial Sea and Exclusive Economic Zone Act 1978". Under the *Seabed Minerals Act 2014*, which provides for the management of Tonga's seabed minerals (in this case sand) the area covered by the Act for the purposes of removal of minerals (including sand) has been defined as the "seabed and ocean floor and subsoil thereof beyond the limits of national jurisdiction as defined under Article 1(1) of the UN Convention on the Law of the Sea".

#### *Relevance to development of an oceans plan*

This technical report and action plan are **highly relevant** as they form the basis of a national dredging policy. Cabinet has recently approved a licence for offshore dredging; the licence conditions include compliance with the action plan provisions in the report. Potentially this *de facto* policy relates to a range of oceans planning issues including:

- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Monitoring, control and surveillance
- Non-living resources (oil, gas and minerals)
- Tourism
- Pollution and waste management
- Coastal systems
- Maritime transport
- Natural and environmental disasters
- Governance and management
- Capacity building (training, education and awareness)
- Science and technology
- Climate change and sea-level rise
- Financial resources – mechanisms
- Development of policies and plans
- Marine spatial planning

### **Tonga Tourism Sector Roadmap 2014-2018 - Final Report**

The Tourism Roadmap "...outlines the requirements to facilitate a prioritised and coordinated approach to the development of the tourism in Tonga." The roadmap identifies and addresses sector-related impediments to facilitate a faster rate of economic growth for Tonga. The roadmap covers the short to medium term and focuses on the implementation of practical and systematic measures to build a stronger and sustainable tourism sector. The vision is that "*Tourism drives Tonga's future sustainable economic growth, optimising wealth and prosperity for all Tongans.*"

The specific objectives for the tourism sector are that by 2020, *inter alia*:

- tourism will be the main source of national revenue and domestic employment;
- Tonga will become a leading and competitive tourist destination; and
- tourism will promote and support the formalisation and sustainable management of an additional five marine and land-based protected areas.

#### *Relevance to development of an oceans plan*

The Tourism Roadmap is **highly relevant** as it incorporates the following sectors:

- Marine biodiversity and conservation
- Living resources (inshore and oceanic fisheries and genetic material)
- Tourism
- Coastal systems
- Maritime transport
- Traditional knowledge and intellectual property
- Governance and management
- Knowledge management and exchange
- Capacity building (training, education and awareness)
- Science and technology
- Climate change and sea-level rise
- Financial resources – mechanisms
- Development of policies and plans
- Marine spatial planning



# 3 ANALYSIS AND ASSESSMENT

Many legislative and policy instruments are relevant to the development and implementation of an oceans plan for marine spatial planning for Tonga. Attachment 1 provides a list of legislative and policy instruments that were analysed; a summary of those that support development and implementation of marine spatial planning is at Attachment 2.

While the analysis did not identify any single piece of legislation or policy that provides a specific foundation for the development of an oceans management plan there is significant legislative support to address a range of broad oceans management issues, including marine spatial planning.

## 3.1 SUPPORT FOR OCEANS MANAGEMENT AND MARINE SPATIAL PLANNING

At a national level, the Tongan Strategic Development Framework 2015–2025 aims to “enhance our inheritance”, of which a large component is marine and coastal resources. Sustainable development of Tonga’s natural assets is a key component of forward planning for the nation. All seven of the national outcomes identified in the framework require sustainability.

At a regional level, Tonga has participated in a range of regional initiatives, in particular the development of the Pacific Islands Regional Ocean Policy and Framework for Integrated Strategic Action. The PIROP is intended to promote the Pacific region as an ocean environment in support of sustainable development. It is not a legal document, but its guiding principles are founded on international law, as reflected in UNCLOS and other international and regional agreements. The guiding principles are: improving our understanding of the ocean; sustainably developing and managing use of ocean resources; maintaining the health of the ocean; promoting the peaceful use of the ocean; and creating partnerships and promoting cooperation.

At an international level, the Kingdom of Tonga ratified the CBD in May 1998. This confirmed Tonga’s commitment to undertake national actions to conserve, sustainably use and protect its biological diversity as its contribution to the conservation and protection of global biodiversity<sup>7</sup>.

However, holistic and integrated forward planning for, and sustainable development of, Tonga’s marine and coastal resources, from the high-water mark out to the EEZ, is lacking. In July 2015 Cabinet addressed this issue and approved the development of a marine spatial plan for Tonga<sup>8</sup>.

This report is part of the process to develop a marine spatial plan for Tonga and summarises the legislative and policy frameworks (both national and international) that support the development of an oceans policy and marine spatial plan in support of ecologically sustainable development of Tonga’s oceans and to meet its international and regional commitments.

### 3.1.1 Legislative and policy support

There is significant legislative and policy support for a wide range of oceans management issues. Attachment 2 provides a comprehensive breakdown of the relevance of the various legislative and policy instruments against a range of ocean management issues; Table 2 provides a snapshot summary of some of those issues. However, there are a range of conflicts and synergies between instruments as well as gaps within the legislation and policies and in the range of instruments required to support oceans management (see sections 3.2, 3.3 and 3.4, respectively). The gaps in legislative and policy coverage will need to be more fully identified and addressed once decisions are made about how the Government of Tonga decides how it will approach (in detail) the issue of oceans policy, planning and management development.

<sup>7</sup> National Biodiversity Strategy and Action Plan 2006

<sup>8</sup> Cabinet Submission CSP/OPM of 14 July 2015

Table 2 Legislative and policy support for an oceans plan (extract from Attachment 2)

ISSUE	NATIONAL LEGISLATION	NATIONAL POLICIES, STRATEGIES AND PLANS
Legislative and policy basis for developing national oceans management	<ul style="list-style-type: none"> <li>▪ Act of the Constitution of Tonga</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> </ul>
Conservation of biodiversity	<ul style="list-style-type: none"> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> <li>▪ Aquaculture Management Act 2003</li> <li>▪ Biosafety Act 2009</li> <li>▪ Environment Management Act 2010</li> <li>▪ Environment Impact Assessment Act 2003</li> <li>▪ Fisheries Management Act 2002</li> <li>▪ Parks and Reserves Act 1976 (revised 1988)</li> <li>▪ Harbours Act 1903</li> <li>▪ Ports Authority Act 1998</li> <li>▪ Ports Management Act 2001</li> <li>▪ Hazardous Wastes and Chemicals Act 2010</li> <li>▪ Marine Pollution Prevention Act 2002</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Minerals Act 1949</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Renewable Energy Act</li> <li>▪ Seabed Minerals Act</li> <li>▪ Tonga Tourism Authority Act</li> <li>▪ Whale Watching and Swimming Act 2009</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Climate Change Policy 2006</li> <li>▪ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>▪ Coastal Community Management Plans</li> <li>▪ Aquaculture Commodity Development Plan 2010–2014</li> <li>▪ Marine Aquarium Fishery Management Plan</li> <li>▪ Tonga Deepwater Fisheries Management Plan 2014–2016</li> <li>▪ Tonga National Aquaculture Management and Development Plan (2014–2019)</li> <li>▪ Kingdom of Tonga National Plan of Action (Shark-Plan) (2014–2016)</li> <li>▪ Tonga National Tuna Fisheries Management and Development Plan (2015–2017)</li> <li>▪ Tonga National Sea Cucumber Fishery Management and Development Plan</li> <li>▪ Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012–2013)</li> <li>▪ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> <li>▪ Tonga Tourism Sector Roadmap – Final Report</li> </ul>
Sustainable development/natural resource management	<ul style="list-style-type: none"> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> <li>▪ Aquaculture Management Act 2003</li> <li>▪ Biosafety Act 2009</li> <li>▪ Environment Management Act 2010</li> <li>▪ Environment Impact Assessment Act 2003</li> <li>▪ Fisheries Management Act 2002</li> <li>▪ Parks and Reserves Act 1976 (revised 1988)</li> <li>▪ Shipping Act 1973</li> <li>▪ Harbours Act 1903</li> <li>▪ Ports Authority Act 1998</li> <li>▪ Ports Management Act 2001</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Minerals Act 1949</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Renewable Energy Act</li> <li>▪ Seabed Minerals Act</li> <li>▪ Tonga Tourism Authority Act</li> <li>▪ Whale Watching and Swimming Act 2009</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Climate Change Policy 2006</li> <li>▪ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>▪ Coastal Community Management Plans</li> <li>▪ Aquaculture Commodity Development Plan 2010–014</li> <li>▪ Marine Aquarium Fishery Management Plan</li> <li>▪ Tonga Deepwater Fisheries Management Plan 2014–2016</li> <li>▪ Tonga National Aquaculture Management and Development Plan (2014–2019)</li> <li>▪ Kingdom of Tonga National Plan of Action (Shark-Plan) (2014–2016)</li> <li>▪ Tonga National Tuna Fisheries Management and Development Plan (2015–017)</li> <li>▪ Tonga National Sea Cucumber Fishery Management and Development Plan</li> <li>▪ Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012–2013)</li> <li>▪ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>▪ Tonga Tourism Sector Roadmap – Final Report</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> </ul>

ISSUE	NATIONAL LEGISLATION	NATIONAL POLICIES, STRATEGIES AND PLANS
Marine spatial planning including MPAs and other MMAs	<ul style="list-style-type: none"> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> <li>▪ Act of the Constitution of Tonga</li> <li>▪ Fisheries Management Act 2002</li> <li>▪ Parks and Reserves Act 1976 (revised 1988)</li> <li>▪ Shipping Act 1973</li> <li>▪ Harbours Act 1903</li> <li>▪ Ports Authority Act 1998</li> <li>▪ Ports Management Act 2001</li> <li>▪ Land Act 1927</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Minerals Act 1949</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Renewable Energy Act</li> <li>▪ Seabed Minerals Act</li> <li>▪ Tonga Tourism Authority Act</li> <li>▪ Whale Watching and Swimming Act 2009</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Climate Change Policy 2006</li> <li>▪ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>▪ Coastal Community Management Plans</li> <li>▪ Aquaculture Commodity Development Plan 2010–2014</li> <li>▪ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> <li>▪ Tonga Tourism Sector Roadmap – Final Report</li> </ul>

## 3.2 EXISTING OR POTENTIAL CONFLICTS

### 3.2.1 Legislation

#### Aquaculture Management Act 2003

Conflict may arise between the Aquaculture Management Act and the Land Act on the designation of aquaculture areas both on land and the foreshore area. The authorities of the Minister of Lands and the Minister of Fisheries appear to overlap, although there are provisions for consultation between those ministries.

#### Environment Impact Assessment Act 2003

This Act provides for the application of environmental impact assessment to the planning of development projects within the Kingdom of Tonga. All “projects” deemed major projects are required to have an EIA. A major project, amongst other criteria, is one which “likely to” have an effect on ecosystems, threatened species or result in the depletion of natural resources at a rate that will prevent renewal. A fisheries activity may or may not fall within the definition of a major project and the Minister may exercise his power under the Act by holding an opinion that a specified matter may occur to a significant degree and therefore be deemed to be a major project. The prescribed procedures in the Regulations shall then apply.

#### Environment Management Act 2010

The Environment Management Act aims to ensure the protection and proper management of the environment and promotion of sustainable development. Conflict may arise when considering marine resource use and their sustainable management if there are spatially overlapping and therefore competing development-driven activities such as transportation, infrastructure, fisheries, tourism and deep-sea mining.

#### Fisheries Management (Conservation) Regulations 2008

These Regulations overlap with the Fisheries Regulations 1992 and the Fisheries (Local Fishing) Regulations 1995 and therefore there may be conflicts in application of provisions covering the same subject matter.

## Harbours Act 1903

*Including Nuku'alofa Harbour Regulations 1929, Vava'u Harbour Regulations 1936 and Proclamation of Harbours 1989*

The Act may conflict with the powers, authorities and application of the Shipping Act, Ports Authority Act and Ports Management Act. The definition of Nuku'alofa Port and Port Areas in the Ports Authority Act is the same as the description of Nuku'alofa Harbour. The Ports Authority is responsible for the Nuku'alofa Port but not the outer island harbours and ports which remain under the authority of the Prime Minister, Harbour Master or Ministry of Infrastructure, as the case may be. There may be gaps/inconsistencies in approach, standards, obligations and requirements among different harbours.

## Hazardous Wastes and Chemicals Act 2010

Conflicts may arise with the application, interpretation and enforcement of the different legislation within the context of hazardous wastes. It appears that multiple agencies may have different levels/degrees of authority with a possibility of duplication and overlap (see references in this report to commitments under the Biosafety Act, Maritime Pollution Act, London Convention, MARPOL, etc). Also, the mandates of agencies that are more adequately resourced with stronger capacity may prevail over the less resourced agencies.

## Land Act 1927

The Land Act extends the permissible use of land to residential purposes which may be conflict with the relevant Constitutional clause.

The enforcement of the provision to permit use of land for residential purposes is weak and consequently conflict may arise with other users such as fisheries (coastal fisheries, aquaculture and SMAs), biodiversity and coastal systems, reclamation, tourist facilities and commercial developments.

Conflict may arise with the designation of aquaculture areas both on land and the foreshore area. The authorities of the Minister of Lands and the Minister of Fisheries appear to overlap, although there are provisions for consultation between those ministries which provide the potential for issues to be resolved.

## Marine Pollution Prevention Act 2002 and Marine Pollution Prevention (Amendment) Act 2009

There may be conflict with the powers, responsibilities and enforcement measures in the Environment Management Act as that Act relates to environmental emergencies and incidents.

## Maritime Zones Act 2013

The proclamation on 15 June 1972 concerning Tonga's sovereignty over Telekitonga<sup>9</sup> and Telekitokelau remains an issue between Tonga and neighbouring Fiji.

Although some legislation has been re-aligned to be consistent with the Maritime Zones Act in respect of defining Tonga's sovereign territory, other legislation is inconsistent and conflicts may arise with application and interpretation. This Act was brought into force on 26 July 2013.

The definition of "natural resources" also differs in various legislation; it is also defined in this Act. Again, conflicts may arise due to differences in interpretation.

## Minerals Act 1949

The Crown's reservation to ownership of minerals is subject to any contrary provision in any other Act. Although there appears to be no Act that is contrary to this Act, a future enactment may incorporate a conflicting provision.

There may be conflict with the Petroleum Mining Act to the extent that the Petroleum Mining Act will prevail where there is variance with this Act.

There is no express reference to environmentally sound or sustainable mining operations in the Minerals Act. However, there is reference to mining activities in the Environment Impact Assessment Act, which promotes sustainable development of the Kingdom's environmental and natural resources.

<sup>9</sup> There are various spellings of this location including Telekitinga, Teleki Toga and Telekitonga Island.

## National Spatial Planning and Management Act 2012

The provisions of the Act appear to apply only to land-based spatial planning and development. However, the definition of land for the purposes of the Act includes land covered by water. It was confirmed by the National Spatial Planning Agency that the Act applies to seabed activities.

There is potential for conflict where a spatial plan and development consent for a seabed activity will conflict with a spatial plan for the water column above.

Conflict may arise where the National Spatial Planning Authority does not consider the views of other public authorities or public submissions in the development application process.

## Petroleum Mining Act 1969

There may be conflict with the Minerals Act to the extent that the Petroleum Mining Act will prevail where there is variance with the Minerals Act.

## Petroleum Mining Regulations 1985

The Petroleum Mining Regulations include a provision about obstruction of a licensee or a company with authority to act under the Petroleum Mining Act. This provision may cause conflict between a licensee or company and other users or enforcement officers.

## Ports Authority Act 1998

There may be conflict with the powers, authorities and application of the Shipping Act and Harbours Act. The Ports Authority Act imposes more detailed and comprehensive obligations on ports users, as well as management and operations functions of the Ports Authority.

The definition of Nuku'alofa Port and Port Areas in the Ports Authority Act is the same as the description of Nuku'alofa Harbour. The Ports Authority is responsible for the Nuku'alofa Port but not the outer island harbours and ports which remain under the authority of the Prime Minister, Harbour Master or Ministry of Infrastructure, as the case may be. There may be gaps/inconsistencies in approach, standards, obligations and requirements among the different harbours.

The Act empowers an employee of the Ports Authority to detain (and hand over to the police) any person who has committed an offence under the Act. There may be conflict with environment enforcement officers under the Environment Management Act in the event of an environmental offence or incident (such as pollution) within the ports area.

Except as otherwise provided, nothing in the Act exempts the Port Authority or the wharves, terminals or other works belonging to it from the provisions of the Shipping Act.

## Ports Management Act 2001

The Ports Management Act may conflict with the powers, authorities and application of the Harbours Act. The Ports Management Act imposes more detailed and comprehensive obligations on port users, as well as management and operation functions of the Ports Authority.

## Shipping Act 1973 and Shipping (Registration) Regulations 2002

Possible conflicts may arise concerning standards and requirements for fishing vessels where there is inadequate consultation between the Ministry of Infrastructure and Ministry of Fisheries. Enforcement measures regarding fishing vessels could also create tension between fisheries officers and transport officers, as each apply their respective legislation and regulations to fishing vessels.

## Transport Services Act 2008

The Ministry of Transport manages and operates the ports and port areas in the outer islands, while the Ports Authority manages and operates the Nuku'alofa Port and port areas.

## 3.2.2 Policies, strategies and plans

### Joint National Action Plan on Adaptation to Climate Change and Disaster Risk Management 2010-2015

The plan highlights the issue of competition for limited national resources; there is potential for conflict to arise among programs and initiatives in that competition for resources.

### National Strategic Development Framework 2015-2025

The framework's vision of sustainable and inclusive economic growth may conflict with the productive sectors that are driven by income/profit generation.

### Technical Report on Dredging and Proposed Plan of Action (2006-2008) for Offshore Aggregate Extraction in Tongatapu 2005 (including an Action Plan for Offshore Aggregates Extraction)

Conflicts may arise with the 'Atataa Island and Fafa Island SMAs given the proximity of the offshore aggregate basins to these areas. Sand mining activity has been identified by the CCMPs for these SMAs as a problem/threat/cause of habitat and fisheries degradation.

The report concludes that "*generally, the absence of appropriate legislation pertaining to offshore aggregate extraction has resulted in these two companies dredging in highly environmentally sensitive areas*".

Given the high volume of maritime transport within Nuku'alofa Harbour, conflict may arise with harbour users. The action plan's reference to an environment impact assessment, environmental monitoring and mitigation measures is compatible with the objectives of the Environment Management Act and Environment Impact Assessment Act.

### Aquaculture Commodity Plan (2010-2014)

Given that aquaculture commodities have been identified as a potential source of foreign revenue, there may be conflict with conservation and environmental issues.

The legal designation of 56 aquaculture areas was recently declared. Conflict may arise with other users or stakeholders if the consultation process was not adequate. The Aquaculture Commodity Plan was made pursuant to the Fisheries Management Act as part of the Act's principal objective of fisheries management in Tonga to provide for the conservation, management and sustainable use and development of fisheries resources.

### Deepwater Fisheries Management Plan (2014-2016)

Conflict may arise with other users especially deep-sea minerals and petroleum mining should those industries develop into mining and production operations.

### National Aquaculture Management and Development Plan (2014-2019)

Conflict may arise with other users or stakeholders should any legal designation of aquaculture areas be made without consultation. The relationship between this plan and the Aquaculture Commodity Plan (2010-2014) is unclear.

This plan was made pursuant to the Fisheries Management Act as part of the Act's principal objective of fisheries management in Tonga to provide for the conservation, management and sustainable use and development of fisheries resources.

### Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012-2013)

Conflict may arise with:

- artisanal and subsistence fishers; and
- the CCMP for the SMA of Felemea which provides that the Community Management Plan Committee must approve a Limu Tanga'u fishing permit.

## National Sea Cucumber Fishery Management and Development Plan (Undated)

The objective to sustainably manage this fishery is faced with serious challenges as the lucrative international demand for this commodity continues.

## National Tuna Fisheries Management Plan (2015-2017)

Conflict may arise with other users, especially deep-sea minerals and petroleum mining should those industries develop into full mining and production operations.

**Coastal Community Management Plans** ('O'ua Island, 'Atataa Island, 'Eueiki Island, Ovaka Island, Felemea Village, Nomuka Island, Taunga Island and Fafa Island) and **Special Management Area Order** (Gazette Supplement 20 of 2004 - made under section 13(1) of the Fisheries Management Act 2002)

Although the CCMPs require regular consultations with neighbouring communities and stakeholders, conflict may arise with other users who are unaware of the conditions of an SMA or do not recognise the legality of the SMAs.

## 3.3 EXISTING OR POTENTIAL SYNERGIES

### 3.3.1 Legislation

#### Aquaculture Management Act 2003

Terms and phrases used in the Fisheries Management Act are given the same meaning in the Aquaculture Management Act.

#### Environmental Impact Assessment Act 2003

The precautionary principle, environmental protection approach and ecosystem approach in fisheries which are enforced in the fisheries management legislation, regulations and management plans fall within the factors to be taken into consideration in the EIA process.

The Environmental Assessment Committee's function to review and recommend to the determining authority, conditions to be attached to major projects and how they should be implemented ensures that other authorities and agencies are appropriately advised on environmental management issues provides opportunities for coordination.

#### Fisheries Management Act 2002

There is synergy with the Environment Management Act through the application of the precautionary principle and the ecosystem approach.

#### Harbours Act 1903

*Including Nuku'alofa Harbour Regulations 1929, Vava'u Harbour Regulations 1936 and Proclamation of Harbours 1989*

There are synergies with legislation and regulations relating to marine environment protection, fisheries management and shipping/marine transportation.

#### Land Act 1927

There are synergies with the Constitution (excluding residential use), the Harbours Act and Ports Management Act and with the EMP and prohibited use of Fanga'uta and Fangakakau Lagoon.

## Marine Pollution Prevention Act 2002 and Marine Pollution Prevention (Amendment) Act 2009

The Marine Pollution Prevention Act has been amended to be consistent with the *Maritime Zones Act 2009*.

## Maritime Zones Act 2009

There are synergies with UNCLOS and the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001.

## National Spatial Planning and Management Act 2012

There are synergies with the Environment Impact Assessment Act and Regulations, and with requirements or views of other public authorities, as the Act requires consultation with such authorities. In addition, the National Spatial Planning Authority is required to consider other strategic plans, development standards, guidelines, etc. that have been adopted by a public authority.

## Petroleum Mining Act 1969

Under the Environmental Impact Assessment Act a major project includes mining, since it is an activity that disturbs more than one hectare of the surface of the land<sup>10</sup>.

## Petroleum Mining Regulations 1985

There are synergies with the Environmental Impact Assessment Act – a major project includes mining, since it is an activity that disturbs more than one hectare of the surface of the land – and with the Environment Management Act promoting sustainable development of the Kingdom's environmental and natural resources.

## Ports Authority Act 1998

There are synergies with legislation and regulations relating to marine environment protection, fisheries management and shipping/marine transportation.

## Ports Management Act 2001

The provisions in this Act are similar to those in the Ports Authority Act.

There are synergies with legislation and regulations relating to marine environment protection, fisheries management and shipping/marine transportation.

## Renewable Energy Act 2008

There are synergies with the Environment Management Act with the promotion of environmentally sustainable infrastructure.

## Seabed Minerals Act 2014

The Minister of Lands is the Seabed Mineral Authority and is also the Parks and Reserves Authority under the Parks and Reserves Act. There is synergy in the Authorities' powers to declare a reserve area.

There are also synergies with the Environmental Impact Assessment Act.

This Act also supports Tonga's obligations under UNCLOS.

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<sup>10</sup> The term "land" for the purpose of this Act includes all land covered by water or not.

## Shipping Act 1973 and Shipping (Registration) Regulations 2002

There are synergies with relevant international Conventions, marine environmental protection and sustainable fisheries management.

## Tonga Tourism Authority Act 2012

The Act expressly provides for synergies with other Acts that are relevant to the development of the tourism sector.

## Transport Services Act 2008

There are synergies with regional and international agreements and conventions on maritime transportation.

## Whale Watching and Swimming Act 2009 and Whale Watching and Swimming Regulations 2013

There are synergies with the Environment Management Act in relation to biodiversity conservation and protection; and with the Fisheries Management Act and Regulations related to the prohibition on whaling.

There is reference to whaling activities in a 1979 Royal Proclamation which designated Tongan national waters as a whale sanctuary, and in the Ha'apai Marine Conservation Area.

### 3.3.2 Policies, strategies and plans

#### National Strategic Development Framework 2015-2025

Table 9 of the framework provides a comprehensive list of cross-cutting sector/district plans.

The framework also states that it is to be implemented in accordance with the legislation and regulations in force.

#### Climate Change Policy 2016 (A Resilient Tonga by 2035)

While the Tonga Climate Change Policy is most clearly aligned with National Outcome F in the Tongan Strategic Development Framework 2015–2025 – “*a more inclusive, sustainable and effective land administration, environment management, and resilience to climate and risk*” – it is strongly aligned with all seven national outcomes. This alignment recognises that climate change will increasingly affect all aspects of life in Tonga.

The Climate Change Policy therefore also provides a supporting framework that is aligned with the Tongan Strategic Development Framework 2015–2025 and encourages alignment with all relevant sector policies and plans to ensure that proactive measures are taken to build a resilient Tonga. This further requires strong engagement with and ownership from the community, with resilience an integral part of all community development plans and island strategic development plans. The policy provides synergies and alignment with the following legislation and plans:

- Environment Management Act
- Environment Impact Assessment Act
- Renewable Energy Act
- National Spatial Management and Planning Act
- Land Act
- Parks and Reserves Act
- Fisheries Management Act
- Fisheries (Coastal Communities) Regulations
- Tourism Act
- National Strategic Development Framework 2015–2025
- Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015
- United Nations Framework Convention on Climate Change.

## Tonga Tourism Sector Roadmap 2014-2018

There are synergies with:

- Environment Management Act
- Environment Impact Assessment Act
- Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015
- National Biodiversity Strategy and Action Plan 2006
- National Infrastructure Investment Plan 2013–2023.

The roadmap promotes eco-tourism and marine-based activities including support for marine and terrestrial protected areas.

## Tonga National Biodiversity Strategy and Action Plan 2006

*(including Tonga's Fifth Review Report on the National Biodiversity Strategy and Action Plan 2014)*

There are synergies with:

- Fisheries Management Act and Regulations
- Environment Management Act
- Environment Impact Assessment Act
- National Strategic Development Framework 2015–2025
- 2020 Aichi biodiversity targets.

## National Invasive Species Strategy and Actions 2013-2020

There are synergies with:

- Fisheries Management Act and Regulations
- Environment Management Act
- Environment Impact Assessment Act
- Ports Management Act
- Ports Authority Act
- Shipping Act
- Biosafety Act
- National Biodiversity Strategy and Action Plan
- Convention on Biodiversity
- Guidelines for Invasive Species Management in the Pacific 2013.

## Joint National Action Plan on Adaptation to Climate Change and Disaster Risk Management 2010-2015

There are synergies with:

- Environment Management Act
- Climate Change Policy
- Pacific Disaster Risk Reduction and Disaster Management Framework for Action 2005–2015
- Hyogo Framework for Action
- Pacific Islands Framework for Action on Climate Change 2006–2015
- UN Framework Convention on Climate Change.

## National Marine Aquarium Fishery Management Plan (undated)

The Marine Aquarium Fishery Management Plan was made pursuant to the Fisheries Management Act as part of the Act's principal objective of fisheries management in Tonga to provide for the conservation, management and sustainable use and development of fisheries resources.

A fishery plan is prescribed in the Fisheries Management (Conservation) Regulations 2008.

The plan makes specific reference to the following international and regional instruments:

- UNCLOS
- CBD
- Pacific Plan
- CITES
- Chapter 17 of the Agenda 21 Programme of Action for Sustainable Development
- Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fishing
- Jakarta Mandate on Marine and Coastal Biological Diversity 1995
- Kyoto Declaration and Plan of Action on the Sustainable Contribution of Fisheries to Food Security 1995
- 2007 Vava'u Declaration on Pacific Fisheries Resources.

## Aquaculture Commodity Plan (2010-2014)

The Aquaculture Regulations 2008 provides for:

- interpretations of aquaculture phrases and terms necessary for its management and development;
- mechanisms required for certification of aquaculture products by an aquaculture officer;
- the forms and schedules for applications for licences or their renewal;
- the information related to production required by license owners;
- the fees associated with applications and permits.

Relevant to this is the Aquaculture Management and Development Plan (2014–2019), which provides for the conservation, management and sustainable use and development of aquaculture.

## Deepwater Fisheries Management Plan (2014-2016)

The Deepwater Fisheries Plan is based on the Fisheries Management Act Section 4(g): "*[...] the need to 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 sustainable use of fishery resources*".

A fishery plan is prescribed in the Fisheries Management (Conservation) Regulations 2008.

The Deepwater Fisheries Management Plan endorses:

- the port state control principles whereby any fishing vessel that enters any port of Tonga can be subjected to a full inspection for compliance of Tongan, regional, or international agreements or third party fisheries laws;
- the national legal stances on pollution of any kind in the fisheries waters of the Kingdom of Tonga.

## National Plan of Action (Shark-Plan) (2014-2016)

The Shark Plan was made pursuant to the Fisheries Management Act and its objective for the conservation, management and sustainable use and development of the fisheries resources in the fisheries waters in the Kingdom.

The Shark Plan refers to the following international and regional instruments:

- FAO International Plan of Action for Sharks
- FAO Code of Practice for Responsible Fisheries, Regional Plan of Action (Sharks) and WCPFC conservation and management measures on sharks (CMM2010-07; CMM2011-04; CMM2012-04).

The Shark Plan also aligns with National Strategic Development Framework and the strategic policy directions under the Tuna Management and Development Plan.

The plan promotes the precautionary approach and an ecosystem approach to fisheries management.

## National Aquaculture Management and Development Plan (2014-2019)

The Aquaculture Management and Development Plan was made pursuant to the Fisheries Management Act as part of the Act's principal objective of fisheries management in Tonga to provide for the conservation, management and sustainable use and development of fisheries resources. The exact relationship between this plan and the now-expired Aquaculture Commodity Plan (2010-2014) is unclear.

A Gazette Notice was recently issued designating 56 aquaculture areas throughout the Kingdom. Tenure and access to land or sea for aquaculture activities is not defined.

## National Sea Cucumber Fishery Management and Development Plan (undated)

The Sea Cucumber Fishery Plan was made pursuant to the Fisheries Management Act as part of the Act's principal objective of fisheries management in Tonga to provide for the conservation, management and sustainable use and development of fisheries resources.

A fishery plan is prescribed in the Fisheries Management (Conservation) Regulations 2008.

## National Tuna Fisheries Management Plan (2015-2017)

The Tuna Fisheries Management Plan complies with section 3 (Minister's powers), section 4 (factors/considerations in the exercise of the Minister's powers) and section 7 (fishery development and management plans) of the Fisheries Management Act 2002. A fishery plan is prescribed in the Fisheries Management (Conservation) Regulations 2008.

There are responsibilities to the WCPFC Convention – implementation of conservation and management measures.

The plan appears to be aligned with the current Tonga Strategic Development Framework II for sustainable development of key productive sectors which includes fisheries.

Tonga is a member of the Forum Fisheries Committee Sub-Committee for South Pacific Tuna and Billfish Fisheries (SC-SPTBF), TVMA and FFA with which Tonga engages and strategically pursues its economic and development interests in other jurisdictions south of the equator. Tonga is a party to the Niue Treaty. Tonga aspires to expand its domestic fleets, through charters and alternative joint-venture arrangements, as one strategy towards responsible development. Tonga is also a signatory to the Tokelau Arrangement.

Linking to this development, Tonga will explore bilateral, tri-lateral and multilateral reciprocal arrangements with neighbouring FFA countries and others to allow the extension of area for fishing by its flag fishing vessels.

**Coastal Community Management Plans** ('O'ua Island, 'Atataa Island, 'Eueiki Island, Ovaka Island, Felemea Village, Nomuka Island, Taunga Island and Fafa Island) and **Special Management Area Order** (Gazette Supplement 20 of 2004 - made under section 13(1) of the Fisheries Management Act 2002)

There are synergies with:

- Fisheries Management Act 2002
- Fisheries (Coastal Communities) Regulations 2009
- Fisheries (Conservation Management) Regulations 2008
- Environment Management Act 2010
- National Strategic Development Framework (2015–2025)
- National Biodiversity Strategy and Action Plan 2006

## Environmental Management Plan for Fanga'uta Lagoon System

The plan provides a first attempt to introduce spatial planning/zoning in a resource conservation context (unless the Ha'apai Conservation Area has such a plan but – we have been unable to find one); therefore, it provides a model for application elsewhere. However, some analysis and assessment about how effective the approach has been since implementation commenced is needed.

## 3.4 ANALYSIS OF GAPS

The key gaps that have been identified in the review of the legislation are:

- That there is no principal Act that provides legal authority for marine spatial planning. The National Spatial Planning and Management Act does provide a precedent and framework based on land-based spatial planning and development consents. There is also a view that this Act can be applied to marine spatial planning. However, our view is that application of the National Spatial Planning and Management Act to marine spatial planning is ambiguous and unclear.
- That there is no central controlling authority for oceans management and planning issues. This raises the question of whether Tonga should consider the establishment of an agency/entity with the specific mandate of oceans planning and management. This agency would be empowered either by a specific Act or by Cabinet direction which would set out the provisions of powers, duties and functions that are key to ocean planning and management as well as centralising this mandate to overcome the current duplication/overlap/conflict between different ministries. An example could be the recently established National Spatial Planning Authority which is the responsibility of the Minister for Lands.
- Where there is legislation with a significant degree of relevance to marine spatial planning, appropriate amendments and/or regulations should be drafted to provide for the legal framework for marine spatial planning. This legislation includes the Environment Management Act, Fisheries Management Act and Parks and Reserves Act.

### 3.4.1 Legislation

#### Aquaculture Management Act 2003

Aquaculture areas and buffer zones are mentioned but are not defined. Tenure and access to land or sea for aquaculture activities is not defined. The precautionary approach is not prescribed as an environmental protection tool.

## **Environment Impact Assessment Act 2003 and Environment Impact Assessment Regulations 2010**

The Minister's power to declare an application as a major project should be clarified, especially the term "significant degree" to ensure consistency and certainty in the application of that provision.

Enforcement of Regulations is weak on the application of the final fee (1% of the capital cost of the project). That fee is intended to assist the Department of Environment with fulfilling its responsibilities under the Act including monitoring.

### **Environment Impact Assessment Act 2003**

The EIA Act applies to sand and gravel removal from any beach within 50 metres of the high-water mark, whereas the Constitution states that the beach frontage is 50 feet above the high-water mark and the Land Act states that the foreshore is the land lying within 15.24 metres of the high-water mark. These differences in application of legislation relating to the high-water mark could lead to some confusion in their application.

### **Fisheries Management Act 2002**

While the Fisheries Management Act provides for a wide range of matters specifically related to fisheries, there are few regulations promulgated under the Act which means implementation of the Act is hampered.

### **Fisheries Regulations 1992 and Fisheries (Local Fishing) Regulations 1995**

The two Regulations overlap with similar provisions on some subject matters – local fishing vessels, commercial sport fishing vessels, fish processing establishments and fish market centres. The 1992 Regulations are more extensive in the matters they cover. These Regulations remain in force and have not been repealed by the Fisheries Management Act or by any other regulations.

### **Harbours Act 1903**

The Harbours Act has not been revised/amended to align with the Shipping Act, Ports Authority Act and Ports Management Act.

### **Hazardous Wastes and Chemicals Act 2010**

With multiple agencies involved at different levels/degrees of authority, there is a possibility of duplication and overlap.

### **Maritime Zones Act 2009**

Although some of the legislation has been re-aligned to be consistent with this Act in respect of defining Tonga's sovereign territory, there are others that are inconsistent and conflicts may arise with application and interpretation. This Act was recently brought into force on 26 July 2013.

The definition of "natural resources" also differ in various legislation. Again, conflicts may arise in terms of interpretation of this term.

### **Minerals Act 1949**

There is no express reference to environmentally sound mining operations in the provision of the Act, however the Environment Impact Assessment Act applies to mining operations.

The transitional provisions of the Seabed Minerals Act provide that one year from the Act coming into effect, all licences and authorities under the Minerals Act would expire and a permit or licence must be obtained under the Seabed Minerals Act for seabed mining activities.

The circumstances under which inconsistencies between the Minerals Act and the Petroleum Mining Act may arise are unclear.

## National Spatial Planning and Management Act 2012

The term “zone” is not used in the Act as there was major objection to the wording during its drafting and consultation.

The Act is silent on its application to oceans. It expressly refers to “land” extending to land covered by water.

Therefore, it can be implied that development or activity in the water column are not subject to the Act. The Act has yet to be applied to any ocean-based activity or development. Therefore, it is unclear how far the application of the Act will extend.

Only some provisions of the Act have been brought into force – definitions, establishment of the National Spatial Planning Authority, Advisory Committee and Agency, objectives of the Act and functions of the Authority. Those parts of the Act relating to spatial plans and development consents have yet to be brought into force.

## Parks and Reserves Act 1976 (revised 1988)

Although the Act states the general purpose of marine parks and reserves, as well as referring to conditions and restrictions on access and activities, there is no monitoring or enforcement or active administration of this Act.

## Petroleum Mining Act 1969

There is no express provision concerning the ownership of petroleum resources.

## Petroleum Mining Regulations 1985

There is no express provision concerning the ownership of petroleum resources.

## Ports Management Act 2001

The definition of the harbours in this Act is the same as the description of harbours in the Harbours Act. The Ports Authority is responsible for the Nuku’alofa Port while the ministry responsible for transport (Ministry of Infrastructure) is responsible for the outer island harbours and wharves. There may be gaps/inconsistencies in approach, standards, obligations and requirements among the different harbours and the Nuku’alofa Port.

## Transport Services Act 2008

No regulations have been promulgated under this Act although there is existing legislation on shipping, harbours and wharves and ports management.

## Whale Watching and Swimming Act 2009

Tonga is not a party to the Convention for the Regulation of Whaling 1946.

The Act does not set out any standard/criteria or guiding principles that are applicable to the licensing regime. The terms and conditions of a licence are determined at the discretion of the Minister.

## 3.4.2 Policies, strategies and plans

### National Strategic Development Framework 2015-2025

The vision of sustainable and inclusive economic growth may conflict with the productive sectors that are driven by income/profit generation. In addition, the government is not always able to provide the enabling environment that non-government stakeholders expect or anticipate.

There is no implementation plan to provide guidance and direction on the specific programs and activities that are to be prioritised and funded under the National Budget.

## Tonga Tourism Roadmap 2014-2018

The Tourism Roadmap includes several entities – Tourism Sector Taskforce, Tourism Roadmap Technical Working Group, Tourism Sector Coordination Unit, Ministry of Tourism and Tonga Tourism Authority. With multiple entities, it is likely that the effective implementation of the roadmap may be challenging. None of these groups appear to include representatives from the environment portfolio despite the roadmap highlighting several environmental issues and the need for environmental initiatives such as turtle protection and establishment of MPAs.

## Tonga National Biodiversity Strategy and Action Plan 2006 and Tonga's Fifth Review Report on the National Biodiversity Strategy and Action Plan 2014

The 2014 NBSAP Review Report provides an overview of the Kingdom's marine ecosystems. The report stated that:

*"The status of the marine ecosystem has yet to be fully explored even though there is information available on fisheries and coral reefs. Lack of resource assessment is the key issue for the marine ecosystem, however only few selected fisheries are known i.e. sea cucumbers, seaweed [...]"*

It is apparent from the report that there is a need for a comprehensive resource assessment of the Kingdom's marine ecosystems.

The report's findings on the status of Tonga's marine ecosystems noted that about 40% of objectives were considered satisfactory and 60% are in progress.

The Kingdom is not a signatory to CITES, although it does recognise and comply with the requirements of State Parties to the Convention. The Kingdom's Quarantine Division website states that prohibited goods include all coral, ivory, snakeskin or whale bone including ornaments, jewellery, souvenirs and handicrafts (CITES) and all clam, turtle and tortoise shells (CITES). The reason(s) for Tonga's prolonged delay in signing CITES is unclear; one reason may be that multi-sector institutional commitment has been lacking.

## National Invasive Species Strategy and Actions 2013-2020

There are no status report or monitoring plan provisions to review the success/effectiveness of the Invasive Species Strategy and Action Plan.

## Joint National Action Plan on Adaptation to Climate Change and Disaster Risk Management 2010-2015

The implementation period for this plan (2010–2015) has now expired with no revised/new plan in place.

## Technical Report on Dredging and Proposed Plan of Action (2006-2008) for Offshore Aggregate Extraction in Tongatapu 2005

*(including an Action Plan for Offshore Aggregates Extraction)*

Offshore dredging for aggregates is an important development issue because of the severe shortage of land-based aggregate. Those beaches on Tongatapu at which aggregate extraction is occurring are very depleted and alternative land-based sites are not available. However, the timeline that the action plan proposed over the 2006–2008 period has not been implemented.

The Environment Impact Assessment Act prescribes mining as a major project since it is an activity that disturbs more than one hectare of land. It may be argued that this provision does not expressly include offshore aggregate extraction as a mining. However, the Minister of Environment may exercise his/her authority under sections 8 and 9 to declare such extraction as a major project in which case the procedures prescribed by the EIA Regulations will apply.

## National Marine Aquarium Fishery Management Plan (undated)

There has been no legal designation about whether aquarium fishing is allowed in areas not designated as an SMA or marine reserve. This will make enforcement a difficult task. The Aquarium Fishery Management Plan should also be updated to include islands and reef systems in Vava'u that were recently approved as SMAs by Cabinet.

There is no reference to the EIA process. The aquarium fishery is not included in the definition of major projects for EIA purposes.

## Deepwater Fisheries Management Plan (2014-2016)

The Deepwater Fisheries Management Plan appears to be aligned with the current Tonga Strategic Development Framework for sustainable development of key productive sectors which includes fisheries.

Although the precautionary approach and co-management approach are promoted by the plan, there is no reference to the ecosystem approach to fisheries management.

The enforcement measures will require a rigorous approach to ensure that the plan is being implemented effectively.

## National Plan of Action (Shark-Plan) (2014-2016)

The Shark Plan states that there is no budget allocation for the implementation of the plan.

## National Aquaculture Management and Development Plan (2014-2019)

Compliance and enforcement remain weak.

## Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012-2013)

Fishing locations/areas are not specifically demarcated/defined in the plan. By contrast, SMAs are clearly demarcated in the relevant Regulations and CCMPs.

**Coastal Community Management Plans** ('O'ua Island, 'Atataa Island, 'Eueiki Island, Ovaka Island, Felemea Village, Nomuka Island, Taunga Island and Fafa Island) and **Special Management Area Order** (Gazette Supplement 20 of 2004 - made under section 13(1) of the Fisheries Management Act 2002) [for Teleki Tonga (South Minerva Reef) and Teleki Tokelau (North Minerva Reef)]

In October 2015, IUCN in collaboration with the Government of Tonga (Fisheries Division and Environment Department) facilitated an SMA Lessons Learned Workshop in Tonga. The report of that workshop is not yet published; it is expected that gaps will be identified in the report.

There also appears to be an issue with the extent and demarcation of the Nomuka SMA which is yet to be resolved. This is likely to impact negatively on the implementation and enforcement of the Nomuka CCMP.

A key issue that should be considered is the capacity of the Coastal Community Management Committees to implement CCMPs especially when financial and technical resources are required. Enforcement of penalties and fines under the authority of a quasi-legal instrument (CCMP) may be legally challenged.

## 3.5 MARINE SPATIAL PLANNING

The use of marine spatial planning is a significant strategy to support the development of oceans planning and management. Marine spatial planning offers countries an operational framework to maintain the value of their marine biodiversity while at the same time allowing sustainable use of the economic potential of their oceans. Marine spatial planning is a practical way to create and establish a more rational organisation of the use of marine space and the interactions between its uses, to balance demands for development with the need to protect marine ecosystems, and to achieve social and economic objectives in an open and planned way. Comprehensive marine spatial planning provides an integrated framework for management that provides a guide for, but does not replace, single-sector planning. For example, marine spatial planning can provide important contextual information for marine protected area management or for fisheries management, but does not intend to replace them.<sup>11</sup>

Other reasons to begin marine spatial planning include<sup>12</sup>:

- To provide a vision and consistent direction not only of what is desirable, but what is possible in marine areas;
- To protect nature, which has its own requirements that must be respected if long-term sustainable human development is to be achieved and if large-scale environmental degradation is to be avoided or minimised;
- To reduce fragmentation of marine habitats (that is, when ecosystems are split up due to human activities and therefore prevented from functioning properly);
- To make efficient use of marine resources – marine resources, including ocean space, are increasingly in short supply. Those that are available should be used to produce goods and services in a sustainable manner;
- To set priorities – to make significant inroads into meeting the development objectives of the marine management area in an equitable way, it is necessary to provide a rational basis for setting priorities, and to manage and direct resources to where and when they are needed most;
- To create and stimulate opportunities for new users of marine areas;
- To coordinate actions and investments in space and time to ensure positive effects from those investments, both public and private, and to facilitate complementarity among jurisdictions;
- To avoid duplication of effort by different public agencies and levels of government in marine spatial planning activities, including planning, monitoring, and permitting; and
- To achieve a higher quality of service at all levels of government, e.g. by ensuring that permitting of human activities is streamlined when proposed development is consistent with a comprehensive spatial management plan.

The management of marine areas, as part of a marine spatial planning approach, will generally include a system of MPAs. MPAs can include a variety of zones including strictly protected areas where no extractive activities are permitted, locally managed areas or areas designed specifically for the needs of threatened species. MPAs can be defined as:

*“a clearly defined coastal or marine area, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values.”<sup>13</sup>*

At the recent COP21 meeting in Paris (December 2015) Tonga committed to achieving the objective of the UNFCCC by tabling its intended nationally determined contributions (INDCs)<sup>14</sup>. Overall, Tonga’s INDCs should raise the Kingdom’s ambition to contribute towards a robust and ambitious legally binding COP21 climate change agreement. A major commitment is *“to double the 2015 number of marine protected areas by 2030”*<sup>15</sup>.

To support implementation of its commitments from COP21, it will be essential to have well-defined types of protected areas within an appropriate strategic context. These must have clear objectives and clear rules about what activities are and are not permitted within each protected area type. Only in this way will it be possible to establish protected areas which can be understood and complied with by the resource users and broader community. Having different types (typology) of MPAs that allow for different activities in different areas can assist in achieving multiple objectives and support meeting the commitments made in the INDCs at COP21 in particular.

<sup>11</sup> Charles Ehler and Fanny Douvere. Marine Spatial Planning: a step-by-step approach toward ecosystem-based management. Intergovernmental Oceanographic Commission and Man and the Biosphere Programme. IOC Manual and Guides No. 53, ICAM Dossier No. 6. Paris: UNESCO. 2009 (English).

<sup>12</sup> *ibid*

<sup>13</sup> Dudley, N. (Editor) (2008). Guidelines for Applying Protected Area Management Categories. Gland, Switzerland: IUCN. x + 86pp. WITH Stolton, S., P. Shadie and N. Dudley (2013). IUCN WCPA Best Practice Guidance on Recognising Protected Areas and Assigning Management Categories and Governance Types, Best Practice Protected Area Guidelines Series No. 21, Gland, Switzerland: IUCN. xxpp.

<sup>14</sup> Intended Nationally Determined Contributions – Towards achieving the objective of the United Nations Framework Convention on Climate Change, 4 December 2015

<sup>15</sup> *ibid* (page 3)

### 3.5.1 Existing typology of marine protected/managed areas

MPAs or MMAs are globally recognised as a vital component for the protection, restoration, wise use, understanding and enjoyment of coastal and marine ecosystems in perpetuity.

Based on the *Parks and Reserves Act 1976* (revised in 1988), five MPAs were initially declared in 1979 in northern areas of Tongatapu. These MPAs are Hakaumama'o Reef Reserve, Ha'atafu Beach Reserve, Pangaimotu Reef Reserve, Monuafe Island Park and Reef Reserve and Malinoa Island Park and Reef Reserve.

Tonga now has 19 protected areas of various types plus six Reserves or National Parks declared by Cabinet in 2015 (Table 3).<sup>16</sup>

**TABLE 3.** Protected areas in Tonga

RESERVES	HECTARES (ha)
Ha'atafu Beach	80
Hakaumama'o Reef	260
Malinoa Island Park and Reef	73
Monuafe Island Park and Reef	33
Pangaimotu Reef	49
<b>PARKS/MANAGED HISTORICAL SITES</b>	
Ha'amonga Trilithon Park	23
Vava'u Coastal Gardens Marine Park	
<b>FAUNAL RESERVE</b>	
Volcanic Island Forest Reserve	
<b>MARINE RESERVES</b>	
Fanga'uta and Fanga kakau Lagoons	2,835
<b>MULTIPLE USE CONSERVATION AREA</b>	
Haapai Conservation Area	1,000,000
<b>NATIONAL PARKS</b>	
'Eua NP	450
Kao NP	1,250
Mt Talau NP	
Tofua NP	4,990
<b>NATURE RESERVE</b>	
Vaomapa	20
<b>OTHER AREAS</b>	
Neiafu Harbour Wreck	
Swallows Cave	
<b>SANCTUARY</b>	
Mounu Reef	
<b>CABINET DECISION DATED 21 AUGUST 2015</b>	
'Otu Motu Lalo Island Reserve (Maninita, Taula and Lualoli Islands) – combined terrestrial and marine reserve (including the reef)	
Fonualei Island Reserve – combined terrestrial and marine reserve (including the reef)	
Talehele (Leimata'a) – terrestrial reserve	
Vai'utukakau (Ha'alaufu) – terrestrial reserve	
Mount Talau National Park	
Popua Sia Heu Lupe Mounds – heritage reserve	

In Attachment 4 the current MPAs/MMAs in Tonga have been listed along with their management objectives, the legislation under which the area was declared, and a summary of relevant management arrangements relevant. This analysis provides the basis for a considered and more systematic and strategic approach to establishing MPAs/MMAs in Tonga in support of Tonga's recent COP21 commitments. The table provides a typology of existing MPAs/MMAs and provides an analytical overview of the MPA/MMA estate in Tonga.

### **3.5.2 Challenges for marine protected/managed areas in Tonga**

Tonga currently faces challenges with both managing existing MMA/MPAs and establishing new MMA/MPAs. These challenges include:

- lack of management plans for some MMAs;
- weak enforcement with no enforcement measures or compliance incentives in place;
- the Parks and Reserves Authority is the Minister of Lands but the capacity, expertise and budget/resources is with the other agencies responsible for environment, fisheries or tourism;
- management and protection measures are not detailed/articulated in the Parks and Reserves Act;
- many of the sites have not been declared/designated under the principal legislation [*Parks and Reserves Act 1976 (revised 1988)*]. The sites are recorded in reports and policies but the formal instruments establishing these sites are not easily found; and
- lack of community involvement and engagement.

The process to establish a regime for marine spatial planning will need to address these issues and define arrangements for developing MMA/MPAs including data/information management, centralised datasets, and consistency of approach to establish any MMA/MPA and coordination of management implementation arrangements.

# 4 CONCLUSIONS AND RECOMMENDATIONS

## 4.1 CONCLUSIONS

On 22 July 2015, Tonga's Cabinet decided to initiate a project to develop a holistic spatial plan for Tonga's ocean (Cabinet Decision 716).

As a contribution to spatial planning this report provides an analysis and assessment of legislation, policies, strategies and plans relevant to sustainable use and management of Tonga's oceans.

This review has found that the policy settings necessary for developing an oceans plan for Tonga already exist and that a wide range of legislation, policies and strategies support implementation of an oceans plan. However, there is no overarching legislation or policy to provide the necessary coordination of all legislation and policies for oceans management.

### Legislative and policy support for oceans policy

Attachment 2 summarises the legislative and policy support from existing national and international instruments available for oceans planning and management and the development of marine spatial planning in Tonga. It identifies the relevant instruments against topics such as legal and policy frameworks for developing national oceans management, sustainable development, biodiversity conservation and climate change. The topics and issues listed are:

- Conservation of biodiversity
- Sustainable development/natural resource management
- Marine spatial planning including MPAs and other MMAs
- Offshore petroleum and mineral prospecting and production
- Shipping including discharge of ballast water
- Depletion of marine resources e.g. overfishing, destructive fishing practices, illegal foreign fishing vessels
- Coastal erosion and increased sedimentation from development
- Climate change
- Marine pollution e.g. oil spills, hazardous waste
- Introduced marine pests and invasive species
- Transboundary issues e.g. overfishing, pollution.

There are areas where existing legislation could be strengthened and refined to better support legislative objectives. For example,

- *Parks and Reserves Act 1976 (revised 1988)* – enforcement and implementation are weak.
- *Environment Impact Assessment Act 2003* – the Minister's power to declare an application as a major project should be clarified, especially the term "significant degree" to ensure consistency and certainty in the application of the provision.
- *Fisheries Management Act 2002* – while the Act provides for a wide range of matters specifically related to fisheries, there are few regulations promulgated under the Act.
- *Harbours Act 1903* – the Act has not been revised/amended to align with the Shipping Act, Ports Authority Act and Ports Management Act.

- *Maritime Zones Act 2009* – although definitions of Tonga’s sovereign territory in some legislation have been re-aligned to be consistent with this Act, other legislation has inconsistent definitions. Conflicts may arise with application and interpretation. This Act was only brought into force on 26 July 2013. The definition of “natural resources” also differs in various legislation. Again, conflicts may arise in interpretation.
- *National Spatial Planning and Management Act 2012* – the Act is silent on its application to oceans. It expressly refers to “land” extending to land covered by water. Therefore, it can be implied that development or activity in the water column are not subject to the Act. The Act has yet to be applied to any ocean-based activity or development. Therefore, it is unclear how far the application of the Act will extend.
- *Petroleum Mining Act 1969* – there is no express provision concerning the ownership of petroleum resources.
- *Whale Watching and Swimming Act 2009* – Tonga is not a party to the Convention for the Regulation of Whaling 1946.

## Coordination of future oceans management

There is no central controlling authority for oceans management and planning. Tonga should consider the identification or establishment of an agency/entity with the specific mandate of oceans planning and management. This entity could be empowered by a specific new Act setting out the provisions that are key to oceans planning and management as well as centralising this mandate to overcome the current duplication/overlap/conflict between different ministries. An example could be the recently established National Spatial Planning Authority which is the responsibility of the Minister for Lands.

Finally, while the legislation and policy foundations for oceans management in Tonga currently exist they by no means constitute the entire legislative and policy framework required to successfully and sustainably manage Tonga’s marine resources and ecosystems. A strategic view and approach that combines the various responsibilities and mandates with visionary leadership is required to achieve long-term and sustainable success in securing the future of Tonga’s oceans.

## 4.2 RECOMMENDATIONS

The review recommends the following options be considered to strengthen Tonga’s capacity and capability regarding marine spatial planning.

1. That a principal Act be drafted to specifically mandate, administer and manage marine spatial planning (as is the case with the *National Spatial Planning and Management Act 2012*).
2. That a dedicated executive/government agency/authority be established with the appropriate mandate and authority to administer and manage oceans affairs (including marine spatial planning) within one of the ministries represented on the Oceans 7 Technical Working Group.
3. That the appropriate amendments be incorporated into the suite of relevant principal Acts already in force to give legal effect to marine spatial planning (e.g. Fisheries Management Act, Environment Management Act, Shipping Act, National Spatial Planning and Management Act, Parks and Reserves Act).
4. Revise the *Parks and Reserves Act 1976 (revised 1988)* to properly establish and effectively manage MMA/MPAs. Because the Act was enacted in 1976 and only updated in 1988, a review is timely and necessary. Key issues that should be considered in the legislative review are:
  - a. Objectives, purpose and guiding principles
  - b. Administering body or authority – functions and responsibilities
  - c. Advisory body
  - d. Powers under the Act
  - e. Leases, licenses, permits and easements
  - f. Classification and categorisation
  - g. Procedures for creation/establishment and declaration
  - h. Planning and management

- i. Regulation of activities
- j. Research, monitoring and reporting
- k. Interaction with other legislation
- l. Consultation with agencies and public
- m. Regulations and offences
- n. Compliance and enforcement measures.

5. That Tonga consider becoming a signatory to the following Conventions:

- a. Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1 July 1975
- b. Convention on Wetlands (Ramsar) 1975
- c. Convention for the Regulation of Whaling 1946.

While Tonga is not yet a signatory to these Conventions they are all relevant to the maintenance of healthy coastal and oceanic ecosystems and consequently are **highly relevant** to Tonga's aspirations to manage its oceans.

6. That clarification be sought whether, and to what extent, the *National Spatial Planning and Management Act 2012* applies to non-land, marine activities. It is worthwhile considering whether this Act may be amended to incorporate specific application to marine spatial planning.

# ATTACHMENTS

1. Legislation, policies, strategies, plans and documents reviewed
2. Summary of support for an oceans plan
3. Boundary definitions
4. Typology of marine protected areas in Tonga

## ATTACHMENT 1 LEGISLATION, POLICIES, STRATEGIES, PLANS AND DOCUMENTS REVIEWED

TYPE/NAME OF DOCUMENT	COMMENTS	PAGE # IN REPORT
<strong>NATIONAL LEGISLATION</strong>		
15. Act of the Constitution of Tonga		5
16. Aquaculture Management Act 2003	Including the Aquaculture Management (Amendment) Act 2005 and the Aquaculture Management (Amendment) Act 2009	8, 43, 53
17. Biosafety Act 2009		12
18. Environment Management Act 2010	Including the Environment Management (Amendment) Act 2010	8, 43, 47, 5
19. Environment Impact Assessment Act 2003	Including the Environment Impact Assessment Regulations 2010	11, 43, 54
20. Fisheries Management Act 2002	Including the Fisheries Management (Amendment) Act 2009, Fisheries (Conservation and Management) Regulations 1994, Fisheries (Conservation and Management) (Amendment) Regulations 2013, Fisheries (Conservation and Management) (Amendment) Regulations 2014, Fisheries Management (Conservation) Regulations 2008, Fisheries (Local Fishing) Regulations 1994, Fisheries (Coastal Communities) Regulations 2009, Special Management Area Order 2004 and Fisheries Regulations 1992	47,54
21. Fisheries Management (Conservation) Regulation (2008)		43
22. Parks and Reserves Act 1976 (revised 1988)		9, 55
23. Harbours Act 1903	Including Regulations made under the Harbours Act e.g. Nuku'alofa Harbour Regulations 1929 and the Vava'u Harbour Regulations 1936	13, 44, 47, 54
24. Hazardous Wastes and Chemicals Act 2010		44, 54
25. Land Act 1927		14, 44, 47
26. Marine Pollution Prevention Act 2002	Including the Marine Pollution Prevention (Amendment) Act 200	9, 44, 48
27. Marine Pollution prevention (amendment) Act 2009		48
28. Maritime Zones Act 2009		48, 54
29. Maritime Zones Act 2013		5, 44

TYPE/NAME OF DOCUMENT	COMMENTS	PAGE # IN REPORT
30. Petroleum Mining Act 1969		6, 45, 48, 55
31. Petroleum Mining Regulation 1985		45, 48, 55
32. Renewable Energy Act 2008		12, 48
33. Seabed Minerals Act (2014)		10, 48
34. Transport Services Act 2008		11, 45, 49, 55
35. Ports Authority Act 1998		13, 45, 48
36. Ports Management Act 2001		13, 45, 48, 55
37. Shipping Act 1973	Including the Shipping (Amendment) Act 1999, Shipping (Amendment) Act 2001, Shipping (Amendment) Act 2002 and the Shipping (Registration) Regulations 2002	14, 45, 49
38. Tonga Tourism Authority Act		14, 49
39. Whale Watching and Swimming Act 2009	Including the Whale Watching and Swimming Regulations 2013	15, 49, 55
40. Birds and Fish Preservation (Amendment) Act 1989	Not considered relevant	
41. Carriage of Goods by Sea Act 2008	Not considered relevant	
42. Foreign Investment Act 2002	Not considered relevant	
43. Illicit Drugs Control Act 2009	Not considered relevant	
44. Tonga Trade and Investment Board 2005	Not considered relevant	
45. Emergency Management Act 2007	Not considered relevant	
46. Ozone Layer Protection Act 2010	Not considered relevant	
47. Plant Quarantine Act (Cap. 127)	Not considered relevant	
48. Pesticides Act 2002	Not considered relevant	
49. Preservation of Objects of Archaeological Interest Act (Cap. 90)	Not considered relevant	
50. Public Health Act 2008	Not considered relevant	
51. Minerals Act 1949	Not considered relevant - Seabed Minerals Act assumes responsibility	44, 54
<b>NATIONAL POLICIES, STRATEGIES AND PLANS</b>		
52. Tongan Strategic Development Framework 2015–2025 In some cases it is called National Strategic ..., Tongan strategic ... or Tongan National Strategic ...		28, 41, 46, 48, 49, 55
53. Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015		29, 46, 56, 50
54. Coastal Community Management Plans	For 'O'ua Island, 'Atataa Island, 'Eueiki Island, Ovaka Island, Felemea Village, Nomuka Island, Taunga Island and Fafa Island. Also includes Special Management Area Order [Gazette Supplement 20 of 2004 – made under section 13(1) of the Fisheries Management Act 2002 for Teleki Tonga (South Minerva Reef) and Teleki Tokelau (North Minerva Reef)]	30, 47, 53, 57
55. Environmental Management Plan for Fanga'uta Lagoon System		32, 53

TYPE/NAME OF DOCUMENT	COMMENTS	PAGE # IN REPORT
56. Aquaculture Commodity Plan 2010–2014		46 51
57. National Marine Aquarium Fishery Management Plan		36, 51, 57
58. Deepwater Fisheries Management Plan		33, 46, 51 57
59. Tonga National Aquaculture Management and Development Plan (2014–2019)		32, 55, 57
60. National Plan of Action (Shark-Plan)		35, 52, 57
61. National Tuna Fisheries Management and Development Plan		33, 47, 52
62. National Sea Cucumber Fishery Management and Development Plan		33 47, 52
63. Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012–2013)		36, 46, 57
64. National Invasive Species Strategy and Action Plan 2013–2020		37, 50, 56
65. Tonga National Biodiversity Strategy and Action Plan (NBSAP)	Including the Kingdom of Tonga's Fifth National Report to the Convention on Biodiversity 2014	31 50, 56
66. Climate Change Policy 2016		37, 49
67. Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report		38, 46
68. Tonga Tourism Sector Roadmap – Final Report		39, 50, 56
69. Fisheries Sector Plan 2016–2026		29
70. National Spatial Planning & Management Act 2012		6, 45, 55
<b>INTERNATIONAL CONVENTIONS</b>		
71. Convention on Biological Diversity (adopted at Rio de Janeiro on 5 June 1992, acceded to by the Kingdom on 19 May 1998)	Schedule 1 of the Environment Management Act	1
72. United Nations Framework Convention on Climate Change (adopted at New York on 9 May 1992, acceded to by the Kingdom on 20 July 1998)	Schedule 1 of the Environment Management Act	18
73. Montreal Protocol (adopted at Montreal on 16 September 1987, acceded to by the Kingdom on 29 July 1998)	Schedule 1 of the Environment Management Act	18
74. Vienna Convention for the Protection of the Ozone Layer (adopted at Vienna on 22 March 1985, acceded to by the Kingdom on 29 July 1998)	Schedule 1 of the Environment Management Act	18
75. United Nations Convention to Combat Desertification (adopted at Paris on 17 June 1994, acceded to by the Kingdom on 25 September 1998)	Schedule 1 of the Environment Management Act	18
76. Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Waste and to Control the Transboundary Movement and Management of Hazardous Waste within the South Pacific Region (adopted at Waigani, PNG on 16 September 1995, ratified by the Kingdom on 22 May 2002)	Schedule 1 of the Environment Management Act	18
77. Cartagena Protocol 11 September 2003 (adopted at Montreal on 29 January 2000, acceded to by the Kingdom on 18 September 2003)	Schedule 1 of the Environment Management Act	19

TYPE/NAME OF DOCUMENT	COMMENTS	PAGE # IN REPORT
78. World Heritage Convention 1972 (adopted at Paris on 23 November 1972, acceded to by the Kingdom on 30 April 2004)	Schedule 1 of the Environment Management Act	19
79. Kyoto Protocol 16 February 2005 (adopted at Kyoto on 11 December 1997, acceded to by the Kingdom in January 2008)	Schedule 1 of the Environment Management Act	19
80. Stockholm Convention on Persistent Organic Pollutants (adopted at Stockholm, on 23 May 2001, ratified by the Kingdom on 23 October 2009)	Schedule 1 of the Environment Management Act	19
81. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (adopted at Basel in March 1989, acceded to by the Kingdom on 26 March 2010)	Schedule 1 of the Environment Management Act	20
82. Rotterdam Convention on the Prior Informed Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade (adopted at Rotterdam in September 1998, acceded to by the Kingdom on 31 March 2010)	Schedule 1 of the Environment Management Act	20
83. United Nations Convention on the Law of the Sea 16 November 1994	Tonga is also a signatory	16
84. UN Fish Stocks Agreement 11 December 2001	Tonga is also a signatory	16
85. Kyoto Protocol 16 February 2005	Tonga is also a signatory	
86. London Convention 1972	Tonga is also a signatory	16
87. London Protocol 1996	Tonga is also a signatory	17
88. International Convention on the Prevention of Pollution from Ships 2 October 1983	Tonga is also a signatory	17
89. Basel Convention 1992	Tonga is also a signatory	
90. Convention on International Trade in Endangered Species of Wild Flora and Fauna 1 July 1975	Relevant Convention to which Tonga is not a signatory	20
91. Convention on Wetlands (Ramsar) 1975	Relevant Convention to which Tonga is not a signatory	2,20
92. Convention for the Regulation of Whaling 1946	Relevant Convention to which Tonga is not a signatory	2, 21
REGIONAL POLICIES, STRATEGIES, PLANS, AGREEMENTS, TREATIES, DECLARATIONS, ETC.		
93. Framework for a Pacific Oceanscape: a catalyst for implementation of ocean policy (2010)		22
94. Pacific Island Regional Ocean Policy 2005		21
95. Action Strategy for Nature Conservation		
96. Pacific Islands Framework for Action to Climate Change		23
97. Forum Fisheries Agency Monitoring, Control and Surveillance Strategy (2010–2015)		
98. Forum Fisheries Agency Regional Tuna Management and Development Strategy		
99. Aquaculture Action Plan 2007		
100. SPC Division of Fisheries, Aquaculture and Marine Ecosystems (FAME) Strategic Plan, 2013–2016		23
101. Pacific Regional Environment Program Strategic Plan, 2011–2015		24
102. SPC SOPAC Strategic Plan 2011–2015		25

TYPE/NAME OF DOCUMENT	COMMENTS	PAGE # IN REPORT
103. Pacific Community Strategic Plan 2016–2020 (Sustainable Pacific development through science, knowledge and innovation)		25
104. Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008–2013 (Apia Policy)		26
105. Niue Treaty 1992		26
106. Niue Treaty Subsidiary Agreement 2012		26
107. The Tokelau Arrangement 2014		26
108. South Pacific Forum Fisheries Agency Convention 10 July 1979		26
109. Western and Central Pacific Fisheries Commission 2004		27
110. Te Vaka Moana Arrangement		27
111. Pacific Plan for strengthening Regional Cooperation and Integration 2007		21
112. United States Multilateral Fisheries Treaty 1988		27

## ATTACHMENT 2 SUMMARY OF SUPPORT FOR AN OCEANS PLAN

The following table summarises the relevant legislation, policies, strategies, plans and other instruments that provide support for developing marine spatial planning in Tonga.

ISSUE/TOPIC	NATIONAL LEGISLATION	NATIONAL POLICIES, STRATEGIES AND PLANS	REGIONAL POLICIES, STRATEGIES AND PLANS AND OTHER INSTRUMENTS
Legislative and policy basis for developing national oceans management	<ul style="list-style-type: none"> <li>▪ Act of the Constitution of Tonga</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pacific Island Regional Oceans Policy</li> <li>▪ Framework for a Pacific Oceanscape (2010)</li> <li>▪ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> <li>▪ Forty-Fifth Pacific Islands Forum Communiqué (Koror, Republic of Palau 29–31 July 2014) and the Pacific Plan</li> </ul>
Conservation of biodiversity	<ul style="list-style-type: none"> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> <li>▪ Aquaculture Management Act 2003</li> <li>▪ Biosafety Act 2009</li> <li>▪ Environment Management Act 2010</li> <li>▪ Environment Impact Assessment Act 2003</li> <li>▪ Fisheries Management Act 2002</li> <li>▪ Parks and Reserves Act 1976 (revised 1988)</li> <li>▪ Harbours Act 1903</li> <li>▪ Ports Authority Act 1998</li> <li>▪ Ports Management Act 2001</li> <li>▪ Hazardous Wastes and Chemicals Act 2010</li> <li>▪ Marine Pollution Prevention Act 2002</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Renewable Energy Act</li> <li>▪ Seabed Minerals Act</li> <li>▪ Tonga Tourism Authority Act</li> <li>▪ Whale Watching and Swimming Act 2009</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Climate Change Policy 2016</li> <li>▪ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>▪ Coastal Community Management Plans</li> <li>▪ Aquaculture Commodity Development Plan 2010–2014</li> <li>▪ Marine Aquarium Fishery Management Plan</li> <li>▪ Tonga Deepwater Fisheries Management Plan 2014–2016</li> <li>▪ Fisheries Sector Plan 2016–2026</li> <li>▪ Tonga National Aquaculture Management and Development Plan (2014–2019)</li> <li>▪ Kingdom of Tonga National Plan of Action (Shark-Plan) (2014–2016)</li> <li>▪ Tonga National Tuna Fisheries Management and Development Plan (2015–2017)</li> <li>▪ Tonga National Sea Cucumber Fishery Management and Development Plan</li> <li>▪ Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012–2013)</li> <li>▪ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> <li>▪ Tonga Tourism Sector Roadmap – Final Report</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> <li>▪ SPC SOPAC Strategic Plan 2011–2015</li> <li>▪ SPC Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013–2016</li> <li>▪ Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008–2013</li> </ul>
Sustainable development/natural resource management	<ul style="list-style-type: none"> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> <li>▪ Aquaculture Management Act 2003</li> <li>▪ Biosafety Act 2009</li> <li>▪ Environment Management Act 2010</li> <li>▪ Environment Impact Assessment Act 2003</li> <li>▪ Fisheries Management Act 2002</li> <li>▪ Parks and Reserves Act 1976 (revised 1988)</li> <li>▪ Shipping Act 1973</li> <li>▪ Harbours Act 1903</li> <li>▪ Ports Authority Act 1998</li> <li>▪ Ports Management Act 2001</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Renewable Energy Act</li> <li>▪ Seabed Minerals Act</li> <li>▪ Tonga Tourism Authority Act</li> <li>▪ Whale Watching and Swimming Act 2009</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Climate Change Policy 2016</li> <li>▪ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>▪ Coastal Community Management Plans</li> <li>▪ Fisheries Sector Plan 2016–2026</li> <li>▪ Aquaculture Commodity Development Plan 2010–2014</li> <li>▪ Marine Aquarium Fishery Management Plan</li> <li>▪ Tonga Deepwater Fisheries Management Plan 2014–2016</li> <li>▪ Tonga National Aquaculture Management and Development Plan (2014–2019)</li> <li>▪ Kingdom of Tonga National Plan of Action (Shark-Plan) (2014–2016)</li> <li>▪ Tonga National Tuna Fisheries Management and Development Plan (2015–2017)</li> <li>▪ Tonga National Sea Cucumber Fishery Management and Development Plan</li> <li>▪ Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012–2013)</li> <li>▪ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>▪ Tonga Tourism Sector Roadmap – Final Report</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> <li>▪ SPC SOPAC Strategic Plan 2011–2015</li> <li>▪ SPC Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013–2016</li> <li>▪ Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008–2013</li> </ul>

ISSUE/TOPIC	NATIONAL LEGISLATION	NATIONAL POLICIES, STRATEGIES AND PLANS	REGIONAL POLICIES, STRATEGIES AND PLANS AND OTHER INSTRUMENTS
Marine spatial planning including MPAs and other MMAs	<ul style="list-style-type: none"> <li>▪ Act of the Constitution of Tonga</li> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> <li>▪ Fisheries Management Act 2002</li> <li>▪ Parks and Reserves Act 1976 (revised 1988)</li> <li>▪ Shipping Act 1973</li> <li>▪ Harbours Act 1903</li> <li>▪ Ports Authority Act 1998</li> <li>▪ Ports Management Act 2001</li> <li>▪ Land Act 1927</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Renewable Energy Act</li> <li>▪ Seabed Minerals Act</li> <li>▪ Tonga Tourism Authority Act</li> <li>▪ Whale Watching and Swimming Act 2009</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Climate Change Policy 2016</li> <li>▪ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>▪ Coastal Community Management Plans</li> <li>▪ Aquaculture Commodity Development Plan 2010–2014</li> <li>▪ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> <li>▪ Tonga Tourism Sector Roadmap – Final Report</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> </ul>
Offshore petroleum and mineral prospecting and production	<ul style="list-style-type: none"> <li>▪ Environment Impact Assessment Act 2003</li> <li>▪ National Spatial Planning and Management Act 2012 (potentially relevant)</li> <li>▪ Marine Pollution Prevention Act 2002</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Seabed Minerals Act</li> <li>▪ Shipping Act 1973</li> <li>▪ Transport Services Act</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> </ul>	
Shipping including discharge of ballast water	<ul style="list-style-type: none"> <li>▪ Act of the Constitution of Tonga</li> <li>▪ Environment Impact Assessment Act 2003</li> <li>▪ Shipping Act 1973</li> <li>▪ Harbours Act 1903</li> <li>▪ Ports Authority Act 1998</li> <li>▪ Ports Management Act 2001</li> <li>▪ Marine Pollution Prevention Act 2002</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Seabed Minerals Act</li> <li>▪ Transport Services Act</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> </ul>	
Depletion of marine resources e.g. overfishing, destructive fishing practices, illegal foreign fishing vessels	<ul style="list-style-type: none"> <li>▪ Aquaculture Management Act 2003</li> <li>▪ Environment Management Act 2010</li> <li>▪ Environment Impact Assessment Act 2003</li> <li>▪ Fisheries Management Act 2002</li> <li>▪ Parks and Reserves Act 1976 (revised 1988)</li> <li>▪ Marine Pollution Prevention Act 2002</li> <li>▪ Maritime Zones Act 2009</li> <li>▪ Petroleum Mining Act 1969</li> <li>▪ Renewable Energy Act</li> <li>▪ Seabed Minerals Act</li> <li>▪ Shipping Act 1973</li> <li>▪ Tonga Tourism Authority Act</li> <li>▪ Whale Watching and Swimming Act 2009</li> </ul>	<ul style="list-style-type: none"> <li>▪ Tongan Strategic Development Framework 2015–2025</li> <li>▪ National Biodiversity Strategy and Action Plan</li> <li>▪ Climate Change Policy 2016</li> <li>▪ Coastal Community Management Plans</li> <li>▪ Aquaculture Commodity Development Plan 2010–2014</li> <li>▪ Marine Aquarium Fishery Management Plan</li> <li>▪ Tonga Deepwater Fisheries Management Plan 2014–2016</li> <li>▪ Tonga National Aquaculture Management and Development Plan (2014–2019)</li> <li>▪ Fisheries Sector Plan 2016–2026</li> <li>▪ Kingdom of Tonga National Plan of Action (Shark-Plan) (2014–2016)</li> <li>▪ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>▪ Tonga National Tuna Fisheries Management and Development Plan (2015–2017)</li> <li>▪ Tonga National Sea Cucumber Fishery Management and Development Plan</li> <li>▪ Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012–2013)</li> <li>▪ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> <li>▪ Tonga Tourism Sector Roadmap – Final Report</li> </ul>	<ul style="list-style-type: none"> <li>▪ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> <li>▪ SPC Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013–2016</li> <li>▪ SPC SOPAC Strategic Plan 2011–2015</li> <li>▪ Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008–2013</li> <li>▪ Palau Declaration on 'The Ocean: Life and Future' Charting a course to sustainability</li> <li>▪ A new song for coastal fisheries: Pathways to change (SPC workshop report 2015)</li> <li>▪ Roadmap for inshore fisheries management and sustainable development 2014–2023 (draft 1 January 2015)</li> <li>▪ The Vava'u Declaration on Pacific Fisheries 'Our Fish, our Future'. Forum Communiqué, Thirty-eighth Pacific Islands Forum, Nuku'alofa, Tonga, 16–17 October 2007</li> </ul>

ISSUE/TOPIC	NATIONAL LEGISLATION	NATIONAL POLICIES, STRATEGIES AND PLANS	REGIONAL POLICIES, STRATEGIES AND PLANS AND OTHER INSTRUMENTS
Coastal erosion and increased sedimentation from development	<ul style="list-style-type: none"> <li>■ Environment Management Act 2010</li> <li>■ Environment Impact Assessment Act 2003</li> <li>■ Marine Pollution Prevention Act 2002</li> <li>■ Land Act 1927</li> <li>■ Tonga Tourism Authority Act</li> <li>■ National Spatial Planning and Management Act 2012 (potentially relevant)</li> </ul>	<ul style="list-style-type: none"> <li>■ Tongan Strategic Development Framework 2015–2025</li> <li>■ National Biodiversity Strategy and Action Plan</li> <li>■ Climate Change Policy 2016</li> <li>■ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>■ Coastal Community Management Plans</li> <li>■ Aquaculture Commodity Development Plan 2010–2014</li> <li>■ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> <li>■ Tonga Tourism Sector Roadmap – Final Report</li> </ul>	
Climate change	<ul style="list-style-type: none"> <li>■ Environment Management Act 2010</li> <li>■ Environment Impact Assessment Act 2003</li> <li>■ Renewable Energy Act</li> </ul>	<ul style="list-style-type: none"> <li>■ Tongan Strategic Development Framework 2015–2025</li> <li>■ Climate Change Policy 2016</li> <li>■ National Biodiversity Strategy and Action Plan</li> <li>■ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>■ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> </ul>	<ul style="list-style-type: none"> <li>■ Framework for a Pacific Oceanscape (2010)</li> <li>■ Pacific Island Regional Ocean Policy 2009</li> <li>■ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> <li>■ Action Plan for Implementing the CBD Program of Work on Protected Areas, (2011)</li> </ul>
Marine pollution e.g. oil spills, hazardous waste	<ul style="list-style-type: none"> <li>■ Environment Management Act 2010</li> <li>■ Environment Impact Assessment Act 2003</li> <li>■ Shipping Act 1973</li> <li>■ Harbours Act 1903</li> <li>■ Ports Authority Act 1998</li> <li>■ Ports Management Act 2001</li> <li>■ Hazardous Wastes and Chemicals Act 2010</li> <li>■ Marine Pollution Prevention Act 2002</li> <li>■ Maritime Zones Act 2009</li> <li>■ Petroleum Mining Act 1969</li> <li>■ Seabed Minerals Act</li> </ul>	<ul style="list-style-type: none"> <li>■ Tongan Strategic Development Framework 2015–2025</li> <li>■ Aquaculture Commodity Development Plan 2010–2014</li> <li>■ National Biodiversity Strategy and Action Plan</li> <li>■ Offshore Aggregate Extraction in Tongatapu 2005 – Technical Report</li> </ul>	<ul style="list-style-type: none"> <li>■ The Nairobi International Convention on the Removal of Wrecks</li> </ul>
Introduced marine pests and invasive species	<ul style="list-style-type: none"> <li>■ Biosafety Act 2009</li> <li>■ Environment Management Act 2010</li> <li>■ Environment Impact Assessment Act 2003</li> <li>■ Shipping Act 1973</li> <li>■ Fisheries Management Act 2002</li> </ul>	<ul style="list-style-type: none"> <li>■ Tongan Strategic Development Framework 2015–2025</li> <li>■ National Biodiversity Strategy and Action Plan</li> <li>■ Coastal Community Management Plans</li> <li>■ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>■ Aquaculture Commodity Development Plan 2010–2014</li> <li>■ Marine Aquarium Fishery Management Plan</li> <li>■ Tonga National Aquaculture Management and Development Plan (2014–2019)</li> </ul>	
Transboundary issues e.g. overfishing, pollution	<ul style="list-style-type: none"> <li>■ Biosafety Act 2009</li> <li>■ Environment Impact Assessment Act 2003</li> <li>■ Fisheries Management Act 2002</li> <li>■ Hazardous Wastes and Chemicals Act 2010</li> <li>■ Shipping Act 1973</li> <li>■ Marine Pollution Prevention Act 2002</li> <li>■ Maritime Zones Act 2009</li> <li>■ Petroleum Mining Act 1969</li> <li>■ Seabed Minerals Act</li> </ul>	<ul style="list-style-type: none"> <li>■ Tongan Strategic Development Framework 2015–2025</li> <li>■ National Biodiversity Strategy and Action Plan</li> <li>■ Joint Action Plan on Climate Change Adaptation and Disaster Risk Management 2010–2015</li> <li>■ Marine Aquarium Fishery Management Plan</li> <li>■ Tonga Deepwater Fisheries Management Plan 2014–2016</li> <li>■ Tonga National Aquaculture Management and Development Plan (2014–2019)</li> <li>■ Fisheries Sector Plan 2016–2026</li> <li>■ Kingdom of Tonga National Plan of Action (Shark-Plan) (2014–2016)</li> <li>■ Tonga National Tuna Fisheries Management and Development Plan (2015–2017)</li> <li>■ National Invasive Species Strategy and Action Plan 2013–2020</li> <li>■ Tonga National Sea Cucumber Fishery Management and Development Plan</li> <li>■ Tonga National Marine Seaweed (Limu Tanga'u) Fisheries Management and Development Plan (2012–2013)</li> </ul>	<ul style="list-style-type: none"> <li>■ Framework for a Pacific Oceanscape (2010)</li> <li>■ Pacific Island Regional Ocean Policy 2009</li> <li>■ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> <li>■ SPC SOPAC Strategic Plan 2011–2015</li> <li>■ SPC Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013–2016</li> <li>■ Pacific Islands Regional Coastal Fisheries Management Policy and Strategic Actions, 2008–2013</li> <li>■ The Vava'u declaration</li> <li>■ Niue Treaty</li> <li>■ Niue Treaty Subsidiary Agreement</li> <li>■ The Tokelau Arrangement</li> <li>■ South Pacific Forum Fisheries Agency Convention 10 July 1979</li> <li>■ Parties to Nauru Agreement</li> <li>■ The Federated States of Micronesia Arrangement</li> <li>■ United States Multilateral Fisheries Treaty</li> <li>■ Western and Central Pacific Fisheries Commission</li> <li>■ The Palau Arrangement</li> </ul>

## ATTACHMENT 3 BOUNDARY DEFINITIONS

The following boundary definitions have been compiled from a range of legislative sources.

NAME OF BOUNDARY/ AREA	DEFINITION	SOURCE
Archipelagic waters	<b>Archipelagic waters</b> means any waters, other than internal waters, enclosed by archipelagic baselines;	Maritime Zones Act 2013
Baselines	<b>Baselines</b> Subject to section 22(1)(a), the baselines which shall be used to determine the maritime zones of the Kingdom shall consist of a combination of the following – (a) straight archipelagic baselines determined in the manner prescribed in Article 47 of UNCLOS; or (b) normal baselines, being – (i) baselines that follow the low-water line in the manner mentioned in Article 5 of UNCLOS; (ii) baselines that follow the seaward low-water line of fringing reefs in the manner mentioned in Article 6 of UNCLOS; and (iii) straight baselines prescribed in the manner mentioned in Article 7 of UNCLOS.	Maritime Zones Act 2013
Baselines for the Tonga Archipelago	“archipelagic baselines” means baselines determined in accordance with section 4(a); (See above)	Maritime Zones Act 2013
Contiguous Zone	<b>11 Contiguous zone</b> The contiguous zone of the Kingdom shall be the area of sea between the territorial sea and a line every point of which is at a distance of 24 nautical miles from the nearest point of the baselines.	Maritime Zones Act 2013
Coastal Zone	Means the area within 30 metres inland from the high-water mark up to the fringing reef or if there is no fringing reef within a reasonable distance from the high-water mark	Maritime Zones Act 2013
Continental shelf	<b>15 Continental shelf</b> The continental shelf of the Kingdom comprises the seabed and subsoil of the submarine area, that extends beyond its territorial sea, throughout the natural prolongation of its land territory: (a) subject to paragraph 2 of article 76 of UNCLOS, to the outer edge of the continental margin; or (b) to a distance of 200 nautical miles from the baselines, from which the breadth of the territorial sea is measured, where the outer edge of the continental margin does not extend up to that distance.	Maritime Zones Act 2013
Exclusive economic zone	<b>12 Exclusive Economic Zone</b> (1) The exclusive economic zone of the Kingdom shall be the area beyond and adjacent to the territorial sea of the Kingdom out to a line every point of which is at a distance of 200 nautical miles from the nearest point of the baselines. (2) The King in Council may, by Order, prescribe the exclusive economic zone outer limit line as determined in accordance with subsection (1).	Maritime Zones Act 2013
Historic Waters	<b>6 Historic waters</b> (1) It is hereby declared that those parts of the sea that are within an area mentioned in subsection (2) are historic waters notwithstanding the fact that they may also be part of any other maritime zone. (2) The areas referred to in subsection (1) are – (a) the areas proclaimed by the Proclamation published on the 24th day of August, 1887 limiting and defining the extent of the Kingdom, being the islands, rocks, reefs, foreshores and waters lying between the fifteenth and twenty-third and half degrees of south latitudes and the one hundred and seventy-third and the one hundred and seventy-seventh degrees of west longitude; and (b) the area bounded by the Proclamation made on the 15th day of June, 1972 affirming and proclaiming Teleki Tokelau and Teleki Tonga to be part of the Kingdom.	Maritime Zones Act 2013

NAME OF BOUNDARY/ AREA	DEFINITION	SOURCE
<b>Internal waters</b>	“internal waters” means: (a) in respect of archipelagic waters, all waters landward of the closing lines: and (b) in any other case, all waters landward of any baselines;	Maritime Zones Act 2013
<b>Low-water line</b>	“low-water line” means the lowest astronomical tide level on the coast of the Kingdom as recommended by the International Hydrographic Organisation;	Maritime Zones Act 2013
<b>Maritime Cultural Zone</b>	<b>20 Maritime cultural zone</b> The maritime cultural zone of the Kingdom is the area of sea coincident with the contiguous zone.	Maritime Zones Act 2013
<b>Maritime Zones</b>	“maritime zones” means the: (a) archipelagic waters; (b) contiguous zone; (c) exclusive economic zone; (d) continental shelf; (e) historic waters; (f) internal waters; (g) maritime cultural zone; and (h) territorial sea;	Maritime Zones Act 2013
<b>Territorial Sea</b>	<b>7 Territorial sea</b> (1) The territorial sea of the Kingdom shall be the sea between the baselines, prescribed under section 4, and a line every point of which is at a distance of 12 nautical miles from the nearest point of the baselines. (2) Subject to UNCLOS, ships of all States, whether coastal or land-locked, shall enjoy the right of innocent passage through the territorial seas of the Kingdom.	Maritime Zones Act 2013
<b>Land</b> (see also Petroleum Mining Act 1970 and National Spatial Planning and Management Act 2012 below)	2. Section 2 of the Principal Act is amended by deleting the definition of “land” and replacing it with the following: “land” includes all submerged lands lying within the maritime zones of the Kingdom;	Minerals (Amendment) Act 2009 and Minerals Act 1988
<b>Marine Reserve</b>	“Marine Reserve” means a reserve of an area of sea	Parks and Reserves Act 1976 (revised 1988)
<b>Park</b>	“Park” means a park established under or pursuant to this Act	Parks and Reserves Act 1976 (revised 1988)
<b>Reserve</b>	“Reserve” means a reserve established under or pursuant to this Act; and includes marine reserves established under or pursuant to this Act	Parks and Reserves Act 1976 (revised 1988)
<b>Foreshore</b> (see also Land Act below)	“foreshore” means the land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of the tides and all land adjoining thereunto lying within 50 feet of the high-water mark of the ordinary tides;	Petroleum Mining Act 1970
<b>Land</b> (see also Minerals (Amendment) Act 2009, National Spatial Planning and Management Act 2012 below and Minerals Act 1988 above)	“land” means any area of onshore land within the Kingdom of Tonga and includes offshore land adjacent to and contiguous with such onshore land;	Petroleum Mining Act 1970

NAME OF BOUNDARY/ AREA	DEFINITION	SOURCE
Off-shore Land	“ <b>off-shore land</b> ” means all submerged lands lying within the archipelagic waters, internal waters, territorial sea, historical waters and exclusive economic zone of the Kingdom;	Petroleum Mining Act 1970 Petroleum Mining (Amendment) Act 2009.
Land (also see Petroleum Mining Act 1970 and Minerals Act 1988 above)	“ <b>land</b> ” includes land covered with water	National Spatial Planning and Management Act 2012
Fisheries Waters	“ <b>fisheries waters</b> ” means the territorial waters of the Kingdom, internal waters including lagoons, and such other waters over which the Kingdom of Tonga from time to time claims sovereign rights or jurisdiction with respect to the marine living resources by legislative enactment or by Royal Proclamation;	Fisheries Management Act 2002
Special Management Areas	<b>13 Special Management Areas</b> (1) The Minister may by Order published in the Gazette, declare any area of the fisheries waters and corresponding subjacent area to be a Special Management Area for purposes of coastal community management, application of certain conservation and management measures, subsistence fishing operations or other specified purpose.	Fisheries Management Act 2002
Forest Reserve	“ <b>forest reserve</b> ” means any demarcated forest or proclaimed forest reserve but shall not include a village forest reserve;	Forest Act 1988
Reserved Area	“ <b>reserved area</b> ” means any demarcated area of land or proclaimed area of land which may be under grass or scrub but which may be needed for afforestation in the future;	Forest Act 1988
Foreshore (also see Petroleum Mining Act 1970 above)	“ <b>foreshore</b> ” means the land adjacent to the sea alternately covered and left dry by the ordinary flow and ebb of the tides and all land adjoining thereunto lying within 15.24 metres of the high-water mark of the ordinary tides; (Amended by Acts 11 of 1980 and 21 of 1984.)	The Land Act 1927
Protected Area	<b>Protected Area</b> means any area or areas within the Kingdom established as a protected area within the meaning of the Convention on Biological Diversity (opened for signature at the Earth Summit in Rio de Janeiro on 5 June 1992, entered into force on 29 December 1993, and to which Tonga acceded in 1998);	Seabed Minerals Act 2014

## ATTACHMENT 4 TYPOLOGY OF MARINE PROTECTED AREAS IN TONGA

NOTE – due to a lack of information the table is incomplete and will need to be completed/updated as more information on each protected area is found.

TYPE OF PROTECTED AREA	OBJECTIVE (S)	LEGAL INSTRUMENT(S)	MANAGEMENT AGENCY	PERMITTED ACTIVITIES	PROHIBITED ACTIVITIES	CRITERIA (EXAMPLE)	IUCN CATEGORY	EXAMPLES
Park Reserve Marine	Benefit and enjoyment of people – freedom of entry and recreation. Protection, preservation and maintenance of any valuable – entry in accordance with conditions and restrictions. Protection, preservation and control of any aquatic form of life and any organic or inorganic matter	<i>1976 Parks and Reserves Act (revised 1988)</i>	Parks and Reserves Authority	?	?	?	?	See Note 1 for details of examples
Parks/ managed reserves	?	?	?	?	?	?	?	Ha'amonga Trilithon Park Vava'u Coastal Gardens Marine Park
Faunal reserve	?	?	?	?	?	?	?	Volcanic Island Forest Reserve
Marine reserve	See Note 2.	Environment Management Plan for the Fanga'uta Lagoon System Birds Preservation Act	Department of Environment	Prescribed by the conditions of use under the 8 zones	Prescribed by the conditions of use under the 8 zones	?	?	Fanga'uta and Fangakakau Lagoons
Multiple use conservation area	The principal aim is to preserve and enhance biodiversity by developing resource management schemes and development activities which enhance the natural environment while providing for the well-being of the local resources owners and communities.	Project based under the South Pacific Biodiversity Conservation Programme	Department of Environment and Ha'apai Governor's Office and Communities	?	?	?	?	Ha'apai Conservation Area
National parks	?	<i>1976 Parks and Reserves Act (revised 1988)</i> for 'Eua and Mt Talau only	?	?	?	?	?	'Eua NP Kao NP Mt Talau NP Tofua NP

TYPE OF PROTECTED AREA	OBJECTIVE (S)	LEGAL INSTRUMENT(S)	MANAGEMENT AGENCY	PERMITTED ACTIVITIES	PROHIBITED ACTIVITIES	CRITERIA (EXAMPLE)	IUCN CATEGORY	EXAMPLES
Nature reserve	?	?	?	?	?	?	?	Vaomapa
Sanctuary	?	?	?	?	?	?	?	Mounu Reef Whale Sanctuary? (there is reference to a Royal Proclamation)
Special management area	Coastal community management, application of certain conservation and management measures, subsistence fishing operations or other specified purpose	<i>Fisheries Management Act 2002</i> <i>Gazette Order Licences</i> <i>Fisheries Management (Conservation) Regulations 1994</i> <i>Fisheries (Coastal Communities) Regulations 2009</i>	Department of Fisheries	Defined by regulation and the individual Coastal Community Management Plans	Defined by regulation and the individual Coastal Community Management Plans	?	?	See Note 3. For details of SMAs
Fish habitat reserve	Manage Fishing	<i>Fisheries (Coastal Communities) Regulations 2009</i>	Secretary and the Committee	Defined by regulation and the individual Coastal Community Management Plans	Defined by regulation and the individual Coastal Community Management Plans	?	?	
Giant clam and lobster protective zone	Protection of giant clam or lobster	<i>Fisheries (Coastal Communities) Regulations 2009</i>	Secretary and the Committee	Defined by regulation and the individual Coastal Community Management Plans	Defined by regulation and the individual Coastal Community Management Plans	?	?	
Aquaculture area buffer zone	As determined by Minister	<i>Aquaculture Management Act</i> Gazette Notice dated 12 January 2016 pursuant to section 5 of the Aquaculture Management Act	Fisheries	As determined by Minister	As determined by Minister	As determined by Minister		See Note 4 for details of areas.
Other areas	?	?	?	?	?	?	?	Neiafu Harbour Wreck Swallows Cave

## NOTES

### 1. Examples of areas declared under the Parks and Reserves Act 1976 (revised 1988)

To date, different legal and other governance arrangement and policies have been applied to declaring and managing protected areas in Tonga. In many cases, the formal instruments have not been sighted by the report drafters, as these have not been filed in an accessible manner. The protected areas that exist (have authority) in legislation (or in other governance structures) may or may not fit within any nominated typology of protected areas. In addition, the protected areas that have authority in legislation (or in other governance arrangements) may or may not have been implemented on the ground (or on the water).

Ha'atafu Beach	'Otu Motu Lalo Island Reserve (Maninita, Taula and Lualoli Islands) –
Hakaumama'o Reef	combined terrestrial and marine reserve (including the reef)
Malinoa Island Park and Reef	Fonualei Island Reserve – combined terrestrial and marine reserve (including the reef)
Monuafe Island Park and Reef	Talehele (Leimatu'a) – terrestrial reserve
Mui Hopo Hoponga Coastal Reserve	Vai'utukakau (Ha'alaufuli) – terrestrial reserve
Pangaimotu Reef	Mount Talau National Park
	Popua Sia Heu Lupe Mounds – heritage reserve

### 2. Marine reserve

The Environmental Management Plan for Fanga'uta Lagoon System was designed to improve the existing conditions in the lagoon and ensure that it can provide the maximum use of goods and services in the future. The EMP is a guide for action by government, and action by individuals taking responsibility for their own environment. To provide guidance for development and spread the benefits of the lagoon as fairly as possible, the plan developed a multi-use zoning plan, based on scientific information and the voice of communities.

### 3. Special management areas

SMAs and designated coastal community:	2004 – SMA Order	2013 – SMA Order
Ovaka Coastal Community	Telekitonga and Telekitonga	Nomuka Coastal Community
Felemea Coastal Community		Taunga Coastal Community
'Atata Coastal Community		Fafa Island Coastal Community
Ha'afeva Coastal Community		
'Eueiki Coastal Community		
'O'ua Coastal Community		

### 4. Aquaculture buffer zone

Ataa Island	Patangata (Area 2)	Niniva	'Utungake (Area 6)	'Utungake (Area 5)
Motutapu Island	Fanga'uta (Area 1)	Teleki Tonga Island	'Alo'italau	Koloa
Nuku Island	Fanga'uta (Area 2)	Teleki Vava'u Island	Holeva	Mo'unga Talau
'Onevao	Fanga'uta (Area 3)	Uonuku Island	Vaipua (Area 1)	Feletoa
'Onevai	Lalona Island	Mounu Island	Vaipua (Area 2)	
Ongo Velitoa	Lekeleka	Olo'ua Island	Vaipua (Area 3)	
Polo'a	Luangahu Island	'Otea	Vaipua (Area 4)	
Tau Island (Area 1)	Luahoko Island	'Otu Motu Hahake Vava'u	Vaipua (Area 5)	
Tau Island (Area 2)	Mangoiki Island	Pangaimotu	Vaipua (Area 6)	
'Oneata		Toku Island	Vaipua (Area 7)	
Patangata (Area 1)			Tu'anuku Lake	
			Tu'anekivale	



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