



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

# VANUATU



Marine and Coastal Biodiversity Management  
in Pacific Island Countries



## EFFECTIVE MANAGEMENT



Marine and coastal ecosystems of the Pacific Ocean provide benefits for all people in and beyond the region. To better understand and improve the effective management of these values on the ground, Pacific Island Countries are increasingly building institutional and personal capacities for Blue Planning.

But there is no need to reinvent the wheel, when learning from experiences of centuries of traditional management in Pacific Island Countries. Coupled with scientific approaches these experiences can strengthen effective management of the region's rich natural capital, if lessons learnt are shared.

The MACBIO project collaborates with national and regional stakeholders towards documenting effective approaches to sustainable marine resource management and conservation. The project encourages and supports stakeholders to share tried and tested concepts and instruments more widely throughout partner countries and the Oceania region.

This review of the legal basis for effective marine management is part of MACBIO's support to its partner countries' national marine planning and management processes.

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MARINE ECOSYSTEM  
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EFFECTIVE MANAGEMENT





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

## REPORT TO THE GOVERNMENT OF VANUATU

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

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SUGGESTED CITATION: Muldoon J, Dovo A and L Fernandes (2015)  
Review of legislation, policies, strategies and plans relating to the use and  
management of Vanuatu's oceans. Report to the Government of Vanuatu.  
MACBIO (GIZ, IUCN, SPREP), Suva.

2015



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

## ACKNOWLEDGEMENTS

The MACBIO Legislative Analysis report was prepared with the support of the Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) project. MACBIO is funded by the German Federal Ministry for Environment, Nature Conservation and Nuclear Safety's (BMUB) International Climate Initiative (IKI). It is being implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, German Agency for International Cooperation) in close collaboration with the Secretariat of the Pacific Regional Environment Programme (SPREP) and with technical support from the International Union for Conservation of Nature (IUCN) Oceania Regional Office. We also thank our tireless copy editor, Dr Vicki Nelson.

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## ACRONYMS AND ABBREVIATIONS

<b>AusAID</b>	Australian Agency for International Development
<b>BAC</b>	Biodiversity Advisory Council
<b>CAP</b>	Chapter
<b>CBD</b>	Convention for Biological Diversity
<b>CCA</b>	Community Conservation Area
<b>CITES</b>	Convention on International Trade in Endangered Species
<b>CROP</b>	Council of Regional Organisations in the Pacific
<b>COP</b>	Conferences of the Parties
<b>DEPC</b>	The Department of Environmental Protection and Conservation
<b>EEZ</b>	Exclusive Economic Zone
<b>EIA</b>	Environmental impact assessment
<b>FAME</b>	SPC Division of Fisheries, Aquaculture and Marine Ecosystems
<b>FFA</b>	Forum Fisheries Agency
<b>GIZ</b>	German Agency for International Cooperation
<b>GMO</b>	Genetically Modified Organism
<b>IUCN</b>	International Union for the Conservation of Nature
<b>LMO</b>	Living Genetically Modified Organism
<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>MDG</b>	Millennium Development Goal
<b>MPA</b>	Marine protected area
<b>MSG</b>	Melanesian Spearhead Group
<b>NAB</b>	National Advisory Board on Climate Change and Disaster Risk Reduction
<b>Nakamal</b>	A customary institution that operates as the seat of governance
<b>NAPA</b>	National Adaptation Programme for Action
<b>NBSAP</b>	National Biodiversity Strategy Action Plan
<b>NEP</b>	National Environment Policy
<b>NICMF</b>	National Integrated Coastal Management Framework
<b>NSDP</b>	National Sustainable Development Plan
<b>OIP</b>	Ocean and Islands Programme
<b>PAA</b>	Priorities and Action Agenda
<b>PEA</b>	Preliminary Environmental Assessment
<b>PICTs</b>	Pacific Islands Countries and Territories
<b>PIF</b>	Pacific Islands Forum
<b>PIROP</b>	Pacific Islands Regional Oceans Policy
<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>SPTT</b>	South Pacific Tuna Treaty
<b>TAC</b>	Total Allowable Catch
<b>U.S.</b>	United States
<b>UN</b>	United Nations
<b>UNCLOS</b>	United Nations Convention on Law of the Sea
<b>UNFCCC</b>	United Nations Framework Convention to Climate Change
<b>VMS</b>	Vessel Management System
<b>VT</b>	Vatu (currency of Vanuatu)

# EXECUTIVE SUMMARY

The Government of Vanuatu has decided to develop an oceans policy, aligning with recommendations from the Commonwealth Secretariat. This report has been prepared to provide an analysis and assessment of legislation relevant to management and use of Vanuatu's oceans, to contribute to the development of a national oceans policy.

The review approach involved an analytical framework comprising three components:

1. Individual analysis of legislation, policies, strategies and plans;
2. Integration of individual analyses into an assessment table for comparative analysis and assessment; and
3. This report that provides an assessment narrative based on the individual analyses and the information from the assessment table.

## Developing an oceans policy

There is a sound legislative basis to support the preparation of an oceans policy and that there exists a matrix of national legislation and both national and regional policies and strategies that provide significant support for implementing an oceans policy although there is no overarching legislation or policy to provide for a coordinated and integrated approach to oceans management. However, there are gaps in some legislation that should be addressed by changes to the legislation, as recommended in this review, to effectively deal with matters that would have an impact on Vanuatu's oceans.

The Constitution of the Republic of Vanuatu 1980, being the sovereign law of Vanuatu, recognises the significant requirement to protect Vanuatu. The Constitution is binding on every Ni-Vanuatu person to safeguard the national wealth, resources and environment for current and future generations. This obligation is one of the underpinnings for managing the territorial waters of Vanuatu and consequently implies de facto support for the development of a national oceans policy.

### Environmental Management and Conservation Act No. 12 of 2002

The Environmental Management and Conservation Act No. 12 of 2002, which is administered by the Minister responsible for the environment, provides for the conservation, sustainable development and management of the environment of Vanuatu, and the regulation of related activities including the development of national policies and plans.

### Maritime Zones Act of 2010

The Maritime Zones Act of 2010 is **highly relevant** to the development of an oceans policy. The Act defines the maritime zones for Vanuatu and sets out Vanuatu's rights in relation to its exclusive economic zone and over the continental shelf, which in turn defines the extent of the area to which a national oceans policy might apply.

### Implementation of an oceans policy

A range of national legislation and both national and regional policies and strategies provide an appropriate level of support for the preparation and implementation of an oceans policy without the need for specific legislation for oceans management. The following are the most relevant instruments.

## NATIONAL LEGISLATION

### Convention on Biological Diversity (Ratification) Act No. 23 of 1992

The Act ratifies the United Nations Convention on Biological Diversity which deals with the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the use of genetic resources, which is **highly relevant** to the development and implementation of a national oceans policy for Vanuatu. The Convention provides for development of national strategies, plans and programmes for conservation and sustainable use and the integration of conservation and sustainable use into relevant cross-sectoral plans, programs and policies.

### National Parks Act [CAP<sup>1</sup> 224]

The National Parks Act makes provision for the declaration of national parks and nature reserves, for the protection and preservation of such areas, and for matters connected with them.

The National Parks Act is relevant to oceans management and use from the perspective that it provides for the creation of protected areas.

### Fisheries Act No. 10 of 2014

The Fisheries Act makes provision for the management, development and regulation of fisheries within Vanuatu waters, and for the control of fishing vessels entitled to fly the flag of Vanuatu outside of Vanuatu waters in a manner consistent with Vanuatu's international obligations, and for related matters. Consequently, it is **highly relevant** to the implementation of a national oceans policy for Vanuatu.

### Framework Convention on Climate Change (Ratification) Act [CAP 218]

The Act provides for the ratification of the United Nations Framework Convention on Climate Change. It is therefore **highly relevant** to development of a national oceans policy as it deals with the effects of climate change through a variety of management instruments developed and implemented by signatories to the Convention, including Vanuatu.

### Maritime Conventions Act [CAP 155]

The Act gives effect to international conventions to which Vanuatu is a signatory and provides that these conventions shall have full force of law in Vanuatu. The conventions most relevant to Vanuatu's oceans are those dealing with pollution at sea and the Agreement on the International Dolphin Conservation Program 1998.

### Shipping Act [CAP 53]

The Shipping Act provides for the control and safety of Vanuatu registered vessels. The Act deals with the safe passage of vessels through the waters of Vanuatu and addresses the issue of protecting Vanuatu waters from pollution.

### Mines and Minerals Act [CAP 190]

The Mines and Minerals Act makes provision for mining to be carried out seaward of the land so is **highly relevant** to oceans management and therefore to the development of a national oceans policy. The Act does not provide for other uses in the oceanic environment and nor does it contain provisions for environmental impact assessment or environmental protection.

### Deep-Sea Mining Legislative Review Vanuatu (2013)

A review of Vanuatu's legislation was conducted in 2013 to identify the extent to which national regulation of deep-sea mineral activities is already covered by existing legislation and where there may be a need for further legislation or regulations to be enacted by Vanuatu to comply with international law standards and requirements.

Some gaps in the regulatory regime for deep seabed mineral activities were identified, most notably environmental management requirements for mineral activities conducted at sea, and fiscal arrangements tailored for seabed mineral activities.

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1 CAP – Chapter

The review recommended that further legislation be adopted to ensure gaps are adequately covered and that a competitive deep-sea minerals management regime for mineral prospecting, exploration and recovery activities of Vanuatu be established.

### Petroleum (Exploration and Production) Act [CAP 227]

The Act is **highly relevant** to a future oceans policy as it defines both a potential use and potential suite of impacts, and provides for a means of spatial planning which raises the issue of potentially conflicting policies and legislation with conservation provisions. However, this provides an opportunity to engage with the relevant government department(s) to ensure that environmental protection and other desirable policy outcomes are incorporated into licensing conditions.

### Custom Land Management Act No. 33 of 2013

The Custom Land Management Act extends to the waters within the outer edge of any reef adjacent to custom land including all fringing reefs, and the land below those waters to the extent that they are considered to belong to custom owners under the custom of that custom area.

This Act is **moderately relevant** to coastal zone management (and oceans management) because it provides a definition of the seaward extent of customary tenure in the coastal zone, as well as providing a dispute resolution mechanism for related disputes.

### Agreement Establishing the South Pacific Regional Environment Program Ratification Act No. 21 of 2005

The purposes of the South Pacific Regional Environment Program (SPREP) are to promote cooperation in the South Pacific region and to provide assistance to protect and improve the region's environment and to ensure sustainable development for present and future generations. SPREP achieves these purposes through an action plan adopted by the SPREP Meeting that sets the strategies and objectives of SPREP. The Agreement is **highly relevant** to oceans use and management from the perspective that it provides region-wide programs and initiatives that are/may be carried out within Vanuatu's maritime boundaries.

## NATIONAL POLICIES

### National Environment Policy (draft dated 26 July 2013)

The (draft) National Environment Policy is **potentially highly relevant** to the development of an oceans policy in that it provides policy settings for many of the uses of Vanuatu's oceans. The National Environment Policy creates a framework that links existing environment-related policies, while at the same time providing a roadmap for Vanuatu's long-term environmental objectives and actions – this is consistent with the general intent of the national oceans policy.

### Tuna Management Plan 2014

This is **highly relevant** to oceans management and use as it deals specifically with the use of fishery resources. The plan is a working document that provides specific direction and guidance to managers and policy-makers linked to a clear set of objectives and principles.

### Integrated Coastal Management Framework and Implementation Strategy, 2010

The Integrated Coastal Management Framework and Implementation Strategy is **highly relevant** to development and implementation of an oceans policy. Many of the issues identified and strategic arrangements developed for managing the coastal zone will apply equally validly to the oceans of Vanuatu.

### Climate Change Policy (draft dated 30 January 2015)

The (draft) Climate Change Policy is **potentially highly relevant** to oceans management and use and the development of a national oceans policy; many of the predicted climate change impacts and impacts from natural disasters have the potential to significantly impact on coastal and marine resources.

## REGIONAL POLICIES AND PLANS

### Framework for a Pacific Oceanscape (2010)

This regional policy is **highly relevant** to a national oceans policy as it provides a regional context for implementation, especially through the Pacific Island Regional Ocean Policy 2009 (PIROP).

### Pacific Island Regional Ocean Policy 2009

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 the United Nations Convention on the Law of the Sea and other international and regional agreements.

### A new song for coastal fisheries: pathways to change

This is a Secretariat of the Pacific Community (SPC) output from a workshop held in Noumea 3–6 March 2015 and provides a strategy for community-based ecosystem approaches to fisheries management.

### Framework for Pacific Regionalism - Forum Leaders Statement 2014

This is a statement by PIF leaders about the Framework for Pacific Regionalism replacing the Pacific Plan. This statement is **highly relevant** to an oceans policy for Vanuatu as it is a political commitment to a regional framework for cooperation between member countries.

### Palau Declaration on 'The Ocean: Life and Future' Charting a course to sustainability

The Palau Declaration calls on regional and global partners, including civil society and the private sector, to work with members and the Forum Fisheries Agency to evaluate and implement appropriate solutions to address illegal, unreported and unregulated fishing and associated significant loss of fisheries earnings to Pacific island countries. This is a significant political commitment by PIF leaders to the sustainable management, development and conservation of the ocean and is **highly relevant** as a political statement of support for an oceans policy.

### Roadmap for inshore fisheries management and sustainable development 2014-2023 (draft 1 January 2015)

The leaders of the Melanesian Spearhead Group (MSG) countries gathered at the leaders' summit in March 2012 agreed to develop a roadmap for the protection of inshore fisheries. This document represents a management framework and regional roadmap for sustainable inshore fisheries which has been developed by the MSG Secretariat in cooperation with representatives of the Fisheries Departments of MSG countries and with the technical assistance of the SPC. This is **moderately relevant** to an oceans policy in that it potentially provides a framework for regional fisheries management and a basis for developing collaborative and synergistic plans and strategies with neighbouring countries.

### 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)

The Vava'u Declaration reaffirms the importance of fisheries to the economies of all PIF countries and commits countries to promoting domestic fisheries, developing and managing coastal/inshore fisheries, maintaining regional solidarity in managing tuna stocks, strengthening support for the Forum Fisheries Agency and upholding and strengthening protection measures for the regions fishery resources. This statement is **highly relevant** because it is a strong political commitment by Vanuatu, as a member of the PIF, to fisheries management in the region.

A range of other national legislation and both national and regional policies and strategies provide a moderate level of support for implementation of an oceans policy (see section 3.2).

Other documents analysed were either of **low relevance** or **not relevant** to the development of a national oceans policy. They were included in the analysis to ensure completeness of the review and are listed in Attachment 1.

# 1 INTRODUCTION

*“The Ni-Vanuatu people treasure their ocean. The Government of Vanuatu sees its role as helping to ensure that the people of Vanuatu, today and into the future, benefit from the bounty of her oceans. Our land is small, our ocean vast – and with a growing community of Ni-Vanuatu, we will turn increasingly to the ocean for our food and livelihoods. This oceans policy contributes to sustaining those efforts. The vision for Vanuatu is of a safe and healthy ocean for the Ni-Vanuatu of today and tomorrow.”<sup>2</sup>*

The strategic objectives for the National Ocean Policy are to:

1. Secure rights to marine resources;
2. Reform ocean governance;
3. Preserve and protect the marine environment;
4. Promote sustainable economic development;
5. Promote public awareness, participation and accountability;
6. Increase knowledge and capacity building; and
7. Build resilience and manage for uncertainty.

The project to review Vanuatu’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). The project is jointly implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ, German Agency for International Cooperation) and the International Union for the Conservation of Nature (IUCN) Oceania office, supported by the Secretariat of the Pacific Regional Environment Programme.

The MACBIO project assists governments to use seascape-level marine spatial planning to strengthen the sustainable management of their marine and coastal resources and biodiversity. 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;
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.

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<sup>2</sup> Oceans Sub-Committee meeting on 3 February 2015 – Meeting Report

## 1.1 PURPOSE OF REVIEW

The Vanuatu Government, through the Ministry of Foreign Affairs and the National Committee on Maritime Boundaries of the Government of Vanuatu, has decided to develop an oceans policy, which aligns with recommendations previously received from the Commonwealth Secretariat.<sup>3</sup>

This report has been prepared for the MACBIO project to support Objective 2 above, the development of exclusive economic zone-wide spatial planning frameworks. More specifically, the analysis and assessment of legislation relevant to management and use of Vanuatu's oceans will contribute to the development of a national oceans policy for Vanuatu (review Terms of Reference are at Attachment 2).

## 1.2 REVIEW APPROACH

The analytical framework used to undertake the review of legislation, conventions, policies and strategies in support of Vanuatu's proposed oceans policy comprises three components:

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

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, plan or network of MPAs for Fiji. 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; and
3. This report, which provides an assessment narrative based on the individual analyses and the information from the assessment table.

An additional analysis explored the legislative basis for inshore maritime boundaries with regard to customary ownership. This analysis is provided at Attachment 3. This analysis was conducted in 2015 and does not consider instruments that came into effect since then.

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<sup>3</sup> Roberts, J. 2012. Vanuatu Ocean Governance Workshop Summary Report. Commonwealth Secretariat, London.

## 2 REVIEW OF LEGISLATION, POLICIES AND PLANS AND RELEVANCE TO DEVELOPMENT OF AN OCEANS POLICY

### 2.1 LEGISLATION

#### 2.1.1 National

##### National Constitution of the Republic of Vanuatu

The Constitution mentions the use of natural resources or the environment. It imposes for every *Ni-Vanuatu* a fundamental duty to him or herself, descendants and to others “to protect the Republic of Vanuatu and to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations”. Although the fundamental duties in the Constitution are non-justifiable, they are still important in shaping national laws and policies.

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

The Constitution is binding on every *Ni-Vanuatu* person to safeguard the national wealth, resources and environment for current and future generations. This obligation is one of the underpinnings for managing the territorial waters of Vanuatu and consequently implies *de facto* support for the development of an oceans policy.

##### Environmental Protection and Conservation Act [CAP 283]

The stated objective of the Environmental Protection and Conservation Act is “to provide for the conservation, sustainable development and management of the environment of Vanuatu and the regulation of related activities.” In short, it builds on existing laws and is regarded as the primary legislation that fosters the sustainable use of resources and appropriate protection of the environment of Vanuatu, “including its lands, air and waters.”<sup>4</sup>

The Act establishes the office of a Director for the department responsible for the environment and establishes two authorities: one lies with the Director of the department responsible for the environment and the other with the Biodiversity Advisory Council (BAC).

The specific functions of the Director of the department responsible for the environment include, among other things:

- maintenance of an Environmental Registry;
- preparation of State of the Environmental Reports;
- *development of national policies and plans with appropriate public consultation* (emphasis added);
- administration of mandatory environmental impact assessment (EIA) procedures;
- preparation of guidelines, standards, codes of practice and procedures;
- preparation of advice on international environmental treaties and instruments; and
- undertaking of environmental research, assessment, monitoring, and inspection.

<sup>4</sup> EPC Act Part 1 – Preliminary.  
2. Interpretation

The BAC has been established under Section 29 of the Act and is specifically tasked to advise the Minister on matters relating to the implementation of the Convention on Biological Diversity (CBD), including commercial bioprospecting.

### *Regulatory and planning provisions*

The Act introduces four main categories of regulatory provisions:

- production and keeping of instruments (documents);
- EIA;
- bioprospecting; and
- community conservation areas.

#### Production and keeping of instruments (documents)

Part 2, Division 2 (sections 6–10) of the Act require the Director to establish, operate and maintain an Environmental Registry (s.6) on which information about prescribed documents, applications, permits, approvals, regulations, standards, guidelines, codes, reports and plans must be registered. The objective of doing so is to ensure transparency in the system.

#### Environmental impact assessment

Part 3 (sections 11–28) of the Act provides necessary statutory linkages and inter government agency coordination for implementing EIAs. Subject to a few exceptions this law states that EIAs are mandatory for all development activities, projects and proposals that cause or are likely to cause significant environmental, social and or custom impacts, especially those that are likely to:

- affect coastal dynamics or result in coastal erosion;
- result in pollution of water resources;
- affect any protected, rare, threatened or endangered species, its habitat or nesting grounds;
- result in the contamination of land;
- endanger public health;
- affect important custom resources;
- affect protected or proposed protected areas;
- affect air quality;
- result in unsustainable use of renewable resources;
- result in introduction of foreign organisms and species; and/or
- result in any other activity prescribed by regulation.

#### Bioprospecting

Part 1 of the of the EPC Act defines bioprospecting as *“any activity undertaken to harvest or exploit all or any ... (a) samples of genetic resources; (b) samples of derivatives of genetic resources; and (c) the knowledge, innovations and customary practices of local communities associated with those genetic resources, for the development of research, product development, conservation, industrial or commercial application, and includes investigative research and sampling, but does not include customary uses of genetic resources and derivatives.”*

The BAC (among other things) vets all bioprospecting applications.

#### Traditional biological knowledge

The definition of bioprospecting includes regulation of traditional biological knowledge by the BAC. Any persons wishing to exploit and/or research traditional biological knowledge must apply for a permit from the BAC. Section 34(6) (a) sets out the criterion for approval of bioprospecting permits.

#### Community conservation areas (CCAs)

The Director can register a CCA in the Environmental Register where custom landowners agree to the formal protection of areas of biodiversity significance within their customary land.

The effect of registration of a CCA places the obligation of managing that area on the landowners through a management committee. The Director can provide technical or financial assistance to support the management of the CCA.

The EPC Act is administered by the Minister responsible for the environment.

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

The EPC Act is **highly relevant** to development of an oceans policy.

#### *Precautionary principle*

The development of the oceans policy also needs to formally consider application of the precautionary principle.

The Environmental Management and Conservation (Amendment) Act No. 28 of 2010 states:

##### *“5A Application of the precautionary principle*

- 1. Notwithstanding the provisions of any other Act, all persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the environment, are to apply the precautionary principle when discharging their responsibilities and functions, or exercising their powers.*
- 2. For the purposes of this section, the precautionary principle is applied if, in the event of a threat or damage to the environment or human health exists in Vanuatu, a lack of full scientific certainty regarding the extent of adverse effects of the threat or damage is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of environmental damage or degradation.*
- 3. Any decision making made under the terms of this Act must be guided by consideration of climate change adaptation and mitigation issues.”*

The Act also provides the basis for developing national policies and plans.

## Convention on Biological Diversity (Ratification) Act No. 23 of 1992 (including the Aichi Targets)

This is an instrument of ratification by the Vanuatu Government to the United Nations CBD signed on 5 June 1992. By this law, the CBD became part of the domestic legislation of Vanuatu on 1 March 1993.

As a signatory to the CBD Vanuatu is obliged to give effect to the provisions of the Convention. The objectives of this Convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the use of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

The Convention recognises that *“States should enact effective environmental legislation, that environmental standards, management objectives and priorities should reflect the environmental and developmental context to which they apply, and that standards applied by some countries may be inappropriate and of unwarranted economic and social cost to other countries, in particular developing countries”*.

#### *Strategic plan*

The tenth meeting of the Conference of Parties (COP), held from 18 to 29 October 2010, in Nagoya, Aichi Prefecture, Japan, adopted a revised and updated Strategic Plan for Biodiversity, including the Aichi Biodiversity Targets for 2011–2020.

The plan provides an overarching framework on biodiversity, not only for the biodiversity-related conventions, but for the entire United Nations system and all other partners engaged in biodiversity management and policy development.

Parties agreed to translate this overarching international framework into revised and updated national biodiversity strategies and action plans within two years. In addition,, the COP decided that the fifth national reports, due by 31 March 2014, should focus on the implementation of the 2011–2020 Strategic Plan and progress achieved towards the Aichi Biodiversity Targets (a copy of the Aichi Targets is at Attachment 4).

The Strategic Plan for Biodiversity 2011–2020<sup>5</sup> obliges Parties to the CBD to undertake certain activities, which are:

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5 <http://www.cbd.int/decision/cop/?id=12268>

- reviewing, and as appropriate, updating and revising their national biodiversity strategies and action plans (NBSAPs) in line with the Strategic Plan for Biodiversity 2011–2020;
- developing national targets, using the strategic plan and its Aichi Biodiversity Targets<sup>6</sup> as a flexible framework, and integrating these national targets into the updated NBSAPs. The national targets are developed considering national priorities and capacities with a view of also contributing to the collective efforts to reach the global Aichi Biodiversity Targets;
- adopting the updated NBSAPs as a policy instrument;
- using the updated NBSAPs for the integration of biodiversity into national development, accounting and planning processes; and
- monitoring and reviewing implementation of the NBSAPs and national targets, using indicators.

The CBD (Ratification) Act is administered by the Minister responsible for the environment.

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

Vanuatu is a signatory to the CBD and is obliged to enact national legislation to give effect to the provisions of the Convention and to develop national strategies, plans or programmes for conservation and sustainable use of biodiversity. This convention underpins Vanuatu's international obligations to conserve biodiversity. The enactment of the Environmental Protection and Conservation Act [CAP 283], the National Biodiversity Strategy and Action Plan 1999, the CBD Strategic Plan for Biodiversity 2011–2020 and the Aichi Targets give effect to the Convention and are therefore **highly relevant** to the development of an oceans policy, including Aichi Targets 2, 4, 5, 6, 9, 10, 15 and particularly Target 11, which states that “By 2020, at least [...] 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider [...] seascapes.”

The development of an oceans policy would therefore be a significant contribution to meeting Vanuatu's policy obligations under the CBD and would link significantly with the draft Climate Change Policy, Vanuatu's NBSAP and the Aichi Targets.

## Fisheries Act No. 10 of 2014

The Fisheries Act makes provision for the management, development and regulation of fisheries within Vanuatu waters, and for the control of fishing vessels entitled to fly the flag of Vanuatu outside of Vanuatu waters in a manner consistent with Vanuatu's international obligations, and for related matters.

The purpose of the Fisheries Act is to:

- conserve, manage and develop fisheries in Vanuatu to ensure their long-term sustainable use for the benefit of the people of Vanuatu; and
- effectively discharge obligations under scheduled treaties and agreements to which Vanuatu is party.

The primary activities covered by the Act are:

#### *Fisheries management, development and conservation (Part 4)*

The Minister is responsible for the management, development and conservation of all fisheries within Vanuatu. The Minister may, on the recommendation of the Director, by notice published in the Gazette, determine that a fishery is a designated fishery. The Director is to prepare, and review where necessary, a plan for the management and development of each designated fishery.

#### *Aquaculture management and development (Part 5)*

The Minister may, on the recommendation of the Director after consulting the relevant Departments and customary owners, declare by notice in the Gazette, an area as a designated aquaculture area where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that such area:

- is important to the national interest; and
- requires management measures for ensuring sustainable aquaculture.

The Minister may declare by notice in the Gazette, areas where aquaculture or related activities are prohibited.

The Act prohibits a person from engaging in aquaculture or related activities in an area where aquaculture or related activities are prohibited. It is an offence not to comply with this provision. The penalty is a fine of up to VT5 million or

<sup>6</sup> *ibid*

imprisonment for up to 5 years or both.

#### *Vanuatu fishing vessels and local fishing vessels in Vanuatu waters (Part 7)*

Such vessels are required to be licensed under the Act. The operator of a Vanuatu fishing vessel used for fishing or related activities within Vanuatu must comply with this Act and any other Act. For example, provisions relating to designated fisheries may apply to such vessel in carrying out fishing activities, for the purpose of managing and conserving those fisheries.

#### *Registration of fishing vessels on the International Shipping Registry (Part 8)*

One of the requirements for the registration of a fishing vessel on the Vanuatu International Shipping Registry is that it must be carried out in a manner consistent with obligations under any arrangements to which Vanuatu is a party including international conservation and management measures relating to effort and capacity limits and the prevention, deterrence, and elimination of illegal, unreported and unregulated fishing or related activity in support of such fishing.

#### *Foreign fishing vessels (Part 10)*

Foreign fishing vessels are prohibited from carrying out any fishing activities in Vanuatu waters or for any other activities provided for by the Fisheries Act. However, the operator of a foreign fishing vessel may use the vessel for fishing or related activities in Vanuatu:

- a. for a purpose recognised by the provisions of the United Nations Convention on the Law of the Sea, 1982; or
- b. in accordance with an access agreement or a licence issued under Part 10.

#### *International obligations*

Part 11 of the Act (Compliance with International Obligations) states that (s61) “Unless stated otherwise in this Act or any other Act, this Part applies to all vessels registered under the Shipping Act and the Maritime Act” and that in terms of international obligations (s62 (1) ) “Subject to subsection (2), the obligations and requirements relating to the activities and practices of fishing vessels provided for in any Scheduled Treaty, apply to Vanuatu Fishing Vessels regardless of whether those vessels are operating inside or outside Vanuatu waters”.

#### *Fisheries management plans*

Part 4 of the Act deals with fisheries management, development and conservation. S10 (Designated fisheries) states that the Minister is responsible for the management, development and conservation of all fisheries within Vanuatu. The minister may determine that a particular fishery is a designated fishery and, once designated, a plan for management of that fishery is required. A tuna management plan has been developed.

Part 14 of the Act (Ban on driftnet fishing) specifically prohibits driftnet fishing in Vanuatu waters.

Part 15 of the Act establishes the Vanuatu Marine Mammal Sanctuary, comprising all of Vanuatu’s waters, in which it is prohibited for any person to kill, harm, harass, take or move a marine mammal.

Part 16 s102 of the Act (Other prohibited activities) provides for the declaration of marine reserves prohibiting:

- a. fishing; or
- b. taking or destroying any coral; or
- c. dredging or taking any sand or gravel; or
- d. otherwise disturbing the natural habitat; or
- e. taking or destroying any wreck or part of a wreck.

The Minister of Agriculture, Forestry, Livestock, Fisheries and Biodiversity and the Director of the Department of Fisheries are the two main office holders who are responsible for the administration of the Fisheries Act.

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

The Fisheries Act is **highly relevant** to the development of an oceans policy because its purpose is to manage Vanuatu’s fishery resources, and it provides for the establishment of some forms of protected area and binds fishing vessels registered in Vanuatu to international conventions and agreements.

## Convention on the Conservation and Management of Tuna Stocks and Other Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Ratification) Act No. 17 of 2005

This Act ratifies the Convention on the Conservation and Management of Tuna Stocks and Other Highly Migratory Fish Stocks in Western and Central Pacific Ocean.

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the Western and Central Pacific Ocean in accordance with the 1982 Convention and the Agreement. The Act is administered by the Department of Fisheries.

There are potential links with the Fisheries Act, *Multilateral Treaty on Fisheries and Related Amendments and to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Ratification) Act No. 23 of 2013* and the *Agreement on Strengthening Implementation on the Niue Treaty on Cooperation in Fisheries surveillance and Law Enforcement in the South Pacific Region (Ratification) Act No. 2 of 2014*, the *Pollution Control Act No 10 of 2013* and the Environmental Protection and Conservation Act. These instruments provide the mechanisms for implementing the Convention and the obligations that come from ratifying the Convention.

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

This Act is **highly relevant** to an oceans policy due to the provisions for fisheries management which may be relevant to ocean planning and the provisions to allow the establishment of marine reserves.

## Framework Convention on Climate Change (Ratification) Act [CAP 218]

This Act ratifies the United Nations Framework Convention on Climate Change (UNFCCC) signed on 8 June 1992.

The ultimate objective of the Convention and any related legal instruments that the COP may adopt is to achieve, in accordance with the relevant provisions of the Convention, stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a timeframe sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.

This Act supports other instruments designed to deal with climate change, research, education and information, sustainable management and sustainable management in the oceans of Vanuatu.

Vanuatu's commitments include:

- a. *Develop, periodically update, publish and make available to the Conference of the Parties, in accordance with Article 12, national inventories of anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, using comparable methodologies to be agreed upon by the Conference of the Parties;*
- b. *Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change;*
- c. *Promote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors, including the energy, transport, industry, agriculture, forestry and waste management sectors;*
- d. *Promote sustainable management, and promote and cooperate in the conservation and enhancement, as appropriate, of sinks and reservoirs of all greenhouse gases not controlled by the Montreal Protocol, including biomass, forests and oceans as well as other terrestrial, coastal and marine ecosystems;*
- e. *Cooperate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and for the protection and rehabilitation of areas, particularly in Africa, affected by drought and desertification, as well as floods;*
- f. *Take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change;*

- g. *Promote and cooperate in scientific, technological, technical, socio-economic and other research, systematic observation and development of data archives related to the climate system and intended to further the understanding and to reduce or eliminate the remaining uncertainties regarding the causes, effects, magnitude and timing of climate change and the economic and social consequences of various response strategies;*
- h. *Promote and cooperate in the full, open and prompt exchange of relevant scientific, technological, technical, socio-economic and legal information related to the climate system and climate change, and to the economic and social consequences of various response strategies;*
- i. *Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations; and*
- j. *Communicate to the Conference of the Parties information related to implementation, in accordance with Article 12.*

The Minister for Climate Change is responsible for administration of this Act.

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

This Act, and the Convention, are **highly relevant** to oceans use and management and to the development of a national oceans policy as they deal with the effects of climate change and management of greenhouse gas emissions through a variety of management instruments and policies, including sustainable use.

In particular, under Article 4 of the Convention Vanuatu has an obligation to comply with the commitments contained in (e) and (f).

## Maritime Conventions Act [CAP 155]

This legislation has been enacted to provide for the application in Vanuatu of certain international maritime conventions. These conventions include:

- Convention on the International Regulations for Preventing Collisions at Sea, 1972;
- International Convention for the Safety of Life at Sea, 1974;
- Protocol of 1978, relating to the International Convention for the Safety of Life at Sea;
- International Convention on Load Lines, 1966;
- International Convention on Civil Liability for Oil Pollution Damage, 1969;
- International Convention for the Prevention of Pollution of the Sea by Oil, 1954;
- International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73);
- Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973;
- Regulations for the Prevention of Pollution by Oil;
- Guidelines for Surveys Order Annex 1 of MARPOL 73/78;
- Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972);
- International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69);
- Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL 74);
- Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974;
- Convention on Facilitation of International Maritime Traffic, 1965 (FAL 1965);
- Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage, 1969;
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND 1971);
- 1976 and 1984 Protocols Relating to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; and
- Agreement on the International Dolphin Conservation Program 1998.

The Minister of Infrastructure and Public Utilities is responsible for implementation of the Act.

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

These conventions and agreements deal primarily with pollution control and shipping, which have high relevance for oceans use and management and to development of an oceans policy, as they are binding on Vanuatu.

The Act also covers the Agreement on the International Dolphin Conservation Program 1998, which is also relevant to development of an oceans policy (note that protection of dolphins (mammals) is also covered under other legislation such as the Fisheries Act).

## **Maritime Zones Act No. 6 of 2010**

The stated objective of this Act is “to provide for the delimitation of the maritime zones and for other related matters”.

The maritime zones of Vanuatu reflect the marine zones which were discussed at the Third United Nations Conference on the Law of the Sea in 1981 and subsequently codified in the United Nations Convention on the Law of the Sea 1982 (UNCLOS)<sup>7</sup>.

The provisions of the Act provide for the following:

### *Establishes an exclusive economic zone (Part 4)*

An exclusive economic zone (EEZ) of the Republic of Vanuatu is established through the Act beyond and adjacent to the territorial sea of Vanuatu. The EEZ comprises the maritime zone contiguous to the territorial sea which extends to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Vanuatu’s EEZ has not yet been endorsed by UNCLOS; consequently, there is potential for conflict with international neighbours during the implementation of aspects of the oceans policy.

### *Defines internal and archipelagic waters of Vanuatu (Part 2)*

The internal waters of Vanuatu form part of the national territory of Vanuatu and consist of:

- a. the waters on the landward side of the baselines from which the territorial sea of Vanuatu is measured; and
- b. for areas enclosed by archipelagic baselines – all waters that are contained within the innermost limits of the archipelagic waters.

The sovereignty of Vanuatu extends to the archipelagic waters, including the airspace over them as well as the seabed, subsoil and all resources contained in them and enclosed by the archipelagic baselines points as prescribed by the Minister.

### *Roadsteads (Part 3)*

For the purposes of this Act, roadsteads which are used for the loading, unloading and anchoring of ships, and which are situated wholly or partly outside the outer limit of the territorial sea of Vanuatu, are taken to be included in the territorial sea of Vanuatu.

### *Territorial sea (Part 3)*

The sovereignty of Vanuatu extends beyond its land territory, internal waters, and archipelagic waters, to an adjacent belt of sea, described as the territorial sea and to the airspace over it and its seabed and subsoil.

### *Contiguous zone (Part 3)*

The contiguous zone of Vanuatu comprises the maritime zone contiguous to the territorial sea which extends to a distance of 24 nautical miles from the baseline from which the breadth of the territorial sea is measured.

### *Continental shelf (Part 5)*

The continental shelf of Vanuatu comprises of the seabed and subsoil of the submarine areas that extend:

- a. beyond its territorial sea throughout the natural prolongation of its land territory 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.

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<sup>7</sup> Yoli, Desmond Tom’ Tavala and Hakwa, Marie Tiana 2004 Review of environmental legislation and policies in Vanuatu. SPREP: Apia, Samoa.

### *Research in the seas of Vanuatu (Part 6)*

The State has the exclusive right to regulate, authorise and conduct research in its territorial seas and archipelagic waters.

The Act is administered by the Minister of Foreign Affairs.

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

The Maritime Zones Act is **highly relevant** to the development of an oceans policy as it establishes the seaward boundaries within which any potential oceans policy will apply and provides a mechanism to introduce ocean zoning as a management tool.

This Act is critical in defining boundaries within any area covered by an oceans policy so it therefore needs to be consulted along with any other initiatives that may require boundaries to be drawn, defined or described.

## Custom Land Management Act No 33 of 2013

This Act provides for the determination of custom owners and the resolution of disputes over ownership of custom land by customary institutions and for related purposes.

Land disputes are determined by a *nakamal*, or a custom area land tribunal. Parties to a dispute may consent to mediation of the dispute. Each Island Court established by the Chief Justice under the Island Courts Act may sit as an Island Court (Land) to review decisions made by *nakamals* and custom area land tribunals under this Act.

Parts 3 and 4 of the Act define its application to areas seaward of the land as follows:

### *3 Application to sea*

This Act extends to the waters within the outer edge of any reef adjacent to custom land including all fringing reefs, and the land below those waters to the extent that they are considered to belong to custom owners under the custom of that custom area.

### *4 Custom areas*

1. For the purposes of this Act, each island is divided into custom areas. Larger islands are divided into many custom areas. By way of contrast, very small islands may consist of only one custom area. The procedure for resolving disputes about custom land varies depending on whether the land is situated wholly within a custom area or within two or more areas.
2. If custom areas are not established, all references to custom areas will be interpreted as meaning provincial areas. For the purpose of establishing a custom area land tribunal, custom areas and custom area councils of chiefs should be established, but where this is not possible a provincial area Council of Chiefs, or where this is not possible the Island Council of Chiefs, will establish a custom area land tribunal.

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

This Act is **moderately relevant** to coastal zone management (and, by definition, oceans management) because it defines the extent of customary tenure in the coastal zone. The extent to which the ownership of custom land has been defined in the Civil Appeal Case No. 4 of 2012 between Terra Holdings Limited and Barak Sope and the Government of the Republic of Vanuatu is very clear. In Paragraph 40 of the judgement, the Court concluded that “land” within the meaning of Articles 73 and 74 of the Constitution extends to the waters below low-water mark and includes seabed within the limits of the territorial sea.

Therefore, the ownership of land determined by a *nakamal* or a custom area land tribunal under this Act extends to the waters below low-water mark and includes seabed. Custom owners therefore must be consulted and must agree to any development or management of the ocean or coastal zone to which they have ownership.

An ocean policy must consider custom ownership.

## Mines and Minerals Act [CAP 190]

The purpose and main objective of this Act is to regulate and control the search for, and development of, minerals and to provide for matters incidental thereto.

Part 1 of the Act defines a 'mining area':

A "mining area" means an area of land subject to a mining licence and an "exploration area" means an area of land subject to an exploration licence where "land" includes –

- a. land beneath water;
- b. the seabed and subsoil beneath the territorial sea; and
- c. for the purposes of giving effect to Section 3(2), the seabed and subsoil of the continental shelf or beneath the waters of the exclusive economic zone;

The property in minerals, in their natural condition, in land is vested in the Republic of Vanuatu. Property rights in continental shelf and other areas are defined in Part 2 of the Act:

1. All rights exercisable, in relation to minerals, by Vanuatu with respect to the continental shelf or the exclusive economic zone are hereby vested in the Republic of Vanuatu.
2. This Act (other than Parts 13 and 14) shall apply in relation to the seabed and subsoil of the continental shelf and beneath the waters of the exclusive economic zone, as it applies in relation to land.

This also raises the potential for conflict with conservation laws in Vanuatu because Part 3 of the Act states:

1. Restriction on exercise of rights (i.e. effect of other laws of Vanuatu)

Where the doing of any act is prohibited or regulated by a written law other than this Act, nothing in this Act shall be construed –

- a. where the doing of the act is so prohibited, as authorising a holder of a Mining Right to do the act; or
- b. where the doing of the act is so regulated, as authorising a holder of a Mining Right to do the act –
  - i. otherwise than in accordance with the written law and any authority referred to in subparagraph (ii); and
  - ii. without first obtaining any authority howsoever described required under the written law for the doing of the act.

The Act is administered by the Minister of Lands and Natural Resources.

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

This Act is **highly relevant** to the development of a national oceans policy.

The Act makes provision for mining to apply in relation to the seabed and subsoil of the continental shelf and beneath the waters of the EEZ (other than Parts 13 and 14), so is directly relevant to oceans management.

The Act does not provide for any uses other than mining in the oceanic environment and nor does it contain provisions for EIA or environmental protection. However, the Act does provide for the inclusion of conditions in licences and permits. Providing the Commission and Minister approve of the conditions, there is potential for managing the potential impacts and conflicts from mining.

Since the Act provides for an activity that may have adverse effects on the environment, it is recommended that provisions relating to the protection of the environment be inserted in the Act, especially in relation to preliminary environmental assessment (PEA) and EIA. The issuing of licences and permits under this Act should be subject to the outcome of an EIA.

## National Parks Act [CAP 224]

The National Parks Act provides for the declaration of national parks and nature reserves, for the protection and preservation of such areas, and for matters connected therewith.

The main provision of the Act relevant to an oceans policy is Section 2 which states:

## NATIONAL PARKS AND RESERVES

Provides for the purpose of protecting and preserving in their natural state, as national parks or nature reserves, areas of Vanuatu, which –

- a. have unique ecosystems, genetic resources or physical and biological formation; or
- b. constitute the habitat of threatened species of animals and plants of outstanding value from the point of view of science and conservation; or
- c. have outstanding natural beauty; or
- d. have any archaeological or other scientific or environmental significance;
- e. and for promotion of scientific study and enjoyment thereof by the public.

The Act applies to all of Vanuatu whether terrestrial or marine.

The Act is administered by the Minister of Lands and Natural Resources.

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

The National Parks Act is **highly relevant** to an oceans policy as any protected areas nominated for biodiversity conservation as part of an oceans policy could potentially be declared under this Act (as opposed to a protected area declared under the Fisheries Act which would be for fishery resources conservation or under the EPC Act which would be for community conservation).

The development of a national system of marine protected areas for Vanuatu could incorporate areas declared under this Act as a contribution. Such a system could also include areas declared under other relevant legislation such as the Fisheries Act (e.g. marine mammal sanctuaries or marine reserves as currently provided for and from any treaties Vanuatu might enter into under the Fisheries Act that relate to the use of protected areas for resource conservation purposes) and/or the Environmental Protection and Conservation Act (CCAs). To develop such a system would require an understanding of the bioregions of Vanuatu's oceans and coastal ecosystems as the ecological basis for selecting sites to be part of any national representative system of marine protected areas.

## Petroleum (Exploration and Production) Act [CAP 227]

The Act covers searching for and producing petroleum and for matters connected therewith.

For licensing, Section 1 of the Act states that the term "land" includes –

- a. land beneath water;
- b. the seabed and the subsoil beneath the territorial sea; and
- c. the seabed and the subsoil of the continental shelf or beneath the waters of the EEZ.

Under Division 2 of the Act, the Minister may grant a Petroleum Prospecting Licence (for up to 4 years with 2 year extensions) on any block or blocks.

A block is defined

- a. by the meridian of Greenwich and by meridians that are at a distance from that meridian of six minutes of longitude or a multiple of six minutes of longitude; and
- b. by the equator and by parallels of latitude that are at a distance from the equator of six minutes of latitude or a multiple of six minutes of latitude;

each of which is bounded by portions –

- c. of two of those meridians that are at a distance from each other of six minutes of longitude; and
- d. of two of those parallels of latitude that are at a distance from each other of six minutes of latitude.

Where any block as so constituted would be partly inside and partly outside the geographical area of land in the Republic, the block shall be treated as being constituted by the part that is inside the area.

Where any significant discovery of petroleum is made by the licensee in a prospecting area, the licensee is obliged to inform the Commissioner of the discovery. If a licensee wants to enter into the production phase of an operation, then under Part 3 the following applies:

### *Application for petroleum production licence*

A licensee whose petroleum prospecting license is in force may, within a specified period the period or within such further period as the Minister may allow, apply for the grant of a petroleum production licence with respect to any discovery block or blocks in the prospecting area, or with respect to any part thereof.

The Minister may make regulations for giving effect to this Act, including in particular provision for or with respect to (*inter alia*):

- a. the prospecting for petroleum and the carrying on of operations, and the executions of works, for that purpose;
  - b. the production of petroleum and the carrying on of operations, and the execution of works, for that purpose;
  - c. conserving, and preventing the waste of, the natural resources, whether petroleum or otherwise;
- and
- n. the division of the geographic area of the Republic into particular sections.

The Act does not explicitly contemplate the environmental impact *per se* of exploration and production activities. However, there is provision for the development of regulations and/or addition of conditions to exploration and production licences thereby providing an opportunity for introducing environmental protection conditions.

The Act is administered by the Minister for Lands.

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

The exploration and production related to petroleum are a long-standing use of oceans areas so the legislation is **highly relevant** to the development of a national oceans policy.

The Act regulating seabed exploration and oil extraction has the potential to conflict with other legislation designed to manage other forms of ocean use including for conservation. This Act does not necessarily recognise this potential; the potential conflict will need to be addressed as part of identifying cross-sectoral arrangements during development of any national oceans policy.

In addition, the Act does not contain specific provisions recognising the importance of marine biodiversity and the need to take a precautionary approach to exploration and production. However, there is provision for conditions to be attached to exploration and production licences and for regulations to be developed, thereby providing some avenue for introducing mechanisms for dealing with negative impacts.

## National Disasters Act [CAP 267]

The National Disasters Act relates to the management of disasters and authorises taking civil defence measures, but not if such measures are actual military combat or preparations for military combat.

The primary activities under the Act are

- establishing the National Disasters Committee;
- providing for the National Disasters Office and disaster plans; and
- guidelines for declaring a state of emergency.

This Act is administered by the Minister for Climate Change.

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

This legislation is **moderately relevant** to development of an oceans policy in that disasters such as cyclones, tsunami and flooding have the potential to impact on coastal shorelines and affect both marine and coastal ecosystems. While the disaster response is unlikely to prevent such damage at least it can be recognised in the broader scheme of damage assessment and is potentially linked to climate change provisions within any oceans policy.

## Physical Planning Act [CAP 193]

The Act seeks to manage development within various Council physical planning areas (as declared by a Council under its jurisdiction). It also has synergy with the Foreshore Development Act [CAP 90] in terms of development control.

Where application is made to a Council for permission to develop, the Council may grant permission unconditionally or subject to conditions, or may refuse permission, and in dealing with any such application the Council shall have regard to the plan for the physical planning area in force and any other material considerations.

The Act does not explicitly contemplate offshore developments such as reclamation of coastal areas, or developments fixed to the seabed (e.g. resort accommodation on piles/stilts in coastal waters).

The Act has the potential to manage the impacts from catchment and foreshore development which may impact on coastal and oceanic waters, e.g. through pollution from increased sedimentation and waste. The Act contemplates development types such as marinas and resorts in the coastal or catchment areas.

The Act is administered by the Ministry of Internal Affairs through provincial governments.

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

The Act is **moderately relevant** to the development of an oceans policy as it provides an avenue for managing the impacts of coastal and catchment developments with the potential to cause negative impacts on coastal and oceanic waters. These activities could include control of sediment and solid waste on development sites to prevent entering coastal waters, control of developments likely to impact on habitats and ecological processes important to maintaining ecosystem integrity in coastal and ocean waters (such as marinas, resorts and industrial plants with potential to pollute), or the impact of development on critical habitat such as mangroves.

The Act also raises the question of how offshore development that is not related to mining or exploration can be controlled.

## Shipping Act [CAP 53]

The purpose of this Act is to provide for the control and safety of Vanuatu vessels.

This is done through provisions for

- Certificates of competency
- Crew requirements
- Safety certificates
- Carriage of passengers
- Loading of vessels
- Unseaworthy vessels
- Dangerous goods.

The Act is administered by the Ministry of Infrastructure.

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

The Act is **moderately relevant** to oceans policy as it deals with the safe passage of vessels through the waters of Vanuatu.

## Foreshore Development Act [CAP 90]

The purpose of the Foreshore Development Act is to regulate works on the foreshore. It has some synergy with the Physical Planning Act [CAP 193] in that both instruments seek to control development.

Section 2 of the Act states that:

*“No person shall undertake or cause or permit to be undertaken any development on the foreshore of the coast of any island in Vanuatu without having first obtained the written consent of the Minister to such development.”*

The potential for land-based sources of pollution from foreshore development is a real issue, particularly for inshore coastal areas. Therefore, there is a need to consider the potential impacts from developments on the broader management of Vanuatu’s oceans from pollution and increased sediment loads emanating from any foreshore development activity.

The Act is administered by the Ministry of Internal Affairs.

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

The Act has **moderate relevance** to development of an oceans policy, as it has the potential to be used to control developments which create sediment flows and/or excessive turbidity into coastal waters. This would complement legislation dealing with land-based sources of pollution and other planning legislation such as the Physical Planning Act.

## Pollution (Control) Act No. 10 of 2013

The Pollution (Control) Act controls the discharge and emission of terrestrial and marine pollution in Vanuatu.

It is a requirement of Section 8 of the Act for the owner or occupier of any premises to comply with any prescribed standard for the discharge of pollution (including sewage and ballast water), waste water and the emission of noise, odour or electromagnetic radiation from the premises.

The primary tools under the Act are:

- a. standards and guidelines prepared by the Director in accordance with this Act;
- b. standards and guidelines prepared by the Director in accordance with the Environmental Protection and Conservation Act [CAP 283]; and
- c. conditions applying under any development consent or approval and any other permit applying to any premises.

The Act also contains an obligation to apply the precautionary principle, and to undertake other functions relevant to oceans use and management:

In carrying out the functions outlined in subsection (1), the Director is to carry out the following:

- i. administer the permit system under Part 2 of this Act;
- ii. in the absence of relevant regulations, prepare guidelines and standards for the purpose of giving effect to this Act;
- iii. undertake environmental assessment, monitoring, and inspection generally; and
- iv. undertake such other duties and responsibilities as may lawfully be required by the Minister.

This Act also places a control on pollution for developments under the Foreshore Development Act [CAP 90].

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

This Act is **moderately relevant** to development of an oceans policy because of its ability to control marine pollution including the dumping of sewage and ballast water by vessels while within Vanuatu's jurisdiction.

## Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Ratification) Act No. 7 of 2014

This Act ratifies the Nagoya Protocol. The objective of the Protocol is the fair and equitable sharing of the benefits arising from the use of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components.

The obligation for Vanuatu is based on:

*Each Party shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring that benefits arising from the utilization of genetic resources that are held by indigenous and local communities, in accordance with domestic legislation regarding the established rights of these indigenous and local communities over these genetic resources, are shared in a fair and equitable way with the communities concerned, based on mutually agreed terms.*

Ratification of the Protocol has some relevance to oceans management and use as it provides the ability to manage access to genetic and biological resources in marine and oceanic environments.

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

This Act has **moderate relevance** to an oceans policy because of its contribution to the conservation of biodiversity.

## International Trade (Flora and Fauna) Act [CAP 210]

This to implements the Republic of Vanuatu's obligations as a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) signed in Washington on 3 March 1973 by controlling and regulating export and import of certain species of fauna and flora, and for related purposes.

This Act is administered by the Department of Biosecurity.

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

This Act has **moderate relevance** to development of an oceans policy, as it deals with the management of endangered species and the introduction of marine pest species, which are important contributions to maintaining ocean ecosystem health.

## Deep Sea Mining Legislative Review Vanuatu 2013

This review of Vanuatu's legislation relating to deep-sea mining, identifies:

- the extent to which national regulation of deep-sea mineral activities is already covered by existing legislation; and
- where there may be a need for further national legislation or regulations to comply with international law standards and requirements.

Some aspects of an adequate seabed minerals regulatory regime are already covered in Vanuatu's existing legislation, notably the Minerals and Mining Act [CAP 190], the Environmental Management and Conservation Act [CAP 283], the Maritimes Zones Act No. 6 of 2010 and the Maritime Act [CAP 131].

The report identifies some gaps in the regulatory regime for deep seabed mineral activities, most notably:

- environmental management requirements for mineral activities conducted at sea; and
- fiscal arrangements tailored for seabed mineral activities.

The report recommends that further legislation be adopted to ensure gaps are adequately covered and that a competitive deep-sea minerals management regime for mineral prospecting, exploration and recovery activities of Vanuatu be established.

Deep-sea mining is administered by the Ministry of Lands and Natural Resources through the Department of Water, Geology and Mines.

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

This review is **highly relevant** to development of an oceans policy, particularly the gaps identified. Recommendations for environmental management requirements for mineral activities conducted at sea should be supported and followed through.

## Agreement Establishing the South Pacific Regional Environment Program Ratification Act No. 21 of 2005

The purpose of SPREP is to promote cooperation in the South Pacific region, and to provide assistance to protect and improve the regions environment and to ensure sustainable development for present and future generations. SPREP achieves these aims through an action plan setting strategies and objectives.

The action plan includes:

- a. coordinating regional activities addressing the environment;
- b. monitoring and assessing the state of the environment in the region including the impacts of human activities on the ecosystems of the region and encouraging development directed at maintaining or enhancing environmental qualities;
- c. promoting and developing programmes, including research programmes, to protect the atmosphere and terrestrial, freshwater, coastal and marine ecosystems and species, while ensuring ecologically sustainable use of resources;
- d. reducing, through prevention and management, atmospheric, land-based, fresh water and marine pollution;
- e. strengthening national and regional capabilities and institutional arrangements;
- f. increasing and improving training, educational and public awareness activities; and
- g. promoting integrated legal, planning and management mechanisms.

The SPREP Agreement underpins a range of environmental initiatives and potential future environmental initiatives including implementation of the CBD, the Environmental Protection and Conservation Act [CAP 283] and the National Parks Act [CAP 224].

The SPREP Agreement is administered by the Department of Environmental Protection and Conservation.

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

The SPREP Agreement is **moderately relevant** to implementation of an oceans policy as it provides opportunities to carry out programs and projects under the SPREP Action Plan within Vanuatu's maritime boundaries and provides an opportunity for collaboration with Vanuatu's maritime neighbours through that process. See more in section 2.2.1.

## Waigani Convention (Ratification) Act No. 16 of 2007

The Waigani Convention (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) entered into force in October 2001. The Act is administered by the Department of Environmental Protection and Conservation.

The main effect of this Convention is to ban the import of all hazardous and radioactive wastes into PIF countries. It also enables Australia to receive hazardous wastes exported from PIF countries that are not Parties to the Basel Convention. There are 24 countries within the coverage area of the Waigani Convention. As of October 2012, there are 13 Parties: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

The main activities covered under the Convention include:

- reducing or eliminating transboundary movements of hazardous and radioactive waste into and within the Pacific region;
- minimising the production of hazardous and toxic wastes in the Pacific region;
- ensuring that disposal of wastes is completed in an environmentally sound manner and as close to the source as possible; and
- assisting Pacific island countries that are Parties to the Convention in the environmentally sound management of hazardous wastes they generate.

The Convention also includes an obligation to ban importation of hazardous and radioactive wastes. Countries should also, wherever possible, minimise the production of hazardous waste and cooperate to ensure that wastes are treated and disposed of in an environmentally sound manner.

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

The Convention and its implementation are **moderately relevant** to development of an oceans policy.

## Agreement Establishing the Pacific Islands Forum Secretariat (Ratification) Act No. 13 of 2005

The Act ratifies the Agreement Establishing the PIF Secretariat (PIFS).

The purpose of the secretariat is to facilitate, develop and maintain cooperation and consultation between member governments on economic development, trade, transport, tourism, energy, telecommunications, legal, political, security and such other matters as the Forum may direct.

Subject to the direction of Forum Officials Committee (made up of representatives from all Forum member country Governments), the PIFS' staff may undertake the following on behalf of member countries:

- a. prepare studies to identify and promote opportunities for a modification of present trade patterns in the Pacific region, and between the region and other countries, having in mind the objectives of regional trade expansion;
- b. prepare studies as required on political, security and legal issues affecting the Forum or member governments;
- c. investigate development of free trade among PIF countries;
- d. prepare studies of the development plans and policies of member to promote cooperation in the region and investigate the scope for regional development planning aimed at rationalising manufacturing and processing industries and the achieving economies of scale in certain regional enterprises;

- e. establish an advisory service on sources of technical assistance, aid and investment finance, both official and private, that is available to member governments;
- f. undertake studies of regional transport, as necessary, and help co-ordinate action, both government and private, in this sector;
- g. advise and assist member governments with the operation of regional trade and tourist promotion services;
- h. provide a means of regular and rapid consultation among PIF countries on the region's import requirements to enable the bulk ordering of essential imports by official agencies;
- i. act as a clearing house for information on trade, production and economic development in the region and in areas outside the region which are of interest to member governments;
- j. carry out research and statistical studies on production and trade on a continuing basis as requested by the Committee;
- k. prepare reports, studies and working papers;
- l. establish means for the collection, dissemination and exchange of information and statistics;
- m. cooperate with member governments in research projects and the obtaining and collating of statistics and other information;
- n. cooperate and co-ordinate its work with that of other international and regional organisations; and
- o. undertake such other activities as the Committee may from time to time consider necessary for the attainment of the Secretariat's purpose.

Of particular relevance to an oceans policy, is the establishment of the position of the Pacific Ocean Commissioner within PIFS. The Pacific Ocean Commissioner is an influential advocate for improved cooperation, coordination and collaboration in the region, for the sustainable use, management and governance of the Pacific Ocean and its resources. A primary focus of the Pacific Ocean Commission was on building a strong alliance and raising awareness of the main issues, challenges and opportunities facing the region and its countries and territories.

The Act is administered by the Ministry of Foreign Affairs.

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

This Act is **moderately relevant** to oceans management especially through the establishment of the Pacific Ocean Commissioner (and Pacific Ocean Commission) within the PIF. It is also relevant through potential trade implications, e.g. shipping agreements and regional tourism.

## The Stockholm Convention on Persistent Organic Pollutants (Ratification) Act No. 12 of 2005

This Act ratifies the Stockholm Convention on Persistent Organic Pollutants.

Mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants.

The main articles of the Act concerning ocean use and management are:

Article 3 – Measures to reduce or eliminate releases from intentional production and use

1. Each Party shall:

(a) Prohibit and/or take the legal and administrative measures necessary to eliminate:

(i) Its production and use of the chemicals listed in Annex A subject to the provisions of that Annex; and

(ii) Its import and export of the chemicals listed in Annex A in accordance with the provisions of paragraph 2; and

(b) Restrict its production and use of the chemicals listed in Annex B in accordance with the provisions of that Annex.

Article 4 – Register of specific exemptions

1. A Register is hereby established for the purpose of identifying the Parties that have specific exemptions listed in Annex A or Annex B. It shall not identify Parties that make use of the provisions in Annex A or Annex B that may be exercised by all Parties. The Register shall be maintained by the Secretariat and shall be available to the public.

Article 5 – Measures to reduce or eliminate releases from unintentional production

Each Party shall at a minimum take the following measures to reduce the total releases derived from anthropogenic sources of each of the chemicals listed in Annex C, with the goal of their continuing minimization and, where feasible, ultimate elimination (measures not included in analysis – see Article 5 for details).

Article 6 – Measures to reduce or eliminate releases from stockpiles and wastes

1. In order to ensure that stockpiles consisting of or containing chemicals listed either in Annex A or Annex B and wastes, including products and articles upon becoming wastes, consisting of, containing or contaminated with a chemical listed in Annex A, B or C, are managed in a manner protective of human health and the environment (measures not included in analysis – see Article 6 in the Act for details).

The Act is administered by the Department of Environmental Protection and Conservation.

*Relevance to development of an oceans policy*

**Moderately relevant** to an oceans policy as an adjunct to other pollution controls.

## 2.1.2 Other legislation

### ASSESSED AND CONSIDERED OF LOW RELEVANCE TO AN OCEANS POLICY

#### Animal Importation and Quarantine Act [CAP 201]

This Act provides for the regulation and control of the importation of animals, animal products and biological products into Vanuatu, and for matters connected therewith.

#### Forestry Act [CAP 276]

This Act provides for the protection, development and sustainable management of forests and the regulation of the forestry industry in Vanuatu, and for related purposes. It is unclear whether the Act also covers mangrove forest management, which has some relevance to coastal management and the protection of related ecosystems and potentially to development of an oceans policy.

#### Preservation of Sites and Artefacts [CAP 39]

This Act provides for the preservation of sites and objects of historical, ethnological or artistic interest.

#### Wild Bird Protection Act [CAP 30]

This Act is to protect wild bird life, that is:

- to prevent the killing etc. of protected species prohibited without permit
- to prevent the killing etc. of protected species prohibited except during permitted months
- to prevent the killing etc. of other protected species prohibited except during permitted months

Most birds protected under this legislation are terrestrial species, i.e. no waders or birds likely to frequent coastal or wetland areas. The legislation is marginally relevant if it protects birds that could frequent coastal forest areas.

#### Forestry Rights Registration and Timber Rights Harvest Guarantee Act [CAP 265]

This Act relates to the registration of certain forestry rights granted in respect of land, and to the harvesting and accreditation of timber plantations. It allows for:

- granting and registration of forestry rights;
- guaranteeing of timber harvest rights;

- accreditation of timber plantations; and
- a timber plantations code.

The Act has very general environmental provisions and does not contain 'make good' provisions for land cleared except within the Timber Plantations Code to deal with soil erosion and sediment control.

This Act is marginally relevant to an oceans policy through potential control of soil erosion and sediment control within coastal catchments.

## Maritime Act [CAP 131]

The Act provides for the establishment of a shipping register for vessels of Vanuatu engaged in foreign trade and for matters connected therewith.

This Act is of **low relevance** to the development of an oceans policy through its purpose of regulating shipping registrations and related matters in Vanuatu.

## Ports Act [CAP 26]

The Act provides for the control of ports in Vanuatu and is primarily relevant to operation of the ports of Port Vila and Luganville through management of<sup>8</sup>:

- Ports of entry
- Harbourmasters and Port Officers
- Explosives
- Wrecks, obstructions and moorings
- Erection of private installations in a port
- Harbourmasters power of entry
- Government wharf and port charges.

This legislation is of **low relevance** to the oceans policy except in the context that the ports of Port Vila and Luganville would be within the boundaries of any policy developed for oceans management.

## Plant Protection Act [CAP 239]

The Act provides for the exclusion and effective management of plant pests and facilitates exports of plant produce and connected matters by:

- quarantine inspection procedures;
- movement control of plants or plant material; and
- use of codes of practice for movement of craft, goods and people without significantly reducing the effectiveness of the legislative requirements.

The Act has **low relevance** to an oceans policy through its potential control of import of unwanted pest species either directly or through ballast water, although the Act does not specifically mention the risks of pest species.

## Quarries Act No 9 of 2013

This Act provides for the regulation of quarries in Vanuatu. The Act covers issue of permits to a custom owner for aggregate prospecting for building minerals in a rural area, and to a quarry company for an aggregate prospecting for building minerals in an urban area, which could include coastal areas for sand and other sediments.

The Act is of **low relevance** to oceans management and use unless there is evidence of large scale coastal quarrying or quarrying in watersheds where sediments are likely to be transported to coastal areas.

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8 Port and harbour maintenance rests with the Department of Ports and Marine

## ASSESSED AND NOT CONSIDERED RELEVANT TO AN OCEANS POLICY

### Animal Importation and Quarantine Act [CAP 201]

The Act provides for the regulation and control of the importation of animals, animal products and biological products into Vanuatu, and for matters connected therewith.

### Decentralisation Act [CAP 230]

This Act provides for the decentralisation and establishment of Provincial Government Regions and connected matters. This legislation is **not relevant** to oceans management and use as presented. In theory, provincial governments will have a role in oceans management particularly in nearshore areas, but this Act does not describe that responsibility.

### Multilateral Treaty on Fisheries and Related Amendments Nos. 16 of 2005 and 12 of 2007

These Acts provide for the ratification of the Amendments to the Agreement Among Pacific Island States Concerning the Implementation and Administration of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America.

The South Pacific Tuna Treaty (SPTT) entered into force in 1988. After an initial five-year term, the SPTT was extended in 1993 and again in March 2002, when the Parties agreed to amend and extend the Treaty and to extend the related Economic Assistance Agreement between the United States and the Forum Fisheries Agency (FFA) beyond the June 2003 expiration date, for a term of 10 years. The 2002 extension provides licences for up to 40 U.S. purse seiners to fish for tuna in the EEZ's of the Pacific Island Parties, with an option for five additional licences reserved for joint venture arrangements. It also contains amendments to the Treaty and its annexes, such as updating the methods available for reporting, a revised procedure for amending the annexes, a revised observer program fee formula, provisions on the use of a vessel monitoring system (VMS), and general provisions on fishing capacity, revenue sharing, and linkages between the Treaty and the Western and Central Pacific Tuna Convention, among others.

The SPTT expired on 14 June 2013 so this Act is **no longer relevant**.

### Public Health Act [CAP 234]

This Act provides for public health (including vessel inspections – Section 9) but is **not relevant** to development of an oceans policy.

### Water Resources Management Act [CAP 281]

This Act provides for the protection, management and use of water resources in the Republic of Vanuatu. This is taken to mean freshwater resources and consequently is **not relevant** to development of an oceans policy.

## 2.2 POLICIES, STRATEGIES AND PLANS

### 2.2.1 Regional

The following regional policies are arranged in order of relevance to the development of Vanuatu's oceans policy.

#### Framework for a Pacific Oceanscape (2010)

The Framework for a Pacific Oceanscape was developed by the PIF to support policy development 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 ocean-related policy, in particular the Pacific Islands Regional Ocean Policy (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 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 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. It also aims to investigate governance issues 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.

The Pacific Plan was adopted by PIF 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 areas of focus are:

#### *Economic growth*

- Maximise sustainable returns from fisheries by development of an ecosystem-based fishery management planning framework; encouragement of effective fisheries development, including value-adding activities; and collaboration to ensure legislation and access frameworks are harmonised;
- Promote domestic fisheries, in particular developing national tuna industries in the context of a phased introduction of rights-based management arrangements;
- Maintain regional solidarity among PIF member countries in conservation and sustainable management of highly migratory tuna resources;
- Reaffirm the Declaration on Deep-Sea Bottom Trawling which called for strong measures to regulate and manage deep-sea bottom trawling, and committed to the protection of high seas biodiversity and the conservation and management of non-highly migratory fish stocks in the Pacific Ocean; and
- Commit to 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.

#### *Sustainable development*

- Develop and implement National Sustainable Development Strategies, including mainstreaming regional policy frameworks or action plans and using appropriate cross-cutting and Pacific-relevant indicators in line with the Millennium Development Goals (MDGs). A 'whole-of-government' and stakeholder-based approach is called for to address sectoral and cross-cutting issues with the support of regional agencies and partners. Priority issues include climate change, energy security and conservation;
- Develop and implement national and regional conservation and management measures for the sustainable use of fisheries resources;
- Develop and implement policies and plans for waste management;
- Facilitate international financing for sustainable development, biodiversity and environmental protection and climate change in the Pacific including through the Global Environment Facility and conservation trust funds;
- Framework for a Pacific Oceanscape: a catalyst for implementation of ocean policy;
- Adopt stakeholder-based planning, establishment and management of conservation areas supported by a strong understanding of economic, social and environmental benefits deriving from effective conservation;
- Develop adaptation and mitigation efforts linked to the Pacific Climate Change Framework 2006–2015 and the Pacific Disaster Risk Reduction and Disaster Management;
- Framework for Action 2006–2015: including public awareness, capacity building and improving governance, risk and vulnerability assessments, and, should a genuine need arise, consideration of measures to address population displacement; and

- Develop and implement national action plans for climate change and mainstream climate change into national development planning drawing on the Pacific Islands Framework for Action on Climate Change and the associated implementation plan.

#### *Good governance*

- Enhance governance mechanisms, including in resource management; and in the harmonisation of traditional and modern values and structures; and
- Upgrade and extend country and regional statistical information systems and databases across all sectors.

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

This regional policy is **highly relevant** to the development of an oceans policy. It provides a significant amount of information at the regional level to underpin national efforts in a coordinated and harmonised way and, more particularly, it links strongly with the PIROP.

## Pacific Island Regional Ocean Policy 2009

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 initiative. The Marine Sector Working Group of the Council of Regional Organisations in the Pacific (CROP) was tasked with developing a regional ocean policy which was produced in 2009.

This 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 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.

Strategic actions are proposed under each principle in the PIROP. An Integrated Strategic Action Plan containing themes, initiatives and actions also forms part of the PIROP for implementation.

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

This is a highly useful policy reference document for developing a national oceans policy and should be reviewed by the oceans policy drafting group to determine whether there should be any links with, or adoption of, elements/components of the PIROP. In particular, it provides a regional policy context for national policy development and serves as part of the broader Pacific policy framework for use and management of natural resources in the region.

## Pacific Regional Environment Program Strategic Plan, 2011–2015

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

This plan is the framework that guides SPREP's annual work plans for a five-year period and provides a focus for its vision for the future.

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.

The strategic plan commits members to:

- a. providing overall institutional support and funding;
- b. committing to achieving targets in the four priority areas; and
- c. engaging in environmental monitoring to assess progress and to guide decision making.

The strategies to deliver the plan 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.

The plan has thematic goals supported by implementation measures.

The timeframe of this document has expired; the strategic plan is likely to be replaced with a revised plan. While the SPREP Strategic Plan is relevant in principle, the detail may not be so relevant until the current plan is reviewed and revised and a new plan for the next period is produced.

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

The 2011–2015 Strategic Plan is **moderately relevant** to the development of Vanuatu's oceans policy in its current form. However, it is recommended that the revised plan for the next planning period (2016–2020) be used as the preferred reference for policy development as it will be based on current knowledge and information and, in particular, commitments for the next implementation period.

## SPC SOPAC Strategic Plan 2011–2015

This plan is the Regional Strategic Plan for Applied Geoscience and Technology Division (SOPAC) of the Secretariat for the Pacific Community (SPC). The goal of the division 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
- Information management and analysis.

The four areas addressed are:

- Monitoring and assessment of natural resources, systems and processes
- Developing and managing natural resources and strengthening governance
- Managing vulnerability and risks
- Delivering efficient and effective service to member countries and SOPAC.

The SOPAC Division Strategic Plan is delivered through an annual work plan and budget that identifies:

- three technical work programmes: Ocean and Islands Programme (OIP), Water and Sanitation Programme, and Disaster Reduction Programme; and
- five technical support service areas: natural resource economics, GIS and remote sensing, technical equipment and services, data management, publications and library.

The OIP provides applied ocean, island and coastal geoscience services to support countries to govern and develop their natural resources and increase their resilience to hazards, and facilitates data-based approaches to adaptation. These vital technical services are strategically deployed in response to specific member requests to assist in the development, management and monitoring of natural resources and unique island environmental systems and processes.

The technical services available under the OIP include:

- Ocean, coastal resource and on-land characterisation, resource- (especially mineral resource) use solutions, monitoring and development;
- Science-based ocean and coastal policy and governance support and advice;
- Strategic communications and advocacy for ocean, coastal and on-land mineral resource policy;
- Strategic alliances with regional and international partners in technical, research and development assistance relevant to members;
- Capacity building via specific initiatives or through “hands-on” joint implementation of works;
- Science-based vulnerability assessments, particularly in shoreline and coastal zones;
- Science-based adaptation responses; and
- Continued secure investment in instrumentation, tools and support services as the only regional technological facility in geoscience.

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

The 2011–2015 SOPAC Strategic Plan is **moderately relevant** to the development of Vanuatu’s oceans policy in its current form with the significant exception of the work on defining maritime boundaries which is **highly relevant**. However, it is recommended that the revised strategic plan for the 2016–2020 be used as the preferred reference for policy development as it will be based on current knowledge and information and, in particular, commitments for the next implementation period.

## SPC Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013–2016

The goal of the SPC Division of Fisheries, Aquaculture and Marine Ecosystems (FAME Division), in line with the priorities of member countries and territories, is that the fisheries resources of the Pacific Islands region be 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 programme requested by Heads of Fisheries and regional organisations. Through a process of review and revision every two years or so, the plan is maintained as a living document.

SPC’s vision for the region is a secure and prosperous Pacific Community whose people are educated, healthy and manage their resources in an economically, environmentally and socially sustainable way. While the FAME Division’s goal relates mainly to the sustainable management of fisheries resources, the opportunities that these resources provide to support economic development and social development of men and women are not neglected.

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 policy*

The 2013–2016 FAME Strategic Plan is **moderately relevant** to the development of Vanuatu’s oceans policy in its current form. However, it is recommended that the revised plan for 2017–2020 be used as the preferred reference for policy development as it will be based on current knowledge and information and, in particular, commitments for the next implementation period.

## **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 for Strengthening Regional Cooperation and Integration (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 Pacific Plan aims to promote economic growth and sustainable development to reduce poverty and improve natural resource and environmental management. This policy document also 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 vision is ‘*Healthy marine ecosystems and sustainable coastal fisheries that provide seafood security and continuing livelihoods for current and future generations of Pacific people*’.

The goal that addresses this vision is ‘*To ensure the optimal and sustainable use of coastal fisheries and their ecosystems by Pacific Island communities*’.

This policy is stated as being 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 national and regional strategic action to address the problems and challenges encountered by PICTs in managing their coastal fisheries.

Strategic actions identified under this policy include the provision of technical assistance to PICTs to translate the international instruments and guidelines referred to below 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 will take into consideration changes that may have occurred over time within coastal fisheries management. It will also identify and address external and internal factors such as type of 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.

The guiding principles for achieving the goal are:

1. Improving understanding of important fisheries species and of the ecosystems on which they depend.
2. Sustainably managing coastal fisheries, reducing their adverse impacts on coastal ecosystems, and optimising production to meet local nutritional needs and contribute to economic development.
3. Creating community partnerships to support the customary and traditional management of nearby ecosystems and fish stocks.
4. Creating stakeholder collaborations to manage ecosystems and reduce the negative environmental impacts of non-fisheries activities, including those that result in high loads of silt and nutrients in coastal waters.
5. Promoting the participation of women and youth in all fisheries-related activities.
6. Enhancing regional exchange and sharing of information on common areas of interest relating to the management of ecosystems and fisheries.

Strategic actions were developed against each of these principles.

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

The term of the Apia Policy has expired; it covers the period 2008–2013 and there is no evidence that it has been reviewed and revised.

However, the policy it is **moderately relevant** to oceans policy as it provides a (outdated) regional policy framework for inshore/coastal fisheries and statement of actions which may, or may not, have been carried out. There is also value in the fact that it was endorsed by the heads of Fisheries Departments and is still likely to be a guideline to how fisheries as an oceans use might be incorporated into a national oceans policy.

The Fisheries Department should be approached to determine the status and relevance of this document.

## A New Song for Coastal Fisheries: Pathways to Change

“A New Song” is a report on an SPC workshop held in Noumea 3–6 March 2015 to develop a strategy for community-based ecosystem approaches to fisheries management.

The initiative calls for an enhanced focus on coastal fisheries management and related development activities in the Pacific region. To effectively implement the actions, national governments, and all stakeholders, would need to commit to substantial support for a community-driven approach to coastal fisheries management.

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

The workshop outcomes need to be translated into actions (strategies and/or plans). The recommendations/outcomes of the workshop are **moderately relevant** to oceans management from the perspective of community-based fisheries management as a legitimate approach to fishery resources management.

## Forty-fifth Pacific Islands Forum Communiqué (Koror, Republic of Palau 29–31 July 2014) and the Pacific Plan

Following a decision taken at the Special Leaders Retreat on the Pacific Plan Review on 5 May 2014 in Rarotonga, Cook Islands to re-cast the Pacific Plan, leaders endorsed the “Framework for Pacific Regionalism”, which embraces the principle of inclusivity.

Leaders also endorsed the 2014 “Pacific Regional MDGs Tracking Report” and the 2014 “Tracking the Effectiveness of Development Efforts in the Pacific Report” and acknowledged PIF countries’ efforts on progress towards the MDGs.

Leaders reiterated the importance of member countries playing an active role in shaping the post-2015 development agenda, particularly the Sustainable Development Goals (SDGs).

Leaders tasked the Forum Secretariat, in collaboration with CROP and UN agencies, to fully support and assist member countries throughout the intergovernmental process to determine the SDGs by the Post-2015 Summit in September 2015. Leaders reiterated strong support for a successful Third International Conference on Small Island Developing States and affirmed the important roles and continued coordination of CROP agencies in relation to the Third International Conference on Small Island Developing States.

Leaders acknowledged their central stewardship role in Pacific Ocean governance, sustainable development, management and conservation. They reaffirmed their commitment to implementation of the PIROP and the Framework for a Pacific Oceanscape.

Leaders noted with concern the rapid decline in tuna stocks, especially bigeye and bluefin tuna stocks, and tasked fisheries ministers to urgently strengthen sustainable fisheries conservation and management plans and measures that constrain and reduce catches based on current and accurate data and information.

Leaders called for effective EIAs, where appropriate, to be incorporated into approval processes and, where necessary, the precautionary principle to be applied to any extractive activities in the Pacific Ocean. Leaders further called for fishery and extractive industry stakeholders, as well as States operating in the region to take on the responsibility to contribute to the rehabilitation of the Oceans and its resources.

Leaders recalled their decisions from the 2013 Forum in Majuro, acknowledging the importance of effectively dealing with invasive species through integrated action and effective partnerships to reduce the threats to Pacific economies, communities and environments, and to enhance climate change adaptation and sustainable development efforts.

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

The commitments contained in the communiqué are **highly relevant** and support the development of an oceans policy as the PIF has dealt with many of the oceans-related issues faced by Vanuatu.

## Framework for Pacific Regionalism - Forum Leaders Statement 2014

This is a statement by the PIF ministers about the Framework for Pacific Regionalism replacing the Pacific Plan.

The principal objectives of the statement are:

- Sustainable development that combines economic social, and cultural development in ways that improve livelihoods and well-being and use the environment sustainably;
- Economic growth that is inclusive and equitable;
- Strengthened governance, legal, financial, and administrative systems; and
- Security that ensures stable and safe human, environmental and political conditions for all.

For each of the principal objectives, Pacific countries are expected to adopt forms of regionalism, drawing from the collective actions (contained in the statement), that work in support of deeper regionalism.

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

This statement is **highly relevant** as it is a political commitment to a regional framework for cooperation between member countries.

## Palau Declaration on 'the Ocean: Life and Future' Charting a Course to Sustainability

The Palau Declaration calls on regional and global partners, including civil society and the private sector, to work with members and the FFA to evaluate and implement appropriate solutions to address illegal, unreported and unregulated fishing and associated significant loss of fisheries earnings to Pacific Island countries.

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

This is a significant political commitment by PIF leaders to the sustainable management, development and conservation of the ocean and is therefore **highly relevant** as a political statement of support for an oceans policy.

## Vava'u Declaration (2007) (The Vava'u Declaration on Pacific Fisheries 'Our Fish, our Future'. Forum Communiqué, 38th Pacific Islands Forum, Nuku'alofa, Tonga, 16-17 Oct;2007)

The Vava'u Declaration reaffirms the importance of fisheries to the economies of all PIF countries and commits countries to promoting domestic fisheries, developing and managing coastal/inshore fisheries, maintaining regional solidarity in managing tuna stocks, strengthening support for the FFA and upholding and strengthening protection measures for the regions fishery resources.

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

This statement is **highly relevant** because it is a strong political commitment by Vanuatu as a member of the PIF to fisheries management in the region.

## Roadmap for Inshore Fisheries Management and Sustainable Development 2014-2023 (Draft 1 January 2015)

The leaders of the Melanesian Spearhead Group (MSG) countries agreed in March 2012 to develop a roadmap for the protection of inshore fisheries. This document was developed by the MSG Secretariat in cooperation with representatives of the Fisheries Departments of the MSG countries and with the technical assistance of the SPC.

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

This is **moderately relevant** in that it potentially provides a framework for regional fisheries management and a basis for developing collaborative and synergistic plans and strategies with neighbouring countries.

## 2.2.2 National

The following national policies are of high or medium relevance to the development of Vanuatu's oceans policy. They are presented in order of relevance.

### National Environment Policy (draft dated 26 July 2013)

The (draft) National Environment Policy (NEP) seeks to create a framework that links already existing environment-related policies, while providing a roadmap for Vanuatu's long-term environmental objectives and actions. Not only will such a policy be of great benefit to the entire environment sector, it will also serve as a strategic guide for the Department of Environmental Protection and Conservation (DEPC), enabling the improvement of existing governance, coordination mechanisms, and service delivery.

The primary principles that support this policy are:

- Precautionary principle and science-based decision making;
- Polluter-pays principle;
- Inclusive environmental development;
- Support and use of traditional knowledge, technology and innovation; and
- Efficiency, equity and sustainability.

There is potential to support implementation of other instruments, in particular the Environment Protection and Conservation Act, the Building Act No. 36 of 2013, Pollution Control Act No. 10 of 2013, Waste Management Act No. 24 of 2014, Utilities Regulatory Authority Act No. 11 of 2007, Tuna Management Plan, Aquaculture Development Plan 2008–2013, Integrated Coastal Management Framework, and the Forestry Act [CAP 276].

As the policy is still in draft form, theoretically it is not being implemented. However, it is highly likely that the draft NEP (2013) is currently providing the environmental policy settings and guidance for the DEPC.

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

The (draft) NEP is **highly relevant** to the development of an oceans policy in that it provides policy settings for many of the uses of Vanuatu's oceans. It is recommended that DEPC advise whether a final NEP is proposed and if so, when is it likely to come into effect. The draft policy contains many actions relevant to implementation of a national oceans policy, including sustainable natural resource management, establishment of MPAs, and identifying and managing biodiversity hot spots.

If the NEP is finalised and implemented it will support a national oceans policy as many of the actions described in the draft are similar to those that might be expected in an oceans policy.

In addition, as DEPC is also the agency mandated to implement the Environmental Management and Conservation Act and its provision for developing national policy (e.g. a national oceans policy) it is even more critical that the national environment and oceans policies are well aligned and compatible.

### Revised Tuna Management Plan 2014 (National Policy for the Management of Vanuatu Tuna Fisheries)

The Vanuatu Tuna Management Plan is a working document that is intended to provide specific direction and guidance to managers and policy-makers while being linked to a clear set of objectives and principles.

The Tuna Management Plan has been developed to meet four key objectives:

- To ensure that the exploitation of the tuna resources that are found in and pass through Vanuatu waters is compatible with the sustainability of the stocks throughout their range;
- Within the limits of the sustainability objective, to ensure the harvest is taken in a way that maximises the long-term economic and social benefits received by the people of Vanuatu;
- To contribute to the food security of *Ni-Vanuatu*; and
- To meet regional and international responsibilities for tuna management.

The scope of the plan includes:

- all billfish and highly migratory tuna species, including albacore, yellowfin, bigeye and skipjack;
- all other species taken in the course of fishing; and
- Vanuatu-flagged tuna fishing vessels wherever they fish.

The Tuna Management Plan covers all Vanuatu waters, including consideration of the area around Matthew and Hunter islands and Vanuatu-flagged tuna fishing vessels wherever they fish.

The plan is structured as follows:

*Policy framework*

A statement of the plan's overarching objectives, goals and strategies.

*Administrative framework for tuna management*

Actions and policies that will provide the necessary administrative and management structure to implement the plan.

*Strategies for conservation and management*

Actions and policies that focus on managing vessels fishing for tuna and the conservation of stocks.

*Strategies for local tuna fishery development*

Actions and policies that focus on ways in which local tuna fisheries and associated activities can be encouraged.

*Schedules*

Specific details on licensing, including fees and limits. These are placed in a separate schedule so that they can be updated easily and incorporated in regulations without requiring revision of the whole plan.

The main management tools of the plan are that it:

1. Identifies the fishery and assesses the present state of its exploitation;
2. Specifies the objectives to be achieved in managing the fishery; and
3. Specifies the management and development measures to be taken, in particular:
  - the licensing programme for all commercial fishing vessels;
  - limitations to fishing operations; and
  - total allowable catch (TAC) for foreign fishing, locally based foreign, local and sport fishing vessels.

*Relevance to development of an oceans policy*

The Tuna Management Plan is **highly relevant** to oceans management and use and the development of an oceans policy as it deals specifically with the use of fishery resources, including the use of fish aggregating devices (FADs). The plan also stipulates the use of VMS for foreign and local vessels and foreign carriers in Vanuatu waters.

Under the management plan Vanuatu proposes to pursue cooperative agreements provided under the Niue Treaty with its neighbours (Australia, Fiji, France, New Caledonia, New Zealand and Solomon Islands) to better monitor, control and manage fishing activities close to the EEZ boundaries.

However, there is no recognition of the Environmental Protection and Conservation Act within the management plan. This, coupled with the lack of DEPC representation on the Tuna Management Advisory Committee (according to Section 3.1 of the plan), could lead to a lack of coordination on environmental management issues within Vanuatu's oceans. The omission of environmental representation from the Tuna Management Advisory Committee is an oversight that will need to be rectified to ensure that there is integrated and cross-sectoral management of Vanuatu's oceans.

We recommend that these issues be discussed with the Department of Fisheries in the context of the oceans policy development as the Tuna Management Plan is **highly relevant** to the successful implementation of any oceans policy.

## Integrated Coastal Management Framework and Implementation Strategy, 2010

The Integrated Coastal Management Framework (NICMF) for Vanuatu has been developed to assist responsible government agencies and concerned stakeholders to cooperate, collaborate and integrate their activities into a coordinated response to mitigate and reduce impacts affecting Vanuatu's coastal ecosystems and resources.

The vision for the NICMF is that Vanuatu will have a clean and healthy coastal and marine environment for current and future generations of the people of Vanuatu, able to be used sustainably in perpetuity.

The goal of the NICMF is to give substance to the national vision for sustainable coastal ecosystem management by prescribing institutional arrangements for management of coastal ecosystems and identifying relevant stakeholders who will support the process for implementing management and development activities.

The specific objectives of the NICMF are to:

- maintain the functional integrity and health of coastal ecosystems and environments through maintenance of ecological balance, protection of biodiversity, preservation of resources and sustainable fisheries and livelihoods of communities;
- harmonise coastal management processes provided for by relevant legislation, strategies, policies and plans;
- enhance and strengthen collaboration of all actors including government agencies, NGOs and communities in the management process;
- ensure coastal ecosystem considerations are efficiently and adequately taken into consideration during all stages of development to minimise detrimental impacts on the coastal environment and achieve sustainability;
- facilitate the progress of sustainable multi-sectoral development;
- reduce resource use conflicts;
- maintain aesthetic appeal of the coastal environment for the enjoyment of the population and for tourism development;
- preserve customary, cultural and traditional values; and
- facilitate climate change adaptation activities.

The NICMF provides a consolidated overview of roles and responsibilities, issues and the range of tools (strategies, plans, legislation) available to address management of the coastal zone. The framework is designed to allow stakeholders, managers and those involved in management of Vanuatu's coastal resources to identify the most appropriate response to best manage coastal resources for long-term sustainable use. The framework is not a static document and should be viewed as a guide. It will be reviewed and revised over time so that, depending on changing circumstances, it always remains a current and valuable resource and guide for implementing best practice coastal resource management.

Implementation by the relevant stakeholders will be achieved through:

- legislative, legal and policy frameworks and systems;
- sectoral dialogue and collaboration;
- mainstreaming into government agency workplans;
- community engagement;
- data sharing; and
- financial and human resource systems.

The NICMF aims to promote and facilitate the framework objectives by serving as a strategic coastal environmental decision-support framework for the Department of Fisheries and DEPC in coordinating their efforts in the integrated management of coastal ecosystems.

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

The NICMF is **highly relevant** to the development of an oceans policy as many of the issues identified and strategic arrangements developed for managing the coastal zone will apply equally validly to the oceans of Vanuatu.

## Priorities and Action Agenda 2006–2015

The objective of the Priorities and Action Agenda (PAA) is to raise the welfare of the people of Vanuatu.

A set of overarching national strategic priorities have been identified for the allocation of development resources, as well as policy initiatives and implementation action. This is the basis for the PAA.

The main priority is to create an environment for private-sector-led economic growth, including activities in the primary sectors of agriculture, forestry and fisheries, as well as in tourism.

The key priority areas are:

- Private sector development and employment creation;
- Macroeconomic stability and equitable growth;
- Good governance and public sector reform;
- Primary sector development and environmental management (natural resources and the environment);
- Provision of better basic services, especially in rural areas;
- Education and human resource development; and
- Economic infrastructure and support services.

The policy objectives for priority 4 (Primary sector development and environmental management) strongly relevant to a national oceans policy are:

*Primary production:*

1. Sustainably raise incomes from agriculture, fishing and forestry resources for domestic and export markets;
2. Improve and strengthen regulatory and sustainable management arrangements for the sector; and
3. Involve all stakeholders in the development of sector strategies and their implementation.

*Environmental and disaster management:*

1. Promote sound and sustainable environmental management practices;
2. Ensure sustainable management and conservation of Vanuatu's biodiversity;
3. Integrate hazard and risk management concerns into policies in order to reduce environmental risk; and
4. Promote traditional and cultural disaster management.

The priorities and strategies to achieve the policy objectives are to:

1. Implement the Environmental Management and Conservation Act and the regulation of related activities;
2. Encourage the development of protected areas;
3. Improve sewage treatment and reduce pollution in the harbours and lagoons near urban centres;
4. Conduct a solid waste disposal study;
5. Encourage eco-tourism, where feasible, as a means to protect the environment;
6. Conduct community awareness of the need to protect the environment including through reduction of risks from natural hazards;
7. Develop and implement risk reduction programs in communities; and
8. Prepare a Port Vila development plan to define how public amenity can be maintained.

*Relevance to development of an oceans policy*

This strategy appears to support the development of national policy which in turns supports sustainable development, a focus of the proposed oceans policy. Consequently, there is unlikely to be any conflict with an oceans policy.

However, the PAA 2006-2015 was due for review in 2015 and at the time of writing it was unclear whether the new version of the agenda would make the same provision for national policy development and environmental management. The Government of Vanuatu is currently preparing a 15-year National Sustainable Development Plan (NSDP) which is proposed to come into operation in 2016. It will incorporate three pillars: economic, environment and social development, underpinned by focus on culture.

Priorities relevant to development of an oceans policy in this version of the document include:

Improved fisheries management through:

- Preparing a sector strategy;
- Implementing the Tuna Management Plan;
- Revision of fisheries legislation;

- Institutional capacity building within the Fisheries Department; and
- Strengthening provincial capacity for coastal fishery management.

Sustainable coastal and reef management through:

- Mobilising communities to manage their coastal and reef fishery resources;
- Facilitating the marketing of reef fish;
- Improving stakeholder involvement in the sector;
- Mobilising local communities to arrange their own FADs; and
- Assessment of the sustainable management of the live reef fish trade.

Sustainable offshore management through:

- Effective monitoring of catches and enforcement of TAC limits;
- Maximising the resource rental from the oceanic tuna; and
- Promoting local investment in value-adding activities and fish exports.

We recommend that the Ministry of Finance be asked about how the PAA 2008–2015 will change in its new version (if a new one is being prepared) and what changes are proposed to national policy development in the primary sector and environment components, as this document is **highly relevant** to the development of an oceans policy.

## National Adaptation Programme for Action

The Republic of Vanuatu ratified the UNFCCC on 09 March 1993, and submitted its Initial National Communication to the UNFCCC on 30 October 1999.

The Seventh Conference of the Parties to the UNFCCC resolved to support the work programme for least developed countries (LDCs) to prepare and implement national adaptation programmes of action (NAPAs), including meeting the agreed full cost of preparing the NAPAs. The NAPAs were designed to communicate priority activities (including projects, integration into other activities, capacity building and policy reform) and address the urgent and immediate needs and concerns of LDCs relating to the adverse effects of climate change.

The objective of the NAPA project for Vanuatu was to develop a country-wide programme of immediate and urgent project-based adaptation activities in priority sectors to address the current and anticipated adverse effects of climate change, including extreme events.

The final list of activities, objectives and programs for Vanuatu were:

- Agriculture and food security (preservation/processing/marketing, modern and traditional practices, bartering);
- Water management policies/programmes (including rainwater harvesting);
- Sustainable tourism;
- Community-based marine resource management programmes (modern and traditional, aquaculture); and
- Sustainable forestry management.

The NAPA is **highly relevant** to several other instruments including the National Biodiversity Strategy and Action Plan 2010, Integrated Coastal Management Framework and Implementation Strategy 2010, Pacific Regional Environment Program Strategic Plan 2011–2015, National Environment Policy, Environmental Protection and Conservation Act 2002, Convention on Biological Diversity (Ratification) (Act No. 23 of 1992), and the Framework Convention on Climate Change (Ratification) Act (1992).

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

The NAPA is **highly relevant** to a national oceans policy, particularly as the oceans policy is likely to relate to coastal and inshore areas and catchment management. However, given that the NAPA has been in effect for some years now, some evaluation of its effectiveness and achievements is necessary to understand how successful the actions proposed under the NAPA have been in contributing to addressing the effects of climate change. It may be useful to contact the Department of Climate Change to find out whether the NAPA is to be reviewed and revised and when that process is likely to occur so that it can be factored into the oceans policy process.

## National Biodiversity Strategy and Action Plan, 1999

The Vanuatu Government signed the CBD at its launch in 1992 and ratified it in 1993. As a party to the CBD, the government is obliged to report to the other Convention signatories on in-country biodiversity management activities and to develop a strategy and action plan (NBSAP) to manage and conserve Vanuatu's biological diversity.

The first national report was prepared by the NBSAP project team and was sent to the CBD Secretariat in December 1997. The 1999 NBSAP remains the first and only national biodiversity conservation strategy and action plan.

From 1997 to 1999 the NBSAP project also implemented activities to raise knowledge of Vanuatu's biodiversity to identify appropriate approaches to manage the use of the country's biological resources.

The purpose of the NBSAP is:

1. To manage and safeguard biological resources through government, provinces and local communities to maintain natural and cultural heritage for all Ni-Vanuatu;
2. Guide government, provinces, local communities and landholders to sustainable management of Vanuatu's natural resources;
3. Ensure that all Ni-Vanuatu, including future generations, benefit from biodiversity and enjoy its use; and
4. Protect the custom, intellectual and legal rights of Ni-Vanuatu as resource custodians and users.

There are various measures that can be used to meet these goals. In developing the strategy and action plan priority was given to activities that are affordable, within the capacity of existing government or community institutions and that meet established needs.

The objectives of the NBSAP are:

1. Protection and wise use of biodiversity
  - Better manage and more wisely use biodiversity, whether as species, varieties or ecosystems, for our benefit today and for the benefit of future generations.
  - Reduce threats to Vanuatu's biodiversity.
  - Protect indigenous biological resources.
  - Manage and protect endangered species and places that are under threat.
2. Application of policy, planning and legal mechanisms to enable sustainable management of biodiversity
  - Ensure all government planning documents, policies and laws recognise the importance and values of biodiversity.
  - Introduce EIAs for government or private development activities to minimise adverse effects on significant habitat or species.
  - Recognise the rights of all custom chiefs and local communities to safeguard biodiversity in the areas under their control for the benefit of present and future generations.
  - Protect the intellectual property rights of *Ni-Vanuatu* to their knowledge and uses of biodiversity.
  - Establish local and national sources of funding to assist with the sustainable conservation of natural resources.
3. Research, assessment and monitoring of biodiversity
  - Increase knowledge of Vanuatu's biodiversity so that appropriate mechanisms for better management and conservation of biological diversity can be identified.
  - Collect information on changes that are taking place among species and their ecosystems so that appropriate management decisions can be made.
  - Monitor the impact of development activities on biodiversity including the success and failure of conservation programmes/projects.
4. Capacity building for environmental management
  - Improve the technical capacity of relevant sectors including the resource people within government, provinces and the community to manage biodiversity.
  - Strengthen and support local communities and land owners so they are better able to execute sustainable biodiversity management activities.
  - Encourage strong local participation in activities that promote sustainable use of biodiversity.

- Establish local or national funding sources to finance biodiversity conservation activities and to enhance the role of local communities in biodiversity conservation.
  - Secure access to international support for biodiversity conservation priorities within the strategy.
  - Support effective traditional biodiversity management systems.
5. Environmental education, awareness and information sharing
- Improve environmental education within the school system.
  - Raise wider awareness of biodiversity and its values.
  - Encourage information sharing and cooperation within and between sectors and between local communities to conserve and wisely use natural resources.
  - Raise community awareness of the provisions of environmental and natural resource legislation.
6. Participation of local communities in the management of biodiversity
- Support cooperation of chiefs, local communities, resource owners and users to better manage the biodiversity.
  - Recognise and strengthen local communities' rights and traditional conservation practices to manage and wisely use biodiversity.
  - Involve local communities with biodiversity field surveys and conservation programmes.
  - Strengthen and support local community decision-making bodies.

The NBSAP has the potential to provide significant support to a range of other instruments including the Environmental Management and Conservation Act [CAP 283], Convention on Biological Diversity (Ratification) (Act No. 23 of 1992), National Parks Act [CAP 224], Wild Bird Protection Act [CAP 30], Plant Protection Act [CAP 239], and the International Trade (Flora and Fauna) [CAP 210].

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

The NBSAP is **moderately relevant** to oceans management and use because of its focus on the conservation of biodiversity (only moderate because the instrument is 16 years old and its effectiveness and level of implementation is unknown). Some of the priority areas listed in the NBSAP have been achieved, such as the enactment of the Environmental Protection and Conservation Act providing for EIA processes for developments.

It is recommended that the DEPC be approached to encourage the effort to update the NBSAP including assessing the effectiveness of the previous NBSAP and which NBSAP priorities have not been implemented or undertaken.

## Agreement on Strengthening Implementation on the Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (Ratification) Act No. 2 of 2014

*[Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (Ratification) Act No.10 of 1993]*

The objective of this Agreement is to enhance active participation in cooperative surveillance and enforcement activities by providing a framework for the Parties to share resources and exchange information, including fisheries data and intelligence, in order to:

- a. maximise the operational reach and effectiveness of fisheries monitoring, control and surveillance tools;
- b. prevent, deter and eliminate illegal, unreported and unregulated fishing; and
- c. contribute to broader regional law enforcement efforts

with the purpose of supporting the continuous improvement of the management and development of the fishery resources in the region, ensuring their sustainability, and maximising the social and economic benefits.

Parties to the South Pacific Forum Fisheries Agency Convention, 1979 have agreed under Article 5 of that Convention that the Forum Fisheries Committee (comprised of one representative of each of the 17 members) shall promote intra-regional coordination and cooperation in fisheries surveillance and law enforcement. This Ratification Act commits Vanuatu to enhance their ability to enforce effectively their fisheries laws, and deter breaches of fishery laws under the Niue Treaty.

There are potential links to the Fisheries Act No.10 of 2014, Multilateral Treaty on Fisheries and Related Amendments and to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Ratification) Act No. 23 of 2013.

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

This Act is **highly relevant** to oceans management and use as it provides a regional framework agreement on fisheries surveillance and law enforcement to prevent illegal access to Vanuatu's fish stocks, and therefore provides part of the implementation framework for fishery management.

## National Bio Safety Framework Project

As a party to the Cartagena Protocol the Vanuatu Government has accepted responsibility to implement a minimum level of control over the import and export of living genetically modified organisms (LMOs). The National Biosafety Project has been operational since 2003 to inform and advise the government on national responsibility under the Cartagena Protocol. The project has looked at a wide range of opportunities for the management of genetically modified organisms (GMOs), including LMOs. The objective of the National Biosafety Project was to develop a National Biosafety (GMO) Framework to clearly define the policy, legal, administrative and technical instruments through which Vanuatu will:

- comply with the provisions of the Cartagena Protocol;
- outline and ensure safety for the environment, health and economy from the use and movement of the GMOs; and
- provide for informed agreement to the use of GMOs at both national and individual levels.

The aim of the GMO Framework is to minimise the risks of both intentional and accidental introduction and spread of organisms with potential to have adverse economic, environmental and socio-economic impacts, including GMOs and their derivatives and processed products.

The biosafety management framework includes, but is not limited to:

- a risk analysis and decision-making framework;
- control over the introduction, release and establishment of new species or varieties of organisms (including monitoring, reporting and containment);
- border control, surveillance and emergency response for the exclusion and eradication of unwanted organisms and associated pathogens;
- information, education and awareness to allow informed use of organisms that may have potential to cause harm (including labelling of foods and animal feeds) and to facilitate community responsibility;
- a precautionary approach with respect to new organisms, including GMOs and their derivatives and processed products; and
- a system for liability and redress.

There are potential synergies with the following legislation:

- Plant Protection Act [CAP 239] which provides for the exclusion and effective management of plant pests (including aquatic plants) and quarantine pests through information sharing, risk assessment procedures and the issue of import and export permits.
- Animal Importation and Quarantine Act [CAP 201], which provides controls on animal importation including the importation of animal products and biological products into Vanuatu.
- Environmental Management and Conservation Act [CAP 283] which enables management measures for the control of foreign organisms, makes the introduction of foreign organisms subject to environment impact assessment provisions and establishes the Biodiversity Advisory Council.

The Department of Biosecurity is designated as the National Biosafety Focal Point and Competent National Authority for ensuring national biosafety.

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

The framework is of relevance to oceans management and use in that it provides for controls over potentially introduced organisms including plants and animals.

The framework was introduced in 2005 and its current relevance is questionable. Many biosecurity issues and approaches will have changed since 2005, as well as the responsibilities for implementing biosafety protocols and responsibilities.

Therefore, the framework is ***moderately relevant*** to development of an oceans policy.

It is recommended that advice be sought from the implementing organisations about the current status and effectiveness of the framework. In particular, it would be useful to know whether it has been (or is being) reviewed, and whether a new iteration of the framework is proposed.

## Draft Climate Change Policy (draft dated 30 January 2015)<sup>9</sup>

The draft Climate Change Policy was still under discussion at the time of this analysis. For this analysis, the draft was assessed.

The purpose of the draft Climate Change Policy was to:

- articulate Vanuatu's vision, principles, strategic goal, priorities and strategies for climate change and disaster risk reduction;
- provide the framework for mainstreaming climate change and disaster risk reduction into sustainable development processes;
- improve coordination and planning of programs, projects and funding across ministries, departments, development partners, civil society organisations (CSOs) and the private sector;
- ensure stakeholders including donors, CSOs, industry sectors and communities understand Vanuatu's policy direction;
- strengthen governance and financial systems to access additional funds, enabling more equitable sharing in resourcing relative to Vanuatu's high level of vulnerability; and
- facilitate accountability through monitoring, evaluation and reporting.

In 2012 the Government of Vanuatu established institutional arrangements for joint governance of climate change and disaster risk reduction through the National Advisory Board on Climate Change and Disaster Risk Reduction (NAB) and a Climate Change/Disaster Risk Reduction Project Management Unit within the Vanuatu Meteorology and Geohazards Department. This represents a proactive approach to integration in key governance structures at national level.

As a further key step, the NAB instituted the Risk Governance Assessment project in 2013 to strengthen systems and provide a way forward in implementing climate change and disaster risk reduction measures. The Risk Governance Assessment report was endorsed in February 2014 and is being implemented. Dedicated NAB Secretariat positions have been established under a key recommendation to support NAB oversight of climate change and disaster risk reduction across Vanuatu. Representation of a broad range of agencies, together with CSOs on the NAB, provide a framework for mainstreaming across sectors and inclusive planning and decision making.

The policy will be implemented applying the six principles of accountability, sustainability, equity, community focus, collaboration and innovation. The policy aims to be accessible to and implemented by a wide range of government agencies and stakeholders. It takes a practical approach in view of Vanuatu's resources, exposure and demographic contexts. It seeks to strengthen existing national, provincial and area council capacity.

The Government of Vanuatu is committed to six key priorities to direct the country's climate change and disaster risk reduction efforts. These priorities fall into two categories of systems (governance, finance, and knowledge and information) and themes.

The themes are climate change adaptation and disaster risk reduction, low-carbon development, and response and recovery.

The draft Climate Change Policy incorporates key elements of all pre-existing plans, building on progress previously made in these fields. Further work is proposed to develop a new National Adaptation Plan to replace the current NAPA. The policy and implementation document aims to integrate climate change and disaster risk reduction policy under one framework, effectively superseding other documents.

At the regional level, the Pacific Islands Framework for Action on Climate Change 2006–2015 and the Pacific Regional Disaster Risk Reduction and Management Framework for Action 2005–2015 are nearing their completion dates. These link strongly with Vanuatu's NAPA 2006. The SPC and SPREP are jointly facilitating development of a Strategy for

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<sup>9</sup> Implemented since this review took place; the final policy did not substantially change from the draft that was assessed.

Climate and Disaster Resilient Development in the Pacific (SRDP) 2016. The new strategy will replace the two existing regional frameworks.

The NSDP identifies climate change and disaster risk reduction as key priorities for government. The draft Climate Change Policy aligns with the proposed direction of the NSDP.

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

The draft Climate Change Policy is **highly relevant** to oceans management and use – many of the predicted climate change impacts and impacts from any natural disasters have the potential to significantly impact on Vanuatu's marine resources. Good governance of oceans and coasts will help mitigate these impacts upon people.

When completed this will be **highly relevant** to an oceans policy and should be considered in its development.

## 2.2.3 Relevance of other policy instruments

The following national policies were reviewed and are of **low relevance** or **not relevant** to the development of Vanuatu's oceans policy.

### Persistent Organic Pollutants Policy/Persistent Organic Pollutants Country Plan (prepared by SPREP, January 2003)

The Australian Agency for International Development (AusAID) identified the mismanagement of hazardous chemicals in the Pacific island countries as a serious environmental concern, and hence the Persistent Organic Pollutants in Pacific Island Countries project was developed as an AusAID-funded initiative, to be carried out by SPREP.

This is an old report which covers a situation up to 2005. It is unclear whether the issues were dealt with. As described they have minor relevance to an oceans policy.

We recommend that the DEPC be asked to provide an update on any policies developed to deal with persistent organic pollutants and to determine the plan's current and relative significance to oceans policy.

### Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity Corporate Plan, 2014-2018

According to the department's website the corporate plan is yet to be developed.

### National Strategy for Spatial and Physical Planning

Unable to locate document.

### National Conservation Strategy 1988

Unable to locate document

### Plan of Works on Protected Areas

Not yet submitted, according to the CBD website.

The following provincial documents were reviewed and are of **low relevance** or **not relevant** to the development of Vanuatu's oceans policy.

### Sanma Provincial Government Council Annual Business Plan, 2014

The plan has the potential to establish conservation areas and expand fisheries activities provides some synergies with the Environmental Management and Conservation Act and the Fisheries Act.

The Sanma business plan is of **low relevance** to development of a national oceans policy.

## Marou Community Declaration Adaptive Management Plan

In 2002 the Marou community became concerned at the reduction in some of their natural resources through population growth, higher cost of living and other reasons.

The community asked for assistance from government departments such as Fisheries and NGOs like Seacology, FSP Vanuatu and Wan Smolbag Theatre in management of their resources and this plan was prepared. The main activities covered by the plan include:

- local fisheries management;
- establishing and managing taboo areas for trochus, *bêche-de-mer* and shellfish;
- protection of lobsters, octopus, turtles, lagoon seagrass and natongtong; and
- other activities covered include protection of bush resources and community management.

This plan is of **low relevance** to development of a national oceans policy.

### 2.2.4 Relevance of legislation to definition of customary boundaries

This analysis also explored the legislative definitions of customary boundaries, of which there are several (see Attachment 3).

## 3 ANALYSIS SUMMARY

A total of 70 instruments were analysed, reviewed and assessed for their relevance to the development of an oceans policy for Vanuatu. This process included international, regional, national and provincial legislative instruments, policies, strategies and plans.

These results of the analysis are summarised below in two sections: section 3.1 describes legislation considered to be important for developing an oceans policy for Vanuatu; and section 3.2 describes instruments important for supporting implementation of a national oceans policy. Instruments analysed and assessed, but considered to be of **low relevance** or **not relevant**, are identified in section 3.3.

### 3.1 CONSTITUTIONAL AND LEGISLATIVE SUPPORT FOR DEVELOPMENT OF AN OCEANS POLICY

The Constitution of the Republic of Vanuatu 1980, the Environmental Management and Conservation Act No. 12 of [CAP 283] and the Maritime Zones Act No. 6 of 2010 are the most relevant legal instruments in Vanuatu to support the development of a national oceans policy.

#### Constitution of the Republic of Vanuatu

The Constitution of the Republic of Vanuatu, being the sovereign law of Vanuatu, recognises the significant requirement to protect Vanuatu. The Constitution is binding on every *Ni-Vanuatu person to safeguard the national wealth, resources and environment for current and future generations. This obligation is one of the underpinnings for managing the territorial waters of Vanuatu and consequently implies de facto support for the development of a national oceans policy.*

#### Environmental Protection and Conservation Act [CAP 283]

The Environmental Protection and Conservation Act [CAP 283], which is administered by the Minister responsible for the environment, provides for the conservation, sustainable development and management of the environment of Vanuatu, and the regulation of related activities including development of national policies and plans.

#### Maritime Zones Act No. 6 of 2010

The Maritime Zones Act No. 6 of 2010 is **highly relevant** to the development of an oceans policy as it provides for the delimitation of the maritime zones and for other related matters. The Act defines the maritime zones for Vanuatu and sets out the rights that Vanuatu has in relation to its EEZ and continental shelf, which in turn defines the extent of the area that a national oceans policy might apply to. The Act:

- establishes an EEZ;
- defines internal and archipelagic waters of Vanuatu;
- defines roadsteads;
- define the territorial sea;
- defines the contiguous zone;
- defines the continental shelf; and
- provides for research in the seas of Vanuatu.

## 3.2 LEGISLATION, POLICIES, STRATEGIES AND PLANS THAT SUPPORT IMPLEMENTATION OF AN OCEANS POLICY

This section of the report has been divided into two sections: section 3.2.1 describes legislation (in priority order) that is highly or moderately supportive of implementing a national oceans policy; section 3.2.2 describes regional and national policies, strategies and plans (in priority order) that are highly or moderately supportive of implementing a national oceans policy.

### 3.2.1 Legislative support for implementing a national oceans policy

#### Convention on Biological Diversity (Ratification) Act No. 23 of 1992

The Act gives effect to CBD which deals with the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the use of genetic resources, which is **highly relevant** both development and implementation of a national oceans policy for Vanuatu. The Convention (and consequently the Act) provides for development of national strategies, plans and programmes for conservation and sustainable use and the integration of conservation and sustainable use into relevant cross-sectoral plans, programs and policies.

#### National Parks Act [CAP 224]

The National Parks Act makes provision for the declaration of national parks and nature reserves, for the protection and preservation of such areas, and connected matters.

The Act is relevant to oceans management and use from the perspective that it provides for the creation of protected areas.

The Act does not define whether declaration of national parks and reserves provisions apply to both terrestrial and/or marine/oceanic or both.

#### Fisheries Act No. 10 of 2014

The Fisheries Act makes provision for the management, development and regulation of fisheries within Vanuatu waters, and for the control of fishing vessels entitled to fly the flag of Vanuatu outside of Vanuatu waters in a manner consistent with Vanuatu's international obligations, and for related matters. Consequently, it is **highly relevant** to the implementation of a national oceans policy for Vanuatu.

#### Framework Convention on Climate Change (Ratification) Act [CAP 218]

The Act ratifies the UNFCCC so is **highly relevant** to development of a national oceans policy as it deals with the effects of climate change through a variety of management instruments developed and implemented by signatories to the Convention, including Vanuatu.

#### Maritime Conventions Act [CAP 155]

The Act gives effect to international conventions to which Vanuatu is signatory. The conventions most relevant to Vanuatu's oceans are those dealing with pollution at sea and the Agreement on the International Dolphin Conservation Program 1998.

#### Shipping Act [CAP 53]

The Shipping Act provides for the control and safety of Vanuatu vessels and the safe passage of vessels through the waters of Vanuatu. It also makes specific mention in Section 39A of the protection of Vanuatu waters from pollution.

## Custom Land Management Act No 33 of 2013

The Act provides for the determination of custom owners and the resolution of disputes over ownership of custom land by customary institutions and for related purposes.

## Mines and Minerals Act [CAP 190]

The Act makes provision for mining to be carried out seaward of the land so is **highly relevant** to oceans management and therefore to the development and implementation of a national oceans policy.

The Act does not provide for other uses in the oceanic environment and nor does it contain provisions for EIA or environmental protection. However, the Act does provide for the inclusion of conditions in licences and permits and for the development of Regulations, thereby providing the tools for managing the potential impacts and conflicts from mining.

## Deep Sea Mining Legislative Review Vanuatu (2013)

The review of Vanuatu's deep-sea mining legislation identifies:

- the extent to which national regulation of deep-sea mineral activities is already covered by existing legislation; and
- where there may be a need for further national legislation or regulations to comply with international law standards and requirements.

Some aspects of an adequate seabed minerals regulatory regime are already covered in Vanuatu's existing legislation, notably the Minerals and Mining Act of 1986, the Environmental Management and Conservation Act of 2003, the Maritimes Zones Act of 2010 and the Maritime Act of 1981.

The report identified gaps in the regulatory regime for deep seabed mineral activities, most notably:

- environmental management requirements for mineral activities conducted at sea; and
- fiscal arrangements tailored for seabed mineral activities.

The review recommended that further legislation be adopted to ensure gaps are adequately covered and that a competitive deep-sea minerals management regime for mineral prospecting, exploration and recovery activities of Vanuatu be established.

This review is **highly relevant** to development of an oceans policy, particularly the gaps identified. Recommendations for environmental management requirements for mineral activities conducted at sea should be supported and followed through.

## Petroleum (Exploration and Production) Act [CAP 227]

In this Act, for licensing purposes, the term "land" includes –

- a. land beneath water;
- b. the seabed and the subsoil beneath the territorial sea; and
- c. the seabed and the subsoil of the continental shelf or beneath the waters of the EEZ.

The Act is **highly relevant** to a future oceans policy as it defines both a potential use and potential suite of impacts, and provides for a means of spatial planning. The Act regulating seabed exploration and oil extraction has the potential to conflict with other legislation designed to manage other forms of ocean use including for conservation. This Act does not necessarily recognise this potential; the potential conflict will need to be addressed as part of identifying cross-sectoral arrangements during development of any national oceans policy.

In addition, the Act does not contain specific provisions recognising the importance of marine biodiversity and the need to take a precautionary approach to exploration and production. However, there is provision for conditions to be attached to exploration and production licences and for regulations to be developed, thereby providing some avenue for introducing mechanisms for dealing with negative impacts.

## Agreement Establishing the South Pacific Regional Environment Program (Ratification) Act No. 21 of 2005

The purposes of SPREP are to promote cooperation in the South Pacific region and to provide assistance to protect and improve its environment and to ensure sustainable development for present and future generations. SPREP achieves these purposes through an action plan adopted from time to time by the SPREP Meeting, that sets the strategies and objectives of SPREP.

This Act binds Vanuatu to the Agreement and therefore is **highly relevant** to oceans use and management from the perspective that it provides region-wide programs and initiatives that are/may be carried out within Vanuatu's maritime boundaries.

## National Disasters Act [CAP 267]

The National Disasters Act relates to the management of disasters and is considered **moderately relevant** to a national oceans policy in that disasters such as cyclones, tsunami and flooding have the potential to impact on coastal shorelines and affect both marine and coastal ecosystems.

## Physical Planning Act [CAP 193]

The Physical Planning Act seeks to manage development within various council physical planning areas (defined under the Act).

The Act has **moderate relevance** to an oceans policy as it has the potential to manage the impacts from catchment and foreshore development which may impact on coastal and oceanic waters e.g. from pollution through increased sedimentation and waste. The Act contemplates development types such as marinas and resorts in coastal or catchment areas.

## Foreshore Development Act [CAP 90]

The purpose of this Act is to regulate the carrying out of works on the foreshore.

The potential for land-based sources of pollution from foreshore development is a real issue, particularly for inshore coastal areas. Therefore, there is a need to consider the potential impacts from pollution and increased sediment loads emanating from any foreshore developments in the broader management of Vanuatu's oceans.

This Act was amended in 2013 to capture requirements for development in other Acts that the Minister must consider in making his decision whether to grant consent for a development, especially the important requirement for PEA and EIA as set out in the Environmental Protection and Conservation Act.

## International Trade (Flora and Fauna) Act [CAP 210]

This is an Act to implement the Republic of Vanuatu's obligations as a party to CITES by controlling and regulating the exportation and importation of certain species of fauna and flora, and for related purposes.

Management of endangered species and the introduction of marine pest species is an important contribution to maintaining ecosystem health so this Act is **moderately relevant** to the development and implementation of a national oceans policy.

## Agreement Establishing the Pacific Islands Forum Secretariat (Ratification) Act No. 4 of 2012

This Act ratifies the PIF Secretariat Agreement. The purpose of the secretariat is to facilitate, develop and maintain cooperation and consultation between member governments on economic development, trade, transport, tourism, energy, telecommunications, legal, political, security and such other matters as the PIF may direct.

This Act is **moderately relevant** to oceans management and use and a national oceans policy through potential trade implications such as shipping agreements and regional tourism.

## Convention on the Conservation and Management of Tuna Stocks and Other Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Ratification) Act No. 17 of 2005

This Act ratifies the Convention on the Conservation and Management of Tuna Stocks and Other Highly Migratory Fish Stocks in Western and Central Pacific Ocean.

The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the Western and Central Pacific Ocean in accordance with the 1982 Convention and the Agreement. This is ***moderately relevant*** to an oceans policy.

## Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization to the Convention on Biological Diversity (Ratification) Act No. 7 of 2014

The objective of the Nagoya Protocol is the fair and equitable sharing of the benefits arising from the use of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding, thereby contributing to the conservation of biological diversity and the sustainable use of its components. This is ***moderately relevant*** to an oceans policy.

## Pollution (Control) Act No. 10 of 2013

The purpose of this Act is to control the discharge and emission of pollution in Vanuatu, including placing a control on pollution for developments under the Foreshore Development Act [CAP 90].

The Act is ***moderately relevant*** to development and implementation of an oceans policy because of its ability to control marine pollution.

## Waigani Convention (Ratification) Act No. 16 of 2007

The Waigani Convention (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) entered into force in October 2001.

The main effect of this Convention is to ban the import of all hazardous and radioactive wastes into PIF countries. It also enables Australia to receive hazardous wastes exported from PIF countries that are not Parties to the Basel Convention. There are 24 countries within the coverage area of the Waigani Convention. As of October 2012, there were 13 Parties: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, New Zealand, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

The Act is considered ***moderately relevant*** to development and implementation of an oceans policy.

## The Stockholm Convention on Persistent Organic Pollutants (Ratification) Act No. 12 of 2005

This Act implements the Stockholm Convention on Persistent Organic Pollutants. Mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants.

This Act is ***moderately relevant*** to implementation of an oceans policy as an adjunct to other pollution controls.

## 3.2.2 Current policies, strategies and plans that support implementation of a national oceans policy

### NATIONAL

#### National Environment Policy (draft dated 26 July 2013)

The (draft) NEP is **highly relevant** to the development of an oceans policy in that it provides policy settings for many of the uses of Vanuatu's oceans. The NEP states that it will create a framework that links already existing environment-related policies, while at the same time providing a roadmap for Vanuatu's long-term environmental objectives and actions – this is consistent with the general intent of the national oceans policy.

We recommend that DEPC advise whether a final NEP is proposed and if so when it is likely to come into effect. DEPC will be legislatively responsible for both the national environment and oceans policies.

#### Tuna Management Plan 2014

The Tuna Management Plan is **highly relevant** to oceans management and use as it deals specifically with the use of fishery resources. The plan is a working document that provides specific direction and guidance to managers and policy-makers while being linked to a clear set of objectives and principles.

The omission of representation on the Tuna Management Advisory Committee by an environment representative is an oversight that will need to be rectified to ensure that there is integrated and cross-sectoral management coordination of Vanuatu's ocean resources. We recommend that this issue be discussed with the Department of Fisheries in the context of the oceans policy development as the Tuna Management Plan is **highly relevant** to the successful implementation of any oceans policy.

#### Integrated Coastal Management Framework and Implementation Strategy, 2010

The NICMF for Vanuatu has been developed to assist responsible government agencies and concerned stakeholders to cooperate, collaborate and integrate their activities into a coordinated response to mitigate and reduce impacts affecting Vanuatu's coastal ecosystems and resources.

The NICMF is **highly relevant** to development and implementation of an oceans policy. Many of the issues identified and strategic arrangements developed for managing the coastal zone will apply equally validly to the oceans of Vanuatu.

#### Priorities and Action Agenda 2006–2015

The purpose of this government policy is to raise the welfare of the people of Vanuatu, particularly those aspects related to primary sector development and the environment which are **highly relevant** to development of a national oceans policy. We note that the PAA expired in 2015.

We recommend that the Ministry of Finance be asked about how the current PAA will change in its new iteration (if a new one is being prepared) and in particular what changes are proposed to national policy development and the primary sector and environment components.

#### National Adaptation Programme for Action (2006)

The NAPA is **moderately relevant** to development and implementation of a national oceans policy.

The objective of the NAPA project for Vanuatu is to develop a country-wide programme of immediate and urgent project-based adaptation activities in priority sectors to address the current and anticipated adverse effects of climate change, including extreme events.

The implementation of the NAPA is relevant to oceans use and management, in particular the focus on coastal communities, activities and the development of integrated coastal zone management plans.

The NAPA has been in effect for at least 10 years so it would be useful to determine whether a review and evaluation of implementation has been carried out as part of developing the Climate Change Policy and what the results of that process were.

## Climate Change Policy (draft 30 January 2015)

This draft policy is **potentially highly relevant** to oceans management and use and the development and implementation of a national oceans policy – many of the predicted impacts from climate change and natural disasters have the potential to significantly impact on coastal and marine resources.

The draft policy incorporates key elements of all pre-existing plans, building on progress previously made in these fields. Further work is proposed to develop a new National Adaptation Plan to replace the NAPA. The Climate Change Policy and implementation documents will integrate climate change and disaster risk reduction policy under one framework, effectively superseding other documents.

## National Biodiversity Strategy and Action Plan, 1999

The purpose of NBSAP is to manage and safeguard biological resources to maintain Vanuatu's natural and cultural heritage for all Ni-Vanuatu.

While the NBSAP focuses on the conservation of biodiversity, it is 16 years old and its effectiveness and level of implementation is unknown, so is only of medium relevance to a national oceans policy.

We therefore recommend that the DEPC be supported in their efforts to review the NBSAP.

## National Bio Safety Framework Project

This project is **moderately relevant** to a national oceans policy.

As a party to the Cartagena Protocol Vanuatu's Government has accepted responsibility to implement a minimum level of control over the import and export of LMOs. The National Biosafety Project has been operational since 2003 to inform and advise the government on national responsibility under the Cartagena Protocol.

This framework was introduced in 2005 so its current relevance is questionable. Many of the issues and approaches will have changed during that period, as well as the responsibilities for implementing bio safety protocols and responsibilities

We recommend that advice be sought from the implementing organisations about the status and effectiveness of this framework. In particular, it would be useful to know if it is/has been reviewed, and whether a new iteration of the framework is proposed.

## REGIONAL

### Framework for a Pacific Oceanscape (2010)

This regional document is **highly relevant** to a national oceans policy as it provides a regional context for implementation, in particular through the PIROP 2009.

The Framework for a Pacific Oceanscape supports policy development by:

- providing a (baseline) review of the Pacific islands region's ocean policy environment and the status of its institutional and operational framework;
- providing a summary of progress in implementation of ocean-related policy and PIROP; and
- presenting a Framework for a Pacific Oceanscape, drawing on the PIROP.

### Pacific Island Regional Ocean Policy 2009

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.

This is a useful reference document for developing and implementing a national oceans policy.

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

The SPREP Strategic Plan is the framework that is intended to guide SPREP's annual work plans for a five-year period and focus its vision.

The current strategic plan is at the end of its useful life and is likely to be replaced with a revised plan. While the document is relevant in principle, the detail may not be so relevant until the review and revision is completed and a revised plan for the next period is produced.

## SPC SOPAC Strategic Plan 2011-2015

The goal of SOPAC 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.

The plan has expired. We therefore recommend that the strategic plan for the next planning period be used as a preferred reference.

## SPC Division of Fisheries, Aquaculture and Marine Ecosystems Strategic Plan, 2013-2016

Fishery resource management is a high priority issue within oceans management and use and as a component of a national oceans policy. While the FAME Strategic Plan is regionally focussed, it should be compatible and aligned with national strategies, which are the more relevant inputs for Vanuatu's oceans policy development.

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

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

The Apia Policy was developed in response to a directive by PIF leaders. The plan aims to promote economic growth and sustainable development to reduce poverty and improve natural resource and environmental management.

The plan provides an outdated regional policy framework for inshore fisheries. However, there is value in endorsement by heads of Fisheries Departments so it is still likely to be a guideline to how fisheries might be incorporated into an oceans policy.

We recommend that the Department of Fisheries be asked to advise on the status of the plan and whether a new version is proposed.

## A New Song for Coastal Fisheries: Pathways to Change

"A New Song" is the report from an SPC workshop held in Noumea 3-6 March 2015 to develop a strategy for community-based ecosystem approaches to fisheries management. It has some value in developing management approaches for fisheries.

## Forty-fifth Pacific Islands Forum Communiqué (Koror, Republic of Palau 29-31 July 2014) and the Pacific Plan

PIF leaders decided to re-cast the Pacific Plan as the Framework for Pacific Regionalism at the Special Leaders Retreat on the Pacific Plan Review on 5 May 2014 in Rarotonga, Cook Islands. In this Communiqué PIF leaders endorsed the Framework for Pacific Regionalism, which embraces the principle of inclusivity.

## Framework for Pacific Regionalism – Forum Leaders Statement 2014

This is a statement by PIF ministers about the Framework for Pacific Regionalism replacing the Pacific Plan. This statement is **highly relevant** to an oceans policy for Vanuatu as it is a political commitment to a regional framework for cooperation between member countries.

## Palau Declaration on ‘the Ocean: Life and Future’ Charting a Course to Sustainability

The Declaration calls on regional and global partners, including civil society and the private sector, to work with members and the FFA to evaluate and implement appropriate solutions to address illegal, unreported and unregulated fishing and associated significant loss of fisheries earnings to Pacific island countries. This is a significant political commitment by PIF leaders to the sustainable management, development and conservation of the ocean so it is **highly relevant** as a political statement of support for an oceans policy.

## Roadmap for Inshore Fisheries Management and Sustainable Development 2014-2023 (Draft 1 January 2015)

The leaders of the MSG countries gathered at the leaders’ summit in March 2012 agreed to develop a roadmap for the protection of inshore fisheries. This document represents that management framework and regional roadmap for sustainable inshore fisheries which has been developed by the MSG Secretariat in cooperation with representatives of the Fisheries Departments of the MSG countries and with the technical assistance of the SPC. This is **moderately relevant** to an oceans policy in that it potentially provides a framework for regional fisheries management and a basis for developing collaborative and synergistic plans and strategies with neighbouring countries.

## Vava’u Declaration (2007)

*(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)*

The Declaration reaffirms the importance of fisheries to the economies of all PIF countries and commits countries to promoting domestic fisheries, developing and managing coastal/inshore fisheries, maintaining regional solidarity in managing tuna stocks, strengthening support for the FFA and upholding and strengthening protection measures for the regions fishery resources. This statement is **highly relevant** because it is a strong political commitment by Vanuatu, as a member of the PIF, to fisheries management in the region.

## 3.3 RELEVANCE OF OTHER INSTRUMENTS ANALYSED

Some of the documents analysed were either of **low relevance** or **not relevant** to the development of a national oceans policy. They are included in the analysis to ensure completeness of the review.

### LEGISLATION

- *Animal Importation and Quarantine Act [CAP 201]* – for the regulation and control of the importation of animals, animal products and biological products.
- *Forestry Act [CAP 276]* – to make provision for the protection, development and sustainable management of forests and the regulation of the forestry industry in Vanuatu, and for related purposes.
- *Preservation of Sites and Artefacts [CAP 39]* – for the preservation of sites and objects of historical, ethnological or artistic interest.
- *Wild Bird Protection Act [CAP 30]* – to protect wild bird life.
- *Forestry Rights Registration and Timber Rights Harvest Guarantee Act [CAP 265]* – relating to the registration of certain forestry rights granted in respect of land, and to the harvesting and accreditation of timber plantations.

- *Maritime Act [CAP 131]* – provide for the establishment of a shipping register for vessels of Vanuatu engaged in foreign trade and for matters connected therewith.
- *Ports Act [CAP 26]* – provide for the control of ports in Vanuatu (refers to Port Vila and Luganville ports).
- *Plant Protection Act [CAP 239]* – to provide for the exclusion and effective management of plant pests and to facilitate exports of plant produce and to provide for matters connected therewith.
- *Decentralisation Act [CAP 230]* – to make provisions for the decentralisation and establishment of Provincial Government Regions and for matters connected therewith.
- *Multilateral Treaty on Fisheries and Related Amendments (Ratification) Acts No. 16 of 2005 and 12 of 2007* – to provide for the ratification of the Amendments to the Agreement Among Pacific Island States Concerning the Implementation and Administration of the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (no longer in effect).
- *Public Health Act [CAP 234]* – to provide for public health.
- *Water Resources Management Act [CAP 281]* – to provide for the protection, management and use of water resources in the Republic of Vanuatu.

## POLICIES, STRATEGIES AND PLANS

- *Sanma Provincial Government Council Annual Business Plan, 2014*
- *Marou Community Declaration Adaptive Management Plan*
- *Persistent Organic Pollutants Policy* – regional management of Persistent Organic Pollutants in Pacific Island Countries
- *Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity Corporate Plan, 2014–2018* – not yet prepared
- *National Strategy for Spatial and Physical Planning* – unable to locate
- *National Conservation Strategy 1988* – unable to locate
- *Plan of Works on Protected Areas* – not yet prepared

## 3.4 ANALYSIS OF GAPS

Analysis of the instruments referred to in Attachment 1 highlighted issues that need to be referred for resolution to the relevant organisations.

### Deep Sea Mining Legislative Review Vanuatu 2013

A review of Vanuatu’s legislation was conducted in 2013, which identified:

- the extent to which national regulation of deep-sea mineral activities is already covered by existing legislation; and
- where there may be a need for further national legislation or regulations to comply with international law standards and requirements.

The review determined that mining legislation as it currently stands does not provide adequate environmental safeguards.

The review report made the following observations:

*‘Environment’ is defined in the Environmental Management and Conservation Act as “The components of the earth and includes all or any of the following: (a) land and water; (b) layers of the atmosphere; (c) all organic and inorganic matter and living organisms; (d) the interacting natural, cultural and human systems that include components referred to in paragraphs (a) to (c).”*

Although ‘Marine Environment’ is not separately defined it would be adequately covered by this definition.

The Environment is also defined in the Review of the Mines and Minerals Act, Part 15A / Schedule 2. 1(1) (a) to include – (i) ecosystems and their constituent parts, including people and communities; and (ii) all natural and physical resources; and (iii) the qualities and characteristics of locations, places and areas, however large or small, that contribute to their biological diversity and integrity, intrinsic or attributed scientific value or interest, amenity, harmony and sense of community; and (iv) the social, economic, aesthetic and cultural conditions that affect, or are affected by, things mentioned in sub-paragraphs (i) to (iii).

While this more comprehensive definition is perhaps preferable to the Environmental Management and Conservation Act definition, Vanuatu may not consider it prudent to have two different definitions of the same word, in two different Acts.

Vanuatu has some aspects of an adequate seabed minerals regulatory regime already covered in the existing legislation, notably the Minerals and Mining Act [CAP 190], the Environmental Management and Conservation Act [CAP 283], the Maritimes Zones Act No. 6 of 2010 and the Maritime Act [CAP 131].

There would remain some gaps in the regulatory regime for deep seabed mineral activities, most notably:

- environmental management requirements for mineral activities conducted at sea; and
- fiscal arrangements tailored for seabed mineral activities.

The review recommended that further legislation be adopted to ensure gaps are adequately covered and that a competitive deep-sea minerals management regime for mineral prospecting, exploration and recovery activities of Vanuatu be established.

## Environmental Protection and Conservation Act No. 12 of 2002

### a. Sections 8 and 10 – National Policies and Plans

Sections 8 and 10 state:

#### *“8. Development of National Policies and National Plans*

*If the Minister determines that a National Policy or National Plan is required for the conservation, sustainable development and management of the environment, the Director must prepare the National Policy or National Plan.*

#### *10. Variation of National Policy or Plan*

- 1. The Minister may instruct the Director to prepare a variation to any National Policy or National Plan.*
- 2. A variation must be prepared, notified and consulted upon in accordance with this Act and the regulations.*
- 3. A variation must be approved by the Council of Ministers, and takes effect on the date of its publication in the Gazette.”*

National policies and plans are important tools for ensuring that the environment is protected and conserved. The Act provides that if the Minister determines that a national policy or plan is required for the conservation, sustainable development and management of the environment, the Director must prepare the national policy or plan. The Act requires that the Director then prepares said national policies and plans and that the plans be reviewed after a reasonable period by the Director, as the authority responsible for implementation of the main provisions of the Act.

The Council of Ministers is not mentioned in Section 8 on development of national policies and plans but is mentioned in subsection 10(3) to approve any variations made in a national policy or plan. This is not logical if the Council of Ministers was not involved in approving the original policy or plan. It is suggested that variations to a national policy or plan should be made by the Director under certain circumstances which the Act could specify.

Recommendations:

Section 8 should be amended to delete the part of the provision requiring the Minister to determine when a national policy or plan is required. It should simply require the Director to prepare any national policy or plan and also require the policy or plan being prepared under this provision to be reviewed after a reasonable period of time by the Director.

Section 10 should be amended to allow the Director to vary a national policy or plan and set out the circumstances that should give rise to the need to require variation. This is to ensure there is control on when the national policy or plan may be varied.

## **b. Section 12A – Activities Subject to EIA**

Section 12A states:

*“12A. Foreshore development consents*

- 1. A person who has obtained the written consent of the Minister responsible for town and country planning, to undertake the development on the foreshore of the coast of any island under the Foreshore Development Act [CAP 90], must not commence any such development unless it is approved under the EIA provisions of this Act.*
- 2. A person who contravenes subsection (1) commits an offence as prescribed under section 24.”*

This provision tries to enforce EIAs under the provisions of this Act on the Foreshore Development Act [CAP 90], but incorrectly. EIAs are required for all activities set out under Section 12 of the Act therefore they must be carried out on all developments that fall under Section 12 and that require the Minister’s consent under the Foreshore Development Act.

*Recommendation:*

This provision should require EIAs to be conducted *before* the Minister grants his or her consent under the Foreshore Development Act.

## **c. Paragraph 13(e) – Activities not Subject to EIA**

Paragraph 13(e) states:

*“13. Activities not subject to an EIA*

- e. any other activity prescribed by regulation.”*

The provision empowers the Minister to prescribe by regulation any other activities that are not subject to an EIA under the Act.

This provision may be mishandled especially when the Minister is given the sole authority to prescribe any other activities that are not subject to an EIA under the Act. This is a matter that is to be determined after careful analysis of the possible effects of such activity on the environment.

EIAs are required under the Act unless exempted. To uphold the principal policy that EIAs must be conducted on activities or developments as described under Section 12 of the Act, the Act should not make provisions for any other activities that are exempted from EIAs to be prescribed by Regulations.

*Recommendation:*

It is recommended that Paragraph 13(e) be repealed or be changed to say that the Minister prescribes any other activities on the advice of the Director.

## **d. Subsections 14(1) and (3) – Preliminary Assessment of Applications**

Subsections 14(1) and (3) state:

*“14. Preliminary environmental assessment of applications*

- 1. The project proponent for any project, proposal or development activity not exempted under section 13, must apply to the Director in the form set out in the regulations accompanied with the prescribed fee.*
- 3. Any person who contravenes subsection (1) commits an offence prescribed under subsection 24(1).”*

Subsection 14(3) makes it an offence prescribed under subsection 24(1) to fail to apply to the Director with the prescribed fee for a PEA to be carried out for a project, proposal or development not exempted under Section 13.

Subsection 24(1) is specifically related to undertaking any activity that is subject to an EIA prior to receiving written approval under this Part or undertaking any such activity where approval has been refused under the provisions of this Part. It has nothing to do with application for a PEA.

*Recommendation:*

Subsection (3) should be redrafted to make it an offence to fail to submit the form and to set out its own penalty provision that would not be high as the penalties for the offences created under subsection 24(1).

## **e. Section 35 – Community Conservation Areas**

Decisions made under the Fisheries Act, the Petroleum (Exploration and Production) Act or the Mines and Minerals Act may come into conflict with any conservation area that might be established under this Act or given coverage of bioprospecting.

The notion of having CCAs under the Act is positive. However, the community has control over whether to continue to maintain an area as a conservation area. If the community decides to cancel the CCA, it could be cancelled or varied after talking with the Director because the land is customary land and is owned by custom owners or may have a lease that is registered to a group or individual(s).

## Foreshore Development Act [CAP 90]

### a. Subsections 2(2) and 3(1) – Ministerial Consent

Subsections 2(2) and 3(1) states:

#### *“2. Consent of Minister required for foreshore development*

*(1) A person must not undertake, cause or permit to undertake any development on the foreshore of the coast of any island in Vanuatu without the written consent of the Minister.*

*(2) A consent granted by the Minister under subsection (1) is also subject to any requirements set out in any other Act in relation to any development.”*

#### *3. Application for consent*

*(1) An application for the consent of the Minister to the undertaking of such development shall be in the form set out in the Regulation and the applicant shall supply all particulars required to be given in such form with the prescribed application fee.”*

Subsection 2(2) is too general in terms of providing that the consent of the Minister is subject to any requirements set out in any other Act in relation to any development. As there is a risk that the EIA process might be overlooked, it is suggested that a specific provision on the EIA process be incorporated into the Act.

Subsection 3(1) is also too general. The form is not set out in any regulation since the schedule of the Act containing the form was repealed in 2013.

There is a high likelihood that some developments on the foreshore or the coast of any island in Vanuatu will have an impact on coastal and marine resources. Sections 2 and 3 do not address the need to ensure that environmental values are protected. As neither section makes specific mention of the requirements to apply the processes set out under Part 3 of the EPC Act [CAP 283] in relation to PEA of a project, proposal or development activity, a mandatory EIA/PEA process would ensure the protection of our marine and coastal ecosystems.

### b. Paragraph 6(1)(f) – Powers of an Enforcement Officer

Paragraph 6(1) (f) states:

#### *6. Powers of an enforcement officer*

*(1) For the purposes of implementing, enforcing or ensuring compliance with the provisions of this Act and its regulation, an enforcement officer has the following powers:*

*(f) to order that the construction activity to be stopped for reason of breaching a condition of the consent or for not obtaining consent for the development;*

Paragraph 6(1) (f) provides for enforcement officers to stop a development if the development is carried on in breach of a condition of the consent or for not obtaining consent for the development.

#### *Recommendations:*

Section 2 should be amended to include a new subsection (3) specifically stating that “The Minister must not grant consent under subsection (1) if an application has been rejected under paragraph 22(3) (c) of the Environmental Protection and Conservation Act [CAP 283].”

Section 3(1) should be amended to require a person to:

1. comply with the processes set out in Part 3 of the Environmental Protection and Conservation Act [CAP 283] in relation to EIAs in making an application for consent under this Act; and
2. attach a copy of the Director’s decision under subsection 22(3) of the Environment Protection and Conservation Act [CAP 283].

A new paragraph should also be inserted in subsection 6(1) on powers of an enforcement officer to specifically mention that the enforcement officer could stop a development if an EIA has not been carried out for the development.

## Maritime Conventions Act [CAP 155]

Subsection 1(2) of the Act states that:

*“Where the provisions of any of the Scheduled Conventions to which Vanuatu has acceded conflict with the provisions of any other Act, the provisions of the Scheduled Convention shall prevail.”*

The issue of conflict is addressed in the Act.

This Act enacts by its provision (subsection 2(2)), the provisions of all the scheduled conventions, making it different from all the other Ratification Acts that have ratified other international conventions, agreements and treaties. The provisions of all the conventions listed in the schedule of this Act have full force of law in Vanuatu. The provisions of any Act that Parliament may enact must be consistent with this Act if they are made in relation to any matter covered by any of the scheduled conventions.

It is recommended that if an Act is to be enacted specifically on any matter covered by any of these conventions, and that Act may contain provisions that may conflict with the provisions of the convention, but in the public interest the provisions of that Act were to prevail, that particular convention must be removed from the schedule of the Maritime Conventions Act.

## Maritime Zones Act No. 6 of 2010

This Act is linked to the definition of Vanuatu’s EEZ, which has not yet been endorsed by UNCLOS. Consequently, there is potential for boundary conflicts with international neighbours pending endorsement.

## Mines and Minerals Act [CAP 190].

The Act does not provide for other uses in the oceanic environment, nor does it contain provisions for EIA or environmental protection. However, the Act does provide for the inclusion of conditions in licences and permits. Providing the Commissioner for Mining and Minerals and the Minister approve, there is potential for managing the impacts and conflicts from mining.

Since the Act regulates an activity that will or may have adverse effects on the environment in terms of its operation, it is recommended that provisions relating to the protection of the environment be inserted into the Act, especially in relation to PEA and EIA. The issuing of licences and permits under this Act should be subject to the outcome of an EIA process.

There are no provisions requiring compliance with EIA processes for licences issued under Parts 5, 6, 7 and 9 of the Act.

*Recommendation:*

We recommend that Part 3 of the Act be amended to include the requirement for EIA processes under the Environmental Protection and Conservation Act [CAP 283] to apply in the process of issuing licences under Part 3.

## Petroleum (Exploration and Production) Act [CAP 227]

Seabed exploration and oil extraction have the potential to conflict with legislation designed to conserve marine biodiversity. This Act does not necessarily recognise this potential which will need to be addressed in cross-sectoral arrangements for any oceans policy.

The Act does not explicitly contemplate the environmental impact *per se* of exploration and production activities. However, there is provision for the addition of conditions to exploration and production licences, thereby providing an opportunity for introducing environmental protection conditions. It may be worthwhile clarifying this issue and addressing it in any future amendments to the Act.

There are no provisions requiring compliance with the EIA processes for licences issued under Part 3 of the Act.

*Recommendations:*

Part 3 of the Act to be amended to include the requirement for EIA processes under the Environmental Protection and Conservation Act [CAP 283] to apply in the process of issuing licences under Part 3.

## Fisheries Act No. 10 of 2014

### *Paragraph 36(5)(b) – Local Fishing Licences*

*“(5) The Director may refuse to issue a licence under this section on any of the following grounds:*

*(b) in the case of a fishery not previously exploited, the Director believes that it would be detrimental to the proper management of the fisheries for the licence to be issued;”*

Paragraph (b) is a provision that is not included in other provisions related to licensing under the Act, for example the licensing of foreign fishing vessels. This provision will have an impact on the management, protection and conservation of fishery resources and must be included in all other provisions relating to the Director’s discretion to refuse to issue a licence under the Act.

### *Recommendation:*

Paragraph (b) to be inserted in other provisions relating to the Director’s discretion to refuse to issue licences under the Act.

### *Section 46 – Duty of Operator to Comply*

*“46 Duty of operator to comply*

*The operator of a fishing vessel applying for authorisation to charter must:*

*(e) ensure that the fishing vessel fully complies will all applicable conservation and management measures;”*

Section 46 only applies to the operator of a fishing vessel applying for authorisation to charter. Nevertheless, it is an important requirement to impose on any fishing vessel carrying out fishing or related activities in Vanuatu waters, to conserve and protect marine resources and ecosystems.

Paragraph 46(e) should be a requirement for all fishing vessels (not just charter vessels) carrying out fishing or related activities in Vanuatu waters.

### *Recommendations:*

1. That any breach of paragraph 46(e) should be a specific ground for suspension or cancellation of any licence or authorisation issued or granted under the Act.
2. The Act should be amended to include paragraph 46(e) as a requirement for all fishing vessels carrying on fishing or related activities in Vanuatu waters.

### *Subsection 102(2) – Marine Reserves*

*“102 Marine reserves*

*(1) The Minister may, after consultation with:*

- (a) the owners of an adjoining land; and*
- (b) any other parties with traditional tenure rights of the said waters; and*
- (c) the appropriate Provincial Government Council,*

*declare an area of Vanuatu waters and the seabed underlying those waters to be a marine reserve.*

*(2) A person who, except with the written permission of the Minister, within a marine reserve:*

- (a) engages in fishing; or*
- (b) takes or destroys any coral; or*
- (c) dredges or takes any sand or gravel; or*
- (d) otherwise disturbs the natural habitat; or*
- (e) takes or destroys any wreck or part of a wreck;*

*commits an offence punishable on conviction by a fine not exceeding VT100,000,000.”*

The Minister is empowered by subsection (1) to declare marine reserves for managing, conserving and protecting marine resources within a marine reserve. Subsection (2) defeats the obvious reasons for declaring marine reserves if the Minister is empowered to give written permission for undertaking any activities under subsection (2).

*Recommendations:*

Subsection (2) should be amended to delete the words “except with the written permission of the Minister”.

The section should also be amended to include a new subsection (3) providing for the grounds on which the Minister may grant written permission for activities to be carried out in a marine reserve and to impose conditions on the carrying out of such activities where necessary.

The section should state the period for which the declaration of a marine reserve applies.

*Section 107 – Fish Processing Establishments*

*“(4) The Director, in considering an application under subsection (2), must take into account the following:*

- (a) the outcome of any consultation with relevant Government departments; and*
- (b) in the case where such fish processing establishment is to be established in a foreshore area, the outcome of any consultation with traditional tenure rights holders of the foreshore area; and*
- (c) an evaluation of all relevant factors, including those relating to fisheries, the environment, health and industry.”*

Subsection (4) does not make it a requirement of the law to undertake consultations and evaluations. It rather provides that the Director considers the consultations and evaluation.

There is no specific provision requiring an EIA process under the Environmental Protection and Conservation Act [CAP 283] to apply in relation to the issuing of licences for the establishment of fish processing plants if the establishment is to be established in a foreshore area. Even though the person must obtain the consent of the Minister for carrying out the development in a foreshore of Vanuatu under the Foreshore Development Act [CAP 90], an EIA process under the Environment Protection and Conservation Act should be a requirement under this Act for the issuing of licences for the establishment of fish processing plant.

*Recommendation:*

A new subsection be inserted in this section to:

- a. require a person to comply with the EIA process set out in Part 3 of the Environmental Protection and Conservation Act [CAP 283] if the establishment is to be established in a foreshore area; and
- b. require consultations set out in paragraph (a) and (b) and evaluation in paragraph (c).

*Section 146 – Serious Violation*

*“146 Serious Violation*

*(1) For the purpose of this section, serious violation refers to instances where a Vanuatu fishing vessel is engaged in fishing or related activity:*

- (a) without a Vanuatu International authorization to fish; or*
- (b) contrary to international conservation and management measures provided under section 63.*

*(2) If a Vanuatu fishing vessel has been engaged in a serious violation, the master, operator, owner or charterer, as the case may be, commits an offence punishable on conviction by a fine not exceeding VT1,000,000,000, or by a term of imprisonment of not more than 2 years.”*

Subsection 146(1) does not make illegal fishing or related activities by any fishing vessel within Vanuatu waters that are undertaken in contravention of national fishery management plans.

*Recommendation:*

Subsection (1) should be amended to include fishing or related activities that are contrary to national fishery management plans.

## Shipping Act [CAP 53]

### *Subsection 39A – Protection of Waters from Pollution*

*“(4) A pollutant or harmful substance must not be discharged from a vessel into Vanuatu waters, unless the discharge is permitted by an applicable International Convention, or by Regulations made under this Act.”*

Section 39A provides for the protection of Vanuatu waters from pollution. Subsection (4) makes it clear that a pollutant or harmful substance must not be discharged from a vessel into Vanuatu waters but allows an exception if the discharge is permitted by an applicable international convention or by Regulations made under the Act.

### *Recommendation:*

This provision should provide more specific guidance about the grounds on which the regulation could allow the discharge and set out the actual conventions under which the discharge is permitted. This is required to ensure that masters of vessels do not misinterpret the provision and allow discharges that could impact on marine ecosystems.

## Physical Planning Act [CAP 193]

### *Section 5 – Application for Planning Permission*

#### *“5. Application for planning permission*

*An application for development shall be made to the Council in such form and containing such information as the Council may specify, and shall be accompanied by such number of copies as the Council may specify.”*

Section 5 deals with application for planning permission. It does not require an applicant to comply with EIA process if the development will be carried out on any foreshore of Vanuatu. However, it specifies that the application is to be made in such form and containing such information as the Council may specify.

Because an EIA process is important for developments that are to be carried out on any foreshore, the Act should specify that provision.

### *Section 7 – Powers of the Council to deal with applications*

#### *“7. Powers of the Council to deal with applications*

*Where application is made to the Council for permission to develop, the Council may grant permission either unconditionally or subject to such conditions as it thinks fit, or may refuse permission, and in dealing with any such application the Council shall have regard to the plan in force and any other material considerations.”*

As specified under CAP 3 (1) *Whenever a Council declares an area to be a Physical Planning Area it shall prepare a plan of that area.* Section 7 then provides that the Council may grant permission without any conditions or subject to such conditions as it thinks fit and that it shall have regard to the plan (as per CAP 3 (1)) and any other material consideration. The provision does not provide specifically that the Council considers the environmental impacts of the development.

### *Recommendations:*

Subsection (5) should be amended to include a specific subsection requiring applicants to comply with the EIA process set out under the Environmental Protection and Conservation Act [CAP 283] if the development will be carried out on any foreshore of Vanuatu.

Section 7 should specifically state in a subsection of that section that the Council must refuse an application if no EIA has been undertaken for the development, or if an EIA had been undertaken the Director, under the Environmental Protection and Conservation Act [CAP 283], has refused the application. This specifically relates to developments to be undertaken on any foreshore of Vanuatu.



## 4 CONCLUSIONS

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

The following table summarises the scope of issues that an oceans policy is likely to address and whether the legislation, policies and strategies analysed and reviewed in this report are relevant to the development and implementation of an oceans policy for Vanuatu (instruments are not in priority order).

ISSUE	LEGISLATIVE INSTRUMENT	REGIONAL AND NATIONAL POLICY AND OTHER INSTRUMENTS
<b>Ability to develop a national oceans policy</b>	<ul style="list-style-type: none"> <li>■ Constitution</li> <li>■ Environmental Protection and Conservation Act [CAP 283]</li> <li>■ Maritime Zones Act No. 6 of 2010</li> <li>■ Custom Land Management Act No.33 of 2013</li> </ul>	<ul style="list-style-type: none"> <li>■ Integrated Coastal Management Framework and Implementation Strategy, 2010</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>
<b>Conservation of biodiversity</b>	<ul style="list-style-type: none"> <li>■ International Trade (Flora and Fauna) Act [CAP 210]</li> <li>■ Convention on Biological Diversity (Ratification) Act No. 23 of 1992</li> <li>■ Fisheries Act No. 10 of 2014</li> <li>■ Environmental Protection and Conservation Act [CAP 283]</li> <li>■ National Parks Act [CAP 224]</li> <li>■ Animal Importation and Quarantine Act [CAP 201]</li> <li>■ Forestry Act 2001 [CAP 276] (providing it covers mangroves)</li> <li>■ Plant Protection Act [CAP 239]</li> <li>■ Wild Bird Protection Act [CAP 30]</li> <li>■ Nagoya Protocol on Access to Genetic Resources and the fair and equitable sharing of benefits arising from their Utilization to the Convention on Biological Diversity (Ratification) Act No. 7 of 2014</li> </ul>	<ul style="list-style-type: none"> <li>■ National Biodiversity Strategy and Action Plan, 1999</li> <li>■ Integrated Coastal Management Framework and Implementation Strategy, 2010</li> <li>■ Tuna Management Plan 2014</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>■ National Adaptation Programme for Action</li> <li>■ National Bio Safety Framework Project</li> </ul>
<b>Sustainable development</b>	<ul style="list-style-type: none"> <li>■ Environmental Protection and Conservation Act [CAP 283]</li> <li>■ Convention on Biological Diversity (Ratification) (Act No. 23 of 1992)</li> <li>■ Fisheries Act No. 10 of 2014</li> <li>■ Mines and Minerals Act [CAP 190]</li> <li>■ Petroleum (Exploration and Production) Act [CAP 227]</li> <li>■ Agreement Establishing the South Pacific Regional Environment Program (Ratification) Act No. 21 of 2005</li> <li>■ Agreement Establishing the Pacific Islands Forum Secretariat (Ratification) Act No. 4 of 2012</li> </ul>	<ul style="list-style-type: none"> <li>■ National Biodiversity Strategy and Action Plan, 1999</li> <li>■ Integrated Coastal Management Framework and Implementation Strategy, 2010</li> <li>■ Tuna Management Plan 2014</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>■ Priorities and Action Agenda 2006–2015</li> <li>■ National Adaptation Programme for Action</li> <li>■ Framework for Pacific Regionalism – Forum Leaders Statement 2014</li> </ul>
<b>Establishment of marine and coastal protected areas</b>	<ul style="list-style-type: none"> <li>■ Environmental Protection and Conservation Act [CAP 283]</li> <li>■ Fisheries Act No. 10 of 2014</li> <li>■ National Parks Act [CAP 224]</li> </ul>	<ul style="list-style-type: none"> <li>■ Pacific Regional Environment Program Strategic Plan, 2011–2015</li> <li>■ Integrated Coastal Management Framework and Implementation Strategy, 2010</li> </ul>

ISSUE	LEGISLATIVE INSTRUMENT	REGIONAL AND NATIONAL POLICY AND OTHER INSTRUMENTS
<b>Offshore petroleum and mineral prospecting and production</b>	<ul style="list-style-type: none"> <li>■ Mines and Minerals Act [CAP 190]</li> <li>■ Petroleum (Exploration and Production) Act [CAP 227]</li> </ul>	
<b>Shipping including discharge of ballast water</b>	<ul style="list-style-type: none"> <li>■ Shipping Act [CAP 53]</li> <li>■ Agreement Establishing the Pacific Islands Forum Secretariat (Ratification) Act No. 4 of 2012</li> <li>■ Maritime Act [CAP 131]</li> <li>■ Ports Act [CAP 26]</li> </ul>	
<b>Depletion of marine resources e.g. overfishing, destructive fishing practices, illegal foreign fishing vessels</b>	<ul style="list-style-type: none"> <li>■ Convention on Biological Diversity (Ratification) Act No. 23 of 1992</li> <li>■ Fisheries Act No. 10 of 2014</li> <li>■ Agreement on strengthening Implementation on the Niue Treaty on Cooperation in Fisheries surveillance and Law Enforcement in the South Pacific Region (Ratification) Act No. 2 of 2014</li> <li>■ Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (Ratification) Act No.10 of 1993</li> <li>■ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Ratification) Act No. 23 of 2013</li> <li>■ Convention on the Conservation and Management of Tuna Stocks and other Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Ratification) Act No. 17 of 2005</li> </ul>	<ul style="list-style-type: none"> <li>■ Tuna Management Plan 2014</li> <li>■ National Biodiversity Strategy and Action Plan, 1999</li> <li>■ Integrated Coastal Management Framework and Implementation Strategy, 2010</li> <li>■ Priorities and Action Agenda 2006–2015</li> <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>
<b>Coastal erosion and increased sedimentation from development</b>	<ul style="list-style-type: none"> <li>■ Physical Planning Act [CAP 193]</li> <li>■ Foreshore Development Act [CAP 90]</li> </ul>	<ul style="list-style-type: none"> <li>■ National Biodiversity Strategy and Action Plan, 1999</li> <li>■ Integrated Coastal Management Framework and Implementation Strategy, 2010</li> </ul>
<b>Climate change</b>	<ul style="list-style-type: none"> <li>■ Framework Convention on Climate Change (Ratification) Act [CAP 218]</li> </ul>	<ul style="list-style-type: none"> <li>■ Climate Change Policy (draft 30 January 2015)</li> <li>■ National Biodiversity Strategy and Action Plan, 1999</li> <li>■ National Adaptation Programme for Action</li> <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> </ul>
<b>Pollution and waste management e.g. oil spills, hazardous waste</b>	<ul style="list-style-type: none"> <li>■ Maritime Conventions Act [CAP 155]</li> <li>■ Shipping Act [CAP 53]</li> <li>■ Agreement Establishing the Pacific Islands Forum Secretariat (Ratification) Act No. 4 of 2012</li> <li>■ The Stockholm Convention on Persistent Organic Pollutants (Ratification) Act No. 12 of 2005</li> <li>■ Pollution (Control) Act No. 10 of 2013</li> <li>■ Waigani Convention (Ratification) Act No. 16 of 2007</li> </ul>	<ul style="list-style-type: none"> <li>■ Persistent Organic Pollutants Policy</li> </ul>
<b>Introduced marine pests and invasive species</b>	<ul style="list-style-type: none"> <li>■ Animal Importation and Quarantine Act [CAP 201]</li> <li>■ Plant Protection Act [CAP 239]</li> </ul>	

ISSUE	LEGISLATIVE INSTRUMENT	REGIONAL AND NATIONAL POLICY AND OTHER INSTRUMENTS
<b>Transboundary issues e.g. overfishing, pollution</b>	<ul style="list-style-type: none"> <li>■ Convention on Biological Diversity (Ratification) Act No. 23 of 1992</li> <li>■ Agreement Establishing the Pacific Islands Forum Secretariat (Ratification) Act No. 4 of 2012</li> <li>■ Agreement on strengthening Implementation on the Niue Treaty on Cooperation in Fisheries surveillance and Law Enforcement in the South Pacific Region (Ratification) Act No. 2 of 2014 and</li> <li>■ Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (Ratification) Act No.10 of 1993</li> <li>■ Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Ratification) Act No. 23 of 2013</li> <li>■ Convention on the Conservation and Management of Tuna Stocks and other Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Ratification) Act No. 17 of 2005</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> </ul>

# ATTACHMENTS

1. List of instruments and documents reviewed
2. Terms of reference
3. Legal definitions for inshore maritime boundaries
4. Aichi Targets

## ATTACHMENT 1 LIST OF INSTRUMENTS AND DOCUMENTS REVIEWED

NATIONAL LEGISLATION	PAGE NO.
Agreement Establishing the South Pacific Regional Environment Programme (Ratification) Act No. 21 of 2005	3, 21-22, 48
Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Ratification) Act No. 23 of 2013	12, 41
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<b>INTERNATIONAL CONVENTIONS</b>	
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Palau Declaration on The Ocean Life and Future: Charting a course to sustainability	4, 33, 53
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<b>NATIONAL POLICIES, STRATEGIES AND PLANS</b>	
Priorities and Action Agenda 2006–2015	36-38, 50
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National Bio Safety Framework Project	41-42, 51
Persistent Organic Pollutants Policy	43
Tuna Management Plan 2014	3, 34-35, 50
Ministry of Agriculture, Livestock, Forestry, Fisheries and Biosecurity Corporate Plan, 2014–2018 (according to the Department's website the Corporate Plan is yet to be developed)	43
National Biodiversity Strategy and Action Plan, 1999	39-40, 51
National Adaptation Programme for Action	38, 50
Integrated Coastal Management Framework and Implementation Strategy, 2010	3, 35-36, 50
National Strategy for Spatial and Physical Planning (not found)	43
National Conservation Strategy 1988 (unclear if this was replaced by the NBSAP)	43
Plan of Works on Protected Areas (not yet submitted, according to CBD website)	43
Climate Change Policy draft 30 January 2015	3, 42-43, 51
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Sanma Provincial Government Council Annual Business Plan, 2014	43
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## ATTACHMENT 2 TERMS OF REFERENCE

10/11/2014

Consultant to conduct legislative review on Oceans for Vanuatu

### BACKGROUND

The Ministry of Foreign Affairs in Vanuatu and the International Union for Conservation of Nature (IUCN) are seeking a consultant to help with progressing aspects of Vanuatu's Ocean Policy. This work would also contribute to an IUCN project called: Marine and Coastal Biodiversity Management in Pacific Island Countries and Atolls (MACBIO).

### DUTIES

To conduct, an analysis of all relevant legislation, policies, plan and strategies, local, provincial, national and international, that pertains to management of Vanuatu's Ocean. For the purposes of this consultancy, Vanuatu's ocean is defined as beginning at the high tide mark and extending out to Vanuatu's Exclusive Economic Zone. The analysis must incorporate:

- Collation of all relevant legislation (laws and regulations), policies, strategies, plans, agreements, etc at a local, provincial, national and international level that have relevance in terms of the future of Vanuatu's Ocean (by 23 January 2015).
- These must be filed, sorted and stored electronically for easy access and retrieval (by 23 January 2015).
- Create an analytical framework within which to conduct and organise the analysis by 23 January 2015. The framework must allow for, for each document analysed, the identification of:
  - Main objectives
  - Main activities that are promoted, controlled and/or managed
  - Main management tools (including incentives) used
  - Geographic extent of jurisdiction (whether formal or informal) and
  - Other analytical dimensions as mutually agreed

The analysis itself must be well written and must identify areas of:

- Conflict or potential conflict
- Synergy or potential synergy and
- Gaps of any kind.

## ATTACHMENT 3

# LEGAL DEFINITIONS FOR INSHORE MARITIME BOUNDARIES

## LEGISLATIVE BASIS FOR DEFINING COASTAL BOUNDARIES

In Vanuatu, land tenure, and therefore resource use and management, is dominated by customary land ownership. The Constitution of Vanuatu states: “All land in the Republic belongs to the indigenous custom owners and their descendants”; as used here “land” includes “land extending to the seaside of any offshore reef but no further”. Just as importantly, traditional land ownership invests the landowner with rights to access and use the resources on that land (positively or negatively, in terms of biodiversity conservation and habitat protection).<sup>10</sup>

As much as 80% of rural land is held under customary ownership. The rules of custom govern all decisions about tenure and ownership. Land cannot be sold, only leased for up to 75 years. The formal leasing process is effective and standard agricultural leases require the preservation, protection, and non-pollution of the land. Therefore, the extent of customary ownership of land seaward into the coastal zone is an issue which needs to be considered in the context of an oceans policy.

The Customary Land Tribunal Act of 2001 awards jurisdiction over land ownership disputes to a tribunal of customary chiefs applying custom and traditional practice to adjudicate local land matters<sup>11</sup>.

There are multiple definitions of the term ‘land’ in the legislation of Vanuatu<sup>12</sup> including:

### Land Reform Act (CAP 123)

“land” includes improvements thereon or affixed thereto and land under water including land extending to the seaside of any offshore reef but no further.

### Land Leases Act (CAP 163)

“land” includes land above the mean high-water mark, all things growing on land, buildings and other things permanently affixed to land but does not include any minerals (including oils and gases) or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working.

### Land Acquisition Act (CAP 215)

“land” includes any estate, any interest in or benefit to land, all things growing on land, houses, buildings, improvements and all other things on land, land beneath water, the seabed extending to the sea side of any offshore reef but no further and the subsoil thereof.

### Foreshore Development Act (CAP 90)

“Foreshore” is defined to mean the land below mean high-water mark and the bed of the sea within the territorial waters of Vanuatu (including the ports and harbours) and includes land below mean high-water mark in any lagoon having direct access to the open sea.

### Environmental Management and Conservation Act (CAP 283)

“land” includes land covered by water.

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10 Review of Policy and Legislation Relating to the Use and Management of Mangrove Ecosystems in Vanuatu – MESCAL Report

11 Mainstreaming Environmental Considerations and Traditional Knowledge and Practices into Policies and Programs for the Mele Catchment Area in Vanuatu by Matt McIntyre and Craig Wilson in the Pacific Regional Environment 2005 – 2009 Volume 2.

12 Civil Appeal Case No4 of 2012. Between Terra Holdings Pty Ltd of Port Vila and Barak Sope and the Government of the Republic of Vanuatu clause 28.

## Customary Land Tribunal Act (CAP 271)

“This Act extends to the waters within the outer edge of any reef adjacent to customary land”.

These definitions show the flexibility of meaning which “land” can convey. Several of the above definitions extend to land under water and to the seabed, and show Parliament’s understanding that “land” is not confined to dry land above water. However, the Vanuatu Court of Appeal has reviewed these and concluded in the Sope judgement<sup>13</sup> that:

*35. We consider the Constitution should be interpreted should be interpreted so as to encompass Vanuatu’s sovereignty over land below water, including below the sea to the territorial limits permitted by international law. So interpreted, the word “land” in the Constitution should be understood to include both inland waters and territorial seas including seabed.*

## SUMMARY – CUSTOMARY LAND AND MARINE TENURE<sup>14</sup>

The principles of customary land tenure were established in Chapter 12 of the 1980 Constitution. It provides that “all land in Vanuatu belongs to the indigenous custom owners and their descendants” in perpetuity, and that the rules of custom shall form the basis of ownership and use of land.

Customary land and marine tenure systems are not uniform across Vanuatu. They are constituted by a range of practices rooted in custom and historical practices, which differ among islands and within each island. Customary land ownership is traditionally communal, owned by clans, villages or families. It may, however, be individual with land owned by chiefs or rights subdivided and allocated to individual heads of families.

The Land Reform Act was enacted pursuant to Section 76 of the Constitution to provide for the implementation of land provisions of the Constitution. The Act defines “land” to include “land under water including land extending to the sea side of any offshore reef but no further”.

Customary land and marine tenure rights on foreshores and coastal waters of most relevance to mangroves ecosystems are therefore, in most, cases held by customary land owners and governed by customary law. Customary marine tenure establishes the management system of near shore reefs, according to custom.

The 2012 Court of Appeal Sope judgement appears to provide a working legal definition of land as it applies to the coastal waters and ocean of Vanuatu and seems to define land as including the seabed and waters out to the seaside of any offshore reef but no further. (Civil Appeal Case No.4 of 2012 between Terra Holdings Ltd and Barak Sope (First respondent) and The Government of the Republic of Vanuatu (Second Respondent) Judgement date 19/7/2012).

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<sup>13</sup> *Ibid* clause 35

<sup>14</sup> Review of Policy and Legislation Relating to the Use and Management of Mangrove Ecosystems in Vanuatu – MESCAL Report

## ATTACHMENT 4 AICHI BIODIVERSITY TARGETS

### NATIONAL TARGETS

[Click here](#) to find national targets, including national targets linked to the Aichi Biodiversity Targets by countries.

### BIODIVERSITY CHAMPIONS

[The Hyderabad call for Biodiversity Champions](#)

[The Champions and their Pledges](#)

### QUICK GUIDES FOR THE AICHI BIODIVERSITY TARGETS



[Aichi Biodiversity Targets Icons](#)

[Aichi Targets Newsletters](#)

### AICHI BIODIVERSITY TARGETS FLIERS

[English](#)

[Spanish](#)

[French](#)

### STRATEGIC GOALS

**Strategic Goal A:** Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society

**Strategic Goal B:** Reduce the direct pressures on biodiversity and promote sustainable use

**Strategic Goal C:** To improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity

**Strategic Goal D:** Enhance the benefits to all from biodiversity and ecosystem services

**Strategic Goal E:** Enhance implementation through participatory planning, knowledge management and capacity building

**STRATEGIC GOAL A: Address the underlying causes of biodiversity loss by mainstreaming biodiversity across government and society**

	<p><b>TARGET 1</b> By 2020, at the latest, people are aware of the values of biodiversity and the steps they can take to conserve and use it sustainably.</p>
	<p><b>TARGET 2</b> By 2020, at the latest, biodiversity values have been integrated into national and local development and poverty reduction strategies and planning processes and are being incorporated into national accounting, as appropriate, and reporting systems.</p>
	<p><b>TARGET 3</b> By 2020, at the latest, incentives, including subsidies, harmful to biodiversity are eliminated, phased out or reformed in order to minimize or avoid negative impacts, and positive incentives for the conservation and sustainable use of biodiversity are developed and applied, consistent and in harmony with the Convention and other relevant international obligations, taking into account national socio economic conditions.</p>
	<p><b>TARGET 4</b> By 2020, at the latest, Governments, business and stakeholders at all levels have taken steps to achieve or have implemented plans for sustainable production and consumption and have kept the impacts of use of natural resources well within safe ecological limits.</p>

**STRATEGIC GOAL B: Reduce the direct pressures on biodiversity and promote sustainable use**

	<p><b>TARGET 5</b> By 2020, the rate of loss of all natural habitats, including forests, is at least halved and where feasible brought close to zero, and degradation and fragmentation is significantly reduced.</p>
	<p><b>TARGET 6</b> By 2020 all fish and invertebrate stocks and aquatic plants are managed and harvested sustainably, legally and applying ecosystem based approaches, so that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits.</p>
	<p><b>TARGET 7</b> By 2020 areas under agriculture, aquaculture and forestry are managed sustainably, ensuring conservation of biodiversity.</p>
	<p><b>TARGET 8</b> By 2020, pollution, including from excess nutrients, has been brought to levels that are not detrimental to ecosystem function and biodiversity.</p>
	<p><b>TARGET 9</b> By 2020, invasive alien species and pathways are identified and prioritized, priority species are controlled or eradicated, and measures are in place to manage pathways to prevent their introduction and establishment.</p>
	<p><b>TARGET 10</b> By 2015, the multiple anthropogenic pressures on coral reefs, and other vulnerable ecosystems impacted by climate change or ocean acidification are minimized, so as to maintain their integrity and functioning.</p>

**STRATEGIC GOAL C: To improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity**



**TARGET 11**

By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes.



**TARGET 12**

By 2020 the extinction of known threatened species has been prevented and their conservation status, particularly of those most in decline, has been improved and sustained.



**TARGET 13**

By 2020, the genetic diversity of cultivated plants and farmed and domesticated animals and of wild relatives, including other socio-economically as well as culturally valuable species, is maintained, and strategies have been developed and implemented for minimizing genetic erosion and safeguarding their genetic diversity.

**STRATEGIC GOAL D: Enhance the benefits to all from biodiversity and ecosystem services**



**TARGET 14**

By 2020, ecosystems that provide essential services, including services related to water, and contribute to health, livelihoods and well-being, are restored and safeguarded, taking into account the needs of women, indigenous and local communities, and the poor and vulnerable.



**TARGET 15**

By 2020, ecosystem resilience and the contribution of biodiversity to carbon stocks has been enhanced, through conservation and restoration, including restoration of at least 15 per cent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification.



**TARGET 16**

By 2015, the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization is in force and operational, consistent with national legislation.

**STRATEGIC GOAL E: Enhance implementation through participatory planning, knowledge management and capacity building**



**TARGET 17**

By 2015 each Party has developed, adopted as a policy instrument, and has commenced implementing an effective, participatory and updated national biodiversity strategy and action plan.



**TARGET 18**

By 2020, the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity, and their customary use of biological resources, are respected, subject to national legislation and relevant international obligations, and fully integrated and reflected in the implementation of the Convention with the full and effective participation of indigenous and local communities, at all relevant levels.



**TARGET 19**

By 2020, knowledge, the science base and technologies relating to biodiversity, its values, functioning, status and trends, and the consequences of its loss, are improved, widely shared and transferred, and applied.



**TARGET 20**

By 2020, at the latest, the mobilization of financial resources for effectively implementing the Strategic Plan for Biodiversity 2011-2020 from all sources, and in accordance with the consolidated and agreed process in the Strategy for Resource Mobilization, should increase substantially from the current levels. This target will be subject to changes contingent to resource needs assessments to be developed and reported by Parties.



Marine and Coastal Biodiversity Management  
in Pacific Island Countries



[www.macbio-pacific.info](http://www.macbio-pacific.info)