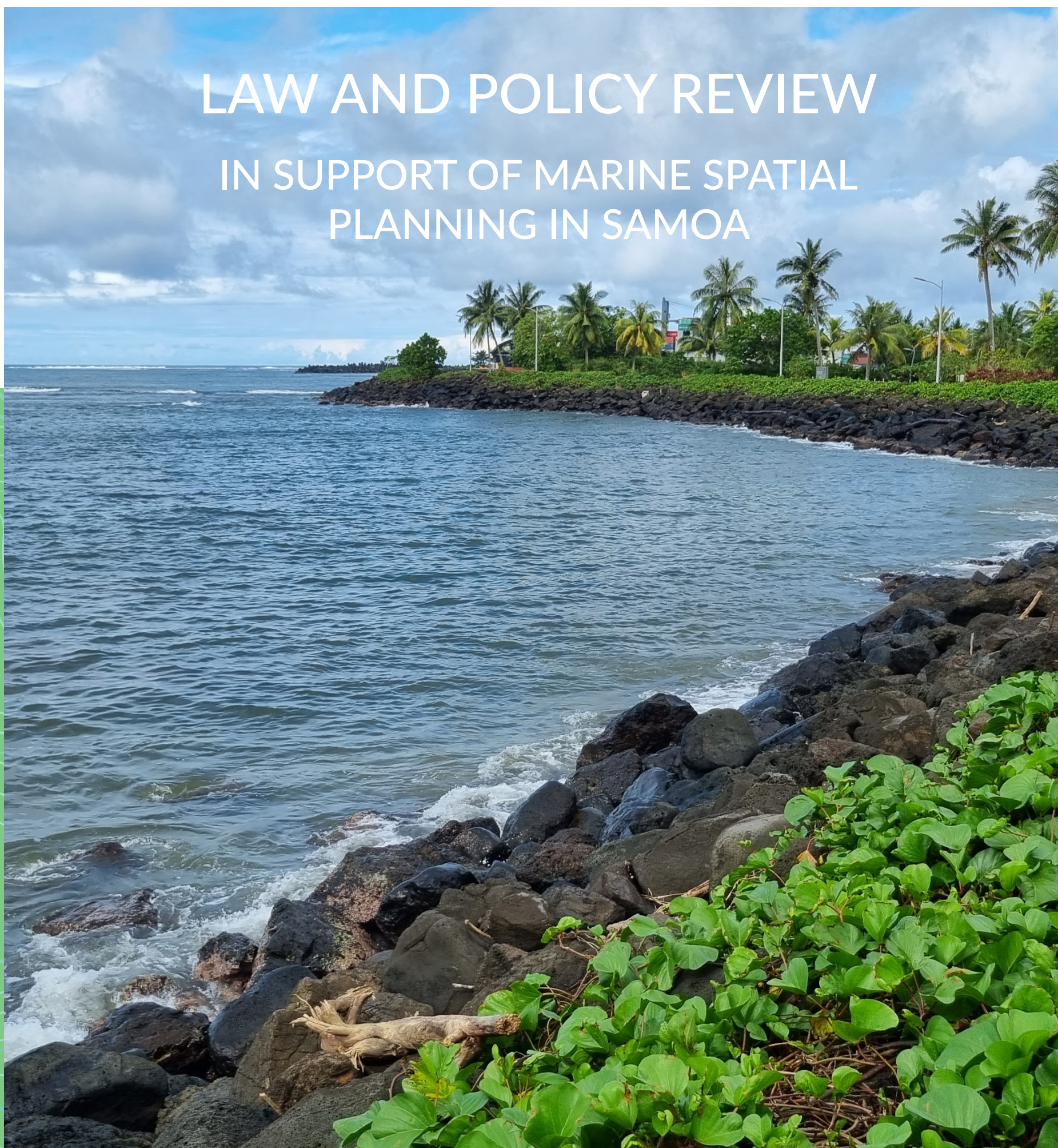


LAW AND POLICY REVIEW

IN SUPPORT OF MARINE SPATIAL PLANNING IN SAMOA



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| Justin G Rose

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Acronyms, Abbreviations and Terms

ABS	Access and Benefit Sharing (of genetic resources)
CBD	Convention on Biological Diversity
CCA	Community Conservation Areas
CITES	Convention on International Trade in Endangered Species
EBA	Ecosystem-Based Approach
EEZ	Exclusive Economic Zone
EIA	Environment Impact Assessment
EMC Bill	Environment Management and Conservation Bill
FMA	Fisheries Management Act 2016
GCCA+	European Union's Global Climate Change Alliance Initiative
GoS	Government of Samoa
IMDG Code	International Maritime Dangerous Goods Code
IMO	International Maritime Organization
IUCN	International Union for Conservation of Nature
IUCN ORO	International Union for Conservation of Nature's Oceania Regional Office
LMOs	Living Modified Organisms
LSE	Lands, Surveys and Environment Act 1989
MAF	Ministry of Agriculture and Fisheries
MARPOL	International Convention for the Prevention of Pollution from Ships
MFAT	Ministry of Foreign Affairs and Trade
MNRME	Ministry of Natural Resource Management and Environment
MOF	Ministry of Finance
MPMC	Ministry of Prime Minister and Cabinet
MPPA	Marine Pollution Prevention Act 2008
MSP	Marine Spatial Plan or Marine Spatial Planning
MWPR	Marine Wildlife Protection Regulations
MWTI	Ministry of Works, Transport and Infrastructure
MZA	Maritime Zones Act 1999
NBSAPs	National Biodiversity Strategies and Action Plans
NESP	National Environment Sector Plan
NGO	Non-Governmental Organisation
NPA	National Parks and Reserves Act
PAA	Ports Authority Act
PUMA	Planning and Urban Management Act 2004
s	section
SDP	Sustainable Development Plan
SIDS	Small Island Developing State
SOLAS	International Convention for the Safety of Life at Sea
Convention	
SOS	Samoa Ocean Strategy 2020-2030
ss	sections
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFCCC	United Nations Framework Convention on Climate Change
WMA	Waste Management Act 2010

Executive Summary

The Samoa Ocean Strategy 2020-2030 (SOS) provides a nationally agreed roadmap for ocean governance in Samoa over the next decade. To achieve its purpose and vision, the SOS identifies thirteen Integrated Management Solutions, including completion of a Marine Spatial Plan (MSP) for Samoa's ocean. To advance this objective, the Government of Samoa (GoS) has partnered with the International Union for Conservation of Nature's Oceania Regional Office (IUCN ORO), funded by the European Union's Global Climate Change Alliance (GCCA+) Initiative.

MSP is an internationally recognized planning tool that applies information about the natural resources and human uses of a particular ocean area to develop a comprehensive ocean management system. UNESCO defines MSP as a "public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process." Typically, MSP establishes and applies zoning within the ocean space; each defined zone has permitted uses and restrictions.

This review is intended to assist Samoan stakeholders to progress their MSP by:

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

The report is structured as follows:

- Section 2 overviews the constitutional and administrative context of Samoan ocean governance;
- Section 3 summarises policy and legislative instruments relevant to Samoan ocean governance;
- Section 4 presents an analysis identifying gaps and synergies in existing policy and legislation relevant to MSP;
- Section 5 identifies four broad options for integration of MSP into Samoa's ocean governance framework; and
- Section 6 restates the findings and recommendations of Sections 4 and 5.

Section 4 details ten findings regarding possible reform of Samoa's ocean governance. Identified areas for reform are:

1. Expanded categories of protected area, including categories that formalise co-management of marine and coastal protected area governance;
2. Clarifying compliance and offence provisions proposed in the Environmental Management and Conservation Bill;
3. Prohibitions on biopiracy and a regulatory framework to facilitate bioprospecting in accordance with the Nagoya Protocol;

4. Prohibitions on the transboundary movement of living modified organisms and a biosafety regulatory framework in accordance with the Cartagena Protocol;
5. Regulatory action in accordance with Minamata Convention;
6. Regulation of seabed minerals exploration and seabed mining;
7. Review the Planning & Urban Management Agency Act and *regulations* with a view to including ecosystem-based approaches to climate change;
8. Review of policy and legislation for coastal ecosystem services protection;
9. Clarifying the National Marine Sanctuary established by the Marine Wildlife Regulations; and
10. Amend an existing law, or enact a new law, to formalise a whole-of-jurisdiction Marine Planning Process (MSP), including the national marine protected area network.

Section 5 discusses and identifies four broad options for stakeholders to integrate MSP within legal frameworks in Samoa. These are:

11. A new MSP-specific enactment;
12. A Sustainable Management Plan under Part 4 of the Planning and Urban Management Act;
13. A management plan under Part 8 Division 4 of the Lands, Surveys and Environment Act; and
14. Adjusting proposed legislation already in draft such as the Environmental Management and Conservation Bill.

From Section 5, following stakeholder consultation the fourth (4th) option is recommended. Prior to its enactment, the Environmental Management and Conservation Bill should be adjusted to incorporate MSP and a national MPA network.

Section 1

Introduction and Purpose

The Samoa Ocean Strategy 2020-2030 (SOS) provides a nationally agreed roadmap for ocean governance in Samoa over the next decade. To achieve its purpose and vision, the SOS identifies thirteen *Integrated Management Solutions*, including completion of a Marine Spatial Plan (MSP) for Samoa's ocean.¹ To advance this objective, the Government of Samoa (GoS) has partnered with the International Union for Conservation of Nature's Oceania Regional Office (IUCN ORO), funded by the European Union's Global Climate Change Alliance (GCCA+) Initiative.

MSP is an internationally recognized planning tool that applies information about the natural resources and human uses of a particular ocean area to develop a comprehensive ocean management system. UNESCO defines MSP as a "public process of analyzing and allocating the spatial and temporal distribution of human activities in marine areas to achieve ecological, economic, and social objectives that are usually specified through a political process."² Typically, MSP establishes and applies zoning within the ocean space; each defined zone has permitted uses and restrictions.

Designing Marine Spatial Planning Legislation: A Guide for Legal Drafters identifies the following key principles of MSP:

- reliance on the best available science;
- a participatory process;
- cross-sector planning;
- transparent decision-making; and
- consideration of economic and environmental objectives.³

The guide states that MSP should be incorporated into a country's legislative framework to be effective and enforceable to achieve its defined objectives. This institutionalizes a process of science-based ocean management, ensures all parties are bound by a lawfully adopted plan therefore subject to consequences for violations, and provides continuity and guidance for plan implementation and revision.⁴

More than sixty countries rely on some form of MSP to manage their ocean economies, most of which have either adopted stand-alone MSP laws, amended existing legislation, or adopted subsidiary legislation, to formalise their MSP.⁵ While sharing some core characteristics, each MSP law is uniquely adapted to the jurisdiction in which it operates.

In developing these laws, it is both typical and advisable to first review existing law and policy governing fisheries management, marine and coastal protected areas, maritime safety and border security, shipping,

¹ Government of Samoa (2020) *Samoa Ocean Strategy 2020-2030, Integrated Management for a Healthy and Abundant Future of Samoa's Ocean* Apia, Samoa, 30.

² C. Ehler et al., *Marine Spatial Planning: A Step-by-Step Approach toward Ecosystem-Based Management* UNESCO IOC, 2009.

³ Environmental Law Institute & Animals | Environment PLLC (2020) *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters* USA, 7. <https://www.eli.org/research-report/designing-marine-spatial-planning-legislation-implementation-guide-legal-drafters>

⁴ Ibid.

⁵ Ibid.

coastal planning and land use, protected species, marine pollution and dumping, coastal forestry, offshore mining and energy, as well as relevant constitutional provisions and administrative arrangements.⁶ The legal review assists the MSP process by:

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

This review report seeks to serve those purposes in the Samoan context.

The methodology applied constituted a desktop review of MSP-related policies, laws, treaties and of literature on corresponding law and governance. A draft report was then reviewed by all key stakeholders adjusted to account for feedback, and finalised.

The reviewer originally intended to conduct in-country visits for one-to-one meetings and possibly other stakeholder consultations, prior to draft report completion. This would have enabled 'ground-truthing' and adjustment or refinement of the desktop review findings. Although this was not possible due to the global pandemic, a virtual meeting of the National MSP Working Group in July 2021 was attended, during which the draft report and recommendations were presented and discussed.

The report is structured as follows: Section 2 overviews the Constitutional and administrative context of Samoan ocean governance; Section 3 summarises international, regional and national policy and legislative instruments relevant to Samoan ocean governance; Section 4 presents an analysis identifying gaps and synergies in existing policy and legislation relevant to MSP; Section 5 identifies four broad options by which MSP may be integrated into Samoa's ocean governance framework; and Section 6 restates the findings and recommendations of Sections 4 and 5.

⁶ Ibid, 8.

Section 2

Administrative and Constitutional Arrangements

Section 2.1

Relevant Constitutional Provisions

As the first island nation in the Pacific to gain full independence, Samoa's 1960 Constitution blends traditional and democratic institutions and processes, and in the Westminster tradition, recognizes separation of powers between the Executive, Legislative and Judicial branches of government.

For the purposes of this review, the most important articles of the Constitution are 104 and 101. These are reproduced below:

104. Land below high-water mark –

(1) Subject to the provision of any Act, **all land lying below the line of high-water mark shall be public land.**

(2) For the purposes of this Article, the term “high-water mark” means the line of median high tide between the spring and neap tides.

101. Land in Samoa –

(1) All land in Samoa is customary land, freehold land or public land.

(2) Customary land means land held from Samoa in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.

(3) Freehold land means land held from Samoa for an estate in fee simple.

(4) Public land means land vested in Samoa being land that is free from customary title and from any estate in fee simple.

Samoa's Constitution, while recognising customary tenure over land above water, provides that all land below a defined high-water mark is public land.

The significance of this in the present context is that the authority of GoS to govern and regulate uses of its ocean space is unimpeded by competing legal claims of persons or groups holding customary marine tenure, as can be the case in some neighbouring jurisdictions.

A previous report, *Review of Policy and Legislation Relating to the Use and Management of Mangrove Ecosystems in Samoa*, considers in detail this issue, especially in relation to management of mangroves and coastal zones, as well as *de facto* claims of persisting customary tenure.⁷ The previous reviewers noted:

⁷ IUCN and Government of Samoa (2014) *Review of Policy and Legislation Relating to the Use and Management of Mangrove Ecosystems in Samoa*.

“Villagers tend to assume that the coastal waters and foreshore are customary land and may be perceived as ‘belonging’ to a particular matai. However, it is clear from the Constitution that the land below the high water mark is public land, while the strip of land extending to a distance of 5 m above the high water mark may be customary land over which the Government of Samoa holds management and control rights.”⁸

Part IV of the Constitution establishes the Executive branch of government, providing that executive power is vested in the Head of State (art31) and exercised in accordance with the Constitution. Act 32 provides for a Cabinet of Ministers, headed by the Prime Minister, “who shall have the general direction and control of the executive government of Samoa”. Article 35 provides for Ministers to be assigned responsibilities for particular subjects. The following section identifies those Ministries which at time of writing are assigned responsibilities relating to MSP.

Section 2.2

Administrative Arrangements

As noted in Section 1, MSP relies upon effective inter-agency coordination. This section, drawing heavily upon the National Environment Sector Plan 2017-2021 (NESP), notes and summarises those Ministries with a regulatory, policy development or coordination role of relevance to MSP.

2.2.1 Ministry of Natural Resources and Environment (MNRME)

MNRE is both a regulator and a policy making agency, being the lead implementing agency for the Environment Sector, Water, the Sanitation Sector, and the Land Registrar. MNRE is responsible for sustainable management and development of Samoa’s natural resources, environment conservation (terrestrial and marine biodiversity), protection and sustainability of the built environment, and is the technical focal point for climate change and disaster risk management. As the technical focal point of climate change and disaster risk management, the Ministry plays a key role in mainstreaming these issues across all sectors.

2.2.2 Ministry of Agriculture and Fisheries (MAF)

MAF is a policy maker and regulator, as well as coordinator of the Agriculture Sector (which includes fisheries). MAF’s overall goal is to ‘increase food, nutrition and income security’ through improvements in animal production and health; crop production (subsistence and commercial); and inshore and commercial fisheries, aquaculture and quarantine. MAF supports the need to build climate and disaster resilience of families and communities through the development of sustainable agricultural and fisheries practices and technologies. Through its Quarantine Division, MAF is responsible for regulating the importation of agrochemicals.

2.2.3 Ministry of Works, Transport and Infrastructure (MWTI)

MWTI is both a regulator and a policy making agency and coordinates the Transport (Infrastructure) Sector. MWTI’s mandate is to ‘ensure safe, secure and viable transportation modes and infrastructure assets in Samoa’. It has responsibility for the safety and security of civil aviation operations, activities and development in Samoa; safety and security for all maritime transportation; provision of a safe, efficient and effective national road and drainage network for Samoa; coordination and implementation of the Transport Sector Plan; and ensuring building structures in Samoa are sustainable and safe in accordance with the National Building Code

8 Ibid, 4.

and applicable regulations and standards.

The MWTI is the focal point for the National Infrastructure and Strategic Plan (NISP), and lead implementing agency for the Transport Sector. The Ministry is also responsible for implementing environmental safeguards through its development consent process (under PUMA) to ensure mitigation of adverse environmental impacts.

2.2.4 Ministry of Customs and Revenue

The Ministry of Customs and Revenue, a policy maker and regulator, is included for its mandate to oversee the Customs Service. Relevant MSP roles include: 1. Border protection and enforcement by providing services which manage the effective use of risk assessment, re-screening information for processing the movement of goods and people, and detecting the movement of illicit, restricted goods and undesirable travellers; and 2. Border and Intelligence Enforcement which gathers intelligence through risk management processing on the movement of people, goods and crafts at the border, and the auditing of international trade documents for compliance.

2.2.5 Ministry of Foreign Affairs and Trade (MFAT)

MFAT is a policy maker and regulator responsible for managing Samoa's trade and foreign relations with the international community. MFAT facilitates Samoa's accession and ratification of international treaties, conventions and agreements. Importantly for MSP, MFAT administers the Maritime Zones Act 1999. The Ministry is the co-chair for the National Ocean Steering Committee and the Maritime Boundaries Committee. MFAT is also the political focal point for all international agreements and is responsible for coordination between ministries to ensure Samoa engages and complies with international maritime, fisheries, oceans and environment treaties.

2.2.6 Ministry of Finance (MOF)

MOF is a policy maker and regulator, coordinates the Finance Sector, and is responsible for the Treasury. MOF provides policy and strategic advice, as well as financial services to the Government regarding sustainable, long-term economic outcomes and fiscal viability towards the advancement of the national vision to 'achieve quality of life for all Samoan citizens'. MOF's role is to promote accountability and transparency in service delivery to the community through establishment and implementation of sound financial management systems, standards, policies and procedures.

MOF undertakes the mobilisation and allocation of annual financial resources to all Government funded agencies through its annual budget cycles. It also houses two aid coordination units which oversee aid funding from development partners to different areas of the sector. The Climate Resilience Investment Coordination Unit manages climate finance and climate resilience related projects, while the Aid Division looks after all other projects across Government. The MOF provides periodic budget and economic statements, as well as project appraisals from time to time. The Economic Planning and Policy Division is secretariat to the CDC and facilitates the SDS and higher level performance monitoring.

2.2.7 Ministry of Prime Minister and Cabinet (MPMC)

MPMC acts as the Cabinet Secretariat and chairs the National Policy Coordination Committee which is attended by all CEOs. MPMC is responsible for screening, coordinating and monitoring policy development across the whole of government. The Ministry houses the Office of the Head of State, the Office of Council of Deputies and the Office of the Prime Minister. MPMC is a key Implementing Agency of the Environment Sector given its secretariat role to Cabinet and coordination of national policy decisions across the whole of government.

Section 3

Summaries of Laws and Policies

Section 3.1

Overview

In preparing this report, more than 50 laws, treaties, policies, strategies and plans relevant to MSP in Samoa were reviewed. The summary for each of these includes:

1. A one paragraph overview;
2. A statement of objectives;
3. A jurisdictional statement i.e. where it applies;
4. Activities promoted, prohibited or regulated under the instrument;
5. Regulatory approaches applied, where appropriate;
6. Financial or other incentives applied, where appropriate;
7. A statement of relevance indicating if:
 - a. The instrument is directly relevant to the management of Samoa's ocean and MSP (a law or policy that significantly guides or regulates activities in Samoa's marine space);
 - b. The instrument is somewhat relevant to the management of Samoa's ocean and MSP (a law or policy that while not significantly guiding or regulating activities in Samoa's marine space, may on occasion be applied to guide or determine aspects of marine governance);
 - c. The instrument is marginally relevant to the management of Samoa's ocean and MSP (a law or policy that does not guide or regulate activities in Samoa's marine space, except perhaps in minor or exceptional situations); and
8. Concluding observations regarding the role or significance of the instrument to the purposes of the review.

At a global and regional level, Samoa's commitments and obligations under the Noumea Convention, UNCLOS and the CBD's Aichi Targets, are centrally relevant to this review. Also relevant are agreed priorities documented in the Pacific Oceanscape Framework. Among the actions implementing Strategic Priority 3 of the Oceanscape is to:

Develop and strengthen appropriate security and enforcement mechanisms and spatial planning systems that guide multiple use for economic growth while maintaining ecosystem function and biodiversity integrity of coastal and ocean areas. These higher order management systems provide the fundamental basis for the use of spatial management tools in a nested fashion drawing from experiences in strict traditional closures, locally managed areas and large multiple use managed and protected areas.⁹

⁹ Pacific Oceanscape: A secure future for Pacific Island Countries and Territories based on sustainable development, management and conservation of our ocean. https://www.sprep.org/att/publication/000937_684a.pdf

The Samoa Ocean Strategy 2020-2030 is the most important of the national policy documents reviewed. Many synergies and no inconsistencies exist between the SOS and other key national policy documents, such as the Samoa Development Strategy and the National Environment Sector Plan. The SOS is referenced frequently in this review.

Regarding national laws, the following were considered as most directly relevant to MSP in Samoa:

1. Maritime Zones Act 1999;
2. Lands, Survey and Environment Act 1989;
3. Marine Wildlife Regulations 2009/2018;
4. Planning and Urban Management Act 2004;
5. Fisheries Act 2016;
6. Marine Pollution Prevention Act 2008;
7. Shipping Act 1998;
8. Waste Management Act 2010;
9. The National Parks Act 1974 is relevant until the EMC Bill passes; and
10. Environment Management and Conservation Bill.

Section 3.2 contains the summaries for these 10 laws. Due to their size, the remaining summaries are provided as Appendix A. Section 3.3 contains three summary tables as follows:

1. Prohibited uses of Samoa's ocean and related prohibited actions;
2. Uses of Samoa's ocean requiring licensing/permitting;
3. Spatial allocations of various kinds ("zoning") in existing Samoan law.

Section 3.2

Summaries of Key Legislation

3.2.1 Maritime Zones Act 1999

Overview

The Maritime Zones Act 1999 (MZA) defines, in accordance with international law, Samoa's sovereignty over its ocean space, including internal waters, territorial sea, contiguous zone and exclusive economic zone. It replaced two previous laws.

Objective

To make provision with respect to the internal waters, territorial sea, the contiguous zone, the exclusive economic zone and Samoa's continental shelf.

Jurisdiction

The MZA is the law that defines Samoa's sovereign boundaries with respect to its marine space, including the EEZ.

Activities promoted, prohibited or regulated

International law regarding the extent state sovereignty can be exercised in marine areas is well-developed. Full sovereignty extends to the internal waters and territorial sea, subject to rights of innocent passage. Section 9 clarifies that land beneath internal waters and the territorial sea is 'and shall be deemed to have always been' public land – ensuring the de jure capacity of the state to regulate marine areas. The contiguous zone may be regulated for the purposes stated in section 18.

The EEZ "comprises that area of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea, having as their outer limits 200 nautical miles seaward from the nearest point of the territorial sea baseline." (section 19).

Section 20 is important as per the complete reference below:

20. Rights and jurisdiction in the exclusive economic zone –

(1) In the exclusive economic zone, the Government of Samoa has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources (whether living or non-living) of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to any other activity relating to the economic exploitation and exploration of the zone.

(2) Without limiting subsection (1), the Government has jurisdiction in the exclusive economic zone with regard to the following:

- (a) the establishment and use of artificial islands, installations and structures;
- (b) marine scientific research;
- (c) the protection and preservation of the marine environment.

Regulatory approaches applied, where appropriate

Some specific provisions of the MZA are particularly relevant.

Section 12 clarifies the limitation of innocent passage by foreign vessel. All of the matters listed in (a)-(k) are relevant to MSP, while (g) pollution of the marine environment, and (h) fishing without a licence, are especially pertinent from an environmental or resource management perspective

Section 14 (2) provides that vessels carrying radioactive wastes or other dangerous, noxious or hazardous wastes or substances harmful to the environment through the territorial sea must have the prior authorisation of the Minister and any other authority in Samoa vested with relevant lawful authority.

Financial or other incentives applied, where appropriate

n/a

Relevance

The Maritime Zones Act is **directly relevant** to this review.

Concluding observations

The MZA is a foundational component of the legal framework for ocean governance in Samoa.

3.2.2 Fisheries Management Act 2016

Overview

The Fisheries Management Act 2016 (FMA) empowers and guides the governance of fishing in Samoan waters, as well as fishing by Samoan vessels on the high seas. It is a comprehensive and modern legislative instrument designed to bring Samoa into compliance with international obligations under fisheries treaties, as well as providing mechanisms of inshore fishery management responsive to local conditions and traditions. The Act is administered by the Fisheries Division of the Ministry of Agriculture and Fisheries.

Objectives

FMA aims to regulate and control the conservation, management and development of inshore and offshore fisheries, and the licensing of Samoan commercial fishing vessels and foreign fishing vessels (Long title).

Closely related to these objectives are the “approaches and principles of conservation and management” identified in section 4, which are intended to guide all decisions made under the Act. The precautionary approach and the ecosystems approach are applied according to the following principles:

- (a) transparency, accountability and inclusiveness, taking into account applicable best international or regional practices;
- (b) sustainable use of fishery resources taking into account the general obligation to protect and preserve the marine environment;
- (c) decisions based on the best information available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield;
- (d) overfishing and excess fishing capacity prevented or eliminated;
- (e) full and accurate data on fisheries, including information relating to the ecosystems and social systems in which fisheries occur, collected, verified and reported;
- (f) effective enforcement of conservation and management measures pursued to protect biodiversity;
- (g) pollution and waste originating from fisheries operations minimised;
- (h) decisions and actions taken to improve the welfare and livelihood of fishers and the fishing community.

Jurisdiction

FMA applies to all Samoan marine waters, including the EEZ and to Samoans and Samoan registered vessels fishing outside of Samoa (s3). The Act defines “fisheries waters” as follows: “(a) means the waters of the territorial sea, the exclusive economic zone and internal waters including lagoons as defined in the Maritime Zones Act 1999; and (b) includes any other waters over which the Government has fisheries jurisdiction.” The Act defines “coastal waters” as “the area of fisheries waters within the limits of territorial sea and internal waters specified by the Maritime Zones Act 1999” (s2).

Activities promoted, prohibited or regulated

The activity FMA regulates, promotes and in some instances prohibits is fishing, broadly defined. As the Act is detailed, it can only be summarised here. In essence, the regulatory approaches applied are: licencing of commercial fishing and aquaculture operations; devolving the making of fishing by-laws by local stakeholders; and prohibiting certain types of fishing altogether.

For coastal fisheries, detailed provisions are contained in the *Local Fisheries Regulations 1995*, saved under s94(6). These include protected species which are not allowed to be fished, gear restrictions, seasonal closures, various species specific requirements, and rules regarding fish aggregating devices.

Regulatory approaches applied, where appropriate

Institutionally, FMA identifies the Fisheries Division as being responsible for its implementation, lists the functions of the Division, and empowers the authorisation of persons to enforce the Act.

Section 18 serves to highlight the various regulatory mechanisms that can be applied in the Act to implement conservation measures. They are:

- Regulations made under section 92;
- An Order published in the Savali;
- The endorsing of a fisheries management plan containing such measures; and
- Imposing conditions on fishing licenses.

Examples of prohibited fishing methods are driftnet fishing (s43) and by use of explosives or poisons (s42).

Part 8 – Village Fisheries By-laws (ss86-89) is especially worth noting in the context of MSP. This aspect of Samoa's marine governance has been reported in international literature for some time (although the publications cited describe previous versions of the arrangements).¹⁰ The jurisdictional limit of these is within a declared "Village Fishery Management Area" (s19). These may notionally extend to the limits of the territorial sea, but in practice, village by-laws are applied to "inshore waters" defined as "areas of waters (including the seabed) adjacent to the village from the high water mark to the outer fringes of the reef, and includes any fish reserve, beach or area covered by mangroves" (Matautu Uta, Lefaga Fisheries ByLaws 2013, s2).

Section 86 of the FMA provides:

86. Making of fisheries by-laws –

(1) A village Fono may make village fishery by-laws, consistent with this Act, for the purpose of conserving, protecting, managing, developing and sustaining harvest of fish in the village fisheries management area, including any or more of the following matters:

- (a) prohibit harvest of certain type of fish;
- (b) prohibit fishing methods that are destructive or damaging;
- (c) provide periodic closure of fishing in certain areas;
- (d) restrict or limit size of fish to be caught or harvested;
- (e) restrict mesh size fishing nets;
- (f) restrict importation or exportation of fish;
- (g) regulate any activity that would cause adverse effects on marine environment and coastal fisheries;
- (h) provide any other matter necessary to protect coastal fisheries.

¹⁰ U Fa'asili and I Kelekolo, *The Use of Village By-laws in Marine Conservation and Fisheries Management* (1999) 11 *Traditional Marine Resource Management and Knowledge* 7-10. M King and U Fa'asili, 'A Network of Small, Community-Owned Village Fish Reserves in Samoa' (1999) 11 *Traditional Marine Resource Management and Knowledge* 2-6. U Fa'asili and A Taua, *Review of the Village Fisheries Management Plans of the Extension Programme in Samoa* Field Report No. 7, 2001, M King, K Passfield, E Ropeti *Management of village fisheries; Samoa's community-based management strategy* (Government of Samoa, 2001), G Macfadyen, P Cacaud and B Kuemlangan *An overview of legal issues and broad legislative considerations for community-based fisheries management* (FAO, Rome, 2005) 21-24. B Kuemlangan *Creating Legal Space for Community- Based Fisheries and Customary Marine Tenure in the Pacific: issues and opportunities* (FAO, Rome, 2004).

(2) Fisheries by-laws are to be:

- (a) prepared under the guidelines issued under section 6; and
- (b) vetted by the Attorney General;
- (c) approved by Cabinet;
- (d) signed by the Chief Executive Officer;
- (e) published in the Savali after they are signed;
- (f) effective on the 14th day after they are first published in the Savali; and
- (g) distributed (copies of by-laws) by the Chief Executive Officer to stakeholders, including neighbouring village communities.

Financial or other incentives applied, where appropriate

The only financial or other incentive applied in the FMA is the provision allowing fines for breaches of village fishery by-laws to be received by the village (s88(2)) as an incentive for active and effective enforcement.

Relevance

FMA is **directly relevant** to this review. Fishing is among the primary uses of Samoa's marine space and the FMA is the primary legislative instrument regulating fishing in Samoan waters.

Concluding observations

The FMA seeks to ensure the sustainable management of coastal and offshore fisheries and the long-term protection of marine biodiversity in Samoa. The Act specifically requires its administration to adopt both the precautionary and ecosystems' approaches. The FMA contains broad regulation-making powers, as well as other regulatory mechanisms such as the imposition of licence conditions and programming of decentralised co-management of inshore fisheries, that enable its administrators to efficiently respond to a future MSP.

3.2.3 Lands, Surveys and Environment Act 1989

Overview

The LSE combines, in a single law, provisions relating to various aspects of environmental protection with those addressing dealings in public land (surveys, compulsory acquisition, leases, alienation of public land etc.). This review is concerned only with aspects of the Act potentially relevant for MSP - sections 1-6 and Parts 8 and 9 (sections 93-147), especially Part 8. The Act is administered by the Ministry of Natural Resources and Environment.

Objectives

The full title of the LSE best describes the Act's objective: to consolidate the Land Ordinance 1959 and to make provision for the conservation and protection of the environment and the establishment of National Parks and other forms of protected areas, and to enlarge the functions of a Department of State and address matters incidental thereto.

Although Part 8 does not have a stated objective, section 98 referring to the Environment Board established by section 97, is worth noting, "The Board shall, in the exercise of the functions conferred upon it by this Act, have as its principal objective the protection and conservation of the natural resources and environment."

Jurisdiction

Part 8 of the LSE applies to all of Samoa. This is not explicitly referred to in the Act, rather in the interpretation of the Act, whereby “Samoa,” when used in the context of a territorial description, includes all waters of the EEZ and the territorial sea. S94 states that the Part applies to all of Samoa (in the absence of a contrary Order by the Head of State).

Activities promoted, prohibited or regulated

The LSE establishes the position of Principal Environmental Officer within the Ministry, reporting to the Chief Executive Officer and responsible for the administration of the Part. Section 93 establishes an Environment Board, although this body was not established as envisioned by the law.

Division 4 of Part 8 is potentially significant in the context of MSP, requiring the preparation of management plans via a process set forth in the Division:

- (a) national parks;
- (b) reserves;
- (c) Samoa waters and water resources;
- (d) coastal zones;
- (e) indigenous forests;
- (f) soil erosion;
- (g) pollution;
- (h) waste and litter disposal; and
- (i) any other matter relating to the environment which in the opinion of the Board will benefit from a management plan.

In practice, Division 4 has not operated as described.

Division 5, Coastal Zones is significant and relevant to MSP. This is the one aspect of the LSE Part 8 that will not be repealed if the EMC Bill is passed. “Coastal zone” is defined in section 2 as meaning “all those areas comprising coastal waters and the foreshore” and “coastal waters” means all that area having as its inner boundary the mean low water mark, and as its outer boundary, the outer limit of the territorial sea, and includes every lagoon and the bed of such sea or lagoon. In particular, section 120 protects coastal waters by prohibiting, in the absence of written consent of the Minister, removal of gravel, coral and other materials, excavation or dredging, the placing of any fill and the construction of any structure across or under coastal waters.

The marine aspects of Division 6, Pollution of Seas and Inland Waters, may have been superseded by the passage of the *Marine Pollution Prevention Act 2008*.

Regulatory approaches applied, where appropriate

This consists of command-and-control regulatory provisions. Although some of the approaches are presented in Part 8, they reside mainly in regulations made pursuant to the power conferred by section 146 as listed below:

- Watershed Protection & Management Regulations 1992/3;
- The Protection and Conservation of Wild Animals Regulations 1993;
- Protection of Wildlife Regulations 2004;
- Plastic Bag Prohibition on Importation Regulations 2006;
- Marine Wildlife Protection Regulations 2009; and
- Marine Wildlife Protection Amendment Regulations 2018.

Financial or other incentives applied, where appropriate

None are applied in this Act.

Relevance

Part 8 of LSE is directly relevant to this review. The legislation establishes the Environment Division within the Ministry and provides regulatory authority that has been exercised most actively through regulations.

Concluding observations

Key stakeholders have sought for some years to replace and repeal the aspects of the LSE most relevant to MSP by passage of the EMC Bill.

3.2.4 Marine Wildlife Protection Regulations 2009 as amended by the Marine Wildlife Protection Amendment Regulations 2018

Overview

The Marine Wildlife Protection Regulations (MWPR) under LSE provide protection specifically for marine mammals, turtles, sharks and breeding aggregations. The 2018 amendment also added a National Marine Sanctuary. The MWPR is administered by the Ministry of Natural Resources and Environment.

Objective

The MWPR does not contain a statement of objectives. They may be inferred in relation to: ensuring legal protection is afforded certain marine species considered particularly important or vulnerable to anthropogenic impacts; regulate certain activities relating to marine species such as research and particular tourism operations; and to declare a National Marine Sanctuary.

Jurisdiction

The MWPR applies to all “Samoan waters” defined as including internal waters, the contiguous zone, the territorial sea and the exclusive economic zone. To avoid all doubt, section 3 restates that the MWPR applies “to all relevant activities by persons within Samoa’s exclusive economic zone as defined by the Marine Zones Act 1999.”

Activities promoted, prohibited or regulated

Prohibitions:

- kill, injure or harm any turtles, marine mammals or spawning aggregations;
- harassing turtles, marine mammals or spawning aggregations;
- fishing for sharks except for subsistence purposes from a non-motorised vessel;
- disturbing turtle nests or taking turtle eggs; and
- import or export species or products in contravention of CITES.

Exemptions

Actions taken to protect human life, taking non-endangered turtles for subsistence purposes.

Licensing with conditions

Tourism operations based around whale, dolphin and turtle watching activities.

Reporting of incidents with marine mammals and turtles

Regulatory approaches applied, where appropriate

The above rules are simply stated prescriptively, as would be expected.

The MWPR contains two other aspects: Part VI provides the Minister with the capacity to designate “species of conservation concern” for which management plans must be prepared and implemented.

Also, the 2018 amendment added a National Marine Sanctuary as per Regulation 14A: “Samoa shall have a National Marine Sanctuary that provides and recognises the conservation of whales, dolphins, turtles and sharks within the exclusive economic zones.” There is currently a “Management Plan Framework” draft for the National Marine Sanctuary. At present, the sanctuary exists by virtue of protections offered to the target species by other provisions of the MWPR.

Financial or other incentives applied, where appropriate

n/a

Relevance

The Marine Wildlife Protection Regulations are directly relevant to this review.

Concluding observations

The MWPR are an important component of Samoa’s marine legislation, particularly regarding marine mammals, sharks, turtles and spawning aggregations.

3.2.5 Planning and Urban Management Act 2004

Overview

The Planning and Urban Management Act 2004 (PUMA) provides an institutional and legislative foundation for sustainable management planning and development assessment in Samoa. PUMA is administered by the Ministry of Works, Transport and Infrastructure. This is a recent re-arrangement of responsibilities; PUMA was administered by MNRE until April 2019.

Objectives

PUMA contains two statements of objectives, the first is the full title: “to establish a Planning and Urban Management Agency and to implement a framework for planning the use, development, management and protection of land in Samoa in the present and long-term interests of all Samoans.”

Also Section 8: Objectives of this Act – In the performance of a function, power or duty under this Act, the following objectives shall be pursued:

- (a) to provide for the fair, orderly, economic and sustainable use, development and management of land, including the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;

(b) to enable land use and development planning and policy to be integrated with environmental, social, economic, conservation and resource management policies at national, regional, district, village and site-specific levels;

(c) to create an appropriate urban structure and form for the development of Apia and other centres so as to provide equitable and orderly access to transportation, recreational, employment and other opportunities;

(d) to secure a pleasant, efficient and safe working, living and recreational environment for all Samoans and visitors to Samoa;

(e) to protect public utilities and other assets and enable the orderly provision and coordination of public utilities and other facilities for the benefit of the community; and

(f) to balance the present and future interests of all Samoans.

Jurisdiction

PUMA applies to all land in Samoa. With respect to marine space, PUMA defines “land” to include land covered with water. The Act defines “Samoa” to include the EEZ. PUMA’s provisions apply to the seabed limits of the EEZ. It is unclear whether PUMA also applies to development in marine space that does not touch the seabed.

Activities promoted, prohibited or regulated

PUMA is Samoa’s environmental impact assessment legislation. Leaving aside provisions around sustainable management planning, the activity regulated or prohibited by PUMA is ‘development’, defined as “the use of land (whether for a long term or temporary purpose), the erection of a building or other structure, the carrying out of a work, subdivision, and any other activity regulated under this Act.”

Under the Act, certain development may be prohibited or allowed without consent; development requires the proponent to apply under PUMA for development consent in accordance with its provisions. Requirements and processes to obtain consent for development are primarily detailed in Part 5 of the Act, as well as in the regulations.

Regulatory approaches applied, where appropriate

In examining the potential to achieve a governance framework for MSP within existing legislative provisions, it is worthwhile considering Parts 2, 3 and 4 of PUMA in some detail.

Part 2 establishes the Planning and Urban Management Agency and the Planning and Urban Management Board to assist the Minister in administering the Act. The Board is chaired by the Minister and has ten members consisting of five government and five community representatives. All members are appointed by the Head of State on the advice of Cabinet.

Part 3 commences with the objectives quoted above, all of which are consistent with MSP and similar to the objectives of MSP itself. Section 9 lists the various functions of the Board, of which the most relevant are:

- (a) to implement the provisions in accordance with its objectives;
- (b) to exercise the powers conferred by this Act so as to meet its objectives including—
 - (i) facilitating the preparation and approval of sustainable management plans;
 - (v) issuing such orders and taking such other action as is provided for by this Act; and
 - (vi) otherwise taking such enforcement action as is provided for.
- (c) to exercise any other power or function conferred on it by law, or as directed by Cabinet;
- (d) to appoint special planning committees to advise on the preparation and contents of a proposed

sustainable management plan and on any other related matters;

(e) to promote strategic planning and coordinated action in relation to the sustainable use of land and natural resources;

(f) to ensure that the operation of this Act and the performance of the functions of the Agency are coordinated with the exercise by any other agencies of related functions and powers;

(g) to liaise with and assist other Ministries and agencies to meet the objectives of this Act;

(h) to preserve those buildings areas or other places of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value; and

(i) to promote education and community awareness concerning urban and planning issues,

Part 4 'Sustainable Management Plans' commences with section 12, which states "A national, regional, district, village or site specific sustainable management plan may be made under this Part to achieve any of the objectives of this Act." Section 15 indicates the contents of sustainable management plans, which are drafted in broad terms and could include an MSP if considered an appropriate course of action. Section 16 provides for special planning committees which is another element that may lend itself to MSP development. The remainder of the Part provides a process by which plans are developed and consulted upon, as well as appeal, amendment, and review etc. . Sustainable development plans are enforceable as per sections 83 and 84 of PUMA.

Section 105 provides a broad range of reasons for which regulations may be made under PUMA. The only regulations in force pursuant to section 105 of PUMA are the PUMA (Environment Impact Assessment) Regulations 2007.

Financial or other incentives applied, where appropriate

n/a

Relevance

PUMA is directly relevant to this review in two respects. Firstly, PUMA provides a legislated system of development consent for projects that may impact on marine space. This system includes avenues of appeal and powers of enforcement, which is an important component of any future MSP. At a minimum, decisions made under PUMA with regard to development consent impacting marine areas should be consistent with any future MSP.

3.2.6 Marine Pollution Prevention Act 2008

Overview

The Marine Pollution Prevention Act 2008 (MPPA), administered by the Ministry of Works, Transport and Infrastructure, implements in Samoa the following international conventions:

(a) Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1990 and its Protocol for the Prevention of Pollution of the South Pacific by Dumping and Protocol concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region;

(b) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 as amended by the Protocol of 1996 relating thereto;

(c) International Convention for the Prevention of Pollution from Ships 1973 as amended by the Protocol of 1978 relating thereto;

(d) International Convention on Civil Liability for Oil Pollution Damage 1992;

(e) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996;

- (f) International Convention on Oil Pollution Preparedness, Response and Co-operation 1990;
- (g) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;
- (h) International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil 1973;
- (i) Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000;
- (j) International Convention on Civil Liability for Bunker Oil Pollution Damage 2001; and
- (k) International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001.

Objectives

MPPA aims “to provide for the prevention of pollution to the marine environment and for responses to marine pollution incidents emanating from vessels, and other matters related to the implementation of international marine pollution conventions.”

Jurisdiction

MPPA applies to all of Samoa, including the EEZ and all vessels operating in Samoan waters, as well as Samoan vessels in any waters.

Activities promoted, prohibited or regulated

The MPPA provides a comprehensive regulatory framework for marine pollution prevention, planning and response in Samoa. The Act itself has 64 sections, but many of these refer to other prescriptions and standards contained in international treaties, so a detailed accounting of all relevant activities regulated is beyond the present scope. MPPA contains the following Parts, indicating the contents:

1. Preliminary;
2. Marine Pollution Prevention;
3. Marine Pollution Response;
4. Marine Casualties;
5. Liability and Compensation for Pollution Damage from Ships;
6. Dumping and Incineration of Wastes; and
7. Miscellaneous.

Some notable elements include: s5 – Act applies to all vessels in Samoan waters and all Samoan vessels; s8 – criminal liability for specified persons in breach; s10 – ballast water requirements; s15 – waste reception facilities at Samoan ports; s16 – duty to report incidents; s17 – record-keeping in accordance with various treaties; s18 – powers enabling inspectors to enforce the legislation.

Regulatory approaches applied, where appropriate

The regulatory approach applied in the MPPA could be described as prescriptive command-and-control. The law, or the treaty to which the law refers, contains detailed rules in relation to matters such as the design or operation of vessels. Additionally, specified persons found to be in breach of those prescriptions are criminally liable.

Exceptions to this are the emphasis on planning (for example, marine spill contingency plans) in Part 3, and Part 5 as per below.

Financial or other incentives applied, where appropriate

Part 5 of MPPA, as the title suggests, presents in Samoan law the internationally-agreed position with regard to liabilities and compensation for marine pollution damage, citing the relevant conventions. Very importantly, also included are the insurance requirements for high-risk or large vessels.

Relevance

MPPA is directly relevant to this review. Preventing and responding to marine pollution, especially from shipping, as a key element of sustainable marine governance is an important aspect of MSP.

Concluding observations

This is a complex and important area of governance. The MPPA is a sound legislative instrument that strikes a balance between including some of the requirements of the relevant treaties within its own provisions, while integrating others by reference.

3.2.7 Shipping Act 1998

Overview

The Shipping Act provides powers and procedures necessary for the effective regulation of shipping in Samoan waters in accordance with international standards and conventions, and principles of good governance. The Act is administered by the Ministry of Works, Transport and Infrastructure. Via a combination of codification and adopting texts by reference, the Shipping Act implements in Samoan the law the following international treaties:

- a. International Convention on Load Lines 1966 and any amendments adopted;
- b. International Convention on Tonnage Measurement of Ships 1969, with any amendments from time to time adopted;
- c. Convention on the International Regulations for Preventing Collisions at Sea 1972, and all amendments adopted under the tacit acceptance procedures unless specifically rejected by Samoa;
- d. International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto, incorporating the 1981 and 1983 amendments;
- e. International Convention for the Safety of Life at Sea 1974, and SOLAS Protocol 1978, including the IMDG Code, and all amendments adopted under the tacit acceptance procedures unless specifically rejected by Samoa;
- f. International Convention of Standards on Training, Certification and Watchkeeping for Seafarers 1978, and all the relevant Protocols and Amendments of 1995, as amended;
- g. Convention on Limitation of Liability for Maritime Claims 1976;
- h. International Convention on Salvage 1989;
- i. International Convention on Maritime Liens and Mortgages 1993; and
- j. International Telecommunication Convention Geneva 1992 as amended.

Objective

To consolidate and amend the law relating to Shipping and Seamen and to control the registration, safety and manning of ships, and to give effect to various international maritime conventions, and for related purposes.

Jurisdiction

The Shipping Act applies to Samoa, expressly including the territorial sea. Section 3 provides that the Act “applies to all vessels registered or required to be registered or licensed under this Act or Regulations on a voyage and in any waters, and to a vessel in Samoan waters or in a Samoan port or harbour, and to a vessel on which Samoan seamen are employed, but does not apply to a vessel belonging to the defence force of a country, including but not limited to, warships, naval auxiliaries, patrol vessels and other similar vessels.”

Activities promoted, prohibited or regulated

The Act is an extensive legal instrument that includes requirements for matters such as declaring nationality (Part 2), registering vessels (Part 3), bareboat charters (Part 3A), safety (Part 4), certification for seaman and pilots (Part 5), international standards for seaman’s employment and welfare (Parts 6 and 7).

All aspects of the Shipping Act have some relevance for MSP, especially the matters regulated by Part 8 – marine navigation aids, Part 10 – wrecks and salvage, and Part 12 – arrest, forfeiture and forced sale of vessels.

Also noted are Section 70 – hazardous cargo, obliging masters to inform the Principal Surveyor of any hazardous cargo and empowering the Principal Surveyor to direct or prohibit various actions with regard to hazardous cargo. Section 73 requires masters to comply with the International Maritime Dangerous Goods (IMDG) Code and the Safety Convention when carrying dangerous goods. Section 80 obliges masters to report all casualties and incidents.

Regulatory approaches applied, where appropriate

The regulatory approach applied in the Shipping Act could be described as prescriptive command-and-control.

Financial or other incentives applied, where appropriate

None.

Relevance

The Shipping Act is **directly relevant** to this review.

Concluding observations

Effective regulation of shipping, which is an essential component of MSP, as well as a function of government, can benefit greatly through an MSP being developed and implemented.

3.2.8 Waste Management Act 2010

Overview

The Waste Management Act 2010 (WMA), administered by MNRE, provides the institutional and governance arrangements for general and hazardous waste management in Samoa, as well as implementation of the following international conventions in national law:

1. Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
2. 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;
3. Stockholm Convention on Persistent Organic Pollutants;
4. Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and
5. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 as amended by the Protocol of 1996.

Objectives

WMA aims “to provide for the collection and disposal of solid wastes and the management of all wastes in Samoa.”

Jurisdiction

WMA applies to Samoa, including the EEZ.

Activities promoted, prohibited or regulated

The WMA provides a regulatory framework for waste management, whereby the suite of activities promoted could be broadly described as environmentally sound waste management.

A central feature of the WMA is the designation, registration and licensing of ‘waste management operators’. Section 8 provides that upon commencement, the only approved operator is the Ministry, but thereafter other entities may be designated. Waste management operators are provided broad functions and powers by sections 24 and 25 respectively.

Some specific provisions or prohibitions particularly relevant to MSP include: section 20(2)(c) which provides an offence for throwing, depositing and/or discharging waste into areas including “mangrove or the sea.” Sections 38 and 39 prohibit dumping or incineration of wastes at sea without a permit from the Minister.

Regulatory approaches applied, where appropriate

The WMA applies a range of regulatory approaches: licensing and registration, auditing (s14), prescriptive command-and-control, community by-laws and polluter pays fees and charges.

Many of the international conventions requirements are met by providing the Ministry with regulation-making powers. This is an efficient method of achieving compliance with these international conventions, which in their detail are quite prescriptive. However the strategy is perhaps taken beyond its reasonable limits with regard to the Prior Informed Consent Convention which aims to regulate chemicals in trade, not waste.

An interesting inclusion in the WMA is Part 6 “Community Involvement in Waste Management.” Similarly to Part 8 of the FMA, this part seeks to engage communities and devolve some rule-making powers to them by applying the institutional structures established under the Village Fono Act. Given the limited resources available for enforcement and the disaggregated nature of much unsound waste management, effectively engaging community-level institutions in this manner has great potential to improve waste management. This would consequently benefit the marine environment, particularly near-shore areas.

Financial or other incentives applied, where appropriate

The WMA provides for the potential of a remarkably broad application of financial incentives to achieve its aims:

Section 10. Special waste related levies:

(1) The Head of State, acting on the advice of Cabinet, may make regulations which:

- (a) impose special levies on particular goods which have adverse effects on the environment;
- (b) impose additional charges on premises in commercial areas where services are provided by an approved waste management operator to maintain cleanliness of street, footpaths and public areas;
- (c) impose any other type of special levy relating to waste management services, or for the purpose of raising revenues for the effective management of wastes; and
- (d) provide for the payment, collection and use of special levies and additional charges.

(2) A levy imposed by regulations made under subsection (1) may be imposed, collected and recovered under the authority of this Act.

These types of levies have not yet been imposed, but section 10 nevertheless is a potentially powerful legislative instrument to apply financial incentives by internalising the environmental cost of goods otherwise borne by future generations of Samoans. This is an example of the polluter pays principle – a core principle of international environmental law – being operationalised in a SIDS context.

Sections 29-32 also provide for waste-related fees and charges.

Relevance

WMA is **directly relevant** to this review. Preventing degradation of marine environments caused by waste and pollution, whether from on-island or other sources, is a key element of sustainable marine governance and therefore an important aspect of MSP.

Concluding observations

The WMA is a sound legislative instrument that establishes a system of waste management in Samoa, ensures compliance by the Government of Samoa with several international conventions, and is well-adapted to the Samoan context.

3.2.9 National Parks and Reserves Act 1974

Overview

The National Parks and Reserves Act (NPA) enables the creation of various types of protected area. The Act is administered by MNRE. In the event the EMC Bill is passed, NPA would be repealed.

Objective

To provide for the establishment, preservation and administration of national parks and reserves for the benefit of the people of Samoa.

Jurisdiction

The NPA applies to “public land” in Samoa. “Land” is not defined in the NPA and therefore conforms with the Constitution by including land under water.

Activities promoted, prohibited or regulated

Part 2 provides for the establishment of national parks and Part 3 provides for establishing reserves.

National parks may be declared by the Head of State over any public land if it is not set aside for other public purposes and not less than 1500 acres in area. A national park must be preserved in perpetuity for the benefit and enjoyment of the people of Samoa, and must be administered to ensure preservation in its natural state, as far as practical; the flora and fauna are preserved as far as possible and the value as a soil, water, and forest conservation area is maintained.

Three types of reserves are described in the Act: nature reserves, recreation reserves and historic reserves. Additionally, reserves may be created for a specified purpose. Most relevant for MSP, a nature reserve is established for the conservation, protection and management of flora, fauna, or aquatic life, or the habitat of fauna or aquatic life within specified public land or the territorial sea. The Minister may prohibit or restrict persons from entering a reserve, and activities detrimental to the reserve.

Regulatory approaches applied, where appropriate

Part 4 of the NPA provides for five offences relating to contravening prohibitions made by notice in the Savali under the Act, with regard to a national park or reserve, or damaging the property or resources within the areas. A regulation-making power also exists that has not been exercised to date. Maximum penalties for offences appear to be quite low.

Financial or other incentives applied, where appropriate

None, except the authority in Section 11 to make regulations for imposing admission fees.

Relevance

NPA is **directly relevant** to this review because it is the principle law in Samoa enabling the creation of protected areas. NPA will lose its relevance if the EMC Bill is enacted.

Concluding observations

The NPA will be directly relevant to this review if it is determined as the appropriate legislation for Samoa to declare marine protected areas (however defined). If the EMC Bill passes in its current form, the NPA will be repealed and replaced by the new law.

3.2.10 Environmental Management and Conservation Bill (EMC Bill)

Overview

The EMC Bill, if enacted, would represent major reform in Samoan environmental law. The EMC Bill would

implement commitments made under the Convention on Biological Diversity and its protocols on biosafety and biosecurity. It would also repeal The National Parks and Reserves Act 1974 and most of 'the environment' aspects of the Lands, Survey and Environment Act 1989.

Objective

The objectives are set out in section 4:

- (a) conserving and protecting Samoa's environment while applying the principles of sustainable use to the development and management of its biodiversity;
- (b) maintaining and enhancing the health, diversity and productivity of the environment for the benefit of generations of today and the future;
- (c) recognising the inherent significance of conserving biodiversity and maintaining ecological integrity;
- (d) regulating biodiversity prospecting to ensure fair and equitable access and benefit sharing arising from the utilization of genetic resources and use of associated traditional knowledge related to those genetic resources;
- (e) protecting Samoa's protected areas; and
- (f) ensuring Samoa meets its international environmental obligations under Conventions referred to in Schedule 1.

Jurisdiction

The EMC Bill applies to Samoa, including the EEZ.

Activities promoted, prohibited or regulated

This is perhaps best summarised by first listing the names of the EMC Bill's Parts and Divisions:

Part 1 – Preliminary

Part 2 – Administration

Div 1 – Minister, CEO, Ministry

Div 2 – Environment Board and Committees

Div 3 – Environment Fund and Audits

Div 4 – Reporting

Part 3 – Biological Diversity Conservation and Sustainable Management

Div 1 – Guiding Principles

Div 2 – Identification and Monitoring

Div 3 – Environmental Lists, Registers and Plans

Div 4 – Declaring Protected Areas

Part 4 – ABS of Genetic Resources and Associated Traditional Knowledge

Part 5 – Biosafety

Div 1 – Transboundary Movements of GMOs

Div 2 – Unintentional Releases

Part 6 – Compliance

Div 1 – Compliance and Enforcement

Div 2 – Offences and Penalties

Div 3 – Indemnities

Part 7 – Miscellaneous

Regulatory approaches applied, where appropriate

Parts 3, 4 and 5 apply various regulatory approaches.

Part 3 Div 4 (sections 35-44) enable various kinds of protected area to be declared (e.g. national parks, nature reserves, mangrove reserves, wildlife and marine wildlife reserves, community conservation areas). This is a notable aspect of the EMC Bill as it provides a selection of governance approaches to achieve objectives related to in situ conservation and sustainable use of biodiversity, including marine biodiversity. Existing protected areas are continued by virtue of the savings' provision in Part 7.

Part 4 and 5 implement the Nagoya Protocol and the Cartagena Protocol respectively. These establish permitting systems for bioprospecting, and transboundary movements of GMOs.

Regulations yet to be prepared would provide much of the detailed requirements for all of the aforementioned regulatory approaches.

Part 6 provides a range of enforcement powers available to the Minister and the Ministry CEO. These include emergency orders, notices to cease activities, precautionary notices, and penalty notices, as well as powers to enter, inspect and seize. Division 2 of the Part provides offences and penalties. This review makes two findings and recommendations with regard to possible refinement of these aspects of the EMC Bill (see section 4.2.2).

Part 2 is also relevant to this review inasmuch as it would create an Environment Board, chaired by the Environment Minister and with membership including the CEOs of many of the Ministries with a stake in MSP, as well as representatives from the private, community and NGO sectors. Section 13 elucidates the functions of the board; stakeholders might consider making adjustments to this provision to include [endorsing/reviewing/advising/coordinating] the MSP and its implementation. Section 16 further provides power to appoint Advisory or Technical Committees. This is another provision that could potentially be applied for future MSP processes.

Financial or other incentives applied, where appropriate

The EMC Bill does not apply incentives.

Relevance

The EMC Bill, assuming it maintains its current agenda, is **directly relevant** to this review. It would re-authorise the ministerial arrangements for the environment sector, implement in Samoa key international and regional treaty obligations on biodiversity conservation, and establish an institutional framework that could potentially be applied to develop, coordinate, endorse and implement MSP in Samoa.

Concluding observations

As highlighted in the following sections, the EMC Bill will fill various gaps in Samoa's environmental regulatory framework. For this reason, especially with regard to its expanded protected area categories, passage of the EMC Bill is important to provide a sound foundation for MSP in Samoa.

Section 3.3

Tables summarising Samoan legal provisions relating to MSP

This section provides three summary tables, as follows:

- 3.2.1 Prohibited uses of Samoa's Ocean and related prohibited actions
- 3.2.2 Uses of Samoa's ocean requiring licensing/permitting
- 3.2.3 Spatial allocations of various kinds ("zoning") in existing Samoan law

3.2.1 Table 1 - Prohibited uses of Samoa's ocean and related prohibited actions

Use/Action	National Law	Notes
Remove any silt, sand, gravel, cobble, boulders or coral from the foreshore or coastal waters w/o permit	LSE Act s119-120	
Excavate, dredge, clear etc, foreshore or coastal waters w/o permit	LSE Act s119-120	
Place fill in foreshore or coastal waters w/o permit	LSE Act s119-120	
Erect structure in foreshore or coastal waters w/o permit	LSE Act s119-120	
Pollute Samoan waters	LSE Act s123	
Littering	LSE Act s130	
Kill, injure or harm any turtles, marine mammals or spawning aggregations	Marine Wildlife Regulations (under LSE Act)	
Harasses turtles, marine mammals or spawning aggregations	Marine Wildlife Regulations (under LSE Act)	
Fishing for sharks and various related offences	Marine Wildlife Regulations (under LSE Act)	except for subsistence from a non-motorised vessel
Disturbing turtle nests or taking turtle eggs	Marine Wildlife Regulations (under LSE Act)	
Import or export marine species or products in contravention of CITES	Marine Wildlife Regulations (under LSE Act) Trade in Endangered Species Bill	
Failing to report incidents with turtles, marine mammals	Marine Wildlife Regulations (under LSE Act)	
Tourism operations based around whale, dolphin and turtle watching activities w/o permit	Marine Wildlife Regulations (under LSE Act)	

Use/Action	National Law	Notes
Researching marine mammals, turtles, sharks, spawning aggregation species w/o permit	Marine Wildlife Regulations (under LSE Act)	
Keeping a marine mammal or turtle in captivity and/or display w/o permit	Marine Wildlife Regulations (under LSE Act)	
Taking of any marine life for the aquarium trade w/o permit	Marine Wildlife Regulations (under LSE Act)	
Commercial diving tours and other marine-based tourism w/o permit	Marine Wildlife Regulations (under LSE Act)	
Exporting marine scientific samples w/o permit	Marine Wildlife Regulations (under LSE Act)	
Failure to comply with marine wildlife tagging rules	Marine Wildlife Regulations (under LSE Act)	
Undertake "development needing consent" under PUMA (in marine space) w/o permit	PUMA Part 5 and s84	
Marine scientific research w/o permit	Fisheries Act s27	
Exploratory or test fishing w/o permit	Fisheries Act s38	
Fishing with explosives or poisons	Fisheries Act s42	
Fishing with driftnet	Fisheries Act s43	
Tranship fish to or from a foreign vessel in Samoan fisheries waters w/o permit	Fisheries Act s44	
Process/trade/market fish w/o permit	Fisheries Act ss 46-47	
Fishing vessels failing to use Mobile Transceiver Units as prescribed	Fisheries Act s48	
Undertaking aquaculture w/o permit	Fisheries Act Part 4 Div 2	
Using prohibited fishing gear	Fisheries Act s82	
Fishing in breach of local fisheries by-laws	Fisheries Act s88 and bylaws	
Permit vessel to be used to contravene treaties or foreign laws	Fisheries Act s90	
Foreign vessel using or threatening force	Maritime Zones Act s12(a)	
Foreign vessel using weapons for practice or exercise	Maritime Zones Act s12(b)	
Foreign vessel collecting sensitive national security related information	Maritime Zones Act s12(c)	
Foreign vessel undertaking an act of propaganda	Maritime Zones Act s12(d)	
Foreign vessel launching, landing or taking on board aircraft or military devices	Maritime Zones Act s12(e)	
Foreign vessel loading or unloading any commodity or persons or currency contrary to law	Maritime Zones Act s12(f)	
Foreign vessel wilfully polluting the marine environment of Samoa	Maritime Zones Act s12(g)	
Foreign vessel fishing without a licence	Maritime Zones Act s12(h)	
Foreign vessel carrying out of scientific research or hydrographic survey activities	Maritime Zones Act s12(i)	
Foreign vessel interfering with communications or other 'such facilities or installations'	Maritime Zones Act s12(j)	

Use/Action	National Law	Notes
In the EEZ, engaging 'in any activity which is inconsistent with the sovereign rights and jurisdiction of the Independent State of Samoa'	Maritime Zones Act s22	
Foreign submarines navigating underwater through Samoa's territorial sea	Maritime Zones Act s24	
Export hazardous waste w/o permit	WMA s21, Maritime Zones Act s14	
Import hazardous waste	WMA s21, Maritime Zones Act s14	
Discharging, depositing, throwing any waste into or in vicinity of sea, foreshore, mangroves	WMA s20(2)	
Polluting public land ¹¹	WMA s20(1)	
Dumping or incineration of wastes at sea w/o permit	WMA 2010 s38	
Manage waste locally other than in accordance with community by-laws	WMA s40 & by-laws	
Operating vessels in contravention of MARPOL design and pollution prevention standards	MPPA s7 & 8	
Discharging a pollutant or harmful substance from a vessel, platform or place on land into Samoan waters	MPPA s9	
Discharging ballast water containing non-indigenous harmful aquatic organisms or pathogens	MPPA s10	
Discharging ballast water w/o permit	MPPA s10, Quarantine Act s29	
Hull scraping or cleaning in a manner that introduces harmful organisms	MPPA s11	
Using harmful anti-fouling systems	MPPA s12	
Polluting Samoan waters from ship repair facility operations	MPPA s13	
Failing to report discharges of pollutants or stranded/wrecked vessels in Samoan waters	MPPA s16	
Failing to comply with oil tanker reporting requirements	MPPA s17	
Offences relating to marine casualties	MPPA s39	
Dumping or incineration of wastes at sea	MPPA Part 6	
Improper display or assumption of nationality by vessel	Shipping Act ss4-5	
Improper marking, description, certificates for vessels	Shipping Act ss20, 23, 24, 25, 28, 29	
Actions contravening Load Lines Convention	Shipping Act s51	
Actions contravening the Safety Convention	Shipping Act s51	
Actions contravening MARPOL 73/78 Convention	Shipping Act s51	
Actions contravening various requirements related to safety, incl reporting dangers to navigation, aiding persons in distress and in case of collision, reporting incidents, maximum passenger limits, overloading, unsafe vessels	Shipping Act ss54, 63, 65, 66, 67, 68, 69, 70, 75, 77, 78, 80	

¹¹ Note that public land includes land below the high tide mark.

Use/Action	National Law	Notes
Actions contravening the International Maritime Dangerous Goods (IMDG) Code	Shipping Act s73	
Improper actions in relation to navigation aids	Shipping Act s162	
Improper actions in relation to wrecks	Shipping Act s188	
Importing by vessel 'regulated articles' in contravention of Quarantine (Biosecurity) Act w/o permit	Quarantine (Biosecurity) Act s12	
Importing by vessel 'regulated articles' other than through prescribed ports of entry	Quarantine (Biosecurity) Act s23	
False declaration by passengers	Quarantine (Biosecurity) Act s28	
False declaration by master or agent of vessel	Quarantine (Biosecurity) Act s7	
Navigating a vessel in a pilotage area other than by a person authorised under Ports Authority Act	PAA s47 & 49	Note exemptions s48
Polluting waters of a port	PAA s57	
Contravening any prohibition or restriction applying to a national park, protected area (nature reserve etc)	National Parks Act s12, EMC Bill s71	
Bioprospecting w/o permit	EMC Bill Part 4 & s69	
Exporting genetic resources w/o permit	EMC Bill s52	
Transboundary movements of genetically modified organisms w/o permit.	EMC Bill Part 5 & s70	
Unreported unintentional release of a genetically modified organism	EMC Bill s58	
Causing significant (marine) environmental impact to:		
Threatened species		
Endangered pop.		
Threatened ecological community	EMC Bill s68	
Critical habitat		
Migratory species		
Spawning/breeding aggregations		
Import of certain products containing mercury after phase out date.		
Seabed minerals exploration w/o permit	Maritime Zones Act s11	
Seabed minerals extractive operations w/o permit	(various possible offences in the event of occurrence, but no specific regulatory mechanism or prohibition)	

3.2.2 Table - Uses of Samoa's ocean requiring some form of licensing/permitting

Use	Instrument	Notes
Remove silt, sand, gravel, cobble, boulders or coral from the foreshore or coastal waters; or dredge, excavate or fill from the foreshore or coastal waters	LSE Act s119 & 120	
Tourism operations based around whale, dolphin and turtle watching activities	Marine Wildlife Regulations (under LSE Act)	
Researching marine mammals, turtles, sharks, spawning aggregation species	Marine Wildlife Regulations (under LSE Act)	
Keeping a marine mammal or turtle in captivity and/or display	Marine Wildlife Regulations (under LSE Act)	
Taking of any marine life for the aquarium trade	Marine Wildlife Regulations (under LSE Act)	
Commercial diving tours and other marine-based tourism	Marine Wildlife Regulations (under LSE Act)	
Exporting marine wildlife or products in accordance with CITES	Marine Wildlife Regulations (under LSE Act) Trade in Endangered Species Bill	
Exporting marine scientific samples	Marine Wildlife Regulations (under LSE Act)	
Undertake "development needing consent" under PUMA (in marine space)	PUMA s34 and Part 5	
Undertaking aquaculture	Fisheries Management Act Part 4 Div 2	
Exploratory or test fishing	Fisheries Management Act s38	
Fish using Samoan vessels	Fisheries Management Act s22 & Part 3 Div 2	Note exemptions
Fish using foreign vessels	Fisheries Management Act s26 & Part 3 Div 2	
Marine scientific research	Fisheries Management Act s27	
Process/trade/market fish	Fisheries Management Act ss 46-47	
Export, transit of hazardous waste by vessel	Waste Management Act 2010	
Dumping or incineration of wastes at sea	Waste Management Act 2010 s38	
Discharging ballast water	MPPA s10 and Quarantine Act s29	
Discharging pollutants or harmful substances in order to respond to an incident	MPPA s14	
Importing by vessel 'regulated articles'	Quarantine (Biosecurity) Act s12	
Bioprospecting	EMC Bill Part 4	
Exporting genetic resources	EMC Bill s52	
Transboundary movements of genetically modified organisms	EMC Bill Part 5	Note exemptions 55.
Seabed minerals exploration	(no specific regulatory mechanism)	
Seabed minerals extractive operations	(no specific regulatory mechanism)	

3.2.3 Marine spatial allocations of various kinds (“zoning”) in existing Samoan law

Zone	Instrument	Notes
National marine sanctuary	Marine Wildlife Regulations Reg14A (under LSE Act)	
National park	National Parks Act Part 2, EMC Bill Part 3, Div 4	
Nature reserve	National Parks Act s6, EMC Bill Part 3, Div 4	Bill not enacted
Recreation reserve	National Parks Act s7, EMC Bill Part 3, Div 4	Bill not enacted
Historic reserve	National Parks Act s8, EMC Bill Part 3, Div 4	Bill not enacted
Special reserve	National Parks Act s9, EMC Bill Part 3, Div 4	Bill not enacted
Mangrove ecosystem reserve	EMC Bill Part 3, Div 4	Bill not enacted
Marine wildlife sanctuary	EMC Bill Part 3, Div 4	Bill not enacted
Wetland reserve	EMC Bill Part 3, Div 4	Bill not enacted
Community conservation areas	EMC Bill ss43-44	
Territorial sea	Maritime Zones Act	
Internal waters	Maritime Zones Act	
Contiguous zone	Maritime Zones Act	
Exclusive economic zone	Maritime Zones Act	
Village fisheries management areas	Fisheries Management Act s19	
Designated fishery	Fisheries Management Act s20	
Areas closed to fishing under village by-Laws	Fisheries Management Act s86 and By-laws	
Ports	Ports Authority Act s 3	
Approaches to ports	Ports Authority Act s 3	
Customs port	Customs Act s10	
Designated ports for foreign fishing vessel access	Fisheries Act s45(1)(a)	
Prohibited area around wrecked vessel	Shipping Act s177	
Community mangrove areas (e.g. Sapapalii mangrove area)	Sapapalii Mangrove Management Plan 2018 - 2023	Not enforceable despite citing laws. Potential exists if the EMC Bill is enacted.

Section 4

Areas for possible reform with regard to Marine Spatial Planning

Section 4.1

Introduction

As is evident from previous sections, Samoa presently has a great deal of law and policy relevant to ocean governance. The review's terms of reference require gaps to be identified; only a few actual gaps exist in Samoa's maritime legislative framework. The majority of Samoa's ocean activities and management that should be regulated or prohibited, according to both international legal obligations and widely-accepted principles of good governance, are already legislatively addressed .

Optimising governance frameworks, however, is wider in scope than identifying and addressing legislative gaps. Availability of technical, human and financial resources, appropriate regulatory design, effective interagency coordination and productive stakeholder relationships, are all as likely as incomplete laws, to impact the effectiveness of environmental governance. Consideration of these matters is however, beyond the scope of this desktop study.

Most of the areas for reform discussed in the following section (4.2) have already been noted by stakeholders as requiring legislative review and amendment. Some amendments have been proposed but are not yet enacted (these are highlighted in blue in the tables in the previous section). Identified areas for reform are:

1. Expanded categories of protected area, including categories that formalise co-management of marine and coastal protected area governance;
2. Clarifying compliance and offence provisions proposed in the EMC Bill;
3. Prohibitions on biopiracy and a regulatory framework to facilitate bioprospecting in conformity with the Nagoya Protocol;
4. Prohibitions on the transboundary movement of living modified organisms and a biosafety regulatory framework in conformity with the Cartagena Protocol;
5. Regulatory action in conformity with Minamata Convention;
6. Regulation of seabed minerals exploration and seabed mining;
7. Review the *Planning & Urban Management Agency Act* and *Regulations* with a view to including ecosystem-based approaches to climate change;
8. Review policy and legislation for Coastal Ecosystem Services protection;
9. Clarifying the National Marine Sanctuary established by the Marine Wildlife Regulations;and
10. Amendments introducing a whole-of-jurisdiction marine planning process, including a marine protected area network.

Section 4.2

Areas of identified reform in Samoa's ocean governance framework

4.2.1 Expanded categories of protected area, including categories that formalise co-management and facilitate decentralised marine and coastal protected area governance

Central to MSP are legal mechanisms that enable the establishment of different kinds of marine protected areas.¹² Existing legal provisions, primarily the National Parks Act 1974, are not ideal to support the establishment of a diverse marine protected area network as aimed for in the SOS. Such a network will include new protected areas in habitats as diverse as remote seamounts, mangrove areas, and inshore reef areas regularly accessed by a diverse range of users, most notably subsistence fishers. Part 3 of Division 4 of the EMC Bill would provide this by expanding the available categories of protected area, including categories specific to local marine contexts, special high-value ecological zones such as mangroves, and categories that formalise co-management and decentralised marine and coastal protected area governance.

Mangrove areas in particular would benefit from greater legal clarity as their habitat is both below the high-water mark (public land) and above it (customary land) and so present a particularly complex challenge for environmental regulators. A review some years ago which identified and discussed the legal complexities and uncertainties surrounding mangrove conservation, made various recommendations regarding possible reform.¹³

It appears the solution subsequently reached by stakeholders was to include two categories of protected area in the EMC Bill that could assist in protecting mangroves – s40 Mangrove Ecosystem Reserve, and ss43 & 44 Community Conservation Areas (CCA). The latter provision mirrors comparable sections of the Fisheries Act (Part 8) enabling the promulgation of village bylaws enforceable against all persons, not only local residents. The CCA provisions could interact with village-level planning and management instruments, such as the Sapapalii Mangrove Ecosystem Management Plan 2018 – 2020, giving them enforceable legal effect.

Two aspects of s 43 of the EMC Bill (Recording CCAs), are noted in the context of implementing MSP. The first is subsection (3), which provides “In this section, area of customary land includes a marine area used by the beneficial owners pursuant to their customary fishing rights.” This is significant as it clarifies that village-level conservation measures may apply in marine areas otherwise beyond their *de jure* authority.¹⁴

The second issue of note regarding s 43 of the EMC Bill is the restrictive nature of the criteria in subsection (2). This subsection limits the potential recognition of CCAs under the Act to those meeting ecological criteria regarding a site's uniqueness or meeting the standards of the World Heritage Convention. Strict application of the criteria in subsection (2) will severely limit the number of CCAs covered by the Act, and may potentially leave local stakeholders who would like to have their CCAs receive the benefits of being recorded under the Act, unable to do so.

If practical resource constraints limit the number of communities with whom the Ministry can work on these issues, it is possible to use the ecological criteria in subsection (2) as a way to prioritise between sites. Excluding from the Act all consideration of CCAs that might not meet these restrictive criteria seems both unnecessary, and contrary to achieving the objective of sustainable conservation and management of Samoa's biological diversity and natural resources.

¹² Environmental Law Institute & Animals | Environment PLLC (2020) *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters* USA.

¹³ IUCN and Government of Samoa (2014) *Review of Policy and Legislation Relating to the Use and Management of Mangrove Ecosystems in Samoa*.

¹⁴ For an analysis of land tenure issues affecting coastal and inshore areas in Samoa see Ibid, 23-32.

Finding 1.1

One of the fundamental foundations of MSP are laws that provide a range of categories of marine protected areas which can account for the diverse circumstances of marine conservation. Particularly in Pacific island countries this involves including mechanisms to recognise co-managed and community-based conservation efforts. Passage of the EMC Bill will enable this.

Finding 1.2

The criteria in subsection (2) of s43 of the EMC Bill will restrict the sites to which the provision may apply, possibly to the overall detriment of community-based marine conservation in Samoa.

Recommendation 1.1

Stakeholders progress passage of the EMC Bill thus establishing a broader range of marine protected area categories.

Recommendation 1.2

Stakeholders review subsection (2) of s43 of the EMC Bill with a view to ensuring that it will not unnecessarily limit the sites to which ss43 and 44 might otherwise apply.

4.2.2 Clarifying compliance and offence provisions proposed in the EMC Bill

MSP relies on the effective operation of its core offence and enforcement provisions. They need to be clearly defined and empower the Ministry to enforce the law efficiently, effectively and fairly. The EMC Bill, when enacted, will be Samoa's central environmental legislation, and for that reason has been reviewed with particular focus on how it might support MSP. In summary, aspects of the EMC Bill could be clarified and enhanced. The relevant sections of the EMC Bill are s2 Interpretation (definition of 'significant environmental impact') and Part 6 Compliance and Enforcement, Offences and Penalties ss59-72.

As currently drafted, "significant environmental impact" is a key phrase within the EMC Bill triggering compliance and offence provisions. The definition of this phrase is unclear. Firstly, the primary aim of the provision appears to be a statement of factors for consideration in determining whether an environmental impact is significant. "Environmental impact" is not defined. Secondly, the definition relies upon the term "development" which is not defined in the Bill and very ambiguous. Contributing to this lack of clarity, the first phrase of the definition refers to "activity or development," yet the remainder of the definition refers only to "development." Therefore, it conveys uncertainty as to whether the concept is limited to "development" or applies to any activity? Is "development" in this context the same as defined in the PUMA?

Finally, the definition's inclusive list of factors does not reduce the uncertainty posing questions such as: "Are all of these factors equal?"; "Who is obligated under the law to make these judgements?"; and "How are conflicts between factors to be weighed?". Some of the criteria also raise questions as to whether the prospect of 'controversy' should be considered in deciding whether an environmental impact is significant, how it might influence the decision, and how it could be applied consistently?

The issues raised in the previous paragraph are considered in the context of Part 6 (Compliance, Enforcement, Offences and Penalties) noting:

- Section 59 empowers the Minister to issue an emergency order if of the opinion that "a situation poses a threat or risk to Samoa's environment" that requires the immediate making of an order to protect the environment;

- Section 60 empowers issuing of a notice to cease an activity if there is “a significant adverse threat or risk to the environment”;
- Section 61 empowers an authorised officer to issue a precautionary notice upon suspicion that “an activity, matter or thing may be result in significant environmental impact” (sic);
- Section 62 empowers the issuing of “improvement and prohibition notices” on government entities or “facilities” (an ambiguous term not defined), if there is “a threat or risk to the environment”;
- Section 63 – Environmental offence and penalty notices - is triggered by a person having committed “an offence under this Act”;
- Section 64 is much broader, providing authorised officers powers of entry, inspection and seizure to enforce “any enactment regulating the environment”;
- Section 65 creates a “general offence” but this is limited to “any act which is inconsistent with or contravenes a provision of this Act.” However, this provision seems redundant as the Bill provides specific offence provisions for every prohibition it creates (ss66-71) as do each of the existing LSE environmental regulations that might be carried forwards.
- Section 68 is reproduced below as it is particularly important for MSP especially given the low penalties for offences specifically related to protected areas:

Strict liability offences for listed species – (1) A person commits a strict liability offence if the person takes an action, without lawful authorisation, which results in a significant environmental impact or is likely to have a significant environmental impact, on:

- a. species that are listed as threatened native species;
- b. endangered population;
- c. threatened ecological community;
- d. critical habitat;
- e. species that are listed as migratory species; or
- f. species migrating to spawn or to breed;

and is liable on conviction to a fine not exceeding 1,000 penaltyunits or to a term of imprisonment not exceeding 5 years, or both.

The primary issue of concern is that the operability of sections 60, 61 and 68, and perhaps also sections 59 and 62 of the EMC Bill rely upon judgements regarding what is, or might be, “significant environmental impact”. As currently drafted uncertainty exists regarding the meaning of the term, how it might be applied, and to what extent the (future) Act could be enforced to prevent or respond to environmental impacts that fall below an uncertain bar of “significance”.

Other jurisdictions have confronted similar issues to those described above. While Samoa’s situation is undoubtedly unique in many respects, it may be useful for stakeholders to review legislation from other countries which have overcome at least some comparable hurdles. A typical format is as follows:

- defining “environmental harm” or less typically, environmental impact noting an impact can be positive or negative, as a distinct concept;
- defining two or three gradations of “environmental harm.” For example, “environmental nuisance,”

“material environmental harm” and “serious environmental harm”; and

- including general offences, in addition to other specific offences, for causing each level of environmental harm.

These terms are to be applied as appropriate in the legislation, especially the compliance enforcement and offence sections. Consistent use of defined terms provides clarity and certainty regarding the application of the law, while the gradations enable different penalties, offences, notices, procedures etc. to be applied as appropriate to various contexts, rather than what may be an extreme all-or-nothing determination as to whether a threat, risk, impact etc is “significant”. Appendix B provides two examples: ss14-17 of the *Queensland Environmental Protection Act 1994* and s3A(2) of the *Environmental Protection Act 1986* (Western Australia).

Finding 2

The EMC Bill as drafted, includes a pivotal term “significant environmental impact” which is defined in a manner that introduces uncertainty regarding interpretation and application by administrators and courts. This element, especially in its interaction with the compliance, enforcement and offence provisions of the Bill, may require further consideration and review by stakeholders.

Recommendation 2.1

Stakeholders consider replacing in the EMC Bill the term “significant environmental impact” with multiple defined terms that separate the task of defining “environmental impact / harm” from determinations made regarding degrees of seriousness or significance.

Recommendation 2.2

Stakeholders consider including in the EMC Bill offence provisions for causing various defined degrees of environmental harm.

4.2.3 Prohibitions on biopiracy and a regulatory framework to facilitate bioprospecting in conformity with the Nagoya Protocol

As among the potential uses of Samoa’s marine areas is bioprospecting for genetic resources, a regulatory framework for this activity, consistent with international legal obligations, is a necessary foundational element for MSP. Samoa’s NBSAP commits to the objective of enacting national legislation to implement the Nagoya Protocol (Target 16 and Action 16.2). Legislative provisions to meet this objective are included as Part 4 of the EMC Bill.

It would be possible to achieve this aim by implementing the Nagoya Protocol in the same manner as the EMC Bill would implement CITES i.e. via regulation. The resulting minimal legal effect would also render the EMC Bill simpler and briefer.

Finding 3.1

Samoa has ratified but not yet fully implemented the Nagoya Protocol in legislation. Draft legislation has been prepared (Part 4 of the EMC Bill) to fulfil this need.

Recommendation 3.1

Stakeholders progress passage of the EMC Bill, thus establishing a regulatory framework for access and benefit sharing of genetic resources in compliance with the Nagoya Protocol.

4.2.4 Prohibitions on the transboundary movement of living modified organisms and a biosafety regulatory framework in conformity with the Cartagena Protocol

Among the potential threats to Samoa's marine environment is the introduction of invasive or otherwise damaging living modified organisms. Therefore, a biosafety regulatory framework consistent with international legal obligations is an essential foundation for MSP. Samoa's ratification of the Cartagena Protocol commits the nation to the objective of enacting national legislation for its implementation. Legislative provisions to meet this objective are included as Part 5 of the EMC Bill.

It would be possible to achieve this aim by implementing the Cartagena Protocol in the same manner as the EMC Bill would implement CITES i.e. via regulation. The resulting minimal legal effect would also render the EMC Bill simpler and briefer.

Finding 4.1

Samoa has ratified but not yet fully implemented the Cartagena Protocol in legislation. Draft legislation has been prepared (Part 5 of the EMC Bill) to fulfil this need.

Recommendation 4.1

Stakeholders progress passage of the EMC Bill, thus establishing a regulatory framework for biosafety in compliance with the Cartagena Protocol.

4.2.5 Regulatory action to phase-out certain products and discharges in conformity with the Minamata Convention

Mercury contamination is among the potential threats to Samoa's marine environment. Samoa has joined the international community in ratifying the Minamata Convention that specifically addresses these threats. In 2018 a *Minamata Initial Assessment Report for Samoa* was prepared, including a full inventory of emissions and releases, and an assessment of the policy, legal and regulatory actions required to bring Samoa into full compliance with the Convention. These are summarised in Annex 2 of the report in the column headed "Outstanding regulatory or policy aspects that need to be addressed or developed to ensure compliance with the Convention." Actions recommended in the report include new regulations under some or all of the LSE Act (or the EMC Bill, should it be enacted), the WMA, and the Water Resource Management Act.

Finding 5.1

Samoa has ratified the Minamata Convention on Mercury and completed a *Minamata Initial Assessment Report* identifying specific (and relatively minor) regulatory actions required to ensure full conformity with the Convention's obligations.

Recommendation 5.1

Samoa's marine environment will be more effectively protected from the threat posed by mercury contamination upon implementing the regulatory reform identified in the *Minamata Initial Assessment Report for Samoa*, Annex 2.

4.2.6 Regulation of seabed minerals exploration and seabed mining

Integrated Management Solution 11 of the SOS states; “Review existing policies and establish legislation where appropriate to manage risks posed by deep-sea and seabed exploration.” It states in part, “Mineral resources have been identified in the seabed of Samoa’s EEZ and exploration activities for the future exploitation of these resources may be initiated, thus posing potential threats to the deep-sea ecology of the offshore ocean. . . . For this reason, the proposed Solution will ensure that best practices for seabed exploration are followed and that appropriate regulations are in place to improve management and preserve the biodiversity of deep-sea ecosystems.” This commitment is also in keeping with Samoa’s obligations under Article 8 of the Noumea Convention, as well as UNCLOS.

Finding 6.1

The Samoa Ocean Strategy identifies governance of seabed minerals as requiring specific regulatory oversight and a commitment to establishing this through a process of review and reform.

Recommendation 6.1

Apply stakeholders progress Integrated Management Solution 11 of the Samoa Ocean Strategy: “Review existing policies and establish legislation where appropriate to manage risks posed by deep-sea and seabed exploration as planned and scheduled.”

4.2.7 Revise the Planning & Urban Management Agency Act and Regulations to include coral reefs and ecosystem-based approaches to climate change.

Integrated Management Solution 10 of the SOS is Integrate Ecosystem-Based Approach (EBA) into existing climate change adaptation management plans and initiatives. To achieve this, the first objective for this solution is “By 2025, current legislation Planning & Urban Management Agency (PUMA) and policies (ecosystem impact assessment-related) are revised to include coral reefs and highlight EBA to climate change issues.”

The SOS explains this objective: “Mangrove forests are essential, supporting coastal ecosystems and contributing to the sequestration and storage of CO₂, coastal protection, food production and biodiversity. Traditionally, mangroves have been harvested for wood and to clear land for houses and other amenities. Only recently has the significant role of these biodiverse and carbon-rich coastal ecosystems been recognized. Hence, the recent imperative for policies aimed at their protection. In Samoa, policies and legislation are needed for the conservation of mangrove forests at national level.”¹⁵

Finding 7.1

The Samoa Ocean Strategy identifies the need to integrate ecosystem-based approaches to climate change as requiring inclusion in planning and EIA legislation and has committed to establishing this through a process of review and reform.

Recommendation 7.1

Stakeholders progress Integrated Management Solution 10 of the Samoa Ocean Strategy in reviewing and revising the relevant legislation to expressly include considerations relating to coral reefs and ecosystem-based approaches to climate change.

¹⁵ Government of Samoa (2020, Apia) *Samoa Ocean Strategy 2020-2030*, 36.

4.2.8 Review policy and legislation for Coastal Ecosystem Services protection

Integrated Management Solution 9 of the SOS is “Strengthen policy and legislation for Coastal Ecosystem Services protection”. The SOS explains; “This Solution is a reflection of the current weak protection of coastal ecosystems and the services they provide. Coastal ecosystems include coral reefs, mangroves, coastal marshes/wetlands, beaches, and seagrass meadows. The protection measures of this Solution include conservation mechanisms and provisions in the sectoral and cross-sectoral legislation regulating activities which may impact all coastal ecosystems. The fragmentation of the legislation relating to coastal ecosystems hinders their effective management and protection.”

Objectives under this solution include reviewing legislation on coastal management by 2022 and reviewing legislation on coastal ecosystem services protection by 2025.

Finding 8.1

The Samoa Ocean Strategy identifies the need to strengthen policy and legislation for Coastal Ecosystem Services protection and has committed to establishing this through a process of review and reform.

Recommendation 8.1

Stakeholders progress Integrated Management Solution 9 of the Samoa Ocean Strategy by reviewing and revising legislation relating to coastal management and coastal ecosystem services protection.

4.2.9 Clarify the National Marine Sanctuary

Regulation 14A of the Marine Wildlife Regulations provides that “Samoa shall have a National Marine Sanctuary that provides for and recognises the conservation of whales, dolphins, turtles and sharks within the Exclusive Economic Zone”. It is not clear whether the Sanctuary is created by this provision, or will be created in the future with inclusion of additional safeguards or prohibitions to protect the species identified.

The Samoa Ocean Strategy does not mention the National Marine Sanctuary, which seems anomalous. The most relevant of the Integrated Management Solutions is 8 “Establish effective protection and management of endangered marine migratory species”.

Finding 9.1

Although National Marine Sanctuary is mentioned in regulation 14A of the Marine Wildlife Regulations, the legal effect of this provision is uncertain.

Recommendation 9.1

If an intent remains to have a National Marine Sanctuary, stakeholders should consider and clarify any effect in law.

4.2.10 Amendments formalising a whole-of-jurisdiction marine planning process, including a marine protected area network.

For reasons outlined in section 1, Samoa’s commitment to developing a Marine Spatial Plan should be accompanied by legal provisions formalising the process and making the resulting plan enforceable. The MSP legal reform should include provisions relating to SOS Integrated Management.



Solution 7

Strengthening the Marine Protected Area network. This will ensure that whole-of-jurisdiction MPA planning is included in the MSP process.

Recommendation 10

Amendments to an existing law, or a new enactment, should formalise a whole-of-jurisdiction marine planning process (MSP), including a marine protected area network.

Refining this recommendation is the central purpose of Section Five.

Section 5

Options for legislating Marine Spatial Planning

Section 5.1

Introduction

This section discusses and identifies options for stakeholders to integrate MSP within legal frameworks in Samoa. This introduction is followed by examples from five other jurisdictions highlighting relevant issues to consider in this context. The third section identifies broad legal options in existing, proposed or new enactments that could be used to formalise MSP.

An issue worth noting is that one of the authors of *Designing Marine Spatial Planning Legislation: A Guide for Legal Drafters* emphasises:

“There is no model MSP Act that will work for every country. Rather, an MSP law must be tailored to each country’s individual needs and circumstances, taking into account and complementing the country’s existing legal framework. Most countries already have at least some laws that contain definitions relevant to MSP, govern the use of certain ocean areas, and/or establish enforcement mechanisms for ocean-related offenses. . . .The determination of how and where to incorporate MSP provisions depends on many factors, including the reach of existing legislation. Since marine spatial planning is cross-cutting, multiple sectors will come within the legislation’s purview. Yet, MSP law is typically intended to complement and build on existing legislation, not displace it, so each ministry/department will retain its usual portfolio.”¹⁶

Section 5.2

Examples from elsewhere

MSP is a fairly new concept, especially in the way it is now being considered and discussed – as a whole-of-jurisdiction method of marine use planning. The earliest and best understood examples of MSP in law are aimed towards the management of specific marine protected areas rather than a whole-of-jurisdiction planning and zoning approach. Although some of these areas are very large, they are nevertheless only part of the marine space of the jurisdiction concerned. Consequently the corresponding laws do not need to address the complex challenge of providing a comprehensive system encompassing all uses, by all users, in all places. The example of MSP in law most often cited as foundational to the concept is the *Great Barrier Reef Marine Park Act 1975* (Australia). Appendix C contains a summary of the law and governance arrangements for the Great Barrier Reef Marine Park, including links to further information.

Four other recent examples are discussed, not as models for Samoa, but to highlight issues that stakeholders might wish to consider in this context.

¹⁶ Environmental Law Institute & Animals | Environment PLLC (2020) *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters* USA, 8.

The first is the *Barbuda (Coastal Zoning and Management) Regulations 2014*. This offers an example, in a small island developing state context, of a relatively uncomplicated legislative instrument implementing MSP for the Island of Barbuda. **The Barbuda regulations do not establish a process for making or reviewing an MSP; a plan has evidently already been finalized** and the regulations simply reflect its outcomes. It is noted that these are provincial, not national, regulations.

The Barbuda regulations:

- define four kinds of zones (marine sanctuaries-net zones, anchoring and mooring zones, shipping areas), and include a provision allowing for the creation of others;
- identify specific acts that are prohibited, either within certain zones, or elsewhere;
- provide necessary offences and penalties;
- include specific provisions protecting mangroves and seagrass;
- enable recovery of damages from persons convicted of an offence;
- include detailed maps indicating the precise location of each zone.

The second is the *Marine Spatial Planning Act 2018* of South Africa. In direct contrast to the Barbuda Regulations, **the South African law aims to establish the process by which MSP will be established** in all South African waters. The law, gazetted in May 2019, is yet to be fully implemented. The South African law does not define zones or offences or includes maps. Its purpose is to define the institutional framework for MSP as well as related principles and decision-making criteria. Sections 3 and 4, particularly s3(2), indicate how MSP will be implemented by the Government of South Africa.

3. Application of Act

(1) This Act applies to Marine Spatial Planning on, or in, South African waters and binds all organs of state.

(2) Any right, permit, permission, licence or other authorisation issued in terms of any other law must be consistent with the approved marine area plans.

4. Conflicts with other legislation

In the event of any conflict between the provisions of this Act and other legislation specifically relating to marine spatial planning, the provisions of this Act prevail.

The combined effect of these provisions is that, once the plans have been approved in accordance with the Act, all organs of the South African Government will be required to implement their own laws in a manner consistent with the approved MSP. For example, if certain seamounts are placed in a protected zone previously open to commercial fishing, the Fisheries Department will be required to adjust either or both their regulations, or their standard licence conditions, to bring their regulatory system into compliance with the MSP. Another example could be the MSP identifying new MPAs. Should this occur it will be incumbent upon the relevant government agency to declare those areas via processes already established under existing legislation.

The third example is the Cook Islands *Marae Moana Act 2017* which is a law with a unique history and context. The initiative first arose in 2011 following the Prime Minister's announcement regarding enhanced protection of all Cook Island waters. Extensive stakeholder consultation was then conducted which identified imperatives for a new law:

- create large buffer zones around all islands for seabed mining and commercial fishing;
- enforce greater coordination between key government agencies: Marine Resources, Environment and the Seabed Minerals Authority;

- MSP to provide a framework for future marine governance in Cook Islands; and
- outer island communities (those not living in Rarotonga) could not be forced to participate in MSP (in accordance with strict recognition of traditional authority over inshore marine resources), but could voluntarily choose to do so.

The resulting law is one that mirrors in a Pacific context the aims of the South African law whereby its passage precedes the development of the MSP. Additionally, its provisions are primarily concerned with the principles and processes by which an MSP should be prepared. The *Marae Moana Act* is similar to the South African law in that enforcement relies upon existing legislation applied by various Cook Islands ministries and agencies in a manner consistent with a future plan. However, unlike the South African law, and akin to the Barbuda regulations, the *Marae Moana Act* defines zones and includes provisions establishing large buffer zones excluding seabed mining operations and commercial fishing from nearshore zones.

The final example is the *Marine and Coastal Act 2018* of the Australian State of Victoria. This law addresses various levels of marine and coastal planning, but includes MSP somewhat unusually. Section 24 compels the Minister to make a Marine and Coastal Policy by a certain date (31/12/2019). Subsection 24(3) states “A Marine and Coastal Policy must include a Marine Spatial Planning framework that establishes a process for achieving integrated and coordinated planning and management of the marine environment.” This is the single instance MSP is mentioned in the Act. The policy and the framework have now been completed and published.¹⁷ Page 74 of the policy indicates that mechanisms under the *Marine and Coastal Act 2018* that could be used to give effect to the output of a MSP process i.e. a marine plan, include a regional and strategic partnership or an environmental management plan. These mechanisms are established by Part 6 of the *Marine and Coastal Act 2018*.

In summary, the recent Victorian law integrates MSP by requiring a policy that must include an MSP framework as a kind of roadmap directing how and where MSP should occur in the state. While it is clear that decisions made under that Act need to be consistent with the eventual marine plans, the Victorian law does not expressly compel all agencies exercising regulatory control over marine uses to apply their laws consistently with the marine plans. The implied approach is that ordinary systems of good government will ensure that relevant agencies adjust and administer their laws in accordance with the agreed MSP plans.

Some observations regarding the above examples:

- Each of these five laws has a specific history and context (they are examples, not models);
- The challenge of creating a marine zoning system within a defined area, such as the Great Barrier Reef Marine Park, is a different one to creating a zoning system for an entire jurisdiction that must interact effectively with all other legislation exercising regulatory authority over the marine space;
- The South African and Cook Islands approach seems well-suited for jurisdictions seeking to overlay a comprehensive MSP upon existing marine governance systems, and is concerned with enshrining MSP processes and principles in law; but alternately
- The Barbuda regulations demonstrate that an MSP can be prepared without a law that requires or directs how it should be prepared, and that an “MSP law” can focus entirely on actuating the outcomes of the plan;
- Contrasting the South African with the Victorian law highlights a key issue – the ultimate enforceability of any eventual marine plan will rely heavily upon consistent and coordinated regulatory action across all marine sectors – fisheries, conservation, shipping, mining. The question then arises whether the law should expressly require consistent and coordinated regulatory action by all agencies, or should that be left implicit?

¹⁷ Government of Victoria (2020) *Marine and Coastal Policy, incorporating the Victorian Marine Spatial Planning Framework*: <https://www.marineandcoasts.vic.gov.au/coastal-management/marine-and-coastal-policy>

Section 5.3

Options to integrate Marine Spatial Planning in Samoa's ocean governance

As is evident from the previous section, MSP may be integrated into the ocean governance framework of a country or subnational jurisdiction in many ways. Regarding published best practices in this area, the authors of *Designing Marine Spatial Planning Legislation: A Guide for Legal Drafters* suggest:

“Marine spatial planning is generally best implemented through standalone legislation, administered by the government ministry and/or department responsible for environmental protection, fisheries and ocean governance, or, less commonly, planning. In some countries, the legal drafter could determine that mandatory marine spatial planning requirements are most easily implemented through amendment to an existing environmental framework law, fisheries management act, or planning law; or even by promulgating new regulations under one of these acts.”¹⁸

This section identifies 4 options:

1. A new enactment;
2. A sustainable management plan under Part 4 of the PUMA Act;
3. A management plan under Part 8 Division 4 of the LSE Act; and
4. Adjusting proposed legislation already in draft, such as the EMC Bill.

5.3.1 Option 1 – A new standalone MSP-specific enactment

The Government of Samoa may contemplate any new legislation, including for MSP. As noted above, the publication *Designing Marine Spatial Planning Legislation: A Guide for Legal Drafters* recommends a standalone Act as the ideal legal mechanism to implement MSP. The clear advantages of a new enactment are that it creates a clean slate offering stakeholders freedom in deciding precisely how to integrate MSP into Samoa's ocean governance framework. A new standalone enactment would also provide a clear signal of the strong interest and support held by the nation's elected leaders to sustainable ocean management generally, and MSP specifically.

In practice, these considerations must be balanced against possible uncertainties, costs and delays in having an entirely new enactment developed, consulted upon, and ultimately endorsed by legislators.

The drafter's guide identifies eight “Components of Marine Spatial Planning Legislation” as follows:¹⁹

1. Preliminary;
2. Institutional and Administrative;
3. Marine Spatial Planning;
4. Traditional Rights and Management;
5. Public Participation and Access to Information;

¹⁸ Environmental Law Institute & Animals | Environment PLLC (2020) *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters* USA, 8.

¹⁹ Ibid, Part II.

6. Sustainable Financing;
7. Enforcement and Compliance; and
8. Miscellaneous.

The authors also note; “Some of the components listed here may not be necessary or even relevant in a specific jurisdiction, or they may already be addressed elsewhere in law.”²⁰ Details of these components, including examples from legislation, are available in the guide.

Examples of laws cited in the previous section in accordance with the category of a “standalone MSP law” are those of South Africa, Cook Islands and Barbuda.

5.3.2 Option 2 – Existing legislation, MSP via a *Planning and Urban Management Act* Sustainable Management Plan.

If a standalone law presents challenges or is otherwise not desired, stakeholders could consider whether existing legal provisions might support the integration of MSP into Samoa’s ocean governance. In this context the *Planning and Urban Management Act 2004*, Part 4 - “Sustainable Management Plans” - merits some attention.

To elaborate on this option, PUMA s12 provides for a SDP to be national, regional, district, village or site specific. Among these, the logical options for a comprehensive MSP would be either site-specific i.e. the site is the ocean, or national i.e the National Marine SDP. The latter is preferable in light of s27.

PUMA s14 provides that an SDP must achieve any of the objects of the Act which are set out in s8 and consistent with those of MSP. They include:

- (a) to provide for the fair, orderly, economic and sustainable use, development and management of [marine spaces] including the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity; and
- (b) to enable [marine] use and development planning and policy to be integrated with environmental, social, economic, conservation and resource management policies at national, regional, district, village and site specific levels.

PUMA s16 provides for the appointment of a special planning committee to advise on preparing SDPs. This could also be useful for MSP.

PUMA ss17-25 provides the processes for consulting upon and bringing into effect a SDP, including an avenue of appeal prior to the plan coming into effect. In terms of the consistency of these processes, it is useful to recall the key principles of MSP planning processes:

- reliance on the best available science;
- a participatory process;
- cross-sector planning;
- transparent decision-making; and
- consideration of economic and environmental objectives.²¹

²⁰ Ibid.

²¹ Environmental Law Institute & Animals | Environment PLLC (2020) *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters* USA, 7.

PUMA ss17-25 expressly includes the final four of these five principles, and contains various triggers (e.g. regulations) that could ensure planners rely upon best-available science throughout the process.

Once an SDP is operational, its provisions are notionally enforceable – see PUMA ss80, 83 and 84. There are some problems with this prospect as a general proposition, but in the present context of contemplating a PUMA SDP as an MSP, it is less important that it is enforceable on its own terms than requiring consistent decision-making, such as permit and license issuing.

As a hypothetical example, if in developing an MSP, stakeholders decide to exclude commercial fishers from high-conservation value seamounts and allocate those seamounts a zone that would raise them to that status. It is more important that the Ministry responsible for the Fisheries Management Act bring their license conditions or regulations into consistency with the new zoning, than it is for the MSP law to include an offence that would make fishing on seamounts illegal.

There are two possible approaches to this: The first is Victoria's, which trusts that if a whole-of-government plan is adopted for MSP then all government agencies will align their systems accordingly.

The second is that of South Africa, which by including s3(2) of their *Marine Spatial Planning Act 2018*, removes all doubt regarding the requirement for whole-of-government cooperation and compliance.

Samoan stakeholders could adopt an option similar to South Africa by seeking a minor amendment to PUMA. An example could be the addition of a third subsection to s26 akin to “(3) Upon the plan taking effect, any permit, permission, licence or any other authorisation issued under this Act and any other law must be consistent with the plan.”

PUMA also includes a broad regulation making power (s105) that could be applied to further elaborate principles, processes, requirements etc. for preparing and consulting upon an MSP.

If this option is considered an important jurisdictional issue requiring clarification is whether PUMA applies to development in the marine space that does not touch the seafloor.

5.3.3 Option 3 – Existing legislation, Division 4 of Part 8 of the Lands, Surveys and Environment Act 1989 (ss116-118)

The third option is similar to the second, except that it would rely upon Division 4 of Part 8 of the Lands, Surveys and Environment Act 1989 (ss116-118), which empowers the creation of management plans for the matters listed in s116, including (c) Samoa waters and water resources, and (d) coastal zones.

This option is not detailed here for the following reasons:

- The principal decision making body under this Division is the Environment Board. Although the body was established in law by s97 of the LSE, the Board itself was never established;
- Without the Board, Division 4 of Part 8 of the LSE could not operate as described in the law; and
- Should the EMC Bill be enacted, the provisions of the LSE will be repealed.

Alternatively, an MSP-specific regulation under the LSE could be contemplated. This would require a head of power in s146(2) who could encompass the necessary elements of an MSP. Provisions in LSE s146(2) supporting the development or enforcement of regulations for MSP were not identified. Nevertheless, if LSE regulations are considered the optimal means to implement MSP, lawyers fully familiar with the Act and the jurisdiction should reconsider this assessment.

5.3.4 Option 4 – Proposed legislation, adjusting the Environmental Management and Conservation Bill

As currently drafted, the EMC Bill does not provide mechanisms suitable to integrate MSP into Samoa's ocean governance, although it could be adjusted prior to its passage. The fourth option is very similar to the first whereby a new enactment provides a clean slate. The difference between the first and the fourth option is that instead of a standalone MSP law or an adjusted Part or Division, or Section, the Bill would guide the development and implementation of an MSP.

Many further options exist within this alternative. For example, stakeholders could decide to make the MSP provisions detailed and prescriptive, such as including a Samoan version of the South African MSP Act as a new Part of the EMC Bill. This could involve a simple reference in the regulation-making provision that identifies MSP as a subject for future regulations.

Following stakeholder consultation on the draft report, this is the recommended option.

Section 6

Findings and Recommendations

This section re-states the findings and recommendations of section 4 and 5.

	FINDINGS	RECOMMENDATIONS
1.1	One of the fundamental foundations of MSP are laws that provide a range of categories of marine protected area that can account for the diverse circumstances of marine conservation. Particularly in Pacific Island countries, this involves including mechanisms to recognise co-managed and community-based conservation efforts. Passage of the EMC Bill will enable this.	Stakeholders progress passage of the EMC Bill, thus establishing a broader range of marine protected area categories.
1.2	The criteria in subsection (2) of s43 of the EMC Bill will restrict the sites to which the provision may apply, possibly to the overall detriment of community-based marine conservation in Samoa.	Stakeholders review subsection (2) of s43 of the EMC Bill to ensure it will not unnecessarily limit the sites to which ss43 and 44 might otherwise apply.
2.1	The EMC Bill as drafted includes the pivotal term “significant environmental impact” defined in a manner that introduces uncertainty regarding interpretation and application by administrators and courts. This may require further consideration and review by stakeholders , especially regarding interaction with the compliance, enforcement and offence provisions of the Bill.	Stakeholders consider replacing the phrase “significant environmental impact” in the EMC Bill with multiple defined terms that separate the task of defining “environmental impact / harm” from determinations made regarding degrees of seriousness or significance.
2.2		Stakeholders consider including offence provisions for causing various defined degrees of environmental harm in the EMC Bill .
3	Samoa has ratified but not yet fully implemented the Nagoya Protocol in legislation. Draft legislation has been prepared (Part 4 of the EMC Bill) to fulfil this need.	Stakeholders progress passage of the EMC Bill thus establishing a regulatory framework for access and benefit from sharing of genetic resources in compliance with the Nagoya Protocol.
4	Samoa has ratified but not yet fully implemented the Cartagena Protocol in legislation. Draft legislation has been prepared (Part 5 of the EMC Bill) to fulfil this need.	Stakeholders progress passage of the EMC Bill, thus establishing a regulatory framework for biosafety in compliance with the Cartagena Protocol.
5	Samoa has ratified the Minamata Convention on Mercury and completed a Minamata Initial Assessment Report identifying specific (and relatively minor) regulatory actions required to ensure full conformity with the Convention’s obligations.	Samoa’s marine environment will receive greater protection from the threat posed by mercury contamination upon implementing the regulatory reform identified in the Minamata Initial Assessment Report for Samoa, Annex 2.

6	The Samoa Ocean Strategy identifies governance of seabed minerals as requiring specific regulatory oversight, including commitment to establish a process of review and reform.	Stakeholders progress Integrated Management Solution 11 of the Samoa Ocean Strategy, "Review existing policies and establish legislation where appropriate to manage risks posed by deep-sea and seabed exploration", as planned and scheduled.
7	The Samoa Ocean Strategy identifies the need to integrate ecosystem-based approaches to climate change as requiring inclusion in planning and EIA legislation, including commitment to establish a process of review and reform.	Stakeholders progress Integrated Management Solution 10 of the Samoa Ocean Strategy in reviewing and revising the relevant legislation to expressly include considerations relating to coral reefs and ecosystem-based approaches to climate change.
8	The Samoa Ocean Strategy identifies the need to strengthen policy and legislation for Coastal Ecosystem Services protection including commitment to establish a process of review and reform.	Stakeholders progress Integrated Management Solution 9 of the Samoa Ocean Strategy in reviewing and revising legislation relating to coastal management and coastal ecosystem services protection.
9	Although National Marine Sanctuary is mentioned in regulation 14A of the Marine Wildlife Regulations, the legal effect of this provision is uncertain.	If an intent to establish a National Marine Sanctuary remains, stakeholders should consider and clarify the effect of this, if any, in law.
10	<p>To ensure effectiveness, MSP should be formalised in law as a whole-of-jurisdiction marine planning process, the outcomes of which are enforceable. A necessary component of an MSP is a national marine protected area network. The Samoa Ocean Strategy includes both MSP and a strengthened MPA network as Integrated Management Solutions 5 and 7 respectively.</p> <p>Of the four options identified and discussed in Section Five of this report, option 4 – adjusting the Environmental Management and Conservation Bill to include MSP – is recommended.</p>	The Environmental Management and Conservation Bill should be adjusted to incorporate MSP and a national MPA network, prior to enactment.

Bibliography

Samoan Law

Constitution of the Independent State of Samoa
Acts Interpretation Act 2015
Customs Act 2014
Order of Prohibited Exports (Sea Cucumber) 2010
Disaster and Emergency Management Act 2007
Fisheries Management Act 2016

- *Fishing (Transshipment) Regulation 2003*
- *Fishing (Scuba Fishing) Regulation 2003*
- *Fisheries By-laws (multiple 1997-2013)*

Fisheries (Ban of Driftnet Fishing) Act 1999
Forestry Management Act 2011
Lands, Surveys and Environment Act 1989

- *Watershed Protection and Management Regulations 1992/3*
- *The Protection and Conservation of Wild Animals Regulations 1993*
- *Protection of Wildlife Regulations 2004*
- *Plastic Bag Prohibition on Importation Regulations 2006*
- *Marine Wildlife Protection Regulations 2009*
- *Marine Wildlife Protection Amendment Regulations 2018*

Marine Insurance Act 1975
Marine Pollution Prevention Act 2008
Maritime Zones Act 1999
Ministry of Transport Act 1978
National Parks and Reserves Act 1974
Ombudsman (Komesina o Sulufaiga) Act 2013
Planning and Urban Management Act 2004

- *PUMA (Environment Impact Assessment) Regulation 2007*

Ports Authority Act 1998

- *Declaration of Ports Order 1999*

Quarantine (Biosecurity) Act 2005
Shipping Act 1998

- *Port Control Regulations*

Village Fono Act 1990
Water Resources Management Act 2008
Waste Management Act 2010

Bills

Convention on the International Trade in Endangered Species Bill
Environment Management and Conservation Bill

Samoan Strategies, Plans, Policies

Samoa Ocean Strategy 2020-2030
Samoa Development Strategy 2016-2020
National Environment Sector Plan (2017-2021)

Apia Waterfront Plan
National Ballast Water Management Strategy 2016-2020
National Biodiversity Strategy and Action Plan (NBSAP)
National Guidelines for Marine Turtle of Samoa (draft)
National Invasive Species Strategy and Action Plan 2019-2024
National Marine Sanctuary Management Framework (draft)
National Water Resources Management Plan
Samoa Aquaculture Management and Development Plan: 2013-2018
Samoa Coastal Fisheries Management Plan: 2013-2016
Samoa Invasive Species Emergency Response Plan (SISERP)
Samoa National Marine Spill Contingency Plan
Samoa Sea Cucumber Management and Development plan
Samoa Tuna Fisheries and Development Management and Development Plan: 2017-2021
Sapapalii Mangrove Ecosystem Management Plan 2018-2020

International Treaties

Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal
Convention on Biological Diversity (CBD)

- Cartagena Protocol on Biosafety to the Convention on Biological Diversity
- 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

Convention on International Trade in Endangered Species of Wild Fauna and Flora
Convention on Limitation of Liability for Maritime Claims
Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean
Convention on the Conservation of Migratory Species of Wild Animals

- Memorandum of Understanding (MoU) for the Conservation of Cetaceans and their Habitats in the Pacific Island Region
- Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks

International Convention for the Prevention of Pollution from Ships
International Convention for the Safety of Life at Sea
International Convention of Standards on Training, Certification and Watchkeeping for Seafarers
International Convention on Civil Liability for Bunker Oil Pollution Damage
International Convention on Civil Liability for Oil Pollution Damage
International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea
International Convention on Load Lines
International Convention on Maritime Liens and Mortgages
International Convention on Oil Pollution Preparedness, Response and Co-operation
International Convention on Salvage
International Convention on the Control of Harmful Anti-fouling Systems on Ships
International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
International Convention on Tonnage Measurement of Ships
International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties
International Regulations for Preventing Collisions at Sea
London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter
Minamata Convention on Mercury
Noumea Convention for the Protection of the Natural Resources and Environment of the South Pacific Region
Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region
Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances
Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade
South Pacific Forum Fisheries Agency Convention

Stockholm Convention on Persistent Organic Pollutants
United Nations Convention on the Law of the Sea (UNCLOS)
United Nations Framework Convention on Climate Change (UNFCCC)
- *Kyoto Protocol*
- *Paris Agreement*

Wagani Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal
Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific

International Strategies, Plans, Policies

Aichi Biodiversity Targets under the CBD
Framework for the Pacific Oceanscape
S.A.M.O.A. Pathway
UN Sustainable Development Goals

Other Law

Barbuda (Coastal Zoning and Management) Regulations 2014
Constitution of the Republic of Vanuatu
Environmental Protection Act 1986 (Western Australia)
Environmental Protection Act 1994 (Queensland)
Great Barrier Reef Marine Park (Aquaculture) Regulations 2000
Great Barrier Reef Marine Park (Environmental Management Charge–Excise) Act 1993
Great Barrier Reef Marine Park (Environmental Management Charge–General) Act 1999
Great Barrier Reef Marine Park Act 1975
Great Barrier Reef Marine Park Regulations 1983
Great Barrier Reef Marine Park Zoning Plan 2003
- *Cairns Area Plan of Management 1998*
- *Whitsundays Plan of Management 1998*
- *Hinchinbrook Plan of Management 2004*
- *Shoalwater Bay (Dugong) Plan of Management 1997*
Marae Moana Act 2017 (Cook Islands)
Marine and Coastal Act 2018 (Victoria)
Marine and Coastal Policy 2020 Incorporating the Marine Spatial Planning Framework (Victoria)
Marine Spatial Planning Act 2018 (South Africa)
Resource Management Act 1991 (New Zealand)

Literature

- B Kuemlangan, *Creating Legal Space for Community-Based Fisheries and Customary Marine Tenure in the Pacific: Issues and Opportunities* (FAO, Rome, 2004).
- C. Ehler et al., *Marine Spatial Planning: A Step-by-Step Approach Toward Ecosystem-Based Management* UNESCO IOC, 2009.
- Environmental Law Institute & Animals | Environment PLLC (2020) *Designing Marine Spatial Planning Legislation for Implementation: A Guide for Legal Drafters*
- G Macfadyen, P Cacaud and B Kuemlangan *An overview of legal issues and broad legislative considerations for community-based fisheries management* (FAO, Rome, 2005) 21-24.

- Government of Samoa (2020) *Samoa Ocean Strategy 2020-2030, Integrated Management for a Healthy and Abundant Future of Samoa's Ocean* Apia, Samoa, 30.
- IUCN and Government of Samoa (2014) *Review of Policy and Legislation Relating to the Use and Management of Mangrove Ecosystems in Samoa*.
- M King and U Fa'asili, 'A Network of Small, Community-Owned Village Fish Reserves in Samoa' (1999) 11 *Traditional Marine Resource Management and Knowledge* 2-6.
- M King, K Passfield, E Ropeti *Management of village fisheries; Samoa's community-based management strategy* (Government of Samoa, 2001),
- U Fa'asili and A Taua, *Review of the Village Fisheries Management Plans of the Extension Programme in Samoa* Field Report No. 7, 2001,
- U Fa'asili and I Kelekolo, *The Use of Village By-laws in Marine Conservation and Fisheries Management* (1999) 11 *Traditional Marine Resource Management and Knowledge* 7-10.

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A.1 International Law

A.1.1 United Nations Law of the Sea Convention

Overview

The **United Nations Convention on the Law of the Sea (UNCLOS)** entered into force in 1994, provides a comprehensive legal regime for the world's oceans. "At the time of its adoption, the Convention embodied in one instrument traditional rules for the uses of the oceans and at the same time introduced new legal concepts and regimes and addressed new concerns. The Convention also provided the framework for further development of specific areas of the law of the sea."²² UNCLOS was signed by Samoa in 1984 and ratified in 1995.

Objectives

UNCLOS does not have an article with expressly stated objectives. Statements of objectives appear in the initial paragraphs of the Preamble. These can be summarised as: 1. Peaceful and just settlement of marine governance issues; 2. Recognising that problems of ocean space are closely interrelated and must be considered as a whole and 3. Providing a legal order for the oceans to facilitate international communication, promote the peaceful uses of the ocean, the equitable and efficient utilization of marine resources, the conservation of living marine resources, and the study, protection and preservation of the marine environment.

Jurisdiction

UNCLOS has a Party of 168 states upon whom its provisions are binding. Additionally, aspects of UNCLOS are considered to reflect customary international law. With respect to this, UNCLOS may be considered a universal application. It also presents law relating to the high seas (beyond any national jurisdiction).

Activities promoted, prohibited or regulated

UNCLOS has 320 articles and nine annexes, which are too voluminous to be summarised here. Suffice to note that in sum they govern nearly all aspects of ocean space, such as boundary delimitation, environmental protection, marine scientific research, economic and commercial activities, transfer of technology, and the settlement of disputes relating to ocean matters.

Approaches applied, where appropriate

UNCLOS expresses duties, rights, immunities and principles governing the ocean. Many of these are broadly described, such as Article 192 containing the general obligation of states to protect and preserve the marine environment. UNCLOS also provides frameworks upon which regulatory institutions have been established, such as Section 4 of Part XI which establishes the authority to regulate seabed mining beyond national jurisdiction. Many UNCLOS provisions are prescriptive statements of international law applicable to specific aspects of marine governance.

Financial or other incentives applied, where appropriate

UNCLOS emphasises the need for general and specific cooperation relating to ocean governance, as well as international development-related incentives, such as the provision for technology transfer in Article 144.

Relevance

UNCLOS is **highly relevant** to this review, providing the international legal framework within which all marine governance must be undertaken. It contains specific obligations upon the state Party that will influence the design of any future MSP in Samoa.

²² https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm

Concluding observations

Existing Samoan marine law and policy indicate awareness of and compliance with the full suite of UNCLOS obligations.

A.1.2 Convention on Biological Diversity

Overview

The **Convention on Biological Diversity** (CBD), entered into force in 1993, is the most important multilateral agreement dealing with conservation of ecosystems and biological diversity. It comprehensively commits state parties to conserving and sustainably using all marine and terrestrial ecosystems within their jurisdictions. The CBD is non-prescriptive, flexible for parties to fulfil their obligations by having regard to particular national circumstances. The CBD was signed by Samoa in 1992 and ratified in 1995.

Objectives

The Convention on Biological Diversity has three main objectives:

- The conservation of biological diversity;
- The sustainable use of the components of biological diversity; and
- The fair and equitable sharing of benefits arising out of the utilization of genetic resources

Jurisdiction

196 state parties have binding CBD provisions, including Samoa. The only notable exception is the United States. The CBD does not apply to areas beyond national jurisdiction except in the circumstance identified in Article 4(b).

Activities promoted, prohibited or regulated

The activities promoted by the CBD are essentially summarised in Articles 6–10: Art 6: General measures for conservation and sustainable use; Art 7: Identification and monitoring; Art 8: In-situ conservation; Art 9: Ex-situ conservation; and Art 10: Sustainable use of components of biological diversity.

Regulatory approaches applied, where appropriate

The provisions of the CBD are not promoted via coercive compliance. Instead, the CBD is implemented via the following mechanisms: 1. National Biodiversity Strategies and Action Plans (NBSAPs), which are national strategies, plans or programmes for the conservation and sustainable use of biological diversity. These integrate, as far and as appropriately possible and, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies; 2. National Reports which provide information on measures taken for the implementation of the Convention and the effectiveness of these measures; 3. Cooperation and Partnerships; 4. Financial resources and mechanism (Global Environment Facility); and 5. Clearing-House Mechanism which involves promoting cooperation, exchanging information and developing a network of partners.

Financial or other incentives applied, where appropriate

See 4. above.

Relevance

CBD is **directly relevant** to this review containing international legal obligations with which Samoa's marine governance must remain consistent. The CBD's implementation mechanisms may provide funding and technical assistance in support of ecologically sound marine governance in Samoa.

Concluding observations

The CBD is a central aspect of the international legal regime relevant to sound marine governance in Samoa. Samoa's current NBSAP (section A.4.7 herein) delineates the actions taken to achieve the CBD's goals in Samoa.

A.1.3 Cartagena Protocol on Biosafety to the Convention on Biological Diversity

Overview

The *Cartagena Protocol on Biosafety to the CBD* is an international treaty governing the movements from one country to another of living modified organisms (LMOs) resulting from modern biotechnology. The Protocol was adopted in 2000 as a supplementary agreement to the CBD and entered into force in 2003.

Objective

To contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of LMOs resulting from modern biotechnology that may adversely affect the conservation and sustainable use of biological diversity, also accounting for risks to human health. The Protocol specifically focuses on transboundary movements.

Jurisdiction

The Protocol has 172 states Party upon whom its provisions are binding, including Samoa.

Activities promoted, prohibited or regulated

The Protocol establishes an advanced informed agreement procedure ensuring that countries are provided with the information necessary for decision-makings before agreeing to the import of living modified organisms into their territory. The Protocol also establishes a Biosafety Clearing-House to facilitate the exchange of information on living modified organisms and to assist countries in the implementation of the Protocol, endorsing a precautionary approach.

Regulatory approaches applied, where appropriate

As noted above, the Protocol's key regulatory approach is to establish a system of prior informed consent for transboundary movements of LMOs, empowering countries to review and assess proposed imports. Additionally, the Biosafety Clearing-House provides an information exchange mechanism allowing open and easy access to key information about LMOs.

Financial or other incentives applied, where appropriate

As a Protocol to the CBD, the two instruments share the same financial mechanism (Art 28).

Relevance

The Cartagena Protocol is **marginally relevant** to this review, having the potential to prevent negative impacts upon Samoa's marine environment caused by imported LMOs.

Concluding observations

Provisions to implement the Cartagena Protocol have been prepared as Part 5 of the EMC Bill.

A.1.4 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

Overview

The Nagoya Protocol is an international treaty, subsidiary to the CBD, that provides a legal framework for the effective implementation of the CBD's third objective: the fair and equitable sharing of benefits arising from the utilization of genetic resources.

Objective

The fair and equitable sharing of the benefits arising from the utilization of genetic resources, including by appropriate access to genetic resources and transfer of relevant technologies. All rights over those resources and to technologies, and by appropriate funding are taken into account thereby contributing to the conservation of biological diversity and the sustainable use of its components.

Jurisdiction

The Nagoya Protocol has 123 state Parties upon whom its provisions are binding, including Samoa.

Activities promoted, prohibited or regulated

The Nagoya Protocol aims to create higher legal certainty and transparency for providers and users of genetic resources by establishing more predictable conditions for access to genetic resources and by helping to ensure benefit-sharing in response to genetic resources exiting the country.

Regulatory approaches applied, where appropriate

The Nagoya Protocol's regulatory approach involves placement of obligations upon Parties to establish domestic legal frameworks creating 3 types of obligation: access obligations; benefit-sharing obligations; and compliance obligations. Furthermore, where traditional knowledge is associated with genetic resources, additional obligations are required to ensure the informed consent of local communities holding rights in that knowledge.

Financial or other incentives applied, where appropriate

As a Protocol to the CBD, the two instruments share the same financial mechanism (Art 25).

Relevance

The Nagoya Protocol is **somewhat relevant** to this review.

Concluding observations

Should interest be shown by biotechnology researchers, companies or institutions in Samoa's genetic marine resources, the Nagoya Protocol provides a framework for equitable and transparent access and benefit-sharing arrangements. Provisions to implement the Nagoya Protocol have been prepared as Part 4 of the EMC Bill.

A.1.5 United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement

Overview

The UNFCCC is the multilateral treaty addressing climate change. The framework treaty contains few prescriptive obligations beyond national reporting. It has two prescriptive subsidiary agreements: the Kyoto Protocol and the Paris Agreement. This summary focuses on current actions and commitments under the Paris Agreement.

Objective

The objective of the UNFCCC is to stabilize greenhouse gas concentrations at a level that prevents dangerous anthropogenic interference with the climate system. The Paris Agreement aims to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels, and to pursue efforts to limit the temperature increase to 1.5 degrees Celsius.

Jurisdiction

All UN member states are UNFCCC states Party (197). The Paris Agreement has 189 state Parties.

Activities promoted, prohibited or regulated

Although the UNFCCC and the Paris Agreement promote activities that reduce greenhouse gas emissions, they do not prohibit or regulate anything of substance.

Regulatory approaches applied, where appropriate

The Paris Agreement requires all Parties to submit nationally determined contributions (NDCs) and to strengthen these efforts in the years ahead. This includes requiring all Parties to report regularly on their emissions and implementation efforts. NDCs embody efforts by each country to reduce national emissions and adapt to the impacts of climate change. Article 4, paragraph 2 of the Agreement requires each Party to prepare, communicate and maintain successive NDCs that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

A global stocktake will be conducted every 5 years to assess the collective progress towards achieving the purpose of the Agreement, and to inform further individual Party actions. Together, these actions will determine whether the world achieves the long-term goals of the Paris Agreement - to reach global peaking of greenhouse gas emissions as soon as possible and to undertake rapid reductions thereafter in accordance with the best available science, so as to achieve a balance between anthropogenic emissions by sources and removals by sinks in the second half of this century.

Samoa's first NDC was submitted in 2016. It states "Samoa is committed to reducing its GHG emissions from the Electricity sub sector through the adoption of a 100% renewable energy target for electricity generation through to the year 2025. Samoa's commitment is conditional on reaching the 100% renewable electricity generation target in 2017 and receiving international assistance to maintain this contribution through to 2025. Economy-wide emissions reduction conditional on external international assistance."

On adaptation it states, "Samoa recognises that the adverse effects of climate change will have significant impact on the country, particularly in sectors such as agriculture, coastal infrastructure, health, forestry, meteorology, tourism, and water." These sectors were prioritized in the National Adaptation Programme of Action (NAPA) and adaptation projects in these sectors have been successfully implemented with external financial support. While the focus of Samoa's INDC is on mitigation, Samoa highlights the need to build on work that has been undertaken to ensure actions that have been identified during the implementation of previous adaptation objectives are addressed at a future stage.

Although the effects of climate change and climate variability in the short and long term will continue to impact Samoa, through the implementation of some of the adaptation projects, emissions reduction is also possible. As

with mitigation activities, implementation of adaptation projects are heavily dependent upon external financial assistance from the international community. Building climate resilience, disaster risk reduction as well as adaptation projects in vulnerable sectors requires significant external assistance which has been highlighted through the prioritisation of climate change in national planning.

Financial or other incentives applied, where appropriate

As is evident from Samoa's NDC Adaptation and mitigation action on climate change is heavily reliant on international assistance. As an example, this project is part of a larger project funded through the Global Climate Change Alliance Plus (GCCA+), a European Union flagship initiative partly undertaken in fulfilment of UNFCCC commitments.

Relevance

The UNFCCC and the Paris Agreement are **directly relevant** to this review.

Concluding observations

The climate change will impact many aspects of life and many sectors of the economy in Samoa, including some of those most central to this review i.e. marine biodiversity, fisheries and food security.

A.1.6 Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal

Overview

The Basel Convention regulates the transboundary movement of hazardous wastes. In the 1980s hazardous waste transportation from industrialized countries to developing countries posed severe problems. The Basel Convention addressed the issue by establishing a system of prior informed consent for the acceptance of imports of hazardous wastes and by banning the export of hazardous wastes from developed to developing countries for the purposes of disposal.

Objective

The Basel Convention aims to reduce risks to human health and the environment from hazardous wastes by reducing the generation of such wastes to a minimum and ensuring that they are managed in an environmentally sound manner, especially when subject to transboundary movements.

Jurisdiction

The Basel Convention has binding provisions across 187 state Parties, including Samoa.

Activities promoted, prohibited or regulated

As indicated by its objective, the core work of the Basel Convention is concerned with movements of hazardous wastes across international borders. These are only allowed under specified circumstances, with a higher standard applied to movements from developed to developing countries.

Regulatory approaches applied, where appropriate

The Basel Convention's central regulatory approach is the prior informed consent system. Specified agencies within the governments of importing countries must consent in writing to any proposed import, prior to departure from the exporting country, that all appropriate measures have been taken. This ensures an environmentally sound way to manage the hazardous waste in question at this stage of movement.

Financial or other incentives applied, where appropriate

The Basel Convention also oversees technology transfer programmes assisting developing countries manage problem waste streams, such as electronic waste, in an environmentally sound manner.

Relevance

The Basel Convention is **somewhat relevant** to this review. Although Samoan marine governance is predominantly undisturbed by transboundary movements of hazardous waste, a single major incident could cause substantial and lasting harm.

Concluding observations

The Basel Convention has a regional equivalent – the Waigani Convention. Samoa is Party to both these treaties and has legislated implementation via the Waste Management Act 2010.

A.1.7 Minamata Convention on Mercury

Overview

The Minamata Convention is a multilateral environmental agreement that addresses the adverse effects of mercury. It requires parties to address mercury throughout its lifecycle, including production, intentional use in products and processes, unintentional release from industrial activity, though to end-of-life aspects. These include waste, contaminated sites, and long-term storage. The Minamata Convention entered into force on 16 August 2017.

Objective

To protect human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds.

Jurisdiction

The Minamata Convention has 121 states Parties upon whom its provisions are binding, including Samoa, which ratified the Convention in 2015.

Activities promoted, prohibited or regulated

The Minamata Convention aims to phase out the manufacture and trade of certain products (Annex A), as well as placing a range of obligations upon state Parties to avoid and reduce mercury emissions and releases.

Regulatory approaches applied, where appropriate

The Minamata Convention places obligations upon parties in relation to mining, export and import, reducing and phasing out the production of certain products and manufacturing processes, and the environmentally sound disposal of mercury wastes. Small-scale gold mining is a particular focus.

Financial or other incentives applied, where appropriate

Articles 13 and 14 of the Minamata Convention, in keeping with the principle of common but differentiated responsibilities, provides for a financial mechanism and capacity building, and technical assistance.

Relevance

The Minamata Convention is **somewhat/marginally relevant** to this review. Samoa completed an Initial Assessment Report for implementing the Minamata Convention in 2018. It contained an inventory of mercury emissions and releases for Samoa, showing that most emissions and releases are generated by waste management. According to the inventory, national total mercury releases are 50kg per year. The two most significant anthropogenic sources of mercury are: 1. use and disposal of other products: 67% (33 kg Hg/y); and 2. the application, use and disposal of dental amalgam fillings: 13% (6 kg Hg/y).

Concluding observations

Samoa's 2018 Initial Assessment Report stated the following: "Samoa, as a Party to the treaty, will need to incorporate the provisions of the Minamata Convention into national legislation and to implement actions to meet its obligations to reduce emissions and releases of mercury arising from anthropogenic activity."

A.1.8 International Maritime Organisation Conventions

International Convention on Civil Liability for Bunker Oil Pollution Damage

International Convention for the Prevention of Pollution from Ships

International Convention on Civil Liability for Oil Pollution Damage

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea

International Convention on Oil Pollution Preparedness, Response and Co-operation

International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties

Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances

International Convention on the Control of Harmful Anti-fouling Systems on Ships

International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage

International Convention for the Safety of Life at Sea

International Convention on Load Lines

International Convention on Tonnage Measurement of Ships

International Convention of Standards on Training, Certification and Watchkeeping for Seafarers

Convention on Limitation of Liability for Maritime Claims

International Convention on Salvage

International Convention on Maritime Liens and Mortgages

International Regulations for Preventing Collisions at Sea

Overview

The International Maritime Organization (IMO) was established in 1958 as a specialised agency of the United Nations responsible for regulating shipping, which is headquartered in London, United Kingdom. The IMO currently has 174 member states and three associate members. Its primary purpose is to develop and maintain a comprehensive regulatory framework for shipping, including safety, environmental concerns, legal matters, technical co-operation, maritime security and the efficiency of shipping.

IMO is the source of approximately 60 legal instruments that guide the regulatory development of its member states to improve safety at sea, facilitate trade among seafaring states and protect the marine environment. Those to which Samoa is a party are listed above. The best known are the International Convention for the Safety of Life at Sea (SOLAS Convention) and the International Convention for the Prevention of Pollution from Ships (MARPOL).

Objective

IMO works in three principal areas: 1) Maritime Safety; 2) Maritime Security and Piracy; and 3) Marine Environment. Although each Convention has a specific purpose as indicated in the titles, taken together they represent agreed international rules on safety, security and environmental protection in shipping.

Jurisdiction

The IMO has 174 member states, covering an overwhelming majority of global shipping.

Activities promoted, prohibited or regulated

The SOLAS Convention specifies minimum standards for the construction, equipment and operation of ships, compatible with their safety. Flag States are responsible for ensuring that ships under their flag comply with these requirements, and a number of certificates are prescribed in the SOLAS Convention as proof of compliance.

The MARPOL Convention includes regulations aimed at preventing and minimizing pollution from ships that is accidental and derived from routine operations. It comprises six technical Annexes: I) Prevention of oil pollution; II) Control of pollution from bulk noxious liquid substances; III) Prevention of pollution by harmful packaged substances; IV) Sewage from ships; V) Garbage from ships; and VI) Air pollution from ships.

Regulatory approaches applied, where appropriate

The IMO treaties prescribe standards, procedures, offences and liabilities that member states must include in domestic legislation and apply to shipping within their jurisdiction. In Samoa, this is achieved primarily via two laws: the Shipping Act 1998; and the Marine Pollution Prevention Act 2008.

Financial or other incentives applied, where appropriate

IMO maintains numerous committees and programmes which actively member states with human resource development and technical capacity building to improve implementation and compliance with the various treaties.

Relevance

The IMO Conventions are **directly relevant** to this review.

Concluding observations

Samoa has legislated to implement the IMO Conventions via the Shipping Act 1998 and the Marine Pollution Prevention Act 2008.

A.1.9 London Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter

Overview

The London Convention, in force since 1975, aims to promote the effective control of all sources of marine pollution and take all practical steps to prevent sea pollution caused by dumping of waste and other matter. The secretariat is the International Maritime Organisation. To modernize the Convention, in 1996 the “London Protocol” was agreed. Under the Protocol all dumping is prohibited, except for possibly acceptable wastes on a “reverse list”. There are currently 53 Parties to the Protocol which entered into force on 24 March 2006

Objective

The London Convention aims to promote the effective control of all sources of marine pollution and to take all practical steps to prevent pollution of the sea caused by dumping of wastes and other matter.

Jurisdiction

The London Convention has 87 states Party upon whom its provisions are binding, including Samoa. The 1996 London Protocol has 53 states Party upon whom its provisions are binding, including Samoa. The 1972 Convention extends its scope over “all marine waters other than the internal waters” of the States.

Activities promoted, prohibited or regulated

The activities regulated and prohibited under the London Convention are those relating to the dumping of wastes at sea. This is often highly damaging to the marine environment which has improved markedly since the Convention has been in force. The more ambitious Protocol was influential in this change.

Regulatory approaches applied, where appropriate

The London Convention has 22 Articles and three Annexes. It follows a “black list/grey list” approach to regulating ocean dumping; Annex I materials (black list) generally may not be ocean dumped (though for certain Annex I materials dumping may be permissible if present only as “trace contaminants” or “rapidly rendered harmless”; and Annex II materials (grey list) require “special care”. Annex III lays out general technical factors to be considered in establishing criteria for issuing ocean dumping permits.

The 1996 Protocol introduces the precautionary approach and the polluter pays principle. The Protocol reverses the structure of the Convention by requiring Parties to prohibit dumping of any waste or other matter not listed in a specified annex, such as fish processing waste and dredged material. It also prohibits certain practices such as incineration at sea.

Financial or other incentives applied, where appropriate

N/A

Relevance

The London Convention is **somewhat relevant** to this review. It contains important international marine pollution requirements that benefit all nations, including Samoa.

Concluding observations

The London Convention has a regional equivalent – the Protocol for the Prevention of Pollution of the South Pacific by Dumping under the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region. Samoa, which is Party to each of these treaties, has legislated implementation via the Marine Pollution Prevention Act 2008.

A.1.10 Convention on the Conservation of Migratory Species of Wild Animals (CMS)

Overview

The CMS Convention provides a global platform for the conservation and sustainable use of migratory animals and their habitats. CMS unites Range States (States through which migratory animals pass) and lays a legal foundation for internationally coordinated conservation measures throughout a migratory range. CMS acts as a framework convention, encouraging and providing an institutional mechanism by which Range States can introduce global or regional agreements for certain species.

Objective

In addition to the conservation of migratory species CMS has 3 specific objectives: a) promote research into migratory species; b) provide protection for species included in Appendix I (threatened); and c) promote species-specific agreements among range states.

Jurisdiction

CMS has 130 states Party upon whom its provisions are binding, including Samoa.

Activities promoted, prohibited or regulated

CMS encourages Parties to prohibit or regulate activities that may harm migratory species, especially those which are threatened or endangered.

Regulatory approaches applied, where appropriate

The principal mechanism of the CMS is providing a framework for species-specific agreements entered into by range states. Samoa is party to two such agreements made under the auspices of CMS: The Memorandum of Understanding (MoU) for the Conservation of Cetaceans and their Habitats in the Pacific Island Region, and the Memorandum of Understanding (MoU) on the Conservation of Migratory Sharks. Although these agreements are not legally binding, they set a baseline for countries in the region regarding protections that should be afforded sharks and cetaceans.

Financial or other incentives applied, where appropriate

The CMS Secretariat operates small grants and capacity building programs for developing country members.

Relevance

CMS is **somewhat relevant** to this review. Samoa is Party to two significant MOUs made under the auspices of CMS committing the nation to protect sharks and cetaceans.

Concluding observations

Samoa has legislated to implement the cetacean and shark MoUs noted above via the Marine Wildlife Protection Amendment Regulations under the LSE Act.

A.1.11 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Overview

CITES aims to ensure international trade in specimens of wild animals and plants does not threaten their survival. The specimens range from live animals and plants to an array of wildlife products, including food, exotic leather goods, musical instruments, timber, tourist curios and medicines. Levels of exploitation of certain animal and plant species are highly exploited resulting, which combined with habitat loss results in substantial population depletion and risks of extinction.

Objective

CITES aims to provide a legal framework for international co-operation in the protection of certain species of wild fauna and flora against over-exploitation through international trade.

Jurisdiction

CITES has 183 states Party upon whom its provisions are binding, including Samoa.

Activities promoted, prohibited or regulated

CITES focuses on regulating, and in many cases prohibiting, international trade in endangered species. All imported, exported and re-exported species covered by the Convention have to be authorized through a licensing system. Each Party to the Convention must designate one or more Management Authorities in charge of administering that licensing system, and one or more Scientific Authorities to advise them on the effects of trade on the status of the species.

Regulatory approaches applied, where appropriate

The principal mechanism of CITES is the listing of species in Appendices whereupon regulatory actions are triggered. Appendix I includes species threatened with extinction. Trade in these specimens is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but which require controlled trade to ensure their survival. Appendix III contains species protected in at least one country, which has requested other CITES Parties for assistance in controlling the trade.

Financial or other incentives applied, where appropriate

The CITES Secretariat operates capacity building programs for developing country members.

Relevance

CITES is **somewhat relevant/directly relevant** to this review. Samoa's marine environment contains numerous species that could be depleted should they become subject to unregulated international trade.

Concluding observation

Samoa has legislated to implement CITES with respect to marine species via the Marine Wildlife Protection Regulations as amended to 2018 of the LSE Act. Also summarised in this review is a CITES Bill. The EMC Bill, if enacted, would specifically empower the establishment of regulations to implement CITES.

A.1.12 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC Convention)

Overview

The Convention addresses pesticides and industrial chemicals banned or severely restricted for health or environmental reasons by Parties and which have been notified by Parties for inclusion in the PIC procedure. It creates legally binding obligations for the implementation of the Prior Informed Consent (PIC) procedure, and originated from the voluntary PIC procedure first initiated by UNEP and FAO in 1989.

Objective

PIC Convention aims to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals to protect human health and the environment from potential harm, and

to contribute to their environmentally sound use. This is implemented by facilitating information exchange about their characteristics through providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.

Jurisdiction

PIC Convention has 163 states Party upon whom its provisions are binding, including Samoa.

Activities promoted, prohibited or regulated

The regulated activity is international trade in hazardous chemicals.

Regulatory approaches applied, where appropriate

The Convention includes two key mechanisms - the Prior Informed Consent (PIC) Procedure and Information Exchange. The PIC procedure is a mechanism for formally obtaining and disseminating the decisions of importing Parties as to whether they wish to receive future shipments of those chemicals listed in Annex III of the Convention, and for ensuring compliance with these decisions by exporting Parties. The Convention facilitates information exchange among Parties for a very broad range of potentially hazardous chemicals. Each Party is required to notify the Secretariat when taking a domestic regulatory action to ban or severely restrict a chemical.

Financial or other incentives applied, where appropriate

The PIC Convention Secretariat operates capacity building programmes for developing country members.

Relevance

PIC Convention is **marginally relevant** to this review. It provides a higher level of protection for Samoa's marine environment from contamination or damage caused by hazardous chemicals.

Concluding observations

Samoa has legislated to implement the PIC Convention via the Waste Management Act 2010.

A.1.13 Stockholm Convention on Persistent Organic Pollutants (Stockholm Convention)

Overview

The Stockholm Convention is a global treaty to protect human health and the environment from chemicals that remain intact in the environment for long periods, become widely distributed geographically, accumulate in the fatty tissue of humans and wildlife, and have harmful impacts on human health or on the environment. Exposure to POPs can seriously impact health including certain cancers, birth defects, dysfunctional immune and reproductive systems, greater susceptibility to disease, and damages to the central and peripheral nervous systems. Given their long range transport, no government acting alone can protect its citizens or its environment from POPs. In response to this global problem, the Stockholm Convention requires parties to apply elimination or reduction measures for the release of POPs into the environment.

Objective

The objective of the Stockholm Convention is to protect human health and the environment from persistent organic pollutants.

Jurisdiction

The Stockholm Convention has 184 states Party upon whom its provisions are binding, including Samoa.

Activities promoted, prohibited or regulated

The regulated activity is the production (intentional and unintentional), use, import and export of POPs. The Convention also promotes the use of best available techniques and best environmental practices for preventing releases of POPs into the environment.

Regulatory approaches applied, where appropriate

The Convention requires each Party to:

- prohibit and eliminate the production and use, import and export, of the intentionally produced POPs that are listed in Annex A;
- restrict the production and use, as well as the import and export, of the intentionally produced POPs that are listed in Annex B;
- reduce or eliminate releases from unintentionally produced POPs that are listed in Annex C; and
- ensure that stockpiles and wastes consisting of, containing or contaminated with POPs are managed safely and in an environmentally sound manner.

For additional POPs the Convention provides procedures for new listings in the Annexes.

Financial or other incentives applied, where appropriate

The Stockholm Convention Secretariat operates capacity building programmes for developing country members.

Relevance

The Stockholm Convention is **marginally relevant** to this review. It provides a higher level of protection for Samoa's marine environment from contamination or damage caused by persistent organic pollutants.

Concluding observations

Samoa has legislated to implement the Stockholm Convention via the Waste Management Act 2010.

A.1.14 The Convention for the Protection of the Natural Resources and the Environment of the South Pacific Region (Noumea Convention) incorporating the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping

Overview

The Noumea Convention originated from the Conference on the Human Environment in the South Pacific, held in Rarotonga in 1982, where participants agreed to the development of a treaty to protect the Pacific environment from all forms of pollution, particularly from nuclear contamination. Future negotiations resulted in adoption of the Noumea Convention in November 1986, which entered into force in 1990.

Objective

The Noumea Convention does not include a statement of objective in its operative provisions. The objective is probably best expressed in the preamble, and can be summarised as a shared desire for the protection and sustainable development of the region's environment.

Jurisdiction

The Noumea Convention defines its "Convention Area" in Articles 1, 2 and 3. This includes the EEZs of all Parties (except Australia which is limited to the East coast and Islands to Macquarie Island), and those areas which are enclosed from all sides by the Parties' 200 nautical mile zones.

Activities promoted, prohibited or regulated

The Noumea Convention encompasses a broad range of environmental and natural resource management issues, including marine pollution from vessels (Article 6), land-based sources (Article 7) and sea-bed activities (Article 8), as well as air pollution (Article 9), waste disposal and storage (Articles 10 and 11), nuclear testing (Article 12), coastal erosion (Article 13) and environmental impact assessment (Article 16). The Noumea Convention also requires Parties to establish protected areas (Article 14).

Regulatory approaches applied, where appropriate

The Convention requires parties "to take all appropriate measures" for each of the matters identified in the previous section.

A central component is the obligation arising from Article 4 endeavouring to conclude agreements subsidiary to the Convention. Two of these have been in place since the Convention entered into force - the Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region, and the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping. SPREP is the Secretariat for the Convention and is coordinating a process of protocol review and amendment.²³

Relevance

The Noumea Convention is **directly relevant** to this review.

Concluding observations

Successfully implementing the SOS in general, and MSP specifically, are key to Samoa's continuing observance of the obligations of the region's most significant multilateral environmental agreement.

A.1.15 The Convention to Ban the importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement of Hazardous wastes within the South Pacific Region (Waigani Convention)

Overview

The Waigani Convention is the Pacific regional equivalent of the Basel Convention (see section A.1.6). The key differences are that only the Waigani Convention covers radioactive wastes and the territorial coverage includes each Party's EEZ, whereas the Basel Convention extends only to the outer boundary of each Party's territorial sea (12 nautical miles).

²³ <https://www.sprep.org/convention-secretariat/noumea-convention>.

Objective

The Convention Secretariat states that the objective of the Waigani Convention is to reduce and eliminate transboundary movements of hazardous and radioactive waste, to minimize the production of hazardous and toxic wastes in the Pacific region, It also ensured that disposal of wastes in the Convention's designated area is completed in an environmentally sound manner.²⁴

Jurisdiction

The Convention covers the land territory, internal waters, territorial sea, continental shelf, archipelagic waters and EEZs of all Parties, as well as the areas of high seas enclosed by those EEZs. The definition of "Convention Area" in Article 2 lists the Parties and defines the area.

Activities promoted, prohibited or regulated

Parties' commitments under the Waigani Convention include:

- taking all appropriate measures to ban the import and export of hazardous waste to and from the Convention Area (Art. 4.1);
- prohibiting dumping of hazardous wastes and radioactive wastes in the Convention Area (4.2);
- ensuring that within the areas of their jurisdiction the generation of hazardous wastes is reduced (art.4.4); and
- ensuring availability of adequate treatment and disposal facilities for the environmentally sound management of hazardous wastes in the Convention Area (4.5).

Regulatory approaches applied, where appropriate_

Beyond the prohibitions noted above, the Waigani Convention's principal regulatory approach is the prior informed consent system. This requires specified agencies within the governments of importing countries to consent in writing to any proposed import, prior to receiving approval to leave the exporting country, having ascertained that all appropriate measures have been taken to ensure the movement represents an environmentally sound way to manage the hazardous waste in question.

Relevance

The Waigani Convention is **marginally relevant** to this review.

Concluding observations

The Waigani Convention, while an important element of the region's environmental treaty system, will only occasionally need implementation; mainly to ensure hazardous waste (such as that contaminated with persistent organic pollutants) is exported to locales where it can be safely treated.

²⁴ <https://www.sprep.org/convention-secretariat/waigani-convention>

A.2 International Plans, Strategies etc.

A.2.1 Convention on Biodiversity (CBD) Strategic Plan for Biodiversity 2011–2020 and the Aichi Targets

Overview

Parties to the Convention on Biological Diversity in 2010 adopted the Strategic Plan for Biodiversity 2011–2020, with the aim to inspire broad-based action in support of biodiversity by all countries and stakeholders over the next decade. The plan's rationale was that biological diversity underpins ecosystem functioning and the provision of ecosystem services is essential for human well-being. It provides for food security, human health, clean air and water, while also contributing to local livelihoods, and economic development, and is essential for the achievement of the Millennium Development Goals, including poverty reduction.

Objective

The mission of the plan is to “take effective and urgent action to halt the loss of biodiversity in order to ensure that by 2020 ecosystems are resilient and continue to provide essential services, thereby securing the planet’s variety of life, and contributing to human well-being, and poverty eradication. To ensure this, pressures on biodiversity must be reduced, ecosystems restored, biological resources sustainably used and benefits arising out of utilization of genetic resources are shared in a fair and equitable manner; adequate financial resources are provided; capacities are enhanced; biodiversity issues and values mainstreamed; appropriate policies are effectively implemented; and decision-making is based on sound science and the precautionary approach.”

Jurisdiction

This is a plan made under the Convention on Biological Diversity and in itself is not legally binding. As a CBD Party, the plan should nevertheless guide state Parties to the CBD, including Samoa, in their national-level governance of biodiversity.

Activities promoted, prohibited or regulate

The plan consists of five strategic goals and includes the twenty Aichi Biodiversity Targets.

- | | |
|-------------------|--|
| 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 |

Regulatory approaches applied, where appropriate

The twenty Aichi Biodiversity Targets for 2015 or 2020 are organized under the five strategic goals. The goals and targets comprise both aspirations for achievement at the global level, and a flexible framework for the establishment of national or regional targets. Parties set their own targets within this flexible framework.

To implement the Strategic Plan for Biodiversity 2011–2020, Parties:

- reviewed, and as appropriate, updated and revised their national biodiversity strategies and action plans (NBSAPs) in line with the Strategic Plan for Biodiversity 2011-2020;
- developed national targets, using the Strategic Plan and its Aichi Biodiversity Targets as a flexible framework. These national targets were integrated into the updated NBSAPs;
- adopted the updated NBSAPs as a policy instrument; and
- used the updated NBSAPs for the integration of biodiversity into national development, accounting and planning processes;
- monitored and reviewed implementation of the NBSAPs and national targets, using indicators.

Financial or other incentives applied, where appropriate

n/a

Relevance

Globally-agreed strategic plans under the CBD are directly relevant to this review. While the term of this plan is soon to conclude, the replacement plan will similarly help guide and set targets for biodiversity conservation, including marine biodiversity conservation.

Concluding observations

Samoa's current NBSAP was developed in light of the Strategic Plan.

A.2.2 UN Sustainable Development Goals and the 2030 Agenda for Sustainable Development

Overview and Objective

The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, established a blueprint for peace and prosperity for people and the planet. At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries - developed and developing - in a global partnership. They recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth – all while tackling climate change and working to preserve our oceans and forests. Samoa's Ocean Strategy recognizes the importance of the SDGs for ocean governance in Samoa (9p?) to conserve and sustainably use the oceans, seas and marine resources for sustainable development most notably in SDG 14 – Life Below Water.

Jurisdiction

Although universally agreed by UN member states, the Agenda for Sustainable Development and the SDGs are not legally binding.

Activities promoted, prohibited or regulated

The 17 SDGs are:

1. No Poverty;
2. Zero Hunger;
3. Good Health and Well-being;
4. Quality Education;
5. Gender Equality;
6. Clean Water and Sanitation;
7. Affordable and Clean Energy;

8. Decent Work and Economic Growth;
9. Industry, Innovation, and Infrastructure;
10. Reducing Inequality;
11. Sustainable Cities and Communities;
12. Responsible Consumption and Production;
13. Climate Action;
14. Life Below Water;
15. Life On Land;
16. Peace, Justice, and Strong Institutions; and
17. Partnerships for the Goals.

Regulatory approaches applied, where appropriate

Each goal has targets and indicators. For SDG 14, Life Below Water, the targets and indicators are reproduced in the table below:

TARGETS	INDICATORS
<p>14.1</p> <p>By 2025, prevent and significantly reduce marine pollution of all kinds, in particular from land-based activities, including marine debris and nutrient pollution</p>	<p>14.1.1</p> <p>Index of coastal eutrophication and floating plastic debris density</p>
<p>14.2</p> <p>By 2020, sustainably manage and protect marine and coastal ecosystems to avoid significant adverse impacts, including by strengthening their resilience, and take action for their restoration in order to achieve healthy and productive oceans</p>	<p>14.2.1</p> <p>Proportion of national exclusive economic zones managed using ecosystem-based approaches</p>
<p>14.3</p> <p>Minimize and address the impacts of ocean acidification, including through enhanced scientific cooperation at all levels</p>	<p>14.3.1</p> <p>Average marine acidity (pH) measured at agreed suite of representative sampling stations</p>
<p>14.4</p> <p>By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans, in order to restore fish stocks in the shortest time possible, at least to levels that can produce maximum sustainable yield as determined by their biological characteristics</p>	<p>14.4.1</p> <p>Proportion of fish stocks within biologically sustainable levels</p>
<p>14.5</p> <p>By 2020, conserve at least 10 percent of coastal and marine areas, consistent with national and international law and based on the best available scientific information</p>	<p>14.5.1</p> <p>Coverage of protected areas in relation to marine areas</p>

<p>14.6</p> <p>By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation</p>	<p>14.6.1</p> <p>Progress by countries in the degree of implementation of international instruments aiming to combat illegal, unreported and unregulated fishing</p>
<p>14.7</p> <p>By 2030, increase the economic benefits to Small Island developing States and least developed countries from the sustainable use of marine resources, including through sustainable management of fisheries, aquaculture and tourism</p>	<p>14.7.1</p> <p>Sustainable fisheries as a percentage of GDP in small island developing States, least developed countries and all countries</p>
<p>14.A</p> <p>Increase scientific knowledge, develop research capacity and transfer marine technology, taking into account the Intergovernmental Oceanographic Commission Criteria and Guidelines on the Transfer of Marine Technology, in order to improve ocean health and to enhance the contribution of marine biodiversity to the development of developing countries, in particular small island developing States and least developed countries</p>	<p>14.A.1</p> <p>Proportion of total research budget allocated to research in the field of marine technology</p>
<p>14.B</p> <p>Provide access for small-scale artisanal fishers to marine resources and markets</p>	<p>14.B.1</p> <p>Progress by countries in the degree of application of a legal/regulatory/policy/institutional framework which recognizes and protects access rights for small-scale fisheries</p>
<p>14.C</p> <p>Enhance the conservation and sustainable use of oceans and their resources by implementing international law as reflected in UNCLOS, which provides the legal framework for the conservation and sustainable use of oceans and their resources, as recalled in paragraph 158 of The Future We Want</p>	<p>14.C.1</p> <p>Number of countries making progress in ratifying, accepting and implementing through legal, policy and institutional frameworks, ocean-related instruments that implement international law, as reflected in the United Nation Convention on the Law of the Sea, for the conservation and sustainable use of the oceans and their resources</p>

Financial or other incentives applied, where appropriate

The UN seeks to encourage implementation of the SDGs through a wide variety of non-regulatory mechanisms and approaches. Of particular relevance to this report is the “Partnerships and Voluntary Commitments Program”, especially the [Ocean Voluntary Commitments Registry](#) and the [Partnerships for Small Island Developing States](#).

Relevance

As recognised in the Samoa Ocean Strategy, the SDGs and SDG14 in particular, are **directly relevant** to this review.

Concluding observations

Samoa Ocean Strategy recognizes the importance of acting consistently with globally agreed frameworks on sustainable ocean governance, including the SDGs in general and SDG14 in particular.

A.2.3 Framework for the Pacific Oceanscape

Overview

The Pacific Oceanscape was conceived by His Excellency Anote Tong, President of Kiribati, and the concept endorsed by Pacific Islands Forum leaders at their 40th Meeting in August 2009: “Leaders welcomed the Pacific Oceanscape concept and its companion Pacific Ocean Arc initiative tabled by Kiribati aimed at increasing marine protected area investment, learning and networking. Leaders tasked the Secretariat, together with relevant CROP agencies and key partners, to develop a framework for the Pacific Oceanscape, drawing on the Pacific Islands Regional Ocean Policy, as a priority area for attention under the Pacific Plan.” The Forum’s Marine Sector Working Group (MSWG) developed the Pacific Oceanscape Framework which was endorsed by the leaders at their 41st meeting.

Objective

The Oceanscape has three objectives, the first of which is most relevant to MSP Integrated Ocean Management – “to focus on integrated ocean management at all scales that results in the sustainable development, management and conservation of our island, coastal and ocean services; adaptation to environmental and climate change: and liaising, listening, learning and leading.”

Jurisdiction

While endorsed as a policy document by PIF leaders, the Pacific Oceanscape is not obligatory.

Activities promoted, prohibited or regulated

Under Strategic Priority 1, PICs are encouraged to delineate their maritime zones and EEZs using base-point coordinates and charts, and to deposit these with the United Nations as allowed by UNCLOS. This assists in clarifying the precise boundary of each country’s maritime zones, including the EEZ, and the risk of sovereign resource loss due to the future impacts of climate-induced sea level rise. For Cook Islands, clarifying the boundaries in that manner will also assist the establishment and implementation of the CIMP.

Oceanscape Strategic Priority 2 is Good Ocean Governance, and among the related actions is one directing PICs to establish clear coordinated institutional arrangements for integrated ocean and coastal management. “Embracing integrated national approaches to ocean and coastal management across relevant sectors such as fisheries, minerals, transport, tourism, energy and environment will require institutional reform seeking to avoid duplication and clarifying responsibilities in the interests of cost effectiveness and efficiency.”

A number of actions directly relevant to MSP are linked to the 3rd Strategic Priority, Sustainable Development, Management and Conservation. The first of these calls upon PICs to implement integrated coastal resource management arrangements - “PICTs are increasingly demonstrating the key role their communities play in managing local resources. These efforts should be supported and coordinated at provincial and national levels to ensure enforcement and information is supplemented, where necessary, and that wider ecosystem and national interests can be incorporated into joint action.”

Another action under Strategic Priority 3 requires PICs to implement systems of marine spatial planning and management - “Develop and strengthen appropriate security and enforcement mechanisms and spatial planning systems that guide multiple use for economic growth while maintaining ecosystem function and biodiversity integrity of coastal and ocean areas. These higher order management systems provide the fundamental basis

for the use of spatial management tools in a nested fashion, drawing from experiences in strict traditional closures, locally managed areas and large multiple use managed and protected areas.”

The final three Strategic Priorities are Liaising, Listening, Learning and Leading (4), Sustaining Action (5), and Adapting to a Rapidly Changing Environment (6). Each of these is relevant to MSP.

Relevance

The Framework for the Pacific Oceanscape, representing an agreed aspirational regional framework for ocean governance, is **directly relevant** to this review.

Concluding comments

Annex 1 (p40) of the SOS identifies all the links and synergies between the SOS and the Framework for a Pacific Oceanscape.

A.2.4 The SIDS Accelerated Modalities of Action (S.A.M.O.A) Pathway

Overview

The SIDS Accelerated Modalities of Action (S.A.M.O.A) Pathway is an international framework developed as the outcome of the Third International Conference on Small Island Developing States (SIDS Conference), held 1-4 September 2014 in Apia, Samoa. The Conference’s overarching theme was “The sustainable development of Small Island developing States through genuine and durable partnerships.”

Objective

The SAMOA Pathway outcomes document is necessarily broad-ranging. It’s objective can be inferred as a reaffirmation by the global community to commitments made in support of the sustainable development of small island developing states.

Jurisdiction

The SAMOA Pathway outcomes document was endorsed by the UN General Assembly in November 2014 by resolution 69/15. It does not create binding legal obligations upon states.

Activities promoted

For present purposes the most relevant section of the SAMOA Pathway outcomes document is titled “Oceans and Seas” (par. 53-58), with paragraph 58 listing actions (a) – (p). Combined, these represent a comprehensive action plan to enhance and optimise ocean governance in SIDS.

It is unnecessary to reproduce the actions of SAMOA Pathway para 53 in this document. The synergies between the SOS and the SAMOA Pathway are identified and tabulated in Annex 1 (p40) of the SOS.

Relevance

In representing an agreed global framework for sustainable development in SIDS, and specifically the sections on ocean governance, The SAMOA Pathway is **directly relevant** to this review.

Concluding Comments

Highlighting national actions taken to implement this international program may be of particular interest to Samoan stakeholders given its origins at the Apia Conference.

A.3 Samoan Law

A.3.1 Acts Interpretation Act

Overview

The AIA provides the principles and rules for interpretation of and general definitions for Acts. Having the AIA in place enables efficiency of drafting and promotes consistency in the language and form in Acts. As MSP in Samoa may require new enactments, it is necessary to consider the AIA in this review.

Objective

The AIA provides the principles and rules for interpretation of, and general definitions for, Samoan legislation.

Jurisdiction

The AIA applies to all Samoan legislation, including subsidiary legislation (e.g. regulations).

Activities promoted, prohibited or regulated

The AIA applies rules for the interpretation of legislation.

Notable Provisions

The AIA is unremarkable in as much as it reflects conventions of legislative interpretation and drafting widely adopted within Westminster-style jurisdictions.

Specific AIA provisions may be relevant to understanding specific aspects of existing and proposed legislation reviewed herein. For example, section 12 of the EMC Bill creates an Environment Board with members, including the CEOs of 10 Ministries or Public Authorities. This should be read in conjunction with section 43 of the AIA which allows delegations, except where these are specifically prohibited.

Certain defined terms are notable: “land” includes land below water. “Samoan waters” does not include the EEZ (unless otherwise expressly provided).

Financial or other incentives applied, where appropriate

n/a

Relevance

The AIA **marginally relevant** to this review.

Concluding observations

Reference to the AIA is necessary in gaining a full understanding of the effect of existing and proposed laws related to MSP.

A.3.2 Customs Act 2014

Overview

The Customs Act is a comprehensive recently enacted legislative instrument that empowers the Government of

Samoa to control the transboundary movement of goods and people. Since many people and most goods arrive and depart Samoa by means of ocean transport, the Customs Act is significant for MSP. Enhancing maritime border security is among the core goals of MSP. The Customs Act operates both to control and facilitate the transboundary movements of people and goods, as well as ensuring compliance with prohibitions and collection of revenue related to imports and exports.

Objective

The aim of the Customs Act is to establish Customs controls, management and enforcement, revenue administration, border controls and border management, trade and travel facilitation, security, and for related purposes.

Jurisdiction

The Customs Act applies to all of Samoa.

Activities promoted, prohibited or regulated

The following activities are regulated under the Customs Act:

- Persons arriving from another country;
- Persons departing to another country;
- Importing goods; and
- Exporting goods.

Regulatory approaches applied, where appropriate

The Customs Act contains 360 provisions briefly summarised:

- Establishes the Customs Service and persons authorised to enforce the Act;
- Allows for the designation of 'Customs Places' and 'Customs Controlled Areas', including all ports of entry;
- Provides that all transportation vehicles must advise of arrival;
- Provides that all goods intended for import or export are subject to customs control;
- Provides that all persons must enter or depart Samoa at a Customs Place;
- Prohibits the import or export of certain goods and materials;
- Provides for the assessment and collection of duties;
- Provides extensive powers to Customs Officers to enforce the Act, including surveillance, boarding and searching craft, detaining craft, seizing goods and arresting suspected offenders;
- Defines a range of offences against the Act, including penalties; and
- Includes special evidentiary provisions and defines avenues and processes of appeal.

Financial or other incentives applied, where appropriate

n/a

Relevance

The Customs Act is **somewhat relevant** to this review. It is a centrally important legislative instrument containing core powers essential to control the movement of people and goods in and out of Samoa's marine space.

Concluding observations

Apart from its general relevance, the Customs Act has been directly applied for purposes of marine conservation in the past. An example is the *Order of Prohibited Exports (Sea Cucumber) 2010*, issued under a previous version of the Act using powers now contained in section 92. While a somewhat 'blunt instrument', such orders can be effective time-efficient measures where specific marine species suffer from excessive international market demand, as can be the case with sea cucumbers or aquarium trade species.

A.3.3 Disaster and Emergency Management Act 2007

Overview

The DEMA establishes an institutional governance structure for disaster planning and response in Samoa. It is administered by the Disaster Management Office in the Ministry of Natural Resources and Environment.

Objectives

DEMA has the following objectives:

- (a) establish an efficient structure for the management of disasters and emergencies by promoting cooperation among agencies, with a role in disaster management and enhancing their capacities;
- (b) require the preparation and implementation of a national disaster management plan consisting of the response agency plans prepared by the response agencies and other groups and institutions;
- (c) to vest authority in persons and agencies to act during times of disaster and emergency;
- (d) to enhance the capacity of the government, relevant agencies and the community to prevent or minimise threats to life, health and the environment from natural disasters and other emergencies;
- (e) to implement mechanisms to reduce risks and hazards that may cause, contribute to or exacerbate disaster or emergency situations in Samoa; and
- (f) to facilitate procedures aimed at implementing recovery activities in the aftermath of disasters and emergencies.

Jurisdiction

DEMA applies to all of Samoa.

Activities promoted, prohibited or regulated

The activities promoted by DEMA are disaster planning, inter-agency and inter-sectoral coordination in the interests of improved disaster preparedness and planning.

Regulatory approaches applied, where appropriate

Institutionally, DEMA establishes a National Disaster Council (PM and Ministerial level), the Disaster Advisory Committee and the National Emergency Operational Centre.

DEMA requires the preparation of plans by each of the 'response agencies' listed in the Schedule. A considerable overlap exists between this list and the agencies with a stake in MSP.

DEMA empowers the establishment of disaster declarations and emergency proclamations.

DEMA includes offences relating to interfering with disaster or emergency operations.

Financial or other incentives applied, where appropriate

n/a

Relevance

DEMA is **somewhat relevant** to this review.

Concluding observations

While disaster management is not central to MSP, the spatial information and tools developed as part of MSP are potentially a valuable enhancement of disaster preparedness and response. Some intersection between the MSP and the disaster plans (e.g. mapping marine-based tsunami warning infrastructure), will exist.

A.3.4 Fisheries Management Act 2016

Overview

The *Fisheries Management Act 2016* (FMA) empowers and guides the governance of fishing in Samoan waters, as well as fishing by Samoan vessels on the high seas. It is a comprehensive and modern legislative instrument designed to bring Samoa into compliance with international obligations under fisheries treaties, as well as providing mechanisms of inshore fishery management responsive to local conditions and traditions. The Act is administered by the Fisheries Division of the Ministry of Agriculture and Fisheries.

Objectives

FMA aims to regulate and control the conservation, management and development of inshore and offshore fisheries, and the licensing of Samoan commercial fishing vessels and foreign fishing vessels (Long title).

Closely related to these objectives are the “approaches and principles of conservation and management” identified in section 4, which are intended to guide all decisions made under the Act. The precautionary and ecosystems approaches apply the following principles:

- (a) transparency, accountability and inclusiveness, taking into account applicable best international or regional practices;
- (b) sustainable use of fishery resources, taking into account the general obligation to protect and preserve the marine environment;
- (c) decisions based on the best information available designed to maintain or restore stocks at levels capable of producing maximum sustainable yield;
- (d) Prevention and elimination of over-fishing and excess fishing capacity;
- (e) Collection, verification and reporting of full and accurate data on fisheries, including information relating to the ecosystems and social systems in which fisheries occur;
- (f) Pursuing of effective enforcement of conservation and management measures to protect biodiversity;
- (g) Minimisation of pollution and waste originating from fisheries operations; and
- (h) decisions and actions taken are to improve the welfare and livelihood of fishers and the fishing community.

Jurisdiction

FMA applies to all Samoan marine waters, including the EEZ. FMA also applies to Samoans and Samoan registered vessels fishing outside of Samoa (s3).

Activities promoted, prohibited or regulated

Fishing is the broadly defined activity the FMA regulates, promotes and in some instances prohibits. The lengthy Act is briefly summarised here. In essence, the regulatory approaches applied are: licencing of commercial fishing and aquaculture operations; devolving the making of fishing by-laws by local stakeholders; and prohibiting certain types of fishing altogether.

Regulatory approaches applied, where appropriate

Institutionally, FMA identifies the Fisheries Division as being responsible for its implementation, lists the functions of the Division, and empowers the authorisation of persons to enforce the Act.

Section 18 highlights the various regulatory mechanisms that can be applied in the Act to implement conservation measures:

- Regulations made under section 92;
- An Order published in the Savali;
- The endorsing of a fisheries management plan containing such measures; and
- Imposing conditions on fishing licences.

Examples of prohibited fishing methods are driftnet fishing (s43) and using explosives or poisons (s42).

Part 8 – Village Fisheries By-laws (ss86-89) is especially worth noting in the context of MSP. This aspect of Samoa's marine governance has been reported in international literature for some time (although the publications cited describe previous versions of the arrangements).²⁵ Section 86 provides:

86. Making of fisheries by-laws – (1) A village Fono may make village fishery bylaws, consistent with this Act, for the purpose of conserving, protecting, managing, developing and sustaining harvest of fish in the village fisheries management area, including any or more of the following matters:

- (a) prohibit harvest of certain type of fish;
- (b) prohibit fishing methods that are destructive or damaging;
- (c) provide periodic closure of fishing in certain areas;
- (d) restrict or limit size of fish caught or harvested;

²⁵ U Fa'asili and I Kelekolo, *The Use of Village By-laws in Marine Conservation and Fisheries Management* (1999) 11 *Traditional Marine Resource Management and Knowledge* 7-10. M King and U Fa'asili, 'A Network of Small, Community-Owned Village Fish Reserves in Samoa' (1999) 11 *Traditional Marine Resource Management and Knowledge* 2-6. U Fa'asili and A Taua, *Review of the Village Fisheries Management Plans of the Extension Programme in Samoa* Field Report No. 7, 2001, M King, K Passfield, E Ropeti *Management of village fisheries; Samoa's community-based management strategy* (Government of Samoa, 2001), G Macfadyen, P Cacaud and B Kuemlangan *An overview of legal issues and broad legislative considerations for community-based fisheries management* (FAO, Rome, 2005) 21-24. B Kuemlangan *Creating Legal Space for Community- Based Fisheries and Customary Marine Tenure in the Pacific: issues and opportunities* (FAO, Rome, 2004).

- (e) restrict mesh size of fishing nets;
- (f) restrict fish importation or exportation;
- (g) regulate any activity that would cause adverse effects on marine environment and coastal fisheries; and
- (h) provide any other matter necessary to protect coastal fisheries.

(2) Fisheries by-laws are to be:

- (a) prepared under the guidelines issued under section 6;
- (b) vetted by the Attorney General;
- (c) approved by Cabinet;
- (d) signed by the Chief Executive Officer;
- (e) published in the Savali after they are signed;
- (f) effective on the 14th day after they are first published in the Savali; and
- (g) distributed (copies of by-laws) by the Chief Executive Officer to stakeholders, including neighbouring village communities.

Financial or other incentives applied, where appropriate

The only financial or other incentive applied in the FMA is the provision allowing fines for breaches of village fishery by-laws to be deposited with the village. (s88(2)). This is assumed to be an incentive for active and effective enforcement.

Relevance

FMA is directly relevant to this review. Fishing is among the primary uses of Samoa's marine space and the FMA is the primary legislative instrument regulating fishing in Samoan waters.

Concluding observations

Samoa has legislation in the FMA that seeks to ensure the sustainable management of coastal and offshore fisheries and the long-term protection of marine biodiversity. The Act specifically requires its administration to adopt both the precautionary and ecosystems approaches. The FMA contains broad regulation-making powers, as well as other regulatory mechanisms, such as the imposition of license conditions and a program of decentralised co-management of inshore fisheries. These enable its administrators to efficiently respond to a future MSP.

A.3.5 Forestry Management Act 2011

Overview

The Forestry Management Act, administered by the Ministry of Natural Resources and Environment, is primarily concerned with forestry resources and operations unrelated to any marine area. Consequently, it is only briefly dealt with here.

Objective

The effective and sustainable management of Samoa's forestry resources.

Jurisdiction

The Forestry Management Act applies to all of Samoa. Key concepts guiding its application 'forestry operation' and 'forestry resource'. The former is defined to include harvesting firewood and the latter is defined in a manner that could include mangroves. This is the most direct link between the Forestry Management Act and MSP.

Activities promoted, prohibited or regulated – Sustainable development with respect to forestry operations means maintenance of the quality of the environment, as well as maintenance of the supply of forest resources, and the precautionary principle is embraced. The Act includes provisions that seek to protect the environment including preventing and halting operations that adversely affect the environment.

The Minister is required to prepare a National Forest Plan which provides for the sustainable management of forest resources.

Regulatory approaches applied, where appropriate

Forestry operations may only be undertaken on the authority of a licence or permit granted under Part 5 of the Act. The Minister may impose prohibitions or restrictions on the logging of a specific species of tree to conserve the species or protect the environment (section 37). An authorised forestry officer has extensive powers to investigate and enforce the Act, including the power to issue a notice to cease activity, under Part 2 of the Act. A forestry officer may also be appointed as a conservation officer under the Lands, Surveys and Environment Act.

Importantly, Part 8 of the Act provides for the creation of Protected Areas. Section 57 provides that areas of land may be protected by license condition and section 58 provides for the declaration of protected areas, although this is limited to a maximum period of 5 years.

Financial or other incentives applied, where appropriate

n/a

Relevance

The Forestry Management Act is **somewhat relevant** to this review.

Concluding observations

Marine environments, particularly in a small island context, are susceptible to degradation from unsustainable forestry operations due to impacts, such as increased sedimentation. This, and the potential to apply its provisions to protect mangrove areas and ecosystems specifically, mean this law is relevant, if not central, to MSP.

A.3.6 Lands, Surveys and Environment Act 1989

Overview

The LSE combines in a single law provisions relating to various aspects of environmental protection with those relating to dealings in public land (surveys, compulsory acquisition, leases, alienation of public land etc). This review is concerned only with those aspects of the Act potentially relevant to MSP, which are sections 1-6 and Parts 8 and 9 (sections 93-147), especially Part 8. The Act is administered by the Ministry of Natural Resources and Environment.

Objectives

The long title of the LSE is the optimum statement of its objective, which is: to consolidate the Land Ordinance 1959 and to make provision for the conservation and protection of the environment and the establishment

of National Parks and other forms of protected areas, and to enlarge the functions of a Department of State and for matters incidental thereto.

Part 8 does not have a statement of objective, but section 98 referring to the Environment Board established by section 97, is worth noting, “The Board shall, in the exercise of the functions conferred upon it by this Act, have as its principal objective the protection and conservation of the natural resources and environment.”

Jurisdiction

LSE applies to all of Samoa.

Activities promoted, prohibited or regulated

The LSE establishes the position of Principal Environmental Officer within the Ministry, which reports to the Chief Executive Officer and is responsible for the administration of the Part. Section 93 establishes an Environment Board, although this body has never met.

Division 4 of Part 8 is potentially significant in the context of MSP, requiring the preparation of management plans via a process set forth in the Division. A finalised management plan becomes an enforceable instrument under section 118. The management plans listed in section 116 are:

- (a) national parks;
- (b) reserves;
- (c) Samoa waters and water resources;
- (d) coastal zones;
- (e) indigenous forests;
- (f) soil erosion;
- (g) pollution;
- (h) waste and litter disposal; and
- (i) any other matter relating to the environment which in the opinion of the Board will benefit from a management plan.

In practice, Division 4 has not operated as described.

Division 5, Coastal Zones, is significant and relevant to MSP. This is the one aspect of the LSE Part 8 that will not be repealed if the EMC Bill is passed. ‘Coastal zone’ is defined in section 2 as meaning “all those areas comprising coastal waters and the foreshore” and ‘coastal waters’ refers to that area having the mean low water mark as its inner boundary, **and as its outer boundary, the outer limit of the territorial sea, including every lagoon and the bed of such sea or lagoon.**” In particular, section 120 protects coastal waters by prohibiting, in the absence of written consent of the Minister, removal of gravel, coral and other materials, excavation or dredging, the placing of any fill and the construction of any structure across or under coastal waters.

The marine aspects of Division 6, Pollution of Seas and Inland Waters, may have been superseded by the passage of the *Marine Pollution Prevention Act 2008*.

Regulatory approaches applied, where appropriate

Primarily command-and-control regulatory provisions. Although some of the details are contained in Part 8, the provisions reside mainly in regulations made pursuant to the power conferred by section 146. These are listed below:

- Watershed Protection & Management Regulations 1992/3;
- The Protection and Conservation of Wild Animals Regulations 1993;
- Protection of Wildlife Regulations 2004;
- Plastic Bag Prohibition on Importation Regulations 2006;
- Marine Wildlife Protection Regulations 2009; and
- Marine Wildlife Protection Amendment Regulations 2018.

Financial or other incentives applied, where appropriate

None applied in this Act.

Relevance

Part 8 of LSE is **directly relevant** to this review. It is the legislation that establishes the Environment Division within the Ministry and provides regulatory authority that has been exercised most actively through regulations.

Concluding observations

Key stakeholders have sought for some years to replace and repeal the aspects of the LSE that are most relevant to MSP by passage of the EMC Bill.

A.3.7 Marine Wildlife Protection Regulations 2009 (as amended by the Marine Wildlife Protection Amendment Regulations 2018)

Overview

The Marine Wildlife Protection Regulations (MWPR) under LSE provide protections specifically for marine mammals, turtles, sharks and breeding aggregations. The 2018 amendment also added a National Marine Sanctuary. The MWPR is administered by the Ministry of Natural Resources and Environment.

Objective

The MWPR does not contain a statement of objectives. They may be inferred as relating to ensuring legal protection is afforded to certain marine species considered to be particularly important or vulnerable to anthropogenic impacts, to regulating certain activities dealing with marine species such as research and particular tourism operations, and to declaring a National Marine Sanctuary.

Jurisdiction

The MWPR applies to all “Samoan waters” defined to include internal waters, the contiguous zone, the territorial sea and the exclusive economic zone. To avoid all doubt, section 3 restates that the MWPR applies “to all relevant activities by persons within Samoa’s exclusive economic zone as defined by the Marine Zones Act 1999.”

Activities promoted, prohibited or regulated

Prohibitions:

- kill, injure or harm any turtles, marine mammals or spawning aggregations;
- harassing turtles, marine mammals or spawning aggregations;
- fishing for sharks except for subsistence purposes from a non-motorised vessel;
- disturbing turtle nests or taking turtle eggs; and

- import or export species or products in contravention of CITES:

Exemptions: Actions taken to protect human life, taking non-endangered turtles for subsistence purposes.

Licensing with conditions: Tourism operations based on whale, dolphin and turtle watching activities.

Reporting of incidents with marine mammals and turtles.

Regulatory approaches applied, where appropriate

The above rules are stated prescriptively, as would be expected.

The MWPR contains two other aspects: Part VI provides the Minister with the capacity to designate “species of conservation concern” for which management plans must be prepared and implemented.

Also, the 2018 amendment added a National Marine Sanctuary. Regulation 14A provides that: “Samoa shall have a National Marine Sanctuary that provides and recognises the conservation of whales, dolphins, turtles and sharks within the exclusive economic zones”. Currently in draft is a “Management Plan Framework” for the National Marine Sanctuary. In legal terms, at present the sanctuary exists by virtue of the protections offered to the target species by other provisions of the MWPR.

Financial or other incentives applied, where appropriate

n/a

Relevance

The Marine Wildlife Protection Regulations are **directly relevant** to this review.

Concluding observations

The MWPR are an important component of Samoa’s marine legislation, particularly regarding marine mammals, sharks, turtles and spawning aggregations.

A.3.8 Lands, Surveys and Environment (Plastic Bag) Regulations (as amended to 2013)

Overview

These regulations, introduced in 2006 and amended in 2013, place restrictions upon the types of plastic bags that can be imported into Samoa, thus addressing a significant source of marine pollution – post-consumer plastic.

Objective

The regulations support the general objective of protecting the environment from pollution by placing limits upon the types of plastic bags imported into Samoa.

Jurisdiction

The regulations are made pursuant to section 146 of the LSE Act.

Activities promoted, prohibited or regulated

Plastic bag importation is the regulated activity. Following the regulatory introduction, only persons with a licence issued under the regulations may import plastic bags, which must be biodegradable and correctly labelled in both English and Samoan.

Regulatory approaches applied, where appropriate

The regulatory approach is as follows:

- Define plastic as a pollutant;
- Ban import of plastic bags except for license holders;
- Require any imported bags to be biodegradable to a specified standard;
- Require labelling of bags in both Samoan and English;
- Require license holders to keep records of imports; and
- Provide offenses and penalties for non-compliance.

Financial or other incentives applied, where appropriate

n/a

Relevance

The Lands, Surveys and Environment (Plastic Bag) Regulations are somewhat relevant to this review.

Concluding observations

Plastic pollution of the ocean is a significant threat to marine biodiversity and sustainability. In a SIDS context especially, import restrictions upon specific items are an effective, efficient and preventive mechanism to address specific post-consumer waste streams.

A.3.9 Marine Pollution Prevention Act 2008

Overview

The Marine Pollution Prevention Act 2008 (MPPA), administered by the Ministry of Works, Transport and Infrastructure, implements the following international conventions in Samoa:

- (a) Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1990 and its Protocol for the Prevention of Pollution of the South Pacific by Dumping and protocol concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region;
- (b) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 as amended by the Protocol of 1996 relating thereto;
- (c) International Convention for the Prevention of Pollution from Ships 1973 as amended by the Protocol of 1978 relating thereto;
- (d) International Convention on Civil Liability for Oil Pollution Damage, 1992;
- (e) International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea 1996;
- (f) International Convention on Oil Pollution Preparedness, Response and Co-operation 1990;
- (g) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1992;

(h) International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (1969) and the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other than Oil 1973;

(i) Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances 2000;

(j) International Convention on Civil Liability for Bunker Oil Pollution Damage 2001; and

(k) International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001.

Objectives

MPPA aims “to provide for the prevention of pollution to the marine environment and for responses to marine pollution incidents emanating from vessels, and other matters related to the implementation of international marine pollution conventions.”

Jurisdiction

MPPA applies to all of Samoa, including the EEZ and all vessels operating in Samoan waters, as well as Samoan vessels in any waters.

Activities promoted, prohibited or regulated

The MPPA provides a comprehensive regulatory framework for marine pollution prevention, planning and response in Samoa. The Act itself has 64 sections, but many of these refer to other prescriptions and standards contained in international treaties. Therefore detailed accounting of all relevant regulated activities is beyond the present scope. MPPA contains the following Parts:

- Preliminary;
- Marine Pollution Prevention;
- Marine Pollution Response;
- Marine Casualties;
- Liability and Compensation for Pollution Damage from Ships;
- Dumping and Incineration of Wastes; and
- Miscellaneous.

Some notable elements include: s5 – Act applies to all vessels in Samoan waters and all Samoan vessels; s8 – criminal liability for specified persons in breach; s10 – ballast water requirements; s15 – waste reception facilities at Samoan ports; s16 – duty to report incidents; s17 – record-keeping in accordance with various treaties; and s18 – powers enabling inspectors to enforce the legislation.

Regulatory approaches applied, where appropriate

The regulatory approach applied in the MPPA could be described as prescriptive command-and-control. The law, or the treaty to which the law refers, contains detailed rules in relation to matters such as the design or operation of vessels. Additionally, specified persons found to be in breach of those prescriptions are criminally liable.

Exceptions to this are the emphasis on planning (for example, marine spill contingency plans) in Part 3, and Part 5 (see below).

Financial or other incentives applied, where appropriate

Part 5 of MPPA, as the title suggests, sets out in Samoan law the internationally-agreed position with regard to liabilities and compensation for marine pollution damage, citing the relevant conventions. Importantly, also included are the insurance requirements for high-risk or large vessels.

Relevance

MPPA is **directly relevant** to this review. Preventing and responding to marine pollution, especially from shipping, is a key element of sustainable marine governance and therefore an important aspect of MSP.

Concluding observations

This is a complex and important area of governance. The MPPA is a sound legislative instrument that strikes a balance between including selected requirements from the relevant treaties within its own provisions, while integrating others by reference.

A.3.10 Marine Insurance Act 1975

Overview

The Marine Insurance Act is a somewhat archaic law partly derived from New Zealand legislation of 1908.

Objective

The objective of this Act is to consolidate the law regarding marine insurance. It assists in the interpretation of policies and claims.

Relevance

The Marine Insurance Act does not require a Party to hold any particular insurance, and is therefore **irrelevant** to MSP and this review.

A.3.11 Maritime Zones Act 1999

Overview

The Maritime Zones Act 1999 (MZA) defines, in a manner consistent with international law, Samoa's sovereignty over its ocean space, including internal waters, territorial sea, contiguous zone and exclusive economic zone. It replaced two previous laws.

Objective

To make provision with respect to the internal waters, territorial sea, the contiguous zone, the exclusive economic zone and Samoa's continental.

Jurisdiction

The MZA defines Samoa's sovereign boundaries with respect to its marine space, including the EEZ.

Activities promoted, prohibited or regulated

International law regarding the extent to which state sovereignty can be exercised in marine areas is well-

developed. Full sovereignty extends to the internal waters and territorial sea, subject to rights of innocent passage. Section 9 highlights that land beneath internal waters and the territorial sea “is and shall be deemed to have always been” public land – ensuring the de jure capacity of the state to regulate marine areas. The contiguous zone may be regulated for the purposes stated in section 18.

The EEZ “comprises that area of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea, having as their outer limits the line, every point of which is 200 nautical miles seaward from the nearest point of the territorial sea baseline.” (section 19).

Section 20 is reproduced below in full due to its importance:

20. Rights and jurisdiction in the exclusive economic zone – (1) In the exclusive economic zone, the Government of Samoa has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources (whether living or non-living) of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to any other activity relating to the economic exploitation and exploration of the zone.

(2) Without limiting subsection (1), the Government has jurisdiction in the exclusive economic zone with regard to all of the following:

- (a) the establishment and use of artificial islands, installations and structures;
- (b) marine scientific research; and
- (c) the protection and preservation of the marine environment.

Regulatory approaches applied, where appropriate

Some specific provisions of the MZA are particularly relevant.

Section 12 defines the criteria for innocent passage by foreign vessels. All of the matters listed in (a)-(k) are relevant to MSP, while from an environmental or resource management perspective (g), pollution of the marine environment and (h) fishing without a licence, are particularly so.

Section 14 (2) provides that vessels carrying radioactive wastes or other dangerous, noxious or hazardous wastes, or substances harmful to the environment, through the territorial sea must have the prior authorisation of the Minister and any other authority in Samoa vested with relevant lawful authority.

Financial or other incentives applied, where appropriate

n/a

Relevance

The Maritime Zones Act is **directly relevant** to this review.

Concluding observations

The MZA is a foundational component of the legal framework for ocean governance in Samoa.

A.3.12 National Parks and Reserves Act 1974

Overview

The National Parks and Reserves Act (NPA) enables the creation of various types of protected areas. The Act is administered by MNRE. In the event the EMC Bill passed, NPA would be repealed.

Objective

To provide for the establishment, preservation and administration of national parks and reserves for the benefit of the people of Samoa.

Jurisdiction

The NPA applies to Samoa's public land. Land is not defined in the NPA and so in conformity with the Constitution, includes land under water.

Activities promoted, prohibited or regulated

Part 2 provides for the establishment of national parks and Part 3 provides for establishing reserves.

National parks may be declared by the Head of State over any public land not set aside for another public purpose and not less than 1500 acres. A national park must be preserved in perpetuity for the benefit and enjoyment of the people of Samoa, and administered to ensure preservation as far as practical in its natural state. Additionally, flora and fauna preservation must be optimised and the value as a soil, water, and forest conservation area is to be maintained.

Three types of reserves are described in the Act: nature reserves, recreation reserves and historic reserves. Additionally, reserves may be created for a specified purpose. Most relevant for MSP, a nature reserve is established for the conservation, protection and management of flora, fauna, or aquatic life, or the habitat of fauna or aquatic life within specified public land or the territorial sea. The Minister may prohibit or restrict persons from entering a reserve, and conducting activities detrimental to the reserve.

Regulatory approaches applied, where appropriate

Part 4 of the NPA provides for five offences relating to contravening prohibitions made by notice in the Savali under the Act, with regard to a national park or reserve, or damaging property or resources within the areas. A regulation-making power also exists that has not been exercised to date. Maximum penalties for offences appear to be quite low.

Financial or other incentives applied, where appropriate

None, except the authority in Section 11 to make regulations imposing admission fees.

Relevance

NPA is **directly relevant** to this review because it is the principal law in Samoa enabling the creation of protected areas. NPA will cease to be relevant if the EMC Bill is enacted.

Concluding observations

The NPA would be directly relevant if it becomes the appropriate legislative vehicle via which Samoa declares marine protected areas (however defined). If the EMC Bill passes in its current form, the NPA will be repealed and replaced by the new law.

A.3.13 Planning and Urban Management Act 2004

Overview

The Planning and Urban Management Act 2004 (PUMA) provides an institutional and legislative foundation for sustainable management planning and development assessment in Samoa. PUMA is administered by the

Ministry of Works, Transport and Infrastructure. This is a recent re-arrangement of responsibilities; PUMA was administered by MNRE until April 2019.

Objectives

PUMA contains two statements of objectives. The full title is: “to establish a Planning and Urban Management Agency and to implement a framework for planning the use, development, management and protection of land in Samoa in the present and long-term interests of all Samoans.”

Section 8 states: Objectives of this Act – In the performance of a function, power or duty under this Act, the following objectives shall be pursued:

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

Jurisdiction

PUMA applies to all land in Samoa. With respect to its application to marine space, PUMA defines land to include land covered with water. The Acts Interpretation Act defines Samoa to include the EEZ. PUMA's provisions apply to the seabed to the limits of the exclusive economic zone. It is unclear whether PUMA also applies to development in marine space that does not touch the seabed.

Activities promoted, prohibited or regulated

Leaving aside provisions around sustainable management planning, the activity regulated or prohibited by PUMA is development, defined as “the use of land (whether for a long term or temporary purpose), the erection of a building or other structure, the carrying out of a work, subdivision, and any other activity regulated under this Act.” PUMA is Samoa’s environmental impact assessment legislation.

Certain development may be prohibited or allowed without consent under the Act or require the proponent to apply under PUMA for development consent. Consent details are primarily elucidated in Part 5 of the Act, as well as in regulations.

Regulatory approaches applied, where appropriate

In examining the potential to achieve a governance framework for MSP within existing legislative provisions, it is worthwhile considering Parts 2, 3 and 4 of PUMA in some detail.

Part 2 establishes the Planning and Urban Management Agency and the Planning and Urban Management Board to assist the Minister in administering the Act. The Board, chaired by the Minister, has ten members; five from government and five community representatives. All members are appointed by the Head of State on the advice of Cabinet.

Part 3 commences with the objectives quoted above, all of which are consistent with MSP and similar to the objectives of MSP itself. Section 9 lists the various functions of the Board, which include the following relevant to this document:

- (a) to implement the provisions in accordance with its objectives;
- (b) to exercise the powers conferred by this Act so as to meet its objectives including—
 - (i) facilitating the preparation and approval of sustainable management plans;
 - (v) issuing such orders and taking such other action as is provided for by this Act;
 - (vi) otherwise taking such enforcement action as is provided for;
- (d) to appoint special planning committees to advise on the preparation and contents of a proposed sustainable management plan and on any other related matters;
- (e) to promote strategic planning and coordinated action in relation to the sustainable use of land and natural resources;
- (f) to ensure that the operation of this Act and the performance of the functions of the Agency are coordinated with the exercise by any other agencies of related functions and powers;
- (g) to liaise with and assist other Ministries and agencies to meet the objectives of this Act;
- (h) to preserve those buildings areas or other places of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- (i) to promote education and community awareness concerning urban and planning issues;

Part 4 'Sustainable Management Plans' commences with section 12, which states "A national, regional, district, village or site specific sustainable management plan may be made under this Part to achieve any of the objectives of this Act." Section 15 drafts in broad terms the contents of sustainable management plans, which could include an MSP, should that be considered an appropriate course of action. Section 16 provides for special planning committees, another element that may lend itself to MSP development. The remainder of the Part provides a process by which plans are developed and consulted upon, as well as appeal, amendment, review etc. Sustainable development plans are enforceable as per sections 83 and 84 of PUMA.

Section 105 provides a broad range of reasons for which regulations may be made under PUMA. The only regulations in force pursuant to section 105 of PUMA are the *PUMA (Environment Impact Assessment) Regulations 2007*.

Financial or other incentives applied, where appropriate

n/a

Relevance

PUMA is **directly relevant** to this review in two respects. Firstly, PUMA provides a legislated system of development consent for projects that may impact upon marine space. This system includes avenues of appeal and powers of enforcement and will therefore be an important component of any future MSP. At a minimum, decisions made under PUMA with regard to development consent impacting marine areas should be consistent with any future MSP.

A.3.14 Ports Authority Act 1998

Overview

The Ports Authority Act (PAA) establishes and provides the Ports Authority of Samoa with powers sufficient to declare, control and regulate activities within ports and approaches to ports. The PAA is administered by the Ministry of Works, Transport and Infrastructure.

Objective

To establish the Ports Authority of Samoa.

Jurisdiction

The PAA applies to all of Samoa, but in practice it operates specifically in and around declared ports and approaches to ports. These are designated by the Head of State upon the advice of Cabinet and are listed in Schedule 1 of the Act (Port of Apia, Port of Asau).

Activities promoted, prohibited or regulated

The activities promoted, prohibited and regulated by the PAA are standard requirements for the safe and efficient operation of modern port facilities.

Much of the PAA is concerned with providing the institutional foundation for the Ports Authority, which is a body corporate capable of entering into contracts, acquiring, holding, and disposing of property, and suing and being sued. The Board of the Authority comprises seven members appointed by the Head of State, acting on the advice of Cabinet, and who may be removed from office by Cabinet.

The regulatory and other functions performed by the Ports Authority guide the manner in which these high-traffic, high-value zones within Samoa's marine space are utilised. Section 8 indicates the functions of the Authority including providing, managing and maintaining adequate and efficient port services, facilities and security in ports and approaches; regulating and maintaining navigation aids within ports and approaches; promoting, improving and developing ports; and coordinating all activities of, or within, ports and approaches.

Regulatory approaches applied, where appropriate

Port Masters, appointed under section 21, have a key role to play in regulating Ports. Section 22 sets out the powers of Port Masters in relation to vessels:

(1) Port Master may within a port or its approaches:

- (a) direct where any vessel shall be berthed, moored or anchored and the method of anchoring;
- (b) direct the removal of any vessel from any berth, wharf, terminal or anchorage and the time within which such removal is to be effected; and
- (c) regulate the movement of vessels generally.

Other notable regulatory provisions include those relating to Pilotage and Dangerous Goods (Part 9), and the offence of “Pollution of waters of a Port” which states that “a person who throws, discharges, or deposits, or causes, suffers, or procures to be thrown, discharged, or deposited into any waters of a port, any harmful substance commits an offence.” This offence, if proven, has both a high maximum penalty and provisions to recover expenses incurred in clean-up and removal of pollutants.

Finally, section 64 provides broad regulation-making powers. Many of these have a spatial element – regulating the movement and passage of vessels, the location of navigation aids, places where recreational uses are prohibited for example. It is noted that as these will be reflected in any future MSP, the spatial tools provided as part of the MSP can potentially improve delivery of these regulatory functions.

Financial or other incentives applied, where appropriate

n/a

Relevance

The PAA is **somewhat relevant** to this review.

Concluding observations

Ports are among the most valuable and highly-used marine areas and so full consideration of all aspects of their management and governance is an essential aspect of MSP.

A.3.15 Quarantine (Biosecurity) Act 1998

Overview

The Quarantine (Biosecurity) Act (QBA) provides the necessary powers, procedures and institutions to protect Samoa from the introduction of biosecurity threats in the form of pests and diseases. The QBA is administered by the Ministry of Agriculture.

Objective

To consolidate the law relating to the importation of regulated articles and associated biosecurity risk, and the control of pests and diseases of animals, plants and the wider environment. Section 4 explains the scope of biosecurity, which refers to the examination, exclusion, detention, observation, segregation, isolation, protection, testing, treatment and regulation of conveyances, installations, people, regulated articles or other goods or things, for the purpose of the prevention or control of the introduction, establishment or spread of pests and diseases that could cause significant damage to human beings, animals, plants, other aspects of the environment or economic activities.

Jurisdiction

The QBA applies to all of Samoa, expressly including the territorial sea.

Activities promoted, prohibited or regulated

The provisions of the QBA ensure regulatory controls that aim to ensure the passage of goods and persons into Samoa does not lead to the introduction of diseases or pests that may damage human health, economic prosperity or the natural environment. The transboundary movement of goods and people is a regulated activity. Avoiding the import of biosecurity threats, and secondly, providing full transparency and cooperation by importers and travellers is the promoted activity

Regulatory approaches applied, where appropriate

A key concept applied by the QBA is that of a regulated article defined to mean “garbage, soil, pests, packing material, fittings, litter, manure or fodder and other materials, goods, substances, articles or equipment and includes one or more animals, animal products, plants or plant material the importation or movement of which may have potential to introduce or spread a pest or disease to or within Samoa.”

Regulated articles are subject to inspection upon arrival (s18) and may not be imported without written permission from an authorised officer (s12). These articles may be seized, placed in quarantine, treated or destroyed as necessary (s25).

Section 29 – “Discharge and treatment of garbage and ballast water” is important in the context of MSP. These actions are also prohibited without written permission from an authorised officer.

The CEO may conduct pest and disease surveys in Samoa (s30) and declare infected areas (31). While most of these will be terrestrial, marine ecosystems can be surveyed for invasive pests and diseases.

The Minister may declare pest or disease emergencies (s36).

Authorised officers are provided powers to ensure they have the legal capacity to enforce the QBA including broad powers of entry (s45) and search (s46).

Financial or other incentives applied, where appropriate

None, although company directors are subject to personal criminal liability, which is a sound incentive towards strong compliance (s66).

Relevance

The QBA is **somewhat relevant** to this review.

Concluding observations

Global events of 2020 have demonstrated the importance of effective biosecurity governance systems in ensuring human health. They play an equally important role in ensuring economic and environmental health and as such, are an important element of MSP.

A.3.16 Shipping Act 1998

Overview

The Shipping Act provides powers and procedures necessary for the effective regulation of shipping in Samoan waters in accordance with international standards and conventions, and principles of good governance. The Act is administered by the Ministry of Works, Transport and Infrastructure. Via a combination of codification and adopting texts by reference, the Shipping Act implements in Samoa the following international treaties:

- International Convention on Load Lines, 1966 and any amendments adopted;
- International Convention on Tonnage Measurement of Ships, 1969, with any amendments from time to time adopted;
- Convention on the International Regulations for Preventing Collisions at Sea, 1972, and all amendments adopted under the tacit acceptance procedures unless specifically rejected by Samoa;
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, incorporating the 1981 and 1983 amendments;

- International Convention for the Safety of Life at Sea, 1974, and SOLAS Protocol 1978, including the IMDG Code, and all amendments adopted under the tacit acceptance procedures unless specifically rejected by Samoa;
- International Convention of Standards on Training, Certification and Watchkeeping for Seafarers 1978, and all the relevant Protocols and Amendments of 1995, as amended;
- Convention on Limitation of Liability for Maritime Claims, 1976;
- International Convention on Salvage, 1989;
- International Convention on Maritime Liens and Mortgages, 1993; and
- International Telecommunication Convention Geneva 1992 as amended.

Objective

To consolidate and amend the law relating to Shipping and Seamen and to control the registration, safety and manning of ships, and to give effect to various international maritime conventions, and for related purposes.

Jurisdiction

The Shipping Act applies to all of Samoa, expressly including the territorial sea. Section 3 provides that the Act “applies to all vessels registered or required to be registered or licensed under this Act or Regulations on a voyage and in any waters, and to a vessel in Samoan waters or in a Samoan port or harbour, and to a vessel on which Samoan seamen are employed, but does not apply to a vessel belonging to the defence force of a country, including but not limited to, warships, naval auxiliaries, patrol vessels and other similar vessels.”

Activities promoted, prohibited or regulated

The Act is an extensive legal instrument that includes requirements for matters such as declaring nationality (Part 2), registering vessels (Part 3), bareboat charters (Part 3A), safety (Part 4), certification for seaman and pilots (Part 5), international standards for seaman’s employment and welfare (Parts 6 and 7).

All aspects of the Shipping Act have some relevance for MSP, but particularly so are the matters regulated by Part 8 – marine navigation aids, Part 10 – wrecks and salvage, and Part 12 – arrest, forfeiture and forced sale of vessels.

Also noted are Section 70 – hazardous cargo, obliging masters to inform the Principal Surveyor of any hazardous cargo and empowering the Principal Surveyor to direct or prohibit various actions with regard to hazardous cargo. Section 73 requires masters to comply with, when carrying dangerous goods, the International Maritime Dangerous Goods (IMDG) Code and the Safety Convention. Section 80 obliges masters to report all casualties and incidents.

Regulatory approaches applied, where appropriate

The regulatory approach applied in the Shipping Act could be described as prescriptive command-and-control.

Financial or other incentives applied, where appropriate

None.

Relevance

The Shipping Act is **directly relevant** to this review.

Concluding observations

Effective regulation of shipping is both an essential component of MSP, as well as a function of government that can significantly benefit through an MSP being developed and implemented.

A.3.17 Village Fono Act 1990

Overview

The Village Fono Act (VFA) is included as at least 3 other laws are relevant to MSP that directly or indirectly apply the village-level powers and procedures that it institutionalised in Samoan law. The VFA is administered by the Ministry of Women, Community and Social Development.

Objective

To validate and empower the exercise of power and authority by the Village Fonos (councils) in accordance with the custom and usage of their villages.

Jurisdiction

The VFA applies to all of Samoa, but specifically in areas over which a Village Fono would customarily have jurisdiction, thereby **excluding** Government, freehold and leasehold land (Section 9), and in accordance with the Constitution, land below the high-water mark.

Activities promoted, prohibited or regulated

Section 5 lists the powers of a Village Fono to make local rules “even if the powers may not in a particular village form part of its custom and usage.” The most relevant for present purposes is s5(2)(k); protecting natural resources and the environment.

Under the VFA, a person guilty of village misconduct may be punished in accordance with the custom and usage of the village, which under section 6 includes the following:

- (a) fines in money, fine mats, animals or food; or be party on one and partly in others of those things;
- (aa) subject to basic requirements of due process, to order banishment or ostracism; and
- (b) ordering the offender to undertake any work on village land.

Regulatory approaches applied, where appropriate

The VFA provides a now well-embedded institutional structure by which local-level authority, which ultimately derives its authority from custom, may be validly exercised within the legal system of the sovereign state of Samoa.

By institutionalising local authority, the VFA provides a clear pathway to devolve specific rule-making powers to local communities, where this is judged to be appropriate. A great deal of literature suggests that devolving this kind of authority to local communities is a good strategy for Pacific island inshore marine conservation and resource management.

The laws relevant to MSP that make use of the VFA are: Fisheries Management Act 2016 (Part 8), the Waste Management Act 2010 (Part 6) and the Environment Management and Conservation Bill section 43 and 44. The Fisheries by-laws are particularly relevant in demonstrating that legislation can extend the authority of the village fono – in this case below the high water mark.

Financial or other incentives applied, where appropriate

None.

Relevance

The Village Fono Act is **somewhat relevant** to this review.

Concluding observations

The involvement of local stakeholders in marine management and conservation as decision-makers in their own right rather than merely consulted, often creates agreement challenges regarding how government and village-level authority and decision-making can interact without conflict or confusion. With the VFA, Samoa is well-placed to avoid some of this confusion and potential conflict, and to implement devolutionary governance approaches where considered appropriate.

A.3.18 Waste Management Act 2010

Overview

The Waste Management Act 2010 (WMA), administered by MNRE, provides the institutional and governance arrangements for general and hazardous waste management in Samoa, as well as implementing in national law the following international conventions:

1. Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
2. 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;
3. Stockholm Convention on Persistent Organic Pollutants;
4. Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade; and
5. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972 as amended by the Protocol of 1996.

Objectives

WMA aims “to provide for the collection and disposal of solid wastes and the management of all wastes in Samoa.”

Jurisdiction

WMA applies to all of Samoa, including the EEZ.

Activities promoted, prohibited or regulated

As the WMA provides a regulatory framework for waste management, the suite of activities promoted could be broadly described as environmentally sound waste management.

A central feature of the WMA is the designation, registration and licensing of ‘waste management operators’. Section 8 provides that upon commencement, the only approved operator is the Ministry, but thereafter other entities may be designated. Waste management operators are provided broad functions and powers by sections 24 and 25 respectively.

Some specific provisions or prohibitions particularly relevant to MSP include: section 20(2)(c) providing an offence for throwing, depositing or discharging waste into areas including “mangrove or the sea” sections 38 and 39 prohibit dumping or incineration of wastes at sea without a permit from the Minister.

Regulatory approaches applied, where appropriate

The WMA applies a range of regulatory approaches: licensing and registration, auditing (s14), prescriptive command-and-control, community by-laws and polluter pays fees and charges.

Many of the requirements of the international conventions are met by providing the Ministry with regulation-making powers. This is an efficient method of achieving compliance with these international conventions, which in their detail are quite prescriptive. However, the strategy is perhaps taken beyond its reasonable limits with regards to the Prior Informed Consent Convention which aims to regulate chemicals in trade, not wastes.

An interesting inclusion in the WMA is Part 6 “Community Involvement in Waste Management.” Similar to Part 8 of the FMA, this part seeks to engage communities and devolve some rule-making powers by applying the institutional structures under the Village Fono Act. Given the limited resources available for enforcement and the disaggregated nature of much unsound waste management, effectively engaging community-level institutions in this manner has excellent potential to improve waste management. This will in turn benefit the marine environment, particularly near-shore areas.

Financial or other incentives applied, where appropriate

The WMA provides for the potential of a remarkably broad application of financial incentives to achieve its aims:

Section 10. Special waste related levies: (1) The Head of State, acting on the advice of Cabinet, may make regulations which:

- (a) impose special levies on particular goods which have adverse effects on the environment;
- (b) impose additional charges on premises in commercial areas where services are provided by an approved waste management operator to maintain cleanliness of street, footpaths and public areas;
- (c) impose any other type of special levy relating to waste management services, or for the purpose of raising revenues for the effective management of wastes; and
- (d) provide for the payment, collection and use of special levies and additional charges.

(2) A levy imposed by regulations made under subsection (1) may be imposed, collected and recovered under the authority of this Act.

Section 10 is a potentially powerful legislative instrument to apply financial incentives by internalising the environmental cost of goods by future Samoan generations. This is an example of the polluter pays principle – a core principle of international environmental law operational in a SIDS context.

Sections 29-32 also provide for waste-related fees and charges.

Relevance

WMA is **directly relevant** to this review. Preventing degradation of marine environments caused by waste and pollution, whether from on-island or other sources, is a key element of sustainable marine governance and therefore an important aspect of MSP.

Concluding observations

The WMA is a sound legislative instrument that establishes a system of waste management in Samoa, ensures compliance by the Government of Samoa with several international conventions, and is well-adapted to the Samoan context.

A.3.19 Local Fisheries Bylaws

Overview

Made pursuant to the Fisheries Management Act are numerous local Village Fisheries By-laws. Applying administrative arrangements in place under the Village Fono Act (VFA), the FMA (previously the Fisheries Act 1988) provides for the development of local by-laws that decentralise the regulation of inshore fisheries within parameters set by the national law. Of the local fisheries by-laws in force, the following six were reviewed preparing this summary:

1. Falealupo Fisheries By-laws 1998;
2. Asau Fisheries By-laws 1999;
3. Lepa Fisheries By-laws 2007;
4. Satafao Fisheries By-laws 2013;
5. Matautu Uta, Lefaga Fisheries Bylaws 2013;and
6. Fasito'o Tai Fisheries By-laws 2013.

Objective

Three of the Six by-laws reviewed included an express purpose – “The purpose of these by-laws shall be to promote the protection, conservation, management and sustainable development of the fishery waters and marine environment of the village of [name].”

Jurisdiction

Each of the by-laws apply “to all residents of the village of [name] and non-residents who fish within the fishery waters of village of [name].” The term “fishery water” is defined as “the inshore fishery water areas adjacent to and extending to 100 metres beyond the reef of the village of [name].”

Activities promoted, prohibited or regulated

The by-laws are similar, although not identical, in the activities they promote, prohibit or regulate. They are:

- The setting of no-take fish reserves marked by poles or buoys;
- Prohibiting certain fishing methods such as poisons, explosives, breathing apparatus, torches;
- Adopting national regulations on mesh sizes for nets and size limits on fish as part of by-laws;
- Prohibiting dumping of waste or pollutants into fishery waters; and
- Some by-laws also prohibit the cutting of mangroves.

Regulatory approaches applied, where appropriate

The regulatory approach is essentially command-and-control, with the significant difference being that the monitoring and enforcement role is devolved to the local level. The link to the FMA ensures that persons from outside the village which has made the by-laws are also required to comply.

Financial or other incentives applied, where appropriate

Penalties may include compensating for damage to the environment.

Relevance

Local fisheries by-laws are **directly relevant** to this review.

Concluding observations

This relatively simple legal innovation, unique to Samoa and adapted to local institutions and legal arrangements, has been widely reported as leading to a substantial improvement in sustainably managing inshore marine resources.

A.3.20 Environmental Management and Conservation Bill (EMC Bill)

Overview

The EMC Bill, if enacted, would represent major reform in Samoan environmental law, implementing commitments made under the Convention on Biological Diversity and its protocols on biosafety and biosecurity. The EMC Bill would repeal The National Parks and Reserves Act 1974 and most of “the environment” aspects of the Lands, Survey and Environment Act 1989.

Objective

The objectives are set out in section 4:

- (a) conserving and protecting Samoa’s environment while applying the principles of sustainable use to the development and management of its biodiversity;
- (b) maintaining and enhancing the health, diversity and productivity of the environment for the benefit of generations of today and the future;
- (c) recognising the inherent significance of conserving biodiversity and maintaining ecological integrity;
- (d) regulating biodiversity prospecting to ensure fair and equitable access and benefit sharing arising from the utilization of genetic resources and use of associated traditional knowledge related to those genetic resources;
- (e) protecting Samoa’s protected areas; and
- (f) ensuring Samoa meets its international environmental obligations under Conventions referred to in Schedule 1.

Jurisdiction

The EMC Bill applies to all of Samoa, including the EEZ.

Activities promoted, prohibited or regulated

This is perhaps best summarised by first listing the names of the EMC Bill's Parts and Divisions:

- Part 1 – Preliminary
- Part 2 – Administration
 - Div 1 – Minister, CEO, Ministry
 - Div 2 – Environment Board and Committees
 - Div 3 – Environment Fund and Audits
 - Div 4 – Reporting
- Part 3 – Biological Diversity Conservation and Sustainable Management
 - Div 1 – Guiding Principles
 - Div 2 – Identification and Monitoring
 - Div 3 – Environmental Lists, Registers and Plans
 - Div 4 – Declaring Protected Areas
- Part 4 – ABS of Genetic Resources and Associated Traditional Knowledge
- Part 5 – Biosafety
 - Div 1 – Transboundary Movements of GMOs
 - Div 2 – Unintentional Releases
- Part 6 – Compliance
 - Div 1 – Compliance and Enforcement
 - Div 2 – Offences and Penalties
 - Div 3 – Indemnities
- Part 7 – Miscellaneous

Regulatory approaches applied, where appropriate

Parts 3, 4 and 5 apply various regulatory approaches.

Part 3 Div. 4 (sections 35-44) enable various kinds of protected areas to be declared (e.g. National Parks, Nature Reserves, Mangrove Reserves, Wildlife and Marine Wildlife Reserves, Community Conservation Areas). This is a notable aspect of the EMC Bill which provides a selection of governance approaches to achieve objectives related to in situ conservation and sustainable use of biodiversity, including marine biodiversity. Existing protected areas are continued by virtue of the savings provision in Part 7.

Part 4 and 5 implement the Nagoya Protocol and the Cartagena Protocol respectively. These establish permitting systems for bioprospecting, and transboundary movements of GMOs.

Regulations that are yet to be prepared would provide much of the detailed requirements for all of the above regulatory approaches.

Part 6 provides a range of enforcement powers available to the Minister and the Ministry CEO. These include emergency orders, notices to cease activities, precautionary notices, and penalty notices, as well as powers to enter, inspect and seize. Division 2 of the Part provides offences and penalties. This review makes two findings and recommendations with regard to possible refinement of these aspects of the EMC Bill (see section 4.2.2).

Part 2 is also relevant to this review insofar as it would create an Environment Board, chaired by the Environment Minister and with membership including the CEOs of many of the Ministries with a stake in MSP, as well as representatives from the private, community and NGO sectors. Section 13 sets out the functions of the board;

stakeholders might consider adjusting this provision to include [endorsing/reviewing/advising/coordinating] the MSP and its implementation. Section 16 further provides power to appoint Advisory or Technical Committees. This is another provision that could potentially be applied for future MSP processes.

Financial or other incentives applied, where appropriate

The EMC Bill does not apply incentives.

Relevance

The EMC Bill, assuming it remains upon current agendas, is **directly relevant** to this review. It would re-authorise the ministerial arrangements for the environment sector, implement in Samoa key international and regional treaty obligations on biodiversity conservation, and establish an institutional framework that could potentially be applied to develop, coordinate, endorse and implement MSP in Samoa.

Concluding observations

As further highlighted in following sections, the EMC Bill will fill various gaps in Samoa's environmental regulatory framework. For this reason, especially with regard to its expanded protected area categories, passage of the EMC Bill is important in providing a sound foundation for MSP in Samoa.

A.3.21 Trade in Endangered Species Bill (TES Bill)

Overview

The TES Bill is a proposed law narrowly focused on implementing the obligations placed upon Samoa by the Convention on International Trade in Endangered Species (CITES).

Objective

To provide for the protection and conservation of endangered species of wild fauna and flora by regulating the export and import of these species and any product derived from those species.

Jurisdiction

The TES Bill, if enacted, would apply to Samoa, with a specific thematic focus upon the transboundary movements of the species and products derived from the species listed in the CITES appendices.

Activities promoted, prohibited or regulated

The activities that would be regulated by the TES Bill are those relating to the trade in endangered species of plants and animals or products derived from them. Common Pacific island examples of such items would be certain sea shells and products derived from turtles.

Regulatory approaches applied, where appropriate

The regulatory approach applied is that of prohibiting certain trade (of the most endangered species) and regulating other trade via an application and permitting process that conforms with CITES requirements.

Financial or other incentives applied, where appropriate

n/a

Relevance

The TES Bill, assuming it remains upon current agendas, is **somewhat relevant** to this review. Unregulated international trade is a recognised threat to some marine species, and an effective permitting system to control such trade is a necessary component of MSP.

Concluding observations

The more recent EMC Bill, if enacted, would specifically empower creating regulations to implement CITES.

A.4 Samoan Policies, Plans, Strategies etc.

A.4.1 Strategy for the Development of Samoa

Overview

The Strategy for the Development of Samoa 2016/17 – 2019/20 (SDS) provides an overview of the priorities the Government will be progressing over the next four years and the committed strategic outcomes. These are conveyed in four priority areas with fourteen key outcomes covering economic, social, community and environmental improvement. The SDS also reflects how the national planning and budgeting processes are addressing the integration and mainstreaming of gender, human rights, climate and disaster resilience, and the responses and commitments to the international protocols Samoa is Party to, including: Agenda 2030; Sustainable Development Goals; SAMOA Pathway; Paris Agreement; and the Pacific Framework for Regionalism. The SDS is linked to, supported by, and builds on more detailed Sector Plans developed by Ministries and Agencies.

Objective

The theme for this SDS is “Accelerating Sustainable Development and Broadening Opportunities for All”.

Jurisdiction

The SDS is a high-level national policy statement covering all sectors.

Activities promoted

The SDS includes four priority areas and fourteen key outcomes. The priority areas are: 1. Economic, 2. Social, 3. Infrastructure, and 4. Environment.

The synergies between the SOS and the SDS are identified and tabulated in Annex 1 (p40) of the SOS. This suggests that while the most directly relevant of the priority areas to ocean governance is the fourth, sustainable ocean governance has some relevance to each of the four areas.

The 14 key outcomes sought under the SDS are:

Priority Area 1: Economic

- Key Outcome 1: Macroeconomic Resilience Increased and Sustained
- Key Outcome 2: Agriculture and Fisheries Productivity Increased
- Key Outcome 3: Export Products Increased
- Key Outcome 4: Tourism Development and Performance Improved
- Key Outcome 5: Participation of Private Sector Development Enhanced

Priority Area 2: Social

- Key Outcome 6: A Healthy Samoa and Well Being Promoted
- Key Outcome 7: Quality Education and Training Improved
- Key Outcome 8: Social Institutions Strengthened

Priority Area 3: Infrastructure

- Key Outcome 9: Access to Clean Water and Sanitation Sustained
- Key Outcome 10: Transport Systems and Networks Improved

Key Outcome 11: Improved and Affordable Country Wide ICT Connectivity

Key Outcome 12: Quality Energy Supply

Priority Area 4: Environment

Key Outcome 13: Environmental Resilience Improved

Key Outcome 14: Climate and Disaster Resilience Increased

Relevance

The SDS is **directly relevant** to MSP.

Concluding comments

The SDS is the highest-level policy and strategy framework document with which all other sectoral plans and policies must be consistent.

A.4.2 Samoa Ocean Strategy 2020-2030 (SOS)

Overview

Developed via a multi-stakeholder consultative process, the SOS aims:

- to secure a future of sustainable development, management and conservation of Samoa's ocean and all resources within, living and non-living;
- to catalyze and guide an integrated approach to ocean governance that reinforces traditional resource management alongside central government management, accounting for and respecting all users and the shared benefits of Samoa's ocean.
- "A holistic national approach to marine management and exploitation is necessary to address the numerous threats to our ocean, and safeguard the resilience of our fragile marine ecosystems, on which the livelihoods of many Samoan people depend. The Strategy seeks to catalyze an integrated approach to ocean governance that reinforces the culture of traditional resource management alongside central government management, accounting for and respecting all users and values of our ocean.";
- to consider inputs from various sectors and resource users and integrate existing relevant strategies and policies. It also aims to ensure alignment to, and support of, Samoa's economic development and socio-cultural goals;
- to outline an integrated framework for the management of Samoa's sovereign waters and all living and nonliving marine resources through to the year 2030. It aims to embrace global and regional initiatives, science-based knowledge, and Traditional Knowledge (TK) as key tools and resources; and
- to emphasize the climate adaptation and mitigation benefits provided by Samoa's marine and coastal ecosystems that strengthen resilience and reduce vulnerability of coastal populations. It also aims to acknowledge the economic and food security benefits received from the ocean, and consider the full array of interactions within an ecosystem, and the importance of maintaining these critical functions.

In a policy sense, the SOS is consistent with, supports, and elaborates existing national and international policies and commitments, including the Samoa Development Strategy, the National Environment Sector Plan, the Framework for a Pacific Oceanscape and Samoa's actions to implement the Sustainable Development Goals, especially SDG 14.

Objective

The SOS (p13) sets out both its Vision and the Purpose. The Vision is “Samoa’s Ocean remains healthy and abundant through integrated management, robust coordination, and respectful use and stewardship that supports cultural, social and economic opportunities for Samoa’s people.”

The Purpose is “to foster a longer-term integrated vision to guide the sustainable and integrated management of Samoa’s ocean and its resources. It should help integrate, complement, support but not undermine, existing ocean related national strategies and sector plans.

It serves as a guiding framework and tool for Samoa to meet its commitments as described in marine related national and international agreements, by setting common goals and objectives for all the actors involved. This includes a range of stakeholders, from national government policy makers and industry heads, to small-scale coastal fishers, tourism operators and subsistence communities.

To ensure its effectiveness, it is critical that the Strategy acknowledges, then actively builds upon, the existing mechanisms for coastal and ocean management in Samoa. This will avoid duplication of efforts and ensure vertical and horizontal alignment of the proposed integrated management solutions.

Through these efforts, the Strategy’s vision and purpose will help to safeguard resilient marine ecosystems that support sustainable development for Samoa’s people.”

Jurisdiction

The NESP applies to all of Samoa, including the EEZ, clarified in the section titled “Geographic Scope” (p14).

Activities promoted, prohibited or regulated

The SOS identifies Thematic Areas, Threats, and Integrated Management Solutions, as follows:

Thematic Areas: Offshore waters, Maritime Security and Safety, Species of Special Interest, Marine Coastal Ecosystems and Species, Food Security and Ocean Knowledge.

Threats: Fishing, Pollution, Unsustainable Development, Climate Change, Knowledge and Data, Invasive species.

Solutions:

- Create a National Ocean Committee;
- Finalise maritime boundaries;
- Develop sustainable ocean financing mechanisms;
- Improve scientific research, data collection and monitoring;
- Complete a Marine Spatial Plan;
- Strengthen monitoring, control surveillance and enforcement;
- Strengthen the national MPA network;
- Establish effective protection and management of endangered marine migratory species;
- Strengthen policy and legislation for coastal ecosystem services protection;
- Integrate ecosystem-based approaches into existing climate change adaptation management plans;
- Review existing policies and establish legislation where appropriate to manage risks posed by deep-sea and seabed exploration;
- Strengthen coastal management by applying both traditional and contemporary knowledge and science; and
- Improve waste management and reduce marine pollution.

With regard to the 5th solution of the SOS, it is notable that the commitment to MSP is described in a way that might suggest a single one-off planning process is intended. Alternatively, MSP can be viewed as an ongoing process. In other words, what is the primary goal? Is it to complete a single plan, or to establish an iterative planning process that will continue indefinitely? This issue requires clarity prior to deciding how MSP might be institutionalised in Samoa.

Regulatory approaches applied, where appropriate

The SOS is not itself a regulatory instrument. For the purposes of this review, two aspects of the SOS are summarised here: 1. Commitment to MSP and 2. Other law reforms identified.

The 5th Integrated Management Solution included in the SOS is Marine Spatial Planning.

Given the importance of this for present purposes, it is reproduced below:

“3. Complete a Marine Spatial Plan (MSP) for Samoa’s ocean

Marine Spatial Planning is needed within Samoa’s ocean to identify areas for production and human use, as well as important areas for protection and conservation actions.

MSP includes designing how people use the ocean in time and space to minimize user-conflict and maintain ecosystem health. This is especially important in Samoa where over 90% of the nation is ocean, and where livelihoods, food security, cultural wellbeing and economic dependencies are intertwined with the marine environment.

Creating the MSP involves an integrated (cross sectoral) and participatory public process of identifying and achieving economic, social and ecological objectives in a transparent and organized way. And therefore, MSP is key to achieve integrated ocean management.”

The SOS identifies MSP as being relevant for only 2 of the thematic areas (Offshore waters and Marine and Coastal Ecosystems, p27). This seems unusual in that MSP has many potential benefits for each of the seven of the SOS thematic areas.

Among the objectives linked to MSP is: “By 2022, the legal and institutional bases for MSP are established”. No further detail is provided on this matter. Identifying possible (broad) options for such legislation is among the purposes of this review.

The 9th Integrated Management Solution is to strengthen policy and legislation for coastal ecosystem services protection. This is in response to “the current weak protection of coastal ecosystems and the services they provide. Coastal ecosystems include coral reefs, mangroves, coastal marshes/wetlands, beaches, and seagrass meadows. The protection measures of this Solution include conservation mechanisms and provisions in the sectoral and cross-sectoral legislation regulating activities which may impact all coastal ecosystems. The fragmentation of the legislation relating to coastal ecosystems hinders their effective management and protection.” The SOS identifies 2025 as the target year by which policy and legislative reform should be completed.

The 11th Integrated Management Solution is to review existing policies and establish legislation where appropriate to manage risks posed by deep-sea and seabed exploration.

“Mineral resources have been identified in the seabed of Samoa’s EEZ and exploration activities for the future exploitation of these resources may be initiated, thus posing potential threats to the deep-sea ecology of the offshore ocean.

... For this reason, the proposed Solution will ensure that best practices for seabed exploration are followed and that appropriate regulations are in place to improve management and preserve the biodiversity of deep sea ecosystems.”

The final reference in the SOS to marine-related legal reform is in relation to sustainable ocean financing mechanisms (p29).

Financial or other incentives applied, where appropriate

The SOS includes Sustainable ocean financing mechanisms as the third Integrated Management Solution.

“The Strategy will deliver on a number of goals and objectives by 2030, including setting up systems, processes and mechanisms for the integrated management of Samoa’s ocean. A key component of this is ensuring availability of adequate financial resources and institutional capacity beyond 2030. Through this Solution, Samoa will seek to identify sustainable and innovative financing mechanisms and resources to safeguard Samoa’s ocean in perpetuity. The NOSC will select appropriate options from a range of potential ocean financing mechanisms and sources. Innovative ocean sustainable financing mechanisms are increasingly being used around the world and will greatly benefit the delivery and long-term sustainability of the Strategy.”

As indicated on p29 of the SOS, the legal and institutional aspects of the sustainable financing solution are to be established by 2025.

Relevance

The SOS is **directly relevant** to this review. It is the central policy and planning instrument for Samoa’s marine space with whole-of-government involvement and endorsement.

Concluding observations

Concluding observations are that MSP will almost certainly prove to be useful and relevant for many more of the various SOS actions and objectives identified in the SOS itself. To take a single example, measuring success of many of Samoa’s ocean-related policy commitments will require an ability to quickly measure disaggregated spatial marine data, such as the percentage of waters, or the habitat of a particular species, or the number of seamounts, included in various kinds of MPA.

A.4.3 National Environment Sector Plan (NESP) 2017-2021

Overview

The NESP is the agreed roadmap for Samoa’s Environment Sector, outlining a vision, goal, a framework for action as well as costs and an expenditure plan. The NESP is consistent with, and supports, the Strategy for the Development of Samoa (SDS) 2016-2020. It sets out national environmental policy frameworks and arrangements for whole-of-government and whole-of-society coordination of environmental governance, including pathways to meet international commitments. The NESP has four Long Term Outcomes (LTOs) under which fifteen End of Sector Plan Outcomes (ESPO) are pursued. The four long term outcomes are:

1. Sustainable management and development of natural resources and environment improved;
2. A more sustainable and resilient built environment;
3. Climate Change and Disaster Risk Management mainstreamed across all sectors; and,
4. Effective enabling environment.

The first and the fourth LTO are the most relevant for the purposes of this review.

Objective

"The NESP articulates the roadmap for the Environment Sector for the period 2017 - 2021. It updates the NESP 2013-2016 by building on its achievements and lessons learned. The NESP outlines the sector's vision, goal and an achievable framework in line with the SDS 2016-2020, the sector policy and legislative framework as well as its numerous regional and international obligations. The framework consists of four (4) long term outcomes under which fifteen (15) end-of-sector plan outcomes will be pursued to achieve its overarching goal." P5.

The Sector Vision is "Samoa's natural and built environment is well protected and resilient to natural and human-induced hazards, and supporting a sustainable and healthy human population." The Sector Goal is "Enhanced environmental sustainability and climate and disaster resilience."

Jurisdiction

The NESP applies to all of Samoa, including the EEZ.

Activities promoted, prohibited or regulated

The NESP is a very important planning document, but it is not itself a regulatory instrument.

It is beyond the present scope to summarise all aspects of the NESP. The most directly relevant aspects are those that detail plans to achieve ESPO 1.5 - Strengthen sustainable

management of marine and coastal environments. (pp18-19 & 83-88). While the NESP does not mention MSP specifically, the policy direction indicates consistency with MSP approaches, e.g:

"Improvements to the sustainable management and development of oceans will take on a much more integrated approach to coastal management, inshore and offshore fisheries management involving a diverse range of stakeholders both in government, private sector, NGOs and communities. Improvements to catchment management will lessen the pressure on the ocean and its marine resources by reducing sedimentation loads, waste (plastics and aluminium cans), nutrients (from effluent discharge) etc. from contaminating the marine environment. The implementation of CIM plans currently under review will significantly increase efforts to improve sustainable management and development of oceans at the community level." (p18)

The following points indicate the programs and activities included in the NESP to achieve ESPO 1.5:

- Formulate Samoa's Ocean Strategy;
- Revise the Marine Wildlife Protection Regulation 2009 and strengthen its implementation monitoring and enforcement;
- Finalise the National Marine Sanctuary Management Framework;
- Finalise the Marine Species Action Plan;
- Develop legal framework for mangroves;
- Establish mangrove reserves;
- Turtle nesting management plans;
- Strengthen community involvement in MPA;
- Coral bleaching response planning;
- Establish new MPAs;
- Update existing MPA management plans;
- Monitor MPAs;
- Crown of Thorns response planning;
- National Plan of Action for Sharks;

- Cetacean stranding response planning;
- Improve record-keeping and information dissemination;
- Education and public awareness;
- Staff training;
- Strengthen community-based fisheries program;
- Enhanced offshore fisheries enforcement;
- Promote sustainable aquaculture/mariculture;
- Review fisheries plans;
- Support enhanced marine research, ecosystem and species surveys, and various forms of ocean monitoring.

Regulatory approaches applied, where appropriate

The NESP is not itself a regulatory instrument.

An aspect of the NESP notable for present purposes is the clear and thorough manner in which it describes the Institutional Arrangements for the Environment Sector, including both the Institutional Framework and the Coordination Framework.

Financial or other incentives applied, where appropriate

The NESP does not apply incentives. It does include a Costed Action Plan to achieve ESPO 1.5 (pp 83-85).

Relevance

The NESP is **directly relevant** to this review. It is the central planning instrument of Samoa's environment sector with whole-of-government involvement and endorsement.

Concluding observations

The NESP was prepared prior to SOS. Indeed, preparing the SOS is among the first actions listed in support of EPSO 1.5. Nevertheless, all the commitments in policy and actions described in the NESP are fully consistent with the more recent goal, introduced by the SOS, of implementing MSP in Samoa.

A.4.4 Apia Waterfront Plan 2017-2026

Overview

The Apia Waterfront Plan is a strategic document that will guide government planning and waterfront users on future development, and how the waterfront will be transformed in coming years.

Objective

Five overarching goals are identified to help achieve the vision of the Apia Waterfront Plan and ensure consistency in future developments. They are:

1. Reflect a unique Samoan experience;
2. Create an inclusive safe and clean waterfront;
3. Enhance public domain for community use;
4. Support opportunities for local business initiatives; and
5. Connect people to the sea.

Jurisdiction

The Apia Waterfront Plan is not a document with binding legal effect, although it is expected to guide future decisions regarding development of the zone made under laws such as PUMA.

In terms of geographic application, the plan states, “There are four distinctive areas in the waterfront:

1. Mulinu'u Waterfront – includes the Mulinu'u Peninsula, Vaiusu Bay mangroves, the Observatory, Parliamentary Complex, NUS Ocean Campus, Malaefatu Reserve, Paramount Chief Tombs, Samoa Courthouse Complex, and existing hotels and dining establishments;
2. Apia Waterfront Central – includes Savalalo market area, bus depot, fish market, Eleele Fou, some government buildings, and commercial entities;
3. Apia Waterfront Harbour – includes Beach Road, Apia port, and the marina area; and
4. Vaiala Waterfront – includes Palolo Deep Marine Reserve, Vaiala Beach and seawall, and part of the Taumeasina area.”

Activities promoted

Part 3 of the AWP identifies 10 Waterfront Strategies as follows:

1. Create a continuous ‘necklace’ linking coastal activities and attractors;
2. Preserve and highlight Samoan heritage and culture;
3. Encourage a diverse economy along the waterfront;
4. Provide a well-designed and attractive public domain for locals and visitors;
5. Establish a people-oriented environment;
6. Partner with community and business to ensure long-term sustainability;
7. Implement efficient and safe traffic/parking strategies;
8. Protect the environmental quality of the waterfront;
9. Ensure future buildings, public spaces and infrastructure are resilient to climate change;
10. Enhance significant views and vistas along the waterfront.

Relevance

The AWP is **somewhat relevant** for future MSP in Samoa. It provides an agreed strategic vision for perhaps the highest-value coastal zone in Samoa with which any future MSP must be consistent.

A.4.5 National Marine Spill Contingency Plan

Overview

The National Marine Spill Contingency Plan 2009 was developed to reflect the steps necessary to initiate, conduct and terminate an emergency spill response on Samoa's marine waters and the adjoining shorelines, including the exclusive economic zone. The plan meets Samoa's obligations under the revised *Protocol Concerning Cooperation in Combating Pollution Emergencies in the South Pacific Region* (Noumea Pollution Protocol) of the Noumea Convention. It also meets obligations under the *International Convention on Oil Pollution Response*,

Preparedness and Cooperation 1990 (OPRC 90). The plan is mandated by the Marine Pollution Prevention Act, s21: “The CEO, with advice from the committee, shall ensure that a National Marine Spill Contingency Plan (NATPLAN) is developed, maintained and implemented.”

Objective

The overall aim of the plan is “to provide for an appropriate response capability to prevent/minimise damage to marine and coastal environments and resources from marine pollution events.” The 5 objectives of plan are:

- To provide the basis of planning for marine pollution and other maritime emergencies at a National level;
- To provide the organisational structure and procedures for the coordinated, timely and effective response to maritime spills of oil and other noxious and hazardous substances;
- To provide systems for the detection and reporting of marine spills within the area covered by the plan, including communications networks;
- To outline the counter-measures available to restrict the spread of a spill and minimise the environmental, economic and social impacts of a spill; and
- To facilitate the implementation of the Noumea Oil & HNS Protocols and OPRC 90 in Samoa.

Jurisdiction

Section 1.5 of the plan states “The geographical scope of NATPLAN, referred to hereafter as the NATPLAN Area, is all of the coastlines and all marine waters below highest astronomical tide within the EEZ of Samoa.”

Activities promoted

Section 1.6 identifies the main four underlying principles of pollution response as promoted by the plan:

- Prevention: regulatory and physical measures to prevent incidents or mitigate the effects of the pollutant;
- Preparedness: arrangements to mobilise and deploy all necessary resources and services;
- Response: actions taken during and immediately after a pollution emergency to minimise effects; and
- Recovery: arrangements to restore the affected environment to normal.

The plan is divided into the following sections indicating its contents:

1. Introduction, including objectives, scope, risk assessment;
2. Roles and responsibilities;
3. Pollution reports and communications;
4. Incident command and control;
5. Response actions and operations;
6. External assistance;
7. Response termination and post-spill activities;
8. Cost recovery and reimbursement;
9. Equipment;
10. Training and exercises;
11. Applicable legislation, enforcement and prosecution;
12. Approval, control and revision of the plan.

Regulatory approaches

The plan is not itself a document giving rise to regulatory obligations; it rather provides detail for persons responsible for implementing laws relating to marine pollution. Part 11 of the plan identifies the relevant enactments containing legal obligations for marine pollution and response in Samoa. These are principally the *Marine Pollution Prevention Act*, while the *Disaster and Emergency Management Act* could also be applied in the situations identified on p45 of the plan.

Relevance

The National Marine Spill Contingency Plan is **somewhat relevant** for future MSP in Samoa. While the best response to pollution is prevention, effective marine spill response is an essential component of sustainable ocean governance with which MSP must be consistent.

Concluding observations

The process of preparing an MSP may assist in enhancing and reviewing marine spill response plans.

A.4.6 National Ballast Water Management Strategy 2016-2020

Overview

The National Ballast Water Management Strategy was developed in accordance with the 'GloBallast Guidelines', primarily during a National Consultation Workshop held in Apia in 2015. The strategy outlines a policy development process to be led by MWTI to bring Samoa into compliance with the *International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention)*, which entered into force in 2017. Somewhat unusually, the strategy describes a process by which Samoa might ratify the Convention, although IMO records show Samoa acceded to the Convention in 2005.

A.4.7 National Biodiversity Strategy and Action Plan (NBSAP)

Overview

All parties to the Convention on Biological Diversity are obligated by Article 6(a) to "Develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity which shall reflect the measures set out in this Convention relevant to the Contracting Party concerned." Samoa's current NBSAP is approaching the end of its period, 2015-2020. The NBSAP contains detailed descriptions of Samoa's biodiversity, including marine biodiversity, as well as assessments of the causes and consequences of biodiversity loss.

Objective

The NBSAP commences with a **vision**: "Samoa's biological and genetic resources are protected, conserved and sustainably managed so that they will continue to flourish and regenerate, for present and future generations."

The NBSAP contains a **mission statement**: *To protect, conserve and sustainably manage Samoa's biological and genetic resources so that they will continue to flourish and regenerate, for present and future generations.*

The NBSAP has **five strategic goals**:

- A: Address the underlying causes and drivers of biodiversity loss by consolidating the mainstreaming of biodiversity conservation across government and society;
- B: Reduce the direct pressures on biodiversity and promote sustainable use;

C: Improve the status of biodiversity by safeguarding ecosystems, species and genetic diversity;

D: Enhance the benefits to all Samoans from biodiversity and ecosystem services; and

E: Enhance implementation through participatory planning, knowledge management and capacity building.

Jurisdiction

The NBSAP applies to all of Samoa. The NBSAP does not give rise to binding legal obligations.

Activities promoted

The activities promoted by the NBSAP are perhaps best summarised by listing the targets, which are grouped according to the relevant strategic goal, as follows:

Targets for Strategic Goal A:

Target 1: By 2020, at the latest, the people of Samoa are aware of the values of biodiversity, the threats it faces, and the steps the Government and the people can take to conserve, protect and use it sustainably.

Target 2: 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.

Target 3: By 2020, at the latest, incentives, including subsidies, harmful to biodiversity are reduced significantly, 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.

Target 4: By 2020, at the latest, Government agencies, private sector organizations and groups, NGOs, civil society 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.

Targets for Strategic Goal B:

Target 5: 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.

Target 6: 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.

Target 7: By 2020, areas under agriculture, aquaculture and forestry are managed sustainably, ensuring the conservation of biodiversity.

Target 8: By 2020, pollution, including from excess nutrients, has been brought to levels that are not detrimental to ecosystem function and biodiversity.

Target 9: 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.

Target 10: By 2020, 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.

Targets for Strategic Goal C:

Target 11: By 2020, at least 17 percent of terrestrial and inland water, and 10 percent 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 landscape 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 at least maintained, and strategies have been developed and implemented for minimizing genetic erosion and safeguarding their genetic diversity.

Targets for Strategic Goal D:

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, 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 percent of degraded ecosystems, thereby contributing to climate change mitigation and adaptation and to combating desertification.

Target 16: By the end of 2015, Samoa has ratified and or acceded to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization with national legislation enacted to support its implementation.

Targets for Strategic Goal E:

Target 17: By 2020 Samoa has developed, adopted as a policy instrument, and is actively 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 fully protected by national legislation and relevant international obligations, and fully integrated and reflected in national and sector plans and budgetary processes.

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 Samoa's NBSAP 2015 – 2020, from all sources, is increased substantially from the current (2015) levels.

Regulatory approaches

The NBSAP does not create legal obligations, but some of the actions identified to achieve the targets listed above mention or refer to legal reform of some kind. This includes activities 4.1 (unsustainable resource use

practices), 6.1 (sustainable fisheries), 7.1 (forestry), 11.2 (protected areas), 16.2 (Nagoya Protocol implementing legislation) and 18.1 (Environmental Management Bill).

Financial or other incentives

The NBSAP notes the exploration of payment for ecosystem services including those on land under customary control, as incentives to reinforce community participation and commitment to conservation objectives, and to demonstrate the links between conservation, sustainable use and livelihoods of local resource owners (page 10, 61, 77).

Relevance

The NBSAP is **directly relevant** for future MSP in Samoa.

Concluding observations

The NBSAP is a comprehensive and thorough assessment of the status of and the threats to Samoa's marine biodiversity, as well as a program of agreed actions to support sustainable management of biodiversity in Samoa

A.4.8 Samoa National Invasive Species Strategy and Action Plan: 2019-2024

Overview

The National Invasive Species Strategy and Action Plan (NISSAP), updating a previous plan, presents principles, priorities and planned actions for the prevention and management of invasive species in Samoa. National plans of this kind are required to be prepared and administered by Parties to the Convention on Biological Diversity. The introduction notes 'the new NISSAP focuses on;

- strengthening the infrastructure and legal frameworks,
- up-scaling local knowledge on invasive species management,
- strengthening the coordination and col-laboration with relevant agencies and institutions working on invasive species,
- building human and resource capacity of the institutions implementing invasive species-related programs, and
- improving access to financial resources.'

Objective

The plan includes a goal and guiding principles, as follows:

The NISSAP goal is developed based on Target 9 of the NBSAP which states: 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.

Guiding Principles - The NISSAP aims to:

- Prevent the introduction and establishment of potential invasive species;
- Eradicate and control the spread of invasive species already present in Samoa;
- Strengthen the legislative framework to support invasive species work;
- Improve coordination and cooperation;

- Support regional and international engagement including donors;
- Improve the knowledge and understanding of key stakeholders and the wider public of invasive species and their impacts.

Jurisdiction

The NISSAP is a national plan, mandated by both the NBSAP and the CBD, encompassing both marine and terrestrial aspects.

Activities promoted

The NISSAP includes nine strategies, as follows:

Strategy 1: Generating Support - Raising awareness of the impacts of invasive species to generate support for action to manage and reduce them.

Strategy 2: Building Capacity - Strengthening the institutions capacity and necessary skills for the technical support required to manage invasive species effectively.

Strategy 3: Legislation, Policy and Protocols - Institutionalization of appropriate legislation, policies and procedures underpinning the effective management of invasive species.

Strategy 4: Baseline & Monitoring - Establishing a baseline of information on the status and distribution of invasive species and implementing a programme for detecting change and emerging impacts.

Strategy 5: Prioritization - Establishing effective systems for assessing risk and prioritizing invasive species for management

Strategy 6: Research on priorities - Understanding priority invasive, including species biology and impacts, and developing effective management techniques.

Strategy 7: Biosecurity- Strengthening the Risk Assessment systems for assessing risk and prioritizing invasive species for management.

Strategy 8: Management of established invasives - Reducing or eliminating the impacts of established invasive species, by eradication, containment, exclusion, or population reduction by physical, chemical or biological control.

Strategy 9: Restoration - Restoring native biodiversity or ensuring recovery of other values, after invasive species management.

Each of these strategies are accompanied by specific objectives. Part 6.4 of the NISSAP presents an Implementation Framework that sets out the roles and responsibilities of the various agencies involved in implementing the plan.

Regulatory approaches

This is a policy document that, while required under Samoa's CBD obligations, is not itself a regulatory instrument.

Relevance

The National Invasive Species Strategy and Action Plan: 2019-2024 is highly relevant to MSP. The NISSAP encompasses both marine and terrestrial invasive species, with an emphasis on terrestrial species (presumably because they are judged to be more immediately problematic). Certain marine invasive – Crown of Thorns starfish and Sea Lettuce – are identified as being subject to active management. Marine biosecurity is an obvious point of connection between the NISSAP and MSP.

Concluding observations – Avoiding the introduction of invasive species and eradicating or managing those that have been introduced, is a key environmental governance objective the achievement of which will be enhanced by more comprehensive spatial data planning, including for marine areas.

A.4.10 National Marine Sanctuary Management Framework (draft)

Overview

On 15 May, 2002, the Cabinet approved the establishment of the National Marine Sanctuary in Samoa's Exclusive Economic Zone [EEZ] for marine animals such as whales, dolphins, turtles and sharks. In law, this decision was actuated by the recent amendment to the Marine Wildlife Regulations.

The document here summarised is a 'draft management framework' which is undated but appears to precede the amended regulations and the SOS. Given the absence of the National Marine Sanctuary from the SOS, it is not clear whether this document represents current or intended policy.

Objective

The NMS management framework "sets provisions for the management of the national marine sanctuary. It provides the general mechanisms to direct and coordinate the various activities that may affect the sanctuary environment ensuring that the purposes of the sanctuary are met. The resources within the sanctuary and their utilization are also addressed."

The NMS itself has four goals:

1. Improve the protection of specific marine species;
2. Promote and coordinate non-lethal research and monitoring to improve our knowledge and understanding of targeted marine species and environment to improve management decision making;
3. Enhance public awareness, understanding and wise use of the marine resources and environment; and
4. Promote environment-friendly activities such as whale/dolphin /shark fishing watching for the tourism industry.

Jurisdiction

Samoaan waters.

Activities promoted

Section 5 of the draft management framework calls for development of the following management plans:

- Resources Protection Plan;
- Research and Monitoring Plan;
- Education Plan;
- Eco-Tourism Plan; and
- Heritage/Tradition Plan.

The framework also suggests the creation of a Sanctuary Management Committee, consisting of representatives from the following Ministries, NGOs and Communities:

- MNRE: Division of Environment and Conservation;
- MAF: Fisheries Division and Quarantine Division;

- Ministry of Police: Maritime Division;
- Ministry of Transport and Infrastructure: Maritime Division;
- Ministry of Education, Sports and Culture;
- Ministry of Finance;
- Ministry of Foreign Affairs;
- Ministry of Women, Community and Social Development: Internal Affairs;
- Ministry for Revenue: Customs Department;
- O le Siosiomaga Society (OLSSI);
- Samoa Conservation Society (SCS);
- Conservation International (CI);
- Secretariat of the Pacific Regional Environment Program (SPREP);
- Youth Climate Action Network (YCAN); and
- Community representatives to be picked according to developments and interests.

Regulatory approaches

The management framework, even upon finalisation, does not imbue regulatory obligations. The document contains much that is relevant to law – including proposing detailed amendments to existing regulations in an Appendix, citing existing laws (somewhat incompletely) that could be relevant to the NMS, and making suggestions for new standalone laws dealing specifically with the NMS.

This material is not described in detail here because it has been superseded by the 2018 amendment of the Marine Wildlife Regulations and the SOS.

Relevance

The **National Marine Sanctuary is itself directly relevant** for future MSP in Samoa. The **relevance of the draft management framework is unclear given subsequent events, decisions and enactments.**

Concluding observations

This document is on the whole somewhat confusing from both a policy and legal perspective, as might be expected from a draft-in-development.

A.4.12 Samoa Aquaculture Management and Development Plan: 2013-2018

Overview

The *Aquaculture Management and Development Plan* outlines plans for the development of the aquaculture sector in Samoa. The introduction notes “real commercial aquaculture has yet to be developed in Samoa, despite previous attempts to culture a range of species. High levels of inputs, specialised facilities and market development requirements contribute to its slow progress. Nevertheless, aquaculture is still widely recognised as a viable means of increasing fisheries production, providing additional dietary resources, and generating income for local communities.”

Objective

The plan includes a vision, goal and objective, as follows:

Vision

Long-term benefits of socioeconomic growth for Samoa as a result of development of the aquaculture sector in a sustainable and responsible way, as an alternative income generating activity to capture fisheries.

Goal

The overall goal is to ensure food and nutritional security and improve rural and urban livelihoods through sustainable and responsible development and management of the aquaculture sector in Samoa.

Objective

To provide comprehensive guidance to the Fisheries Division and aquaculture stakeholders on sustainable management and development of the aquaculture sector in the country by increasing the number of species being farmed, identifying species with high commercial potential, providing support to community development and management initiatives, enhancing the skills and knowledge of all those involved in the sector, and researching and promoting ways to add value to existing products, in order to improve the current status of the sector.

Jurisdiction

It is a national plan, mandated by the Fisheries Management Act.

Activities promoted

In addition to the overall objective noted above, the plan includes eight sub-objectives, as follows:

Objective 1: To promote better aquaculture management practices;

Objective 2: To improve marketability of aquaculture products in Samoa;

Objective 3: To diversify the number of aquatic species that can be cultured in Samoa;

Objective 4: To improve quality and availability of lower-cost feeds for aquaculture;

Objective 5: To ensure access by farmers to the best possible genetic quality of seed stocks;

Objective 6: To promote private sector development;

Objective 7: To improve human resource capacities to manage and develop aquaculture; and

Objective 8: To improve aquaculture networking.

The plan includes an assessment of species suitable for aquaculture according to both returns and feasibility considerations. Species assessed as high return, high feasibility are giant clam, sea grapes, tilapia, mullet, trochus and freshwater prawn.

Regulatory approaches

This is a policy document that, while required by legislation to be prepared, is not itself a regulatory instrument.

Relevance

The National Aquaculture Plan is somewhat relevant to MSP in Samoa.

Concluding observations

Aquaculture, particularly the proper siting of locations for marine-based aquaculture taking into account other uses, is a good example of a challenge the solution for which can be assisted by MSP.

A.4.13 Samoa Coastal Fisheries Management Plan: 2013-2016

Overview

The *Coastal Fisheries Management Plan* is the outcome of a stakeholder consultative process that engaged village representatives, government ministries, non-governmental

organisations, regional organisations, and the Fisheries Division of the Ministry of Agriculture and Fisheries. It aims to provide a policy framework and strategic directions for sustainable coastal fisheries, presenting strategies with plans of action to address issues of concern.

Objective

The *Coastal Fisheries Management Plan* includes a vision, goal and objective, as follows:

Vision

A healthy marine environment and ecosystems that maintain sustainable coastal fisheries resources for Samoa

Goal

The overall goal is to ensure sustainable food security and livelihoods through sustainable utilisation, development and management of coastal fisheries in Samoa.

Objective

The purposes of the plan are to monitor, develop and manage coastal resources for sustainable utilisation; to support community development and management initiatives; to support the development of species with commercial potential; to enhance the skills and knowledge of all those involved in coastal fisheries; and, by researching and promoting ways of adding value to resources, to improve the overall situation of coastal fisheries.

Jurisdiction

The Coastal Fisheries Management Plan applies to all resources within the coastal waters of Samoa, as stipulated by the Fisheries Management Act. The definition of “coastal fisheries” adopted by this policy is that any fishery conducted in coastal waters, lagoons, reefs, outer reef slopes, or seamounts of Samoa within the country’s EEZ.

Activities promoted

The plan includes eight strategies, as follows:

- Develop specific coastal fisheries management plans (for sea cucumber, trochus, ornamental fishery, fish spawning aggregations, deepwater snapper);
- Strengthen community-based fisheries management;
- Strengthen and expand resource assessment and monitoring;
- Develop alternative initiatives to support management;
- Species biological research;

- Improve and maintain healthy marine ecosystems, habitat protection and rehabilitation.
- Climate change impacts and adaptation; and
- Strengthen the capacity of the Fisheries Division to manage, develop and monitor coastal fisheries, and enforce relevant management regimes.

Various projects are included under each of these strategies.

Regulatory approaches

This is a policy document that is not itself a regulatory instrument. Certain projects, particularly under strategies 2, 5 and 8, refer to enhanced legislation or legal training.

Relevance

The Coastal Fisheries Management Plan is directly relevant to MSP in Samoa.

Concluding observations

Coastal fisheries are a vital aspect of food security and economic well being in Samoa, requiring careful management to ensure their continued productivity. Many of the projects described in this plan would benefit greatly from an effective MSP being in place.

A.4.15 Samoa Sea Cucumber Management and Development plan

Overview

The *Sea Cucumber Management and Development Plan* is an example of a management plan developed for a 'designated fishery' pursuant to sections 20 and 21 of the Fisheries Management Act. The fishery was declared as a designated fishery by the Minister in 2015.

Objective

The purpose of the Samoa Sea Cucumber Management and Development Plan is to provide for biologically and economically sustainable development, and to establish an effective and enforceable management structure. The plan also provides recommendations and measures governing the exploitation and utilisation of Samoa's sea cucumber fishery, while maintaining the sea cucumber's cultural and traditional importance. The plan includes 4 fisheries management objectives:

- Manage the fishery using the best available information and improve the collection of information to assist decision-making and refine the management of Samoa's sea cucumber fisheries;
- Ensure that commercial harvest is economically sustainable, contribute to increasing livelihoods for Samoan communities, and recover the costs of resource assessment and management;
- Maintain and encourage customary and traditional values and management practices of Samoan communities in the sustainable harvesting, processing and marketing of sea cucumber resources; and
- Incorporate community-based fisheries management strategies to ensure effective participation, monitoring and enforcement by communities.

Jurisdiction

The Sea Cucumber Management and Development Plan applies to the taking of any species of sea cucumber in Samoan waters, or the processing or export of any sea cucumbers taken in Samoan waters.

Activities promoted

The plan includes six strategies as follows:

- a. Develop effective and enforceable management measures for any commercial and artisanal sea cucumber fisheries;
- b. Promote the development of sustainable sea cucumber aquaculture for the benefit of Samoa and its people;
- c. Establish an ongoing programme of catch, effort and export data collection, and scientific data and surveys, to improve information for the support of effective management;
- d. Establish an effective monitoring and enforcement system to ensure compliance;
- e. Promote and encourage the management of the sea cucumber fishery at the community level, including the retention of useful traditional management practices; and
- f. Provide timely advice to the Coastal Fisheries Advisory Committee (CFAC) on issues pertaining to the management and development of sea cucumber fisheries.

Regulatory approaches

This plan is a regulatory instrument mandated under the Fisheries Management Act pursuant to the provisions relating to designated fisheries and fisheries management plans. The plan includes the following regulatory measures:

- Open/closed harvesting periods;
- Restricted fishing areas (e.g. marine protected areas);
- Licensing for processors, exporters and aquaculture operations;
- Export license capping;
- Special export requirements;
- Gear prohibitions; and
- Species prohibitions.

Relevance

The Sea Cucumber Management and Development Plan is **somewhat relevant** to MSP in Samoa.

Concluding observations

Many of the activities/projects in this plan would benefit greatly from an effective MSP, such as mapping areas prohibited to sea cucumber harvest or areas where sea cucumber aquaculture is permitted.

A.4.16 Samoa Tuna Fisheries and Development Management and Development Plan: 2017-2021

Overview

The *Tuna Fisheries and Development Management and Development Plan* describes the intent of the Government of Samoa over the five-year period 2017 to 2021 regarding the development and management of tuna resources in its EEZ and the maximization of the long term economic and social benefits derived from the utilization of the resource for the people of Samoa.

The Plan covers two main areas:

- The management of the tuna resources of Samoa, particularly the licensing arrangements for the tuna longline fishery; and

- The future development of the tuna industry in Samoa to sustain and maximize the economic benefits and participation of Samoans in the fishery.

Objective

The plan has two overall goals: 1. To ensure the long term sustainability of tuna resources harvesting from within Samoa's EEZ and throughout their range; and 2. To optimize the long term economic and social benefits accruing to the people of Samoa from the exploitation of its tuna resources.

Furthermore, section 2.2 of the plan identifies four objectives:

The Plan will pursue the following objectives through the management of Tuna fishing:

- Continuing to strengthen the exercise of sovereign rights of Samoans over tuna in the Samoan EEZ and on the adjacent high seas, recognition of cultural values in tuna policy and planning, particularly the importance of tuna to food security and the livelihoods of the small scale fishers;
- Maximizing the economic and social gains received by Samoa through ensuring the economic viability of its tuna industry and the optimal management of the fishery;
- Contributing to the sustainable management of tuna resources and the associated ecosystem, including through effective participation by Samoa in regional and international activities; and
- Developing and implementing national management frameworks and systems that promote economic sustainability of the Samoan domestic fleet.

Jurisdiction

The Plan defines the rules and management measures applicable to the commercial fishery for Tuna and Tuna-like species in Samoa's fishery waters and ports and for Samoan vessels fishing in other areas of competencies under relevant Regional Fisheries Management Organisations. The key species covered under this Plan are: South Pacific Albacore (*Thunnus alauunga*), Yellowfin tuna (*Thunnus albacores*), Bigeye tuna (*Thunnus obesus*) Skipjack tuna, (*Katsuwonus pelamis*).

Activities promoted

Part 2 of the Plan sets out management measures (discussed in the next section) and Part 3 presents development plans. Part 3 defines the goal for the development of the domestic tuna fishery as "to maximize economic benefits flowing to Samoa from the sustainable utilization of its tuna resources, including through harvesting and processing activities." To achieve this goal the plan proposes:

- Ensuring that all developments are sustainable and economically viable, with benefits flowing directly to the local economy;
- Providing an enabling policy environment that will promote and encourage private sector development in commercial fishing, processing and support sectors in Samoa;
- Maintaining and expanding the export of tuna and tuna products from Samoa, including through the development of new markets;
- Promoting value-adding to tuna catches in Samoa, to maximize local employment, and produce a high value product for both domestic and export markets;
- Encouraging the private sector to enter into joint ventures with foreign investors to establish viable fishing operations with shore facilities for processing and exporting fresh or processed tuna based in Samoa;
- Increasing the allowable catch of the Samoan tuna fleet through the negotiation of access arrangements with neighboring countries and Territories and through the chartering of vessels to fish on the high seas;

- g. Increasing the participation of private sector interests in tuna fishing through the provision of infrastructure needed to foster development such as anchorage for fishing vessels, and constructing support services such as ice making machines for processing and / or storage facilities including in rural locations;
- h. Strengthen the regulatory framework to support future development of a regional Competent Authority on fish and fishery products destined for exports; and
- i. Promote food security and enhance livelihoods by increasing the supply of tuna for domestic consumption.

Regulatory approaches

It is unclear whether the Tuna Management and Development Plan is a management plan developed for a “designated fishery” pursuant to sections 20 and 21 of the Fisheries Management Act. Regardless of whether this official designation has been made, the plan does interact with the Fisheries Management Act by providing a clear statement of policies that guide the implementation of the Act with regard to licences and other regulatory measures applied for tuna management in Samoan fishery waters. These management measures set out in Part 2 of the plan include:

- Catch and effort limits;
- Licensing;
- Spatial allocation and conflict mitigation;
- Monitoring control and surveillance measures;
- Data collection and record-keeping;
- Vessel monitoring systems; and
- Requirements for bycatch such as sharks and turtles.

Relevance

The *Tuna Fisheries and Development Management and Development Plan* is **directly relevant** to MSP in Samoa.

Concluding observations

This plan covers the management and development of the largest commercial fishery in Samoan waters. It is a key component of ocean governance in the country.

A.4.17 Sapapalii Mangrove Ecosystem Management Plan 2018 - 2020

Overview

Seeking to build on previous achievements in developing and implementing a village Fisheries Management Plan, the coastal community of Sapapalii has developed a Mangrove Ecosystem Management Plan, with assistance from MNRE with funding from United Nations Development Programme Global Environment Facility Small Grants Programme. The plan was prepared by the people of Sapapalii under the leadership of the Alii ma Faipule Environment Project Committee.

Objective

The plan has a vision, an overall goal, and seven management objectives.

Vision

The mangrove ecosystem management and protection in the village is driven by the community and founded on a collective vision of “A healthy environment, a happy and prosperous Sapapalii.”

Overall goal

“Improved management of mangrove ecosystems for biodiversity, livelihoods and climate change resilience.”

Management Objectives:

- To maintain the integrity of our mangrove ecosystems and all life support systems by conserving, restoring, rehabilitating and using our resources wisely;
- To encourage monitoring on a regular basis for the state and health of the mangrove ecosystems;
- To practice good stewardship and sound decision making;
- To raise awareness and educate our people on mangrove values and wise use and management;
- To develop opportunities to enhance our livelihoods and income generating activities that are sustainable, compatible and beneficial for our village;
- To build partnerships within and outside of Samoa to work together in the conservation of mangroves; and
- To share our experiences and lessons learnt from mangrove conservation with other villages.

Jurisdiction

The Plan covers all (12.5 hectares) of the Sapapalii mangrove area with its estuaries, channels, natural springs, including areas which will be planted to increase the size and the complexity of the mangrove area.

Activities promoted

Part 5 of the plan includes a range of management strategies and actions, including: signage and public information about the mangrove protection; restoring and rehabilitating mangrove areas by planting, removing rubbish and improving waste management; encouraging tourism and visitors; building the capacity of local stakeholders to protect and sustainably manage the mangrove areas; adapting to climate change through actions such as establishing landward buffer zones; removing invasive introduced species such as African tulip and the Mexican rubber; and seeking future funding to support continued implementation of the plan.

Regulatory approaches

Part 6 of the plan is titled “Co-management framework.” It states in part “Below are the national plans and legislation which supports the Plan.”:

- National Environment Sector Plan 2017 – 2021
- National Biodiversity Strategy and Action Plan 2015 – 2020
- Sapapalii Fisheries Management Plan 2016
- Lands, Surveys and Environment Act 1988
- Environment Management and Conservation Bill 2017

The Waste Management Act, the Village Fono Act and the Fisheries Management Act could have been added to this list.

Compared to the legal arrangements under the Fisheries Management Act to support village-level co-management (such as the Sapapalii Fisheries Management Plan 2016 and related village by-laws), the legal arrangements for this plan are much less clear and certain. Passage of the EMC Bill will assist in resolving this.

Relevance

The *Sapapalii Mangrove Ecosystem Management Plan 2018 – 2020* is **somewhat relevant** to MSP in Samoa.

Concluding observations

Successful co-management approaches to biodiversity conservation are an important element of sustainable ocean governance, and another example of an initiative that will both contribute to and benefit from a future MSP.

Appendix B

Examples of Environmental Harm Provisions

Queensland Environmental Protection Act 1994 ss14-17 Section 3A(2)

14 Environmental harm

- (1) Environmental harm is any adverse effect, or potential adverse effect (whether temporary or permanent and of whatever magnitude, duration or frequency) on an environmental value, and includes environmental nuisance.
- (2) Environmental harm may be caused by an activity:
 - (a) whether the harm is a direct or indirect result of the activity; or
 - (b) whether the harm results from the activity alone or from the combined effects of the activity and other activities or factors.

15 Environmental nuisance

Environmental nuisance is unreasonable interference or likely interference with an environmental value caused by:

- (a) aerosols, fumes, light, noise, odour, particles or smoke; or
- (b) an unhealthy, offensive or unsightly condition because of contamination; or
- (c) another way prescribed by regulation.

16 Material environmental harm

- (1) Material environmental harm is environmental harm (other than environmental nuisance):
 - (a) that is not trivial or negligible in nature, extent or context; or
 - (b) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount but less than the maximum amount; or
 - (c) that results in costs of more than the threshold amount but less than the maximum amount being incurred in taking appropriate action to:

- (i) prevent or minimise the harm; and
- (ii) rehabilitate or restore the environment to its condition before the harm.

17 Serious environmental harm

(1) Serious environmental harm is environmental harm (other than environmental nuisance):

- (a) that is irreversible, of a high impact or widespread; or
- (b) caused to:
 - (i) an area of high conservation value; or
 - (ii) an area of special significance, such as the Great Barrier Reef World Heritage Area; or
- (c) that causes actual or potential loss or damage to property of an amount of, or amounts totalling, more than the threshold amount; or
- (d) that results in costs of more than the threshold amount being incurred in taking appropriate action to—
 - (i) prevent or minimise the harm; and
 - (ii) rehabilitate or restore the environment to its condition before the harm.

Section 3A(2) of the Environmental Protection Act 1986 (Western Australia)

(2) In this Act —

Environmental harm means direct or indirect:

- (a) harm to the environment involving removal or destruction of, or damage to:
 - (i) native vegetation; or
 - (ii) the habitat of native vegetation or indigenous aquatic or terrestrial animals; or
- (b) alteration of the environment to its detriment or degradation or potential detriment or degradation; or
- (c) alteration of the environment to the detriment or potential detriment of an environmental value; or
- (d) alteration of the environment of a prescribed kind.

Material environmental harm means environmental harm that:

- (a) is neither trivial nor negligible; or
- (b) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding the threshold amount.

Serious environmental harm means environmental harm that:

- (a) is irreversible, of a high impact or on a wide scale; or
- (b) is significant or in an area of high conservation value or special significance; or
- (c) results in actual or potential loss, property damage or damage costs of an amount, or amounts in aggregate, exceeding 5 times the threshold amount.

Appendix C

Overview of Great Barrier Reef Marine Park legislation

The GBRMP was established by the **Great Barrier Reef Marine Park Act 1975**, which also created the Great Barrier Marine Park Authority to manage GBRMP.

The Act is divided into 13 parts and one schedule. Part I deals with preliminary matters including defining the main objective of the Act, which is “to provide for the long-term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region.”

Other objectives of the Act include:

- Sustainable use of GBRMP for the purpose of public enjoyment and appreciation;
- Recreational, economic and cultural activities;
- Meeting international obligations with respect to environmental protection;
- Protection of designated World Heritage sites;
- Encouraging community and stakeholder participation in the protection and management of GBRMP; and
- Meeting Australia's international obligations under the World Heritage Convention.

The Act seeks to achieve its objectives by:

- providing for the establishment, control, care and development of GBRMP;
- establishing the Great Barrier Reef Marine Park Authority;
- providing for zoning plans and plans of management;
- regulating, including by a system of permissions, use of GBRMP in ways consistent with ecosystem-based management and the principles of ecologically sustainable use;
- facilitating partnership with traditional owners in management of marine resources; and
- facilitating a collaborative approach to management of the Great Barrier Reef World Heritage area with the Queensland government.

Certain definitions are pivotal to the manner in which the Act and the Great Barrier Reef Marine Park Regulations are implemented. Two of these are “ecologically sustainable use” (Section 3AA) and “principles of ecologically sustainable use” (Section 3AB). Section 7A of the Act requires the GBRPM Authority to perform its functions with regard to principles of ecologically sustainable use, meaning:

- (a) decision-making processes should effectively integrate both long-term and short-term environmental, economic, social and equitable considerations;
- (b) the precautionary principle;
- (c) the principle of intergenerational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making; and
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

The Act defines the precautionary principle as “the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.” Ecosystem-based management is defined as “an integrated approach to managing an ecosystem and matters affecting that ecosystem, with the main object being to maintain ecological processes, biodiversity and functioning biological communities.”

Parts II and III of the Act establish and provide the functions and powers of the GBRMP Authority. It was created as an incorporated statutory authority having perpetual succession and the capacity to sue and be sued, composed of a full-time Chairperson and between 2 and 4 part-time members. This structure provides a degree of independence from the government. However, Section 7(2) states that the Authority must act in accordance with Ministerial directions provided they are not inconsistent with the Act. Appointments are made for up to five years and members are eligible for reappointment.

Important functions of the Authority include:

- making recommendations to the Minister with respect to the care and development of GBRMP;
- conducting research (individually or collaboratively);
- preparing the GBRMP management and zoning plans;
- providing information and advice to the Minister in relation to the Intergovernmental Agreement between the Commonwealth and Queensland governments; and
- granting financial assistance from the Commonwealth Government to the Queensland Government in respect of GBRMP issues.

Under Section 40, the Authority is a statutory body for the purposes of the *Commonwealth Public Services Act 1999*, empowered to appoint staff, including inspectors who may exercise powers under both the GBRMP Act as well as under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

The GBRMP Authority website provides information about the corporate structure of the Authority as well as the laws, plans and policies under its administration. See:

<http://www.gbrmpa.gov.au/about-us>

<http://www.gbrmpa.gov.au/zoning-permits-and-plans/legislation-regulations-and-policies>

<http://www.gbrmpa.gov.au/zoning-permits-and-plans/plans-of-management>

The GBRMP was established by Section 30 (Division 1 of Part V). Section 31 sets out the process by which the Governor General may, by proclamation, incorporate areas of the Great Barrier Reef Region within the GBRMP.

Division 2 of Part V of the Act determines the system of zoning plans and procedures. As soon as practicable after an area is declared to be a part of GBRMP under Section 30, the Authority must prepare a zoning plan, designating each zone within it. Section 32C requires a notice of intention to prepare a zoning plan and consideration of any comments made by the public with respect to the notice, before preparing a zoning plan. Detailed provisions for preparing zoning plans by the Authority are outlined in Section 34, which requires the plans to address socioeconomic and environmental objectives. Accordingly, the process of developing zoning plans includes assessments of related socio-economic and environmental effects.

The GBRMP Authority website provides information about zoning, including a range of maps indicating zone boundaries throughout the region, and detailed information about what activities are allowed or prohibited within specific areas. See: <http://www.gbrmpa.gov.au/zoning-permits-and-plans>

Section 35A lists issues the Authority must consider when preparing zoning plans for the Minister’s approval and presentation to both Houses of the Parliament as required by Section 38 of the *Commonwealth Legislative Instruments Act 2003*. When in force zoning plans are binding and play a central role in determining how the Authority performs its duties.

Division 3 of Part V places a general duty upon users of GBRMP to take all reasonable steps to prevent or minimise harm to the marine environment in the region. The Act defines “harm” to include direct and indirect harm resulting in adverse effects on GBRMP, and provides guidance in determining reasonable steps for prevention and minimisation of harm.

Part VAA details various offences and sets penalties for each, which may be up to a maximum of three years’ imprisonment or 2,000 penalty units or both for an aggravated offence, a civil penalty for an aggravated contravention of relevant law of up to 5,000 penalty units for an individual, and up to 50,000 penalty units for a body corporate. Division 6 provides for some offenses that are subject to collective and vicarious liability, and Division 7 creates a range of aggravated offenses.

Part VA empowers the Authority to collect the environmental management charges imposed under the *Great Barrier Reef Marine Park (Environmental Management Charge-General) Act 1993* and the *Great Barrier Reef Marine Park (Environmental Management Charge-Excise) Act 1993*. Included are many detailed provisions dealing with the manner in which the charges are collected, penalties for late payments, rights of review and appeal for aggrieved parties, record-keeping and enforcement powers of the Authority relating to the charge-collection function.

Part VB relates to management plans, detailing their possible scope, objectives and process of development and approval. Section 39X provides:

The Authority may prepare plans of management for the following:

- (a) one or more areas of the Marine Park;
- (b) one or more species within the Marine Park or within an area or areas of the Marine Park; and
- (c) one or more ecological communities within the Marine Park or within an area or areas of the Marine Park.

Part VI deals with important administrative matters relating to the Authority’s power to hire staff, appoint inspectors and delegate functions. Finance and reporting requirements are provided in Part VII which establishes a special account for the purposes of the *Commonwealth’s Financial Management and Accountability Act 1997* for the management, protection and maintenance of the GBRMP. Annual reports are prepared each year and an Outlook Report published every five years. Links to the most recent Annual and Outlook Reports are provided below:

<http://www.gbrmpa.gov.au/about-us/corporate-information/annual-report>

<http://www.gbrmpa.gov.au/outlook-for-the-reef/great-barrier-reef-outlook-report>

Part VIIA addresses compulsory pilotage of regulated ships within a specified compulsory pilotage area, including exemptions and powers of enforcement.

Part VIII deals with enforcement, including powers of monitoring and monitoring directions, enforceable undertakings and directions, emergency directions. It also creates various offenses and civil penalties for failing to comply with directions and undertakings. Additionally included are provisions for injunctions, remediation orders and powers for the Minister or Authority to publicize convictions.

