

# Towards an Effective Legal Framework for Marine Protected Areas in Fiji

## Policy and Law Discussion Paper

An underwater photograph showing a vibrant coral reef on the left side. The water is clear and blue. Numerous fish are visible, including several large striped surgeonfish in the foreground and a massive school of smaller fish in the background. The lighting is bright, suggesting a shallow depth.

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# What are Marine Protected Areas (MPAs)?

- No single global definition of MPA or in Fiji laws and policies.
- **CBD definition of marine and coastal protected area:**  
*“any defined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna, and historical and cultural features, which has been **reserved by legislation or other effective means, including customs, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings**”.*
- **IUCN definition of protected area:** require a primary objective of nature conservation, and no express reference to customs  
*‘a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values’.*



# Why are MPAs relevant to Fiji?

- Benefits of MPAs include:
  - protection of marine areas (conserve biodiversity & maintain critical ecosystems and their services)
  - food security
  - resilience to natural disasters
  - adaptation to climate change
  - Preserve marine areas for customary practices
- 2005 – Fiji Government commits to protect at least 30% of Fiji’s marine areas using ‘comprehensive, ecologically representative networks of MPAs, which are effectively managed and finance’.



# Dual governance of inshore marine areas and resources

- Customary elements (customary law and practices) & western ('formal') elements (common law, statutes and policies)
- The *Constitution of the Republic of Fiji 2013* recognises Customary land ownership recognised by, but **only the customary right of access to marine resources** (i.e. customary fishing rights)
- Challenge: harmonisation of the two systems of governance – Role of Provincial Councils and initiatives such as LMMAs



# Current policy and law context for MPAs

- No protected areas or MPA policy
- Laws directly relevant to MPAs:
  - Fisheries Act 1942
  - Offshore Fisheries Management Decree 2012
  - State Lands Act 1946and
  - Environmental Management Act 2005



# Existing Mechanisms for Creating MPAs

CUSTOMARY MPAs

STATUTORY MPAs

Strictly  
Customary  
MPAs  
(Tabu)

FLMMA  
SITES

Fisheries Act  
Regulations  
(S.9)  
(Marine  
Reserves)

OFMD  
designation  
of MPAs and  
regulation

MPAs under  
State Lands  
Act Licence  
of Foreshore



- IUCN Guidelines for Protected Areas  
Legislation



- IUCN-based Recommendations



# 2011 IUCN guidelines

- 27 IUCN based recommendations
- Five interrelated categories:
  - A) Policy
  - B) Legislative drafting
  - C) Governance and institutions
  - D) MPA management mechanisms and concepts
  - E) Compliance and enforcement





# Flexibility in the design of MPA frameworks

MPA legislation should reflect local 'culture, tradition and legal processes'

Consider:

- MPA specific legislation vs MPA provisions in existing legislation
- 'Umbrella' provisions vs site specific legislation
- Many small MPAs vs few large MPAs
- More prescriptive legislation vs less prescriptive legislation



# Important qualities of MPAs

- May cover large areas and require significant resources
- May extend beyond national jurisdiction
- Marine ecosystems not as well understood as terrestrial ecosystems
- High connectivity between marine, coastal and territorial ecosystems
- Governance of 3D space
- High degree of environmental variability
- Customary fishing rights to marine resources
- Other property rights in coastal areas and in relation to marine resources
- Range of stakeholders



# A: Policy

- (i) Comprehensive biodiversity and conservation policy



## B: Legislative Drafting

- (ii) Legislative objectives should spell out the main purposes and intent of the law
- (iii) Legislation must operate harmoniously with other marine legislation
- (iv) Include thorough definition and interpretation provisions
- (v) Legislation should include application provisions



## C: Governance and institutions

- (vi) Institutional arrangements should be clearly established in legislation
- (vii) Advisory bodies should be created
- (viii) Authorities should coordinate and consult with relevant stakeholders
- (ix) Legislation should state the legal status of proposed MPA sites and jurisdiction to establish MPAs
- (x) Governance by indigenous peoples or local communities over conservation areas should be enabled wherever possible
- (xi) Protected areas should be co-managed by two or more partners
- (xii) Legislation should set out financial arrangements for MPA management
- (xiii) Effective management of protected areas includes public participation and good governance



## D: Governance and management mechanisms and concepts

- (xiv) Protected areas should be managed using the ecosystem approach (12 principles)
- (xv) A network of MPAs should be established
- (xvi) Systems planning and strategic planning should be adopted
- (xvii) Legislation must require establishment of protected areas by effective legal means and according to qualifying factors
- (xviii) Legislation should include provisions about negotiation, just compensation and acquisition of lands or use rights
- (xix) There should be provision for interim protection
- (xx) MPA boundaries should be clearly delineated
- (xxi) Legislation should enable various levels of protection and use management and zoning plans
- (xxii) Legislation should categorise protected areas according to IUCN protected areas categories
- (xxiii) Legislation should require environmental and social impact assessment for activities affecting MPAs
- (xxiv) Legislation should include a regulation making power



## E: Compliance and Enforcement

- (xxv) Regulated activities should be clearly identified
- (xxvi) Legislation must include adequate enforcement provisions, including incentives and penalties
- (xxvii) MPA management plans should incorporate education, outreach and public awareness mechanisms



# Weaknesses of Fiji's existing MPA mechanism

- Lack of a comprehensive oceans or marine protected areas policy
- Harmonisation issues
- Limited institutional options
- Scope to strengthen and extend the function and powers of the PAC
- No effective and mandatory requirements for coordination and consultation between relevant stakeholders in the establishment and management of MPAs
- No formal recognition of voluntary conservation areas
- No sustainable financing arrangements for MPAs
- Failure to establish a network of MPAs and a lack of systems planning and strategic planning
- No allowance for compensation to CFROs
- Scope to strengthen the EIA process





# Options for law reform

## Three options for reform

- Option 1: Making comprehensive MPA regulations
- Option 2: Amending existing primary legislation
- Option 3: Making new primary legislation

## Other matters to consider

Further analysis of each option is required, including consideration of:

- 2011 IUCN Guidelines
- MACBIO Report
- FELA's publication 'Regulating Coastal Fisheries: Policy and Law Discussion Paper'



# Possible next steps

Establish a clear road map to include:

- Protecting high priority conservation areas
- Developing a comprehensive oceans or MPA policy
- Determining the preferred approach to legislative reform
- Drafting and implementing new MPA or protected areas legislation

