

REVIEW OF THE NOUMEA CONVENTION FINAL REPORT – 23 November 2021

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Contents

Acknowledgements	4
1. Objectives and approach of this review	8
1.1 Objectives	8
1.2 Approach	8
1.3 Structure of this report	9
2 What is the background to the Noumea Convention and how is the Convention being applied in the Pacific region?	10
2.1 Background.....	10
2.2 How is the Noumea Convention being applied in the Pacific region?.....	12
2.2.1 Which State Parties are members of the Noumea Convention?	12
2.2.2 How is the Noumea Convention applied within national legislation and policies?	13
2.2.3 What are the key activities and achievements of the Noumea Convention?	16
3 Is the Noumea Convention relevant to current environmental challenges in the Pacific region and should the Convention be updated?	17
3.1 Relationship between the SPREP Strategic Plan and the Noumea Convention.	17
3.1.1 The Noumea Convention	18
3.1.2 The SPREP Strategic Plan 2017-2026	18
3.1.3 Review conclusion: relationship between the Noumea Convention and the SPREP Strategic Plan.....	20
3.1.4 Review conclusion and recommendation: should the SPREP Strategic Plan be the Action Plan for the Noumea Convention?	20
3.2 Views of State Parties and others – is the Noumea Convention relevant to current environmental challenges and should it be updated?.....	22
3.3 Review conclusion and recommendations: is the Noumea Convention relevant and should it be amended?.....	26
4 Is the Noumea Convention being effectively applied and how can its effectiveness be improved?	29
4.1 Views of State Parties and others on the effectiveness of the Noumea Convention ...	29
4.2 Key issues limiting the effectiveness of the Noumea Convention and recommendations to address these issues	29
4.2.1 Limited linkage between the Noumea Convention and the rest of the SPREP Programme and Strategic Plan.....	30
4.2.2 Limited awareness of the Noumea Convention at a range of levels	30
4.2.3 Limited coordination and cooperation between different stakeholders.	33
4.2.4 Lack of financial and staff capacity resources to implement the Convention	34
4.2.5 Membership of the Noumea Convention	35
5. Is the SPREP Secretariat effective in carrying out its roles and functions and how could this role be improved?	36
5.1 Background.....	36
5.3 Review conclusion and recommendations: how can Secretariat effectiveness be improved?	38
5.3.1 General	38
5.3.2 Reporting under the Noumea Convention.....	40
5.3.3 Staffing Arrangements	40
6. Road Map and Recommendations	41

6.1 Road Map	41
6.2 Recommendations	43
Annex A: Scope of the review of the Noumea Convention	46
Annex B. Data collection for the review of the Noumea Convention	49
Interviews: persons interviewed	49
Interview questions:.....	49
Questionnaire.....	50
Literature review	50
Annex C: Summary of responses to questionnaires by all States Parties	51
Annex D: Powerpoint presentation to the 2021 COP of the Noumea Convention	61
Annex E: Text of the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and related Protocols.	62
Annex F: Application of the Noumea Convention by State Parties	79
Annex G: Awareness of State Parties of the Protocols of the Noumea Convention.	83
Annex H: SPREP Secretariat work in relation to the Noumea Convention 2019-2021	84
Annex I – Relationship between the Noumea Convention and the SPREP Strategic Plan 2017-2026	94
<i>The Noumea Convention</i>	<i>94</i>
<i>The SPREP Strategic Plan 2017-2026</i>	<i>95</i>
<i>Relationship between the Noumea Convention and the SPREP Strategic Plan</i>	<i>97</i>

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Acronyms and abbreviations

ACP-MEAs – Africa Caribbean and Pacific Multilateral Environment Agreements
 AMSA - Australian Maritime Safety Authority
 CBD – Convention on Biological Diversity
 COP – Conference of the Parties to the Noumea Convention
 CITES – Convention on International Trade in Endangered Species of Wild Fauna and Flora
 CMEA – Coastal and Marine Ecosystems Advisor (of SPREP)
 CMS – Convention on the Conservation of Migratory Species of Wild Animals
 DSM – Deep Seabed Mining
 EIA – Environmental Impact Assessment
 EIS – Environmental Impact Statement
 EMG – Environmental Monitoring and Governance Programme (of SPREP)
 EPA – Environment Protection Authority
 FP – French Polynesia
 FSM – Federated States of Micronesia
 IMO – International Maritime Organization
 IOEP – Island and Ocean Ecosystems Programme (of SPREP)
 MEA – Multilateral Environmental Agreement
 MoU – Memorandum of Understanding
 MFAT – Ministry of Foreign Affairs and Trade (of NZ)
 MNRE – Ministry of Natural Resources and Environment (of Samoa)
 MPA – Marine Protected Area
 NATPLAN – National Contingency Plan on Oil Spill
 NC – Noumea Convention
 NC – New Caledonia
 NEMS – National Environment Management Strategies
 NZ – New Zealand
 PACPLAN - Pacific Islands Regional Marine Spill Contingency Plan
 PACPOL – Pacific Ocean Pollution Prevention Programme
 PICs – Pacific Island Countries
 PICTs - Pacific Island Countries and Territories
 PIPA – Phoenix Islands Protected Area (in Kiribati)
 PIRT – Pacific Islands Roundtable for Nature Conservation and Protected Areas
 PNG – Papua New Guinea
 SDG – Sustainable Development Goals (of the UN)
 SEA – Strategic Environmental Assessment
 SoE – State of the Environment
 SP – Strategic Plan (of SPREP)
 SPC – Secretariat of the Pacific Community
 SPREP – Secretariat of the Pacific Regional Environment Programme
 UNEP – United Nations Environment Programme
 USA – United States of America
 W&F – Wallis and Futuna

Summary of Recommendations

This review includes 20 recommendations. Each recommendation and the reference to the section of the review which relates to the recommendation is listed below.

Recommendation 1: (section 3.1.4) That there should be stronger linkages developed between the Noumea Convention and the SPREP Strategic Plan. These linkages should be communicated by the SPREP Secretariat as a key element of the targeted communication and awareness campaign (recommendation 7 of this review).

Recommendation 2: (section 3.1.4) That the Noumea Convention be more clearly and explicitly linked with key frameworks, such as the Framework for Nature Conservation and Protected Areas in the Pacific Islands Region and the Cleaner Pacific 2025.

Recommendation 3: (section 3.3) That minor changes to the Noumea Convention be undertaken as quickly as possible.

Recommendation 4: (section 3.3) That State Parties of the Noumea Convention be presented with two options for substantive amendment to the Noumea Convention: (a) no substantive changes be made to the Noumea Convention; (b) substantive changes be made. If the latter is chosen then the Secretariat and State Parties need to develop and agree on a process and timeline for this amendment which should include, but not be limited to, the suggested areas in Paragraph 53 of this review.

Recommendation 5: (section 3.3) That State Parties of the Noumea Convention agree that the Noumea Convention be referred to in all subsequent dealings and matters as the SPREP Convention.

Recommendation 6: (section 3.3) That the Noumea Convention be used more strategically as the framework for addressing key issues such as Marine Plastic and Deep Seabed Mining, irrespective of whether the Convention text is substantively amended or not.

Recommendation 7: (section 4.2.2) That the SPREP Secretariat develop a targeted communication and awareness campaign to raise awareness of the Noumea Convention and to more effectively and widely share information with State Parties about activities under the Convention.

Recommendation 8: (section 4.2.2) That the SPREP Secretariat raise the profile of the Noumea Convention by more clearly linking, or badging, related SPREP meetings with the Noumea Convention, including those relating to marine pollution, ocean conservation and management.

Recommendation 9: (section 4.2.2) That State Parties should be encouraged to do more to promote the Noumea Convention within their countries to communicate its role, importance and outcomes.

Recommendation 10: (section 4.2.2) That the range of activities under the Noumea Convention which are presented to each COP Meeting should be more effectively communicated and promoted to raise its profile and awareness.

Recommendation 11: (section 4.2.3) That State Parties be encouraged to develop more effective mechanisms for internal cooperation and communication, including ensuring that the Focal Point within countries is directly involved with, and knowledgeable about, the Noumea Convention.

Recommendation 12: (section 4.2.4) That a sustainable financing strategy be developed for the Noumea Convention, building on support from the ACP-MEAs 3 project, to ensure a more effective implementation of the Noumea Convention.

Recommendation 13: (section 4.2.4) That the SPREP Secretariat actively approach metropolitan members of the Noumea Convention, and key partners including UNEP and IMO, to seek increased support for the implementation of the Noumea Convention, including through secondments and through targeted support to address specific marine pollution issues and incidents.

Recommendation 14: (section 4.2.5) That SPREP Members which are currently not Parties to the Noumea Convention should be encouraged to join and that the SPREP Secretariat develop a membership strategy with the aim of progressively increasing the number of State Parties to the Convention.

Recommendation 15: (section 5.3.2) That Reporting under the Noumea Convention be strengthened and enhanced, including through implementing measures (a) to (d) in paragraph 107 of this review, as well as ensuring that improved reporting is one of the key elements included in the Terms of Reference for the SPREP Officer responsible for the Noumea Convention.

Recommendation 16: (section 5.3.3) SPREP should consider options to establish a dedicated, permanent staff position for the Noumea Convention including through activities under the ACP MEA 3 project.

Recommendation 17: (section 5.3.3) That clear Terms of Reference be developed for this position, to include, at a minimum, the items mentioned in point 109 of this review.

Recommendation 18: (section 5.3.3) That relevant staff within SPREP should be encouraged to link their work more clearly with the Noumea Convention.

Recommendation 19: (section 5.3.3) That opportunities for better linking the work of the SPREP Coastal and Marine Ecosystems (CME) Advisor with the Noumea Convention should be explored between relevant SPREP Divisions and the Advisor.

Recommendation 20: (section 6.1) That the Road Map for implementation of the Noumea Convention Review, including a Work Plan and Budget for the Convention with clear targets and indicators, be adopted and applied by State Parties and the SPREP Secretariat.

1. Objectives and approach of this review

1.1 Objectives

(1) This is the final report of the review of the Noumea Convention. The objectives of the review are:

“To undertake a comprehensive evaluation of the Noumea Convention as it is being implemented at all levels by its Parties and assess whether its objectives are being met by the Parties and the effectiveness of SPREP as the Secretariat of the Convention.”

(2) These objectives are elaborated in the “Scope of the Review” as outlined in Annex A, which identifies two (2) main headings and specific objectives¹ below:

1. “Governance and operation of the Noumea Convention:
 - a) *examine, evaluate, determine the effectiveness of the Convention;*
 - b) *examine, evaluate, determine the effectiveness of the Secretariat in discharging the roles and functions mandated by the Convention;*
 - c) *examine, analyse and determine the linkages to the work programmes of the Secretariat;*
 - d) *analyse, evaluate and determine the effectiveness of the administrative and procedural matters relating to amendment provisions, reporting and other obligations.*
2. Implementation of the Noumea Convention:
 - a) *examine, analyse, determine whether the purpose of the Convention is achieved;*
 - b) *examine, analyse and determine whether objects / purpose of the Convention remains relevant to the current environmental challenges; and*
 - c) *examine, analyse and determine the approach to expand the scope the Convention, to tackle current environmental challenges”.*

(3) This final report incorporates comments received on a draft report submitted on 4 November, 2021.

1.2 Approach

(4) This report is based on the collection and analysis of relevant data, based on the principle of consulting as widely as possible with key stakeholders, as well as a review of relevant literature. The detailed data collection approach is outlined in Annex B of this report. Data collection involved:

- Interviews: Interviews were undertaken with: (a) States Parties to the Noumea Convention, with 11 of the 12 Members of the NC interviewed for this review; (b) Senior SPREP staff, with all members of the SPREP Executive Team being interviewed;

¹ These objectives were agreed at COP15 of the Noumea Convention in August 2019.

(c) Key SPREP Partners, with interviews conducted with staff from the UNEP Pacific Office and the UNEP Headquarters.

- Questionnaire: A questionnaire developed by the Secretariat, in consultation with States Parties to the Noumea Convention, was sent to all States Parties. The questionnaire was online² for ease of completion. The following State Parties responded to the questionnaire: Fiji; FSM; NZ; PNG, Samoa; Solomon Islands. The summary of responses to the questionnaires is attached as Annex C;
- Literature review: An assessment of literature relevant to the Noumea Convention was undertaken, the key issues arising from this assessment are included in this final report; and
- Presentation to the COP: A power point presentation was given to the COP of Noumea Convention on 2nd September 2021 updating Parties on progress with the review. Feedback from this presentation provided useful input to this review. The text of the power point is attached as Annex D.

(5) Data collection for the review of the Noumea Convention proceeded at a slower rate than expected throughout this project, thus delaying the anticipated delivery of project outcomes. Extensive efforts were undertaken, by the consultant and the SPREP Secretariat, to interview all States Parties, and to obtain questionnaire responses from as many State Parties as possible.

(6) The SPREP Secretariat provided technical guidance and administrative support throughout this review through an internal Steering Committee. This support and guidance are acknowledged with appreciation.

1.3 Structure of this final report

(7) This report is structured around the following questions which reflect the objectives and scope of the review:

- What is the background to the Noumea Convention and how is it being applied? providing context and background information on the Convention and its application in the Pacific region;
- Is the Noumea Convention relevant to current environmental challenges in the Pacific region and, if not, how could this be addressed? assessing the relevance of the Convention to current environmental issues in the Pacific region and assessing different options for the future of the Convention;
- Is the Noumea Convention being effectively applied and how can its effectiveness be improved? reviewing how effectively the Convention is being applied in the Pacific

²<https://www.surveymonkey.com/r/6WVLRW>

region, assessing barriers to effective delivery, and suggesting how these can be addressed;

- Is the SPREP Secretariat effective in carrying out its roles and functions and how could this be improved? assessing the roles and activities of the Secretariat and suggesting how they could be improved; and
- What are the suggestions and recommendations for moving forward? outlining recommendations and a suggested process for moving forward with this review.

2 What is the background to the Noumea Convention and how is the Convention being applied in the Pacific region?

2.1 Background

(8) The Noumea Convention³, also known as the SPREP Convention, has two Protocols, the Dumping Protocol⁴ and the Emergencies Protocol⁵. The full text of the Convention is outlined in Annex E. The Convention and its related Protocols were adopted in 1986 and entered into force in 1990. The Convention has a particular focus on preventing, reducing and controlling pollution of the Convention Area⁶, from any source, and on ensuring sound environmental management and development of natural resources within “*the Area*”. The two Protocols aim to assist effective implementation of the Noumea Convention.

(9) The aim of the Dumping Protocol is to prevent, reduce and control pollution by dumping of wastes and other matter in the South Pacific. In 2006 an amendment to this Protocol⁷ was prepared to update the existing Protocol and ensure consistency with other relevant international legal instruments.

(10) The aim of the Emergencies Protocol is to enhance cooperation among State Parties to protect the South Pacific Region from threats and effects of pollution incidents.

(11) During the Conference of the Plenipotentiaries in 2006, the Parties to the Noumea Convention adopted two new protocols as new instruments to implement the provisions of the Convention. The two protocols, respectively the “*Protocol on Oil Pollution preparedness, response and cooperation in the Pacific region*” and the “*Protocol on hazardous and noxious substances pollution, preparedness, response and cooperation in the Pacific region*”, constitute new commitments of the State Parties to take effective regional actions for the prevention of marine pollution from two specific clusters of pollutants: oil, and hazardous and noxious substances⁸. These two 2006 protocols have not entered into force.

³ Full title: *The Convention for the Protection of Natural Resources and Environment of the South Pacific Region*
https://www.sprep.org/att/IRC/eCOPIES/pacific_region/201.pdf

⁴ Protocol for the Prevention of Pollution of the South Pacific Region by Dumping
https://www.sprep.org/attachments/Legal/Files_updated_at_2014/Dumping_Protocol.pdf

⁵ Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region
https://www.sprep.org/attachments/Legal/Files_updated_at_2014/Emergencies_Protocol.pdf

⁶ As defined in Article 2 (a) of the Noumea Convention, referred to as “the Area”

⁷ <https://www.sprep.org/attachments/Legal/SPREPDumpingProtocolamended.doc>

⁸ <https://www.sprep.org/convention-secretariat/noumea-convention>

(12) The Noumea Convention and the related Protocols has been referred to as a *“comprehensive, legally binding agreement for Parties to undertake the protection, management and development of the marine and coastal environment of the Pacific region”*⁹. This Convention is the only multilateral umbrella agreement in the Pacific Region for the protection of natural resources and the environment, a fact noted as very important by many States Parties interviewed for this project.

(13) The Noumea Convention is the Pacific region component of UNEP's Regional Seas Programme.¹⁰ This Programme has functioned in conjunction with Action Plans which have been underpinned with a strong legal framework in the form of a regional Convention and associated Protocols on specific issues. The Convention's key objective as part of the Regional Seas Programme is: *“to address the accelerating degradation of the world's oceans and coastal areas through prevention, reduction and control of pollution from any source; and ensure sound environmental management and development of natural resources”*.¹¹ SPREP is unique as providing a separate stand-alone Secretariat for the Regional Seas Programme in the Pacific region, UNEP Regional Seas Programmes, in other parts of the world, are usually hosted within UNEP regional offices.

(14) Another Convention dealing with environmental issues was signed in Apia in 1976: *“the Apia Convention”*¹². This Convention, however *“did not develop or thrive”*¹³ due to a number of reasons, including the lack of interest amongst Pacific countries and the narrow focus of the Convention on protected areas. The Apia Convention was also superseded by the Noumea Convention and the SPREP Agreement within the Pacific region, and by the advent of the Convention on Biological Diversity¹⁴ (CBD) at the global level. The Apia Convention was in fact seen as pioneering at the time of development, however it became redundant over time particularly with the advent of other Conventions and agreements which were seen as more relevant and useful for the Pacific region. As one interviewee noted: *“the development and adoption of the Convention of Biological Diversity provided the death knell for the Apia Convention”*.

(15) There have been substantial changes and developments since the Noumea Convention entered into force in 1990. SPREP was established as a legal entity through the SPREP Agreement¹⁵ which entered into force in 1995. SPREP has grown significantly since then and the scope of its work has broadened. The framework for the SPREP Programme is currently provided through the SPREP Strategic Plan 2017-2026¹⁶. The relationship between the Strategic Plan and the Noumea Convention is discussed later in this review.

⁹ <https://www.sprep.org/convention-secretariat/noumea-convention>

¹⁰ <https://www.unep.org/explore-topics/oceans-seas/what-we-do/regional-seas-programme>

¹¹ Review of the Waigani and Noumea Conventions, 17 July 2019

¹² <http://www2.ecolex.org/server2neu.php/libcat/docs/TRE/Full/En/TRE-000540.txt>

¹³ According to members of the SPREP Executive Team

¹⁴ <https://www.cbd.int/>

¹⁵ https://www.sprep.org/attachments/Legal/AgreementEstablishingSPREP_000.pdf

¹⁶ <https://www.sprep.org/publications/sprep-strategic-plan-2017-2026>

2.2 How is the Noumea Convention being applied in the Pacific region?

2.2.1 Which State Parties are members of the Noumea Convention?

(16) There are 12 State Party Members of the Noumea Convention, as shown in Table 1 below.

Table 1: Membership of the Noumea Convention and the Protocols

	Noumea Convention	Dumping Protocol	Emergencies Protocol
Australia	X		X
Cook Is	X	X	X
FSM	X	X	X
Fiji	X	X	X
France	X	X	X
Marshall Is	X	X	X
Nauru	X	X	X
New Zealand	X	X	X
PNG	X	X	X
Samoa	X	X	X
Solomon Is	X	X	X
USA	X	X	X

(17) Parties of the Noumea Convention¹⁷ represent a subset of the State Parties to the SPREP Agreement¹⁸ (hereafter referred to in this review as SPREP Members). The following SPREP Members are not signatories to the Noumea Convention: American Samoa; French

¹⁷ Referring to signatories of the Noumea Convention, consistent with references in the Convention.

¹⁸ As set out in the SPREP Agreement: American Samoa; Australia; Cook Islands; Federated States of Micronesia; Fiji; France; French Polynesia; Guam; Kiribati; Marshall Islands; Nauru; New Caledonia; New Zealand; Niue; Northern Mariana Islands; Palau; Papua New Guinea; Samoa; Solomon Islands; Tokelau; Tonga; Tuvalu; United Kingdom; United States of America; Vanuatu; and Wallis and Futuna.

Polynesia; Guam; Kiribati; New Caledonia; Niue; Northern Mariana Islands; Palau; Tokelau; Tonga; Tuvalu; United Kingdom; Vanuatu; and Wallis and Futuna¹⁹.

(18) This review notes the interests of the French Territories in the Pacific (which are not Parties of the Noumea Convention) are currently represented by France in the Noumea Convention COP Meetings.²⁰ At present, France receives and transmits the reports from New Caledonia (NC), French Polynesia (FP) and Wallis and Futuna (W&F) to the NC COP²¹. It is understood there is a broadly similar situation regarding the USA and its territories and freely associated States, where their interests are also considered within presentations to the NC COP although the USA is not speaking on their behalf when making presentations to the COPs of the Noumea Convention²².

(19) This limited membership is a challenge for the effective implementation of the Noumea Convention, as issues such as marine pollution are obviously transboundary, requiring action both within and between the countries and territories of the region. The limited membership is also one factor impeding the overall awareness and profile of the Noumea Convention in the Pacific region. The 2019 review of the Waigani and Noumea Conventions²³ identified the need for the membership of the Noumea Convention to be further developed to: *“strengthen efficacy for environmental action in the Pacific”*. This view is shared by this review of the Noumea Convention.

(20) The review understands there is no constraint under the Noumea Convention for territories and freely associated states to become members of the Noumea Convention, as is the case for membership of SPREP under the SPREP Agreement. However, this would require discussions with the relevant metropolitan State Party and pre-supposes interest and willingness on the part of the territory and associated state to join the Convention. There would be considerations on voting and representation that would need to be worked out. This review notes that for the Convention to have a truly regional focus then the membership of the Noumea Convention should ideally be the same as the membership of the SPREP Convention.

2.2.2 How is the Noumea Convention applied within national legislation and policies?

(21) All countries interviewed noted that the content of the Noumea Convention is relevant to their country, particularly in relation to waste management, marine pollution and Environmental Impact Assessment (EIA). All State Parties which responded to the questionnaire noted they have *“laws/legislations, administrative systems, policy frameworks to ensure the protection of the natural resources and environment in accordance with the Noumea Convention”*.²⁴ This review notes this is a positive indicator and reflection of the impact of the Noumea Convention in the Pacific region.

¹⁹ The USA and France are signatories to the Noumea Convention while their territories and freely associated states are not.

²⁰ Personal communication: Mr Luc Williencourt on 18 August 2021

²¹ France has a particular position as competencies regarding environment are transferred to the French territories. Competencies also vary within and between French Territories, for example, in New Caledonia competencies for environment are at the Provincial level. However, France has competencies on international conventions and agreements.

²² Personal communication: Dr Gerry Davis on 3rd September 2021

²³ Unpublished document held by the SPREP Secretariat and reviewed by the consultant for this project

²⁴ Question 7 of the questionnaire

(22) All State Parties noted²⁵ they have clear national processes for considering and ratifying international conventions, including the Noumea Convention, and for the preparation and implementation of national laws and policies which ensure these Conventions are effectively applied at national levels. These processes are detailed for each State Party in Annex D²⁶. As an example, New Zealand has prepared detailed guidelines regarding the process of ratifying and applying regional and international conventions within domestic legislation²⁷. There are similar processes for other State Parties to the Noumea Convention. All processes require ratification and/or endorsement at the highest levels of Government. As noted, the objectives and articles of the Noumea Convention are usually mirrored in national legislation. Articles of the Convention are usually included as elements within broader environmental laws and policies and in some cases are reflected in relevant, stand-alone legislation.

(23) While this is a positive aspect of the Noumea Convention, State Parties noted the link between such national legislation and the Convention is not always clear or explicit. While there is a range of activities undertaken under the umbrella of the Noumea Convention²⁸, many State Parties interviewed appeared unclear as to whether these activities were undertaken as part of the Noumea Convention or as part of the SPREP Strategic Plan. This review notes this often reflects the low level of awareness and understanding of the Noumea Convention within or by State Parties. Suggestions for improving the awareness and understanding of the Convention are included later in this review²⁹.

(24) The questionnaire included questions to ascertain whether laws and policies had been developed within State Parties, to reflect specific articles of the Noumea Convention. The full responses from the 6 State Parties which returned the questionnaire are outlined in Annex F³⁰. The majority of State Parties responding to the questionnaire have developed laws and/or regulations which address articles of the Convention, as outlined in Annex F. Some examples of national application are provided in Table 2 below.

Table 2: Examples of national laws to address articles of the Noumea Convention

Article	Example of application in national laws and/or regulations
Article 6: Pollution from vessels	As an example, NZ notes this is covered by the NZ Resource Management Act 1991 ³¹

²⁵ In response to question 6 of the questionnaire

²⁶ Covering those State Parties (SP) which responded to the questionnaire, refer to Annex D, SP responses to question 6.

²⁷ Refer: <https://www.mfat.govt.nz/en/about-us/who-we-are/treaties/#:~:text=The%20treaty-making%20process%20in%20New%20Zealand%2C%20the%20power,the%20House%20of%20Representatives%20for%20select%20committee%20consideration>

²⁸ As noted in Section 2.2.3 of this review

²⁹ As outlined in section 4.2.2 of this review.

³⁰ From countries which responded to the questionnaire: Fiji; FSM; New Zealand: PNG; Samoa and Solomon Islands

³¹ <https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html>

Article 7: Pollution from land-based sources	As an example, PNG notes this is covered by the PNG Environment Act 2000 ³²
Article 8: Pollution from sea-bed activities:	As an example, Samoa noted this is covered under the Samoa Marine Pollution Prevention Act 2008 ³³
Article 10: Disposal of wastes	As an example, PNG noted this is covered under the PNG Dumping of Wastes Act 2013 ³⁴
Article 11: <i>Storage of toxic and hazardous wastes:</i>	As an example, PNG noted this is covered under the PNG Ships and Installations Act 2013 ³⁵
Article 13: <i>Pollution from mining and coastal erosion.</i>	As an example, FSM noted this is covered under various laws including the FSM Environment Protection Act.
Article 14: <i>Specially Protected Areas and Protection of Wild Fauna and Flora:</i>	As an example, NZ noted this is covered under the NZ Conservation Act 1987 ³⁶
Article 15: <i>Co-operation in combating pollution in emergency situations:</i>	As an example, Samoa noted this is covered under the Samoa National Contingency Plan on Oil Spill (NATPLAN) ³⁷ This is a strategy developed under the PACPLAN and is the basis of the cooperation mechanism on oil spills wherein the 3 tiers of oil spills are described, and the type of action required.

(25) Regarding application of the Noumea Convention within State Party national laws, this review concludes that:

- Articles of the Noumea Convention are generally reflected in national legislation and/or policies of State Parties³⁸, with this legislation including key aspects of the Noumea Convention and its Protocols relating to waste management and pollution. These aspects are often addressed as elements within broader national environmental legislation, which also cover other issues such as biodiversity conservation and ecosystem management.
- Some of the Articles of the Convention appear to be less well reflected, such as Article 8 which addresses pollution from sea-bed activities, which notes: *“The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil”* This particular article is potentially relevant to Deep

³² http://www.paclii.org/pg/legis/consol_act/ea2000159/

³³ <https://www.mnre.gov.ws/mnre-redesign/wp-content/uploads/2017/08/Marine-Pollution-Prevention-Act-2008.pdf>

³⁴ <http://nmsa.gov.pg/wp-content/uploads/2017/02/Marine-Pollution-Sea-Dumping-Act-2013.pdf>

³⁵ <http://www.parliament.gov.pg/index.php/bills-and-legislation/view/marine-pollution-ships-and-installations-act-2013>

³⁶ <https://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html>

³⁷ <https://library.sprep.org/content/final-draft-samoa-national-marine-spill-contingency-plan-nat-plan>

³⁸ Referring to those 6 State Parties which responded to the questionnaire conducted as part of this review

Seabed Mining in the Pacific region, currently a major issue of topical interest in the region³⁹;

- Articles relating to cooperation and assistance (articles 17 and 18) are reflected nationally through policy instruments such as Memorandum of Understanding (MoU) between States Parties, such as, for example, the MoU between the Government of PNG and AMSA⁴⁰ regarding cooperation on marine pollution activities; and
- While the reflection of articles of the Noumea Convention and national legislation and policies is positive, the link between such national legislation and the Noumea Convention is not always clear or explicit⁴¹.

2.2.3 What are the key activities and achievements of the Noumea Convention?

(26) There have been several achievements from the Noumea Convention. Foremost among these are the development and implementation of two major SPREP Programmes: the Pacific Ocean Pollution Prevention Programme (PACPOL)⁴² and the Pacific Islands Regional Marine Spill Contingency Plan (PACPLAN)⁴³. These address marine pollution, including from vessels, and include responses to oil spills and other marine emergencies. Responses from interviews and to the questionnaire indicate these programmes are appreciated by State Parties.

(27) A detailed report by the SPREP Secretariat on activities completed under the Noumea Convention is provided to each COP Meeting, with the latest report to the 2021 COP⁴⁴; an extract outlining key activities and achievements under each article of the Convention, is outlined in Annex H. This report provides a comprehensive listing of activities under three areas:

- Marine pollution work as part of the SPREP Waste Management and Pollution Control Programme (WMPC)⁴⁵;
- Marine and coastal conservation work as part of the SPREP Island and Ocean Ecosystems Programme (IOEP)⁴⁶; and
- Environmental Impact Assessment (EIA) work as part of the SPREP Environmental Monitoring and Governance Programme (EMG)⁴⁷.

(28) Highlights within the 2021 report⁴⁸ included:

³⁹ For example, see <https://thediplomat.com/2021/06/pacific-island-nations-consider-deep-sea-mining-despite-risks/>

⁴⁰ The Australian Maritime Safety Authority <https://www.amsa.gov.au/>

⁴¹ Statement based on interviews with NC State Parties conducted as part of this review

⁴² https://www.sprep.org/att/publication/000148_PACPOL_Strategy_and_Workplan.pdf

⁴³ <https://www.sprep.org/publications/pacplan-pacific-islands-regional-marine-spill-contingency-plan-2019>

⁴⁴ https://www.sprep.org/sites/default/files/30-SPREP-Meeting/Noumea%20Convention/Eng/WP_4.1-Report_by_the_Secretariat.pdf

⁴⁵ <https://www.sprep.org/programme/waste-management-and-pollution-control>

⁴⁶ <https://www.sprep.org/news/island-and-ocean-ecosystems?page=19>

⁴⁷ <https://www.sprep.org/programme/environmental-governance#:~:text=The%20Environmental%20Monitoring%20and%20Governance,pace%20with%20socio%2Deconomic%20development> .

⁴⁸ A more detailed listing is outlined in Annex I.

- Completion of regional workshops to address ship sourced pollution made possible with financial assistance from the International Maritime Organisation (IMO);
- Development of Strategic Environmental Assessment (SEA) Guidelines for Pacific Island Countries and Territories (PICTs), which were endorsed by the SPREP Executive Board meeting in 2020;
- Support for State of the Environment (SoE) reports and National Environment Management Strategies (NEMS) to strengthen reporting, monitoring, and planning processes on infrastructural developments such as mining and coastal development. During the reporting period, Papua New Guinea and the Solomon Islands completed their respective NEMS; and
- SPREP's partnership with the Pacific Islands Roundtable for Nature Conservation and Protected Areas (PIRT) and New Caledonia, with a highlight being the successful 10th Pacific Islands Conference on Nature Conservation and Protected Areas in November 2020.

(29) Regarding activities undertaken under the Noumea Convention, this review concludes that:

- The range of activities occurring under the Noumea Convention is impressive and comprehensive;
- The highest profile "products" under the Noumea Convention are PACPOL and PACPLAN. These have a high level of visibility within the region and are appreciated by SPREP Members⁴⁹. This underlines the importance of having high profile products associated with the Noumea Convention as a strategy to raise awareness of, and build support for the Convention in general;
- While the range of activities and products are impressive, many State Parties note confusion as to whether these activities were undertaken as part of the Noumea Convention or as part of the SPREP Strategic Plan. This reflects the relative lack of clear linkage of the Noumea Convention to the SPREP Strategic Plan. There is a need to make linkages clearer and more explicit and for these linkages to be better communicated. Suggestions for improving the linkages between the Noumea Convention and SPREP Strategic Plan are included in the following sections of this review; and
- There is far greater information on Noumea Convention activities that are undertaken by the SPREP Secretariat rather than those by Pacific Island States Parties. In part this reflects the limited reporting by PIC State Parties to NC COP meetings.

3 Is the Noumea Convention relevant to current environmental challenges in the Pacific region and should the Convention be updated?

3.1 Relationship between the SPREP Strategic Plan and the Noumea Convention.

(30) To assist in assessing the relevance of the Noumea Convention to current environmental issues in the Pacific, it is useful to examine the relationship between the Noumea

⁴⁹ As previously noted, SPREP Members refers to the State Parties to the SPREP Agreement

Convention and the SPREP Strategic Plan 2017-2026, the key current programmatic document for SPREP. This relationship is examined in detail in Annex I and the key elements are outlined below.

3.1.1 The Noumea Convention

(31) The main aim of the Noumea Convention is covered under Article 4 (1) inter alia “The parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, *for the protection, development and management of the marine and coastal environment of the Convention Area*⁵⁰”.

(32) Thirteen articles of the Convention, articles 6 through 18⁵¹, relate to the implementation of activities in the Pacific region. These can be broadly grouped under the categories of:

- Pollution (Articles 6,7,8,9)
- Disposal and Storage of Waste (Articles 10, 11)
- Management and mitigation of environmental impacts (Articles 13, 16)
- Protection of habitats and species (Articles 14)
- Cooperation between Parties and partners (Article 15, 17, 18)
- Other (Article 12)

3.1.2 The SPREP Strategic Plan 2017-2026

(33) The vision of the SPREP Strategic Plan 2017-2026⁵² is: “*A resilient Pacific environment sustaining our livelihoods and natural heritage in harmony with our cultures.*” The Strategic Plan consists of four (4) Regional Goals and five (5) Organisational Goals. These regional and organisational goals set targets for the overall protection and management of the Pacific environment, including addressing the impacts of climate change. SPREP Members and the Secretariat report on progress and actions against the key targets in the Strategic Plan at each SPREP Meeting.

(34) The SPREP Strategic Plan regional goals are as follows:

- Regional Goal 1: Pacific people benefit from strengthened resilience to climate change;
- Regional Goal 2: Pacific people benefit from healthy and resilient island and ocean ecosystems;

⁵⁰ My emphasis added

⁵¹ [Article 6](#): Pollution from vessels; [Article 7](#): Pollution from land-based sources; [Article 8](#): Pollution from sea-bed activities; [Article 9](#): Airborne pollution; [Article 10](#): Disposal of wastes; [Article 11](#): Storage of toxic and hazardous wastes; [Article 12](#): Testing of Nuclear Devices; [Article 13](#): Pollution from mining and coastal erosion; [Article 14](#): Specially Protected Areas and Protection of Wild Fauna and Flora; [Article 15](#): Co-operation in combating pollution in emergency situations; [Article 16](#): Environmental Impact Assessment; [Article 17](#): Scientific and Technical Cooperation; and [Article 18](#): Technical Cooperation and Assistance

⁵² <https://www.sprep.org/publications/sprep-strategic-plan-2017-2026>

- Regional Goal 3: Pacific people benefit from improved waste management and pollution control; and
- Regional Goal 4: Pacific people and their environment benefit from commitment to and best practice of environmental governance.

The links between these goals and associated objectives⁵³ and articles of the Noumea Convention are outlined in Annex I.

(35) The relationship between the articles of the Noumea Convention and the SPREP Strategic Plan is outlined below:

Table 3: Relationship between articles of the Noumea Convention

Article of the NC	Relate to the following Regional Objectives of the SPREP Strategic Plan (SP)
<i>Article 6: Pollution from vessels</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to SP Objective 3.2
<i>Article 7: Pollution from land-based sources</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to SP Objective 3.1 to 3.4
<i>Article 8: Pollution from sea-bed activities:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to SP Objective 3.2 and 3.4
<i>Article 9: Airborne Pollution</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to SP Objectives 3.1, 3.2 and 3.4
<i>Article 10: Disposal of wastes:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to SP Objective 3.3
<i>Article 11: Storage of toxic and hazardous wastes:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to SP Objectives 3.1 and 3.2
<i>Article 12: Testing of Nuclear Devices</i>	This generally relates to SP Goal 3
<i>Article 13: Pollution from mining and coastal erosion.</i>	This generally relates to SP Goal 2 (resilient island and ocean ecosystems) and SP Goal 4 (environmental governance)
<i>Article 14: Specially Protected Areas and Protection of Wild Fauna and Flora</i>	This generally relates to SP Goal 2 (resilient island and ocean ecosystems) and particularly to SP Objectives 2.1 and 2.2
<i>Article 15: Co-operation in combating pollution in emergency situations:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to SP Objectives 3.1 and 3.2

⁵³ Abbreviated, full text in the SPREP Strategic Plan at <https://www.sprep.org/publications/sprep-strategic-plan-2017-2026>

<i>Article 16: Environmental Impact Assessment</i>	This generally relates to SP Goal 4 (environmental governance) and SP Objective 4.1
<i>Article 17: Scientific and Technical Cooperation:</i>	This generally relates to SP Goal 4 (environmental governance) and SP Objective 4.3 and 4.5
<i>Article 18: Technical Cooperation and Assistance.</i>	This generally relates to SP Goal 4 (environmental governance) and SP Objective 4.5

3.1.3 Review conclusion: relationship between the Noumea Convention and the SPREP Strategic Plan

(36) Regarding the relationship between the Noumea Convention and the SPREP Strategic Plan, this review concludes that:

- All of the Noumea Convention is relevant to, and fits within, the current SPREP Strategic Plan (SP);
- However, the scope and content of the Strategic Plan is broader than the Noumea Convention;
- The Noumea Convention is particularly relevant to the SPREP Strategic Plan Regional Objective 3 regarding waste management and pollution control;
- The Noumea Convention is also relevant to the SPREP Strategic Plan Regional Goal 4 relating to environmental governance, particularly in relation to Environmental Impact Assessment. This relevance is less direct than for SPREP Strategic Plan Regional Goal 3;
- The Noumea Convention is also relevant to SPREP Strategic Plan Regional Goal 2 relating to resilient island and ocean ecosystems, particularly in relation to the protection and sustainable use of important ecosystems and species. This relevance is less direct than for the relationship between the Noumea Convention and Strategic Plan Regional Goal 3;
- Articles of the Noumea Convention are also broadly relevant to a number of contemporary issues, including marine plastic and Deep Seabed Mining (Article 13) although these issues are not specifically mentioned;
- There are a few areas within the SPREP Strategic Plan which are not reflected within the Noumea Convention. These include climate change, ecosystem-based management and contemporary developments relating to sustainable development, particularly the Sustainable Development Goals; and
- There are also some key initiatives developed through SPREP, such as the 5 yearly Nature Conservation Congress, which could be linked to the Noumea Convention.

3.1.4 Review conclusion and recommendation: should the SPREP Strategic Plan be the Action Plan for the Noumea Convention?

(37) State Parties, SPREP staff and donors noted the Noumea Convention appears to be poorly linked with the overall SPREP programme, specifically with the Strategic Plan and Workplan. This was considered a significant barrier to the effective implementation of the Noumea Convention. Most of the State Parties agreed that better linkages between the core

SPREP “components”: the Noumea Convention, the SPREP Agreement and the SPREP Strategic Plan, should be developed. While the articles of the Convention directly address a number of SPREP’s activities, as outlined above, implementation is not undertaken in a cohesive and coordinated way with the SPREP Strategic Plan. This contributes to a perception that the Noumea Convention is separate to, and less relevant than, the overall SPREP Programme. State Parties considered the SPREP Strategic Plan should be better linked with the Noumea Convention.

(38) When SPREP was first established as a programme within the South Pacific Commission⁵⁴ its work was guided by an Action Plan which outlined priorities, objectives and activities for the organisation. This is reinforced in Article 1 of the Noumea Convention which states: *“Desirous to adopt the regional convention to strengthen the implementation of the general objective of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region adopted at Rarotonga, Cook Islands, on 11 March 1982”*. This Action Plan continued after SPREP was established as a separate regional organisation under the SPREP Agreement in 1992 and was merged into the SPREP Strategic Plan 2011-2015 as the key programmatic and strategic planning instrument for the organisation.

(39) Ensuring the SPREP Strategic Plan is better linked with the Action Plan for the Noumea Convention is entirely consistent with the preambular text of the Noumea Convention.

(40) There are also several other key important regional frameworks which have been developed at SPREP, reflecting directions in the Strategic Plan, including the Framework for Nature Conservation and Protected Areas in the Pacific Islands Region⁵⁵ and Cleaner Pacific 2025 Pacific Regional Waste and Pollution Management Strategy⁵⁶. This review considers that options for linking the Noumea Convention with these frameworks should be considered.

(41) Virtually all interviewed for this review noted there should be better linkages between the SPREP Strategic Plan and the Noumea Convention and that this would enhance the effectiveness and profile of the Noumea Convention. The review outlines above⁵⁷ the linkages that exist between the Convention and the SPREP Strategic Plan, however these linkages are not clearly understood by State Parties⁵⁸. Additionally implementation of the Noumea Convention has not been carried out in a cohesive manner which has created the perception that it is separate from the SPREP Strategic Plan. There needs to be better coordination of implementation and reporting by Parties in relation to both the Strategic Plan and the Noumea Convention.

(42) This review noted there are several advantages of making the SPREP Strategic Plan the Action Plan for the Noumea Convention, including that this course of action would:

⁵⁴ Now known as the Secretariat of the Pacific Community <https://www.spc.int/>

⁵⁵ <https://www.pacificnatureconference.com/framework-for-conservation#:~:text=The%20Framework%20for%20Nature%20Conservation.and%20implementation%20in%20our%20region>

⁵⁶ <https://www.sprep.org/publications/cleaner-pacific-2025-pacific-regional-waste-and-pollution-management-strategy>

⁵⁷ Sections 3.1.1 to 3.1.3

⁵⁸ Based on responses to interviews for this review

- (a) ensure the Noumea Convention is better linked with and integrated with the SPREP Programme.
- (b) ensure greater relevance and profile for the Noumea Convention.
- (c) appear to have strong support from all State Parties, SPREP Executive staff and Partners interviewed for this review.
- (d) enable more effective and comprehensive reporting on the Noumea Convention, thus addressing issues raised by State Parties on this specific issue⁵⁹; and
- (e) make the Noumea Convention more interesting and relevant to SPREP Members and donors and partners.

There are also arguments against making the SPREP Strategic Plan the Action Plan for the Noumea Convention, including that:

- (a) the Strategic Plan is a higher-level strategic document for all of SPREP, providing the framework for other programmes and activities within SPREP;
- (b) the Strategic Plan has a broader focus than the Noumea Convention, covering other areas including climate change; and
- (c) the Strategic Plan is not necessarily intended to be action-oriented, as would be required for the Action Plan for the Noumea Convention.

(43) This review considers that there should be stronger linkages developed between the Noumea Convention and the SPREP Strategic Plan (SP) rather than making the SP the Action Plan for the Convention. These linkages should be communicated by the SPREP Secretariat as a key element of the targeted communication and awareness campaign to raise awareness of the Noumea Convention⁶⁰. The review further considers the Noumea Convention should more clearly be linked with other key important SPREP regional frameworks including the Framework for Nature Conservation and Protected Areas in the Pacific Islands Region and Cleaner Pacific 2025 Pacific Regional Waste and Pollution Management Strategy.

Recommendation 1: That there should be stronger linkages developed between the Noumea Convention and the SPREP Strategic Plan. These linkages should be communicated by the SPREP Secretariat as a key element of the targeted communication and awareness campaign (recommendation 7 of this review).

Recommendation 2: That the Noumea Convention be more clearly and explicitly linked with key frameworks, such as the Framework for Nature Conservation and Protected Areas in the Pacific Islands Region and the Cleaner Pacific 2025

3.2 Views of State Parties and others – is the Noumea Convention relevant to current environmental challenges and should it be updated?

⁵⁹ Refer Section 4 of this review for further elaboration on the issue of reporting

⁶⁰ Outlined in Recommendation 7 of this review (Paragraph 81)

(44) State Parties noted the Noumea Convention is important as it is the Regional Convention for addressing environmental and natural resources issues in the Pacific region. There is no comparable overarching convention for the region relating to the environment and natural resources. Other international conventions such as the CBD are well regarded and applied in the region, but they are not tailored to the unique circumstances of the Pacific region. As one person interviewed for this review noted: *“if the Noumea Convention didn’t exist it would have to be invented”*.

(45) Several State Parties noted the Noumea Convention has a unique position as the major multilateral umbrella agreement for the environment in the Pacific Region, however the full potential of the Convention is not being realized at this stage. As one interviewee noted: *“One could ask, why bother with the Noumea Convention when things are happening anyway under the SPREP Programme. However, the Noumea Convention is the only regional environment convention in the Pacific region, and it is thus giving a legal framework for the work of SPREP”*. The Noumea Convention also provides an explicit legal mechanism to take priorities and actions from the Pacific regional level to the global level, such as through linking with the global regional seas network and through linking to global frameworks and Conventions, such as the London Dumping Convention⁶¹.

(46) All other Multilateral Environmental Agreements, (MEAs) and Conventions in the Pacific such as the CBD, CITES⁶² and CMS⁶³, are global environmental conventions which are applied within the Pacific region; however, they are not environmental conventions directly relating to the Region. Some interviewed noted that there is a strong benefit of having a specific regional environment convention which provides an entry point and “voice” for the region into global agreements, programme and organisations, such as those relating to the UNEP Regional Seas Programme and to the International Maritime Organisation⁶⁴.

(47) The Noumea Convention is broad in scope, with many interviewed perceiving it as largely focussed on marine pollution. State Party responses to the questionnaire⁶⁵ reinforce this view and note the Convention focuses on the marine environment, particularly on the protection of the marine ecosystems from oil spills. These views largely reflect the content of the two Noumea Convention protocols and the fact that many State Parties are mainly involved with the Noumea Convention through the SPREP Programmes PACPOL and PACPLAN, which directly relate to marine pollution. Interviewees noted the Noumea Convention is perceived as mainly relevant to pollution, as one State Party noted: *“marine pollution is an important issue, and they tend to see the Noumea Convention in this context”*⁶⁶. Another noted: *“the Noumea Convention has been kept alive through PACPOL and PACPLAN”*. All interviewed noted that the future implementation of the Convention must maintain a clear focus on tangible aspects and programmes, such as PACPOL and PACPLAN.

⁶¹ <https://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Pages/LDC-LC-LP.aspx>

⁶² Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) <https://cites.org/eng>

⁶³ Convention on the Conservation of Migratory Species of Wild Animals <https://www.cms.int/>

⁶⁴ <https://www.imo.org/>

⁶⁵ Five responses received as at 23.09

⁶⁶ Personal communication State Party Nauru

(48) Several State Parties suggested the Convention is outdated as it provides a snapshot of environmental issues in the Pacific during the 1980s and 1990s and urged that it be updated. Given the Convention was developed in the 1980s it is obvious that contemporary environmental issues, such as climate change, marine plastic and Deep Seabed Mining (DSM), are not addressed. In fact, the Noumea Convention was developed to respond to the major regional issues of the 1980s and 1990s, including nuclear testing, so the text understandably reflects issues which were relevant at that time.

(49) The scope of the Noumea Convention is limited when compared to the nature and extent of environment issues facing the region today.⁶⁷ The following comments from State Parties reflect the views of those who consider the Convention should be updated:

- *“Marine plastics and climate change are very important but are not adequately covered at the moment in the Noumea Convention, they should be”;*
- *“The key issue is ensuring the relevance of the Convention. Need to ensure it remains relevant as the Pacific regional convention for the Environment, ensuring the objectives are drawn out and linked with contemporary issues such as Deep Seabed Mining”;* and
- *“The Noumea Convention should be modified and updated to address new challenges of the 21st century”.*

(50) A number of State Parties consider there should be more emphasis on broader issues relating to ocean governance and management within the Noumea Convention, and its implementation. These State Parties note that the updating should strive to give greater prominence to the role of the Noumea Convention in addressing marine and ocean conservation and management.

(51) This is particularly significant in the current context in the Pacific where ocean governance and management issues are given the highest priority by Pacific Island Leaders, including through initiatives such as the 2050 Strategy for the Blue Pacific Continent⁶⁸ and the Pacific Oceanscape⁶⁹. Pacific countries have recently started to provide global leadership in marine conservation, including through the establishment of some of the largest Marine Protected Areas (MPAs) on Earth, such as the Phoenix Islands Protected Area (PIPA) in Kiribati⁷⁰ There are also a number of threats and challenges to the marine environment, such as Deep Seabed Mining⁷¹ and Ocean Acidification⁷² which are increasingly being raised in regional and international forums.

(52) A key SPREP donor and partner noted there appears to be a lot of work undertaken by SPREP on ocean conservation and management which is not included within Noumea Convention reports to the UNEP Regional Seas Programme. This adversely impacts on

⁶⁷ Annex IV, 14NC/WP.7.11

⁶⁸ <https://www.forumsec.org/2050strategy/>

⁶⁹ <https://www.conservation.org/where/Pages/pacific-oceanscape.aspx>

⁷⁰ https://en.wikipedia.org/wiki/Phoenix_Islands_Protected_Area

⁷¹ For example, see <https://thediplomat.com/2021/06/pacific-island-nations-consider-deep-sea-mining-despite-risks/>

⁷² <https://www.pmel.noaa.gov/co2/story/What+is+Ocean+Acidification%3F>

perceptions of SPREP and the Noumea Convention within the Global Regional Seas Programme.

(53) State Parties supporting the substantive review of the Noumea Convention argue the outdated text limits the effectiveness of the Noumea Convention as a regional legal instrument to tackle current environmental issues⁷³ and that the text of the Convention should thus be updated. This was the position of several Pacific Island State Parties. Parties interviewed suggested areas that could be considered within any substantive revision of the Convention text could include, but not be limited to, the following: (a) climate change; (b) marine plastic; (c) sustainable development; (d) ecosystem-based approaches⁷⁴; (e) reference to SPREP as the Secretariat; (f) reference to the SPREP Strategic Plan.

(54) However, other State Parties interviewed suggested that the Convention text, as currently drafted, is sufficiently broad and flexible in relation to contemporary issues, such as responding to threats from plastic pollution, and threats to biodiversity and ecosystem health,⁷⁵ which could be addressed through the development of specific Protocols to the existing Convention. Caution was raised regarding the fact that the process of amendment to Conventions can be protracted and challenging. In the words of one State Party: *“They don’t want a new international negotiation to amend the Noumea Convention, it is too complicated, and is not justified, the Convention has inadequacies but it is useful and can and does work”*.

(55) Another comment along these lines was: *“Expanding the convention to cover new challenges would need a new treaty making process and should be avoided, new treaty making is too long and difficult to achieve. However, cleaning up the Convention is certainly important and necessary but major “surgery”, involving major change to the Convention, is not a practical option. That is good in theory, but it may not lead to greater implementation. May be better to renew and give it new purpose. This matter is worth discussing within State Parties however”*. These comments reflected a common view amongst the metropolitan State Party members of SPREP⁷⁶.

(56) There are thus differing State Party views as to whether there should or should not be changes to the text of the Noumea Convention. It is noted that any change can be considered as either minor or substantive.

(57) There are a few minor changes to the Convention that all State Parties agreed could and should be undertaken as quickly as possible. The text of the Noumea Convention is clearly outdated, for example Article 2 (a) (i) refers to *“Western Samoa”* and article 21 (1) (i) refers to the *“South Pacific Conference”* and the *“South Pacific Forum”*. There is also no reference to SPREP within the Text of the Convention.

⁷³ Ibid

⁷⁴ Which are particularly relevant to the current focus of SPREP as well as regional and global approaches, such as those implemented through the Convention on Biological Diversity (CBD)

⁷⁵ Opening remarks for the 15th Noumea Convention COP, Director General Kosi Latu

⁷⁶ Australia, France, New Zealand and the United States of America

(58) There are also several substantive changes that could be made to update the Convention. However, there are differing views amongst State Parties to the Noumea Convention as to whether this should occur, as noted above.

(59) The terms “Noumea Convention” and the “SPREP Convention” have been used interchangeably, however it is commonly referred to as the former. Several State Parties suggested that the Convention should in future be referred to as the SPREP Convention to more clearly identify it with the programme and activities of SPREP, including the SPREP Strategic Plan and the SPREP Work Plan. This could reinforce and strengthen the linkage between the Noumea Convention and SPREP, in particular reinforcing that the Convention underpins and provides an important legal framework for the SPREP programme.

(60) State Parties note the Noumea Convention could and should provide the framework for the development of new initiatives and programmes, such as the development of an instrument for Marine Plastic in the Pacific, discussed at the 2021 SPREP Ministerial Meeting which could be logically linked to the Noumea Convention, possibly through the development of a new Protocol. The review considers that the issue of marine plastic should be addressed specifically within the framework of the Noumea Convention, either under existing Articles of the Convention, or, if SPREP Members decide to proceed with a legal instrument, then this instrument could potentially be developed as a protocol under the Noumea Convention.

(61) The issue of Deep Seabed Mining (DSM) was also noted as an important issue for the Pacific region, with potentially significant economic benefits on the one hand and with potentially serious environmental impacts on the other. Deep sea ecosystems are unique and highly vulnerable to disturbance and many of the regions identified for future seabed mining are already recognized as vulnerable marine ecosystems (VMEs)⁷⁷. The review understands there were proposals for a DSM Convention in the Pacific region, through the Secretariat of the Pacific Community (SPC)⁷⁸, but that this Convention has lapsed. The review notes that Article 8 of the Convention “Pollution from Seabed Activities” states: *“The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil”*. Article 13 of the Noumea Convention addresses mining and coastal erosion, stating: *“The Parties shall take all appropriate measures to prevent, reduce and control environmental damage in the Convention Area”*. The review considers Articles 8 and 13 of the Noumea Convention directly applicable to the issue of Deep Seabed Mining and that future responses of SPREP to this issue should link to and reference these articles.

3.3 Review conclusion and recommendations: is the Noumea Convention relevant and should it be amended?

(62) Regarding the relevance of the Noumea Convention to current environmental challenges, this review concludes that:

⁷⁷ <https://www.frontiersin.org/articles/10.3389/fmars.2017.00418/full>

⁷⁸ <https://www.spc.int/>

- The Noumea Convention has a unique status as the only multilateral umbrella agreement in the Pacific Region for the protection of natural resources and the environment. This is considered significant by a number of States Parties interviewed for this project;
- The Noumea Convention, while broad in scope, is not specifically relevant to all of the current environmental challenges in the Pacific;
- There are differing views among State Parties as to whether the text of the Convention should be reviewed and updated. This review notes there is an established process for amending the Convention⁷⁹ which states, inter alia: (1) *“Any Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties; and (2) Any Party to this Convention may propose amendments to any Protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties to the Protocol concerned.”*;
- There are two categories of change that could be undertaken: firstly, minor changes to the text to bring it up to date, such as replacing the names “Western Samoa” to “Samoa”⁸⁰, and removing references to the South Pacific Forum, these are two examples of existing text that is clearly out of date. and secondly, substantive changes to include references to contemporary environmental issues such as climate change and ecosystem based management;
- Regarding minor changes, there is agreement from all State Parties that such minor changes to the Convention are warranted and should be undertaken as quickly as possible.

Recommendation 3: That minor changes to the Noumea Convention be undertaken as quickly as possible.

- There are differing views regarding substantive changes to the Noumea Convention. On the one hand, some State Parties, and the majority of the SPREP Executive Team, consider the Convention should be substantively updated to reflect contemporary challenges, noting the need for a unique Pacific regional convention for the environment reflecting contemporary issues. On the other hand, other State Parties argue that substantive amendment to the Convention text requiring a new treaty making process should be avoided as it would be too difficult and too long to achieve.
- The review considers that substantive amendment of the text is warranted and would greatly enhance the relevance and profile of the Noumea Convention. This is considered justified given: (a) the importance of the Convention as the only legal instrument for the environment and natural resources which exists at the regional

⁷⁹ As set out in Article 24 of the Noumea Convention.

⁸⁰ Article 2 (a) (i) of the Noumea Convention

level; and (b) that many contemporary environmental issues are not addressed in the existing text of the Noumea Convention. Substantive amendment of the Convention could include, but not be limited to: (a) clear reference to climate resilience, adaptation and mitigation; (b) including specific mention of marine plastic; (c) including reference to sustainable development and the SDGs⁸¹ in the preamble; (d) ecosystem based approaches⁸²; (e) explicit reference to SPREP as the Secretariat; (f) reference to the SPREP Strategic Plan being the Action Plan for the NC⁸³; and (g) more explicit reference to contemporary ocean conservation and management initiatives such as the 2050 Strategy for the Blue Pacific Continent⁸⁴ and the Pacific Oceanscape⁸⁵.

- However, this review notes there are differing views amongst State Parties on this matter. The Convention belongs to its Parties and, accordingly, any decision as to whether to substantively amend the convention, or not, is a matter for consideration and decision by State Parties.

Recommendation 4: That State Parties of the Noumea Convention be presented with two options for substantive amendment to the Noumea Convention: (a) no substantive changes be made to the Noumea Convention; (b) substantive changes be made. If the latter is chosen then the Secretariat and State Parties need to develop and agree on a process and timeline for this amendment which should include, but not be limited to the suggested areas in Paragraph 53 of this review.

- This review agrees with most of the State Parties that referring to the “Noumea Convention” as the “SPREP Convention” would reinforce and strengthen the linkage between the Convention and the SPREP as the Secretariat, in particular reinforcing that the Convention underpins and provides the legal framework for the SPREP Programme. This change of name would be a substantive amendment and should be considered by State Parties, along with other review recommendations.

Recommendation 5: That State Parties of the Noumea Convention agree that the Noumea Convention be referred to in all subsequent dealings and matters as the SPREP Convention.

- This review considers the Noumea Convention could and should be used more strategically as the framework for addressing key issues such as Marine Plastic and Deep Seabed Mining. This view is supported by a number of State Parties. In the opinion of the review, this approach could be undertaken irrespective of whether the Convention text is substantively amended or not. A clearer and more explicit linkage could be achieved in a number of ways, including through developing specific

⁸¹ SDG – UN Sustainable Development Goals

<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

⁸² Which are particularly relevant to the current focus of SPREP as well as regional and global approaches, such as those implemented through the Convention on Biological Diversity (CBD)

⁸³ As recommended in a previous section of this review

⁸⁴ <https://www.forumsec.org/2050strategy/>

⁸⁵ <https://www.conservation.org/where/Pages/pacific-oceanscape.aspx>

protocols for specific issues, such as marine plastic⁸⁶, should State Parties agree with this course of action. Other issues, such as Deep Seabed Mining could be more explicitly linked to the Convention through clear reference and programmatic linkage to the Noumea Convention within the Secretariat.

Recommendation 6: That the Noumea Convention be used more strategically as the framework for addressing key issues such as Marine Plastic and Deep Seabed Mining, irrespective of whether the Convention text is substantively amended or not.

4 Is the Noumea Convention being effectively applied and how can its effectiveness be improved?

4.1 Views of State Parties and others on the effectiveness of the Noumea Convention

(63) The majority of State Parties considered the Noumea Convention as a useful instrument but that its effectiveness is constrained by a number of factors, including: (a) very limited visibility, both at regional and national levels; (b) a shortage of resources to support implementation; (c) a lack of linkage between the Noumea Convention and the SPREP Programme; and (d) a perception that the Noumea Convention is not relevant and applicable to contemporary issues. These matters are addressed in other sections of this review.

(64) Several State Parties noted that it is difficult to assess effectiveness when the level of reporting on activities from many State Parties, particularly those from Pacific Island countries, is very limited. As one State Party noted: *“limited reporting by PICs makes it difficult to assess involvement in the Noumea Convention and thus it is hard to assess the effectiveness of the Convention”*

(65) SPREP staff found the Noumea Convention to be a useful instrument which has been moderately effective, however they raised similar concerns to State Parties, particularly that effectiveness is constrained by limited awareness of the Convention, both amongst State Parties and also within SPREP. Overall SPREP staff found the Noumea Convention to have considerable *“unmet potential”*.

(66) Donor representatives consulted for this review noted several concerns about the Noumea Convention, specifically in relation to reporting from SPREP which they feel under-reports activities associated with the Noumea Convention, particularly those in the marine environment which relate to the SPREP’s role as a Regional Seas Programme.

4.2 Key issues limiting the effectiveness of the Noumea Convention and recommendations to address these issues

⁸⁶ As discussed at the 2021 SPREP Ministerial Meeting

(67) The interviews and responses to the interviews⁸⁷ and the questionnaire⁸⁸ noted several key issues and challenges faced by State Parties in implementing the Noumea Convention at national levels. These include:

- Limited linkage between the Noumea Convention and the rest of the SPREP Programme and the SPREP Strategic Plan (section 4.2.1);
- Limited awareness of the Noumea Convention at a range of levels: within States Parties, within the region, and within the SPREP Secretariat (section 4.2.2);
- Limited coordination and cooperation between different stakeholders (section 4.2.3);
- Lack of financial and staff capacity resources to implement the Convention, including enforcement (section 4.2.4); and
- Membership of the Convention (section 4.2.5).

(68) These issues are addressed in detail below with recommendations suggested to address each issue.

4.2.1 Limited linkage between the Noumea Convention and the rest of the SPREP Programme and Strategic Plan

(69) As noted above,⁸⁹ State Parties, SPREP staff and donors consider the Noumea Convention poorly linked with the overall SPREP programme, specifically with the Strategic Plan and Workplan. This is seen as a significant barrier and impediment to the effectiveness of the Noumea Convention. As outlined in this section, this review recommends ensuring better linkages between the SPREP Strategic Plan and the Noumea Convention.

4.2.2 Limited awareness of the Noumea Convention at a range of levels

(70) The majority of persons interviewed noted that there is limited awareness of the Noumea Convention within States Parties, within the Pacific region, and within the SPREP Secretariat. These factors were noted as a major constraint to the effective implementation of the Noumea Convention. One interviewee noted: *“I have worked in the Pacific region in the environmental area since 1985, however am not sure what the Noumea Convention does. I feel that the Convention is still relevant, but I am not really clear, it is a well-kept secret”*.

(71) This low level of awareness extends to State Parties. For example, the questionnaire included questions to ascertain the level of awareness of the protocols to the Noumea Convention. The full responses from Parties are outlined in Annex G⁹⁰ and are summarized below:

⁸⁷ In response to question 4 of the interview

⁸⁸ In response to question 19 of the questionnaire

⁸⁹ In Section 3.1.4 of this review.

⁹⁰ From State parties which responded to the questionnaire: Fiji; FSM; NZ, PNG; Samoa and Solomon Islands

- *Question 2 of the questionnaire: Is the Contracting Party aware that the Noumea Convention has 2 Protocols?* 40% of State Parties which responded noted they were aware.
- *Question 3 of the questionnaire: Is the Contracting Party aware that the Noumea Convention has 2 new Protocols and an amended Protocol that has not entered into force?* 40% of State Parties which responded noted they were aware.

(72) An example which underlines the lack of awareness of the Noumea Convention is that the review of environmental law in FSM⁹¹ which looked at relevant regional and international law and its application within the country makes no mention of the Noumea Convention (while mentioning the Waigani Convention).

(73) Those State Parties that were aware of the Noumea Convention tended to view it through the lens of marine pollution, in particular associating the Convention with SPREP programmes which address marine pollution from shipping, specifically PACPLAN, the Pacific Islands Regional Marine Spill Contingency Plan.⁹² Some suggested that the Noumea Convention may have “faded away”, as happened for the Apia Convention, if it was not for this tight focus of the Convention on marine pollution. As one interviewee noted: *“Communication and coordination are the major issues, most State Parties don’t know the Noumea Convention exists. Unless Pacific countries are aware of, and understand, the Convention, they will not commit or engage”*.

(74) Interviews also indicated some confusion about the relationship between the Noumea Convention, the SPREP Agreement and the SPREP Strategic Plan. Most interviewed noted the linkage between the Noumea Convention, the SPREP Strategic Plan and Work Plan was neither clear nor apparent. All interviewed thought that these issues require clarification and that more awareness raising is required.

(75) Another key aspect is the need for better information sharing regarding the Noumea Convention itself. Interviewees suggested that there should be more information available from the Secretariat regarding the Noumea Convention and its associated obligations and that this should be widely shared with States Parties. As one State Party noted: *“The Convention is very low profile and could be much more, this is a challenge for implementation: when people/organisations/countries are not aware of what is happening, they are unlikely to show interest and become involved”*.

(76) Limited awareness of the Convention also reflects the fact that COP Meetings are held only every two years and there is limited communication about activities related to the Convention in the intersessional period. As one interviewee noted: *“the key issues regarding the Noumea Convention stem from the way the Convention is set up. State Parties gather to a meeting every several years, come and discuss activities and issues, and then forget about the Convention for the next two years. If there was consistent communication about articles being met and the submission of the national report to the Secretariat, then the Convention will seem like it is activated. Parties only seemed to be notified of (activities at) the meetings.”*

⁹¹ Environmental Law in the Federated States of Micronesia: A Review <https://fsm-data.sprep.org/system/files/62.pdf>

⁹² <https://library.sprep.org/content/pacplan-pacific-islands-regional-marine-spill-contingency-plan-2019>

(77) The Noumea Convention COPs provide an opportunity to showcase the relevance, work and outcomes of the Noumea Convention. Section 2.2.3 of this review highlights the considerable activities that are undertaken through the Noumea Convention. This is further amplified by the full list of key activities and achievements under each article of the Convention, as outlined in Annex H. However, these activities are not effectively communicated, thus contributing to the low level of awareness of, and interest in, the Noumea Convention both by State Parties and within SPREP. This should be addressed as an element of the SPREP Communications Strategy regarding the Noumea Convention.

(78) An additional suggestion to raise the profile of the Noumea Convention is to clearly link, or badge, related SPREP meetings under the framework of the Noumea Convention, between the biennial COP meetings. The level of interest of States Parties in the Noumea Convention is greatest immediately before and during the COP Meetings, in the two year period between meetings there is limited interest and awareness. There should be more attention given to the activities of the Noumea Convention between the 2 yearly COP Meetings.

(79) External partners consulted for this review noted that there is a problem in the reporting of outcomes at international and other levels, such as in relation to the Regional Seas Programme. One interviewee noted that: *“compared to other conventions – the level of impact of the Noumea Convention is not reported, and it is thus very hard to assess what is being achieved, as a consequence the Noumea Convention is not highly regarded”*.

(80) State Parties agreed that they should also do more to promote the Noumea Convention within their countries to communicate the role and activities of the Convention.

(81) This review considers the SPREP Secretariat should do more to promote the Noumea Convention and that a targeted awareness and communications programme should be developed to this end.

Recommendation 7: That the SPREP Secretariat develop a targeted communication and awareness campaign to raise awareness of the Noumea Convention and to more effectively and widely share information with State Parties about activities under the Convention.

Recommendation 8: That the SPREP Secretariat raise the profile of the Noumea Convention by more clearly linking, or badging, related SPREP meetings with the Noumea Convention, including those relating to marine pollution and to ocean conservation and management.

Recommendation 9: That State Parties should be encouraged to do more to promote the Noumea Convention within their countries to communicate its role, importance and outcomes.

Recommendation 10: That the range of activities under the Noumea Convention which are presented to each COP Meeting should be more effectively communicated and promoted to raise its profile and awareness.

4.2.3 Limited coordination and cooperation between different stakeholders.

(82) Implementation of the Noumea Convention at national levels is carried out through and with many different agencies, reflecting the varied activities associated with the Convention such as oil spills, maritime safety and marine surveillance. For example, regarding implementation of the Noumea Convention in the FSM, the SPREP Focal Point⁹³ works with FSM State Environment Protection Authorities (EPAs) as well as relevant key stakeholders at the national and state level with agencies such as Resources and Development, Public Works and others⁹⁴. As another example, in Samoa, in relation to the Noumea Convention, the MNRE⁹⁵ plays a coordination role regarding oil spills and dumping and works across several agencies and with SPREP⁹⁶. The recent grounding of Samoa's Police patrol boat provided a good case study of inter-agency cooperation collaborating on the vessel grounding and oil spill. The Samoa NATPLAN was activated which clearly saw another agency, not MNRE, play the leading role and MNRE was involved in more of a supporting role⁹⁷. This situation, where multiple agencies are involved in Noumea Convention activities, is common across all Parties to the Convention and makes for a more complex situation than for many other SPREP activities which are often largely implemented directly through the SPREP Focal Point, thus making reporting on activities, and coordination more straight forward and easier.

(83) The involvement of multiple agencies with the Noumea Convention, in addition to the normal SPREP Focal Point, makes for a challenging situation and a more "whole of Government" approach is thus necessary. In many cases the agency within the State Party which is responsible for implementing the NC is not the SPREP Focal Point. This can create an unclear situation which can cause confusion and mixed responsibilities for the Noumea Convention at national levels. This poses challenges in terms of the need for effective coordination and in relation to issues such as reporting under the Convention.

(84) While a "whole of Government"⁹⁸ approach is required for the Noumea Convention, in many cases the SPREP Focal Point is still the main coordination point and is responsible for reporting under the Convention. In most of the cases more effective coordination within and between agencies is required, particularly when there are incidents, such as oil spills, when clear roles and channels of communication are essential.

(85) Most interviewed noted that reporting on the Noumea Convention is weak and that better information and guidance on reporting is required. The review notes there are several areas in which reporting under the Convention could be improved⁹⁹, and this is addressed in paragraph 107 and recommendation 15 of this review. The Focal Point for the Noumea Convention within States Parties is usually the SPREP Focal Point, who may or may not be involved in the operational aspects of implementing the Noumea Convention. Some

⁹³ Department of Environment, Climate Change, & Emergency Management

⁹⁴ Personal communication, Patti Pedrus, FSM Government 29 September 2021

⁹⁵ Ministry of Natural Resources and the Environment

⁹⁶ Personal communication, Frances Reupena, Samoa Government, 26 August 2021

⁹⁷ See Samoa's Marine Pollution Prevention Act 2008, Shipping Act 1998 and the Samoa NATPLAN

⁹⁸ Which would involve better coordination and cooperation between different Government agencies

⁹⁹ Based on suggestions from NC State Parties and other stakeholders, and also the experience of the review consultant.

interviewed suggested that the Focal Point for the Noumea Convention should be a more operational agency not just the SPREP Member/Focal Point. As one State Party noted: *“There needs to be a campaign to get the right people to participate from the Members, at the moment, the SPREP Member is often not necessarily the right person for the Noumea Convention”*.

(86) The identification of Focal Points is a matter for each State Party to decide however, in all cases, close cooperation and coordination would be required between the main operational agency and the SPREP Member agency.

Recommendation 11: That State Parties be encouraged to develop more effective mechanisms for internal cooperation and communication, including ensuring that the Focal Point within countries is directly involved with, and knowledgeable about, the Noumea Convention.

4.2.4 Lack of financial and staff capacity resources to implement the Convention

(87) There are limited funds available for the implementation of the Noumea Convention, both at national and regional levels, particularly in relation to surveillance and implementation. Limited resources also pose a challenge for SPREP: administration of the Noumea Convention is supported by a very limited budget and is currently funded by State Party contributions. Although the amounts involved are small, it is positive to note that at least all Pacific Island member contributions have been paid, thus providing one indicator of the relevance and importance of the Noumea Convention to Member States. The overall member funding covers the costs of the COP of the Noumea Convention, however, it is inadequate to cover any programme activities and more funding is required. It is anticipated that any suggested increase to State Party member contributions would be challenging in the current Covid climate, where resources are understandably being allocated to address health and economic recovery related issues. Any suggestions to raise Member Contributions to the Noumea Convention are thus not included in this review. Alternative sources of funding and human resources should thus be explored.

(88) The lack of a dedicated staff position within SPREP to service the implementation of the Convention has been a constraint. Recent support from the ACP-MEA¹⁰⁰-3 project will increase the level of support for the Noumea Convention and this is a positive initiative. However, this provides a short-term solution and a dedicated position for the Noumea Convention should be identified. This is further discussed in Section 5 of this review.

(89) Opportunities for secondments should also be pursued to support SPREP’s work on the Noumea Convention. AMSA¹⁰¹ provided support through a secondment for several years and the outcomes and benefits from this secondment were positively regarded by SPREP and by Parties to the Noumea Convention. Some State Parties noted the benefits of this arrangement and suggested that approaches be made to metropolitan members of the Noumea Convention to seek their assistance either through secondments or through the provision of support to address specific issues, including oil spill incidents. Some

¹⁰⁰ Africa Caribbean Pacific Multilateral Environment Agreement Project

¹⁰¹ Australian Maritime Safety Authority <https://www.amsa.gov.au/>

metropolitan members interviewed noted they could potentially be open to providing more support to SPREP and Noumea Convention Parties but that there have not been any recent requests for such support. For example, NZ mentioned: *“MFAT has given a secondment to SPREP to support work on threatened species, having a secondment regarding the Noumea Convention is an idea to explore”*. Another State Party¹⁰² noted: *“they are open to receiving requests from SPREP for support, including through secondments or short-term support, and these would be most likely be viewed in a favourable light”*.

(90) The Noumea Convention is specifically linked to global organisations and programmes, such as the UNEP Regional Seas Programmes and the Marine Environmental Programmes of IMO. However, the level of direct support provided by these organisations to the Noumea Convention is limited, although recent support under the ACP-MEA 3 project has been welcomed by the SPREP Secretariat. It is however argued that more tangible contributions should be forthcoming and that existing representations to these organisations regarding increased resourcing should continue and indeed accelerate.

(91) Other options for resource generation should be explored, including through the development of project proposals, linked to the aims of the Noumea Convention, for submission to organisations such as the Global Environment Facility and the Green Climate Fund. Options for secondment should also continue to be explored, possibly along the lines of the AMSA secondment in the early 2010s.

Recommendation 12: That a sustainable financing strategy be developed for the Noumea Convention, building on support from the ACP-MEAs 3 project, to ensure a more effective implementation of the Noumea Convention.

Recommendation 13: That the SPREP Secretariat actively approach metropolitan members of the Noumea Convention, and key partners including UNEP and IMO, to seek increased support for the implementation of the Noumea Convention, including through secondments and through targeted support to address specific marine pollution issues and incidents

4.2.5 Membership of the Noumea Convention

(92) As noted in Section 2.2.1 of this review the State Party Membership of the Noumea Convention represent a subset of the membership of SPREP¹⁰³. The following SPREP Members are not members of the Noumea Convention: American Samoa; French Polynesia; Guam; Kiribati; New Caledonia; Niue; Northern Mariana Islands; Palau; Tokelau; Tonga; Tuvalu; United Kingdom; Vanuatu; and Wallis and Futuna.

(93) This limited membership is a challenge for the effective implementation of the Noumea Convention, as issues such as marine pollution are transboundary, requiring action both within and between the countries of the region. The review notes there is no constraint

¹⁰² Personal communication - Dr Gerry Davis, USA on 3rd September

¹⁰³ American Samoa; Australia; Cook Islands; Federated States of Micronesia; Fiji; France; French Polynesia; Guam; Kiribati; Marshall Islands; Nauru; New Caledonia; New Zealand; Niue; Northern Mariana Islands; Palau; Papua New Guinea; Samoa; Solomon Islands; Tokelau; Tonga; Tuvalu; United Kingdom; United States of America; Vanuatu; and Wallis and Futuna.

under the Noumea Convention for territories and freely associated states to become members of the Noumea Convention, as is the case for membership of SPREP under the SPREP Agreement. This would obviously require discussions with the relevant metropolitan State Party and pre-supposes interest and willingness on the part of the territory and associated state to participate in the Noumea Convention.

(94) Members interviewed considered that the limited membership of the Noumea Convention is a barrier to its effective implementation in the Pacific region and that efforts should be made to encourage other SPREP Members to join.

Recommendation 14: That SPREP Members which are currently not members of the Noumea Convention should be encouraged to adhere and that the SPREP Secretariat develop a membership strategy with the aim of progressively increasing the number of State parties to the Convention.

5. Is the SPREP Secretariat effective in carrying out its roles and functions and how could this role be improved?

5.1 Background

(94) The Noumea Convention has been implemented through SPREP since its entry into force. Initially the lead responsibility for the Convention within SPREP rested with the SPREP Legal Officer whose main role was to organize and follow up COP Meetings. Over time, responsibility for the Noumea Convention shifted to the technical programmes of the Secretariat, initially through the Coastal Advisor in the (then) Pacific Futures Division¹⁰⁴. This proved challenging with the turn-over of Coastal Advisor positions at that time and the lack of linkages between the tasks of these positions and the aims of the Noumea Convention. Subsequently, the technical focus of the Noumea Convention shifted to the Waste Management and Pollution Control (WMPC) Division, reflecting the Dumping and Emergencies Protocols coming into force. Currently the WMPC Division is the main SPREP Division involved with the Noumea Convention, particularly through implementation of marine pollution activities, including implementation of PACPLAN and PACPOL. The Island and Ocean Ecosystems Division, through the Marine and Coastal Advisor, continues to lead on issues associated with the Noumea Convention dealing with marine conservation, including those related to the UNEP Regional Seas Programme.

(95) The work of relevant staff in these Divisions has not been exclusively on the Noumea Convention, various other activities have been undertaken, usually relating to other donor funded projects. Therefore, it is difficult to attribute the work of the different SPREP Divisions directly to the Noumea Convention especially when reporting to external donors. UNEP for instance has noted that SPREP activities, such as those relating to the marine environment under the Noumea Convention are significantly under reported.

(96) The challenge of reporting has been raised by several State Parties. Reports to the COP are undertaken by SPREP and Metropolitan members of SPREP but the reporting by Pacific

¹⁰⁴ Currently the SPREP Island and Ocean Ecosystems Division

Island Countries has been limited. Reports by SPREP indicate an impressive list of activities, however, these activities are undertaken through other donor funded projects.

(97) Coordination of the Noumea Convention is currently undertaken through the SPREP Environmental Monitoring and Governance Programme however the overall work on, and profile of, the Convention have suffered by not having a dedicated SPREP Officer directly responsible for the Noumea Convention. There has not been a dedicated officer through much of the life of the Noumea Convention. The ACP MEA 3 Project provides the opportunity to raise the profile of the Noumea Convention through awareness initiatives and targeted capacity building. Raising its profile may in turn create an opportunity for donors to fund a position for the Noumea Convention.

5.2 Views of State Parties, and others, on the effectiveness of the Secretariat

(98) The majority of State Parties interviewed noted that SPREP has generally been satisfactory in conducting activities under the Noumea Convention but that performance of both the Secretariat and the Convention itself has been hindered by the lack of perceived relevance of the Convention, the lack of linkage of the Noumea Convention to the SPREP Programme, and by limited resources.

(99) Comments from State Parties and others that considered the Secretariat's performance to be effective included:

- SPREP has made an effort to ensure Members are: *“aware of member countries obligations under the Convention and Protocols”*;
- The high level of support provided from the Secretariat under PACPLAN and PACPOL has been appreciated;
- SPREP staff are considered extremely dedicated and conscientious; and
- COP Meetings are well planned and implemented.

(100) Comments from State Parties and others that considered the Secretariat's performance to be less effective included:

- A few State Parties noted the Secretariat's response to the Solomon Trader Oil Spill incident in Rennell Island in 2018, could have been more effective¹⁰⁵. It was suggested that the Noumea Convention and PACPLAN were not efficient in dealing with this incident which, in part, led to the request from the SPREP Meeting in 2019 that PACPLAN be revised. PACPLAN was subsequently revised, but several State parties feel that the Plan is still not adequate and needs to be better supported by the development of capacity at national levels. As one State Party noted: *“PACPLAN can be fantastic but if capacity is not adequate then it won't work.”*
- It was suggested that the Noumea Convention could be used more effectively to support Pacific responses to international incidents regarding dumping of waste at

¹⁰⁵ Rapid response assistance was sought from SPREP during this incident in Rennell Island, however it was noted that the: *“Secretariat response has not been forthcoming as expected as the request for technical advice and personnel was not readily actioned or provided”*.

sea. The example of the Government of Japan dumping of treated but still radioactive wastewater from the crippled Fukushima nuclear plant into the Pacific Ocean¹⁰⁶ was mentioned as a case in point, which is directly relevant to the Noumea Convention. It was suggested the Noumea Convention can and should be used more directly in cases such as these;

- Communication needs to be improved. SPREP needs to make State Parties more aware of the Noumea Convention and what it entails. At the moment most of the communication comes around the time of the COP meeting or if there are specific incidents, such as oil spills. Communication needs to be more regular and effective;
- Confusion about what is undertaken under the Noumea Convention and what is undertaken through other SPREP Programmes. This generally reflects the lack of awareness and interest in the Noumea Convention as mentioned in previous sections; and
- There is a general view that the Secretariat should provide more support to Pacific Island State parties, particularly in training, capacity building and technical advice.

(101) State Parties were asked what extra support was required from the Secretariat and, unsurprisingly, many pointed out several areas, listed in Annex D of this review. Priorities identified included:

- Training and capacity building in Pacific Island countries to develop and strengthen preparedness and response skills in managing oil pollution and other hazardous matters. As noted by one State Party: *“When a situation occurs, we tend to call for help instead of trying to handle ourselves and that is because there is a need for more local capacity building”*;
- A more proactive and strategic approach on the part of SPREP, working with and through State Parties, to address regional and international incidents of marine pollution which affect Pacific countries.
- Provision of more technical advice on specific topics, including responding to issues associated with Deep Seabed Mining;
- Improvement of service delivery in areas directly covered by the Noumea Convention, including enhancing oil spill preparedness and response.

5.3 Review conclusion and recommendations: how can Secretariat effectiveness be improved?

5.3.1 General

(102) Many of the elements relevant to improving Secretariat performance have been addressed in Section 4 of this review regarding the effectiveness of the Convention. The following recommendations should improve the effectiveness of both the Secretariat and the Convention:

¹⁰⁶<https://www.npr.org/2021/04/13/986695494/japan-to-dump-wastewater-from-wrecked-fukushima-nuclear-plant-into-pacific-ocean>

- **Recommendation 7: That the SPREP Secretariat develop a targeted communication and awareness campaign to raise awareness of the Noumea Convention and to more effectively and widely share information with State Parties about activities under the Convention.**
- **Recommendation 8: That the SPREP Secretariat raise the profile of the Noumea Convention by more clearly linking, or badging, related SPREP meetings with the Noumea Convention, including those relating to marine pollution and to those relating to ocean conservation and management.**
- **Recommendation 10: That the range of activities under the Noumea Convention which are presented to each COP Meeting should be effectively communicated and promoted to raise its profile and awareness.**
- **Recommendation 12: That a sustainable financing strategy be developed for the Noumea Convention, building on support from the ACP-MEAs 3 project, to ensure the more effective implementation of the Noumea Convention.**
- **Recommendation 13: That SPREP Secretariat actively approach metropolitan members of the Noumea Convention, and key partners including UNEP and IMO, to seek increased support for the implementation of the Noumea Convention, including through secondments and through targeted support to address specific marine pollution issues and incidents.**

(103) It is important that the Secretariat establish clear and realistic expectations for State Parties as to what can and cannot be delivered under the Noumea Convention. Responses from State Parties as to what support the Secretariat should provide show that their expectations are considerable and often unrealistic considering the available resources.

(104) This review notes that concerns expressed regarding responses to specific incidents, such as in East Rennell¹⁰⁷, are beyond the capacity of SPREP directly and underline the need for SPREP to play an effective coordination role, working with and through Metropolitan countries, to ensure speedy and effective responses when incidents such as these occur in Pacific Island countries. Again, realistic expectations need to be established.

(105) This review notes and agrees with State Party views that PACPLAN be further revised and better linked to resources which will support implementation. This specific aspect should be included within the fundraising strategy for the Noumea Convention.¹⁰⁸

(106) This review notes and agrees with State Party suggestions that the Noumea Convention be used more effectively and strategically to support Pacific responses to international incidents of dumping of waste at sea. Any responses should be developed with and through State Parties to the Noumea Convention.

¹⁰⁷ Point 100 of this review

¹⁰⁸ Outlined in recommendation 12 of this review.

5.3.2 Reporting under the Noumea Convention

(107) State Parties and donors noted that reporting under the Noumea Convention is weak and should be improved. Limited reporting, particularly by many Pacific Island State Parties makes it difficult to assess the effectiveness of the Noumea Convention and the Secretariat. Most of those interviewed reiterated that reporting is weak and that better information and guidance on is required, including clearer, concise templates for reporting. The review notes there are a number of areas in which reporting under the Convention could be improved, and this is addressed in paragraph 107 and recommendation 15 of this review. including through:

- a) developing clearer, concise and streamlined reporting formats for the Noumea Convention;
- b) ensuring reporting under the Noumea Convention is focused more on impact and outcomes rather than activities;
- c) ensuring that reporting includes the full range of activities linked to the Noumea Convention and undertaken by SPREP, including those relating to the UNEP Regional Seas programme; and
- d) supporting training and capacity building to improve reporting by State Parties.

Recommendation 15: Reporting under the Noumea Convention be strengthened and enhanced, including through implementing measures (a) to (d) in paragraph 107 of this review, as well as ensuring that improved reporting is one of the key elements included in the Terms of Reference for the SPREP Officer responsible for the Noumea Convention.

5.3.3 Staffing Arrangements

(108) This review considers a dedicated staff position for the Noumea Convention within SPREP is desirable and would enhance the effective delivery of the Convention. As noted in paragraph 97 activities under the ACP MEA 3 Project to raise the profile of the Noumea Convention may create an opportunity for donors to fund a position for the Noumea Convention.

Recommendation 16: SPREP should consider options to establish a dedicated, permanent staff position for the Noumea Convention including through activities under the ACP MEA 3 project.

(109) A clear terms of reference for this position should be developed as soon as possible and it should include: (a) responsibility for the effective implementation of COP Meetings; (b) increasing awareness of the work of the Noumea Convention within States Parties and also within SPREP; (c) ensure effective coordination across the Secretariat regarding activities of the Noumea Convention; (d) working with all State parties to enhance and improve reporting under the Noumea Convention; (e) establishing clear and realistic expectations as to what the Secretariat can and cannot provide to State parties regarding the Noumea Convention, particularly regarding support that may be provided in emergency situations such as oil spills; and (f) fundraising for project and programme related funding that would support implementation of the Convention.

Recommendation 17: That clear Terms of Reference be developed for this position, to include, at a minimum, the items mentioned in point 109 of this review.

(110) There is limited staffing available within the Secretariat to address the technical aspects of the Noumea Convention. The secondment from AMSA to SPREP to support SPREP's work on the marine pollution was effective and several Metropolitan State Parties to the Noumea Convention have indicated they may be willing to consider such support in the future, although specific commitment was not made. This aspect should be followed up by the Secretariat, in line with Recommendation 13 of this review.

(111) There is considerable work undertaken by SPREP staff which relates to the Noumea Convention, however it is often not linked, reported, or recorded as being of relevance to the Convention. This also links with the recommendation for SPREP activities and meetings to be better linked, or badged, with the Noumea Convention¹⁰⁹.

Recommendation 18: That relevant SPREP staff should be encouraged to link their work more clearly with the Noumea Convention.

(112) This review notes and agrees with comments from some State Parties and donors that the work of the SPREP Coastal and Marine Ecosystems (CME) Advisor¹¹⁰ could be better linked with the Noumea Convention. Opportunities to strengthen this linkage should be explored between the relevant Programmes¹¹¹ and the CME Advisor. Including ensuring the work plan and ToR of the CMEA is closely linked to the Noumea Convention in relation to reporting under the Convention itself and to donors. Particularly to UNEP, on marine activities undertaken through the Noumea Convention.

Recommendation 19: That opportunities for better linking the work of the SPREP Coastal and Marine Ecosystems (CME) Advisor with the Noumea Convention should be explored between relevant SPREP Divisions and the Advisor.

(113) Efforts should be made to increase funding for activities of the Noumea Convention and a fundraising strategy should be developed by the Secretariat, working with and through State Parties and key donors and partners¹¹². This should be a key responsibility of the SPREP Officer for the Noumea Convention, whose role should include the development of project proposals, coordination and cooperation with other stakeholders.

6. Road Map and Recommendations

6.1 Road Map

(114) The table below outlines the 19 recommendations in this report and provides:

¹⁰⁹ Recommendation 8 of this review

¹¹⁰ Within the Island and Ocean Ecosystems Division

¹¹¹ Environmental Governance Division and Island and Ocean Ecosystems Division

¹¹² In line with Recommendation 12 of this review

- reference to the relevant paragraph number in the text;
- the view of this review on the priority of the recommendation with: (A) having the highest priority (12 recommendations); (B) having medium level priority (6 recommendations); and (C) having lower priority (2 recommendations); and
- a suggested lead for each recommendation.

(115) The Table outlined below provides the Framework for the Road Map for implementation of this Review, with recommendations denoted as priority A having the highest priority for attention and implementation. The allocation of priorities (A, B or C) is based on the professional judgement of the review consultant in light of the following criteria:

- The need to take urgent/immediate action;
- The level of potential impact of the recommendation on the effectiveness and efficiency of the SPREP as it relates to the Noumea Convention;
- The level of potential impact of the recommendation on the reputation of State parties to the Noumea Convention and SPREP; and
- A broad, qualitative assessment of benefits relative to costs of the recommendation

(116) The review recommends that the recommendations of this report be considered by the inter-sessional meeting of the Noumea Convention, as agreed at the 2021 COP meeting. It is noted that funding implications for some of the recommendations will have to be reviewed closely by the Secretariat in terms of implementation, and the results from this assessment should also be presented to the inter-sessional meeting.

(117) As soon as possible after this meeting the SPREP Secretariat should prepare an Implementation Plan for these recommendations for consideration by the next COP of the Noumea Convention. This implementation plan should include a Work Plan and Budget for the Convention with clear targets and indicators. This should be linked to the SPREP Work Plan and Budget.

(118) The Review recommends that the oversight of the implementation of these recommendations be undertaken by a core group comprising relevant SPREP staff and representatives of State Parties.

(119) The SPREP Secretariat should report on progress on the implementation Plan at subsequent COP and SPREP Meetings.

(120) The assessment of achievement of the Implementation Plan and specific recommendations will be undertaken by State parties to the Noumea Convention, on a basis to be determined by the next COP.

Recommendation 20: That the Road Map for implementation of the Noumea Convention Review, including a Work Plan and Budget for the Convention with clear targets and indicators, be adopted and applied by State Parties and the SPREP Secretariat.

6.2 Recommendations

Recommendation (R)	Para. No. of this review	Priority (A, B, C)	Lead
R1: That there should be stronger linkages developed between the Noumea Convention and the SPREP Strategic Plan. These linkages should be communicated by the SPREP Secretariat as a key element of the targeted communication and awareness campaign (recommendation 7 of this review).	43	A	SPREP Secretariat
R2: That the Noumea Convention be more clearly and explicitly linked with key frameworks, such as the Framework for Nature Conservation and Protected Areas in the Pacific Islands Region and the Cleaner Pacific 2025.	43	B	SPREP Secretariat
R3: That minor changes to the Noumea Convention be undertaken as quickly as possible.	62	A	SPREP as NC Secretariat
R4: That State Parties of the Noumea Convention be presented with two options for substantive amendment to the Noumea Convention: (a) no substantive changes be made to the Noumea Convention; (b) substantive changes be made. If the latter is chosen then the Secretariat and State Parties need to agree a process and timeline for this amendment which should include, but not be limited to the suggested areas in Paragraph 53 of this review	62	A	State Parties
R5: That State Parties of the Noumea Convention agree that the Noumea Convention be referred to in all subsequent dealings and matters as the SPREP Convention.	62	A	State Parties
R6: That the Noumea Convention be used more strategically as the framework for addressing key issues such as Marine Plastic	62	B	SPREP Secretariat

and Deep Seabed Mining, irrespective of whether the Convention text is substantively amended or not.			
R7: That the SPREP Secretariat develop a targeted communication and awareness campaign to raise awareness of the Noumea Convention and to more effectively and widely share with State Parties information about activities under the Convention	75-81	A	SPREP Secretariat
R8: That the SPREP Secretariat raise the profile of the Noumea Convention by more clearly linking, or badging, related SPREP meetings with the Noumea Convention, including those relating to marine pollution and those relating to ocean conservation and management.	75-81	B	SPREP Secretariat
R9: That State Parties should be encouraged to do more to promote the Noumea Convention within their countries, to communicate its role, importance and outcomes.	75-81	A	State Parties
R10: That the range of activities under the Noumea Convention which are presented to each COP Meeting should be more effectively communicated and promoted to raise its profile and awareness.	75-81	B	SPREP Secretariat
R11: That State Parties be encouraged to develop more effective mechanisms for internal cooperation and communication, including ensuring that the Focal Point within countries is directly involved with, and knowledgeable about, the Noumea Convention.	86	B	State Parties
R12: That a sustainable financing strategy be developed for the Noumea Convention, building on support from the ACP-MEAs 3 project, to ensure a more effective implementation of the Noumea Convention.	91	A	SPREP Secretariat, working with State Parties and donors/partners
R13: That the SPREP Secretariat actively approach metropolitan members of the Noumea Convention, and key partners including UNEP and IMO, to seek increased support for the implementation of the Noumea Convention, including through secondments and through targeted support to address specific marine pollution issues and incidents.	91	A	SPREP Secretariat, with metropolitan State Parties

R14: That SPREP Members which are currently not members of the Noumea Convention should be encouraged to adhere and that the SPREP Secretariat develop a membership strategy with the aim of progressively increasing the number of State parties to the Convention.	94	C	SPREP Secretariat, with State Parties.
R15: That reporting under the Noumea Convention be strengthened and enhanced, including through implementing measures (a) to (d) in paragraph 107 of this review, as well as ensuring that improved reporting is one of the key elements included in the Terms of Reference for the SPREP Officer responsible for the Noumea Convention.	107	B	SPREP Secretariat
R16: That SPREP should consider options to establish a dedicated, permanent staff position for the Noumea Convention including through activities under the ACP MEA 3 project.	108	A	SPREP Secretariat
R17: That clear Terms of Reference be developed for this position, to include, at a minimum, the items mentioned in point 109 of this review.	109	A	SPREP Secretariat
R18: That relevant SPREP staff should be encouraged to link their work more clearly with the Noumea Convention.	111	A	SPREP Secretariat
R19: That opportunities for better linking the work of the SPREP Coastal and Marine Ecosystems (CME) Advisor with the Noumea Convention should be explored between relevant SPREP Divisions and the Advisor.	112	C	SPREP Secretariat
R20: That the Road Map for implementation of the Noumea Convention Review, including a Work Plan and Budget for the Convention with clear targets and indicators, be adopted and applied by State Parties and the SPREP Secretariat.	114-120	A	State Parties and SPREP Secretariat.

Annex A: Scope of the review of the Noumea Convention

SCOPE FOR THE REVIEW OF THE CONVENTION FOR THE PROTECTION OF THE NATURAL RESOURCES AND ENVIRONMENT OF THE SOUTH PACIFIC REGION (1986) AND RELATED PROTOCOLS (NOUMEA CONVENTION)

As agreed at the Fifteenth Conference of the Contracting Parties to the Noumea Convention (COP15) held in Apia, Samoa on 29 August 2019

I. Introduction

The Noumea Convention and the related Protocols is a comprehensive, legally binding agreement for Parties to undertake the protection, management and development of the marine and coastal environment of the Pacific region. Its key objective as part of the Regional Seas Programme is to address the accelerating degradation of the world's oceans and coastal areas through prevention, reduction and control of pollution from any source; and ensure sound environmental management and development of natural resources.¹¹³ Adopted in 1986, the Convention and its related Protocols entered into force in 1990.

The Noumea Convention was developed on a set of different regional issues to what we face today. Specifically, the Noumea Convention does not cover climate change, plastic pollution, or marine litter which have become significant threats to our livelihoods and present environment. However, under the Noumea Convention our Pacific region have been able to address many of the emerging and challenging issues, emanating from increased marine pollution, deep seabed minerals exploration and mining, increased pressure on fisheries management systems and stocks, ocean acidification, biodiversity and ecosystem health, climate change including sea level rise, storms, temperatures rising.¹¹⁴

The scope of the Noumea Convention is limited when compared to the type and extent of environment issues facing the region today.¹¹⁵ As such, this limits the effectiveness of the Noumea Convention as a regional legal instrument to tackle the environmental issues of today.¹¹⁶

II. Mandate of the Review

At the Fifteenth Conference of the Contracting Parties to the Noumea Convention (COP15), the conference agreed for the Secretariat to carry out a review of the Noumea Convention on the following basis:

- i. Evaluate how the Convention is being implemented at all levels;
- ii. Determine whether the objectives of the Convention are being met by the actions of the Parties; and
- iii. Evaluate the effectiveness of the Secretariat.

¹¹³ Review of the Waigani and Noumea Conventions, 17 July 2019

¹¹⁴ Opening remarks for the 15th Noumea Convention COP, Director General Kosi Latu

¹¹⁵ Annex IV, 14NC/WP.7.11

¹¹⁶ Ibid

The above review, undertaken in July and August 2019, consisted of a desktop analysis of outputs and achievements. The review report contained a series of recommendations for Parties to consider, ranging from increased resourcing to administer the Convention and greater commitment from Parties to meet the requirements of the Convention, an award for best project/initiative within the reporting period, a rotational system for hosting COPs that includes field trip of a demonstration project by the host country, increased scope to include emerging issues such as plastic pollution and amendment procedures to be carried out by tacit acceptance.¹¹⁷

Since the establishment of the Secretariat of the Pacific Regional Environment Programme (SPREP) in 1993, programmes have been designed to assist Parties and SPREP member countries to achieve the key objective of the Noumea Convention through the delivery of activities under SPREP Technical Programmes – Island and Ocean Ecosystems (IOE), Environmental Monitoring and Governance (EMG) and Waste Management and Pollution Control (WMPC). These work programmes and plans form the pillars of SPREP's 10-year Strategic Plan from 2017 to 2026.

The Strategic Plan 2017-2026 consists of four (4) Regional Goals and five (5) Organisational Goals.¹¹⁸ These regional and organisational goals set realistic targets on the overall protection of the Pacific environment from impacts of climate change. The Noumea Convention has been the platform of work programmes and activities at SPREP, which must align with the existing Strategic Plan to remain relevant and effective. As such, the 2019 review of the Waigani and Noumea Conventions identified specifically for the Noumea Convention the need for its membership and scope to be further developed to strengthen efficacy for environment action in the Pacific.

III. Purpose of the Review

The purpose of the review is to strengthen the membership of the Noumea Convention and its effectiveness in addressing environment action in the Pacific region. Given the changing nature of environmental issues, there is a need to expand the scope of the Convention to, not only remain relevant but to establish linkages to the regional plan of action to achieve environmental protection and resilience.

Based on an Information Paper titled 'Strengthening membership and effectiveness of the Convention' presented at the Fourteenth Conference of the Contracting Parties to the Noumea Convention, Parties determined that a review of the Noumea Convention was timely and appropriate.

IV. Objectives of the Review:

The COP15 established broad objectives for which the review of the Noumea Convention should be focused on, and to guide the scope of that review conducted by the Secretariat. However, that review was limited to a survey and a desktop analysis drawn from multiple reports by Parties and collective reports from the Technical Programmes on a biennial basis.

¹¹⁷ Fifteenth Meeting of the Noumea Convention, agenda item 7.2: Review of the Noumea Convention

This second review takes on a regional approach and focus emphasising the importance of strengthening the membership of the Noumea Convention and future memberships. To align with the broad objectives determined by the Parties at the COP15, the scope of this review is grouped into the two (2) main headings and specific objectives below:

3. Governance and operation of the Noumea Convention:

- a) examine, evaluate, determine the effectiveness of the Convention;
- b) examine, evaluate, determine the effectiveness of the Secretariat in discharging the roles and functions mandated by the Convention;
- c) examine, analyse and determine the linkages to the work programmes of the Secretariat;
- d) analyse, evaluate and determine the effectiveness of the administrative and procedural matters relating to amendment provisions, reporting and other obligations.

4. Implementation of the Noumea Convention:

- a) examine, analyse, determine whether the purpose of the Convention is achieved;
- b) examine, analyse and determine whether objects / purpose of the Convention remains relevant to the current environmental challenges; and
- c) examine, analyse and determine the approach to expand the scope the Convention, to tackle current environmental challenges.

V. Overall expected outcome of the Review:

The expected outcome of the Review is to provide recommendations for Parties to make an informed decision on the strategic direction of the Noumea Convention.

VI. Methodology of the Review

To facilitate and implement the Parties' decision to review the Convention, the Secretariat embarked on engaging an independent consultant with sufficient knowledge and understanding on treaty law and the Noumea Convention. The consultant will work independently of the Secretariat and guided by the specific objectives above.

Developing an appropriate methodology tool to gauge views and responses to meet the specific objectives is a priority for the consultant and the Working Group. A questionnaire as a tool may be developed and aligned with the specific objectives above.

The role of the Secretariat in this review will be set out in the terms of reference of the Working Group.

VII. Other considerations

The consultant is encouraged to consider other factors, information, data that may fall outside of the purview of the specific objectives above.

Annex B. Data collection for the review of the Noumea Convention

The review involved the collection of data through interviews, a questionnaire, and through review of relevant literature.

Interviews: persons interviewed

Representatives of the following groups were interviewed for this review: (a) States Parties to the Noumea Convention; (b) senior SPREP staff; and (c) relevant SPREP Partners.

State Party interviews: the status of interviews as at 6 October, 2021 is as follows:

- Australia – interview was conducted with Mr Andrew Chek on 6th October;
- Cook Islands – interview was conducted with Mr Vavia Tangatataia on 31st August;
- Fiji – interview was conducted with Ms Sandeep Singh on 25th August;
- France – interview was conducted with Mr Luc Williencourt on 18 August;
- FSM – interview was conducted with Ms Patti Pedrus on 4th August;
- Nauru – interview was conducted with Mr Bryan Star on 3rd September;
- NZ – interview was conducted with Jonny Martin on 29th September;
- PNG - not interviewed as 6th October, trying to arrange with State Party;
- RMI - interview was conducted with Warwick Harris on 30th August;
- Samoa - interview was conducted with Ms Frances Reupena and Ms Fiasoso Siasosi on 24 August;
- Solomon Islands – interview was conducted with Ms Debra Kereseka on 31 August;
- USA - interview was conducted Mr John Griffith and Mr Van Reidhead on 20 August and with Dr Gerry Davis on 3rd September.

Senior SPREP staff interviews: The following members of the Senior Leadership Team were interviewed for this review: Kosi Latu; Stuart Chape; Easter Chu Sing; Clark Peteru; Anthony Talouli; Jope Davetanivalu; Simeamativa Vaai; and Petra Chan Tung

Relevant SPREP Partner interviews: Interviews were conducted with Sefanaia Nawadra, Head of UNEP Pacific Office on 26 August and with Dr. Balakrishna Pisupati, Manager of UNEP ACP-MEA Programme on 30 August.

Interview questions:

The following questions were asked in all interviews:

Introduction

1. Could you please outline your position and involvement with the Noumea Convention?

Relevance and effectiveness of the Noumea Convention and its implementation

2. How effectively are the objectives of the Noumea Convention being met?
3. What are the key issues and challenges facing the Noumea Convention?
4. What are the gaps and weaknesses of the Noumea Convention and how could they be addressed?
5. Are the objectives and purposes of the Noumea Convention relevant to current environmental challenges facing the Pacific region?
6. Should the scope of the Noumea Convention be modified or changed to address these environmental challenges ?
7. What is the relevance and added value of the Noumea Convention, in relation to the SPREP Convention and other conventions such as the Waigani Convention?

Effectiveness of SPREP as the Secretariat of the Convention.

8. How effective has SPREP been as the Secretariat of the Noumea Convention?
9. Is the Noumea Convention clearly linked with the work programmes of the Secretariat? Should SPREP's Strategic Plan become the Action Plan of the Noumea Convention?
10. Are there any areas relevant to the Noumea Convention that have not been adequately addressed by the Secretariat? If so, what are these areas?
11. Are the administrative and procedural aspects of the Noumea Convention, including the COP, being effectively addressed? Do you have any suggestions for improvement?
12. How could the role and activities of Secretariat be improved in relation to the Noumea Convention?

Future of the Noumea Convention

13. How can the implementation of the Noumea Convention be improved in the future?
14. How can the Noumea Convention can be funded in the future? Do you have any suggestions as to possible funding sources?
15. Do you have any additional comments?

Questionnaire

A questionnaire was developed by the Secretariat, in consultation with States Parties to the Noumea Convention, and this has been sent to all States Parties. The questionnaire is on-line at <https://www.surveymonkey.com/r/6WVLRW> The following State Parties have responded as at 06.10.2021: Solomon Islands; Samoa; FSM; Fiji; NZ and PNG.

Literature review

An assessment of available literature relevant to the Noumea Convention was undertaken by the consultant and key issues arising from this assessment will be included within the final review report.

Annex C: Summary of responses to questionnaires by all States Parties

MASTER LIST – COMPLETED QUESTIONNAIRES 06.10.2021

Q1 From your country’s perspective, what is the purpose of the Noumea Convention?

SI For the protection, management and development of the marine and coastal environment of the South Pacific Region

SAMOA – (a) prevent shipping pollution; (b) protection of the marine environment; (c) to ensure that Small Island countries are safe from pollution by big ships and trading in sea's environment

FIJI – (a) prevent shipping pollution; (b) provide a foundation for the work of SPREP; (c) protection of the marine environment

PNG - Protection of the marine environment

NZ - (a) prevent shipping pollution; (b) protection of the marine; (b) environment

Q2 Is the Contracting Party aware that the Noumea Convention has 2 Protocols?

SI – No

SAMOA – Yes

FSM – No response

FIJI – No

PNG – Yes

NZ - Yes

Q3 Is the Contracting Party aware that the Noumea Convention has 2 new Protocols and an amended Protocol that has not entered into force?

SI – No

SAMOA – Yes

FSM – Yes

FIJI – No

PNG – No

NZ - Yes

Q4 From your country’s perspective, what are the key issues or barriers to implementing the Noumea Convention?

SI - Convention secretariat to respond or tailor its programmes or plans towards realizing its member’s states priority environmental programmes. For example, in Solomon Islands case, the secretariats support to improve EIA capability and develop water quality standards for the country. Convention secretariat to provide on a regular basis and in a timely manner relevant information on the implementation of the Convention and its Protocols to parties.

SAMOA (a) insufficient funding / internal resourcing; (b) insufficient understanding / awareness of the Noumea Convention and its obligations; (c) lack of domestic legislative authority to implement actions relating to the Noumea Convention

FSM – To address the issue of insufficient funding / internal resourcing

FIJI - (a) insufficient funding / internal resourcing; (b) insufficient understanding / awareness of the Noumea Convention and its obligations; (c) lack of domestic legislative authority to implement actions relating to the Noumea Convention

PNG – (a) insufficient funding / internal resourcing; (b) insufficient understanding / awareness of the Noumea Convention and its obligations

NZ – (a) insufficient funding / internal resourcing; (b) insufficient understanding / awareness of the Noumea Convention and its obligations

Q5 The SPREP's Strategic Plan 2017-2026 reflects the work programme of SPREP including all its MEAs such as marine pollution conventions under the International Maritime Organization (IMO) the chemical and hazardous waste conventions, Waigani Convention and the biodiversity conventions. The action plan developed under the Noumea Convention is incorporated in the Strategic Plan. Should SPREP's Strategic Plan become the action plan of the Noumea Convention?

SI Yes

FSM - No, it should remain as incorporated.

SAMOA – Yes. To avoid repetition of making too many documents, it is fine to have the SPREP's Strategic Plan become the action plan for the Noumea Convention, as long as all the appropriate actions are identified and incorporate for implementation.

FIJI – Yes

PNG - We would think so and support the SPREP's Strategic Plan 2017-2026

NZ - Potentially that is a solution

Q6 What is your country's standard process of domesticating/ratifying regional/international conventions? Please describe any challenges faced by your country in ratifying and/or implementing the Noumea Convention.

SI - The process involves cabinet endorsement at the highest political level and development of policies and national laws to give effect to the MEAs.

SAMOA - Our challenges in implementing the Noumea Convention is the lack of collaboration and in-effective engagement between relevant stakeholders and the secretariat.

FSM - Relevant Department prepare proposal to ratify Convention -Sends request of consideration of Proposal to President's Office -Depending on President's response, the request for ratification is sent to Congress for approval/passing -After Congress approves, the instruments of deposit are prepared through relevant department and Foreign Affairs to be submitted to Convention Secretariat Body.

FIJI – Reporting

PNG - The process involves the following; 1: Identify and prioritize conventions to be ratified. 2: Submission is made to the Transport Minister for endorsement. 3: Once endorsed, submitted to the Office of the State Solicitor for Legal Clearance. 4: After legal clearance, submitted to the National Executive Council for endorsement. 5: Submitted to the Foreign

Affairs and Trade Ministry to proceed to submission through the diplomatic process to get the ratification. 6: Once ratified, national legislation drafted. Problems encountered are: 1: Ministerial approval process takes so long. 2: National legislation take so long as well.

NZ - A breakdown of the process and an associated guide is found here:

<https://www.mfat.govt.nz/en/about-us/who-we-are/treaties/#:~:text=The%20treaty-making%20process%20In%20New%20Zealand%2C%20the%20power,the%20House%20of%20Representatives%20for%20select%20committee%20consideration.>

Q7 Does your country have laws/legislations, administrative systems, policy frameworks to ensure the protection of the natural resources and environment in accordance with the Noumea Convention?

SI – Yes

SAMOA – Yes

FSM - Yes, there are Acts, Strategies, and Regulations on Pollution Control in regards to natural resources

FIJI – Yes

PNG - Satisfactorily laws do exist

NZ - Yes

Q8 Article 6: Are there laws etc in place for: Pollution from Vessels?

SI – Yes

SAMOA – Yes, Marine Pollution Prevention Act 2008 Samoa Ocean Strategy 2020

FSM - Yes, Regulations to control pollution from vessels

PNG - Yes. Marine Pollution Prevention Laws in place based on the Conventions such as Noumea/SPREP Convention and the London Convention/Protocol.

NZ - Yes, the Resource Management Act 1991 and regulations restrict non-operational discharges/pollution from vessels such as garbage. Restrictions exist for the discharge of sewage for vessels in the coastal marine area.

Q9 Article 7: Are there laws etc in place for: Pollution from land-based sources?

SI – Yes

SAMOA - Yes, National Waste Management Act 2010 Integrated Waste Management Strategy 2019

FSM – Yes, Regulations to control pollution from land based resources

FIJI – Yes

PNG - Yes, the Environment Act 2000 fully regulates it.

NZ - Yes, The overarching regime for the coastal marine area out to 12 nautical miles includes the Resource Management Act 1991 and regulations controlling land based pollution, and the NZ Coastal Policy Statement, all of which inform regional plan rules and decision making/regulating by local authorities.

Q10 Article 8: Are there laws etc in place for: Pollution from sea-bed activities?

SI – No

SAMOA – Yes, Marine Pollution Prevention Act 2008

FSM – No

PNG – No

NZ – Yes, The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil

Q11 Article 10: Are there laws etc in place for: Disposal of wastes?

SI – Yes

SAMOA – Yes, National Waste Management Act 2010

FSM – Yes, Environmental Acts, Strategies, and Regulations on proper disposal of waste

FIJI – Yes

PNG - Yes, Covered by Environment Act 2000 and Dumping of Wastes Act 2013 where permits applications to be submitted and assessed and permits granted.

NZ - Yes: “The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by dumping from vessels, aircraft, or man-made structures at sea, including the effective application of the relevant internationally recognized rules and procedures relating to the control of dumping of wastes and other matter. The Parties agree to prohibit the dumping of radioactive wastes or other radioactive matter in the Convention Area. Without prejudice to whether or not disposal into the seabed and subsoil of wastes or other matter is "dumping", the Parties agree to prohibit the disposal into the seabed and subsoil of the Convention Area of radioactive wastes or other radioactive matter. This article shall also apply to the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area”

Q12 Article 11: Are there laws etc in place for: Storage of toxic and hazardous wastes?

SI – Yes

SAMOA – Yes, National Waste Management Act 2010

FSM – Yes, SOP

FIJI – Yes

PNG - Yes, Covered by Environment Act 2000 and Ships and Installations Act 2013 where permits applications to be submitted and assessed and permits granted.

NZ - Yes “The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from the storage of toxic and hazardous wastes. In particular, the Parties shall prohibit the storage of radioactive wastes or other radioactive matter in the Convention Area”

Q13 Article 13: Are there laws etc in place for: Pollution from mining and coastal erosion?

SI – Yes

FSM – Yes, Environmental Act

FIJI – Yes

PNG - Yes, covered by Environment Act 2000 where permits applications to be submitted and assessed and permits granted.

NZ - Yes “The Parties shall take all appropriate measures to prevent, reduce and control environmental damage in the Convention Area, in particular coastal erosion caused by coastal engineering, mining activities, sand removal, land reclamation and dredging”

Q14 Article 14: Are there laws etc in place for: Specially Protected Areas and Protection of Wild Fauna and Flora?

SI – Yes

FIJI – Yes

SAMOA - Yes, to be confirmed later

FSM - Yes, Strategies

PNG – Yes, Covered by Wildlife and Fauna Act.

NZ - Yes, DOC ADMINISTERS A SUITE OF RELEVANT ACTS, INCLUDING: THE CONSERVATION ACT 1987; MARINE MAMMALS PROTECTION ACT 1978; MARINE RESERVES ACT 1971; AND SPECIFIC MARINE PROTECTED AREAS; WILD LIFE ACT 1953; TRADE IN ENDANGERED SPECIES ACT 1989; AND DOC ENGAGES WITH THE FISHERIES ACT 1996, AND THE RESOURCE MANAGEMENT ACT 1991.

Q 15 Article 15: Are there laws etc in place for: Co-operation in combating pollution in emergency Situations?

SI – Yes

SAMOA – Yes, Draft Disaster Waste Management Plan

FSM – Yes

FIJI – Yes

PNG - Yes. Have an MOU with AMSA and recently became an Associated Membership with Oil Spill Response Limited -Singapore. Also under the PACPLAN.

NZ - Yes

Q16 Article 16: Are there laws etc in place for: Environmental Impact Assessment?

SI – Yes

SAMOA – Yes, There is EIA component under the PUMA Act 2004

FSM Yes, EIA Regulations and Guidelines

FIJI – Yes

PNG - Yes, covered by Environment Act 2000.

NZ - Yes

Q17 Article 17: Are there laws etc in place for: Scientific and Technical Cooperation?

SI – No

SAMOA – Yes, TBC

FSM – Yes

FIJI – Yes

PNG – No

NZ - Yes

Q18 Article 18: Are there laws etc in place for: Technical Cooperation and Assistance?

SI – No

FSM – Yes

FIJI – Yes

PNG - Yes, MOU with AMSA in place

NZ - Yes

Q19 What are some of the challenges faced by your country in enforcing the legislation you have listed above at Question 7-18?

SAMOA - Lack of leadership Inadequate support of implementing agencies Insufficient financial mechanisms Lack of resources and short staff of responsible agencies

FSM - Enforcement due to lack of specific regulations and limited capacity

SI - Staffing level not adequate Funding not adequate Limited technical capability Inadequate monitoring equipment Inadequate coordination among relevant stakeholders Lack of information sharing

PNG - Human resources, logistics and funding for enforcement.

NZ - CAPACITY CONSTRAINTS AND HAVING THE APPROPRIATE TOOLS IN PLACE TO ADMINISTER THE ACTS.

Q20 If there are no existing laws/legislations, administrative systems, or policy frameworks, is there pending legislative action, planned amendments or plans to develop legislation to implement the Noumea Convention?

SAMOA – No

FIJI – No

PNG - No, there are existing laws in place already.

NZ - Yes, potential amendments to domestic pollution legislation as part of current resource management reform underway

Q21 Is your country aware of reporting done previously or recently under the Noumea Convention?

- **SAMOA** - For my case, haven't completed nor seen any national report done for Samoa under the Noumea Convention
- **PNG** - No
- **NZ** - Yes

Q22 One of the obligations of the Noumea Convention is for Parties to cooperate and share information with international organizations (including standard-setting) and

monitoring. Is your country aware of any requests for cooperation or sharing of information?

- **FIJI** No
- **SAMOA** - Not aware of any requests from other Parties so far
- **PNG** - Yes
- **NZ** - No

Q23 Were there any barriers, challenges in the cooperation or sharing of information requested or described in the Question above?

- **FIJI** - Not applicable
- **SAMOA** - Other parties not willing to share their information or there's no effective cooperation between parties of the convention
- **PNG** – NO (but there is) no network of information sharing within the Pacific nations and Territories.
- **NZ** – not applicable

Q24 The Conference of the Parties (COP) is the Noumea Convention’s primary decision-making body, established by Article 22, which requires or empowers the COP to: (i) Assess periodically the state of the environment in the Convention Area; (ii) Consider the information submitted by the Parties under Article 19; (iii) Adopt, review and amend, as required, annexes to the Convention and to its Protocols, in accordance with the provisions of Article 25;(iv) Make recommendations regarding the adoption of any Protocols or any amendments to the Convention or its Protocols in accordance with the provisions of Articles 23 and 24;(v) Consider cooperative activities to be undertaken within the framework of the Convention and its Protocols, including their financial and institutional implications and to adopt decisions relating thereto;(vi) Consider and undertake any additional action that may be required for the achievement of the purposes of the Convention and its Protocols; and(vii) Adopt by consensus financial rules and budget, prepared in consultation with the Organisation, to determine, inter alia, the financial participation of the Parties under the Convention and those Protocols to which they are Party to. As a Contracting Party to the Noumea Convention, what is your Country’s assessment of how the Conference of the Parties is discharging or is not discharging the above powers and responsibilities?

- **FIJI** Well (i.e. efficiently and effectively)
- **SAMOA** Well
- **SI** - Convention discharge its powers and responsibilities but does not fully comply with article 22
- **PNG** - Well (i.e. efficiently and effectively), SPREP very active in the implementation and making aware of the member countries obligations under the convention and protocols.
- **NZ** - Well (i.e. efficiently and effectively)

Q25 Do you have any recommendations or suggestions to improve the operation of the Conference of the Parties to the Noumea Convention?

SAMOA To have an active engagement of the Secretariat and parties prior to COP meetings.

SI - It is recommended that the COP; 1. have access to information papers and their background analysis well in advance of any COP meeting. 2. disseminate decisions and related information to parties after COP meeting in a timely manner. 3. Seeks predictable funding mechanisms for its programme

PNG - Not at this moment.

NZ - We note that relevant materials were not circulated before the 2021 COP in time to prepare country positions on some issues. This also meant that it was difficult to have meaningful discussion with Parties. New Zealand recommends that all materials to be submitted well in advance of the meetings of the COP and subsidiary groups.

Q26 What is your recommendation on how the Conference of the Parties could promote the adoption of appropriate national legislation, policies, strategies and measures to minimise harmful impacts to human health and the environment?

- **FIJI** Direct the Secretariat to engage more with the Secretariats to other Conventions to, for example, better align work programs.
- **SAMOA** – All of the above
- **SI** - Decision made by COP must be made available to higher decision making bodies of each party
- **PNG** - Provide more opportunities for regional training on implementing the Noumea Convention.
- **NZ** - Direct the Secretariat to engage more with the Secretariats to other Conventions to, for example, better align work programs.
-

Q27 The Secretariat to the Noumea Convention is established by Article 21 to carry out the following functions: (i) To prepare and convene the meetings of the Parties;(ii) To transmit to the Parties notifications, reports and other information received in accordance with the Convention and its Protocols;(iii) To perform the functions assigned to it by the Protocols to the Convention;(iv) To consider enquiries by, and information from, the Parties and to consult with them on questions relating to the Convention and the Protocols;(v) To coordinate the implementation of cooperative activities agreed upon by the Parties;(vi) To ensure the necessary coordination with other competent global, regional and sub-regional bodies;(vii) To enter into such administrative arrangements as may be required for the effective discharge of the Secretariat's functions;(viii) To perform such other functions as may be assigned to it by the Parties; and (ix) To transmit to the South Pacific Conference and the South Pacific Forum the reports of ordinary and extraordinary meetings of the Parties. As a Contracting Party, what is your Country's assessment of how the Secretariat to the Noumea Convention is discharging or is not discharging the above duties and functions?

SAMOA – Satisfactory

FIJI - Satisfactory

SI – Satisfactory. Solomon Islands do not have a dedicated officer to follow up on convention implementation and therefore could not identify how the secretariat discharges its duties and functions.

PNG - SPREP is very well active in the implementation and making aware of the member countries obligations under the convention and protocols.

NZ - Good - Overall the Secretariat has done a 'good' job of discharging its duties. We ask that notices about relevant meetings / issues are emailed in a timely manner to the national focal points, and are put on the SPREP website. Our experience has been that this has not happened in a regular manner, and the SPREP Circular does not always reach the right people. This includes notifications about the COP, intersessional meetings of the subsidiary meetings, and notifications.

Q28 Are there any recommendations or suggestions to improve the Secretariat's performance of its functions as listed above and outlined in Article 21?

FIJI - capacity building, enabling environment

SAMOA - The Secretariat should actively lead all parties, by providing assistance through trainings, workshops and progress updates on the convention.

SI - Make regular communications and information sharing with parties focal point.

PNG - Not at this moment

Q29 As a Contracting Party, has your Country requested from the Secretariat any or all of the following (refer list in questionnaire):

FIJI - Assistance to facilitate compliance with the Convention Area or requirements of an article.

SAMOA- Rapid response assistance in an emergency, Dumping of ferries Oil Spill accidents Salvage operations

SI - Rapid response assistance in an emergency. Rapid response assistance was sought with SPREP during the Solomon Trader Oil Spill incident in Rennell Island. However, the secretariat response has not been forth coming as expected as our request for technical advice and personnel was not readily provided.

Q30 Please identify the areas where your Country could benefit from further assistance to enhance implementation of the Noumea Convention:

SI

- Noumea Convention annual reporting
-
- How to dispose of land waste at sea including radioactive waste or matter
 - How to plan, prepare and respond to oil spills
 - How to address mining and coastal erosion
 - Managing seabed mining and sub-soil activities
 - Develop legislations and / or regulations
 - Effective engagement at MEA COP meetings particularly for biodiversity, hazardous chemicals and marine sourced pollution
 - Storage of toxic and hazardous materials including radioactive wastes and matter
-

SAMOA

- Noumea Convention annual reporting
- How to dispose of land waste at sea including radioactive waste or matter
- How to plan, prepare and respond to oil spills
- How to address mining and coastal erosion
- Effective engagement at MEA COP meetings particularly for biodiversity, hazardous chemicals and marine sourced pollution
- Storage of toxic and hazardous materials including radioactive wastes and matter

FSM - How to dispose of land waste at sea including radioactive waste or matter

FIJI

- Noumea Convention annual reporting
- How to dispose of land waste at sea including radioactive waste or matter
- How to plan, prepare and respond to oil spills
- How to address mining and coastal erosion
- Develop legislations and / or regulations
- Effective engagement at MEA COP meetings particularly for biodiversity, hazardous chemicals and marine sourced pollution

PNG - Develop legislations and / or regulations

Annex D: Powerpoint presentation to the 2021 COP of the Noumea Convention

POWERPOINT PRESENTATION BY THE CONSULTANT TO THE COP OF THE NOUMEA CONVENTION ON 2ND SEPTEMBER, 2021

SLIDE 1

Review of the Noumea Convention

David Sheppard – 2nd September 2021

SLIDE 2

Introduction

- Review requested by State Parties
- Current status: interview and questionnaire
- All State Parties are urged to participate

SLIDE 3

Interim Comments

- Niche
- Awareness
- Linkage
- Resources
- Global Implications
- Other

SLIDE 4

The Way Forward

Two Broad options

- Status Quo
- Energize and Update

A matter for States Parties

Once again, please participate

Annex E: Text of the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region and related Protocols.

Adopted at Noumea on 24 November 1986

Entered into force 22 August 1990

The Parties,

Fully aware of the economic and social value of the natural resources of the environment of the South Pacific Region;

Taking into account the traditions and cultures of the Pacific people as expressed in accepted customs and practices;

Conscious of their responsibility to preserve their natural heritage for the benefit and enjoyment of present and future generations;

Recognizing the special hydrological, geological and ecological characteristics of the region which requires special care and responsible management;

Recognizing further the threat to the marine and coastal environment, its ecological equilibrium, resources and legitimate uses posed by pollution and by the insufficient integration of an environmental dimension into the development process;

Seeking to ensure that resource development shall be in harmony with the maintenance of the unique environmental quality of the region and the evolving principles of sustained resource management;

Realizing fully the need for co-operation amongst themselves and with competent international, regional and sub-regional organizations in order to ensure a co-ordinated and comprehensive development of the natural resources of the region;

Recognizing the desirability for the wider acceptance and national implementation of international agreements already in existence concerning the marine and coastal environment;

Noting, however, that existing international agreements concerning the marine and coastal environment do not cover, in spite of the progress achieved, all aspects and sources of marine pollution and environmental degradation and do not entirely meet the special requirements of the South Pacific Region;

Desirous to adopt the regional convention to strengthen the implementation of the general objective of the Action Plan for Managing the Natural Resources and Environment of the South Pacific Region adopted at Rarotonga, Cook Islands, on 11 March 1982;

Have agreed as follows:

Article 1 GEOGRAPHICAL COVERAGE

1. This Convention shall apply to the South Pacific Region, hereinafter referred to as "the Convention Area" as defined in paragraph (a) of Article 2.

2. Except as may be otherwise provided in any Protocol to this Convention, the Convention Area shall not include internal waters or archipelagic waters of the Parties as defined in accordance with international law.

Article 2 DEFINITIONS

For the purposes of this Convention and its Protocols unless otherwise defined in any such Protocol:

(a) the "Convention Area" shall comprise:

(i) the 200 nautical mile zones established in accordance with international law off:

American Samoa
 Australia (East coast and Islands to eastward including Macquarie Island)
 Cook Islands
 Federated States of Micronesia
 French Polynesia
 Guam
 Kiribati
 Marshall Islands
 Nauru
 New Caledonia and Dependencies
 New Zealand
 Niue
 Northern Mariana Islands
 Palau
 Papua New Guinea
 Pitcairn Islands
 Solomon Islands
 Tokelau
 Tonga
 Tuvalu
 Vanuatu
 Wallis and Futuna
 Western Samoa

(ii) those areas of high seas which are enclosed from all sides by the 200 nautical mile zones referred to in sub-paragraph (i);

(iii) areas of the Pacific Ocean which have been included in the Convention Area pursuant to Article 3;

(b) "dumping" means:

- any deliberate disposal at sea of wastes or other matter from vessels, aircraft, platforms or other man-made structures;

- any deliberate disposal at sea of vessels, aircraft, platforms or other man-made structures at sea;

"dumping" does not include:

- the disposal of wastes or other matter incidental to, or derived from the normal operations of vessels, aircraft, platforms or other man-made structures at sea and their equipment, other than wastes or other matter transported by or to vessels, aircraft, platforms or other man-made structures at sea, operating for the purpose of treatment of such wastes or other matter on such vessels, aircraft, platforms or structures;

- placement of matter for a purpose other than the mere disposal thereof, provided that such placement is not contrary to the aims of this Convention;

(c) "wastes or other matter" means material and substances of any kind, form or description;

(d) the following wastes or other matter shall be considered to be non-radioactive: sewage sludge, dredge spoil, fly ash, agricultural wastes, construction materials, vessels, artificial reef building materials and other such materials provided that they have not been contaminated with radio nuclides of anthropogenic origin (except dispersed global fallout from nuclear weapons testing), nor are potential sources of naturally occurring radio nuclides for commercial purposes, nor have been enriched in natural or artificial radio nuclides;

If there is a question as to whether the material to be dumped should be considered non-radioactive, for the purposes of this Convention, such material shall not be dumped unless the appropriate national authority of the proposed dumper confirms that such dumping would not exceed the individual and collective dose limits of the International Atomic Energy Agency general principles for the exemption of radiation sources and practices from regulatory control. The national authority shall also take into account the relevant recommendations, standards and guidelines developed by the International Atomic Energy Agency.

(e) "vessels" and "aircraft" means waterborne or airborne craft of any type whatsoever. This expression includes air cushioned craft and floating craft, whether self-propelled or not;

(f) "pollution" means the introduction by man, directly or indirectly, of substances or energy into the marine environment (including estuaries) which results or is likely to result in such deleterious effects as harm to living resources and marine life, hazards to human health,

hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of sea water and reduction of amenities;
In applying this definition to the Convention obligations, the Parties shall use their best endeavours to comply with the appropriate standards and recommendations established by competent international organizations, including the International Atomic Energy Agency;

(g) "Organisation" means the South Pacific Commission; [will be amended to be SPREP]

(h) "Director" means the Director of the South Pacific Bureau for Economic Co-operation.[will be amended to be Secretary-General of the South Pacific Forum Secretariat]

Article 3 ADDITION TO THE CONVENTION AREA

Any Party may add areas under its jurisdiction within the Pacific Ocean between the Tropic of Cancer and 60 degrees South latitude and between 130 degrees East longitude and 120 degrees West longitude to the Convention Area. Such addition shall be notified to the Depositary who shall promptly notify the other Parties and the Organisation. Such areas shall be incorporated within the Convention Area ninety days after notification to the Parties by the Depositary provided there has been no objection to the proposal to add new areas by any Party affected by that proposal. If there is any such objection the Parties concerned will consult with a view to resolving the matter.

Article 4 GENERAL PROVISIONS

1. The Parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development and management of the marine and coastal environment of the Convention Area. Such agreements shall be consistent with this Convention and in accordance with international law. Copies of such agreements shall be communicated to the Organisation and through it to all Parties to this Convention .
2. Nothing in this Convention or its Protocols shall be deemed to affect obligations assumed by a Party under agreements previously concluded.
3. Nothing in this Convention and its Protocols shall be construed to prejudice or affect the interpretation and application of any provision or term in the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.
4. This Convention and its Protocols shall be construed in accordance with international law relating to their subject matter.
5. Nothing in this Convention and its Protocols shall prejudice the present or future claims and legal views of any Party concerning the nature and extent of maritime jurisdiction.
6. Nothing in this Convention shall affect the sovereign right of States to exploit, develop and manage their own natural resources pursuant to their own policies, taking into account their duty to protect and preserve the environment. Each Party shall ensure that activities within

its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction.

Article 5 GENERAL OBLIGATIONS

1. The Parties shall endeavour, either individually or jointly, to take all appropriate measures in conformity with international law and in accordance with this Convention and those Protocols in force to which they are party to prevent, reduce and control pollution of the Convention Area, from any source, and to ensure sound environmental management and development of natural resources, using for this purpose the best practicable means at their disposal, and in accordance with their capabilities. In doing so the Parties shall endeavour to harmonize their policies at the regional level.

2. The Parties shall use their best endeavours to ensure that the implementation of this Convention shall not result in an increase in pollution in the marine environment outside the Convention Area.

3. In addition to the Protocol for the Prevention of Pollution of the South Pacific Region by Dumping and the Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region, the Parties shall co-operate in the formulation and adoption of other Protocols prescribing agreed measures, procedures and standards to prevent, reduce and control pollution from all sources or in promoting environmental management in conformity with the objectives of this Convention.

4. The Parties shall, taking into account existing internationally recognized rules, standards, practices and procedures, co-operate with competent global regional and sub-regional organisations to establish and adopt recommended practices, procedures and measures to prevent, reduce and control pollution from all sources and to promote sustained resource management and to ensure the sound development of natural resources in conformity with the objectives of this Convention and its Protocols. and to assist each other in fulfilling their obligations under this Convention and its Protocols.

5. The Parties shall endeavour to establish laws and regulations for the effective discharge of the obligations prescribed in this Convention. Such laws and regulations shall be no less effective than international rules, standards and recommended practices and procedures.

Article 6 POLLUTION FROM VESSELS

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by discharges from vessels, and to ensure the effective application in the Convention Area of the generally accepted international rules and standards established through the competent international organisation or general diplomatic conference relating to the control of pollution from vessels.

Article 7 POLLUTION FROM LAND-BASED SOURCES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by coastal disposal or by discharges emanating from rivers, estuaries, coastal establishments, outfall structures, or any other sources in their territory.

Article 8 POLLUTION FROM SEABED ACTIVITIES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting directly or indirectly from exploration and exploitation of the seabed and its subsoil.

Article 9 AIRBORNE POLLUTION

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from discharges into the atmosphere from activities under their jurisdiction.

Article 10 DISPOSAL OF WASTES

1. The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area caused by dumping from vessels, aircraft, or man-made structures at sea, including the effective application of the relevant internationally recognized rules and procedures relating to the control of dumping of wastes and other matter. The Parties agree to prohibit the dumping of radioactive wastes or other radioactive matter in the Convention Area. Without prejudice to whether or not disposal into the seabed and subsoil of wastes or other matter is "dumping", the Parties agree to prohibit the disposal into the seabed and subsoil of the Convention Area of radioactive wastes or other radioactive matter.

2. This article shall also apply to the continental shelf of a Party where it extends, in accordance with international law, outward beyond the Convention Area .

Article 11 STORAGE OF TOXIC AND HAZARDOUS WASTES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area resulting from the storage of toxic and hazardous wastes. In particular, the Parties shall prohibit the storage of radioactive wastes or other radioactive matter in the Convention Area.

Article 12 TESTING OF NUCLEAR DEVICES

The Parties shall take all appropriate measures to prevent, reduce and control pollution in the Convention Area which might result from the testing of nuclear devices.

Article 13 MINING AND COASTAL EROSION

The Parties shall take all appropriate measures to prevent, reduce and control environmental damage in the Convention Area, in particular coastal erosion caused by coastal engineering, mining activities, sand removal, land reclamation and dredging.

Article 14 SPECIALLY PROTECTED AREAS AND PROTECTION OF WILD FLORA AND FAUNA

The Parties shall, individually or jointly, take all appropriate measures to protect and preserve rare or fragile ecosystems and depleted, threatened or endangered flora and fauna as well as their habitat in the Convention Area. To this end, the Parties shall, as appropriate, establish protected areas, such as parks and reserves, and prohibit or regulate any activity likely to have adverse effects on the species, ecosystems or biological processes that such areas are designed to protect. The establishment of such areas shall not affect the rights of other Parties or third States under international law. In addition, the Parties shall exchange information concerning the administration and management of such areas.

Article 15 CO-OPERATION IN COMBATING POLLUTION IN CASES OF EMERGENCY

1. The Parties shall co-operate in taking all necessary measures to deal with pollution emergencies in the Convention Area, whatever the cause of such emergencies, and to prevent, reduce and control pollution or the threat of pollution resulting therefrom. To this end, the Parties shall develop and promote individual contingency plans and joint contingency plans for responding to incidents involving pollution or the threat thereof in the Convention Area.

2. When a Party becomes aware of a case in which the Convention Area is in imminent danger of being polluted or has been polluted, it shall immediately notify other countries and territories it deems likely to be affected by such pollution, as well as the Organisation. Furthermore it shall inform as soon as feasible, such other countries and territories and the Organisation of any measures it has itself taken to reduce or control pollution or the threat thereof.

Article 16 ENVIRONMENTAL IMPACT ASSESSMENT

1. The Parties agree to develop and maintain, with the assistance of competent global, regional and sub-regional organisations as requested, technical guidelines and legislation giving adequate emphasis to environmental and social factors to facilitate balanced development of their natural resources and planning of their major projects which might affect the marine environment in such a way as to prevent or minimise harmful impacts on the Convention Area.

2. Each Party shall, within its capabilities, assess the potential effects of such projects on the marine environment, so that appropriate measures can be taken to prevent any substantial pollution of, or significant and harmful changes within, the Convention Area.

3. With respect to the assessment referred to in paragraph 2, each Party shall, where appropriate, invite:

(a) public comment according to its national procedures;

(b) other Parties that may be affected to consult with it and submit comments.

The results of these assessments shall be communicated to the Organisation, which shall make them available to interested Parties.

Article 17 SCIENTIFIC AND TECHNICAL CO-OPERATION

1. The Parties shall co-operate, either directly or with the assistance of competent global, regional and sub-regional organisations, in scientific research, environmental monitoring, and the exchange of data and other scientific and technical information related to the purposes of the Convention.

2. In addition, the Parties shall, for the purposes of this Convention, develop and co-ordinate research and monitoring programmes relating to the Convention Area and co-operate, as far as practicable, in the establishment and implementation of regional, sub-regional and international research programmes.

Article 18 TECHNICAL AND OTHER ASSISTANCE

The Parties undertake to co-operate, directly and when appropriate through the competent global, regional and sub-regional organisations, in the provision to other Parties of technical and other assistance in fields relating to pollution and sound environmental management of the Convention Area, taking into account the special needs of the island developing countries and territories.

Article 19 TRANSMISSION OF INFORMATION

The Parties shall transmit to the Organisation information on the measures adopted by them in the implementation of this Convention and of Protocols to which they are Parties, in such form and at such intervals as the Parties may determine.

Article 20 LIABILITY AND COMPENSATION

The Parties shall co-operate in the formulation and adoption of appropriate rules and procedures in conformity with international law in respect of liability and compensation for damage resulting from pollution of the Convention Area.

Article 21 INSTITUTIONAL ARRANGEMENTS

1. The Organisation shall be responsible for carrying out the following secretariat functions:

(a) to prepare and convene the meetings of Parties;

(b) to transmit to the Parties notifications, reports and other information received in accordance with this Convention and its Protocols;

(c) to perform the functions assigned to it by the Protocols to this Convention;

(d) to consider enquiries by, and information from, the Parties and to consult with them on questions relating to this Convention and the Protocols;

(e) to co-ordinate the implementation of cooperative activities agreed upon by the Parties;

(f) to ensure the necessary co-ordination with other competent global, regional and sub-regional bodies;

(g) to enter into such administrative arrangements as may be required for the effective discharge of the secretariat functions;

(h) to perform such other functions as may be assigned to it by the Parties; and

(i) to transmit to the South Pacific Conference and the South Pacific Forum the reports of ordinary and extraordinary meetings of the Parties.

2. Each Party shall designate an appropriate national authority to serve as the channel of communication with the Organisation for the purposes of this Convention.

Article 22 MEETINGS OF THE PARTIES

1. The Parties shall hold ordinary meetings once every two years. Ordinary meetings shall review the implementation of this Convention and its Protocols and, in particular, shall:

(a) assess periodically the state of the environment in the Convention Area;

(b) consider the information submitted by the Parties under Article 19;

(c) adopt, review and amend as required annexes to this Convention and to its Protocols, in accordance with the provisions of Article 25;

(d) make recommendations regarding the adoption of any Protocols or any amendments to this Convention or its Protocols in accordance with the provisions of Articles 23 and 24;

(e) establish working groups as required to consider any matters concerning this Convention and its Protocols;

(f) consider co-operative activities to be undertaken within the framework of this Convention and its Protocols, including their financial and institutional implications and to adopt decisions relating thereto;

(g) consider and undertake any additional action that may be required for the achievement of the purposes of this Convention and its Protocols; and

(h) adopt by consensus financial rules and budget prepared in consultation with the Organisation, to determine, inter alia, the financial participation of the Parties under this Convention and those Protocols to which they are party.

2. The Organisation shall convene the first ordinary meeting of the Parties not later than one year after the date on which the Convention enters into force in accordance with Article 31.

3. Extraordinary meetings shall be convened at the request of any Party or upon the request of the Organisation, provided that such requests are supported by at least two-thirds of the Parties. It shall be the function of an extraordinary meeting of the Parties to consider those items proposed in the request for the holding of the extraordinary meeting and any other items agreed to by all the Parties attending the meeting.

4. The Parties shall adopt by consensus at their first ordinary meeting, rules of procedure for their meetings.

Article 23 ADOPTION OF PROTOCOLS

1. The Parties may, at a conference of plenipotentiaries, adopt Protocols to this Convention pursuant to paragraph 3 of Article 5.

2. If so requested by a majority of the Parties, the Organisation shall convene a conference of Plenipotentiaries for the purpose of adopting Protocols to this Convention.

Article 24 AMENDMENT OF THE CONVENTION AND ITS PROTOCOLS

1. Any Party may propose amendments to this Convention. Amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties.

2. Any Party to this Convention may propose amendments to any Protocol. Such amendments shall be adopted by a conference of plenipotentiaries which shall be convened by the Organisation at the request of two-thirds of the Parties to the Protocol concerned.

3. A proposed amendment to the Convention or any Protocol shall be communicated to the Organisation which shall promptly transmit such proposal for consideration to all the other Parties.

4. A conference of plenipotentiaries to consider a proposed amendment to the Convention or any Protocol shall be convened not less than ninety days after the requirements for the convening of the Conference have been met pursuant to paragraphs 1 or 2, as the case may be.

5. Any amendment to this Convention shall be adopted by a three-fourths majority vote of the Parties to the Convention which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Convention. Amendments to any Protocol shall be adopted by a three-fourths majority vote of the Parties to the Protocol which are represented at the conference of plenipotentiaries and shall be submitted by the Depositary for acceptance by all Parties to the Protocol.

6. Instruments of ratification, acceptance or approval of amendments shall be deposited with the Depositary. Amendments shall enter into force between Parties having accepted such amendments of the instruments on the thirtieth day following the date of receipt by the Depositary of the instruments of at least three-fourths of the Parties to this Convention or to the Protocol concerned, as the case may be. Thereafter the amendments shall enter into force for any other Party on the thirtieth day after the date on which that Party deposits its instrument.

7. After the entry into force of an amendment to this Convention or to a Protocol, any new Party to the Convention or such Protocol shall become a Party to the Convention or Protocol as amended.

Article 25 ANNEXES AND AMENDMENT OF ANNEXES

1. Annexes to this Convention or to any Protocol shall form an integral part of the Convention or such Protocol respectively.

2. Except as may be otherwise provided in any Protocol with respect to its annexes, the following procedures shall apply to the adoption and entry into force of any amendments to annexes to this Convention or to annexes to any Protocol:

(a) any Party may propose amendments to the annexes to this Convention or annexes to any Protocol;

(b) any proposed amendment shall be notified by the Organisation to the Parties not less than sixty days before the convening of a meeting of the Parties unless this requirement is waived by the meeting;

(c) such amendments shall be adopted at a meeting of the Parties by a three-fourths majority vote of the Parties to the instrument in question;

(d) the Depositary shall without delay communicate the amendments so adopted to all Parties;

(e) any Party that is unable to approve an amendment to the annexes to this Convention or to annexes to any Protocol shall so notify in writing to the Depositary within one hundred days from the date of the communication of the amendment by the Depositary. A Party may at any time substitute an acceptance for a previous declaration of objection, and the amendment shall thereupon enter into force for that Party;

(f) the Depositary shall without delay notify all Parties of any notification received pursuant to the preceding sub-paragraph; and (g) on expiry of the period referred to in subparagraph

(e) above, the amendment to the annex shall become effective for all Parties to this Convention or to the Protocol concerned which have not submitted a notification in accordance with the provisions of that sub-paragraph.

3. The adoption and entry into force of a new annex shall be subject to the same procedure as that for the adoption and entry into force of an amendment to an annex as set out in the provisions of paragraph 2, provided that, if any amendment to the Convention or the Protocol concerned is involved, the new annex shall not enter into force until such time as that amendment enters into force.

4. Amendments to the Annex on Arbitration shall be considered to be amendments to this Convention or its Protocols and shall be proposed and adopted in accordance with the procedures set out in Article 24.

Article 26 SETTLEMENT OF DISPUTES

1. In case of a dispute between Parties as to the interpretation or application of this Convention or its Protocols, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their own choice. If the Parties concerned cannot reach agreement, they should seek the good offices of, or jointly request mediation by, a third Party.

2. If the Parties concerned cannot settle their dispute through the means mentioned in paragraph 1, the dispute shall, upon common agreement except as may be otherwise provided in any Protocol to this Convention, be submitted to arbitration under conditions laid down in the Annex on Arbitration to this Convention. However, failure to reach common agreement on submission of the dispute to arbitration shall not absolve the Parties from the responsibility of continuing to seek to resolve it by means referred to in paragraph 1.

3. A Party may at any time declare that it recognizes as compulsory ipso facto and without special agreement, in relation to any other Party accepting the same obligation, the application of the arbitration procedure set out in the Annex on Arbitration. Such declaration shall be notified in writing to the Depositary who shall promptly communicate it to the other Parties.

Article 27 RELATIONSHIP BETWEEN THIS CONVENTION AND ITS PROTOCOLS

1. No State may become a Party to this Convention unless it becomes at the same time a Party to one or more Protocols. No State may become a Party to a Protocol unless it is, or becomes at the same time, a Party to this Convention.

2. Decisions concerning any Protocol pursuant to Articles 22, 24 and 25 of this Convention shall be taken only by the Parties to the Protocol concerned.

Article 28 SIGNATURE

This Convention, 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 shall be open for signature at the South Pacific Commission Headquarters in Noumea, New Caledonia on 25 November 1986 and at the South Pacific Bureau for Economic Co-operation Headquarters, Suva, Fiji from 26 November 1986 to 25

November 1987 by States which were invited to participate in the Plenipotentiary Meeting of the High Level Conference on the Protection of the Natural Resources and Environment of the South Pacific Region held at Noumea, New Caledonia from 24 November 1986 to 25 November 1986.

Article 29 RATIFICATION, ACCEPTANCE OR APPROVAL

This Convention and any Protocol thereto shall be subject to ratification, acceptance or approval by States referred to in Article 28. Instruments of ratification, acceptance or approval shall be deposited with the Director who shall be the Depositary.

Article 30 ACCESSION

1. This Convention and any Protocol hereto shall be open to accession by the States referred to in Article 28 as from the day following the date on which the Convention or Protocol concerned was closed for signature.

2. Any State not referred to in paragraph 1 may accede to the Convention and to any Protocol subject to prior approval by three-fourths of the Parties to the Convention or the Protocol concerned.

3. Instruments of accession shall be deposited with the Depositary.

Article 31 ENTRY INTO FORCE

1. This Convention shall enter into force on the thirtieth day following the date of deposit of at least ten instruments of ratification, acceptance, approval or accession.

2. Any Protocol to this Convention, except as otherwise provided in such Protocol, shall enter into force on the thirtieth day following the date of deposit of at least five instruments of ratification, acceptance or approval of such Protocol, or of accession thereto, provided that no Protocol shall enter into force before the Convention. Should the requirements for entry into force of a Protocol be met prior to those for entry into force of the Convention pursuant to paragraph 1, such Protocol shall enter into force on the same date as the Convention.

3. Thereafter, this Convention and any Protocol shall enter into force with respect to any State referred to in Articles 28 or 30 on the thirtieth day following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 32 DENUNCIATION

1. At any time after two years from the date of entry into force of this Convention with respect to a Party, that Party may denounce the Convention by giving written notification to the Depositary.

2. Except as may be otherwise provided in any Protocol to this Convention, any Party may, at any time after two years from the date of entry into force of such Protocol with respect to that Party, denounce the Protocol by giving written notification to the Depositary.

3. Denunciation shall take effect ninety days after the date on which notification of denunciation is received by the Depositary.

4. Any Party which denounces this Convention shall be considered as also having denounced any Protocol to which it was a Party.

5. Any Party which, upon its denunciation of a Protocol is no longer a Party to any Protocol to this Convention, shall be considered as also having denounced this Convention.

Article 33 RESPONSIBILITIES OF THE DEPOSITARY

1. The Depositary shall inform the Parties, as well as the Organisation SPREP Convention and Related Protocols

(a) of the signature of this Convention and of any Protocol thereto and of the deposit of instruments of ratification, acceptance, approval, or accession in accordance with Articles 29 and 30;

(b) of the date on which the Convention and any Protocol will come into force in accordance with the provisions of Article 31;

(c) of notification of denunciation made in accordance with Article 32;

(d) of notification of any addition to the Convention Area in accordance with Article 3;

(e) of the amendments adopted with respect to the Convention and to any Protocol, their acceptance by the Parties and the date of their entry into force in accordance with the Provisions of Article 24; and

(f) of the adoption of new annexes and of the amendments of any annex in accordance with Article 25.

2. The original of this Convention and of any Protocol thereto shall be deposited with the Depositary who shall send certified copies thereof to the Signatories, the Parties, to the Organisation and to the Secretary-General of the United Nations for registration and publication in accordance with Article 102 of the United Nations Charter.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Convention.

DONE at Noumea, New Caledonia on the twenty-fourth day of November in the year one thousand nine hundred and eighty-six in a single copy in the English and French languages, the two texts being equally authentic.

ANNEX ON ARBITRATION

Article 1

Unless the agreement referred to in Article 26 of the Convention provides otherwise, the arbitration procedure shall be in accordance with the rules set out in this Annex.

Article 2

The claimant Party shall notify the Organisation that the Parties have agreed to submit the dispute to arbitration pursuant to paragraph 2, or that paragraph 3 of Article 26 of the Convention is applicable. The notification shall state the subject matter of the arbitration and include the provisions of the Convention or any Protocol thereto, the interpretation or application of which is the subject of disagreement. The Organisation shall transmit this information to all Parties to the Convention or Protocol concerned.

Article 3

1. The Tribunal shall consist of a single arbitrator if so agreed between the Parties to the dispute within thirty days from the date of receipt of the notification for arbitration.
2. In the case of the death, disability or default of the arbitrator, the Parties to a dispute may agree upon a replacement within thirty days of such death, disability or default.

Article 4

1. Where the Parties to a dispute do not agree upon a Tribunal in accordance with Article 3 of this Annex, the Tribunal shall consist of three members: (i) one arbitrator nominated by each Party to the dispute, (ii) a third arbitrator who shall be nominated by agreement between the two first named and who shall act as its Chairman.
2. If the Chairman of a Tribunal is not nominated within thirty days of nomination of the second arbitrator, the Parties to a dispute shall, upon the request of one Party, submit to the Secretary-General of the Organisation within a further period of thirty days, an agreed list of qualified persons. The Secretary-General shall select the Chairman from such list as soon as possible. He shall not select a Chairman who is, or has been, a national of one Party to the dispute except with the consent of the other Party to the dispute.
3. If one Party to a dispute fails to nominate an arbitrator as provided in subparagraph 1 (i) within sixty days from the date of receipt of the notification for arbitration, the other Party may request the submission to the Secretary-General of the Organisation within a period of thirty days of an agreed list of qualified persons. The Secretary-General shall select the Chairman of the Tribunal from such list as soon as possible. The Chairman shall then request the Party which has not nominated an arbitrator to do so. If this Party does not nominate an arbitrator within fifteen days of such request, the Secretary-General shall, upon request of the Chairman, nominate the arbitrator from the agreed list of qualified persons.

4. In the case of the death, disability or default of an arbitrator, the Party to the dispute who nominated him shall nominate a replacement within thirty days of such death, disability or default. If the Party does not nominate a replacement, the arbitration shall proceed with the remaining arbitrators. In the case of the death, disability or default of the Chairman, a replacement shall be nominated in accordance with paragraphs 1 (ii) and 2 within ninety days of such death, disability or default.

5. A list of arbitrators shall be maintained by the Secretary-General of the Organisation and composed of qualified persons nominated by the Parties. Each Party may designate for inclusion in the list four persons who shall not necessarily be its nationals. If the Parties to the dispute have failed within the specified time limits to submit to the Secretary-General an agreed list of qualified persons as provided for in paragraphs 2, 3 and 4, the Secretary-General shall select from the list maintained by him the arbitrator or arbitrators not yet nominated.

Article 5

The Tribunal may hear and determine counter-claims arising directly out of the subject matter of the dispute.

Article 6

The Tribunal may, at the request of one of the Parties to the dispute, recommend interim measures of protection.

Article 7

Each Party to the dispute shall be responsible for the costs entailed by the preparation of its own case. The remuneration of the members of the Tribunal and of all general expenses incurred by the arbitration shall be borne equally by the Parties to the dispute. The Tribunal shall keep a record of all its expenses and shall furnish a final statement thereof to the Parties.

Article 8

Any Party which has an interest of a legal nature which may be affected by the decision in the case may, after giving written notice to the Parties to the dispute which have originally initiated the procedure, intervene in the SPREP Convention and Related Protocols arbitration procedure with the consent of the Tribunal which should be freely given. Any intervenor shall participate at its own expense. Any such intervenor shall have the right to present evidence, briefs and oral arguments on the matter giving rise to its intervention, in accordance with procedures established pursuant to Article 9 of this Annex but shall have no rights with respect to the composition of the Tribunal.

Article 9

A Tribunal established under the provisions of this Annex shall decide its own rules of procedure.

Article 10

1. Unless a Tribunal consists of a single arbitrator, decisions of the Tribunal as to its procedure, its place of meeting, and any question related to the dispute laid before it, shall be taken by majority vote of its members. However, the absence or abstention of any member of the Tribunal who was nominated by a Party to the dispute shall not constitute an impediment to the Tribunal reaching a decision. In case of equal voting, the vote of the Chairman shall be decisive.

2. The Parties to the dispute shall facilitate the work of the Tribunal and in particular shall, in accordance with their legislation and using all means at their disposal: (i) provide the Tribunal with all necessary documents and information; and (ii) enable the Tribunal to enter their territory to hear witnesses or experts, and to visit the scene of the subject matter of the arbitration.

3. The failure of a Party to the dispute to comply with the provisions of paragraph 2 or to defend its case shall not preclude the Tribunal from reaching a decision and rendering an award.

Article 11

The Tribunal shall render its award within five months from the time it is established unless it finds it necessary to extend that time limit for a period not to exceed five months. The award of the Tribunal shall be accompanied by a statement of reasons for the decision. It shall be final and without appeal and shall be communicated to the Secretary-General of the Organisation who shall inform the Parties. The Parties to the dispute shall immediately comply with the award.

Annex F: Application of the Noumea Convention by State Parties

This section outlines responses from 6 Parties¹¹⁹ which responded to the question regarding the application of articles of the Noumea Convention within domestic laws and policies

Full questionnaire responses regarding whether laws and policies have been developed to address specific articles of the Noumea Convention

Article of the Noumea Convention	SI	Samoa	FSM	Fiji	PNG	NZ
Article 6: Pollution from Vessels?	Yes	Yes, Marine Pollution Prevention Act 2008	Yes, Regulations to control pollution from vessels	Yes	Yes. Marine Pollution Prevention Laws	Yes, Resource Management Act 1991
Article 7: Pollution from land-based sources	Yes	Yes, National Waste Management Act 2010 Integrated Waste Management Strategy 2019	Yes, Regulations to control pollution from land based resources	Yes	Yes, Environment Act 2000	Yes, Resource Management Act 1991 and NZ Coastal Policy
Q10 Article 8: Pollution from sea-bed activities	No	Yes, Marine Pollution Prevention Act 2008	No		No	Yes
Article 10: Are there laws etc in place for: Disposal of wastes?	Yes	Yes, National Waste Management Act 2010	Yes, a number of Environmental Acts, Strategies, and Regulations on proper disposal of waste	Yes	Yes, Covered by Environment Act 2000 and Dumping of Wastes Act 2013	Yes
Article 11: Are there laws etc in place for: Storage of toxic and hazardous wastes	Yes	Yes, National Waste Management Act 2010	Yes	Yes	Yes, Covered by Environment Act 2000 and Ships and Installations Act 2013	Yes
Article 13: Pollution from mining and	Yes		Yes, Environment Act	Yes	Yes, covered by	Yes

¹¹⁹ From countries which had responded to the questionnaire as at 27.09.2021: Fiji; FSM; NZ; PNG; Samoa and Solomon Islands

coastal erosion					Environment Act 2000	
Article 14: Specially Protected Areas and Protection of Wild Fauna and Flora?	Yes	Yes	Yes	Yes	Yes, Wildlife and Fauna Act.	Yes, Conservation Act 1987
Q 15 Article 15: Co-operation in combating pollution in emergency Situations?	Yes	Yes, Cooperation mechanism for oil spill emergencies is set out in Samoa's NATPLAN. This is also addressed in the Draft Disaster Waste Management Plan	Yes	Yes	Yes. Also have an MOU with AMSA	Yes
Q16 Article 16: Environmental Impact Assessment?	Yes	Yes, There is EIA component under the PUMA Act 2004	Yes, EIA Regulations and Guidelines	Yes	Yes, covered by Environment Act 2000 .	Yes
Article 17: Scientific and Technical Cooperation?	No	Yes	Yes	Yes	No	Yes
18 Article 18: Technical Cooperation and Assistance?	No		Yes	Yes	Yes, MOU with AMSA in place	Yes

Summary of questionnaire responses regarding application of Noumea Convention within National Legislation.

The full responses from Parties are outlined above and are summarised below:

- *Article 6: Pollution from vessels:* 100% of State Parties which responded had developed laws and/or regulations to address this article. As an example, NZ notes this is covered by the NZ Resource Management Act 1991¹²⁰;
- *Article 7: Pollution from land-based sources:* 100% of State Parties which responded had developed laws and/or regulations to address this article. As an example, PNG notes this is covered by the PNG Environment Act 2000¹²¹;
- *Article 8: Pollution from sea-bed activities:* 20% of State Parties which responded had developed laws and/or regulations to address this article. As an example, Samoa noted this is covered under the Samoa Marine Pollution Prevention Act 2008¹²²;
- *Article 10: Disposal of wastes:* 100% of State Parties which responded had developed laws and/or regulations to address this article. As an example, PNG noted this is covered under the PNG Dumping of Wastes Act 2013¹²³;
- *Article 11: Storage of toxic and hazardous wastes:* 80% of State Parties which responded had developed laws and/or regulations to address this article. As an example, PNG noted this is covered under the PNG Ships and Installations Act 2013¹²⁴;
- *Article 13: Pollution from mining and coastal erosion.* 100% of State Parties which responded had developed laws and/or regulations to address this article. As an example, FSM noted this is covered under various laws including the FSM Environment Protection Act. the FSM Environment Act;
- *Article 14: Specially Protected Areas and Protection of Wild Fauna and Flora:* 100% of State Parties which responded had developed laws and/or regulations to address this article. As an example, NZ noted this is covered under the NZ Conservation Act 1987¹²⁵;
- *Article 15: Co-operation in combating pollution in emergency situations:* 100% of State Parties which responded had developed laws and/or regulations to address this article. As an example, Samoa noted this is covered under the Samoa National Contingency Plan on Oil Spill (NATPLAN)¹²⁶ This is a strategy developed under the PACPLAN and is the basis of the cooperation mechanism on oil spills wherein the 3 tiers of oil spills are described and the type of action required. The National Waste Management Strategy 2019-2023¹²⁷ is also relevant although it does not have a cooperation mechanism for combating pollution in emergency situations;
- *Article 16: Environmental Impact Assessment:* 100% of State Parties which responded had developed laws and/or regulations to address this article;
- *Article 17: Scientific and Technical Cooperation:* 60% of State Parties which responded had developed laws and/or regulations to address this article; and

¹²⁰ <https://www.legislation.govt.nz/act/public/1991/0069/latest/DLM230265.html>

¹²¹ http://www.paclii.org/pg/legis/consol_act/ea2000159/

¹²² <https://www.mnre.gov.ws/mnre-redesign/wp-content/uploads/2017/08/Marine-Pollution-Prevention-Act-2008.pdf>

¹²³ <http://nmsa.gov.pg/wp-content/uploads/2017/02/Marine-Pollution-Sea-Dumping-Act-2013.pdf>

¹²⁴ <http://www.parliament.gov.pg/index.php/bills-and-legislation/view/marine-pollution-ships-and-installations-act-2013>

¹²⁵ <https://www.legislation.govt.nz/act/public/1987/0065/latest/DLM103610.html>

¹²⁶ <https://library.sprep.org/content/final-draft-samoa-national-marine-spill-contingency-plan-nat-plan>

¹²⁷ <https://www.sprep.org/attachments/VirLib/Samoa/national-waste-management-strategy-2019-2023.pdf>

- *Article 18: Technical Cooperation and Assistance.* 40% of State Parties which responded had developed laws and/or regulations to address this article.

Annex G: Awareness of State Parties of the Protocols of the Noumea Convention.

This section outlines responses from Parties¹²⁸ to questions to ascertain the level of awareness of protocols to the Noumea Convention.

Questionnaire responses regarding whether Parties are aware of various aspects of Protocols to the Noumea Convention

Article of the Noumea Convention	Solomon Islands	Samoa	FSM	Fiji	PNG	NZ
<i>Is the Contracting Party aware that the Noumea Convention has 2 Protocols¹²⁹?</i>	No	Yes		No	Yes	Yes
<i>Is the Contracting Party aware that the Noumea Convention has 2 new Protocols and an amended Protocol that has not entered into force¹³⁰?</i>	No	Yes	Yes	No	No	Yes

¹²⁸ From countries which had responded to the questionnaire as at 27.09.2021: Fiji; FSM; PNG; Samoa and Solomon Islands

¹²⁹ Question 2 of the questionnaire

¹³⁰ Question 3 of the questionnaire

Annex H: SPREP Secretariat work in relation to the Noumea Convention 2019-2021

SECRETARIAT WORK IN RELATION TO NOUMEA CONVENTION AND PROTOCOLS

July 2019 – June 2021

Report to 2021 COP of the Noumea Convention

This is an extract of the report on Secretariat activities under the Noumea Convention and protocols, which was submitted to the 2021 COP meeting on 2nd September. The full report is outlined at https://www.sprep.org/sites/default/files/30-SPREP-Meeting/Noumea%20Convention/Eng/WP_4.1-Report_by_the_Secretariat.pdf

Article 6: Pollution from vessels

(a) In the 2019 and 2020 biennium the Pacific completed 2 regional workshops to address ship sourced pollution made possible with financial assistance from the International Maritime Organisation (IMO). The Regional Ballast Water and GloFouling workshop was held in June 2019 in Suva Fiji attended by 35 participants from 15 Pacific island countries and territories (PICTs).

(b) The Secretariat completed an assessment of Vanuatu MARPOL Annex V compliance and carried out a national Oil spill preparedness and response training.

(c) The Secretariat established an oil spill response agreement with Oil Spill Response Limited (OSRL) for all PICTs with funding support from NZ MFAT and technical sponsorship from Maritime NZ. This will allow for better protection of the marine environment from impacts of oil spills

Article 7: Pollution from land-based sources

(a) The Secretariat provided guidance to the development of the Standard Operating Procedures for the operation of material recovery facility in Nauru.

Article 8: Pollution from sea-bed activities

(a) SPREP continues to be an active member of the CROP technical team that provides technical advice on the Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ). With the leadership of the Pacific Island Forum Secretariat (PIFS), SPREP provides technical advice to CROP and Member countries on the application of the EIA process on sea-bed activities. As the recognized technical lead for EIA and SEA capacity building in the region, SPREP has been supporting PSIDS in the technical review of the draft International Legally Binding Instrument for the protection of marine Biodiversity Beyond National Jurisdiction (BBNJ).

Article 10: Disposal of wastes

(a) During the reporting period, the Secretariat did not receive any information on the disposal of waste at sea.

Article 11: Storage of toxic and hazardous wastes

Further activities implemented under this Article are provided in Table 1 of this Report.

(a) Legacy wastes safeguarded (12 tonnes of DDT and 600,000 Litres of PCB contaminated transformer oils) in Papua New Guinea.

(b) Identified and ensured safeguarding of asbestos stockpiles in Nauru for remediation work in 2021-2022.

(c) Ten sites were identified for remediation in Papua New Guinea and Nauru to be addressed through the GEF Islands Project and PacWASTE Plus Programme.

(d) Fiji has updated their National Implementation Plans (NIPs) for the Stockholm Convention.

Article 13: Mining and coastal erosion

(a) The Strategic Environmental Assessment (SEA) Guidelines for Pacific Island Countries and Territories (PICTs)¹ was endorsed by the 2nd SPREP Executive Board meeting in 2020. The SEA guidelines are a first for the region and among the first of these types of guidelines endorsed for use in the world, they also complement and build on the success of the Regional EIA Guidelines. Strategic Environmental Assessment – Guidelines for Pacific Island Countries and Territories have been prepared to provide guidance on the application of SEA as a tool to support environmental planning, policy and informed decision making. It provides background on the use and benefits of SEA as well as providing tips and guiding steps on the process, including case studies, toolkits, and checklists for conducting an SEA²

(b) The Regional EIA Guidelines “Strengthening Environmental Impact Assessment; Guidelines for Pacific Island Countries and Territories” continue to be highly valued, formally recognised and referenced by the World Bank and Asia Development Bank as good practice in their new shared approach and Environmental and Social Management Framework, released in 2020. This is the first time the World Bank has referenced an outside standard or process in their safeguards and framework system. The Pacific Learning Partnership (PLP-ESS) which consists of SPREP, USP, ADB and the World Bank

¹ The SEA Guidelines commenced drafting in 2018 and circulated to member countries in 2019. Due to a lack of detailed comments on the draft SEA Guidelines, a face-to-face workshop on the principles of SEA and review of the draft was held with representatives from 11 PICTs (American Samoa, Cook Islands, Federated States of Micronesia, Fiji, Kiribati,

New Caledonia, Solomon Islands, Tokelau, Tonga, Tuvalu and Vanuatu) in November 2019. Key inputs on the draft SEA Guidelines were also provided by EIANZ, IAIA, NZAIA.

2 SEA is a means of systematically evaluating the environmental and related socio-economic impacts and cumulative impacts of Policies, Plans and Programmes (PPP) to ensure that opportunities can be maximized, risks can be mitigated and alternatives can be considered during the early stages of PPP. State Parties continue to promote and utilise the SPREP Regional EIA Guidelines as a resource for regional capacity building on EIA for professional development of national environment regulatory staff, project staff, as well as a resource for graduate courses delivered by USP.

(c) The Secretariat continues to work with Member countries to develop State of the Environment (SoE) reports and National Environment Management Strategies (NEMS) to strengthen reporting, monitoring, and planning processes on infrastructural developments such as mining and coastal development. During the reporting period, Papua New Guinea and Solomon Islands had completed their respective NEMS.

(d) The Secretariat through its Environmental Monitoring and Governance (EMG) Programme provided training for the Solomon Islands Mining Division of the Ministry of Mines, Energy and Rural Electrification (MMERE) and the Environment and Conservation Division (ECD) of the Ministry of Environment, Climate Change and Disaster Management (MECCDM) on how to conduct an EIA training for the mining sector.

(e) As a key partner to the 2020 Pacific Ocean Climate Conference, the Secretariat delivered a presentation on the importance of the Environmental Impact Assessment (EIA) creating awareness on EIA as an important tool for sustainable development.

Article 14: Specially Protected Areas and Protection of Wild Flora and Fauna

(1) Ocean and island ecosystems

(a) The Secretariat presently supports the Parties in negotiations to, and the agreement in the Convention on Biological Diversity for the development of the Post 2020 Global Biodiversity Framework. Following a regional workshop hosted by SPREP, the Pacific region has advocated for a strong ambition on protected areas and supported a 30% target for marine protected areas in the new framework.

(b) Through the Bycatch and Integrated Ecosystems Management (BIEM) Initiative and in partnership with IUCN, the Secretariat supported the work by members to conduct Marine Spatial Planning and development of National Ocean Strategies and Plans for their Exclusive Economic Zones.

(c) The Secretariat continues to support Pacific countries in negotiations on the UN Law of the Sea legally binding instrument for the conservation and sustainable use of Biodiversity Beyond National Jurisdiction in Part II which relates to Area Based Management Tools including marine protected areas.

(2) Biodiversity and marine protected areas

(d) SPREP's partnership with the Pacific Islands Roundtable for Nature Conservation and Protected Areas (PIRT) and New Caledonia, hosted a successful 10th Pacific Islands Conference on Nature Conservation and Protected Areas in November 2020. This was originally planned to be face-to-face event in New Caledonia earlier in the year, however the global COVID-19 pandemic led to the event being postponed and re-scheduled as a virtual event. The event has 21 Action Tracks covering priority topics for the region including protected areas, threatened species, invasive species, marine pollution, landbased pollution, marine threats and much more. A High-Level segment produced the Vermore Declaration addressing the 21 Priority Actions for the region. These Actions are carried forward in the new Framework for Nature Conservation and Protected Areas 2021-2025.

(e) A State of the Environment and Conservation in the Pacific Islands: 2020 Regional Report (SOEC) was developed during 2019-2020. This Report examines the status and trends of 31 regional environment indicators in 22 Pacific Island Countries and Territories which also updates the 2013 State of Conservation on Oceania assessment, focusing on the period 2015-2020. An interactive webpage was launched in April 2021 to share the digital story and key messages in the Regional Report (<https://soec.sprep.org/>). The information contained in this Regional Report is targeted to national and regional priorities. Each indicator is mapped to facilitate reporting to priority international agreements and the global Sustainable Development Goals (SDGs), used to address today's challenges, such as climate change, pollution, and resource extraction.

(f) The Secretariat provided support and assistance to Cook Islands and Samoa in their virtual participation to the pre-COP meetings of the CBD Convention, through covering internet costs for the meeting participants. This support was funded under the ACP MEA Phase III Programme.

(g) EU-ACP Biodiversity and Protected Areas Management (BIOPAMA) Programme Phase II:

(i) Completed 3 virtual trainings for Marshall Islands, Samoa and Solomon Islands that engaged over 60 government technical officers and NGO representatives. Participants were equipped with basic practical knowledge of navigating the Pacific Islands Protected Area Portal (PIPAP) to find country data, information resources and protected area management tools to assist them with their daily work. Furthermore, the training equipped them with practical skills in field data capture, use of GPS units, data input and the production of basic site maps with primary descriptive features utilizing the freely available QGIS software.

(ii) Completed data reviews and updates on Protected Areas for the World Database on Protected Areas (WDPA) for the Cook Islands during 2019-2020. These data updates at the global level will assist Cook Islands with more accurate reporting of protected area coverage in relation to the Aichi Biodiversity Targets, SDGs and the SAMOA

Pathway.

(iii) SPREP with IUCN Oceania Regional Office and the UN Environment World Conservation Monitoring Centre (UNEP-WCMC) co-organised and delivered a 3-day regional virtual training from 27 to 29 May 2021 on the Global Database on Protected Areas (GD-PAME) managed by the UNEP-WCMC. The training facilitated understanding on the importance of protected area management, effectiveness of information at the international, regional, or national and site-specific scale. The training familiarized participants with the background, role, and purpose of the GD-PAME. Furthermore, the training captured important feedback from participants that will contribute to establishing a practical workflow for updating protected area management and effectiveness of data across all Pacific ACP countries.

(3) Threatened and migratory species

(h) The Turtle Research and Monitoring Database System (TREDS) was updated and the Secretariat is rolling out training on its use across the region. Tags and applicators continue to be distributed and a monitoring manual as well as a training programme is planned.

(i) Through the ACP MEA Phase III Programme, the Secretariat engaged in a partnership with Birdlife International to develop a new Regional Marine Species Action Plan which will become part of the new series of 5 action plans.

(j) The “Strandings of Oceania” database has been developed by the Secretariat to support efforts to manage and monitor strandings of marine mammals across the region.

(k) The Secretariat supports Parties’ engagement in the CITES and CMS. SPREP, is a member of 2 of CITES working groups, including the Working Group on Electronic Systems and Information Technologies. As a member thereof, SPREP participated in a workshop on this issue on 14 December 2020.

(l) An updated review of Cetaceans and key threats across WCPO is being carried out by a consultant.

(m) Through partnerships with the Pacific-European Union Marine Partnership (PEUMP) Programme and the BIEM Initiative, the Secretariat undertook key activities related to threatened and migratory species as follows:

- Assessing the risk of marine turtle extinction across the region
- Consultants are engaged and working with the Governments of Papua New Guinea and Solomon Islands to develop National Plans of Action for sharks, seabirds and marine turtles and crocodile management plans for Solomon Islands as well as the review of legislation to crocodile management and trade in PNG
- WWF Pacific is leading a project to improve uptake of bycatch mitigation measures for Species of Special Interest in the Pacific longline fleet through a port-based extension programme. A training is included for observers and crew. Marine turtle bycatch toolkits

are being distributed to Fijian longline vessels and seabird bycatch mitigation using tori lines is also being implemented

(n) Further information is available on this link:
<https://library.sprep.org/sites/default/files/2021-03/SOEC-Indicator-21.pdf>.

(4) Invasive species

(o) During the reporting period, 3 multi-country projects began implementation:

(i) EDF11 OCT PROTEGE invasive species component in support of the French territories, French Polynesia, New Caledonia and Wallis and Futuna, and the UK Overseas Territory Pitcairn Island (EUR 5,240,000);

(ii) GEF 6 funded project “Strengthening national and regional capacities to reduce the impact of Invasive Alien Species on globally significant biodiversity in the Pacific, to support Marshall Islands, Niue, Tonga and Tuvalu plus a significant regionally focused component (USD\$6,252,489); and

(iii) The New Zealand Ministry of Foreign Affairs and Trade funded “Managing invasive species for Climate Change Adaptation in the Pacific” project with implementing partners Manaaki Whenua Landcare Research and New Zealand Department of Conservation and SPREP (NZD 10million). The SPREP component is worth NZD 2,448,000.

(p) The Pacific Regional Invasive Species Management Support Service (PRISMSS) was established to facilitate the scaling up of invasive species operational management across the Pacific which was identified as a major gap through regional monitoring of the Guidelines for Invasive Species Management in the Pacific. PRISMSS partners are BirdLife, Island Conservation, Manaaki Whenua Landcare Research, New Zealand Department of Conservation, SPC, SPREP and Wellington UniVentures. Operationally, PRISMSS is currently financially supported by the GEF, NZ MFAT and SPREP.

(q) Completed 1 regional marine invasives GloFouling and Ballast Water Management workshop and 2 national marine invasives GloFouling workshops in partnership with IMO for Fiji. This allowed for better protection of the marine environment from impacts of invasive marine species through the implementation of the Guidelines to address invasive species from hull biofouling and Ballast Water Management Convention.

(r) Regional initiatives:

(i) A 5-week PRISMSS Invasive Species Programme Management Course held in late 2019 in Apia, Samoa, followed by several online workshops, guides and training materials focused on invasive species management.

(ii) Virtual Pacific Battler Lounge was launched to provide Pacific practitioners an

opportunity to learn and share.

(iii) Work began on reviewing the Guidelines for Invasive Species Management in the Pacific, a marine biosecurity toolkit, mainstreaming invasive species management across the Pacific into climate change and other sectors, sustainable financing of national invasive species programmes, and the standardization of National Invasive Species Strategy and Action Plans (NISSAPs), Early Detection Rapid Response Plans and Biosecurity legislation reviews.

(s) Further information is available on this link:
<https://library.sprep.org/sites/default/files/2021-03/SOEC-Indicator-19-20.pdf>

Article 15: Co-operation in combating Pollution in cases of emergency

Further information on activities undertaken to meet Article 15 are listed in Table 1 of this Report.

Article 16: Environmental Impact Assessment

(a) In addition to the SEA and EIA Guidelines, the Secretariat continues to promote best practices in EIA through the delivery of EIA in-country awareness training workshops and technical advisory support to member countries' environmental regulators for EIA. This work is now being further supported through the PLP-ESS and the ACP MEA Phase III Programme.

(b) In November 2019, the World Bank through the PLP-ESS, funded the recruitment of an ESS Consultant to be based in the EMG Programme at the SPREP Headquarters, to assist in identifying EIA-ESS capacity needs for SPREP Member countries and Parties, and to support the delivery of capacity building initiatives of SPREP through the EMG EIA Planning Team. The ESS Consultant developed a training needs assessment for Pacific member countries and assisted in several EIA-ESS training initiatives. Travel restrictions resulted in the delivery of joint SPREP and World Bank series of virtual training modules on Regional Training on EIA, Stakeholder Engagement and Social Impact Assessment in the Pacific. The virtual training was held from 11 November to 3 December 2020 with over 200 participants from 9 PICTs, including Parties to the Noumea Convention as follows: Federated States of Micronesia, Fiji, Marshall Islands, Papua New Guinea, Samoa, and Solomon Islands including Australia. There was positive feedback received throughout the 8 training modules affirming the usefulness and effectiveness of the training.

(c) As part of SPREP's webinar "Transitioning to a Post-Pandemic Pacific" in 2020, SPREP's EMG Programme delivered a webinar focused on the use of EIA and the importance of integrating environmental considerations in sustainable tourism planning. Titled "Environmental Consideration in Sustainable Tourism in the Pacific Region", the webinar had speakers from the Pacific Tourism Organisation (SPTO) and the Tourism sector in the Pacific to share their perspectives and expertise on why it is important to ensure that

tourism operates in an environmentally friendly and sustainable manner. The webinar was joined by over 40 separate logins, many of which were shared as end point mini conference sittings with participants from Australia, Federated States of Micronesia, Fiji, Samoa, Solomon Islands and USA. The webinar resulted in follow up requests for a tourism-sector specific EIA training with the Samoa Tourism Authority (STA) in Samoa, and a planned remote training for SPTO staff in Fiji for 2021.

(d) The Secretariat's technical support for reviews of Member countries' proposals and EIA/SEA processes included the provision of, and assistance with, the direct review and inputs into several national legislations such as in:

- Nauru: a draft Environment Bill to include and refine its EIA process now endorsed as Nauru's first Environmental Management and Climate Change Act.
- Cook Islands: the review of the draft, revised Environment (Seabed Minerals Activities) Regulations 2020 to highlight gaps and conflicts between seabed mining permit process and EIA process.
- Tokelau: a draft of the first EIA Policy currently with the General Fono for approval.

The EIA Policy will inform the development of the draft EIA regulations pending approval of the EIA Policy. This work commenced in 2019 during the last face-to-face EIA training conducted prior to the pandemic and then continued remotely throughout 2020 and 2021.

(e) In addition to EIA trainings, the Secretariat continues to provide technical backstopping for member countries in key steps of the EIA process, particularly the development of terms of reference for EIA reports and the review of EIA reports. The EIA training in combination with direct technical backstopping, has helped to improve countries' confidence with EIA administration and oversight. There are, nonetheless, ongoing challenges with EIA implementation in the Pacific including insufficient quality control exercised over EIA reports, weak compliance, monitoring and enforcement, and low levels of public engagement and participation in EIA. The Secretariat is working with Member countries and partners to identify ways of addressing these challenges such as:

- Encouraging EIA administrators to establish networks with other government agencies and regional partners to help strengthen their compliance, monitoring and enforcement efforts; and
- Emphasising opportunities for public involvement in key steps of the EIA process such as screening, scoping and EIA report review.

Article 17: Scientific and technical co-operation

(a) The Secretariat has undertaken numerous activities to enhance environmental monitoring and the exchange of data and other scientific and technical information. Since 2018, the Secretariat established the Pacific Environment data portal network, which hosts 14 country data portals as well as a regional node. This network is used for sharing and storing of data but more importantly, using data to foster national objectivity including the

Noumea Convention. In 2020, there were over 9000 datasets available to all members to access and utilise. Further information is available on <https://pacific-data.sprep.org/>

(b) The Secretariat produced the State of the Environment and Conservation 2020 regional report which provides indicator status for 31 indicators including protected areas, pollution, migratory species and more. This contributes to the regional monitoring and exchange of technical information in the region. Further information is available on <https://soec.sprep.org/>.

(c) The Secretariat, as a key partner in the 2020 Pacific Ocean Pacific Climate Conference, created awareness through the delivery of a presentation on the importance of the Environmental Impact Assessment.

(d) In the 10th Pacific Islands Conference on Nature Conservation and Protected Areas Nature Conservation Action for a Resilient Pacific, the Secretariat presented on the importance of the Coastal Tourism EIA Guidelines on the topic of “Sustainable and regenerative tourism in the Pacific - tools for making progress.”³ At the same Conference, the Secretariat chaired a panel session on threats to migratory species.

(e) In February 2020, the Secretariat participated in the Pacific negotiators meeting with representatives from the PIFS countries on matters related to the preparation for the then upcoming IGC4 to finalise the BBNJ. The IGC4 was subsequently postponed due to the pandemic and all support work has continued to be undertaken remotely. This has included drafting text on behalf of PSIDS for an international legally binding instrument on biodiversity beyond national jurisdiction process of undertaking a Strategic Environmental Assessment for activities. This proposed process was then refined in liaison with Australia and New Zealand for use in PIFS negotiations with other potential BBNJ Parties. As IGC4 and the finalisation of BBNJ is now tentatively planned for August 2021, the Secretariat continues to support the PSIDS and PIFS in preparation for these negotiations.

(f) Engaged with international conventions specifically the International Whaling Commission (IWC) including hosting a session for Pacific IWC Commissioner in April 2021.
Article 18: Technical and other assistance

(a) The New Zealand Department of Conservation is supporting SPREP through a secondee working with the Threatened and Migratory Species (TAMS) including the review of the Regional Marine Species Programme 2013-2017 and assist with updating new draft plans.

(b) The Threatened and Migratory Species Adviser (TAMSA) collaborated with the Waste Management and Pollution Control Programme (SPREP) to support Members in their engagement on marine plastics through the 4th meeting of the Ad Hoc Open-Ended Expert Group on Marine Litter and Microplastics in November 2020.

(c) A scholarship programme through the Lui Bell Scholarship is being developed to support a student undertaking research in the Kikori Delta Important Marine Mammal Area where bycatch of hump-back and snub nose dolphins is occurring. BIEM is also supporting research on the bycatch of sawfish in the same fishery.

(d) Capacity building workshops for Parties to CITES on the development of Non-Detriment Findings for species including sea cucumbers, giant clams, and sharks.

(e) The Secretariat provided technical assistance to all Pacific Island Countries on national reporting mechanisms.

(f) The Pacific Islands Database of Capacity Development Activities (PIDOC) system was revised to better capture human capacity development activities across the region

Annex I – Relationship between the Noumea Convention and the SPREP Strategic Plan 2017-2026

There are clearly different views on the relevance of the Noumea Convention, from those who advocate change to the Convention text to those that do not wish to see amendment. To further assess the relevance of the Noumea Convention it is instructive to assess the relationship between the SPREP Strategic Plan 2017-2026, the key current programmatic document for SPREP, and the Noumea Convention. This relationship is outlined in Annex J and the key elements are outlined below.

The Noumea Convention

The Noumea Convention has the following general provision:

Article 4 (1) Inter alia “The parties shall endeavour to conclude bilateral or multilateral agreements, including regional or sub-regional agreements, for the protection, development and management of the marine and coastal environment of the Convention Area¹³¹”

The main Convention articles which relate to implementation of activities are:

- Article 6: Pollution from vessels
- Article 7: Pollution from land-based sources
- Article 8: Pollution from sea-bed activities
- Article 9: Airborne pollution
- Article 10: Disposal of wastes
- Article 11: Storage of toxic and hazardous wastes
- Article 12: Testing of Nuclear Devices
- Article 13: Pollution from mining and coastal erosion
- Article 14: Specially Protected Areas and Protection of Wild Fauna and Flora
- Article 15: Co-operation in combating pollution in emergency situations
- Article 16: Environmental Impact Assessment
- Article 17: Scientific and Technical Cooperation
- Article 18: Technical Cooperation and Assistance

These can be broadly grouped under the categories of:

- Pollution (Articles 6,7,8,9)
- Disposal and Storage of Waste (Articles 10, 11)
- Management and mitigation of environmental impacts (Articles 13, 16)
- Protection of habitats and species (Articles 14)
- Cooperation between Parties and partners (Article 15, 17, 18)
- Other (Article 12)

¹³¹ My emphasis added

The SPREP Strategic Plan 2017-2026

The Strategic Plan 2017-2026¹³² consists of four (4) Regional Goals and five (5) Organisational Goals. These regional and organisational goals set targets for the overall protection of the Pacific environment from the impacts of climate change. SPREP Members and the Secretariat report on progress and actions against the key targets in the Strategic Plan at each SPREP Meeting.

The vision of the SPREP Strategic Plan is: *“A resilient Pacific environment sustaining our livelihoods and natural heritage in harmony with our cultures.”*

The SPREP Strategic Plan regional goals and associated objectives¹³³ and their links to the Noumea Convention are outlined below:

Regional Goal 1: Pacific people benefit from strengthened resilience to climate change
Objectives under Regional Goal 1:

- 1.1 Strengthen the capacity of Pacific Island Members to lead, prioritise, and manage national climate change adaptation, mitigation (NDCs), and disaster risk reduction.
- 1.2 Minimise multiple pressures on vulnerable Pacific Island ecosystems by implementing ecosystem-based approaches to climate change adaptation
- 1.3 Enhance National Meteorological and Hydrological Services capacity in weather forecasting, early warning systems, long-term projections, and improved climate
- 1.4 Support Pacific Island Members to access and manage climate change finances and their national accreditation processes.
- 1.5 Support Pacific Island Members to develop policy responses to issues of loss and damage, and climate change and disaster induced population mobility.

Regional goal 2: Pacific people benefit from healthy and resilient island and ocean ecosystems.

Objectives under Regional Goal 2:

- 2.1 Effectively manage and protect marine and coastal ecosystems; mitigation of the impacts of fisheries activities to ensure healthy populations of threatened species, and reduce the release of marine pollutants (*this relates to Articles 6,7,8,9 of the Noumea Convention*)
- 2.2 Support the conservation and sustainable use of marine, coastal, and terrestrial ecosystems and biodiversity. (*This relates to Article 14 of the Noumea Convention*)
- 2.3 Prevent the extinction of threatened species and support measures to sustain their conservation status. (*This relates to Articles 14 of the Noumea Convention*)
- 2.4 Significantly reduce the socioeconomic and ecological impact of invasive species on land and water ecosystems and control or eradicate priority species. (*This relates to Articles 14 of the Noumea Convention*)

¹³² <https://www.sprep.org/publications/sprep-strategic-plan-2017-2026>

¹³³ Abbreviated, full text in the SPREP Strategic Plan at <https://www.sprep.org/publications/sprep-strategic-plan-2017-2026>

Regional Goal 3: Pacific people benefit from improved waste management and pollution control

Goal 3 and all its related objectives all *directly relate to Articles 6,7,8,9,10,11,12, and 13 of the Noumea Convention*)

Objectives under Regional Goal 3:

3.1 Minimise the adverse impacts of chemicals and all wastes on human health and the environment (*this relates to Articles 6 to 13 of the Noumea Convention*)

3.2 Strengthen national, regional, and international mechanisms for waste management including for chemicals, hazardous wastes, ship and aircraft generated waste, marine plastic litter, and other marine debris. (*This relates to Articles 6 to 13 of the Noumea Convention*)

3.3 Recover resources from waste and pollutants through composting (nutrient recovery), recycling (material recovery), energy recovery, and other measures in order to minimise waste and contribute to economic and social development. (*This relates to Articles 6 to 13 of the Noumea Convention*)

3.4 Improve waste and pollution monitoring of receiving environments to enable informed decision-making on appropriate measures to protect human health and the environment and to reduce associated environmental damage. (*This relates to Articles 6 to 13 of the Noumea Convention*)

Regional goal 4: Pacific people and their environment benefit from commitment to and best practice of environmental governance

Objectives under Regional Goal 4:

4.1 Strengthen national sustainable development planning and implementation systems including through use of Environmental Impact Assessments, Strategic Environmental Assessments, and spatial planning. (*This relates to Articles 16 of the Noumea Convention*)

4.2 Improve national capacity for good environmental governance supported by technical assistance for the development of policy and legislation, and in support of the implementation of Member international and regional commitments.

4.3 Strengthen environmental data collection, monitoring, and analysis and reporting on results, nationally and regionally. (*This relates to Articles 17 of the Noumea Convention*)

4.4 Strengthen access to funding mechanisms and using funds effectively and efficiently to deliver required interventions.

4.5 Strengthen synergies between science, policy, and traditional and local knowledge to guide decision making. Article 17: Scientific and Technical Cooperation
Article 18: Technical Cooperation and Assistance (*this relates to Articles 17 and 18 of the Noumea Convention*).

The relationship between the articles of the Noumea Convention and the SPREP Strategic Plan is outlined below:

Article of the NC	Relate to the following Regional Objectives of the SPREP Strategic Plan
<i>Article 6: Pollution from vessels</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to Objective 3.2
<i>Article 7: Pollution from land-based sources</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to Objective 3.1 to 3.4
<i>Article 8: Pollution from sea-bed activities:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to Objective 3.2 and 3.4
<i>Article 9: Airborne Pollution</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to Objective 3.1, 3.2 and 3.4
<i>Article 10: Disposal of wastes:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to Objective 3.3
<i>Article 11: Storage of toxic and hazardous wastes:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to Objective 3.1 and 3.2
<i>Article 12: Testing of Nuclear Devices</i>	This generally relates to SP Goal 3
<i>Article 13: Pollution from mining and coastal erosion.</i>	This generally relates to SP Goal 2 (resilient island and ocean ecosystems) and SP Goal 4 (environmental governance)
<i>Article 14: Specially Protected Areas and Protection of Wild Fauna and Flora</i>	This generally relates to SP Goal 2 (resilient island and ocean ecosystems) and particularly to Objective 2.1 and 2.2
<i>Article 15: Co-operation in combating pollution in emergency situations:</i>	This generally relates to SP Goal 3 (waste management and pollution control) and particularly to Objective 3.1 and 3.2
<i>Article 16: Environmental Impact Assessment</i>	This generally relates to SP Goal 4 (environmental governance)
<i>Article 17: Scientific and Technical Cooperation:</i>	This generally relates to SP Goal 4 (environmental governance)
<i>Article 18: Technical Cooperation and Assistance.</i>	This generally relates to SP Goal 4 (environmental governance)

Relationship between the Noumea Convention and the SPREP Strategic Plan

The following can be noted regarding this relationship between the Noumea Convention and the SPREP Strategic Plan:

- All the Noumea Convention is relevant to the current SPREP Strategic Plan (SP)
- The Noumea Convention is particularly relevant to the SPREP SP Regional Objective 3 regarding waste management and pollution control

- The Noumea Convention is also relevant to SP Regional Goal 4 relating to environmental governance, particularly in relation to activities related to Environment Impact Assessment. This relevance is less direct than for SP Regional Goal 3
- The Noumea Convention is also relevant to SP Regional Goal 2 relating to resilient island and ocean ecosystems, particularly in relation to the protection and sustainable use of important ecosystems and species. This relevance is less direct than for the relationship between the Noumea Convention and SP Regional Goal 3
- Articles of the NC are also relevant to a number of contemporary issues, including marine plastic and Deep Seabed Mining (Article 13)
- There are specific gaps which are identified within the SPREP SP which are not reflected within the Noumea Convention. These include climate change, ecosystem-based management and contemporary developments relating to sustainable development, particularly the Sustainable Development Goals.
- There are also several key initiatives developed through SPREP, such as the 5 yearly Nature Conservation Congress, which could and should be linked to the Noumea Convention.