

Review of environmental legislation and policies in Vanuatu

By Yoli Desmond Tom'Tavala & Marie Tiana Hakwa

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Review Team :

Yoli Desmond Tom' Tavala & Marie Tiana Hakwa

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¹ Extraordinary Official Gazette *Petroleum (Exploration and Production) Act No.13 of 1993* State Law Office, 1 August 1993 Port Vila

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Abbreviations and Acronyms

BAC	Biodiversity Advisory Council
CBD	Convention for Biological Diversity
CLT	Customary Land Tribunal
CITES	Convention on International Trade in Endangered Species
DGM	Department of Geology and Mines
EEZ	Exclusive Economic Zone
EIA	Environmental impact assessment
FBV	Forestry Board Vanuatu
FIO	Forestry Investigation Officer
FFA	Foreign Fishing Agency
FOC	Flag of convenience
FSP	Forest sector plan
GEF	Global Environment Facility
ILO	International labour organisation
IMO	International maritime organisation
LGC	Local Government Council
LMC	Local Management Committee
MPA	Marine protected area
NC	National Coordinator
NPB	National Parks Board
NBF	National Bio safety Framework
NBCS	National Biodiversity Conservation Strategy
NBSAP	National Biodiversity Strategy Action Plan Project
NTF	National Task Force
NSRC	National Scientific Research Council
OFM	Ocean Fisheries Management
PICTs	Pacific Islands Countries and Territories
POPs	Persistent Organic Pollutants
PPPO	Principal Plant Protection Officer
RTF	Regional Task Force
SAP	Strategic Action Plan
SPREP	South Pacific Regional Environmental Programme
SPC	South Pacific Community
TBK	Traditional Biological Knowledge
TRA	Timber Rights Agreement
VEU	Vanuatu Environment Unit
VQIS	Vanuatu Quarantine and Inspection Services
VMA	Vanuatu Maritime Authority
VIWP	Vanuatu International Waters Programme
UNDP	United Nations Development Programme
WRM	Water Resources Management
WPZ	Water Protection Zone
WPWP	Western Pacific Warm Pool

Executive Summary

Background to International Waters Programme

The IW Programme is a 7 year programme that began in July 2000 and is part of a global effort to develop and implement measures to conserve, sustainably manage, and restore coastal and oceanic resources in the Pacific Region. The IW Programme addresses a diverse range of issues, including resource management, conservation, habitat rehabilitation, economic development, policy and planning, and institutional issues, particularly at the community level. The IWP is funded by the Global Environment Facility (GEF), implemented by the United Nations Development Programme (UNDP) and executed by SPREP.²

The Strategic Action Programme (SAP) for the International Waters of the Pacific Small Island Developing States (PIWP) has four immediate objectives:

- To enhance trans-boundary management mechanisms.
- To enhance conservation and sustainable use of coastal and watershed resources.
- To enable the conservation and sustainable yield of ocean living resources.
- To maximise regional benefits from lessons learned through community-based participation, and
- To catalyse donor participation.³

The SAP is carried out in two complementary contexts; Integrated Coastal and Watershed Management (ICWM) and Oceanic Fisheries Management (OFM). ICWM actions focus on freshwater supplies, including groundwater, Marine Protected Area (MPA) enhancement and development, sustainable coastal fisheries, integrated coastal management including tourism development, and activities to demonstrate waste reduction strategies. The OFM component targets the Western Pacific Warm Pool (WPWP) ecosystem that includes the islands and EEZ of the participating nations.⁴

Terms of Reference (ToR)

The ToR of this report is to identify any overlaps, conflicts and gaps in current legislation. This section should recommend for particular areas of conflicts to be addressed and identify potential in the legislation to support the Government in respect to the responsible management of the environment and the sustainable use and conservation of natural resources. It is also to identify barriers to the effective implementation of existing legislation to achieve the above potential and profile environment and natural resource related bills. In addition, the ToR requires an analysis of the status of consideration of each bill, assess prospects for its enactment and entry into force and identify any proposed reviews of legislation/policy and explain the intent of such reviews.

² <http://www.sprep.org.ws/iwp/index.asp>

³ <http://www.sprep.org.ws/iwp/summary.htm>

⁴ <http://www.unescap.org/mced2000/pacific/background/sapiw.htm>

Focal Points

Four focal points were provided to the consultants:

- Preservation of fresh water,
- Marine zones & resources,
- Marine protected areas, and
- Waste management.

Thus legislation and policies reviewed in this Report are limited to those which directly concern the use, protection, management or conservation of natural resources or facets of terrestrial, aquatic and marine environments.

Land tenure provisions under the Constitution

The Constitution states that Ni-Vanuatu indigenous custom owners collectively own all land in the country in perpetuity.⁵ Alienation of customary land through a system of national land laws including the:

- Land Leases Act [CAP.163]
- Land Reform Act [CAP. 123]
- Alienated Lands Act [CAP.143]
- Land Acquisitions Act No.5 of 1992
- Valuation of Land Act No. 22 of 2002
- Land Valuers Registration Act No. 23 of 2002
- Strata Titles Act No.29 of 2000
- Customary Land Tribunal Act No.7 of 2001

These national land laws do not contain any environmental provisions and thus little is said of them. Although standard agricultural, residential and commercial lease agreements play a significant part in environmental protection because they can impose conditions to preserve water resources or prevent soil erosion, these discussions remain outside the scope of this Report. Presently, there have been no state acquisitions of land for the purpose of conservation and environmental protection.

Review of environmental legislation and policies

The laws in Vanuatu related to conservation and protection of natural resources is done through legislation enacted specifically for a particular economic development activity or focused in conserving a particular type of species. The body of Legislation reviewed focuses on objectives, administration, bodies established by it, regulatory and planning provisions and an assessment of its implementation.

Those enacted to regulate development of natural resources include:

- Mines and Minerals Act;
- Petroleum (Prospecting and Production) Act;
- Geothermal Energy Act;
- Forestry Act;
- Fisheries Act;

⁵ Constitution of Vanuatu, 1980, Article 75

- Foreshore Development Act; and
- the Pesticides Act.

With the exception of the Petroleum (Prospecting and Production) Act and the Forestry Act, none of the above laws contains environmental impact assessments provisions.

The following laws are enacted to protect certain species or natural resource in Vanuatu:

- Various fisheries subsidiary legislation that restricts the harvesting of certain fisheries e.g. bêche-de-mer, lobsters, coconut crabs, trochus shell and turtles;
- Shefa Local Government Councils ‘Fisheries Management Licensing System Bylaw’;
- Subsidiary legislation restricting harvesting of sandalwood in certain islands;
- National Parks Act;
- Plant Protection Act;
- Animal Quarantine and Inspection Act;
- Preservation of Sites and Artefacts Act;
- International Trade (Flora and Fauna) Act⁶;
- Wild Bird Protection Act;
- Vanuatu Logging Practice Code;
- Maritime (Conventions) Act;
- Water Resources and Management Act; and
- The Convention on Biological Diversity (Ratification) Act.

Other legislation such as the Maritime Zones Act; Shipping Act; Vanuatu Maritime Authorities Act; Ports Act; the Vanuatu Foreign Investments Promotions Authority Act (VFIPA) and the Public Health Act do not relate directly to conservation of natural resources, but contribute indirectly to safeguarding the environment. These laws regulate ship safety, obligations to prevent oil pollution, and establish a national body charged with executing Vanuatu’s oil pollution response strategy, and prohibits against pollution of water supplies and watercourses. The VFIPA may request environmental impact assessments (EIAs) for any proposed foreign investment development. This requirement is now superseded by the Environmental Management and Conservation Act, No 12 of 2002.

Vanuatu’s national environmental policy

Government policy on environment and conservation is to provide an affordable framework of environmental protection and compliance within Vanuatu. This is realised through the enactment of the Environmental Management and Conservation Act No. 12 of 2002. This commenced as law on 09 March 2003. This is the only legislation governing environmental protection of all natural resources in Vanuatu. It requires mandatory EIAs carried out for all developments that affect the environment before any local or national authority gives consent to developers and project proponents. It even sets up the Bioprospecting Advisory Committee, which vets all applications to carry out bioprospecting activities in Vanuatu. Although already law, the Environmental Management and Conservation Act No. 12 of 2002 is currently implemented on an interim basis by the Vanuatu Environmental Unit (VEU). A Director of Environment is not yet appointed.

A review of the structures of institutions delegated to enforce this legislation and support the additional tasks with resources and training as appropriate is outside the scope of this Report.

⁶ This Act ratifies the Convention on Trade in Endangered Species.

However, the need for this is evident as mandatory EIA provisions apply to all national and local authority permit or licensing authorities in relation to developments.

The VEU of the Ministry of Lands, Survey, Environment, Energy, Minerals and Water Resources is the national Environment Institution for Vanuatu. However, environmental provisions are scattered and other ministries and departments exercise natural resource responsibilities.

Weaknesses in natural resource legislation

The environmental laws of Vanuatu consist of laws that are specific to a particular resource such as the Water resources management Act and laws that cover a whole ambit of natural resources such as the Environmental management and conservation Act of 2002.

A lack of coordination produces legal and administrative overlaps, gaps and sometimes conflicts. Areas of conflict for environmental protection are more prominent where environmental policies are not stream lined with current trade, commercial development and investment policies of national government, Local Government Councils (LGCs) and municipal councils. The drafting of some recent legislations dealt with in this review do not contain provisions stating relevant amendments in other earlier laws – the most obvious being the Environmental Management and Conservation Act of 2002. This lack in coordination in drafting environmental legislation is a hindrance especially when Departments are busy with implementing their own laws and are remain unaware of recent and binding environmental provisions.

Proposed reviews of environmental legislation

The National Bio Safety Framework Project (NBSFP) is working to establish a practical bio safety regime – legal and administrative to implement (amongst other things) the obligations set out under the Cartagena Protocol.

The Persistent Organic Pollutants Project (POPP) in Vanuatu is also endeavouring to raise awareness and identify relevant areas to implement the obligations under the Stockholm Convention.

Implications of environmental legislation and the pilot project

The Crab Bay Community is an initiative that is fairly recent and is not endorsed by existing environmental legislation namely the National Parks Act, 1993, the Fisheries Act [Cap.158], and the Environmental Management and Conservation Act, 2002. Thus the only legal rights actionable in law for the Community lie in customary land tenure.

It is suggested that communities initiating marine protected area (MPA) should work within the scope of existing legislation or statutory authorities. Employing the provisions of the National Parks Act to declare a marine reserve or to liaise with their respective LGC to establish a marine reserve are practical suggestions. The advantages of both these authorities are that they provide the legal mechanism for setting up, managing and implementing a natural reserve within a recognised legal framework. Any breaches that occur are actionable in a court of law.

1 Introduction

This consultancy was commissioned by the Vanuatu International Waters Programme (VIWP) National Task Force committee on behalf of the International Waters of the Pacific Small Island Developing States (PIWP). The PIWP is the Pacific-based component of the global International Waters Programme (IWP). The IWP is one of four focal areas that were approved in 1994 as part of the Strategic Action Programme (SAP) of the Global Environment Facility (GEF) – the others being biodiversity, climate change and ozone depletion. These programmes are implemented for GEF by the United Nations Development Programme (UNDP)⁷ and are executed in the Pacific Islands by the South Pacific Regional Environment Programme (SPREP). The work within each of the fourteen (14) Pacific Island developing states is carried out by a national coordinator with oversight by a National Task Force committee⁸.

The ultimate goal of the SAP on international waters is to ensure their integrated sustainable development and management. For these purposes, ‘international waters’ is defined to include oceans, large marine ecosystems, enclosed or semi-enclosed seas and estuaries as well as rivers, lakes, groundwater systems, and wetlands with trans-boundary drainage basins or common borders. Thus, this definition embraces all water-related ecosystems and critical habitats associated with them, extending from far inland of terrestrial areas to further out at sea.

To this end, priority concerns and imminent threats were identified and strategies were then devised to deal with them. In the Pacific, this process began with political endorsements for the programme in 1995 and led to the establishment of a regional task force (RTF) which began the task of formulating the SAP. Thus, three priority concerns were identified concerning international waters, being:

- Degradation of their quality,
- Degradation of associated critical habitats and
- Unsustainable use of their living and non-living resources.

In the Pacific, the following threats have been identified as region-wide concerns to both living and non-living resources and habitats:

- Pollution of marine and fresh water (including ground water) from land-based activities;
- Issues related to the long-term sustainable use of marine and fresh water resources;
- Physical, ecological and hydrological modification of critical habitats; and
- Unsustainable exploitation of living and non-living resources, particularly, coastal and ocean fishery resources.

Four high priority areas for immediate intervention were identified, being:

- Improved waste management;
- Better water quality;

⁷ Information about the GEF’s SAPs and their implementation by the UNDP is available at “United Nations Development Programme-GEF Team” at <http://www.undp.org/gef/>. Accessed on Thursday, 9 September 2004.

⁸ Further information about the IWP and its implementation in the Pacific Islands is contained in “The International Waters of the Pacific” on the South Pacific Regional Environment Programmes website at <http://www.sprep.org.ws/topic/iwp.htm>.

- Sustainable fisheries; and
- Effective marine protected areas.

Five categories of targeted action within these activity areas were proposed:

- Management;
- Capacity building;
- Awareness/education;
- Research/information for decision-making;
- Investment.

(Institutional strengthening is included under management and capacity building.)

In the Pacific, the response to these concerns is two-fold. Firstly, an Oceanic Fisheries Management (OFM) programme has been devised to enable Pacific island countries and territories (PICTs) to develop management and conservation arrangements for their oceanic fisheries resources. The main target of the management initiatives is the western central Pacific ecosystem whose boundaries correspond almost precisely with the commercial tuna fishery operating in that area. The OFM also assists PICTs fully participate in the work of the newly-created Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. This programme is executed by Secretariat of the Pacific Community (SPC) and the Forum Fisheries Agency (FFA).

The second is the Integrated Coastal and Watershed Management (ICWM) programme that is executed by SPREP. The idea is to foster integrated, instead of sectoral, management of the coastal watershed.

When IWP is considered in relation to particular communities, its simple aim is to ensure that living and non-living natural resources and habitats within coastal lands and waters are managed on a sustainable basis. In order to do that it is necessary to enhance the capacities of local communities so that they can apply themselves to the tasks of sustainable management and conservation of coastal and marine resources and habitats in particular countries.

The initial work to be done in each country is to identify and support a community-based pilot project by strengthening its capacity for purposes of:

- Marine Protected Areas;
- Sustainable Coastal Fisheries;
- The Protection of Freshwater; and
- Community-based waste reduction.

It is hoped that that project will engender valuable lessons about best practices and appropriate methodologies that can be used for sustainable resource management and conservation in other parts of the country.

The Vanuatu NTF has selected Crab Bay villages in the east coast of Malekula Island in Malampa Province as the site for the pilot project. This site is chosen because it has outstanding littoral zone habitats and the community, with the assistance of the Province, has already initiated a Marine Protected Area (MPA) within the harbour for the purpose of replenishing stocks of crab, mangrove and reef fish which have been depleted as a result of (mainly) subsistence fishing. The

National Coordinator is in the process of devising work programmes to implement on site as a complement to the community's own MPA initiative.

1.1 Terms of Reference (ToR)

The stated ToR for the consultancy comprises two phases as explained below. The ToR in full is in Appendix 1.

Phase 1 requires the provision of a comprehensive review of current legislation covering environmental and natural resources (marine and terrestrial) and other legislation which have a bearing on such resources. The review will include the objectives of relevant legislation or policy, their administration, regulatory and planning provisions as well as a summary of the functions of bodies established by the legislation.

Phase 2 entails various specific tasks that include the following:

- Identifying any overlaps, conflicts and gaps in current legislation. This section should recommend for particular areas of conflicts to be addressed. Identify potential in the legislation to support the Government in respect to the responsible management of the environment and the sustainable use and conservation of natural resources.
- Identifying barriers to the effective implementation of existing legislation to achieve the above potential.
- Profile environment and natural resource related bills. Analyse the status of consideration of each bill and assess prospects for its enactment and entry into force.
- Identifying any proposed reviews of legislation/policy and explain the intent of such reviews.
-

By consent, it has been agreed to integrate both phases in this single report.

1.2 Focal Points

The NC has further delimited the scope of the consultancy to four (4) focal issues or subject matters:

- Preservation of fresh water,
- Marine zones & resources,
- Marine protected areas, and
- Waste management.

These issues or subject matters clearly correspond to the issues that are targeted in the pilot project. The practical consequence of this dictum is that this report is limited to legislation and policies which directly concern the use, development, protection, management and or conservation of natural resources or of those facets of the environment as identified above. Other facets of environmental regulations such as for control of air pollution, urban planning and environmental health will be excluded in this report. The full list of national laws, policies and municipal enactments which fall within the purview of this report is in Appendix 2.

2 Review of Natural Resources Laws and Policies (Terrestrial)

This section deals with the review of applicable laws and policies of Vanuatu. As earlier mentioned, the legislation and policies under review are limited to those which directly concern the use, protection, management and or conservation of natural resources or facets of terrestrial, aquatic and marine environments. Considering that the different laws that cover these issues, the scope of a review of a particular law depends on the extent to which they provide for the use, protection, management and or conservation of natural resources or the environment. Therefore, some laws will be covered in greater detail than others.

Most of these are national laws in that they have been enacted by the Parliament of Vanuatu or relevant delegated authorities. A few of them are municipal by-laws. The legislation and policies under review are set out under three divisions which correspond with three main spatial environments: terrestrial, fresh water and marine. Despite the fact that some laws overlap between these three spatial facets of the environment, the allocation of particular laws to each of the groups is based on the main areas with which the legislation are concerned with. For each legislation, the review canvasses its objectives, administration, bodies established by it, regulatory and planning provisions.

This category of terrestrial resources, encompasses a wide range of laws including the Constitution, various land related legislation and the Environmental Management and Conservation Act 2002, which is the main legislation for protection of the environment in the country. These are discussed below.

2.1 Constitution of the Republic of Vanuatu

The 1980 Constitution touches on natural resources or the environment in two places. Firstly, it imposes for every Ni-Vanuatu a fundamental duty to himself and his descendants and to others “to protect the Republic of Vanuatu and to safeguard the national wealth, resources and environment in the interests of the present generation and of future generations”⁹ (emphasis added). Although, the fundamental duties in the Constitution are non-justifiable, they are still important in shaping national laws and policies.

2.1.1 Land tenure provisions under the Constitution

The other place where the Constitution provides for natural resources is chapter 12 (articles 73-81) which set out the broad outlines of the land tenure system of the country. It begins by stating that Ni-Vanuatu indigenous custom owners collectively own all land in the country in perpetuity.¹⁰ It provides for the alienation of customary land through a system of national land laws. All land transactions between indigenous citizens and either a non-indigenous citizen or a non citizen is permissible only after consent of the Government is obtained.¹¹ The Constitution sets out the conditions of governmental consent, which is mandatory in all land transactions.¹²

⁹ Constitution of Vanuatu, 1980, Article 7(d)

¹⁰ Constitution of Vanuatu, 1980, Article 75

¹¹ Constitution of Vanuatu, 1980, Article 79 (1)

¹² Constitution of Vanuatu, 1980, Article 79(2)

2.2 National Land Laws

The seven legislation which are listed below set out the national land law as envisaged under articles 73, 74 and 75 of the Constitution. These were enacted by the Parliament after consultation with the National Council of Chiefs, commonly referred to as the Malvatumauri Council of Chiefs.¹³ These laws have little to do with the protection, management and conservation of the environment so little will be said of them.

2.2.1 Land Leases Act [CAP.163]

As its name connotes, this Act provides for the creation and disposition of leases on land, their registration and all dealings connected with leases. Standard agricultural, residential and commercial lease agreements have an indirect, albeit significant, part in environmental protection because they can impose conditions to preserve water resources or prevent soil erosion.

2.2.2 Land Reform Act [CAP. 123]

The stated purpose of this Act is to make interim provision for the implementation of chapter 12 of the Constitution. In particular, it protects the land interests of non-indigenous landowners (called “alienators”) by allowing them to remain on land they occupied on Independence Day until they entered into lease arrangements with or received compensation for improvements from customary land owners.

2.2.3 Alienated Lands Act [CAP.143]

This Act prescribed the system for registration and dealing with the claims of alienators as recognised under the above Act.

2.2.4 Land Acquisitions Act No.5 of 1992

This Act sets out the process for the state to acquire land and easements in the public interest. Presently, there have been no state acquisitions of land for the purpose of conservation and environmental protection. Acquisitions have been limited to urban, commercial and government administration purposes.

2.2.5 Valuation of Land Act No. 22 of 2002

This establishes the office of Valuer-General and makes provisions for valuation of land in order to improve the system of land tenure in the country. This act is yet to be implemented and a Valuer General appointed.

2.2.6 Land Valuers Registration Act No. 23 of 2002

This provides for registration of valuers in order to ensure professionalism amongst their rank.

¹³ Constitution of Vanuatu, 1980, Article 76

2.2.7 Strata Titles Act No.29 of 2000

This provides for establishment of strata titles to land. Although this Act is gazetted and is entered into force, other legal and administrative steps are required to enable the lawful registration of strata titles in the Land Records Office.

2.2.8 Customary Land Tribunal (CLT) Act No.7 of 2001

Parliament enacted this Act to provide for a system based on custom to resolve disputes about customary land. This was done mainly in response to the inability of the earlier established courts to deal expeditiously with disputes concerning customary land. It involves the use of custom chiefs to deal with disputes to customary land at various levels of indigenous communities. As things stand, the majority of CLT's have not yet been established since the Malvatumauri is still processing names of approved adjudicators for each custom area in their respective islands. After selection, the names will be published in the Official Gazette. The CLT is currently undergoing review to identify further areas of development.¹⁴

2.3 Conservation of mineral resources and environmental regulations regarding mining and related activities

2.3.1 Objective

The Mines and Minerals Act, 1986 was enacted to regulate explorations and development of minerals and related matters. For the purposes of this Act, a mineral is “...any substance, whether solid, liquid, or gaseous form occurring naturally in land, formed by or subject to a geological process, but does not include (a) water or (b) petroleum.”¹⁵

2.3.2 Administration

The Ministry of Land, Geology and Mines and Water Resources is responsible for all matters relating to mineral resources. The Ministry hosts the Department of Geology, Mines and Water Resources. The Act establishes the Commissioner for Mining and Minerals under section 6(1) who is responsible for implementing the provisions of the Act. The Commissioner is assisted by other public servants appointed for such purposes.¹⁶

2.3.3 Bodies set up by Legislation

The Commissioner for Mining and Minerals is appointed by the Public Service Commission and is responsible for:

- maintaining a register of prospecting licences granted by the Minister;¹⁷
- receiving notices from prospecting licensees of the existence of minerals sufficient for commercial purposes located within the prospecting area;¹⁸
- receiving applications for and issue prospecting permits;¹⁹

¹⁴ Funding for this review was granted by the New Zealand Government.

¹⁵ Mines and Minerals Act, 1986, section 1.

¹⁶ Mines and Minerals Act, 1986, section 6(2) and (3).

¹⁷ Mines and Minerals Act, 1986, section 20(3).

¹⁸ Mines and Minerals Act, 1986, sections 32 and 33(1).

- maintaining a register of claims;²⁰
- granting quarry permits, renew quarry permits and maintain a register of all quarry permits issued; and²¹
- monitoring mining operations, and inspect premises and machinery in relation to the health and safety of persons employed by the licensee.²²

2.3.4 Regulatory and Planning Provisions

The Act regulates all exploration and exploitation of minerals through a licensing and permit system. The Minister alone grants all exploration²³ and prospecting²⁴ and mining licences²⁵ and has power to make regulations.²⁶ The Commissioner of Mines and Minerals grants quarry and prospecting permits.

Exploration Licences

Where the Minister decides to grant an exploration license, the Act confers an obligation upon that holder of an exploration license to submit an evaluation report to the Minister, within three months, as to the mineral prospects in the area. The report must attach:

- all geological, geochemical and geophysical maps, profiles, diagrams and charts;
- copies of all tests and analyses carried out by the holder;
- copies of all reports made by the holder; and
- a statement of direct costs incurred by the holder in the exploration programme.²⁷

Prospecting Licences

A person, to whom a prospecting licence is granted in accordance with the provisions of the Act, has specific obligations to maintain a full and accurate record of all prospecting operations including:

- all drilled boreholes drilled, with detailed logs of strata penetrated,
- the results of any geochemical or geophysical analysis;
- minerals discovered; and
- the results of any analysis or identification of minerals; and any other matters as may prescribed by law. The reports are to be tendered once every three months.²⁸

Mining Licences

Where the holder of a prospecting licence has discovered minerals in a commercially recoverable quantity, the said holder may apply for a mining licence from the Minister.²⁹ A holder of a mining licence has exclusive rights to carry out exploration, prospecting and mining operations for the specific mineral stated in the mining licence.³⁰ An application for a mining licence

¹⁹ Mines and Minerals Act, 1986, section 54(1).

²⁰ Mines and Minerals Act, 1986, section 58.

²¹ Mines and Minerals Act, 1986, section 62(1).

²² Mines and Minerals Act, 1986, section 79(1).

²³ Mines and Minerals Act, 1986, section 15(1).

²⁴ Mines and Minerals Act, 1986, section 20(1).

²⁵ Mines and Minerals Act, 1986, section 34(1) and (2).

²⁶ Mines and Minerals Act, 1986, section 88.

²⁷ Mines and Minerals Act, 1986, section 19.

²⁸ Mines and Minerals Act, 1986, section 26(1).

²⁹ Mines and Minerals Act, 1986, section 33.

³⁰ Mines and Minerals Act, 1986, section 40.

requires more information than licences for prospecting and exploration including “a detailed programme for the progressive reclamation and rehabilitation of lands disturbed by mining and the minimisation of the effects of such mining on adjoining land and water areas”.³¹

Concerns expressed by earlier critics of Vanuatu’s environmental regime are that applications for mining licences do not require environmental impact assessments. (EIAs)³² While this remains true of the principal act governing mining activities in Vanuatu, there have been recent additions to the environmental regime namely, the Vanuatu Foreign Investments Promotions Authority Act, No. 15 of 1998 and the Environmental Management and Conservations Act No. 12 of 2002. The Vanuatu Investments Promotions Authority Board (VIPA Board) a discretionary power to request environmental impact assessments for any foreign proposed development, while the Director of Environment has a general power to request EIA’s for any development where he sees fit.³³

Mining applications for the following areas require the consent of the Minister of Lands³⁴ who is also responsible for the environment.

- Public land,
- Land reserved for burial sites; and
- Land which is regarded as a place of religious significance.³⁵

Mining operations in the following areas require the consent of the lawful occupiers.³⁶

- Within 200 metres of any occupied house or building,
- within 50 metres of land which has been cleared, ploughed or prepared for the growing of crops,
- within 50 metres of land upon which agricultural crops are growing, and
- near towns and villages.

Furthermore, the Act prescribes for the lawful occupier’s rights to a navigation and fishing.³⁷ Compensation is paid by the holder of a mining licence in the case where disturbance of the lawful occupier’s rights and damages to crops, trees, buildings, stock or works on land.³⁸

Quarry Permits

A holder of a quarry permit granted by the Commissioner of Mines has the right to prospect for and extract building materials, which are defined as “...*mineral substances and rocks commonly used for building, road making or agricultural purposes.*”³⁹ Quarry permits normally last for 10 years and are renewable at two yearly intervals thereafter.⁴⁰ The Minister has the power under the Act to include or exclude materials from the definition of “building materials”. Sand and coral aggregate are currently excluded from the definition of “building materials” and is therefore not subject to the process for obtaining a quarry permit. Without any current regulations in place to

³¹ Mines and Minerals Act, 1986, section 40(1),(b) and (c).

³² Forster, Malcolm, Environmental Law in Vanuatu: A Description and evaluation, Asian Development Bank, March 1991, p. 55.

³³ Environmental Management and Conservation Act, section 15.

³⁴ Mines and Minerals Act, 1986, section 72.

³⁵ Mines and Minerals Act, 1986, section 73 (1) (a).

³⁶ Mines and Minerals Act, 1986, section 73 (1) (b), (d) and (e).

³⁷ Mines and Minerals Act, 1986, section 74 (3) and (4).

³⁸ Mines and Minerals Act, 1986, section 75.

³⁹ Mines and Minerals Act, 1986, section 1(1).

⁴⁰ Mines and Minerals Act, 1986, section 65 (1) (a) and (b).

control quarrying activities and the extraction of sand and coral aggregate, the problem in terms of coastal erosion is increasing in certain areas.

2.3.5 Assessment of implementation

The Department of Geology and Mines (DGM) utilises the various licenses and permit systems set out under the Act to regulate all exploration and quarrying activities. A large amount of its collection of funds comes from the granting of commercial research or prospecting. There is no current mining activity in Vanuatu. It is noted also that the Act provides the Minister with the power to make regulations including:

- to prevent pollution and dispersal of pollutants and the conserving and preventing waste of minerals;
- water rights and the use of water and
- the cutting and use of timber and fuel for the purposed connected with mining.⁴¹

These provisions have yet to be utilised.

2.4 Regulation of Geothermal Resources

2.4.1 Objective

The Geothermal Energy Act No.6 of 1987 [CAP.197] regulates the exploitation of geothermal energy. The property in and control over all natural reserves of geothermal energy in land vested in the Republic of Vanuatu.⁴² Geothermal energy is defined as:

“...energy derived or derivable from within the ground or there under by natural heat, and includes all steam, water or other fluid and any mixture of all or any of them that has been heated by such energy, and every kind of matter, fluid or mixture, but does not include water that has been heated by such energy to a temperature not exceeding 70 degrees Celsius.”⁴³

2.4.2 Administration

Administration of this act fell under the Ministry of Geology and Mines and is implemented by the Department of Geology, Mines and Water Resources.

2.4.3 Bodies set up by Legislation

Nil.

⁴¹Mines and Minerals Act, 1986, section 88 (2) (f), (w) and (y).

⁴² Geothermal Energy Act, 1987, section 2

⁴³ Geothermal Energy Act, 1987, section 1(2),(3).

2.4.4 Regulatory and Planning Provisions

This Act closely mirrors the Mines and Minerals Act, 1986.⁴⁴ It contains provisions for prospecting applications which are granted by the Minister for Geology and Mines and also provides for production licences for geothermal energy. There are no provisions contained in the Act requiring submissions of environmental impact assessments. However, there are opportunities for the Director of the Environment Department to initiate such a request where he sees fit. There are also provisions under the Vanuatu Foreign Investment Promotions Authority Act No. 15 of 1998 which grant the Board a discretionary power to request the submission of an environment impact assessment from a foreign investor when determining an application for certificate of approval.⁴⁵

2.4.5 Assessment of Implementation

Although geothermal energy is present on a number of the islands of Vanuatu, north Efate is the only area where work has been done in the past to exploit the potential of such energy.

2.5 The Petroleum (Exploration and Production) Act No.13 of 1993⁴⁶

2.5.1 Objectives

This Act makes provisions with respect to searching for and producing petroleum on land – including land beneath water, the seabed and the subsoil beneath the territorial seabed; and the seabed and the subsoil of the continental shelf or beneath the waters of the exclusive economic soil.⁴⁷

2.5.2 Administration

The Minister responsible for Mines, Geology and Water Resources administers this Act.⁴⁸ Section 5 establishes a Commissioner for Petroleum Exploration and Production including appointed authorised officers.⁴⁹

The Commissioner and authorised officers are authorised with inspection powers to monitor the operations of petroleum exploration and production to ensure compliance with the provisions of this Act.⁵⁰

2.5.3 Bodies established by legislation

Nil.

2.5.4 Planning and Regulatory Provisions

The exploration and production of petroleum is regulated through

⁴⁴ Forster, Malcolm, 1991, p.58.

⁴⁵ Foreign Investments Promotions Authority Act No. 15 of 1998, section 2(A) (a) and (b). This provision is set out in full in Annexure

⁴⁶ Extraordinary Official Gazette *Petroleum (Exploration and Production) Act No.13 of 1993* State Law Office, 1 August 1993 Port Vila

⁴⁷ Petroleum (Exploration and Production) Act No.13 of 1993, section 1(1)

⁴⁸ Petroleum (Exploration and Production) Act No.13 of 1993, section 1(1)

⁴⁹ Petroleum (Exploration and Production) Act of 1993, section 5(1) and (2).

⁵⁰ Petroleum (Exploration and Production) Act No. 13 of 1993, section 7 (1)(a) to (g)

- the granting of petroleum prospecting licence;
- compulsory notification of petroleum discoveries to the Minister within 30 days of such discoveries included an evaluation as to its commercial exploitation⁵¹;
- and the granting of a petroleum production licence; and
- the maintenance of a register of all licences granted.⁵²

The Minister has powers to order disclosure of further information in applications for licences and may grant licences with conditions attached.

The Petroleum Regulations Order No.30 of 1997⁵³ also entered into force on 1 August 1993. It sets out:

- how to apply for a petroleum prospecting licence and how to transfer such licence once it has been lawfully obtained;
- how to apply for a petroleum production licence and how to transfer such licence once it has been lawfully obtained;
- what is contained in reports prepared by the licence holders and submitted to the Minister as required by the principal Act;
- operation documents that must be submitted before operations of prospecting and producing commence including an environmental code of practice;
- general duties of licensee's during operations;
- emergency and occupational health and safety provisions for workers;
- how electrical work, surveying and drilling operations are undertaken; and
- how production royalty rates are assessed, reports and paid.

2.5.5 Petroleum prospecting licence

Subject to the restrictions⁵⁴ contained in the Act, only the Minister can grant petroleum prospecting licences. Applications are submitted with the appropriate fee of US\$ 5,000⁵⁵ for the Minister's consideration. The Minister has the authority to obtain further disclosure of information from the applicant.⁵⁶ The Minister may then grant a petroleum prospecting licence upon such terms and conditions as he sees fit for a period not exceeding four years. The Minister can renew⁵⁷ a successful applicant's licence for a further two years⁵⁸ unless it is shown that the licensee is in default of his obligations under the licence or the Act and continues to fail to remedy such default after receiving a notice from the Minister to take appropriate steps to remedy the situation.⁵⁹

A lawfully obtained petroleum prospecting licence, grants the holder exclusive right to explore for petroleum and to carry on such operations and execute such works as are necessary for that

⁵¹ Petroleum (Exploration and Production) Act No.13 of 1993, section 26(1)

⁵² Extraordinary Gazette *Petroleum Regulations No. 30 of 1997*, State Law Office, 1 August 1997, Port Vila.

⁵³ Regulation Order No.30 of 1997, section 125

⁵⁴ Section 14(1), (2) and (3) of the Petroleum Regulations No. 30 of 1997, stipulates that only indigenous citizens, locally incorporated companies, or companies approved by the Minister can apply for a license under this Act. Furthermore, section 9 prohibits authorized officers engaged in administration of this Act and their family members from (a) applying for licenses and (b) acquiring shares in a company approved by the Minister to conduct petroleum explorations and production.

⁵⁵ Petroleum Regulations No. 30 of 1997, section 128.

⁵⁶ Petroleum (Exploration and Production) Act 1993, section 13

⁵⁷ Application to renew a licence attracts a fee of US\$3,000 under section 128, Order No.30 of 1997.

⁵⁸ Petroleum (Exploration and Production) Act 1993, section 20

⁵⁹ Petroleum (Exploration and Production) Act 1993, sections 21(3) (a) and (b)

purpose, in the identified prospecting area.⁶⁰ Once a licence is granted, a licensee must apply to the Commissioner for approval of an operator before the licensee starts any operations.⁶¹

Petroleum production licence

Any holder of a petroleum prospecting licence may apply for a petroleum production licence within two years of discovering petroleum which is of commercial interest,⁶² or subject to the provisions referred to earlier, any person who is not a holder of a valid prospecting licence.⁶³

For the purposes of this report, the Minister shall not grant a petroleum production licence unless (amongst other things):

- the proposals of the applicant take proper account of environmental and safety factors;⁶⁴
- the proposals of the applicant shall ensure the most effective, beneficial and timely use of the petroleum resource concerned;⁶⁵
- the applicant has adequate financial resources and technical and industrial competence and experience to carry on effective production;⁶⁶
- the applicant is able and willing to comply with the conditions of the production licence;⁶⁷ and
- the applicants proposal for training of and employment of citizens of Vanuatu is adequate.

The Minister may exempt an applicant from satisfying any of these conditions if he is satisfied that special circumstance exist and thus grant a petroleum production licence.⁶⁸ A petroleum production licence is granted for twenty-five (25) years and may be renewed by the Minister upon application with payment of the appropriate fee.⁶⁹

A production licensee must comply with any subsidiary legislation or regulation for good oil-field practices. Failure to do so after receiving directions from the Minister to do so constitutes an offence⁷⁰ and if convicted faces a fine of VT.50, 000,000.⁷¹ Where a company is found guilty of committing offences prescribed by the Act, its respective officers and agents will also be regarded in law as personally liable as well.⁷²

Environmental Code of practice and Report

Section 65 of the Act grants the Minister powers to make regulations (among other things) to conserve and prevent the waste of the natural resources, whether petroleum or otherwise.⁷³

Section 32 of the Regulations says “*a licensee must not state operations in any part of the licence area until the Commissioner has approved operations documents which apply to those operations and that part of the licence area.*” Operations documents consist of:

⁶⁰ Petroleum (Exploration and Production) Act 1993, section 19.

⁶¹ Regulation Order No.30 of 1997, section 30.

⁶² Petroleum (Exploration and Production) Act 1993, sections 28 and 26(2)

⁶³ Petroleum (Exploration and Production) Act 1993, section 28(2)

⁶⁴ Petroleum (Exploration and Production) Act 1993, section 30(a)(i)

⁶⁵ Petroleum (Exploration and Production) Act 1993, section 30(a)(ii)

⁶⁶ Petroleum (Exploration and Production) Act 1993, section 30(a)(iii)

⁶⁷ Petroleum (Exploration and Production) Act 1993, section 30(a)(iv)

⁶⁸ Petroleum (Exploration and Production) Act 1993, section 30(b)

⁶⁹ Petroleum (Exploration and Production) Act 1993, sections 35(1)(a) and 33(1),(2)

⁷⁰ Petroleum (Exploration and Production) Act 1993, section 36(1)

⁷¹ Petroleum (Exploration and Production) Act 1993, section 51.

⁷² Petroleum (Exploration and Production) Act 1993, section 57.

⁷³ Petroleum (Exploration and Production) Act 1993, section 65(1)(c)

- an environmental code of practice;
- an environmental report;
- a procedures manual; and
- an emergency response manual.⁷⁴

These documents are submitted two months before the commencement of any operations and must comply with the criteria set out in sections 33, 34, 35 and 36 of the Regulations and any failure to comply may result in the refusal by the Minister to approve the said documents.⁷⁵ If operations are ongoing, operation documents must be reviewed by the licensee every two years and resubmitted to the Commissioner for approval.⁷⁶

Section 33 expressly provides that environmental code of practice in relation to the licence area must provide for:

- the protection of wildlife, livestock, flora, marine creatures and sites of natural geological and tourist significance, and other environmentally sensitive areas in line with existing laws and the Republic's conservation policies;
- mitigation to the disturbance of the land surface; and
- clean up and rehabilitation of areas disturbed by operations.

Section 34 says that an environment report must:

- describe the activity to be undertaken under the licence;
- identify crew size and equipment;
- describe the natural environment in the licence area with particular reference to the physical and biological environment and present land use;
- identify any encroachment of the licence area onto public land or internal waters and identify the responsible legal authority for that area;
- report any discussions with interested parties in relation to environmental concerns;
- report the environmental effect of undertaking the proposed operations and the measure proposed to avoid or minimise environmental effects;
- nominate an area for waste disposal;
- describe proposals to ensure quality of water discharged is in accordance with existing laws and the National Conservation policies of the Republic; and
- attach any reference material necessary to understand the information in the Report.

Section 54 outlines the general statutory duties that a licensee must undertake in order to protect the environment. This provision says:

"A licensee must:

- (a) control the flow and prevent the waste or escape in the licence area of petroleum, gas (not being petroleum), water or other product;*
- (b) prevent the escape of any mixture of water or drilling fluid and petroleum or any other product;*
- (c) prevent damage to petroleum-bearing strata both within and outside the licence area;*

⁷⁴ Regulation Order No.30 of 1997, section 32(3) (a) to (d)

⁷⁵ Regulation Order No.30 of 1997, section 32(3), (4) and (5)

⁷⁶ Regulation Order No.30 of 1997, section 37(1)

(d) keep separate as the Commissioner directs by notice in writing on the licensee:

(i) each petroleum reservoir discovered in the licence area;

(ii) discrete aquifers (if any) discovered in the licence area;

(e) prevent water or any other matter entering any petroleum reservoir through the wells in the licence areas except where required by, and in accordance with good oil field practices;

(f) prevent the pollution of any body of water, land area or marine environment by the escape of petroleum, salt water, drilling fluid, chemical additive, gas (not being petroleum), waste, effluent or any other product; and

(g) if pollution occurs, treat or disperse it in an environmentally acceptable manner.”

Finally, the regulation says that the licensee must ensure that petroleum gas or water will not be wasted or contaminated and must undertake specified tests within a certain time to determine such waste, if directed to do so by the Commission. If the tests prove that waste and contamination is occurring the licensee must take all necessary steps to remedy the waste or contamination. This will be reviewed by the Commissioner for effectiveness.⁷⁷

Any waste fluids produced from a well must be disposed of using good oil-field practices so as not to constitute a risk to public health, safety or contamination of land or water which do not constitute approved waste disposal areas. The licensee must ensure that a record of the quality of water discharged is maintained for monitoring purposes.⁷⁸

Restrictions and surface rights

Schedule 2 of the principal Act provides restrictions to petroleum prospecting and production where the land indicated in his licence is

(a) public land, (b) any land dedicated as a burial site or a place of religious significance. In this case, the licensee must obtain the consent of the Minister.⁷⁹ Petroleum operations in the following areas require the consent of the lawful occupiers:⁸⁰

- Within 200 metres of any occupied house or building,
- within 50 metres of land which has been cleared, ploughed or prepared for the growing of crops,
- within 50 metres of land upon which agricultural crops are growing, and
- near towns and villages.

This Schedule recognises that the lawful occupiers of land, retain rights to graze stock and cultivate crops so long as they do not interfere with petroleum prospecting or production.⁸¹ Furthermore, it restricts production and prospecting activities from interfering with fishing and navigations rights.⁸²

⁷⁷ Regulation Order No.30 of 1997, section 57(1),(2) and (3)

⁷⁸ Regulation Order No.30 of 1997, section 57(4), (5) and (6)

⁷⁹ Petroleum (Exploration and Production) Act 1993, Schedule 2, section 2(a)

⁸⁰ Petroleum (Exploration and Production) Act 1993, section 2

⁸¹ Petroleum (Exploration and Production) Act 1993, Schedule 2, section 3(1) and (2)

⁸² Petroleum (Exploration and Production) Act 1993, Schedule 2, section 3(4) (a) and (b)

Scientific Research

The Commissioner may authorise in writing any person to carry on prospecting operations with respect to geology or petroleum resources the purposes of scientific research.⁸³

2.5.6 Assessment of Implementation

No petroleum exploration licences have been granted to date – instead scientific research activities have been carried in relation to areas of Vanuatu’s seabed without much success. Although this Act already has provisions requiring environmental reports to be submitted prior to any operations, the Environmental Management and Conservation Act carries similar provisions and is fairly recent law. Thus the mandatory EIA provisions would supersede the provisions of sections 33 and 34 of the Act and the regulatory Orders No.30 of 1997.

Other considerations which are more related to technical resources is the availability of experts in the Environment Department to understand the Environmental reports submitted. This is not a legal aspect though and beyond the scope of this Report.

2.6 Foreshore Development Act, 1975

2.6.1 Objective

The Foreshore Development Act No. 31 of 1975 regulates all works carried out on the foreshore.

2.6.2 Administration

This Act is administered by the Minister for Internal Affairs.

2.6.3 Bodies set up by legislation

Nil.

2.6.4 Regulatory and Planning Provisions

Any developments on the foreshore of the costs of any island in Vanuatu must first obtain consent from the Minister of Internal Affairs.

2.6.5 Assessment of Implementation

The increase in development on the foreshore of islands is propelled by the Vanuatu’s growing tourism industry. Until early 2003 there were no statutory requirements for EIA’s to be submitted prior to any Ministerial consent for development on the foreshore. The Environmental Management and Conservations Act, subjects all such development s to mandatory EIA’s unless such activity is exempted under the Act. There are great concerns that while the Environmental Act is undergoing administrative preparations prior to implementation of its EIA provisions, interim steps should be formulated to assist the vetting of development of the foreshore area.

⁸³ Petroleum (Exploration and Production) Act 1993, section 61(1)

2.7 Control of Introduced Animal Species

2.7.1 Objectives

The Animal Importation and Quarantine Act No.7 of 1988 [CAP.201] regulates the control of animal importation including the importation of animal products and biological products into Vanuatu and related matters. It repeals sections of the Animal Imports [CAP.98] which are inconsistent with its provisions. The primary intention of this Act is to prevent diagnosed and suspected animal diseases from entering Vanuatu ports of entries.⁸⁴

The definition of “*animal*” is taken to be “*any living stage of any member of the animal kingdom except human beings and includes arachnids, birds, crustaceans, fish, insects and reptiles and also any fertilised egg or ovum.*”⁸⁵ The importation of all fish and fish products with the exemption of live fish is exempt from import permits.

2.7.2 Administration

The Ministry of Agriculture, Quarantine, Fisheries and Forestry administers the Act through the Department of Agriculture. The Vanuatu Quarantine Inspection Services (VQIS) has two divisions namely animal importation and the plant importation. The VQIS is hosted within the Department of Agriculture. This particular Act is implemented by the Principal Veterinary Officer and supporting quarantine officers.

2.7.3 Bodies established by legislation

The office of the Principal Veterinary Officer.

2.7.4 Regulatory and Planning Provisions

This Act is primarily regulated through an import permit system, and risk assessment procedures carried out by the Principal Veterinary Officer and quarantine officers. Ad hoc consultations with the Vanuatu Environment Unit (VEU) in relation to applications to import introduced animal species is also employed by the current Principal Veterinary Officer.

It is unlawful to import or introduce any animals into Vanuatu without first obtaining a permit granted in accordance with the provisions of the Act⁸⁶ i.e. obtaining a permit from the Principle Veterinary Officer.⁸⁷ The Principal Veterinary Officer may attach conditions to the permit if he or she decides to grant it.

The Act also grants the Minister power to prohibit the landing of animals not naturally occurring in Vanuatu.⁸⁸ Section 18(2) of the Act grants the Minister further power to issue orders prohibiting the landing of specified animals or animal products from any place outside Vanuatu for the purposes of preventing or controlling the international trade in endangered wildlife species.

⁸⁴ Animal Importation and Quarantine Act No. 7 of 1988, sections 9 (h), 18 (1) (a) and 19(1) (c), (d) and (e).

⁸⁵ Animal Importation and Quarantine Act No.7 of 1988, section 1.

⁸⁶ Ibid, section 2(1) subparagraph (a) and (b).

⁸⁷ Ibid, section 4(1) and (2).

⁸⁸ Ibid, Section 18(1) subparagraph (b).

In 1995 the Minister authorised the publication in the gazette of the Animal Importation and Quarantine Regulations No.14 of 1994. These regulations contain the procedures and forms for issuing provisional import permits, and quarantine procedure governing animal, animal products, biological products and related matters. The regulations also grant wide powers of inspection to quarantine officers to protect against the introduction of known animal diseases and pests.

2.7.5 Assessment of Implementation

The current Act and regulations provide wide powers to enable the Principal Veterinary Officer to prevent introduction of suspected or known animal, human, livestock or diseases into the country.⁸⁹ Although not stipulated in the Act itself, the current ad hoc procedures of vetting import applications for the introduction of new animal species into the country are also directed to the Environment Unit for consultation. This informal system will vary according to the personal preferences of the individual holding the post of the principal veterinary officer. Reviews taken earlier this year suggest that the principal Act be amended to insert a provision that applications regarding the importation of introduced or foreign species must be referred to the Environmental Unit for their recommendation as well.

2.8 National Parks and Nature Reserves

2.8.1 Objectives

The National Parks Act No.07 of 1993 provides for the declaration of national parks and nature reserve; for the protection and preservation of such areas and all related matters.

2.8.2 Administration

The Minister responsible for environment and conservation regulates the provisions of this Act upon the advice of the National Parks Board.⁹⁰

2.8.3 Bodies established by legislation

The National Parks Board (NPB) is established under section 3 of the Act and consists of the:

- Director of Forestry;
- Director of Lands;
- Director of Geology and Mines;
- Director of Fisheries;
- Principal Environmental Officer;
- Chairman of the National Council of Chiefs; and
- Not more than three other persons appointed by the Minister.⁹¹

Tenure is for three years.⁹² Where a director cannot attend he or she may authorise another officer to attend meetings on his behalf.⁹³ The Chairman and the Vice-Chairman of the NPB is

⁸⁹ Animal Importation and Quarantine Act No. 7 of 1988, section 18(1) (c).

⁹⁰ Section 1 and 2 (2) of the National Parks Act, 1993.

⁹¹ National Parks Act, 1993, section 4 (1), (a) – (g).

⁹² National Parks Act, 1993, section 4 (4).

appointed from the representative of the government departments.⁹⁴ The Chairman convenes all meetings of the NPB who regulate their own internal meeting procedures.⁹⁵ Quorum of all meetings is five members.⁹⁶ In the absence of the Chairman, the Vice-Chairman presides over meetings.⁹⁷

2.8.4 Regulatory and Planning Provisions

The Minister has the power to declare national parks or nature reserves upon recommendation from the NPB. A national park or nature reserve is defined in the Act as:

- an area having unique eco-systems, genetic resources or physical and biological formation; or
- an area constituting the habitat of threatened species of animals and plants of outstanding value from the point of view of science and conservation; or
- an area having outstanding natural beauty; or
- an area having any archaeological or other scientific or environmental significance.⁹⁸

In addition, the Act provides for the protection of national parks or nature reserves for the purposes of promoting scientific study and enjoyment for the public.⁹⁹

The Minister has power to make further regulations to implement the provisions of the Act including:

- regulations for administration and management of parks and reserves; and
- regulations to implement management plans prepared in respect of parks and reserves.¹⁰⁰

Consultation Process in Declaring National Park Or Natural Reserve

The preliminary duty of the NPB is to consider what areas of Vanuatu constitute national parks or nature reserves as defined in the Act.¹⁰¹ The NPB must then put up a public notice of their intentions to declare a national park or nature reserve, and must allow at least 30 days for submissions or representations from relevant custom owners, local authorities and other interested persons.¹⁰² Thereafter, NPB submit their recommendation to the Minister together with all objections and or representations received from the local authorities, the custom owners and interested persons.¹⁰³ The Minister must consider all the information received from the NPB

⁹³ National Parks Act, 1993, section 4 (3).

⁹⁴ National Parks Act, 1993, section 4 (2).

⁹⁵ National Parks Act, 1993, section 5 (2).

⁹⁶ National Parks Act, 1993, section 5 (2).

⁹⁷ National Parks Act, 1993, section 5 (3).

⁹⁸ National Parks Act, 1993, section 2 (1), (a) – (d).

⁹⁹ National Parks Act, 1993, section 2 (1).

¹⁰⁰ National Parks Act, 1993 section 21.

¹⁰¹ National Parks Act, 1993, section 8 (1).

¹⁰² National Parks Act, 1993, section 8 (2) and (3). Subsections (2) . This subsection also states that notices must be exhibited in a conspicuous place and must be printed in English, French and Bislama. Notices must state that representations must be made within thirty days of the posting of such notice. The notice must be accompanied by a sketch plan of the proposed park or reserve.

¹⁰³ National Parks Act, 1993, section 8 (4).

before making a decision.¹⁰⁴ The Minister may appoint an independent inquiry into the matter and consider such independent report prior to making a decision.¹⁰⁵

If the Minister agrees with the NPB to set up a park or reserve, the Minister will publish a declaration in the official gazette together with a map clearly showing the boundaries of the national park or nature reserve.¹⁰⁶

Management Plan

Soon after the declaration of a park or reserve is published in the Official Gazette, the NPB is charged with preparing a management plan for that park or reserve.¹⁰⁷ Although the NPB may consult custom owners and local authorities in formulating a management plan, consideration of the following factors is fundamental:

- Observations or objections made by stakeholders and interested parties which was made during the preliminary declaration process.
- Conservation and preservation of native plants and animals.
- Prevention of the introduction of noxious plants and animals and the removal of them.
- Protection of the area against soil erosion.
- Protection of the area against pollution or physical damage.
- Provision of facilities or services for the enjoyment or convenience of the public.
- Conservation of the natural beauty.
- Provision, where appropriate, for customary usage such as gathering and hunting, and any other matter considered necessary by the NPB.¹⁰⁸

The Minister may in considering the NPB's management plan require an independent inquiry into the matter and consider the findings of such report prior to approving any management plan. The Minister may also amend the management plan where necessary prior to approving it. All approved management plans are published in the Official Gazette.¹⁰⁹

Local Management Committee

Section 13 of the National Parks Act, 1993 grants the Minister power to appoint a local management committee (LMC) for every national park or natural reserve declared. The LMC's are constituted by representatives from:

- the NPB;
- the Vanuatu National Council of Women (VNCW) representative in the area;
- custom owners of the area;
- relevant local authority; and
- a chief whose area includes part of the park or reserve.¹¹⁰

The LMC determines its own internal meeting procedures and is responsible for the implementation of its respective management plan.¹¹¹ The LMC makes progress report to the

¹⁰⁴ National Parks Act, 1993, section 9 (1).

¹⁰⁵ National Parks Act, 1993, section 9 (2) and (3).

¹⁰⁶ National Parks Act, 1993, section 2 (2) and (3).

¹⁰⁷ National Parks Act, 1993, section 10 (1) and section 2(3).

¹⁰⁸ National Parks Act, 1993, section 10 (3) and (4).

¹⁰⁹ National Parks Act, 1993, sections 11 and 12.

¹¹⁰ National Parks Act, 1993, section 13 (1).

Minister. The LMC notifies the NPB of any difficulties faced in implementing its management plan together with recommendations to solve these difficulties. The NPB may decide to delegate its powers or functions and duties to the LCM to assist implementation of management plans.¹¹²

Conservation Fund

Section 18(1) of the Act, provides that the NPB shall have a conservation fund for its financial purposes. Parliament will allocate funds for the credit of the conservation fund.¹¹³ All monies received by the NPB during its normal duties and through administrative fees, charges and penalties that are prescribed for by Minister in regulations also make up the Conservation Fund.¹¹⁴ Normal accounting procedures are applied to the NPB who must have their accounts audited by an independent auditor approved by the Minister.¹¹⁵ The NPB will file annual reports to the Minister who will submit such report before Parliament.¹¹⁶

2.8.5 Assessment of Implementation

Although this Act has been in force since 25 July 1995, the NPB is not established. The few conservation areas that exist today, such as the Vathe Conservation area on the island of Santo, are initiatives developed outside the authority of this legislation. The recent enactment of the Environmental Management and Conservation Act, 2002, provides for the establishment of Community Conservation Areas (CCA). In contrast to the National Parks Act which sets up parks and reserves through a formal statutory body, CCAs are set up at the request of local communities and managed by such communities. If these latest provisions i.e. CCAs proves popular and successful, it may have the effect of rendering the National Parks Act nugatory.

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

2.9.1 Objectives

Instrument of ratification of the Vanuatu Government to the United Nations Convention on Biological Diversity (CBD) signed on the 5th day of June, 1992. By virtue of this law, the CBD became part of the domestic legislation of Vanuatu on 01 March 1993.

2.9.2 Administration

The administration of this Act rests with the Minister responsible for environment and is therefore the responsibility of the VEU, hosted within the Department of Lands.

2.9.3 Bodies set up by Legislation

The Act establishes two bodies or authorities: the Director of the Department responsible for the environment and the Biodiversity Advisory Council (BAC).

¹¹¹ National Parks Act, 1993, section 13 (2), (3) and (4).

¹¹² National Parks Act, 1993, sections 14 and 15.

¹¹³ National Parks Act, 1993, section 18 (2) (a).

¹¹⁴ National Parks Act, 1993 section 18 (2) (b), (c) and (d).

¹¹⁵ National Parks Act, 1993, section 19 (1) – (4).

¹¹⁶ National Parks Act, 1993, section 20.

The Director of the Department is not yet appointed in accordance with the provisions of the Public Service Act No.11 of 1998. The specific functions of the Director of the Department responsible for Environment include, amongst other things:

- the maintenance of an Environmental Registry,
- the preparation of State of the Environmental Reports,
- the development of National Policies and Plans with appropriate public consultation,
- the administration of mandatory Environmental Impact Assessment (EIA) procedures,
- the preparation of guidelines, standards, codes of practice and procedures,
- preparation of advice on international environmental treaties and instruments and
- the undertaking of environmental research, assessment, monitoring and inspection.¹¹⁷

The Director is authorised under the Act to employ persons not employed by the Department as authorised officers for the purposes of administering the provisions of the Act and such appointment must be made in consultation with the Public Service Commission and the relevant Local Authority. The term Local Authority used in this report refers to the Municipal Council or the Local Government Councils (LGCs).

Section 29 of the Act establishes a BAC specifically tasked to advise the Minister on matters relating to the Implementation of the Convention on Biological Diversity, including commercial bio prospecting.

2.9.4 Regulatory and Planning Provisions

The Act introduces four (4) main categories of regulatory provisions:

- production and keeping of instruments (documents),
- EIA,
- bio prospecting, and
- community conservation areas.

Production and keeping of instruments (documents)

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

Environmental Impact Assessment

Part 3 (sections 11-28) of the Act provides necessary statutory linkages and inter Government agency co-ordination for implementing EIAs. Subject to a few exceptions¹¹⁸ this law states that EIAs are mandatory for all development activities, projects and proposals that cause or are likely to cause significant environmental, social and or custom impacts¹¹⁹, especially those that are likely to:

- affect coastal dynamics or result in coastal erosion;
- result in pollution of water resources;

¹¹⁷ Environmental Management and Conservation Act 2002, section 4 (2)

¹¹⁸ Environmental Management and Conservation Act 2002, section 13

¹¹⁹ Environmental Management and Conservation Act 2002, Section 12 (1)

- affect any protected, rare, threatened or endangered species, its habitat or nesting grounds;
- result in the contamination of land;
- endanger public health;
- affect important custom resources;
- affect protected or proposed protected areas;
- affect air quality;
- result in unsustainable use of renewable resources;
- result in introduction of foreign organisms and species; etc.¹²⁰

The Act also grants the Director of the Environment Department powers to intervene on his/her own initiative and request an EIA for any proposed development if s/he sees fit.¹²¹ Where any activity requiring an EIA is carried out by a project proponent in the absence of any Ministerial approval as set out in the Act a convicted offender faces penalty fines up to one million vatu and/or face up to two years imprisonment.¹²²

Bio prospecting

Part 1 of the EMC Act defines bio prospecting as “any activity undertaken to harvest or exploit all or any ...

- samples of genetic resources;
- samples of derivatives of genetic resources; and
- the knowledge, innovations and customary practices of local communities associated with those genetic resources, for the development of research, product development, conservation, industrial or commercial application, and includes investigative research and sampling, but does not include customary uses of genetic resources and derivatives.”¹²³

The BAC (amongst other things) vets all bio prospecting applications. The Director of the Environment Department presides as chairperson¹²⁴ of the BAC. The Minister, after consulting the Director, may appoint five additional members on merit to sit for a term of three years.¹²⁵ The BAC must meet twice a year or more when necessary. The Environmental Department provides administrative support for the BAC.¹²⁶

Traditional Biological Knowledge

The definition of bio prospecting¹²⁷ includes regulation of Traditional Biological Knowledge (TBK) by the BAC. Any persons wishing to exploit and/or research TBK must apply for a permit from the BAC. Section 34(6) (a) sets out the criterion for approval of bio prospecting permits. These conditions incorporate the basic principles of prior informed consent from TBK holders to an applicant; and the requirement of an access benefit contract that contains mutually agreeable terms.¹²⁸ Recent developments will require clarification of the roles between the BAC and the proposed National Scientific Research Council (NSRC).

¹²⁰ Environmental Management and Conservation Act 2002 section 12 (2)

¹²¹ Environmental Management and Conservation Act 2002 section 15

¹²² Environmental Management and Conservation Act 2002, section 24 (1) (a) and (3)

¹²³ Environmental Management and Conservation Act 2002, section 3.

¹²⁴ Environmental Management and Conservation Act 2002, section 29(2)

¹²⁵ Environmental Management and Conservation Act 2002, section 29(3)

¹²⁶ Environmental Management and Conservation Act 2002, sections 29(2) and (4)

¹²⁷ Environmental Management and Conservation Act 2002, section 2

¹²⁸ Environmental Management and Conservation Act, 2002, section 34(6)(a)

Community conservation areas

The Director can register a Community Conservation Area in the Environmental Register where custom landowners agree to the formal protection of areas of biodiversity significance within their customary land.¹²⁹ The effect of registration of such Community Conservation Area places the obligation of managing that area upon the landowners, through a management committee. The Director can provide technical or financial assistance to support the management of the Community Conservation Area.¹³⁰

2.9.5 Assessment of Implementation

Although this legislation commenced legal force on 10 March 2003, in fact it remains largely unimplemented. This is because the Department of Environment created under the Act awaits approval by the Public Service Commission. Under the proposed departmental structure, it is envisaged there will be an increase in manpower and, hopefully, financial resources which would enable the Department to play a more active role in ensuring proper management and conservation of the environment and sustainable development of natural resources of the country. At this point in time, there is only a small matter of concern arising from the Act. Concerning Community Conservation Areas, the Act allows them to be established but fails to give the local community concerned any right to enact regulations to give effect to the conservation mandate and to enforce them at the community level. It is recognised that customary dispute settlement mechanisms can be used instead but it may be that they would not be altogether appropriate and chief's 'courts' would certainly benefit from some form of legal recognition, especially given that chiefs in some islands are complaining about the increasing tendency of people to disobey decisions of chief's.

2.10 Environmental Management and Conservation Act 2002

2.10.1 Objectives

The stated objective of this Act is *“to provide for the conservation, sustainable development and management of the environment of Vanuatu and the regulation of related activities.” In short, it builds on existing laws and is regarded as the main legislation that will foster sustainable use of resources and due protection of the environment of Vanuatu, “including its lands, air and waters.”*¹³¹

2.10.2 Administration

The Act establishes the office of a Director for the Department responsible for environment. The provisions of this Act are yet to be administered. The Environment Unit overseen by the Head of Environment currently implements this Act. The VEU is currently hosted within the Ministry of Lands.¹³²

¹²⁹ Environmental Management and Conservation Act, 2002, section 37(1)

¹³⁰ Environmental Management and Conservation Act, 2002, section 39(1) and (2)

¹³¹ Environmental Management and Conservation Act No.12 of 2002, section 1.

¹³² Republic of Vanuatu Official Gazette No, Ministerial Portfolio,

2.10.3 Bodies established by the legislation

The Act establishes two bodies or authorities: the Director of the Department responsible for the environment and the Biodiversity Advisory Council (BAC).

The Director of the Department is not yet appointed in accordance with the provisions of the Public Service Act No.11 of 1998. The specific functions of the Director of the Department responsible for Environment include, amongst other things:

- the maintenance of an Environmental Registry,
- the preparation of State of the Environmental Reports,
- the development of National Policies and Plans with appropriate public consultation,
- the administration of mandatory EIA procedures,
- the preparation of guidelines, standards, codes of practice and procedures,
- preparation of advice on international environmental treaties and instruments, and
- the undertaking of environmental research, assessment, monitoring, and inspection.¹³³

The Director is authorised under the Act to employ persons not employed by the Department as authorised officers for the purposes of administering the provisions of the Act and such appointment must be made in consultation with the Public Service Commission and the relevant Local Authority. The term Local Authority used in this report refers to the Municipal Council or the Local Government Councils (LGCs).

The BAC is established under section 29 of the Act and is specifically tasked to advise the Minister on matters relating to the Implementation of the Convention on Biological Diversity, including commercial bioprospecting.

2.10.4 Regulatory and Planning provisions

The Act introduces four main categories of regulatory provisions:

- production and keeping of instruments (documents),
- EIA,
- Bioprospecting, and
- community conservation areas.

Production and Keeping of Instruments (Documents)

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

Environmental Impact Assessment

Part 3 (sections 11-28) of the Act provides necessary statutory linkages and inter Government agency co-ordination for implementing EIAs. Subject to a few exceptions¹³⁴ this law states that EIA's are mandatory for all development activities, projects and proposals that cause or are likely

¹³³ Section 4 (2), Environmental Management and Conservation Act No.12 of 2002.

¹³⁴ Set out under section 13, Environmental Management and Conservation Act No.12 of 2002.

to cause significant environmental, social and or custom impacts¹³⁵, especially those that are likely to:

- affect coastal dynamics or result in coastal erosion;
- result in pollution of water resources;
- affect any protected, rare, threatened or endangered species, its habitat or nesting grounds;
- result in the contamination of land;
- endanger public health;
- affect important custom resources;
- affect protected or proposed protected areas;
- affect air quality;
- result in unsustainable use of renewable resources;
- result in introduction of foreign organisms and species; etc.¹³⁶

The Act also grants the Director of the Environment Department powers to intervene on his/her own initiative and request an EIA for any proposed development if s/he sees fit.¹³⁷ Where any activity requiring an EIA is carried out by a project proponent in the absence of any Ministerial approval as set out in the Act a convicted offender can be fined up to one million vatu and/ or face up to two years imprisonment.¹³⁸

Bio prospecting

Part 1 of the of the EMC Act defines bioprospecting as “any activity undertaken to harvest or exploit all or any ... (a) samples of genetic resources; (b) samples of derivatives of genetic resources; and (c) the knowledge, innovations and customary practices of local communities associated with those genetic resources, for the development of research, product development, conservation, industrial or commercial application, and includes investigative research and sampling, but does not include customary uses of genetic resources and derivatives.”¹³⁹

The BAC (amongst other things) vets all bioprospecting applications. The Director of the Environment Department presides as chairperson¹⁴⁰ of the BAC. The Minister, after consulting the Director, may appoint five additional members on merit to sit for a term of three years.¹⁴¹ The BAC must meet twice a year or more when necessary. The Environmental Department provides administrative support for the BAC.¹⁴²

Traditional Biological Knowledge

The definition of bio prospecting¹⁴³ includes regulation of Traditional Biological Knowledge (TBK) by the BAC. Any persons wishing to exploit and/or research TBK must apply for a permit from the BAC. Section 34(6) (a) sets out the criterion for approval of bio prospecting permits. These conditions incorporate the basic principles of prior informed consent from TBK holders to an applicant; and the requirement of a access benefit contract that contains mutually agreeable

¹³⁵ Section 12 (1) of the Environmental Management and Conservation Act.

¹³⁶ Section 12 (2) of the Environmental Management and Conservation Act.

¹³⁷ Section 15 of the Environmental Management and Conservation Act.

¹³⁸ Environmental Management and Conservation Act, 2002, section 24 (1) (a) and (3)

¹³⁹ Environmental Management and Conservation Act 2002, section 3.

¹⁴⁰ Environmental Management and Conservation Act, 2002, section 29(2)

¹⁴¹ Environmental Management and Conservation Act, 2002, section 29(3)

¹⁴² Environmental Management and Conservation Act, 2002, sections 29(2) and (4)

¹⁴³ Environmental Management and Conservation Act, 2002, section 2

terms.¹⁴⁴ Recent developments will require clarification of the roles between the BAC and the proposed National Scientific Research Council (NSRC). The proposed NSRC is discussed later on in this report.

Community Conservation Areas

The Director can register a Community Conservation Area in the Environmental Register where custom landowners agree to the formal protection of areas of biodiversity significance within their customary land.¹⁴⁵ The effect of registration of such Community Conservation Area places the obligation of managing that area upon the landowners, through a management committee. The Director can provide technical or financial assistance to support the management of the Community Conservation Area.¹⁴⁶

2.10.5 Assessment of Implementation

Although this legislation commenced legal force on 10 March 2003, in fact it remains largely unimplemented. This is due to the fact that the Department of Environment that is created under the Act has yet to receive approval by the Public Service Commission. Under the proposed departmental structure, it is envisaged there will be an increase in manpower and, hopefully, financial resources which would enable the Department to play a more active role in ensuring proper management and conservation of the environment and sustainable development of natural resources of the country. At this point in time, there is only a small matter of concern arising from the Act. Concerning Community Conservation Areas, the Act allows for them to be established but fails to give the local community concerned any right to enact regulations to give effect to the conservation mandate and to enforce them at the community level. It is recognised that customary dispute settlement mechanisms can be used instead but it may be that they would not be altogether appropriate and chief's 'courts' would certainly benefit from some form of legal recognition, especially given that chiefs in some islands are complaining about the increasing tendency of people to disobey decisions made by chief's.

2.11 Preservation of Sites and Artefacts [Cap. 39] (JR 11 of 1965)

2.11.1 Objectives

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

2.11.2 Administration

The Minister responsible for culture administers this Act.¹⁴⁷

2.11.3 Bodies established under the Act

Nil.

¹⁴⁴ Environmental Management and Conservation Act, 2002, section 34(6)(a)

¹⁴⁵ Environmental Management and Conservation Act, 2002, section 37(1)

¹⁴⁶ Environmental Management and Conservation Act, 2002, section 39(1) and (2)

¹⁴⁷ Preservation of Sites and Artefacts JR11 of 1965, section 1

2.11.4 Regulatory and Planning Provisions

The Minister responsible for Culture consults with the Board of Management of the Port Vila Cultural Centre (PVCC). He classifies any site as historical, ethnological or of artistic interest. Once a site is classified as preserved any artefact of local manufacture fixed to the soil shall also become preserved as a consequence.¹⁴⁸

The Minister must inform the owners of the site classified and allow three months for representations to be made by the owners.¹⁴⁹ Once a site is classified the owner is obligated under the Act to prevent modification or deterioration of the site and must inform the Minister of the likelihood of modification or deterioration of the site.¹⁵⁰ The Minister may authorise funds allocated to assist the owners in preserving the site.¹⁵¹

The Act provides the Minister has pre-emptive rights on every sale of any site or object manufactured by indigenous Ni-Vanuatu. The Minister after consulting the Board of Management of the PVCC must use the pre-emptive right to purchase within 14 days of receiving such notification. Failure to express an intention to purchase within the time limit will be considered as a waiver of the Ministers pre-emptive right.¹⁵² This Act defines artefacts that are protected under this Act – however, this does not fall within the scope of this review and will not be discussed.

The Minister has the power to make regulations for the implementation of this Act.

2.11.5 Assessment of Implementation

Previous reviews have offered the following recommendations for better implementation.

- Amendments to confer protection for sites between notification and classification:
- Amendments to provide classification by reason of the presence of minerals or timber or other material of significance for traditional, cultural or ritual purposes:
- Amendment to create it an offence to incite destruction of a site or artefact: and
- To include obligations to preserve sites in lease agreements to enable compliance by lessees.

These recommendations remain sound.

2.12 Preservation of Sites and Artefacts JR11 of 1965, Order No.12 of 1993

2.12.1 Objectives

On 13 April 1993, this subsidiary legislation provided for the classification of the Yasur Volcano on Tanna as a preserved site.¹⁵³

¹⁴⁸ Preservation of Sites and Artefacts JR11 of 1965, section 2(1) and (2)

¹⁴⁹ Preservation of Sites and Artefacts JR11 of 1965, section 3(1)

¹⁵⁰ Preservation of Sites and Artefacts JR11 of 1965, section 4

¹⁵¹ Preservation of Sites and Artefacts JR11 of 1965, section 5

¹⁵² Preservation of Sites and Artefacts JR11 of 1965, section 6 (1) – (4)

¹⁵³ Official Gazette No.11 'Preservation of Sites and Artefacts JR11 of 1965 Regulations Order No.12 of 1993, 19 April 1993 State Law Office, Port Vila, section 6.

2.12.2 Administration

This Order is administered by the Minister of Culture and the Tanna Council of Chiefs.

2.12.3 Bodies established by the Act

Regulation 3(2) set up the Nengau Entany Trust to manage Yasur Volcano on a commercial basis for the benefit of the Tannese. Composition is by representatives of people of White Sands whose land adjoin the Yasur Volcano namely portions Numbered 50,51,52,56,64, 70 and 71 as set out in the schedule, and subject to approval by the Minister for Culture.¹⁵⁴

2.12.4 Regulatory and Planning Provisions

The Tanna Council of Chiefs is responsible with making rules for the:

- Control (including prohibition) of building, trading or advertising; and
- Fees or charges payable in connection with visit to and or use of the any facilities provided at Yasur Volcano.¹⁵⁵

The Tanna Council of Chiefs submit annual financial and management reports on the operations of the Council to the Minister for Culture.¹⁵⁶

2.12.5 Assessment of Implementation

The customary practice of collecting wild cane for traditional houses with the preserves site is permitted by regulation 2(2) of the Order.

2.13 Plant Protection Act (No. 14 of 1997)

2.13.1 Objectives

Its stated objective is “To provide for the exclusion and effective management of plant pests; and to facilitate exports of plant produce.” The Act defines plant material as “any goods that are wholly or partly derived from a member of the plant kingdom or its excretions or secretions.”¹⁵⁷ A plant pest is “any organism, including any pathogen, which is known, suspected, or liable to be directly or indirectly harmful to plants or beneficial organisms and includes any noxious plant or weed and any product of any pest.”¹⁵⁸ This wide definition extends to aquatic plants.

2.13.2 Administration

The Act refers to the Director of Agriculture and Horticulture and the Minister for the time being responsible for Agriculture, Forestry, Fisheries, Livestock and Horticulture¹⁵⁹ to consult with the

¹⁵⁴ Official Gazette, No. 27 'Preservation of Sites and Artefacts (Amendment) Regulation Order No. 38 of 1997', 29 September 1997, State Law Office, Port Vila, regulation 3(3) (a) and (b)

¹⁵⁵ Preservation of Sites and Artefacts Order No. 12 of 1993, regulation 5

¹⁵⁶ Preservation of Sites and Artefacts Order No. 12 of 1993, regulation 4(2)

¹⁵⁷ Mines and Minerals Act, 1986, section 1

¹⁵⁸ Mines and Minerals Act, 1986, section 1

¹⁵⁹ Plant Protection Act, 1997, section 1

Principle Plant Protection Officer for the purposes of implementing quarantine standards¹⁶⁰ and management of plant pests.¹⁶¹ The Department of Agriculture and Quarantine and Inspection Services are currently hosted within the Ministry of Internal Affairs.¹⁶²

2.13.3 Bodies Established by the legislation

The Act provides for a Principal Plant Protection Officer and sufficient Quarantine Officers appointed by the Public Service Commission.¹⁶³

2.13.4 Regulatory and Planning provisions

The regulatory provisions in this Act include:

- the quarantine of all crafts and goods entering Vanuatu by the Quarantine Officers¹⁶⁴;
- conducting surveys to determine specific pest management programmes;¹⁶⁵
- certificate of plant produce for export purposes and registration of plant product exporters with the Director
- movement controls for the purposes of preventing the spread of plant pests through international and domestic borders.¹⁶⁶

Quarantine Risk Assessments

All craft and goods entering Vanuatu are subject to quarantine until granted quarantine release. Craft is defined as including any conveyance used or capable of being used for carrying goods or people by air, sea, and any shipping container.¹⁶⁷ All imported goods are subjected to routine risk assessments by quarantine officers. The general power of inspection relating to all crafts is to prevent known plant pests, plant diseases and quarantine pests. This Act defines ‘quarantine pest’ to mean a plant pest known or suspected of being capable of causing significant harm to natural resources and which is either not yet present in Vanuatu, or is of limited distribution; and subject to active control measures.¹⁶⁸ Natural resources are defined as meaning:

- organisms of all kinds;
- the air, water, and soil in or on which any organism lives or may live;
- landscape and land form; and
- systems of interacting living organisms and their environment;¹⁶⁹

The Act provides that notwithstanding that quarantine release is already granted, the Principal Plant Protection Officer (PPPO) has powers to deal with a suspected quarantine pest. It is only in this instance that the Minister may approve compensation payments for any direct and immediate loss suffered by any person who is affected by this action.¹⁷⁰ The exception to this is where the

¹⁶⁰ Plant Protection Act, 1997, section 3

¹⁶¹ Plant Protection Act, 1997, section 4

¹⁶² Republic of Vanuatu Official Gazette No.15 ‘Ministerial Portfolio’s’ 17 June 2002, p.4

¹⁶³ Plant Protection Act, 1997, section 9(1) and (2)

¹⁶⁴ Plant Protection Act, 1997, section 2(1) and (2)

¹⁶⁵ Plant Protection Act, 1997, section 4(1)(a) and (b)

¹⁶⁶ Plant Protection Act, 1997, section 6(1) and (2)

¹⁶⁷ Plant Protection Act, 1997, section 1

¹⁶⁸ Plant Protection Act, 1997, section 1

¹⁶⁹ Plant Protection Act, 1997, section 1

¹⁷⁰ Plant Protection Act, 1997, section 16(1) and (2)

goods where released from quarantine following misleading or false information provided by the importer.¹⁷¹

Management of Plant Pests

The Act grants the Minister power to make orders in respect of management of plant pests as follows:

- conducting surveys to determine the pests presence;
- specify a pest management programme including the identification of the targeted pest, the reasons for management;
- identify areas to be managed; duration of management programme; objectives and technical methods to be used;
- identify the implementing person or agency and identify its budget.

Control of Plant Produce Export

The Act grants the Minister the power to specify general quality standards for export certificates. No person may export plant produce unless they are registered as such with the Director of the Department of Agriculture.

2.13.5 Assessment of Implementation

This Principal Plant Act is fairly comprehensive granting extensive powers of inspection and seizure to the PPPO and Quarantine Officers in preventing known plant diseases and pest into Vanuatu. This section of Vanuatu Quarantine and Inspection Services (VQIS) is being implemented with success to date. Only two notable areas of concern have been raised.

The particular provisions relating to monitoring of ballast emissions has never been used. This is an area which has to be looked into carefully to consider how best to implement especially in regulating the introduction of introduced aquatic plant species and related pests through ballast emissions.

There have been indications from the office of the PPPO that their fees and charges must be increased to cover basic administrative costs including on the spot fines should be introduced to act as further deterrence in implementing provisions of the Act. Fees and service charges for the Department of Agriculture and Quarantine services are regulated through subsidiary legislation of the Agricultural Fees Act [Cap.74]. Order No.27 of 1987 contains fees and charges and has been recently amended by Amendment Order No. 10 of 2004, and reflect an increase in service fees for:

- issue of import permits for quarantinable material;
- issue of export phytosanitary certificates; and
- inspection of treatment and storage of imported quarantinable material.

¹⁷¹ Plant Protection Act, 1997, section 17(2)

2.14 Conservation of Forests

2.14.1 Objectives

The Forestry Act No. 26 of 2001 commenced on 03 March 2003. It provides for the protection, development and sustainable management of forests and the forest industry. It repeals the Forestry Act [CAP147].

2.14.2 Administration

The Department of Forests is established and headed by a Director. It is currently hosted under the Ministry of Agriculture, Quarantine, Forestry and Fisheries.¹⁷²

2.14.3 Bodies established by the Legislation

Part 2 of the Forestry Act establishes the Forests Board of Vanuatu (FBV) whose main task is to supervise the negotiations for timber rights agreements.¹⁷³ In addition the FBV advises the Minister on matters relating to forestry policy and administration.¹⁷⁴

2.14.4 Regulatory and Planning Provisions

This Act provides for the management and conservation of forests through:

- Forest Sector Planning;¹⁷⁵
- declaration of Conservation Areas¹⁷⁶ to prohibit commercial forestry in selected forests and protect certain plant species;¹⁷⁷ and
- establishing the Forestry Project Fund to assist in implementation of the reforestation programme;¹⁷⁸
- Any persons wishing to harvest logs from a forest must enter into a Timber Rights Agreement (TRA) with the land owners and must obtain approval from the FBV;
- Timber permits are granted by the Director of Forests where he sees that the land owners are willing to sell their timber;
- Custom owners may grant a forestry lease which is registered in accordance with the provisions of the Land Leases Act [CAP.163];
- Commercial forestry operations require either a timber license, mobile sawmill licence, sandalwood license or a special license granted by the Director.

Forests board of Vanuatu (FBV)

The FBV consists of the Director of Forests, the Director of the Department of Lands and the Head of the Environment Unit.¹⁷⁹ Apart from vetting all TRA, the FBV also sits as an appeals

¹⁷² Republic of Vanuatu Official *Gazette No. 15* 'Ministerial Portfolio's' 17 June 2002, p.4

¹⁷³ Forestry Act, 2001, section 2(2)

¹⁷⁴ Forestry Act, 1997, section 7(e)

¹⁷⁵ Forestry Act, 1997, section 9 (2)

¹⁷⁶ Forestry Act, 1997 section 50

¹⁷⁷ Forestry Act, 1997 section 53(1)

¹⁷⁸ Forestry Act, 1997 section 57 and 59

¹⁷⁹ Forestry Act, 1997, schedule 1 section 1

board to hear applicants whose applications for commercial forestry licences have been rejected by the Director.¹⁸⁰

Agreements for commercial forestry activities

Section 15(1) provides that any commercial forestry operations may be conducted only after a person obtains approval from the Forests Board for either a timber rights agreement,¹⁸¹ a timber permit,¹⁸² or is the holder of a registered forestry lease – together with a valid timber license.¹⁸³

Timber Rights Agreement

Any company or person wanting to enter into a timber rights agreement with custom owners must apply to the Forests Board for approval to negotiate for such acquisition.¹⁸⁴ If the application to negotiate is successful, the Board refers the application to the Forest Investigation Officer (FIO) for further consultation with relevant local government authorities and the affected custom owners.¹⁸⁵ The FIO submits a report to the Board advising whether or not the custom owners consent to the sale of their timber rights to the Applicant. The Board then determines whether or not it will reject or also consent to the application. The Board may attach conditions to its consent. Such consent does not mean that a TRA is granted. A negotiating team is appointed by the Director to assist and advice the custom owners of their entitlements to sell their timber rights.

Planning for the forestry sector

Part three of the Forestry Act provides that the function of the Director of Forests (amongst other things) includes the drafting of the Forestry Sector Plan¹⁸⁶ for each island of Vanuatu.¹⁸⁷ The drafting Forest Sector Plan (FSP) must be considered by the following stakeholders and interest groups:

- Department of Lands;
- Environment Unit;
- Representatives from the forest industry;
- Relevant local government council representatives;
- The Malvatumauri Council of Chiefs;
- The Vanuatu National Council of Women; and
- The general public.¹⁸⁸

After consultations, the Director finalises the FSP and submits it to the Minister responsible for Agriculture, Quarantine, Fisheries and Forestry.¹⁸⁹ The Minister is to table the FSP before the Council of Ministers (COM) within 28 days.¹⁹⁰ If the COM do not require the Director to make any further amendments or alternatively the COM may make such amendments that it sees fit and

¹⁸⁰ Forestry Act, 1997, section 49(1)

¹⁸¹ Section 15(2) subparagraph (a)

¹⁸² Section 15(2) subparagraph (b)

¹⁸³ Section 15(2) subparagraph (c)

¹⁸⁴ Forestry Act No.26 of 2001, section 18(1)

¹⁸⁵ Forestry Act No.26 of 2001, section 19(1)

¹⁸⁶ Forestry Act No.26 of 2001, section 11(1)

¹⁸⁷ Forestry Act No.26 of 2001, section 10(1) (d)

¹⁸⁸ Forestry Act No.26 of 2001, section 11(1) subparagraph (a) to (f)

¹⁸⁹ Republic of Vanuatu Official *Gazette No.15* 'Ministerial Portfolio's' 17 June 2002, p.2

¹⁹⁰ Forestry Act No.26 of 2001, section 12 (1)

approve the FSP,¹⁹¹ the Minister must then table the FSP before the next ordinary session of Parliament.¹⁹²

Conservation Areas

A Conservation Unit exists within the Department of Forests to implement Part 6 of the Forestry Act No. 6 of 2001. The Act provides that custom owners may apply in writing to the Minister responsible for Forests to declare a forest located on their land, a Conservation Area.¹⁹³ The Minister must be satisfied that the particular area of forest has particular scientific, cultural, social or other special value for the community and future generations before granting the request to declare it a Conservation Area. This is done through consultation with relevant LGC's and Area Council of Chiefs, and interested members of the general public.¹⁹⁴ The effect of such a declaration prohibits all commercial operations within that area, while it remains registered as a Conservation Area.¹⁹⁵ Cancellation of a Conservation Area can only be done where the Minister receives such written request from the custom owners to cancel the declaration.¹⁹⁶

2.14.5 Assessment of Implementation

This Act is completely different to its predecessor. Awareness workshops were conducted in the LCG's and the Department of Forests began to implement the provisions of this Act in January 2004. The Forestry Regulation Order No.46 of 2003 entered into force on 5 January 2004 prescribing the forms, fees, bonds and other matters under the principal Forestry Act.

2.15 Forestry Rights Registration and Timber Harvest Guarantee Act 2000¹⁹⁷

2.15.1 Objectives

To provide for the registration of certain forestry rights granted in respect of land and to the harvesting and accreditation of timber plantations.

2.15.2 Administration

Administration of the Act lies with the Minister of Forests and Department of Forests headed by the Director of Forests. The Forestry Officers are primarily responsible for ensuring that accredited timber plantation comply with the Timber Plantations Code.

2.15.3 Bodies established by the Legislation

Nil.

2.15.4 Regulatory and Planning Provisions

The Act regulates:

¹⁹¹ Forestry Act No.26 of 2001, sections 12(2), (3) and (5)

¹⁹² Forestry Act No.26 of 2001, section 13(1)

¹⁹³ Forestry Act No.26 of 2001, section 50(1)

¹⁹⁴ Forestry Act No. 26 of 2001,section 50(2)

¹⁹⁵ Forestry Act No.26 of 2001, section 51

¹⁹⁶ Forestry Act, 1997, section 52(1)

¹⁹⁷ Parliament of Vanuatu, Forestry Rights Registration & Timber Harvest Guarantee Act No.28 of 2000, Extraordinary Official Gazette No. No.10, 9 October 2000.

- the granting and registration of a forestry right;
- applications for the accreditation of a timber plantation;
- the preparation of a timbers plantation code; and
- the Minister of Forests may make regulations that is necessary for implementing the provisions of the Act.¹⁹⁸ The Forestry Regulation Order No. 46 of 2003 sets out the format for a standard TRA.¹⁹⁹

2.16 Control of Pesticides

2.16.1 Objectives

The Pesticides (Control) Act No. 11 of 1993 commenced on or about 16 March 1998. The objectives of this Act are to make provision for the regulation and control of the importation, manufacture, sale, distribution and use of pesticides.

2.16.2 Administration

Minister of Agriculture appoints officers from government departments known as inspectors to carry out the purpose of this Act. The Director of Agriculture is the chairman of the Pesticides Committee whose primary function is regulation of this Act.

2.16.3 Bodies established by the Legislation

Section 2 of the Act establishes the Pesticides Committee. The Pesticides Committee consists of the Directors of Agriculture and Health Department, the Commissioner of Labour, the principal officers of Animal Health and Production, Environment, Plant Protection and not more than three persons who are experienced in pest control, pesticides and related scientific disciplines appointed by the Minister.²⁰⁰ The Pesticides Committee must meet at least once a year in order to carry out its functions as follows:

- to assess and evaluate any application for the registration of pesticides or for the import of any pesticide;
- to determine the conditions of use of any pesticide;
- to promote the efficient, prudent and safe use of pesticides;
- to administer the provisions of its Act and its regulations; and
- to advise the Minister on matters arising out of the administration of its Act; and
- the term of office for members is two years.²⁰¹

Section 3 of the Act provides that the Principal Plant Protection Officer is the Registrar of Pesticides. The main duty of the Registrar is to maintain a Register of pesticides containing:

- the trade name;
- its chemical names;
- the approved common chemical name;
- percentage of active ingredients or acid equivalents as appropriate;
- the name and place of business of the manufacture and the supplier; and

¹⁹⁸ Forestry Rights Registration and Timber Harvest Guarantee Act 2000, section 26(a) and (b).

¹⁹⁹ Forestry Regulation Order No.46 of 2003, section 6 and Form 5 of Schedule 1

²⁰⁰ Pesticides (Control) Act, 1993, section 4(1) subparagraphs (a) – (c).

²⁰¹ Pesticides (Control) Act, 1993, section 4(2).

- the named and place of business of the importer.²⁰²

2.16.4 Regulatory and Planning Provisions

The Act provides for the (i) registration of all pesticides for import, manufacture, packaging or export purposes maintained by the Registrar of Pesticides; (ii) Section 9(a) and (b) set out minimum standards when dealing with pesticides in Vanuatu.

2.16.5 Assessment of Implementation

The Pesticides Committee is currently defunct resulting in the lack of implementation of this Act. This is an area of priority that needs to address as soon as possible. There may be opportunities to explore realistic solutions either through the national Persistent Organic Pollutants (POPs) Project that is currently underway or the National Bio safety Framework (NBF) Project.

2.17 Persistent Organic Pollutants Project in Vanuatu

Vanuatu became a signatory to the Stockholm Convention in May 2002. The Vanuatu Quarantine and Immigration Services are currently implementing a twenty-four month project to implement its obligations under the Stockholm Convention. This global treaty aims to protect human health and the environment from POPs. Twelve targeted toxic chemicals are listed in the Convention. The project (amongst other things) will review Vanuatu's National Profile to assess the National Infrastructure for Management of Chemicals Draft Report together with the Pesticides (Control) Act.²⁰³

The 1997 review highlights relevant concerns when stating that (amongst other things) the strength of various national ministries/agencies in terms of their technical capacity to address chemical management is few and far between. There is a general lack of decision makers with expertise. The decision on whether to use a pesticide ideally requires a detailed knowledge of the pest ecology and of alternative and complimentary methods. The review says that national agencies require strengthening and capacity building, and human resources in most areas of chemicals management.

While it is anticipated that there will be a review of the existing legal regime in relation to management of POPs – this has yet to be undertaken.

Existing Domestic Laws in relation to POPs

Section of the Environmental Conservation and Management Act No. 12 of 2002, provides the Minister with the power to regulate (amongst other things) the environmental effects of importation and transportation of hazardous substances; pests and weeds; waste management; air and water pollution. These powers provide opportunities to strengthen the Environment Department's capacity to monitor the environment for industrial waste, pollution, and other chemicals or biological agents in relation to management of pests and weeds. Any future initiatives to do so must avoid duplicity of roles and instead attempt capacity building for existing laws such as the Pesticides (Control) Act. Although the Environmental Conservation and

²⁰² Pesticides (Control) Act, 1993, section 17(1).

²⁰³ Vanuatu's National Profile to assess the National Infrastructure for Management of Chemicals Draft Report, 1997.

Management Act entered into force on 03 March 2003, the Department has yet to be formally established and a Director of Environment appointed to implement the provisions of the Act.

Municipality By-laws

The Port Vila municipal council prohibition of deposition of litter and rubbish by-law 2 of 1990 prohibits the depositing of refuse and rubbish on any street, public place or unoccupied land. Refuse includes empty food or drink containers, rubbish derelict vehicles or parts of vehicles or any other material.²⁰⁴ Penalties for contravening these provisions is a fine not exceeding VT.20,000 or a period imprisonment of not more than 52 weeks imprisonment.²⁰⁵

2.18 Conservation of Fauna

2.18.1 Objectives

The objectives of the Wild Bird Protection Act 1989, is to protect wild birds listed the Act itself.

2.18.2 Administration

This Act is administered by the director of the Department of Agriculture. The Act provides for a voluntary warden to administer its provisions. This warden remains responsible to the Director of Agriculture.

2.18.3 Bodies established by the Legislation

Nil.

2.18.4 Regulatory and Planning Provisions

The Act provides for a schedule of wild birds protected under this Act by controlling hunting of such birds, and prohibiting their sale or export.

2.18.5 Assessment of Implementation

A recent ad hoc arrangement between the Department of Agriculture and the VEU agreed that the VEU to undertake this responsibility as warden to administer the provisions of the Act.

2.19 International Trade (Flora and Fauna) Act 1989

2.19.1 Objectives

The International Trade (Fauna and Flora) Act No. 56 of 1989 entered into force on 11 February 1991.²⁰⁶ It provides for the implementation of Vanuatu's obligations as a party to the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

²⁰⁴ Port Vila municipal council prohibition of deposition of litter and rubbish byelaw 2 of 1990, Section 1(1).

²⁰⁵ Ibid, Section 4.

²⁰⁶ Official Gazette of the Republic of Vanuatu, No.5 'International Trade (Fauna and Flora) Act No.56 of 1989'

2.19.2 Administration

The Minister responsible for environment and its conservation is responsible for the administration of this Act. CITES obligations include the identification of a management authority to implement its provisions.

2.19.3 Bodies set up by Legislation

Article IX of CITES provides for a Management Authority competent to grant permits or certificates in relation to species protected under Appendix I and implement the provisions of CITES. The Act further provides that the Management Authority shall *exercise the powers, duties and functions of the Scientific Authority as established under Article IX (1) (b)*.

2.19.4 Regulatory and Planning Provisions

This Act is regulated by means of an export permits, re- export certificates and import certificates, granted by the Managing Authority for all protected species listed in Appendix II, III and IV. In Vanuatu the Managing Authority is also the Scientific Authority which provides technical advices in relation to the determination of export permit applications.²⁰⁷ The Management Authority must use permits and certificates that cannot be duplicated easily and used by unauthorised persons. The Managing Authority also maintains an exporter and importer register with full details of specimens.

2.19.5 Implementation

The VEU is the Managing Authority and currently imposes the following fee charges:

- Flying foxes, 300vt per species,
- Triton Shell (Bubu Sel) 500 vatu (endangered worldwide),
- Tree ferns (Black Palm carving) 300 vatu/species,
- Shell species 300vt/species, and
- Turtle Shells (500 vatu per species).

There are suggestions that proposals to increase fees would be welcomed, as fees are applied across the board regardless of weight or quantity factors. However, species exported for commercial purposes are given different fee rates. Species that are endangered world wide, rare or endemic are charged a higher rate than those that are common. No proper stock assessment is available at the VEU on all CITES permits issued.²⁰⁸

3 Conservation of Aquatic Environments

3.1 Water Resources Management Act 2002 (No. 9 of 2002)

This Act provides for the protection, management and use of water resources in Vanuatu.

State Law Office, Port Vila, 11 February 1991.

²⁰⁷ International Trade (Flora and Fauna) Act, 1989, section 1(2).

²⁰⁸ E-mail Donna Kalfatak 09 June 2004.

3.1.1 Objectives

Water is defined in the Act to include:

- any water flowing over or situated upon the surface of any land;
- water flowing over or contained in any river, stream, creek or other natural course for water any lake, lagoon, bay swamp, marsh or spring whether or not it has been altered or artificially improved;
- any groundwater;
- water at any time contained by works and any estuarine or coastal sea water.²⁰⁹ “Works” is defined as any physical works related to the protection, management and use of water and includes any storm water or wastewater works and their associated construction activities;²¹⁰

3.1.2 Administration

The Minister of Lands, Geology & Mines and Water Resources has the overall responsibility for protecting and managing water use in Vanuatu. The Department of Geology & Mines and Water Resources is headed by a Director who is appointed under the Public Service Act No. 11 of 1998.

3.1.3 Bodies established by the legislation

The Minister appoints members to the National Water Resources Advisory Committee under sections 15, 16 and 17 of the Act.

3.1.4 Regulatory and Planning provisions

Regulation of this Act is focused through the duties and functions of the Director in:

- determining of applications for the right to use water, or to construct, operate or maintain works affecting water;
- conducting investigations, research and monitoring into water resources, their use and future management including into water protection zones;
- assisting in the preparation of any National Water Resources Management Policy or Plan;
- providing secretariat services to the National Water Resources Advisory Committee;
- establishing a National Water Resource Inventory;
- establishing committees appropriate to the purpose of the Act;
- maintaining a register of local water management committees;
- establishing standards for drinking water;
- taking water samples for testing;
- approving water supply schemes; and
- conducting training for water supply operators and undertaking such other duties and responsibilities as is lawfully required by the Minister.²¹¹

²⁰⁹ Section 2

²¹⁰ Section 2

²¹¹ *Ibid*, Section 14(1) and (2).

Any person who is not a custom owner or does not receive water supplied by an authorised work under the Act must apply to the Director of Geology, Mines & Rural Water Resources Department for the right to use water for any purpose. For avoidance of doubt, all works and uses lawfully undertaken prior to the commencement of the WRM Act are deemed to be lawful.²¹²

Water Protection Zone (WPZ)

The Minister responsible for Water Resources has the power to (amongst other things) declare by publication in the Official Gazette²¹³ any area to be a WPZ either in the rural or urban areas²¹⁴ for the following purposes:

- to conserve or protect any significant water resource;
- conserve or protect any water resource used or intended for water supply;
- promoting the protection, management or use of water in rural and urban areas;
- dealing with any emergency which may affect the water supply.²¹⁵

3.1.5 Assessment of Implementation

The Water Resources Section is largely implemented by a Manager within the Water Resource Section. Work plans over the last three years have already begun implementing the provisions of the Act prior to its entering into force. WPZs have been indicated for the Tagabe Catchment Area but are still to be processed into law as prescribed by the Act.

3.2 Waste Management

Vanuatu has no existing legislation regulating waste management. Instead, the Public Health Act No.22 of 1994 provides the basic requirements for sanitary systems for all dwellings in rural and urban areas. A National Waste Minimisation and Management Project set about raising general awareness on the need for waste management. Despite these efforts, no national policy has been endorsed by the Council of Ministers with a view to drafting a Waste Management Bill. This is an area of priority for Vanuatu to have effective legislation in place to address waste management on land and sea.

3.3 Public Health Act No. 22 of 1994²¹⁶

3.3.1 Objectives

The Public Health Act No. 22 of 1994 is lengthy with some 130 sections. It provides for general public health in Vanuatu including prohibition to pollution of water resources and the regulation of adequate sanitary systems.

3.3.2 Administration

The Act comes under the general administration of the Minister of Health who is also responsible for public health.²¹⁷ The Minister may request any local authority to act as an agent for the

²¹² Ibid, section 5(1).

²¹³ Ibid, section 26 (4).

²¹⁴ Ibid, section 27.

²¹⁵ Ibid, section 26 (1) subparagraphs (a) to (d).

²¹⁶ Extraordinary Gazette 'Public Health Act No.22 of 1994', State Law Office, 24 April 1995. Note that section 130 states that the Act shall come into force on such date as the Minister may be notice publish in the Gazette and the Minister may appoint different dates in relation to different provisions of this Act.

²¹⁷ Official Gazette No.15, 'Ministerial Portfolios' State Law Office, 17 June 2002.

Government pursuant to the provisions of this Act provided that these delegated powers shall not in any way derogate from the powers conferred on the Minister responsible for local authority i.e. Minister of Internal Affairs.²¹⁸ Local Authority refers to the LCGs established under the Decentralisation Act of 1992 and the Municipals established under the Municipalities Act, [Cap.126].²¹⁹ The Minister may by Order appoint authorised officers to implement the provisions of this Act including:

- Environmental health officers;
- Meat inspectors;
- Veterinary officers;
- Medical practitioners;
- Fisheries officers; and
- any suitable persons.

Finally, the Minister may delegate any or all of his powers under this Act to the Director of Health.²²⁰

3.3.3 Bodies established by legislation

Nil.

3.3.4 Regulatory and Planning Provisions

The regulatory and provisions of interest in this Report are the provisions prohibiting

- pollution of water supplies used for human consumption,
- prohibitions against pollution of all watercourses including ground water,
- prohibitions against littering on the foreshore, estuary and harbour,
- restrictions against erection of latrines within 300 metres of a watercourse, and
- the obligation of local authorities to provide adequate drainage systems for all dwellings constructed.

Furthermore, the Minister of Health has the power to make regulations for the following purposes:

- the control of factories i.e. trade premises which are liable to cause offensive smells, effluvia, or to discharge liquid or other material liable to cause such smells or effluvia, or to pollute streams...²²¹
- the design and the standards of materials to be used on any methods of construction and maintenance and inspection and cleaning of, drainage and sewerage systems,
- the inspection and testing of drainage works,
- the disposal of effluents of trade or other waste matter,
- the construction and fittings of toilets, latrines, sanitations and sewage disposal systems,

²¹⁸ Official Gazette No. 05, 'Constitutional Appointments: Appointment of Ministers' State Law Office, 01 March 2004.

²¹⁹ Public Health Act No.22 of 1994, section 1(1)

²²⁰ Public Health Act 1994, section 5

²²¹ Public Health Act 1994, section 113(k)

- the submission of plans and specifications of drainage works,
- the licensing of plumbers and drain layers, and
- the provisions of toilet accommodation for building and public places;²²²
- the standard or standards of purity of any liquid which after treatment in any purification works, may be discharged there from as effluent;²²³ and
- the control and maintenance of general environmental health quality in matters such as to prevent soil, water, noise and air pollution.²²⁴

Section 114 empowers the Minister with the power to issue advisory or mandatory codes of practice to implement the provisions of the Act. While section 116 of the Act allows LGCs and Municipalities by-laws for specific matters of concern to their area of jurisdiction.²²⁵

Prohibition of pollution of water supply

These sections define ‘nuisance’ and allocates responsibility to the relevant local authorities to take all lawful, necessary and practicable measures to maintain its respective areas free from nuisance. Nuisance is defined to include any “...river, stream, spring or other source of water supply...which is likely to be used for human drinking or domestic purposes...which is in the opinion of the environmental health officer polluted...”.²²⁶

Thus in this indirect manner, the responsibilities of public health authorities at national, LGC, and Municipality level prohibits pollution of fresh water resources. The Act provides two manners to eradicate this nuisance. If people or industries pollute the water source by dumping organic or chemical refuse near the water source then abatement notices are served.²²⁷ If the persons causing the nuisance do not comply within the period specified in the notice, the authorities can initiate court proceedings to obtain relevant court orders against the defaulters.²²⁸

The alternative provision is where the author of the nuisance cannot be located or the owner of the offending materials cannot be located. In this case local authorities or environmental health officers are empowered to do what is necessary to prevent the recurrence of the nuisance.²²⁹

Prohibition of erection of latrines near a water course

Furthermore, the Act prohibits the erection of any latrine within 30 meters of any well, dam, reservoir, river, creek, stream, or watercourse which is used as a source of domestic water supply. Latrines must not be erected to contaminate any aquifer or groundwater that is used for domestic supply. Convicted persons face penalty fines of VT.1,000,000 and imprisonment for up to 5 years.²³⁰

The pollution of waters supplies including any water-course, stream, lake, pond, or reservoir is prohibited under section 48 of the Public Health Act, and punishable if convicted by a fine of up VT1,000,000 or 5 years imprisonment.²³¹ This Report notes that these statutory prohibitions are

²²² Public Health Act 1994, section 113(p)

²²³ Public Health Act 1994, section 113(q)

²²⁴ Public Health Act 1994, section 113(y)

²²⁵ Public Health Act 1994, section 114 and 116

²²⁶ Public Health Act 1994, section 24(c)

²²⁷ Public Health Act 1994, section 25(a)

²²⁸ Public Health Act 1994, section 26

²²⁹ Public Health Act 1994, section 25(b)

²³⁰ Public Health Act 1994, section 63(1) and (2)

²³¹ Public Health Act 1994, section 48(1)

restricted to water resources used for domestic supply only and does not cover water resources generally.

Prohibition of discharge of sewage into a water course

Section 64 prohibits the discharge of raw or untreated sewage into any river, stream, creek, well, dam, reservoir, groundwater or other watercourse. This is a general provision applicable to all watercourses and not restricted to water supplies for human consumption. Any infringements of this provision attracts a penalty of VT1,000,000 or imprisonment of 5 years.²³²

Prohibition of discharge of refuse in a watercourse

Section 65 says “no person shall throw, empty or deposit, or cause to be thrown, emptied or deposited, into any part of any river, stream, creek or other watercourse any rubbish, refuse, waste products, sewage, or other noxious or offensive matter...” However, a local authority may grant permission in writing to any person to discharge wastewater or sewage effluent from a treatment installation into such a watercourse if it is satisfied that the nature of the discharge does not cause health dangers and the watercourse is suitable to receive such discharge. Contraventions of this provision attracts a conviction of 5 years imprisonment and or a fine of VT.1,000,000.²³³

Prohibition of littering on beach of foreshore

The Public Health Act prohibits the littering of box, bottle, tin, paper or other litter likely to be washed up on the shore into the harbour, estuary, creek or any foreshore. Any person found guilty of this penalty will face either a fine of VT.500.000 or imprisonment of 3 years.²³⁴

Adequate drainage systems

The Act provides that local authorities are responsible for providing adequate drainage systems for all building within their LGC area or municipality when they see that the existing drains are ineffective or lacking altogether.²³⁵ The Act prohibits the erection of any dwelling in urban areas unless the lessee has filled in and taken such measures for the general drainage of the area.²³⁶

3.3.5 Assessment of Implementation

The Act defines “sanitary system” as “the total arrangement for disposal of sewage includes the toilet, method of treatment and final discharge”²³⁷ Although the Act allocates responsibility to ensure the regulation of adequate sanitation with local authorities, it does not establish an approved sanitary and waste treatment facility for Vanuatu. It is noted that this is preferable scope for stand-alone legislation – which at this point in time does not exist.

The Public Health Act is brought into force in different stages. By Public Health (Commencement) Order No.10 of 1995, Parts 1,2,9,12,15, and 16 and only section 104(c) and (d) and section 109(1) became law on 24 April 1995. In 2002, the Minister for Health caused a Notice of Commencement of certain provisions of the Public Health Act No.22 of 1994 to be published in the Official Gazette. This brought in the remainder of the parts of the Act into force. Thus, the provisions in relation to nuisance, protection of water supply, sanitation and waste disposal commenced as law in 2002.

²³² Public Health Act 1994, section 64(1) and (2)

²³³ Public Health Act 1994, section 65(1) and (2)

²³⁴ Public Health Act 1994, section 66(1) and (2)

²³⁵ Public Health Act 1994, section 69(1)

²³⁶ Public Health Act 1994, section 79.

²³⁷ Public Health Act 1994, section 1(1)

4 Marine Zones & Fishery Resources

4.1 Maritime Zones Act Cap 138 (No. 23 of 1981)

4.1.1 Objectives

The stated objective of this Act is “To provide for the delimitation of the maritime zones of Vanuatu and other matters incidental thereto.” The marine zones claimed in 1981 reflect the crystallising marine zones which were then being discussed at the Third United Nations Conference on the Law of the Sea and subsequently codified in the United Nations Convention on the Law of the Sea 1982.

4.1.2 Administration

The Department of Ports and Marine is hosted within the Ministry of Infrastructure and Public Utilities.²³⁸

4.1.3 Bodies established by the legislation

Nil.

4.1.4 Regulatory and Planning provisions

The provisions of this Act fall into three broad matters: systems of baselines, delimitation of marine zones and rights to marine zones.

Baselines

The Act claims two systems of baselines. The first are low water line (also called the normal baseline) along the shores of each island and closing lines across bays or river mouths of each island, all of which serve to delimit the internal waters of Vanuatu (s.4 (2)). The other baseline system is straight archipelagic baselines which connect twenty-three base points, being outermost points of various islands as set out under schedule 4 of the Act. These delimit the outermost points of the archipelagic waters of the state.

Delimitation of Marine Zones

The Act claims six types of marine zones for the country. Looking seaward from the shore the first two are internal waters (s. 2) and archipelagic waters (s. 4 (1)). This is followed by the territorial sea (s. 5), contiguous zone (s. 7), continental shelf (s. 8) and 200-mile exclusive economic zone (EEZ) (s.9).

4.1.5 Rights To Marine Zones

Perhaps these aspects in the Act matter most to the current consultancy. The state claims sovereignty in respect of its internal waters, territorial sea and archipelagic waters (s. 3) which means that it has the full right to enact laws (legislative competence) and enforce them (enforcement competence) within these zones. The state only has enforcement competence in its

²³⁸ Republic of Vanuatu Official Gazette, Ministerial Portfolios, No.15, 17 June 2002, p.3.

contiguous zone (s. 7 (2)). In respect of its continental shelf and 200-mile EEZ the state claims a wide range of rights as follows (s.10):

- sovereign rights for the purposes of exploration, exploitation, conservation and management of all resources;
- exclusive rights and jurisdiction for the construction, maintenance or operation of artificial islands, off-shore terminals, installations and other structures and devices necessary for the exploration and exploitation of resources or for the convenience of shipping or for any other purpose;
- exclusive jurisdiction to authorise, regulate and conduct scientific research;
- exclusive jurisdiction to preserve and protect the marine environment and to prevent and control marine pollution; and
- such other rights as are recognised by international law or state practice.
- As well, s. 13 (b) authorises the Minister to issue statutory orders to “provide for the protection and preservation of the marine environment of the continental shelf, archipelagic waters, the territorial sea and the exclusive economic zone.”

4.1.6 Assessment of Implementation

The marine zones claimed by Vanuatu under this Act are consistent with applicable international laws and are accepted by other countries. The most economically significant of these is the 200-mile EEZ which is the area where most licensed commercial fishing is concentrated. The only area of concern is the absence of any laws to provide for the protection and preservation of the marine environment from dumping and other forms of pollution.

4.2 Fisheries Act Cap 158 (No. 37 of 1982)

4.2.1 Objectives

The stated objective of the Act is “To provide for the control, development and matters incidental thereto” It applies in respect of “Vanuatu waters” which is defined under section 1 to mean “waters of the exclusive economic zone, territorial sea, archipelagic waters, and internal waters as defined in the Maritime Zones Act, Cap 138 and any other waters over which Vanuatu claims fisheries jurisdiction.”

4.2.2 Administration

This Act is administered by the Department of Fisheries and Marine Resources which is headed by a Director.

4.2.3 Bodies established by the legislation

The Act does not create any bodies but allocates certain powers and duties to the “Minister”, “Director” and other persons who are designated as “authorised officers” and are empowered to enforce certain provisions of the Act.

4.2.4 Regulatory and Planning provisions

The regulatory provisions are called “Management of Fisheries” and are set out under Part II (sections 2 - 21) of the Act. The substantive provisions fall into four broad areas:

- Management and development plans,
- Access and Licenses,
- Marine scientific research, and
- Conservation.

Management and development plans

Section 2 authorises the Director to prepare and keep under review plans for the management and development of fisheries in Vanuatu waters. In doing so, the Director is required to consult relevant stakeholders such as local fishermen, any other persons affected by the plan, local authorities, government ministries or departments affected by the plan and, where appropriate or practicable, the fisheries management authorities of other states in the region - in particular with those sharing the same or interrelated stocks. Each plan shall identify the fishery and assess the present state of its exploitation, specify the management and development measures to be taken and, in particular, specify the licensing programme to be followed for each fishery, the limitation, if any, to be applied to local fishing operations and the amount of fishing, if any, to be allocated to locally based foreign fishing vessel. The only plan that has been prepared and approved is a Tuna Management Plan.

Access and Licenses

In order to enable foreign nationals to fish in Vanuatu waters, the Act provides for various aspects of access. Section 3 authorises the Minister to enter into agreements with other states or associations of foreign fishermen under which they can be allowed access to fish in Vanuatu waters; but only upon licenses which are issued with conditions (s. 4) and after payment of prescribed fees (s. 14). The Fisheries (Amendment) Act 1989 gives effect to the provisions of various regional fishing agreements and arrangements which have been initiated under the auspices of the South Pacific Forum Fisheries Agency (FFA). Thus, under the amendment act, Vanuatu recognises licenses granted under regional treaties as well as harmonisation of licensing procedures, terms and conditions of licenses and enforcement measures. The amendment Act also authorises the Minister to conclude arrangements for an observer programme pursuant to regional fisheries agreements concluded under the auspices of the FFA.

Marine scientific research

Recognising the significance of marine scientific research, section 10 of the Act authorises the Minister to allow “any fishing vessel to fish in Vanuatu waters for the purpose of scientific research, subject to such conditions as he may specify, and may in granting such authorisation exempt such vessel from the requirements of any fisheries management and conservation measures that may be prescribed.”

Conservation of fisheries resources

The conservation of fisheries resources is catered for through licensing conditions (section 13), protection of species (section 18), prohibition of fishing methods or gear (section 19) and protected areas (section 203).

Licensing conditions

Section 13 enables conservation through the powers of the Minister to impose and vary conditions of fishing licenses. Subsection 2 says that some of these conditions can be general and

be published in the Gazette such as those ‘relating to open and closed seasons, prohibited fishing areas, minimum mesh sizes and minimum species sizes.’ Subsection 2 adds that others may be conditions specific to particular licenses such as those ‘relating to the type and method of fishing or related activity which are authorised, the areas within which such fishing or related activities are authorised, and the target species and amount of fish which are authorised to be taken including any restriction on by-catch.’

Protection of mammals

Section 18 prohibits the fishing for marine mammals and requires any mammals caught to be returned with minimal harm. The penalty is a fine not exceeding VT10, 000,000.

Prohibition of fishing methods or gear

Section 19 prohibits the use of explosives and poisons for fishing; a conviction for which attracts a fine not exceeding VT1, 000,000.

Protected areas

The final conservation oriented provision is section 20 which allows for the establishment of marine reserves. It says ‘the Minister may, after consultation with owners of adjoining land and with the appropriate local government council declare any area of Vanuatu waters and the seabed underlying such waters to be a marine reserve.’ Within this area, it is prohibited to take or destroy any coral, dredge or take any sand or gravel, destroy or disturb the natural habitat and take or destroy any wreck or parts thereof. This is punishable by a fine not exceeding VT1, 000,000. The only marine reserve that has been established so far is Million Dollar Point on Espiritu Santo.

4.2.5 Assessment of Implementation

According to reports in the local media, the Department of Fisheries earned VT92, 025, 000 from exports of fish and various marine products up to the end of October 2003. Commodities exported included aquarium items (such as live fish, live rock, cultured coral and invertebrates), deep sea crab, giant clams, green snails and shark fins.²³⁹ Arguably, this is a positive reflection on the effective implementation of the Act, especially in the area of fisheries development.

Of the Act itself, past reviews have highlighted the fact that the Act itself is outdated, having been enacted in 1982, and past amendments have only addressed issues of fisheries access for distant water fishing nations instead of strict management or conservational issues.²⁴⁰ As well, a recent review sponsored by the Asian Development Bank noted that the Fisheries legislation does not accommodate regional and international initiatives relating to the management of foreign fishing effort in Vanuatu’s EEZ and conservation of marine resources.²⁴¹ They thus proposed, any review of fisheries legislation should ensure the removal of any ambiguity and inconsistency and the alignment of domestic legislation with international practice.²⁴² These comments are basically sound. The ‘ambiguity’ referred to is that pertaining to the implications of various legislations regarding the ownership, use or control of the inshore littoral zone and resources thereof. For example, section 20 of the Decentralisation Act 1994 vests on the provinces power to make “rules

²³⁹ As reported in the *Vanuatu Daily Post* of Friday 31 October 2002 at page 2.

²⁴⁰ Forster, Malcolm, *Environmental Law in Vanuatu: a Description and Evaluation*, A report prepared on behalf of the IUCN Environmental Law Centre at the request of the Asian Development Bank (Unpublished Report: March 1991) at pages 86-92.

²⁴¹ Crowley, Peter, Andrew Wright and Francis Foo, *Vanuatu: Agriculture and Fisheries Sector Review 2000* (Manila: Asian Development Bank, April 2001) at page 90.

²⁴² *Ibid*

and regulations governing fishing and conditions relating to the issuing of fishing licences covering six nautical miles as from the low tide foreshore of all islands making up the local government region.” This provision has meant that the Department of Fisheries has largely left the 6-mile limit to the provinces and customary right-holders to control fisheries access, management and control.

At this point in time, the fisheries sector appears to be plagued by two broad issues. The first is depletion or over harvesting of certain stocks, such as shell fish and coconut crabs. The Fisheries Regulations 1983 cater for control of shell fish harvests by imposing size limits and bans on harvest of coconut crabs and clams are periodically imposed. These are supplemented by the Department’s own fishery reseeded programme for some species. There is also concern about overexploitation of swimming fishery resources in inshore or nearshore areas. To the extent that these problems arise in connection with species that are found within areas dominated by traditional right-holders, it would be a good idea to engage them in the management and conservation process such as by enabling them to enact and enforce local regulations.

The second problem concerns reported conflicts amongst different users of the seas, especially fisher folk. The longest standing of these is the conflict between customary marine right holders and commercial fishermen or artisanal fishermen. The former have long complained of the presence of commercial fishermen in waters which they claim to be their own according to customs. These concerns are prompted not only by perceptions of unjust encroachment on customary resources but also by the fact that commercial and artisanal fishermen have the capacity to deplete resources faster given that they use more effective fishing methods. This concern may be addressed in proposed regulation which would reserve the inner 9-mile zone to local fishermen²⁴³. The other conflict is between dive operators and aquarium traders who are accused by the former of ‘trespassing’ in dive sites, collecting tamed fishes and destroying the reefs. This problem is caused by the fact that there is no existing management plan for dive operators and aquarium traders and the decision as to the site for these competing activities is made by the landowners and provinces, not the Department of Fisheries. Current initiatives are under way to develop an appropriate management plan for aquarium trade.²⁴⁴ The third conflict is between long liners and sports fishing operators who complain that the methods used by the former within the 6-mile zone will deplete stocks of bait fish and drive away marlins and other game-fish.

The foregoing problems are not necessarily based on any deficiencies in the current law. This is because the Act confers on the Minister sufficient powers to issue regulations and the Director to adopt plans that can deal with these. As mentioned, there are plans to gazette regulations on General Conditions for Foreign Fishing and Locally Based Foreign Fishing Vessels which should deal with the conflicts between customary marine tenure holders versus commercial fishermen and sports fishermen versus commercial long liners. These can also be catered for by the adoption of appropriate plans for aquarium trade and inshore fisheries²⁴⁵.

²⁴³ According to a media release by the Minister for Agriculture, Quarantine, Forestry and Fisheries, this would be gazetted in the ‘Notice of General Conditions for Foreign Fishing and Locally Based Foreign Fishing Vessels Regulations.’ As reported in the *Vanuatu Daily Post*, Friday 12th December 2003 at page 2.

²⁴⁴ For a fuller discussion of this issue, see Kalo M. Pakoa, Principal Fisheries Officer, “Aquarium trade in Vanuatu”, in *Vanuatu Daily Post*, Friday 7th November 2003 at page 3.

²⁴⁵ For a fuller discussion of this issue, see Kalo M. Pakoa, Principal Fisheries Officer, “Aquarium trade in Vanuatu”, in *Vanuatu Daily Post*, Friday 7th November 2003 at page 3.

4.3 Maritime Act Cap 131 (No. 8 of 1981 & No. 36 of 1982)

4.3.1 Objectives

The stated objective of this Act was “To provide for the establishment of a shipping register for vessels of Vanuatu engaged in foreign trade and for matters connected therewith.” In simple terms, it facilitates the registration of international ships under the Vanuatu flag and regulates their operations whilst engaged in foreign trade, being, “the transportation of goods between the ports of Vanuatu and ports of foreign countries and between the ports of one foreign country and another.”²⁴⁶

4.3.2 Administration

The Maritime Act is administered by the Ministry of Public Utilities and Infrastructure.

4.3.3 Bodies established by the legislation

Chapter 2, sections 2, 3 and 4 establish the offices of the “Commissioner of Maritime Affairs”, “Deputy Commissioner of Maritime Affairs” and the “Maritime Administrator” respectively, whose functions are as provided for in this Act. These offices and their functions have subsequently been modified by the Vanuatu Maritime Authority Act 1998 (below). Also, the Maritime (Amendment) Act 1989, sections 1 and 2 authorise the Commissioner and Deputy Commissioner to appoint “Special Agents” to exercise powers of the Commissioner or Deputy Commissioner in foreign ports.

4.3.4 Regulatory and Planning provisions

Although this Act does not directly make any provisions for the protection or preservation of the environment, it indirectly contributes to the same by promoting safety in the manning and operation of international ships. The specific matters dealt with by the Act are:

- Documentation and identification of vessels (Chapter 4, sections 16-49);
- Preferred ship mortgages and maritime liens (Chapter 5, sections 50-67);
- Carriage of goods by sea (Chapter 6, sections 68-78);
- Limitation of ship owners liability (Chapter 7, sections 79-84);
- Radio (Chapter 8, section 85);
- Rules of navigation (Chapter 9, sections 86-91);
- Wrecks and salvage (Chapter 10, sections 92-98); and
- Merchant seamen (Chapter 11, sections 99-152).

The Minister is authorised under section 52 to issue regulations relating to various matters referred to under that section. The Maritime Regulations issued between 1981 and 1987 provide for a wide range of matters including Documentation and Identification of Vessels (Chapter 2), Preferred Ship Mortgages and Maritime Liens on Vanuatu Vessels (Chapter 4), Marine Inspection (Chapter 5), Marine Casualties & Offences and Marine Investigations (Chapter 6) and Merchant Marine (Chapter 7).

²⁴⁶ In section 1 (a) of the *Maritime (Amendment) Act No. 8 of 1989*

From the point of view of environmental protection, the most pertinent provisions of the Regulations are section 16 and Chapter 3 (sections 18-22) which is entitled “Prevention of Pollution of the Sea by Oil.” Section 16 imposes an obligation on ship owners and masters to ensure that their vessels are in compliance with the requirements of various conventions that had been adopted under the auspices of the International Maritime Organisation (IMO) and the International Labour Organisation (ILO). These include the International Convention for the Prevention of Pollution of the Sea by Oil 1954 (as amended), International Convention on Marine Pollution 1973 and the International Convention on Tanker Safety Pollution Prevention 1978. In the event of a failure to do so, a ship’s Certificate of Registry may be cancelled and or a fine not exceeding US\$5,000 be imposed together with any other conditions deemed to be necessary. The regulations under chapter 3 represent some attempt to give effect to the International Convention for the Prevention of Pollution of the Sea by Oil 1954 (as amended). The general rule under clause 19 is that unless necessitated by force permitted by regulations it is prohibited to discharge from a vessel any oil or oily mixture into the coastal waters of Vanuatu or within any prohibited zone. This is punishable by fines ranging from US\$5,000 – 25,000.

4.3.5 Assessment of Implementation

Vanuatu is commonly regarded as a Flag of Convenience (FOC) state in that its laws do not impose stringent requirement for any genuine link between ship-owners and grant of flag or nationality to ships. The registration of international ships under this Act has been contracted out to a private company which is based in New York. From 1999 to mid-2001, some five hundred and forty-four (544) vessels comprising some 2, 207, 700 gross tons have been registered under the Vanuatu flag. Unlike vessels flagged in other FOCs, such as Tonga, there have been no reported, public complaints against Vanuatu-flagged vessels. Hence, it appears that the law is being implemented. Only two disputes of note have recently occurred concerning the international registry. Firstly, there have been calls by an indigenous pressure group to transfer the operation of the registry to indigenous people instead of the foreign-owned private company. Secondly, the VMA and the private operator of the registry have been engaged in litigation over distribution of funds and other issues of control. Both are not legal issues.

4.4 Shipping Act Chapter 53 (Queens Regulation 1 of 1968 – Order 15 of 1987)

4.4.1 Objectives

According to the preamble of this Act, its objective is “To provide for the control and safety of Vanuatu vessels”, being, any vessel engaged in commercial trade, game fishing, transport of passengers, etc. but does not include any vessels registered outside Vanuatu.¹⁷⁰ In short, this Act caters for ships which operate within the ports of Vanuatu.

4.4.2 Administration

This Act is also administered by the Vanuatu Maritime Authority (VMA) which falls under the Department of Public Utilities.

4.4.3 Bodies established by the legislation

The Act established the offices of Principal Licensing Officer and Licensing Officers (section 2) who are responsible for carrying out inspections and issuing licenses and certificates under the

Act (section 3). This task is now vested in the Commissioner of Maritime Affairs who is also authorised to appoint other licensing officers to grant the necessary licenses and certificates¹⁷¹

4.4.4 Regulatory and Planning provisions

In order to ensure the proper control, safety and manning of Vanuatu vessels the Act deals with the following matters: certificates of competency for masters, mates, coxswains, engineers and mechanics (Part II); crew requirements (Part III); safety certificates (Part IV); carriage of passengers (Part V); loading of vessels (Part VI); unseaworthy vessels (Part VII); dangerous goods (Part VIII); etc. Although the provisions of this Act do not directly prescribe any requirements for environmental protection, ensuring safety of shipping and operation of ships contributes to protection of the environment.

4.4.5 Assessment of Implementation

The establishment of the VMA in 1998 has led to greater scrutiny of the operations of coastal vessels. Stricter enforcement and compliance with safety regulations has minimised shipping casualties in the country. The only recent issue of note concerning local shipping is that the work of marine inspectors of the VMA are reportedly being hindered certain members of the VMA Board. However, this is not strictly a legal issue.

4.5 Vanuatu Maritime Authority Act 1998 (No. 29 of 1998)

4.5.1 Objectives

The stated objective of this Act is “to establish the Vanuatu Maritime Authority and to provide for the regulation, administration and promotion of the maritime transport industry.”

4.5.2 Administration

This Act is also administered by the Vanuatu Maritime Authority and falls under the Department of Public Utilities.

4.5.3 Bodies established by the legislation

The Act establishes three legal entities: the Vanuatu Maritime Authority (VMA), the office of the Commissioner of Maritime Affairs and the Maritime Appeal Tribunal. Each of these is briefly explained below.

Vanuatu Maritime Authority

The VMA is established under Part 2. It is a body corporate comprised of six members who are appointed by the Minister¹⁷² and whose principal objectives are to:

- regulate, administer and promote the Vanuatu maritime transport industry;
- promote the provision of an effective marine pollution prevention programme; and
- promote the provision of an effective marine pollution response system¹⁷³

To this end, section 6 details the specific functions of the VMA which include, amongst others:

- to promote compliance with safety standards in the maritime transport industry;
- to promote compliance with marine pollution prevention standards in the maritime transport industry;
- to promote Vanuatu's preparedness for, and ability to respond to, occurrences resulting in the pollution of the marine environment;
- to ensure the provision of appropriate distress and safety radio communication systems and navigational aids for shipping;
- to ensure compliance with occupational health and safety standards for seafarers;
- to promote safety in the maritime transport industry by providing information and advice on maritime safety; and
- to ensure the investigation of accidents, mishaps and incidents, and the reporting of those investigations as obliged under any convention, memorandum of understanding or other agreement to which Vanuatu is a party.

Commissioner of Maritime Affairs

The office of the Commissioner of Maritime Affairs (CMA) is established under section 12 of the Act. Section 7 of the Vanuatu Maritime Authority (Amendment) Act No. 29 of 2002 makes clear that the Commissioner is responsible to the authority for the proper administration of this Act and the day to day running of the affairs of the authority. Additionally the Commissioner has other powers and functions that are provided for under this Act, the Shipping Act Cap53 and the Maritime Act Cap 131.

Maritime Appeal Tribunal

This is an administrative tribunal established under Part 9 of the Act. It consists of three persons whose functions are to determine appeals from decisions of either licensing officers or the Commissioner as made under the Shipping Act Cap53, the Maritime Act and Regulations Cap 131.

4.5.4 Regulatory and Planning provisions

The main purpose of the Act is to establish the VMA and the office of the Commissioner who constitute the main administrative framework for giving effect to the Shipping Act Cap53 and the Maritime Act Cap 131.

4.5.5 Assessment of Implementation

Since its establishment in 1998, the VMA and Commissioner have done a commendable job in ensuring safety of shipping at both the domestic and international levels. Unfortunately, the essence of the recent changes to the composition of the VMA and the functioning of the Commissioner is to ensure greater political control thereby disrupting the operations of the VMA and termination of the original Commissioner's contract of service. The fall out from these actions is still being felt and a lot of bad press has been expressed between some employees of the VMA and the board. However, these matters are beyond the purview of this report so it is not necessary to indulge in them.

4.6 The Maritime (Conventions) Act Cap 155 (No. 29 of 1982 & No. 29 of 1984)

4.6.1 Objectives

The stated objective of this Act is “To provide for the application in Vanuatu of certain international maritime conventions” to which Vanuatu is a party.

4.6.2 Administration

This Act is also administered by the Vanuatu Maritime Authority and falls under the Department of Public Utilities.

4.6.3 Bodies established by the legislation

Nil.

4.6.4 Regulatory and Planning provisions

Section of the Act says that the provisions of any of the Conventions listed in the schedule and to which Vanuatu is a party shall have the force of law and shall prevail over any domestic legislation that conflicts with their provisions. The scheduled conventions are:

- Convention on the International Regulations for Preventing Collisions at Sea, 1972;
- International Convention for the Safety of Life at Sea, 1974;
- Protocol of 1978, relating to the International Convention for the Safety of Life at Sea;
- International Convention on Load Lines, 1966;
- International Convention on Civil Liability for Oil Pollution Damage, 1969;
- International Convention for the Prevention of Pollution of the Sea by Oil, 1951;
- International Conference on Maritime Pollution, 1973;
- International Conference on Tanker Safety and Pollution Prevention, 1978;
- Regulations for the Prevention of Pollution by Oil; and
- Guidelines for Surveys Order Annex 1 of MARPOL 73/78.

Items 7 and 8 in the above are “conferences” instead of “conventions” so the Maritime (Conventions) (Amendment) Act 1988 provides for their deletion and substitution with: International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73), and Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973. As well, it adds the following International Maritime Conventions to the list:

- Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972);
- International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 69);
- International Convention for Safe Containers, 1972 (CSC, 1972);
- Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974 (PAL 74);
- Protocol to the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974;

- Convention on Facilitation of International Maritime Traffic, 1965 (FAL 1965);
- Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage, 1969;
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (FUND 1971);
- 1976 and 1984 Protocols Relating to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971.

4.6.5 Assessment of Implementation

Many of these conventions directly provide for facets of protection and preservation of the marine environment. Others do not do so directly but by ensuring safety of shipping or setting up a compensation funds, they indirectly contribute to cleaner seas. As is quite obvious, the list is quite extensive and a lot of these conventions are very long and detailed. Thus, practical problems of access to the documents, reading and understanding them would dissuade ship owners and masters from giving effect to them fully.

The legal avenue, which would most benefit from the scheduled conventions, is section 16 of the Maritime Act, which imposes an obligation on ship owners and masters to ensure that their vessels comply with the requirements of various conventions that had been adopted under the auspices of the IMO and the ILO. Many (but not all) of the scheduled conventions were adopted through the IMO. However, the task of ensuring compliance by Vanuatu-flagged vessels in foreign ports conceivably lies in Special Agents appointed by Commissioner so it is not possible to say whether this Act is in fact implemented at all. Perhaps the facts that Vanuatu is an FOC and that the Maritime Conventions Act Cap 155 is not listed as an Act under the responsibility of the Commissioner are sufficient bases to conclude that this act remains largely unimplemented.

4.7 Ports Act Cap 26 (JR 12 of 1957 – Act No. 6 of 1985)

4.7.1 Objectives

The stated objective of this Act is “To provide for the control of ports in Vanuatu.” When the Act was initially adopted in 1957, section 2 of the Act stipulated two ports of entry, being Port Vila and Luganville. Under the Ports (Amendment) Act 1999²⁴⁷, these other ports were also added by schedule 2 to the list: Lenakel, Loltong, Sola, Anelcauhat and Litzlitz.

4.7.2 Administration

The Act is administered by the Department of Ports and Harbours, which comes under the Ministry of Internal Affairs.

4.7.3 Bodies established by the legislation

The Act provides for the office of Harbourmaster and other port officers. Section 5 of the Act authorises the Minister to appoint a Harbourmaster who has overall responsibility for proper administration of the port. To this end, he has the powers “to give directions regulating the time and the manner in which any vessel shall enter into, go out of or lie in the port, and the position,

²⁴⁷ No. 11 of 1999

mooring, unmooring, placing or removing of any vessel within the same.”¹⁷⁵ Additionally, section 11 allows the certification of ship pilots. Formerly, this was done by the Minister but is now done by the Commissioner of Maritime Affairs¹⁷⁶.

4.7.4 Regulatory and Planning provisions

Apart from the above matters, the Act also deals with incidental issues such as carrying and use of explosives (sections 17-18), wrecks, obstructions and moorings (sections 19-22), erections of private installations in a port (sections 23-24), government wharf and port charges (sections 27-32) and offences (sections 33-34). As well, the Minister is authorised to issue regulations under section 32 for the purposes of giving effect to the Act²⁴⁸. Most of the above provisions are not directly relevant to environmental protection.

However, two provisions of the Ports (Operation in Port of Port Vila) Regulations prohibit pollution from dumping and expectorating. Section 24 (Dumping of refuse) says, “No fuel oil, lubricating oil, or waste oil shall be thrown or pumped over the side from any ship within the port without the prior permission of the harbourmaster.” Section 25 says that no person shall expectorate, urinate or defecate within the port except in the places provided for such purposes.

4.7.5 Assessment of Implementation

On the operational side of business, the Department of Ports and Harbours have done a commendable job in ensuring that the ports are run smoothly, necessary repairs to infrastructure are carried out, services are provided to vessels, and ports and charges are collected. However, the legislation and regulations governing their operations are rather old and need to be updated. Concerning environmental protection generally and within the port area in particular, the laws fail to address these environmental concerns.

Cleaning of bilges is an incidental part of navigation because ships need to remove excess water that collect at the bottom of vessels or else they will sink. Oftentimes, this water is mixed with diesel or other oils and can thus be a pollutant. Both local and overseas ships do it all the time at the Port Vila harbour but it appears that section 24 of the Port Vila Regulation (above) is not enforced. In any case, the problem cannot be stopped merely by prohibiting it; instead the mixture and discharge rate must be controlled or reception facilities be set up as an alternative.

Discharge of ballast is also incidental to navigation. Big ships carry water in order to stabilise them during voyages. When they approach the Port Vila harbour, they have to discharge the ballast in order to reduce their draft for the sake of entering into the shallow waters of the harbour. The ballast that is discharged is pollutant because it may contain exotic organisms that can be harmful to local species of marine flora and fauna. The way to deal with this problem is for the law to prohibit discharge of ballast in the port area.

Discharge of sewage and other domestic waste is also incidental to navigation. The regulations do not address the issue of dumping of sewage and other waste into the harbour. This problem may not be so obvious for most small craft but in the case of bigger vessels, the larger volumes they

²⁴⁸ The following regulations have been published in the *Gazette: Ports (Compulsory Pilotage at Ports of Port Vila and Luganville Regulations 1973-1977, Ports (Operation in Port of Port Vila) Regulations 1965-1973 and Ports (Operation in Port of Luganville) Regulations 1957-1977.*

discharge brings out this issue to the fore. For example, people who work or visit at the main wharf when the Pacific Sky visits say that the sewage it discharges not only discolours the water but leaves an overpowering stench. Similarly, the absence of regulations means that ships of all sizes can discharge kitchen refuse such as empty cans, plastic bags and so on into the sea without any fear of being prosecuted.

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Appendix I

Terms of Reference for Consultants

Consultancy – Review of Environment legislation and policies for Vanuatu

The Government of Vanuatu, through the Environment Unit, through the International Waters Programme (IWP), is to commission a review of natural resource and environment-related legislation in Vanuatu. A review of Vanuatu environment laws had been undertaken in 1991 by ADB and since then there had been some changes in procedures and roles to accommodate the development changes within the country.

The principal focus of the IWP is community-based activities associated with the conservation and preservation of freshwater, community-based waste management and the sustainable use of coastal resources where it includes marine protected areas.

The consultancy is in two Phases.

Phase 1

Provide a comprehensive review of current legislations covering environmental and natural resources (marine and terrestrial) and other legislations, which has a bearing on such resources. The review will include the objectives of relevant legislation or policy, its administration; its regulatory and planning provisions as well as a summary of the functions of bodies established by the legislation.

On the basis of the report prepared for Phase 1 instructions will be provided to the consultant in respect of additional work, which may include:

Phase 2

Identify any overlaps, conflicts and gaps in the current legislations. This section should recommend for particular areas of conflict to be addressed. Identify potential in the legislations to support the Government in respect to the responsible management of the environment and the sustainable use and conservation of natural resources.

Identify barriers to the effective implementation of existing legislations to achieve the above potential.

Profile environment- and natural resource-related Bills. Analyse the status of consideration of each Bill and assess prospects for its enactment and entry into force.

Identify any proposed reviews of legislation/policy and explain the intent of such reviews.

Phase II will be completed within a 2-week time frame.

Output

The output of the work will include a report to the Environment Unit for Vanuatu. The report will include:

cover page that clearly displays the title of the report, the author, their affiliation and date
a table of contents including appendices

abbreviations

acknowledgments

an executive summary

a reference list

the list of environmental related legislations and policies and description of their administration, regulation and planning provisions] and functions of bodies establish by the legislation/policy.

- as one of the appendices, the descriptions on any overlaps, conflicts and gaps with recommendations on particular areas of conflicts to be addressed.

- as one of the appendices, on description of barriers to effective implementation of existing legislations/policies to achieve sustainable use and conservation of natural resources.

as one of the appendices, a list of environment and natural resource related Bills and comment on each bill on it's status and prospect for it's enactment and entry into force.

as one appendices if required, a description of any proposed legislation/policy review

Appendix 2

List of Environmental Related Laws and Policies

Constitution

Constitution of the Republic of Vanuatu 1980

Legislation

Alienated Lands Act Chapter 143 (No. 12 of 1982)
Animal Importation and Quarantine Act [CAP.201] (Act No.7 of 1988)
Animal Importation and Quarantine Regulations (Order No.14 of 1994)
Convention on Biological Diversity (Ratification) (Act No. 23 of 1992)
Customary Land Tribunal Act 2001 (No.7 of 2001)
Environmental Management and Conservation Act 2002 (No. 12 of 2002)
Fisheries Act Cap 158 (No. 37 of 1982)
Fisheries Amendment Act (No. 2 of 1989)
Forestry Act 2001 (No. 26 of 2001)
Forestry Rights Registration and Timber Rights Harvest Guarantee Act (No.28 of 2000)
International Trade (Flora and Fauna) (Act No. 56 of 1989)
Land Acquisition Act 1992 (No. 5 of 1992)
Land Leases Act Cap 163 (Act No. 4 of 1983, No. 10 of 1987)
Land Reform Act Chapter 123 (Joint Regulation 31 of 1980 – Act No. 32 of 1985)
Land Valuers Registration Act 2002 (No. 23 of 2002)
Maritime (Amendment) Act 1989 (No. 8 of 1989)
Maritime (Amendment) Act 1990 (No. 3 of 1990)
Maritime (Amendment) Act 1996 (No. 13 of 1996)
Maritime (Amendment) Act 1998 (No. 31 of 1998)
Maritime (Conventions) (Amendment) Act 1988 (No. 17 of 1988)
Maritime (Conventions) Act Chapter 155 (No. 29 of 1982 & No. 29 of 1984)
Maritime Act Chapter 131 (No. 8 of 1981 & No. 36 of 1982)
Maritime Zones Act Chapter 138 (No. 23 of 1981)
Mines and Minerals [CAP.190] (Act No.11 of 1986)
National Parks Act, 1993
Plant Protection Act 1997 (No. 14 of 1997)
Ports (Amendment) Act 1998 (No. 32 of 1998)
Ports (Amendment) Act 999 (No. 11 of 1999)
Ports Act Chapter 26 (Joint Regulation 12 of 1957 – Act No. 6 of 1985)
Shipping Act Chapter 53 (Queens Regulation 1 of 1968 – Act no. 7 of 1985)
Strata Titles Act 2000 (No. 29 of 2000)
Valuation of Land Act 2002 (No. 22 of 2002)
Vanuatu Maritime Authority (Amendment) Act 2001 (No. 23 of 2001)
Vanuatu Maritime Authority (Amendment) Act 2002 (No. 29 of 2002)
Vanuatu Maritime Authority Act 1998 (No. 29 of 1998)
Water Resources Management Act 2002 (No. 9 of 2002)
Wild Bird Protection Act Chapter 30 (Joint Regulation 5 of 1962 – JR 13 of 1971)

Policies & Programmes

Code of Logging Practice
National Biodiversity Conservation Strategy
National Bio safety Framework Project
National Conservation Strategy
National Waste Management Strategy
Persistent Organic Pollutants
Tuna Management Plan

Appendix 3

Description of any overlaps, conflicts and gaps with recommendation of particular areas of conflicts to be addressed

The environmental laws of Vanuatu are categorised into three groups in this review as follows; terrestrial, aquatic and marine resources. There are laws that are specific to a particular resource such as the Water resources management Act and there are laws that cover a whole ambit of natural resources such as the Environmental management and conservation Act of 2002. Therefore, there is much room for legal and administrative overlaps. This is anticipated where conservation of natural resources involve cross-sectoral administration by government agencies and departments. Areas of conflict for environmental protection are more prominent where environmental policies are not stream lined with current trade, commercial development and investment policies of national government, LGC's and municipal councils. The drafting of some recent legislations dealt with in this review do not contain provisions stating relevant amendments in other earlier laws – the most obvious being the Environmental Management and Conservation Act of 2002. This lack in harmonisation of environmental legislation is highlighted in recommendations. The following discussion is limited to those Acts that have identifiable overlaps and conflicts.

**Legislation:
Overlaps:**

Mines and Minerals Act of 1986

In the case where a foreign investor is applying to conduct mining activity in Vanuatu, such development is subject to the Vanuatu Foreign Investment Promotions Authority Act No. 15 of 1998. This Act grants the Board a discretionary power to request the submission of an environment impact assessment from a foreign investor when determining an application for certificate of approval.²⁴⁹

Conflicts:

Part 3 of the Environmental Management and Conservation Act of 2002. Future conflicts with the powers of the Director of Environment to request EIA in relation to developments, which would include applications for mining licences, exploration and prospecting permits. However, this Review acknowledges that the various working groups set up by the NBSAP project for example, within the VEU include the Director of Geology and Mines as a member. These working group committees also serve as awareness raising on issues of protection and conservation of biodiversity and therefore provide a forum – albeit ad hoc for the two departments to liaise with one another in protecting the nations biodiversity.

Gaps:

- Mining licences do not require EIA's.
- No regulations in place to control quarrying activities and the extraction of sand and coral aggregate.

²⁴⁹ Foreign Investments Promotion Authority Act No. 15 of 1998, section 8 (2)A

<i>Recommendations:</i>	Amendment to the Mines and Minerals Act, 1986 to ensure compatibility with the Environmental Management Act in relation to EIA's for all applications to conduct mining activities. DGM and VEU to attend to the drafting of regulations to control quarrying activities and extraction of sand and coral aggregate for COM to endorse.
<i>Barriers to implementation of recommendations:</i>	A potential barrier may be the level of awareness and importance of the issue of EIA's at a Ministerial level who endorse these recommendations before they become actionable.
<i>Legislation: Overlaps:</i>	<i>Geothermal Energy Act of 1987</i> There are also provisions under the Vanuatu Foreign Investment Promotions Authority Act No. 15 of 1998 which grant the Board a discretionary power to request the submission of an environment impact assessment from a foreign investor when determining an application for certificate of approval. ²⁵⁰
<i>Conflicts:</i>	Part 3 of the Environmental Management and Conservation Act of 2002. Future conflicts with the powers of the Director of Environment to request EIA in relation to developments i.e. applications for mining licences.
<i>Gaps:</i>	Exploration and prospecting licences do not require EIA.
<i>Recommendations:</i>	Relevant amendments to ensure compatibility with the EIA provisions contained in the Environmental Management and Conservation Act.
<i>Barriers to implementing recommendations:</i>	A potential barrier is the level of awareness of the issue of EIA's at the Ministerial level, who need to endorse these recommendations before they become actionable.
<i>Legislation: Overlaps:</i>	<i>Animal Importation and Quarantine Act No.7 of 1988 [CAP.201]</i> International Trade (Flora and Fauna) Act administering of export permits for endangered species set out in Appendix I, II and III of CITES. This Act is administered by VEU hosted within the Ministry of Lands and environmental matters. Section 18(2) of this Act provides the Minister of Agriculture and Quarantine powers to issue orders prohibiting the landing of specified animals in Vanuatu for the purposes of preventing or controlling the international trade in endangered wildlife species. This early provision is redundant with the later enactment of the International Trade (Flora and Fauna) Act in 1991. The later Act appoints the VEU as the managing authority with powers to issue import and export permits (CITES permits) in relation to endangered species set out in

²⁵⁰ Foreign Investments Promotion Authority Act No. 15 of 1998, section 8 (2)A

Appendices II and III.

Part 3 of the Environmental Management and Conservation Act of 2002 which requires EIA for any introduced foreign organism. At a practical level it is fortunate that the VEU is also the managing authority for issuing CITES permits and this overlap does not currently present implementation difficulties.

Conflicts:

Nil

Gaps:

- No specific provision to prevent the introduction of invasive alien species.
- No specific provisions requiring EIA prior to the use of biological control agents.²⁵¹
- No specific provisions for on the sport fines for offenders discovered at border control areas.

Recommendations:

Amendment to the Act to ensure compatibility with EIA provisions of the Environmental Management and Conservation Act.

Barriers to implementing recommendations:

A potential barrier is the level of awareness of the issue of EIA's at the Ministerial level, who need to endorse these recommendations before they become actionable.

Legislation:

Environmental Management and Conservation Act No. 12 of 1002.

Overlaps:

Plant Protection Act, 1997 in relation to procedures for granting import permits for alien plant species.

Decentralisation Act, 1991 in relation to LGC's powers to regulate development in their respective LGC areas.

Municipality Act, 1986 in relation to powers of the Town Planning Committee to regulate all development within their respective Municipalities.

Mines and Minerals Act, 1986.(refer to above comments under Mines and Minerals Act, 1986.)

Animal Importation and Quarantine Act, 1989 in relation to import permit procedures for alien animal species.

Conflicts:

Foreign Investments Promotions Authority Act, 1998.

This Act overlaps into areas of weed control and pests which is already regulated by the Plant Protection Act of 1997.

Gaps:

The Act establishes Community Conservation Areas, but fails to give the local community concerned any right to enact regulations to give

²⁵¹ Note this EIA requirement can be implemented under the Environmental Management and Conservation Act of 2002, but implementation is yet to happen

effect to the conservation mandate and to enforce them at the community level.

Recommendations:

All legislation listed in ‘overlaps’ and ‘conflict’ should be amended to ensure compatibility with the EIA provisions of the Environmental Management and Conservation Act.

It is recommended that any implementation of the provisions relating to pests and weeds including the drafting of regulations by the Minister for environment must be done with the Director of Quarantine and in consultation with the Principal Plant Officer (who is also the Registrar of Pesticides).

It is recognised that customary dispute settlement mechanisms can be used instead but it may be that they would not be altogether appropriate and chief’s ‘courts’ would certainly benefit from some form of legal recognition, especially given that chiefs in some islands are complaining about the increasing tendency of people to disobey decisions of chief’s.

Barriers to implementing recommendations:

A potential barrier is the level of awareness of the issue of EIA’s at the Ministerial level, who need to endorse these recommendations before they become actionable.

In relation to achieving compatibility with the Foreign Investments Promotions Authority Act of 1998, the idea of a ‘one stop’ shop and efficient processing of investment applications may hinder proposed amendments.

Legislation: Overlaps:

Forestry Act No.26 of 2001

Environmental Management and Conservation Act, 2002.

There is likelihood that conservation areas set up under the Forestry Act No.26 of 2001, may cover area that has been registered as a community conservation area under the Environmental Management Act. Where this occurs, management of such areas must comply with protection of protected species listed in Schedule 7 of the Forestry Regulation Order No.46 of 2003.

This may also be the case with the National Parks Act, 1993, but as NPB is not active the overlap is currently non-existent.

Gaps:

Contains no provisions in relation to invasive alien species that may affect the conservation of forests.

Conflicts:

Nil

Recommendations:

The VEU and the Department of Forests need to agree a workable policy to state what happens where conservation areas and community conservation areas overlap.

Barriers to implementing recommendations:

A potential barrier is the low level of awareness of the statutory implications that arise out of establishing a conservation area with other government agencies such as the Department of Agriculture,

Trade, Industry and Commerce.

Legislation: *The Pesticides (Control) Act No. 11 of 1993*
Overlaps: (Refer to comments under Environmental Management and Conservation Act.)
Gaps: Nil
Conflicts: Nil
Recommendations: That the Pesticides Committee is reconvened as soon as possible to review and implement the provisions of this Act.

Registration of pesticides in Vanuatu is updated as soon as possible.

Barriers to implementing recommendations: Lack of resources and capacity to implement the Act.
General lack of awareness regarding chemical risks relating to contained use of pesticides on the environment.

Legislation: *Maritime Zones Act Cap 138 (No. 23 of 1981)*
Overlaps: Nil
Gaps: No regulations in relation to dumping and other forms of pollution.
Conflicts: Nil
Recommendations: Efforts to implement effective regulation of dumping and forms of marine pollution in line with Vanuatu's obligations under the London Convention.

Barriers to implementing recommendations: Nil.

Legislation: *Fisheries Act No. 37 of 1982[Cap.158]*
Overlaps: Nil.
Gaps: Legislation does not accommodate regional and international initiatives relating to the management of foreign fishing in Vanuatu's EEZ and conservation of marine resources.
Conflicts: Nil
Recommendations: Review of fisheries legislation to remove ambiguities and inconsistency to ensure compatibility with international practice.

Barriers to implementing recommendations: Nil

Legislation: *Foreshore Development Act, 1975*
Overlaps: Decentralisation Act and the powers of LGC's to regulate development proposals within their own LGC Areas.
Municipalities Act and the town planning committee powers to grant building permits in their respective Municipalities.

<i>Gaps:</i>	Definition of ‘foreshore’ is narrow and does not have the effect of controlling beachfront development that lies entirely above the mean high water mark. Although development activities above the mean high water mark are now subject to EIA’s under the provisions of the Environmental Management and Conservation Act, these provisions are not yet formally implemented.
<i>Conflicts:</i>	Nil
<i>Recommendations:</i>	Amendments to the Act to make it compatible with the EIA provisions in the Environmental Management and Conservation Act.
<i>Barriers to implementing recommendations:</i>	Nil.

Appendix 4

Profile environment and natural resource related bills. Analyse the status of consideration of each bill and assess prospects for its enactment and entry into force.

Advises from the State Law Office are that bills for Parliament are strictly confidential therefore cannot be divulged in this report. The Consultants are aware that that there is only one bill that is in the process of being drafted that relates to natural resources and this is the bill for the national scientific research council (NSRC). As its status is already at the drafting stage, this bill has been endorsed by the Council of Ministers and unless government policy and priorities change after the upcoming general elections in July 2004, the bill should be enacted at the first ordinary session of the new Parliament in 2005. Considerations as to when it enters into force as law, should not be problematic as the bill will be identifying the VEU as the interim implementing agency until such time as funding permits the establishment of a fully fledged NSRC.

Appendix 5

Identify any proposed reviews of legislation/policy and explain the intent of such reviews.

National Bio safety Framework Project

Vanuatu formally joined this UNEP/GEF Project in February 2003. This Global Project aims at assisting up to 100 eligible countries to prepare their national biosafety frameworks in accordance with the relevant provisions of the Cartagena Protocol on Biosafety. Several surveys were required to assist in the development of Vanuatu's national biosafety framework by identifying the following factors including a report to identify:

Existing domestic laws, bylaws and regulations that are related to the management of biosafety; and

Vanuatu's existing international obligations and guidelines and how they may impact upon the management of biosafety in Vanuatu.

The Report found that there are no existing laws governing GMOs in Vanuatu. There are formal import permits systems set up to screen imported food, fisheries, animals and plants. These do not specifically mention GMOs and are therefore inadequate in their current state to address the issue of biosafety to the satisfaction of the CPB provisions.

The Report concluded that Vanuatu must ratify the CPB as soon as possible.²⁵² In general, there are no existing laws governing GMOs in Vanuatu. There are formal import permits systems set up to screen imported food, fisheries, animals and plants. These do not specifically mention GMOs and are therefore inadequate in their current state to address the issue of biosafety to the satisfaction of the CPB provisions. While this effort is ongoing, the formulation of the national biosafety framework can continue with consultation of the various agencies referred to in the Report. The most important interest group of course is the ordinary consumer and they must be represented at all stages prior to any formal drafting of biosafety legislation.

The news for Vanuatu and other countries developing their national biosafety frameworks and legal regimes is that the international organisations and treaties such as Codex Alimentarius Commission and the International Plant Protection Convention have forged ahead to develop helpful guidelines in this area. These developments enforce arguments for stricter domestic regulation of GMOs in general as opposed to setting up minimum requirements to regulate specific LMOs in transit as prescribed under the CPB.

Elements of Vanuatu's Biosafety framework include:

1. the development of a Biosafety policy;
2. the establishment of appropriate Regulatory Regime;
3. identification of System to handle requests (administrative, risk assessment & management, decision making);
4. follow up actions (monitoring, inspections and enforcement); and
5. public awareness and participation seminars.

Persistent Organic Pollutants Project in Vanuatu

²⁵² The Ratification Act is already prepared by the State Law Office and awaiting tabling before the next ordinary session of the new Government.

Vanuatu became a signatory to the Stockholm Convention in May 2002. The Vanuatu Quarantine and Immigration Services are currently implementing a twenty-four month project to implement its obligations under the Stockholm Convention. This global treaty aims to protect human health and the environment from persistent organic pollutants (POPs). Twelve targeted toxic chemicals are listed in the Convention. The project (amongst other things) will review Vanuatu's National Profile to assess the National Infrastructure for Management of Chemicals Draft Report together with the Pesticides (Control) Act.²⁵³

While it is anticipated that there will be a review of the existing legal regime in relation to management of POPs – this has yet to be undertaken.

Existing legislation relating directly or indirectly to regulation of POPs:

Section of the Environmental Conservation and Management Act No. 12 of 2002, provides the Minister with the power to regulate (amongst other things) the environmental effects of importation and transportation of hazardous substances; pests and weeds; waste management; air and water pollution. These powers provide opportunities to strengthen the Environment Departments capacity to monitor the environment for industrial waste, pollution, and other chemicals or biological agents in relation to management of pests and weeds. Any future initiatives to do so must avoid duplicity of roles and instead attempt capacity building for existing laws such as the Pesticides (Control) Act.

²⁵³ Vanuatu's National Profile to assess the National Infrastructure for Management of Chemicals Draft Report, 1997.