

COOK ISLANDS

Legislative Overview

On the basis the work of the International Waters Programme will be in four principal areas; marine protected areas and sustainable coastal fisheries, the protection and conservation of freshwater and the management of community-based waste, a pilot project established under the Cook Islands national component of the International Waters Programme has the potential to interact with several Government ministries.

In an attempt to understand public service responsibilities for the administration and management of activities in these four focal areas, a brief review of current legislation, including responsibilities for its implementation, was undertaken during the first visit of the International Waters Project Coordination Unit to Cook Islands in May 2001. The resulting summary, presented here, was assisted by a review of environment legislation in Cook Islands undertaken by Mere Pulea in 1992. Since Pulea's review, some legislation has been reviewed (for example the Marine Resources Act) while new legislation has been drafted (for example the Cook Islands Environment Act). This overview would benefit from a review by the National Coordinator. Table 3 lists legislation and government officers and bodies responsible for it's implementation.

Table 3: Legislation and Responsible Government Offices, Cook Islands

<i>Legislation</i>	<i>Responsible Government Offices</i>
The Cook Islands Constitution (1916) House of Arikis Act (1966)	Queen's Representative, Cabinet, Executive Council, House of Ariki and Koutu Nui
The Cook Islands Act (1915)	Land Court
The Outer Islands Local Government Act (1988)	Island Councils
The Development Investment Act (1977) The Litter Act (1986/87) Re-Use of Bottles Act (1988)	Trade, Industries, Labour and Commerce
The Planning and Economic Development Act (1987)	Planning and Economic Development
The Rarotonga Environment Act (1994-95) The Cook Islands Environment Act (proposed)	Tu'anga Taporoporo, (Environment Service & Environment Council)
The Marine Resources Act (1989) The Marine Resources Amendment Act (1991) The Continental Shelf Act (1974) and its subsequent amendments The Territorial Seas and Exclusive Economic Zone Act (1977)	Marine Resources
The Prevention of Marine Pollution Act (1998)	Ministry of Transport
Ministry of Agriculture Act (1978) The Plants Act (1973) The Plant Introductions and Quarantine Introductions Act (1976) and its 1980 amendments The Animals Act (1975) with its associated regulation relating to the importation of animals and the prevention of animal disease The Pesticides Act (1987) The Wandering Animals Act (1976)	Ministry of Agriculture and Forests
National Water Authority Bill (proposed)	National Water Authority (proposed) Ministry of Works
Ministry of Health Act (1991) Public Health Regulations (1987) Building Controls and Standards Regulations (1991)	Ministry of Health
	Tourist Authority

The Tourist Authority Act (1989)	
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The Cook Islands Constitution Act (1966) establishes the Cook Islands as a self-governing entity except in respect of external affairs and defence which remain the responsibility of New Zealand. The relationship between New Zealand and Cook Islands is the subject of a review in 2001 - coinciding with 100 years of administrative contact with New Zealand.

Executive authority for the Cook Islands is vested in Her Majesty the Queen in the right of New Zealand exercised through the Queen's Representative. The Constitution establishes a Cabinet consisting of a Prime Minister and not more than eight other Ministers and an Executive Council consisting of the Queen's Representative and members of Cabinet. Parliament provides for no more than 24 members elected by secret ballot.

The Constitution also establishes the House of Ariki (chiefs), complimented by the House of Ariki Act (1966). The House comprises 14 representatives, with the customary title of Ariki, from each of the island groups of the Cook Islands, appointed by the Queen's Representative. Eight representatives are selected from the Outer islands and not more than six are selected to represent Palmerston and Rarotonga. The House may consider matters of importance to the Cook Islands as submitted to it by the Legislative Assembly for its opinion and it may make its own recommendations to the Legislative Assembly on any matter affecting the custom and traditions of the Cook Islands. The House meets at least once every 12 months.

While the House of Ariki is comprised of hereditary chiefs, secondary level chiefs comprise the Koutu Nui, a subsidiary of the House of Ariki. The Koutu Nui (or lesser chiefs with the titles Kavana, Mataiapo or Rangatira) also meet once annually and, in recent years, have been principally responsible for the re-establishment of the Ra'ui system of protected areas on Rarotonga and Aitutaki.

The Development Investment Act (1977) establishes a Development Investment Council to advise the Minister of Trade, Industries, Labour and Commerce on national planning and investment. The Planning and Economic Development Act (1987) is overseen by the Minister of Planning and Economic Development with the objective of ensuring that economic development proceeds in a manner compatible with social and cultural values, with equitable distribution of benefits, and accordance with the level of natural resources to attain a larger measure of economic independence and with regard to conservation of natural resources and the environment. The principal objective of the Ministry is to formulate and evaluate guidelines for a National Development Plan and to oversee its programmes.

The Outer Islands Local Government Act (1988) establishes island councils for all islands, except Rarotonga. Island Councils established under the Act can enact ordinances and by-laws that may be applicable to an island and coordinate activity relating to the social and economic development of the island. In relation to resource use and conservation by-laws that have been enacted include the Aitutaki Fisheries Protection By-laws (1998), the Manihiki Pearl and Pearl Shell By-law (1991), Manihiki Milkfish By-law (1991), the Penrhyn Pearl and Pearl Shell By-law (1993) and the Rakahanga 1998 draft by-law relating to major marine resources on the island, including provision for the establishment of an Environment Committee.

In respect of economic development, in 2000 each island council produced a Strategic Plan that identifies the development objectives for each island group. Features of the Strategic Plans of interest to the International Waters Programme are summarized elsewhere in this report.

The Conservation Act (1975) established a Conservation Service with seven programmes in environmental impact and resource management, wildlife protection, environmental education, soil conservation, pollution, coastal zone management and cultural conservation. The Conservation Act (1986-87) established the Conservation Service as a corporation and makes provision for the conservation and protection of the environment and natural resources and the establishment of national parks and reserves. It also establishes a Conservation Council of five to advise the Minister on environmental matters.

The Rarotonga Environment Act (1994-95) repealed the Conservation Act, established the *Tu'anga Taporoporo*, and provides for the conservation and management of the environment of the island of Rarotonga in a sustainable manner. It provides for the preparation and administration of management plans, environment impact assessment and for the establishment of an Environment Council with responsibilities for formulating and coordinating policies and programs for the *Tu'anga Taporoporo*. It also establishes the Environment Service as part of the *Tu'anga Taporoporo*.

Other ministries, such as the Ministry of Marine Resources and Outer Island Councils, also have powers to develop management plans although, in the case of outer islands, it is intended that this be done in collaboration with the Director of the Environment Service. In 2001, the Environment Service was working with the South Pacific Regional Environment Programme (SPREP) to draft additional legislation titled the Cook Islands Environment Act which, once enacted, will establish a national environment bill with provisions of the Rarotonga Environment Act being extended to all islands. The Cook Islands Environment Act will rescind the Rarotonga Environment Act (1994-95).

The Ministry of Agriculture and Marine Resources Act (1978) established a Ministry of Agriculture and Fisheries. Marine resources were subsequently identified as requiring special support with the establishment of a marine resources ministry in 1984.

The Marine Resources Act (1989) and the Marine Resources Amendment Act (1991), which is currently under review, are the main legislation governing the harvest and management of marine resources in the Cook Islands. While the Act is administered by the Ministry of Marine Resources, which is established under the Ministry of Marine Resources Act (1984), it also describes the role of Island Councils in establishing and administering by-laws relating to the management of island resources, principally through seasonal closures. It also provides for the adoption of regulations, in support of the Act.

The Cook Islands is also party to the following international conventions relating to oceans and fisheries:

- The United Nations Convention on the Law of the Sea;
- The United Nations Fish Stocks Agreement;
- The Wellington Convention regulating driftnet fishing;
- The Forum Fisheries Agency Convention; and
- has signed the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific.

The Continental Shelf Act (1974) and its subsequent amendments and the Territorial Seas and Exclusive Economic Zone Act (1977) respectively establish the continental shelf and the exclusive economic zone of the Cook Islands including archipelagic baselines, territorial seas and

internal waters. The Territorial Seas and Exclusive Economic Zone Act also makes provision for the Minister for Marine Resources to establish a total allowable catch for Cook Islands waters.

The Prevention of Marine Pollution Act (1998) provides for the prevention of marine pollution, the dumping and transportation of other waste in Cook Island waters by vessels and gives effect to the following international conventions on marine pollution and protection of the marine environment which have been adopted into law by the Cook Islands:

- International Convention for the Prevention of Pollution from Ships (1973) and its Protocol of 1978
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972) (The London Dumping Condition)
- Convention for the Protection of the Natural resources and Environment of the South Pacific Region (1986) (the SPREP Convention, including:
 - The Protocol for the Prevention of Pollution of the South Pacific Region by Dumping (1986), and
 - The Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region
- International Convention relating to the Intervention on the High Seas in cases of Oil Pollution Casualties (1969), and the Protocol relating to the Intervention on the High Seas in cases of Pollution by Substances other than Oil (1973);
- International Convention on Civil Liability for Oil Pollution Damage (1969) and the 1976, 1984 and 1992 Protocols to the Civil Liability Convention (CLC 1969);
- The Convention for the Conservation of Nature in the South Pacific (the Apia Convention); and
- The International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (1976, 1984 and the 1992 Protocols to the Fund Convention (FUND 1971).

In respect to land, the Cook Islands Act (1915) apportions land into three categories: Crown land, Customary land and Freehold land. Crown land is administered by the Queen's Representative who may take any land in the Cook Islands for public purposes. In such instances the High Court may determine compensation for customary title holders.

Customary land is a term used to describe both native land and native customary land, terms that are used interchangeably. The limits of native land lie at the high water mark. Any land beyond high water is Crown land. The Land Court, a branch of the High Court, has exclusive jurisdiction to investigate title to customary land. This applies in all islands except Mangaia, Pukapuka and Mitiaro where land matters are managed in accordance with local custom through the *Aronga Mana*, the traditional chiefly authority.

The Land Court is empowered to investigate any native title claim, the result of which is an Order designating the land either:

- Native Freehold Land, in which case a person or group of people may hold title to the land. Freehold land can be allocated through lease, on the basis of a peppercorn rent, or through occupation rights. Occupation Rights can be cancelled by the Land Court if the land has been unoccupied for more than five years, or the Land Court may grant indefinite occupancy – if residents have occupied land for more than 20 years – a Long Occupation Right, or
- Ariki Land held by a local chief by operation of native custom.

In 1977, the *Koutu Nui* proposed changes to the Cook Islands Act (1915) which requires land ownership to be restricted to blood rights to the land through common ancestors or ancestral land owners.

Activities on land, such as agriculture and industry are governed under a variety of legislation, including the Short Term Crop Leases Act (1966) concerning agriculture activities by individuals or groups with a valid lease. In relation to agriculture, Pulea (1992) recommended an urgent need for review of existing legislation – on the basis that some regulations and by-laws in force date to 1916. Pulea noted that subsistence agriculture varies in the extent it considers environmental safeguards and that in an effort to address various land use issues, the Department of Agriculture had produced a “management menu” which provides guidelines to land users in relation to pesticides and the control and eradication of plant disease and pests.

The Ministry of Agriculture and Forests was established under the Ministry of Agriculture Act (1978). Under this Act, the Minister has power to conduct special investigations into any matter associated with agriculture and to appoint technical and advisory committees. The Outer Islands Local Government Act (1987) has also supported the development of ordinances and by-laws with the primary objective of regulating agriculture, although, in effect, the same by-laws extend to the protection of the environment.

The agriculture sector, including the introduction of plants and animals into Cook Islands is governed by the following legislation:

- The Plants Act (1973), and
- The Plant Introductions and Quarantine Introductions Act (1976) and its 1980 amendments;
- The Animals Act (1975) with its associated regulation relating to the importation of animals and the prevention of animal disease;
- The Pesticides Act (1987) relating to the importation and use of pesticides; and
- The Wandering Animals Act (1976) which is designed to reduce and prevent damage to the environment and reduce risks to human health. Some islands, for example Aitutaki, have supplemented this Act with the enforcement of a related by-law.

There is no consolidated legislation for the management and conservation of water resources in Cook Islands. Responsibility for water supply generally rests with the Ministry of Works while water quality is with the Ministry of Health. At the time of Pulea’s review in 1992 there was a proposal to consolidate key responsibilities, particularly in respect of water quality, in a new bill, the National Water Authority Bill.

Provisions relating to water in current law include the Cook Islands Act (1915) wherein the Queen’s Representative may appropriate any land for public purposes, including water supply. In addition, the Rarotongan Environment Act (1994-1995) provides for the management, protection and conservation of water catchments and water resources. Several island councils (for example Mauke and Aitutaki), have established ordinances and by-laws for protecting water resources. The proposed National Water Authority Bill establishes a National Water Authority and makes provision for water conservation and management strategies for both underground and surface water, including erosion and damage to catchment areas.

Waste has been identified as a primary environmental concern since the Cook Islands State of Environment Report was drafted in 1992 and, in many respects, the management of waste is directly linked to the quality and supply of water.

The Ministry of Health Act (1991) establishes a Cook Island Health Board that, among other functions, is to generally promote and protect the health of Cook Islands people. Solid waste, including litter, are addressed through several pieces of legislation, including the Animal Disease Prevention Regulations (1982) in respect of ship's waste in port and the Outer Islands Local Government Act (1987) which provides for Island Councils to establish by-laws relating to waste management. The Litter Act (1986/87) and the Rarotongan Environment Act (1994/95) make provision for the control of litter while the Re-Use of Bottles Act (1988) is administered by the Department of Trade, Labour and Transport.

In relation to sewerage, the Public Health Regulations (1987) specify that sanitary conveniences must be connected to public sewerage systems, where that is available, failing which it must be connected to a septic tank. The Building Controls and Standards Regulations (1991) specifies the requirements for septic tanks and water closets, including providing for their inspection. These Regulations are administered by the Director-General of Health.

Pollution on the waterfront is regulated under the Waterfront Industry Act (1973-74) which repealed the Harbour Control Regulations (1971) and is administered by the Minister responsible for the Waterfront Commission. The Dangerous Goods Act (1984), administered by the Department of Trade, Labour and Transport, provides for the regulation and management of dangerous goods.

The only legislation controlling pollution of the atmosphere is the Tobacco Products Control Act (1987), which principally addresses the sale and use of tobacco, is administered by the Ministry of Health. Noise pollution is selectively controlled at the discretion of the Queen's Representative. At present, the Noise Control Act (1986) only applies to Aitutaki and Rarotonga in relation to the control of unreasonable and excessive noise. Finally, in respect of pollution, the Rarotonga Harbour Control Regulations prohibits the disposal of rubbish below the high water mark in any harbour in the Cook Islands and the Marine Resources Act (1989), provides for the Queen's Representative to make regulations relating to the prevention of marine pollution.

Water and waste concerns in the Cook Islands in 2001 largely relate to the capacity of existing facilities and systems to absorb increased demands resulting from increased tourist numbers. Tourism has remained the Cook Islands largest source of foreign exchange for the last decade. The Tourist Authority Act (1989) provides for a Tourist Authority, established as a body corporate with a Board of Directors and a Tourism Advisory Committee consisting of 12 members. In addition to promoting growth in the Cook Islands tourism industry, the Authority is also tasked with recommending standards for the industry. However, in relation to the management and conservation of natural resources, the tourism industry is reliant on the existing Rarotonga Environment Act (1994-95), which is currently under review.