

FSM

Legislative Review in Relation to the Environment and Natural Resources (Provisional)

Introduction

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 Federated States of Micronesia (FSM) national component of the International Waters Programme has the potential to interact with several Government ministries responsible for various legislation.

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 FSM in October 2001. The resulting summary, presented here, was based on a review of environment legislation (Harding, 1992).

While gaps in this brief review are inevitable, it is the intention of the Project Coordination Unit, that once the IWP is established in FSM, the information presented in this report – effectively the result of a 6-day visit, will be reviewed, updated and, where necessary, corrected.

It would appear that the need for a comprehensive review of environmental and natural resource-related legislation, some dating to the period FSM was administered under as a Trust Territory, has not diminished since 1992 when a Working Group, called the “Legal Task Force of a Joint Attorney General’s Opinion” was convened during the FSM National Seminar on Environmental Planning and Management for Sustainable Development. Involving the National and State Governments, this sort to rationalize and harmonize existing conflicting environmental and natural resource law, with the aim of establishing a coherent legal framework across the country. The result of this exercise was not apparent during the visit of the PCU and requires follow-up work.

Constitution

The Constitution, as the supreme law of FSM, establish a system of national, state and municipal governance. Each State is required to have its own democratic constitution. The Constitution refers to traditional practice and custom as a guiding influence in all aspects of decision-making in FSM and seeks to preserve the role of tradition and custom in FSM life. To support this, a Council of Chiefs, consisting of traditional leaders and elected representatives, is provided for in the Constitution.

The Nation's executive powers are vested in the President who is elected by Congress for a 4-year term and limited to no more than two consecutive terms. The President appoints judges, ambassadors and principal officers of government departments in the National Government.

National Government judicial power is vested in the Supreme Court, and subsidiary courts, established by statute. The Supreme Court consists of a Chief Justice, the chief administrator for the national judicial system. The Chief Justice may be supported by no more than five associates. Court decisions are constitutionally required to be consistent with Micronesian customs and traditions.

The legislative power of the National Government is vested in Congress. The Congress includes one member elected from each of the four States, an additional member elected from congressional districts in each State apportioned by population. Each State may decide that one of its seats be reserved for a traditional leader in place of one of the elected representatives.

To become law, a Bill must pass the first reading with a two-thirds majority of all members and then pass the final reading on a two-thirds vote of all State delegations, each delegation having cast one vote. Congress can also override a Presidential veto by not less than three-quarter vote of all State delegations, each casting a single vote.

Regulation development, as prescribed under the *Federated States of Micronesia Administrative Procedures Act*, requires the widespread publication and dissemination of proposed regulations before adoption, including radio announcements in English and indigenous languages. Opportunities for public comment and public hearings are incorporated in the Act..

In most instances, National legislation is supplemented, or even duplicated, by State legislation. This provisional review is confined to current National legislation based on the report prepared by Elizabeth Harding in 1992. That report recommends a thorough review of existing FSM environmental and natural resource legislation with the objective of rationalizing existing laws and regulations, providing a more effective mechanism for coordination at both National and State levels and removing outmoded law that was promulgated under the Trust Territory Arrangements. Apart from some specific areas of environmental and natural resources law, such as Title 24 directed at the administration of fishing within the exclusive economic zone, this need still exists.

Environmental legislation

Building on the *Trust Territory Environmental Quality Protection Act* (Title 25 of the FSMC), the *Federated States of Micronesia Environmental Protection Act (1984) (FSM EPA)*, and its subsidiary instruments, seeks to provide the legislative basis for the protection of the environment, including cultural, historic and natural aspects of Micronesian heritage, throughout FSM. The Act acknowledges that close co-operation between the National and State Governments is required to support this objective.

The original Act established the Environmental Protection Board within the Office of the President. The Board is composed of five members: “one member from each State and one member appointed by the President”. In 1987, an *Act to Reorganize the Government of the Federated States of Micronesia* redefined the Board to mean the Secretary for Human Resources.

The Act requires the Secretary to enter into written cooperative arrangements with the States or State agencies for the purposes of providing funds to the States, collecting data on local needs and transferring authority to the States to act as agents of the National Government in implementing environmental programs at the State level. Such delegation of functions may be withdrawn on written advice from the Secretary if the delegation results in termination of any financial grant.

The Secretary, as a result, has broad authority to protect health, welfare and safety and to implement policy and strategies, through the promulgation of regulations, to remedy pollution and contamination of air, land and water. Current regulations, which draws heavily on legislation in place during the Trust Territory arrangements include:

- *Trust Territory Air Pollution Control Standards and Regulations (1980)*

This Regulation sets air quality standards by preventing or controlling the emissions of air contaminants at their source. The Regulations incorporate USEPA National Emission Standards for Hazardous Air Pollutants.

- *Trust Territory Pesticides Regulations (1980)*

This Regulations establishes a system of control for the importation, distribution, sale and use of pesticides. Systems of permits and certification are established under the Regulations.

- *Public Water Supply Systems Regulations (1983)*

The FSM EPA prescribes “drinking water regulations” as applying to public water systems and specifies contaminants, which may adversely impact on human health, safe levels of contaminants and describes procedures and criteria to secure safe drinking water supplies.

The 1983 Regulation establishes minimum standards and requirements to ensure that water supply systems are protected against contamination and pollution and do not constitute a health hazard. The Secretary of Human Resources administers the Regulation.

- *Marine and Freshwater Quality Standards Regulations (1986)*

This Regulation identifies the uses for which waters of FSM shall be maintained and protected, to specify water quality standards required to maintain the designated use and to prescribe requirements to maintain specified water quality.

Any entity responsible for a point source of discharge that threatens a breach of these standards, unless it has received a discharge permit under the National Pollutant Discharge Elimination System (NPDES) from the United States Environment Protection Agency, is in breach of these Regulations.

- *Trust Territory Solid Waste Regulations (1979)*

These Regulations establish minimum standards for the design, construction, installation, operation and maintenance of solid waste storage, collection and disposal systems.

“Solid waste” is defined as “garbage, refuse, and other discarded solid waste materials” not including substances in water sources, but including liquid waste such as waste oil, pesticides, paints, solvents and hazardous waste. A “disposal system” includes the entire process of storage, collection, transportation, processing and disposal of solid waste by any person or authority.

- *Toilet Facilities and Sewerage Disposal Regulations (1977)*

The purpose of these Regulations is to establish minimum standards for toilet facilities and sewerage disposal to reduce environmental pollution, health hazards, and public nuisance from such facilities. Standards are established for i) flush toilets connected to a sewerage system available to the public, ii) flush toilets connected to septic tanks and iii) a pit privy or outside banjo.

All public and private buildings require toilet disposal facilities approved by the Secretary of Human Resources. The Regulations make it unlawful to dispose of treated or semi-treated sewerage into any body of water in FSM, unless it can be clearly demonstrated that such activity is necessary for the economic and social benefit or research and that the activity poses no public health hazard.

- *FSM EPA Earthmoving Regulations (1988)*

These Regulations provide that “no person shall release funds, equipment or materials or building permit to those engaged in earthmoving activities requiring a permit until a permit is issued by the Secretary of Human resources.

Earthmoving is defined to include activities of a continuous nature such as dredging or quarrying which disturb or alter the surface of the land, including reefs and lagoons. Earthmoving also applies to the subdivision of land, and the moving, depositing or storing of soil, rock, coral or earth.

- *FSM EPA Environmental Impact Assessment Regulations (1989)*

These Regulations require the National Government and its agencies to submit an Environmental Impact Statement (EIS) to the Secretary of Human Resources prior to taking any “major” action significantly effecting the quality of the human environment. “Effect” is defined to include indirect, direct and cumulative effects in areas such as land use, population density, air, water and natural systems including ecosystems. “Effects” may be ecological, aesthetic, cultural, historical, economic, social or health-related. “Significant impacts”, determined as a result of a preliminary assessment, require a Comprehensive EIA. Draft EIA statements are to be made available for public comment and review, including provision for a public hearing.

Resource Development, Management and Conservation

Marine species preservation is promoted under the FSMC Title 23 – *Resource Conservation*, Chapter 1, *Marine Species Preservation*, which is based on Trust Territory Code. This Chapter provides for the control of destructive fishing practices, prohibiting the catching, possession or sale of any fish or other marine life by means of explosives, poisons, chemicals or other noxious substances. The Code does not extend to the use of local plant used as stupeficients for fishing activity. The Chapter places limitations on the harvesting of turtles, sponges and pearl oyster.

Title 23 – *Resource Conservation*, Chapter 2, *Trust Territory Endangered Species Act (1975)*, subsequently by FSM provides for the protection of endangered fish, shellfish and game. It declares the indigenous plants and animals of the FSM to be of aesthetic, ecological, historical, recreational, scientific and economic value. It further states that the policy of FSM is to foster the well-being of these plants and animals including the prevention of the extinction of any species.

The Act is administered by the Director of the Department of Resources and Development and provides the Director with the authority to set up conservation and research programs aimed at conserving endangered and threatened species. It also provides authority to acquire land or aquatic habitats for the conservation resident endangered or threatened species. It is uncertain if any acquisitions or associated conservation programs have been established by the Department.

The Act, anticipating the FSM’s ratification of the *Convention on International Trade in Endangered Species of wild Flora and Fauna (CITES)*, prohibits the importation of any species listed by CITES.

A subsidiary to the *Endangered Species Act* is the Regulation, Title 45, *Fish, Shellfish and Game: Chapter 5; Endangered Species* which lists endangered species with FSM or pan-Micronesian ranges. The list includes: blue and sperm whale, the Chuuk Micronesian pigeon, the hawksbill and leatherback turtle, nightingale reed warbler, Chuuk greater white eye, Pohnpei great white eye, Pohnpei mountain starling (since

pronounced as extinct), chuuk Palm and the Chuuk poison tree. The Act provides for supporting regulations to be promulgated. None have been issued to date.

Title 24, *Marine Resources* concerns promoting the conservation, management and development of the marine resources of the FSM, to generate maximum benefit for the Nation from foreign fishing and to promote the development of a domestic fishing industry.

Title 24 creates the Micronesian Maritime Authority, amended as the Micronesian Fisheries Authority, which is designated authority to regulate, manage and exploit marine resources within the 200 mile exclusive economic zone, negotiate and manage fisheries access agreements by establishing the terms and conditions for access, and establish and manage a foreign fishing permit system for commercial and non-commercial fishing.

The National Fisheries Corporation (NFC) is also created under this Title, with powers to enter into joint-venture and other agreements in relation to fisheries and to develop the fishing industry by fostering economic activities and providing technical assistance for fisheries projects. The NFC is governed by a Board consisting of representatives of all four States and is the commercial arm of the National Government fisheries administration.

Agriculture

Title 22 – *Agriculture and Livestock*, creates the Coconut Development Authority (CDA) and describes its powers. The CDA assists in copra marketing and transporting it from production areas throughout FSM. It administers subsidies allocated by Congress and promotes development of alternative coconut products such as oil, soap and shampoo. Chapter Four address plant and animal quarantine and enables the issuing, administration and enforcement of quarantine Regulations.

The Plant and Animal Quarantine Regulations (1991) provide for specific ports of entry to FSM, inspection of plants and animals entering FSM, plant and animal quarantine permits, inspection and treatment of plants and animals.

Forestry

There is currently no legislation specific to forestry. The FSM EPA and Title 23 concerned with Resource Conservation, are the most relevant pieces of legislation that could be interpreted to cover forestry and agro-forestry matters.

Minerals

Apart from EPA Regulations relating to quarrying and earthmoving, there is currently no legislation specific to exploration and exploitation of minerals. The responsibility for seabed minerals beyond 12 miles rests with the Marine Resources Division of the

Department of Resources and Development. Within 12 miles these responsibilities rest with the individual States.

Tourism

There is currently no legislation supporting the management, administration or regulation of the tourism sector. Current responsibility for the sector rests with FSM and State Visitors Bureaus.

Cultural Heritage

FSMC, Title 26 – *Historical Sites and Antiquities* states that it is FSM policy to protect and preserve the diverse cultural heritage of the people's of Micronesia and to identify and maintain areas, sites and objects of historical significance. “Cultural attribute” is defined to include: all aspects of local culture, tradition, arts, crafts, all social institutions, forms of expression and modes of social interaction. “Historical property” is defined to mean sites, structures, building, objects, and areas of significance to local history, archeology and culture. “Historical artefact” means an object 30 years or more in age.

Although the Act establishes the Institute of Micronesian Culture and History. The Institute was never established and, in 1987, the relevant section of the Act was repealed. The administrative body charged with the preservation of cultural heritage is the Office of Administration Services, which established the Division of Historic Preservation in 1988. The Division is currently staffed by one Historic Preservation Officer. To promote liaison with the States, local staff are employed to assist with the work of the Division in the States.

Compatible State Legislation

Kosrae

- *Constitution of the State of Kosrae*
- *Kosrae State Code, Title 7, Chapter 4 which establishes the Kosrae EPA*
- *Kosrae Island Resource Management Act – draft*
- *Kosrae Code Section 13.514 – water quality*
- *Kosrae Code Section 13.506 – littering*
- *Kosrae Code Section 13.1201 – toilets and the disposal of human excreta*
- *Kosrae Code Section 11.201 – land use and subsidiary regulations (draft) on Fill and Construction Below High Water Mark*
- *Kosrae Code, Section 14.1302 – foreign fishing agreement*
- *Kosrae Code, Section 14.1303 – fishing permits*
- *Kosrae Code, Section 11.1601 – endangered species and supplementing regulations relating to four species of giant clam.*
- *Kosrae Code, Section 11.1602 – Psittacine birds*
- *Kosrae Code, Section 13.523 – unauthorized procuring of marine life concerning turtles, trochus and hawksbill and “sea” turtles.*

- *Kosrae Code, Section 13.524 – endangering a species*
- *Kosrae Code, Section 11.1401 and 11.1402 (a regulation) concerning the impact review for the protection of antiquities and traditional culture.*

Pohnpei

- *The Constitution of Pohnpei*
- *Public Trust Lands Distribution Act (1980)*
- *Public Lands Act (1987)*
- *Deed of Trust Act (1987)*
- *Trust Territory Environmental Protection Act* (preserved from the Trust Territory environmental law) and subsidiary regulations relating to i) air pollution, ii) pesticides, iii) public water supply systems, iv) marine and freshwater quality, v) solid waste, vi) toilet facilities and sewerage disposal, and vii) earthmoving.
- *Transportation Zone Act (1987)*
- *Conservation and Resource Enforcement Act (1982)*
- *Foreign Fishing in State Waters Act (1979)*
- *Prohibiting Harvesting and Use of Bait Fish Act (1971)*
- *Forest Management Act (1979)*
- *Pohnpei Watershed Forest Reserve and Mangrove Protection Act (1987)* and subsidiary regulations (draft) to both the *Forest Management Act and Pohnpei Watershed Forest Reserve and Mangrove Protection Act (1987)*
- *Exportation of Certain Crabs and Lobsters Act (1971)*
- *Fresh Water Shrimp Harvesting Act (1972)*
- *Designation of State Bird Act*
- *Marine Resources Conservation Act (1981)*

Chuuk

- *Chuuk Constitution (1989)*
- Memorandum of Understanding between the State and National Governments delegating State power to administer, at State level, the Solid Waste Management Permit Program and the Solid Waste Management Permit Variance Program
- Memorandum of Understanding between the State and National Governments delegating State power to administer, at State level, the *National Earthmoving Regulations*
- Memorandum of Understanding between the State and National Governments delegating State power to administer, at State level, the Pesticides Applicator Certification Program and the Restricted Use Pesticide Dealer License Program.
- *Chuuk State Historic Preservations Act* – relating to wrecks in Chuuk lagoon

Yap

- *Constitution of the State of Yap*
- *Environmental Quality Protection Act 1987 and subsidiary draft pesticide regulations*
- *Yap State Code, Title 18, Chapter 4, Section 401 – disposal of petroleum products*
- *Yap State Code, Title 11, Section 805 – oil spills*
- *Draft Water Supply Systems Regulations – based on the U.S. Trust Territory Public Water Supply Systems Regulations*
- *Trust Territory Solid Waste Regulations (1979)*
- *Draft Toilet Facilities and Sewerage Disposal Regulations*
- *Draft Earthmoving and Sedimentation Regulations*
- *Yap State Code, Title 20, Chapter 3 – building permits*
- *Yap State Code, Chapter 18 - Fishing Authority Act (1979)*
- *Yap State Code, Title 18 - State Fishery Zone Act (1980)*
- *Yap State Code, Chapter 10, Section 1008 – wildlife conservation*
- *Yap State Code, Title 18, Sections 404, 402 and 403 – relating to oil spills*
- *Yap State Code, Title 11, Section 815 – reef and environmental damage*
- *Yap State Code, Title 18, Chapter 10, Section 1009 – trochus*
- *Yap State Code, Title 18, Chapter 10, Section 1010 – cultured species*
- *Yap State Code, Title 18, Chapter 10, Section 1011 – temporary protection of marine life*
- *Yap State Code, Title 18, Chapter 10, Section 1101 – fruit bats*