

PALAU

Environment Legislation (provisional review)

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 Palau 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 Palau in October 2001. The resulting summary, presented here, was based on a review of environment legislation (Pulea, 1994).

While gaps in this brief review are inevitable, it is the intention of the Project Coordination Unit, that once the IWP is established in Palau, 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, which is understood to encompass at least 30 separate pieces of legislation, some dating to the period Palau was administered under as a Trust Territory, has not diminished since Pulea proposed it in 1994.

Legislative basis

The Palau National Code (PNC) consists of a combination of laws passed by the Olbiil Era Kelulau (OEK), colonial law implemented under a succession of Spanish, German, Japanese and American (the Clean Water Act is in fact a U.S. law) administrations and law more recently promulgated during the period Palau was administered as a Trust Territory of the Pacific Islands. Since the adoption of the PNC many additional laws have been enacted and are yet to be incorporated into the PNC. Following implementation of the Compact of Free Association in October 1994, U.S. law pertaining to Palau were no longer applicable.

The Preamble to the Constitution reaffirms Palauans commitment to protect their natural heritage. Apart from a requirement that Palau can only enter into an international agreement concerning toxic chemical, nuclear, gas or biological weapons intended for warfare with the approval of more than three quarters of the population at a referendum, the Constitution also states that the national Government will strive to implement national

policies to promote “conservation of a beautiful, healthy and resourceful natural environment”.

While the Constitution makes “statutes and traditional law....equally authoritative” it also states that when statute and customary law conflict, statute prevails only to the extent that it does not conflict with the “underlying principles of traditional law”.

Article II of the Constitution makes the Constitution the supreme law and no law, act of government, or agreement to which the government is a party may conflict with the Constitution. The PNC, adopted by the OEK in 1985 codifies all national law applicable to Palau. The Code is a combination of:

- Laws of the U.S. specifically made applicable to Palau;
- The laws of the Palau District Code (a compilation of those of laws of the Palau Legislature in effect in the Palau District in March 1971;
- The Trust Territory Code (a compilation and codification of the laws of the Congress of Micronesia in effect throughout the Trust territory;
- The laws of the 5th, 6th and 7th Palau Legislature; and
- The Republic of Palau’s Public Laws of the OEK.

Section 301 of the PNC also gives effect of law in Palau to:

- The U.N. trusteeship Agreement;
- The law of the U.S. that are applicable to Palau, including Executive Orders of the President of the U.S. and the Orders of the Secretary of the Interior;
- Laws of the Trust Territory and amendments to them, to the extent that they have not been repealed by the EOK;
- District Orders and Emergency District Orders promulgated by the District Administrator of the Palau District and in accordance to the Trust Territory Code;
- The Acts of the OEK; and
- State Law.

Two supplements to the PNC have been issued since its publication in 1985. The First contains all laws enacted from the initial publication of the Code up to March 1986. The Second updates the Code up to March 1987. The PNC is divided into Titles, according to their respective subject matter, and generally incorporate several Acts of the Legislature.

Land

The PNC repeals all laws, regulations and ordinances enacted by the Spanish, German and Japanese administrations except those concerning the ownership, use, inheritance and transfer of land that were in effect before December 1st 1941 and that have not been changed by express written agreement.

In Palau, land under traditional tenure is divided into public domain and clan lands. The public domain consists of the “chutem bwai” – the land in the interior of Babeldaob, and of Koror, Peleliu and Airai, the numerous islands of the Chelebacheb complex, the mangrove swamps and the sea and reefs. The public domain was in most cases, traditionally controlled by the village council (“Klobak”) or a district council. Resources within the public domain were equally available to village members. Access for non-village members was subject to approval of the Council.

Clan lands comprise most of the private land of aboriginal Palau. Clan lands were assigned to member lineages, each of which had a principal house site that generally bore the name of the lineage. Lands assigned to a lineage were controlled by the male lineage head who in turn assigned land to members.

Public lands are defined under the PNC (Title 35) as those lands which were owned or maintained by the Japanese administration or the Trust Territory Government as government or public lands and such other lands that the government acquires for public purposes.

The law established during the Japanese administration, which provided that all marine areas below the ordinary high water mark belonged to the government, is confirmed as part of the law of Palau with the following exceptions:

- The right to fish weirs or traps as long as they do not interfere with establish routes of water travel;
- The rights of the owner of abutting land to claim ownership of all materials deposited on the shore by wave action and such fishing rights on and in the water over reefs where the general depth of water does not exceed four feet at mean low water provided that these rights are not in conflict with the rights of the national government as owner of all marine areas below the high water mark;
- Subject to the written permission of the President, the right of land owners to reclaim land and erect structures over water abutting their land;

Marine

The nature of authority of the Government over marine resources is unclear. Marine resource conservation activity is assumed to be in the national interest and thus subject to National Government jurisdiction under Article IX, Section 5(12) of the Constitution. However, Article 1, Section 2 explicitly empowers the States with the ownership of all marine resources out to 12 nautical miles.

Article V of the Constitution prevents the Government from taking any action to prohibit or revoke the role and function of a traditional leader unless it is inconsistent with the Constitution. Traditionally recognized fishing rights in submerged reef areas wherever located within the fishery zone are also preserved and respected in accordance with the regulations established by the Palau Maritime Authority.

The *Marine Resources Protection Act* (1994), and amended in 1995, administered by the Division of Marine Resources within the Bureau of Natural Resources and Development, regulates the taking of certain species of marine (coconut and mangrove crabs, clams, hump-head wrasse and lobster are covered by the Act), and terrestrial organisms, protects coral reefs and regulates certain fishing methods. The Act is supplemented by three Regulations:

- The Collection of Marine Resources for Aquaria and Research Regulations became effective in 1994. It provides for the management of aquarium species collection activities including the issue of annual permits for such activities;
- Reporting and Labeling of Exports of Marine Resources Regulations which requires the weight and number of individual species destined for export to be clearly labeled on export packaging became effective in 2001, and
- Marine Resource Export Regulations relating to verification of the origin of exports as Palau in support of the Convention on International Trade in Endangered Species of Flora and Fauna (CITES).

As inferred in the Section above relating to Government Structure, management of the marine sector is also provided for in several additional pieces of legislation. This creates some overlapping mandates in respect of marine resource management and conservation arrangements. In addition to the Bureau of Natural Resources and Development, particularly the Division of Marine Resources, the agencies or institutions to which this statement applies includes:

- The Palau Maritime Authority, created under Title 27 and which reports to the Minister of State;
- The Palau Fishing Authority, create by the *Palau Fishing Authority Act* (1980), and
- The Fish and Game Commission created under the Environmental Quality and Protection Act (Title 24).

Pulea (1994) recommended review, consolidation and rationalization of existing marine and marine resource law in Palau.

Planning

The *Environmental Quality Protection Act (1981)* (Title 24 under the PNC), has three divisions: i) general provisions, ii) wildlife protection and iii) preserves and protected areas.

The General Provisions, Division 1, provide for the establishment, functions and operation of the Palau Environmental Quality Protection Board (EQPB). Division 2, Wildlife Protection, provides framework legislation concerning endangered species and includes an Endangered Species Act (Chapter 10, a former Trust Territory Act) providing for both animal and plant endangered species. Protected sea-life sub chapters include

turtles, sponges, pearl shell, dugong, trochus and clams. Chapter 13 deals with illegal fishing methods, including the use of explosives, poisons and chemicals. Chapter 14 covers protected land life which is restricted to the conservation of birds (with the exception of four species). Division 3 covers the only two legally protected areas in Palau, the Ngerukewid Islands Wildlife Reserve and the Ngerumekaol Spawning Area.

Division 1 is administered by the EQPB and Divisions 2 and 3 by the Bureau of Natural Resources and Development.

The *Environmental Quality Protection Act (1981)* implements the Environmental Impact Statement Regulations which establish general standards for the environmental review of projects by the EQPB to ensure that environmental concerns are given appropriate consideration in decision-making, together with economic and technical considerations.

The *Trust Territory Land Planning Act*, incorporated in the PNC under Title 31, provides the current basis for land use planning. As with the marine sector, responsibilities for land use planning are shared among a number of Government agencies – the Bureau of Lands and Surveys under the Ministry of State, the Palau Planning Commission established under Title 31 and the States, through various State Planning Commissions.

Zoning, as the critical element of planned development, is expected to form a central function of State Planning Commissions. The following are the zone categories described in the *Koror Municipal Zoning Law (1976)*:

- residential;
- residential commercial;
- commercial;
- resort centers;
- transportation facilities;
- industrial (standard);
- industrial (offensive)
- public;
- village;
- agriculture;
- conservation;
- watershed;
- historic preservation;
- planned development; and
- floating (miscellaneous public use);

It appears that only Koror State has established a conservation zone – to preserve areas for their scenic and natural beauty - the *Koror Municipal Zoning Law (1976)* and the *Koror Municipal Sub-division Law*.

In addition to the difficulties associated with application of the *Marine Resource Protection Act (1994)* identified above, other legislation theoretically controlling

development of the littoral zone is also confused. Under Title 24, the EQBP has developed a set of *Earthmoving Regulations* with the intention of controlling, through permits, any “construction or activity which disturbs or alters the surface of the land, coral reef or bottom of a lagoon”. However, agricultural activities and construction of solid waste land fill sites are permitted under the *Solid Waste Regulations*.

Agriculture

The majority of agriculture in Palau is for subsistence. Activities in the sector are regulated under PNC Title 9 concerning agriculture and the *Trust Territory Land Planning Act*, which establishes agricultural zones and regulates use of those zones.

A Bill, the *Animal and Plant Quarantine Bill*, has been drafted with the intention of providing protection against the importation of pests and disease through improved regulation of the importation of plants and animals.

The use of chemicals to control agricultural diseases and pests is regulated under Pesticides Regulations administered by the EQPB.

Forestry

Apart from the limited provisions of the *Land Planning Act*, there appears to be no statutory mandate for forests. The *Palau Wildland Fire and Forest Management Bill* has been in draft form since at least 1988. The Bill is intended to empower the Head Forester to manage wildland fire protection and suppression, to suppress wildfires within one mile of roads, or in other areas deemed (by the Minister or, in his absence, the Director), to be harmful to soil or forest resources.

The *Palau Forest Practice Bill* has been in draft form since it was prepared with the assistance of the U.S. Forest Service in 1991. The Bill sets policy goals for effective management, through the development of a Forest Plan, and provides controls through a permitting system.

Water

The *Marine and Freshwater Quality Standards Regulations* (Title 24), based on U.S. legislation, the *Clean Water Act*, apply to all marine and freshwater bodies in Palau. The intent of the Regulations is to maintain water quality for health and welfare reasons and to control pollutants that are discharged into Palau’s waters. The Regulations are intended to support:

- The propagation of aquatic life;
- The propagation of shell, shellfish and wildlife;
- Protection against the degeneration of water quality;

- The prevention of new point sources of pollution from discharging into near-shore or fresh surface waters and that there is no discharge of sewerage or other wastes into any planned ground or surface sources of drinking water; and
- Protection of outstanding national water resources in a pristine state.

The EQPB administers the Act, which, as in the case for the U.S. *Clean Water Act*, and its intended application in Palau, is required to permit all point source discharge operators under the National Pollutant Discharge Elimination System (NPDES).

Water Supply Systems Regulations have been promulgated by EQPB to protect public water supplies against contamination. The Regulations set drinking water standards, a Microbiological Quality Monitoring System and sets standards of water supply during emergencies.

Minerals

Legislative support for the mineral sector in Palau appears only in draft form as it was prepared in 1987. This constitutes the *Mines and Minerals Bill*, the *Petroleum (Marine Area Exploration and Production) Bill* and associated *Regulations* and a draft model concession agreement for petroleum exploration, development and production. Perhaps, given interest expressed by a Canadian company in assessing and possibly developing an offshore oil deposit in 2001, the OEK will request the draft legislation be reviewed for possible enactment.

The draft Mines and Minerals Bill provides for the designation of reserved areas where any activity associated with mining, even exploration, is prohibited. A number of such areas are provided for in the draft:

- Any village place of burial or other site of traditional significance or within 30 meters of a dwelling house or building;
- Any land used for crops or considered fit for planting;
- Any designated town land; and
- Any land used in connection with water supply for public purposes.

Waste and Pollution

The management of waste is covered under the *Solid Waste Regulations*, the *Public Health, Safety and Welfare Act* (Title 34), and the *Trust Territory Air Pollution Control Standards* and associated *Regulations*. Supplementary provisions are also found in the *Trust Territory Pesticide Regulations* and the *Trust Territory Land Planning Act*.

Responsibility for the management of solid waste is found in the *Solid Waste Regulations* implemented by EQPB and the *Public Health, Safety and Welfare Act* administered by the Ministry of Health.

The *Solid Waste Regulations* regulate the standards of solid waste collection and storage facilities so that the pollution of water, land and air and the spread of disease is prevented, through a permit system for the disposal of waste, while at the same time conserving natural resources and preserving the quality of the environment.

Under Title 34, the Director of Health Services, subject to the approval of the President, is responsible for the development and application of regulations necessary to promote public health and safety in relation to privy vaults, cesspools and other means of human excreta disposal. The *Individual Sewerage Disposal Act*, promulgated under Title 34 provides the basis for regulating individual sewerage disposal systems. Regulations can also establish standards to ensure that waste discharged to individual disposal systems do not:

- Contaminate drinking water;
- Pollute water used for bathing and shellfish breeding grounds;
- Cause nuisance due to unsightly appearance or odor;
- Become accessible to rodents, insects and other disease carriers; and
- Violate other laws relating to water pollution and sewerage disposal.

Under the *Sewer Use Act* (1984), no person, other than the Director of Public Works, is permitted to uncover or make connections to a public sewer without a permit from EQPB. The EQPB has also drafted regulations relating to toilet facilities and waste water disposal systems pursuant to the authority vested in the Board under the *Palau Environmental Quality Protection Act* and the *Sewer Act*.

Good standards of sanitation are also promoted under the *Public Health, Safety and Welfare Act* – through, for example, establishing prohibitions for the accumulation of rubbish, garbage, coconut shells and other refuse. These provisions are enforced by the Bureau of Health Services.

Heritage and Culture

The *Natural Heritage Reserves Systems Act* (1991) acknowledges the uniqueness of Palau's geographical and natural resources and, under the Act, proposes that "a system of reserves, sanctuaries, and refuges must be identified, developed and strengthened. Additional terrestrial, freshwater and marine areas suitable for the preservation should be set aside and administered" for the protection of the environment and natural resources of Palau. While the Bureau of Natural Resources and Development is responsible for the Act, the system for the establishment of protected areas involves:

- the State Governor, through the State Legislature and State Chiefs, shall designate areas within the State, by mutual consent with the Bureau of Natural Resources and Development, as part of Palau's Natural Heritage Reserves System. This applies to State-owned land, private land gifted to or purchased by the State for that purpose; and

- the Ministry of Resources and Development may designate, through the Bureau of Natural Resources and Development, areas as part of Palau's Natural Heritage Reserves System and bring them under their control and management. This applies to Republic-owned land, land set aside under the Trust Territory administration, State-owned or private land conveyed or set aside for the purpose of Palau's Natural Heritage Reserves System, and other land purchased by Palau for that purpose.

Conservation

The legislative basis for conservation in Palau is provided for in:

- the Land Planning Act which establishes conservation zones to protect land and shoreline areas;
- the Natural History Reserves System Act (1991) which provides for a system of reserves, sanctuaries and refuges; and
- the Endangered Species Act (1975) which promotes the protection of species considered to be threatened or endangered.

A Bill to Amend the Endangered Species Act (1975) was drafted in 1993 with the purpose of establishing conservation programs for endangered and threatened species under the Minister's authority, including research programs needed to define which species are genuinely threatened. The Bill would also empower the Minister to acquire areas of known aquatic habitat for the conservation of resident threatened species. The draft also requires the Minister to establish and implement Management Plans for the conservation and survival of threatened or endangered species. The draft Bill includes guidelines for the issues to be addressed by a Management Plan.

A Wildlife Management Bill covers wild birds, amphibians, reptiles and wild mammals not listed under the *Endangered Species Act*. The Bill provides for the Bureau of Natural Resources and Development to develop a wildlife classification scheme, promulgate regulations relating to collection or harvesting, provide for a system of licensing for hunters and a system of permits for the collection of animals for various purposes, the preparation of management plans and recommend key habitat of sensitive or rare species for inclusion in the Natural Heritage Reserves System, establish a monitoring system and regulate the importation of wildlife.

The *Palau National Park Protection Bill* was drafted to provide protection to Palau's natural environment. It aims to preserve Palau's cultural and historical sites, to provide a mechanism for collaboration between States and the National Government for environmental conservation, to fulfil Palau's obligations under international conventions and to promote eco-tourism.

The *Palau Natural Resource Council Act* (2001) establishes the Council with membership including the Bureau of Natural Resources and Development, Department of Agriculture/Forestry, EQPB, Natural Resources Conservation Service, OERC, Palau Community Action Agency, PALARIS (Bureau of Lands and Survey), Palau Community

College (Agricultural Science Program and Cooperative Research and Extension Program), Palau Conservation Society and the Peace Corp Volunteers.

The Council is mandated to promote co-operative efforts working with local communities, governments, agencies, NGOs and others to achieve wised use and sustainable management of Palau's (land-based) natural resources using appropriate technology.

The *Koror State Mangrove Protection Bill* was enacted in January 2001 to protect mangroves in Koror.

Koror State has also designated the Rock Islands as a protected area under the *Koror Rock Islands Management and Conservation Act* in 1997. Protected areas and tourist activity areas are designated and enforced through a permit system that is reported to generate nearly \$1.0 million in revenues for the State annually. The project is lead by the Palau Conservation Society who acts as an independent agency liaising with both Koror and Peleliu State in legally establishing a single Rock Island Conservation Area management area. The project management responsibility is shared by the Lead agency, the Conservation Area Support Officer (CASO - with the acronym RIC - Rock Islands Coordinator), and until now by the Koror State Department of Conservation and Law Enforcement as part of the implementation and enforcement of the *Koror Rock Island Conservation and Management Act*.

In response to perceived impacts on areas of the Rock Islands by the tourist industry, a *Rock Islands Use Act* (since amended) was introduced in 1997, limiting access by tourists to certain areas of the Rock Islands and requiring a permit.

Several initiatives currently in process have a significant effect on the Rock Islands Conservation Area project. The State of Koror is further committing legal enactments and funds to ensure further protection and management of the Rock Islands. The State of Peleliu has now passed a Dive Permit Act and is committing budget allocations for training and appointment of rangers for law enforcement within Peleliu waters. The two are in the process of establishing inter-state cooperation for the management of the Rock Islands.

A proposal for the development and adoption of the Rock Islands Management Plan was put forward to the legislature of the Koror State with the full support of the House of Traditional leaders and the Governor of Koror. Endorsement was given in July 2000 to the proposed strategic approach for formulating an integrated management and conservation plan for the Rock Islands of the Koror State.

Apart from exceptions in respect of biological control, which may be imported under Palau's quarantine laws, the importation to Palau of any species listed in the Convention on International trade in Endangered Species of Wild Fauna and Flora is prohibited.

The *Environmental Quality Protection Act (1981)* (Title 24 under the PNC) also provides for the establishment of a Fish and Game Commission (see Section on Government Structure). Although the law establishing it has not been repealed the Commission is not currently operational.

The same Act also establishes restrictions in relation to the harvest of some selected marine species (including turtles, sponges, pearl oyster, dugongs, trochus and clams) and birds (with four exceptions – *Malkureomel*, *Wek*, *Yakotsiang* and *Tengadidik*). In addition, a draft *Fruit Bat Conservation Bill* was submitted for ratification in 1991 – it is uncertain if it entered into force.

Palau is not yet a party to the Apia Convention for the Conservation of Nature in the South Pacific. Palau is a signatory to the SPREP Convention for the Protection of Natural Resources and the Environment of the South Pacific Region and its related protocols, but is yet to ratify the Convention.