

# PROTECTING FIJI'S GREAT SEA REEF AND SEASCAPE

Options for strengthening  
management arrangements  
under existing legislation



## Table of Contents

<b>INTRODUCTION</b> .....	<b>1</b>
<b>THE GREAT SEA REEF PROJECT</b> .....	<b>1</b>
<b>MARINE MANAGEMENT IN FIJI</b> .....	<b>4</b>
CUSTOMARY <i>TABUS</i> .....	6
LOCALLY MANAGED MARINE AREAS .....	6
<i>FISHERIES ACT 1942</i> .....	6
<i>OFFSHORE FISHERIES MANAGEMENT DECREE 2012</i> .....	7
<i>STATE LANDS ACT 1946</i> .....	7
<i>ENVIRONMENT MANAGEMENT ACT 2005</i> .....	8
<b>THE PAC COMPRISES MULTIPLE WORKING GROUPS, INCLUDING A MARINE WORKING GROUP.</b> .....	<b>9</b>
<b>LEGISLATIVE MANAGEMENT OPTIONS</b> .....	<b>9</b>
PART A: IMPLEMENTING THE GSR MANAGEMENT STRATEGY UNDER EXISTING LEGISLATION	10
1. <b>ESTABLISHING A NETWORK OF MPAs</b> .....	12
2. ENABLING VARIOUS LEVELS OF PROTECTION .....	13
<i>Consultation Focus Areas</i> .....	14
3. SUSTAINABLE FISHERIES MANAGEMENT .....	14
4. ENVIRONMENTAL AND SOCIAL IMPACT ASSESSMENT .....	15
<i>Consultation Focus Areas</i> .....	17
5. RESEARCH AND MONITORING .....	17
6. GOVERNANCE AND INSTITUTIONS .....	18
TABLE 2: PROPOSED MANAGEMENT FRAMEWORK FOR GSR MANAGEMENT STRATEGY .....	19
<i>Consultation Focus Areas</i> .....	20
7. FINANCIAL ARRANGEMENTS .....	20
PHOENIX ISLANDS PROTECTED AREA CONSERVATION TRUST .....	22
<i>Consultation Focus Areas</i> .....	23
8. ENFORCEMENT, INCENTIVES AND PENALTIES .....	23
<i>Consultation Focus Areas</i> .....	25
SUMMARY .....	25
PART B: LEGISLATIVE REFORM OPTIONS .....	25
1. SPECIFIC GREAT SEA REEF ACT AND GSR AUTHORITY .....	25
<i>Great Barrier Reef Marine Park</i> .....	26
2. NEW PROTECTED AREAS LEGISLATION .....	27
<i>Making comprehensive protected areas regulations</i> .....	28
<i>Amending existing or making new legislation</i> .....	28

# Acknowledgements

## Producer

This study was produced jointly by Fiji Environmental Law Association and EDO NSW (a public interest environmental law organisation based in Australia) at the request of WWF-Pacific.

Financial support was generously provided by the David and Lucile Packard Foundation.

FELA and EDO NSW would like to warmly thank all those who have contributed to the development of this study.

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## Citation

Fiji Environmental Law Association and EDO NSW. (2018). Protecting Fiji's Great Sea Reef and Seascape: Options for Strengthening Management Arrangements Under Existing Legislation. Fiji Environmental Law Association and EDO NSW.

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## INTRODUCTION

The Great Sea Reef (**GSR**), also known as Cakaulevu in Macuata, as Bai ni Vualiku (Wall to the North) in Vanua Levu, and Bai kei Viti (Wall of Fiji) in Ba Province, is the third longest continuous barrier reef system in the world and the third longest reef in the southern hemisphere. According to research conducted by WWF, it is home to 55% of the known coral reef fish in Fiji, 74% of the known corals, and 40% of the known marine flora and fauna in the Fiji Islands.<sup>1</sup>

WWF has been working with local communities to sustainably manage the GSR since 2004. WWF intends to continue to work with the community until adequate management structures and resources are in place to ensure that *iQoliqoli* owners can continue to sustainably and adaptively manage their *iQoliqoli* without WWF support in the long-term.

This report outlines a number of legal mechanisms that are currently available to assist WWF and *iQoliqoli* managers to ensure that the work to protect the GSR done to date can be enshrined in legislation, and be supported by a management system that ensures adequate resources are dedicated to helping the community to achieve their long term management goals. This report builds on previous work done by WWF and local communities on setting a long term vision for GSR management through National Stakeholder Consultation;<sup>2</sup> and work done by Fiji Environmental Law Association (**FELA**) in relation to ensuring an effective legal framework for marine protected areas (**MPAs**) in Fiji.<sup>3</sup>

## THE GREAT SEA REEF PROJECT

The GSR runs for over 200km from the north eastern tip of Udu point in Vanua Levu to Bua at the north west edge of Vanua Levu, across the Vatu-i-ra passage. It passes adjacent to the coastline of Ra and Ba provinces and into the Yasawas. The GSR takes on different local names in each of the four provinces it encompasses (Macuata, Bua, Ra and Ba), but is part of one barrier reef system.

The GSR Project encompasses work done by WWF, local communities, Government and partners to increase protection and sustainable management of the GSR area. The goal of the GSR Project is that 'By 2025, the Great Sea Reef and coastal ecosystems are healthy and resilient to a changing climate, supporting sustainable

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<sup>1</sup> For more information on the ecology of the GSR see WWF *Fiji's Great Sea Reef: The first marine biodiversity survey of Cakaulevu and associated coastal habitats*, available at: [http://www.wwfpacific.org/what\\_we\\_do/freshwater/the\\_great\\_sea\\_reef/](http://www.wwfpacific.org/what_we_do/freshwater/the_great_sea_reef/).

<sup>2</sup> Information on local understanding of and expectations for the Great Sea Reef Project have been collected in many forums but particularly the *Great Sea Reef Management Strategy Development Process – National Stakeholder Consultation*, held 6th – 7th July, 2015, Holiday Inn, Suva (**National Stakeholder Consultation**) available at WWF's Office, 4 Ma'afu Street, Suva.

<sup>3</sup> In 2017, FELA published a review of existing Fijian legislation and policy that enabled protection of marine and coastal environments titled *Towards an Effective Legal Framework for Marine Protected Areas in Fiji: Policy and Law Discussion Paper*, available at: the University of the South Pacific Bookshop or FELA's Office.

business, inclusive livelihoods, food security and community wellbeing'. This goal supports Fiji's 17 voluntary commitments made at the UN Oceans Conference in 2017 to protect and sustainably manage our oceans. These voluntary commitments are part of Fiji's commitment to develop appropriate frameworks and actions to meet the United Nations Sustainable Goals. The goal also supports the 2005 Fiji Government commitment that, 'by 2020, at least 30% of Fiji's inshore and offshore marine areas (iqoliqoli) will have come under a comprehensive, ecologically, representative networks of MPA, which are effectively managed and financed'.<sup>4</sup> This commitment has since been incorporated in government policies, plans and strategies, including the *Green Growth Framework* and the draft *2014 National Biodiversity Strategy Action Plan*. To reach the 30% target, Fiji needs to protect both inshore and offshore, or beyond the reef, marine areas. The GSR is one of three areas currently being proposed to bring Fiji to its target.<sup>5</sup> In January 2018 the Qoliqoli Cokovata, a significant part of the GSR was designated as a RAMSAR site. The GSR Management Strategy (currently under development) aims to chart a strategy for the collective and sustainable management of the GSR. This will be achieved by community self-management based on sound governance systems. This goal will be guided by the existing work and lessons generated from the *Qoliqoli Cokovata Management Committee* and the Ministry of Fisheries and Forest. The Management Strategy will address the increasing number of threats and pressures placed on the GSR system from direct impacts (including overharvesting and destructive fisheries) and indirect sources (including sedimentation and chemical pollution); and support key national stakeholders to become engaged and actively drive the process.<sup>6</sup>

WWF has been working with local communities and individuals who benefit financially, socially and culturally from the GSR to monitor sustainable use of this living asset and to finance its management. Extensive work has been done in the province of Macuata where there are four districts whose traditional fishing grounds encompass one fifth of the reef system. This area is referred to locally as the *Macuata Qoliqoli Cokovata*. The communities of the *Qoliqoli Cokovata* have established one of the largest community-managed MPA networks in Fiji. Community activities include voluntary Fish Warden training, development of management plans, restoration initiatives, fundraising, and livelihood options. These activities have reinforced widespread community appreciation for their natural resources and garnered an active interest in better managing and sustaining its abundance.

The National Stakeholder Consultation held in June 2015 in Suva made significant progress on an 'integrated reef system management plan for the Great Sea Reef and Seascape'. This consultation workshop identified the following ten (10) Prioritised Thematic Areas for further development:

- a. Data Consolidation, Research and Monitoring;
- b. Sustainable Industries and Natural Resource Management;

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<sup>4</sup> Commitment made as part of the 10 year review of the Barbados Programme of Action for Small Island Development States by the Hon Minister of Foreign Affairs, Kaliopate Tavola.

<sup>5</sup> The National Stakeholder Consultation identified the three areas being targeted as the GSR, the Vatuiria Passage, and Kadavu and Southern Lau waters.

<sup>6</sup> For more information see the minutes of the National Stakeholder Consultation.

- c. Grassroots Community Participation, Awareness, Ownership, Empowerment and Capacity Building;
- d. Livelihoods and Food Security;
- e. Integration, Planning, Policy, Legislation, Compliance and Enforcement;
- f. Knowledge Management and Communications;
- g. Protection and Conservation;
- h. Management Processes;
- i. Climate Change; and
- j. Sustainable Financing.

Short term (5 year) and long term (20 year) goals were set for each of these themes.<sup>7</sup> A key target under the Integration, Planning, Policy, Legislation, Compliance and Enforcement theme was to establish legislated, enforceable protections for the GSR. This report outlines some ways in which WWF and partners can progress this goal.

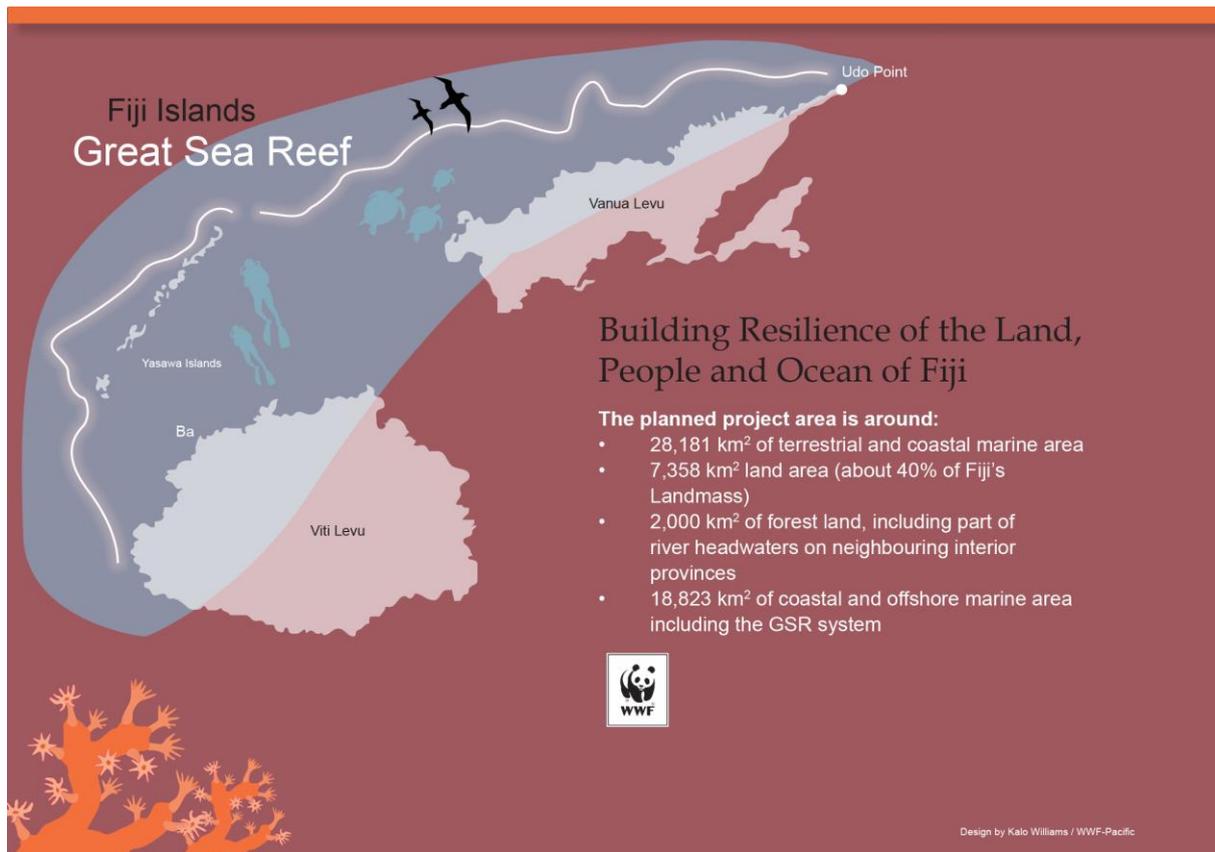
In 2017, WWF undertook further stakeholder consultation aimed at ‘Building the Resilience of the Land, People and Ocean of Fiji’<sup>8</sup> (**Building Resilience Consultation**) as a way of embedding the past 15 years of work in the GSR region into the broader goal in Fiji of expanding large scale marine managed areas. This consultation further identified some of the tools that will be required to achieve integrated management of the GSR and surrounding environments. As shown in the image below:

The planned project area is around 28,181km<sup>2</sup> of terrestrial and coastal marine area; 7,358km<sup>2</sup> of land area (about 40% of Fiji); est 2,000kms of forest land part of river headwaters on neighbouring interior provinces; 18,823km<sup>2</sup> of coastal marine area including the GSR reef system.

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<sup>7</sup> For more detail on the 5 and 20-year targets for the GSR Management Strategy see *Great Sea Reef Management Strategy Development Process – National Stakeholder Consultation* 6th – 7th July, 2015, Holiday Inn, Suva.

<sup>8</sup> For more information see the WWF report: “*Awareness raising on SDG generally, SDG 14 specifically, the Great Sea Reef and the Building the Resilience of the Land, People and Ocean of Fiji concept*” compiled by Kesaia Tabunakawai, Francis Areki, Unaisi Malani, Karalaini Rereavosa and Unaisi Vuli, available at: WWF Headquarters, Suva.



## MARINE MANAGEMENT IN FIJI

The current legal system in Fiji provides a suite of tools that could be utilised to help achieve the GSR Management Strategy. In considering the relevant tools, it is important to recognise that the law and governance arrangements that apply to Fiji's fisheries are complex, incorporating both a modern legal framework and a traditional *iTaukei* system of law and governance. Much of the marine environmental protection undertaken to date has focussed on voluntary, customary measures although there has been increasing use of legislative tools to establish MPAs. Any proposals for increased protection and management of the marine environment must build on the strengths of each system to provide appropriate protection for the marine environment.

One of the key mechanisms available for managing the marine environment is the establishment of MPAs. Different jurisdictions use terms associated with marine management differently, however the IUCN describes MPAs as:

Marine Protected Areas (MPAs) involve the protective management of natural areas so as to keep them in their natural state. MPAs can be conserved for a number of reasons including economic resources, biodiversity conservation, and species protection. They are created by delineating zones with permitted and non-permitted uses within that zone.

It is vital to have in depth knowledge of the area so as to define ecological boundaries and set objectives for the MPA. It is also important to have the support of

the public and established techniques for surveillance and monitoring of compliance. The IUCN engages in advocating for the expansion of the MPA network through reliable science and by engaging with local stakeholders.<sup>9</sup>

Another useful definition of MPAs is the definition used by the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention of Biological Diversity (CBD), namely:

Marine and Coastal Protected Areas mean any defined area with or adjacent to the marine environment, together with its overlying waters and associated flora and fauna and historical and cultural features, which has been reserved by legislation or other effective means, including customs, with the effect that its marine and/or coastal biodiversity enjoys a higher level of protection than its surroundings.

The significant difference between the IUCN definition and the CBD definition is that the IUCN definition specifies that nature conservation is the primary objective of a conservation area, whereas the CBD definition is broader by express reference to custom and placing emphasis on “effect” or the level of protection afforded to a protected area which must be a higher level of protection than its surroundings.<sup>10</sup>

MPAs are likely to play a key role in achieving an ‘integrated reef system management plan for the Great Sea Reef and Seascape’. MPAs will include areas that are conserved for purely biodiversity protection purposes (also known as sanctuary or no-take areas), as well as areas that allow different levels of activity to protect the environment and ensure sustainable use (also known as multiple use MPAs). MPAs can cover an entire area of interest, or be complemented by formalised spatial based management of areas outside of an MPA system, known as marine management areas (**MMAs**).

Conservation International defines MMAs as:

[A]rea(s) of ocean, or a combination of land and ocean, where all human activities are managed toward common goals. MMAs are a form of ecosystem-based management, where all elements - biophysical, human, and institutional - of a particular system are considered together.<sup>11</sup>

This integration of land and ocean matches the recent focus of Locally Managed Marine Areas (**LMMA**s), which in 2014 reported that LMMA sites are increasingly ‘employing yaubula management, equivalent to ecosystem-based management, also commonly known as Ridge to Reef (R2R), whereby management of the *iQoliqoli* is set in the context of broader watershed and spatial management’.<sup>12</sup>

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<sup>9</sup> <<https://www.iucn.org/theme/marine-and-polar/our-work/marine-protected-areas>>.

<sup>10</sup> For more information refer to Fiji Environmental Law Association and EDO NSW (2017) ‘Towards and Effective Legal Framework for Marine Protected Areas in Fiji : Policy and Law Discussion Paper’, The University of the South Pacific Press, Suva.

<sup>11</sup> Orbach M, Karrer L. 2010. *Marine Managed Areas: What, Why, and Where*. Science and Knowledge Division, Conservation International, Arlington, Virginia, USA. Available at: <[https://www.conservation.org/publications/Pages/MMAs\\_what\\_why\\_where.aspx](https://www.conservation.org/publications/Pages/MMAs_what_why_where.aspx)> .

<sup>12</sup> FLMMA, *Strategic Plan 2014-2018* (FLMMA, 2014). For more information on the Ridge to Reef concept see: <<http://www.pacific-r2r.org/partners/member-countries/fiji>>.

In 2017, FELA published a review of existing Fijian legislation and policy that enabled protection of marine and coastal environments, titled *Towards an Effective Legal Framework for Marine Protected Areas in Fiji: Policy and Law Discussion Paper (MPA Discussion Paper)*. The review also considered how existing laws could be strengthened. The report ultimately recommended new legislation to support a comprehensive, adequate and representative system of MPAs to ensure the best outcome for the marine environment of Fiji. It also outlined ways in which existing legislation and policy can be used to protect the marine environment in the short term.

Each of Fiji's existing mechanisms for strengthening marine management, particularly the creation of MPAs, are described briefly below. A more detailed description of these mechanisms can be found in the MPA Discussion Paper.

### **Customary *Tabus***

*Tabus* are measures under customary law that prohibit certain behaviour or activities, such as taking fish or other marine resources. *Tabus* can be species-specific or site-specific, can last indefinitely or for a limited period of time, and can be lifted temporarily and/or renewed by chiefly decision. They can be adjusted in response to changing fish stock and ecosystem status, and as such are well suited to an adaptive management approach to marine resource management. However, flexibility has its downsides as frequently lifting *tabus* can undermine sustainable fisheries management.

### **Locally Managed Marine Areas**

Fiji has been extremely successful in developing LMMAs to promote and encourage the preservation, protection and sustainable use of marine resources in Fiji's coastal communities. LMMAs are voluntarily management systems co-managed by Customary Fishing Rights Owners (**CFROs**) and partners including non-government organisations, the Fiji government, research institutes, the private sector, and individuals. The Fiji LMMA (**FLMMA**) network adopts a Community-Based Adaptive Management (**CBAM**) approach, whereby 'local stakeholders develop a natural resource management plan and implement it, monitor, analyse and communicate the results, and then revise the management plan as needed'.<sup>13</sup>

### ***Fisheries Act 1942***

The *Fisheries Act 1942* (**Fisheries Act**) does not have any stated objects but is described in its long title as 'An Act to make provision for the regulation of fishing'. The main management tools available in the Fisheries Act are licensing and permit systems, vessel registration, bans on the use of explosives, and the use of species and/or spatial closures. The Fisheries Act also establishes a system for recognising customary rights to access and use resources within *iQoliqoli* that have been registered under the Act. This means fishing activities are regulated differently depending on who is undertaking the activity, and the purpose of the activity (i.e.

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<sup>13</sup> For more information on the FLMMA network see: <<http://lmmanetwork.org/who-we-are/country-networks/fiji/>> and the FLMMA, *Strategic Plan 2014-2018* (FLMMA, 2014).

personal consumption versus trade or business). While the Fisheries Act does include provisions for creating fisheries closures, there is no specific mechanism for creating MPAs. However, section 9 of the Fisheries Act (the regulation-making provision) creates scope for implementing MPAs via regulations. Four MPAs have been established under this process.<sup>14</sup>

### ***Offshore Fisheries Management Decree 2012***

The objective of the *Offshore Fisheries Management Decree 2012 (Offshore Decree)* is to 'conserve, manage and develop Fiji fisheries to ensure long term sustainable use for the benefit of the people of Fiji'. The Offshore Decree explicitly provides for the establishment of MPAs and empowers the Director of Fisheries to 'identify and recommend' the designation of MPAs and the Permanent Secretary to designate MPAs. The *Offshore Fisheries Management Regulations 2014 (Offshore Regulations)* allows for the scheduling of restricted and prohibited areas. Schedule 1 to the Offshore Regulations includes some prohibited and restricted areas, but these areas do not prohibit or restrict all types of fishing in all circumstances. Instead, the restrictions and prohibitions apply only to vessels (defined as foreign fishing vessels and Fiji fishing vessels) and only in some circumstances.

Other relevant features of the Offshore Decree and Regulations include:

- The ability of the Permanent Secretary to 'appoint such committees as he or she determines necessary to advise or make recommendations on any areas under his or her authority', which includes advising the Minister on any matter relating to the conservation, management, development and sustainable use of fisheries resources and designating MPAs;
- Provisions for establishing seasonal and species restrictions; a prohibition on killing, taking, landing, selling endangered or listed species; and a prohibition on the use of certain types of fishing methods or gear; and
- The ability to declare that an international conservation or management measure is applicable to Fiji fishing vessels and foreign fishing vessels in Fiji fisheries waters, and to Fiji fishing vessels beyond Fiji fisheries waters.

Importantly, the Offshore Decree states that it applies to inshore and offshore areas and is to prevail in the event of inconsistency with any other law. This creates the potential for any decisions under the Offshore Decree to override any decisions under the Fisheries Act.

### ***State Lands Act 1946***

The *State Lands Act 1946 (SLA)* regulates the 'control, administration and disposal of Crown land'. 'Crown land' refers to:

all public lands in Fiji, including foreshores and the soil under the waters of Fiji, which are for the time being subject to the control of Her Majesty by virtue of any treaty,

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<sup>14</sup> The following Marine Reserve Regulations (effectively MPAs) have been established: *Fisheries (Shark Reef Marine Reserve) (Serua) Regulations 2014*; *Fisheries (Wakaya Marine Reserve) Regulations 2015*; *Fisheries (Kiuva Marine Reserve) Regulation 2018* and *Fisheries (Naiqoro Passage Spawning Aggregation Marine Reserve) Regulation 2018*.

cession or agreement, and all lands which have been or may be hereafter acquired by or on behalf of Her Majesty for any public purpose.<sup>15</sup>

Foreshores are the area between the mean high water mark and the mean low water mark, including mangroves, beachfront and sand or mud flats areas. Foreshores are therefore important for the integrated management of the marine environment.

The Ministry of Lands and Mineral Resources is responsible for the administration and oversight of all development on State Land in Fiji, which is mostly undertaken through a lease or licence under the SLA. A lease gives the lessee, in addition to a positive right to occupy and use the land for the agreed purpose, a temporary negative right to exclude others from the lease area. A licence is a governmental permission to perform a particular act, or conduct a particular business or activity (e.g. logging or fishing), or use property for a certain purpose. Development for which the Ministry of Lands and Mineral Resources issues leases and licences includes jetty, marinas, integrated tourism development, gravel or sand extraction, MPAs, aquaculture, mangrove harvesting;<sup>16</sup> agriculture, logging and residence. SLA mechanisms include the conferral of a statutory right on the CFROs as lessee or licensee where SLA leases or licenses are granted, public notification and consultation requirements prior to the grant of a foreshore lease, and the practice of compensating CFROs for the loss of customary fishing rights when foreshore leases and licences are granted.

As discussed in the MPA Discussion Paper, SLA leases and licences are not considered as offering a viable long-term mechanism for establishing a comprehensive network of MPAs. However, the SLA mechanisms may offer some important lessons useful for developing the preferred legal framework for MPAs.

### ***Environment Management Act 2005***

The *Environment Management Act 2005 (EMA)* requires approval authorities to examine proposals, excluding fishing activities, that 'could harm or destroy designated or proposed protected areas'<sup>17</sup>, and determine whether a proposed activity 'is likely to cause significant environmental or resource management impact'.<sup>18</sup> If the approving authority determines that the activity will cause a significant environmental or resource management impact, the EMA requires that it be subject to an Environmental Impact Assessment (**EIA**) process. The EIA process can also be triggered by the proposed development causing public concern; or the Minister of Environment forming the view that the development proposed is likely to cause public concern.

The EMA also establishes the National Environment Council (**NEC**) which has, in turn, established the Protected Areas Committee (**PAC**). The PAC is recognised by the national government as responsible for providing advice and leadership on

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<sup>15</sup> *Crown Lands Act* [Cap 132], section 2.

<sup>16</sup> Source: Presentation by Thomas Fesau, Foreshore Unit, Department of Lands, at FELA's EIA Legal Training, 2014.

<sup>17</sup> *Environment Management Act 2005*, Schedule 2, Part 1 (1)(n).

<sup>18</sup> *Environment Management Act 2005*, Section 27(1)(b).

meeting the national goal of protecting Fiji's marine areas using MPAs.<sup>19</sup> The PAC Terms of Reference identifies the PAC as a 'forum or formal mechanism where stakeholders can consult and agree on how to implement activities'. The functions of the PAC are:

- (1) to advise the [NEC] on protected area policies and priorities;
- (2) to support the establishment of an adequate and representative national protected area system, consistent with national and international policy commitments;
- (3) to facilitate consensus on national priority areas for conservation, including terrestrial, freshwater and marine protected areas;
- (4) to identify gaps in the existing protected area system, including the extent of protected areas, the state of scientific knowledge and the adequacy of existing management measures;
- (5) to identify actions for the establishment and effective management of protected areas, to be implemented by government, non-government organisations and the private sector;
- (6) to identify options for to [sic] resource protected area management, and to support efforts to secure financial resources for protected area management activities; and
- (7) to facilitate the exchange of information and data sharing between stakeholders.<sup>20</sup>

The PAC comprises multiple working groups, including a marine working group.

## **LEGISLATIVE MANAGEMENT OPTIONS**

The key focus of this paper is how actions across the 10 themes identified in the GSR Management Strategy development process can be carried out under existing legislation.

Part A of this report examines recommended priority actions to address each of the themes. It also includes a detailed consideration of how the existing legislation can be applied. Each section concludes with potential issues for community consultation to help progress these proposals. We acknowledge that this approach will need to evolve over time as new laws to protect Fiji's marine environments come into effect.

The MPA Discussion Paper identified that integrated protection and management of Fiji's marine environment would be best achieved through the development of new legislation, Part B of the present report briefly considers potential longer term approaches to legislative reform that would support improved management of the GSR, namely:

1. Implementing a specific Great Sea Reef Act, supported by a Great Sea Reef Authority.
2. Developing a general protected areas legislative regime that could be applied to the GSR area.

<sup>19</sup> MPA Discussion Paper, p 31.

<sup>20</sup> Terms of Reference for the National Protected Areas Committee (PAC): A Technical Committee for the National Environment Council (2009).

## **PART A: IMPLEMENTING THE GSR MANAGEMENT STRATEGY UNDER EXISTING LEGISLATION**

The work undertaken through the Building Resilience Consultation seeks to recognise the inter-related nature of the land, oceans and people, and acknowledges that the successful management of all of these elements is necessary to ensure sustainable livelihoods and protection of the environment. The vast area involved, and the number of communities and ecosystems impacted, means that it will be necessary to work in local regions to identify local solutions to key management issues, while maintaining the ability to look at the entire system and understand how management measures are being integrated. For example, in some communities the greatest threat to a healthy marine environment may be over fishing, while other communities may be impacted by poor management of coastal areas and forests. Responses to these issues will require both local and co-operative regional actions. This multi-level management approach empowers local communities to take ownership of local issues and resources, but ensures that resources or features that cross local boundaries, for example fish stocks that move throughout the region, will be appropriately managed.

Working within the existing legislative framework, communities can tailor existing environmental protection mechanisms to meet their local needs. Such an approach means that each community can identify for themselves those areas in need of protection in sanctuary or no-take zones, areas where it would be appropriate to apply restrictions on fishing and other activities, areas where coastal activities should be better regulated, and activities for which greater environmental assessment should be required. The overarching work of WWF, FLMMA, Government, local representatives and other partners means that these local decisions can be considered at a regional and national level to ensure that management decisions are complementary and there are no significant gaps that would undermine management of the broader region.

This approach is not without shortcomings. The MPA Discussion Paper identified significant concerns with gaps in existing legislation – meaning that without specific regulation, marine protection is not absolute, and limitations in compliance activities means that the local community's wishes are not always enforced. Nonetheless, there are significant opportunities to progress the goal of improving management of the GSR while working to address the existing legislative gaps.

Given the fragmented nature of the current legislative framework, implementation of integrated management for the GSR will rely heavily on community engagement and partnerships at all levels. Local management priorities will need to be supported at a regional level, and communities will need to ensure they have complementary management systems in place, so that those communities who invest in sustainable livelihoods are not undermined by management decisions in adjacent areas that share resources. Governments of all levels will have a vital role to play in supporting local management initiatives through enacting regulations to legislate for protected areas, supporting compliance efforts, and facilitating financing mechanisms to allow reinvestment in local community management.

This section of the paper considers how the 10 Prioritised Thematic Areas from the GSR Management Strategy can be incorporated into existing legislation and management regimes to achieve integrated management to the greatest extent possible. Building on the IUCN based recommendations for developing an effective legal framework for MPAs set out in the MPA Discussion Paper, we have identified the following priority actions under each thematic area. Each priority action will contribute to multiple themes. These activities may be progressed collectively or individually, but all will need to be address to enact the 10 key themes within existing legislation:

1. Protection and Conservation – establishing a network of protected MPAs (establishing a network of MPAs<sup>21</sup>);
2. Sustainable Industries and Natural Resource Management - creating multiple use MPAs/MMAs, including sustainable fisheries management, and bringing *tabus* and FLMMAs into the regulatory system; and managing external impacts on the marine environment, including land, mineral and forest based industries (enabling various levels of protection<sup>22</sup>);
3. Livelihoods and Food Security – managing fishing licences and quotas, including fees and licencing (sustainable fisheries management<sup>23</sup>);
4. Sustainable Industries and Natural Resource Management - particularly focusing on coastal and foreshore management, including SLA leases and licences (environmental and social impact assessment<sup>24</sup>);
5. Data Consolidation, Research and Monitoring – consolidating local data, including the spawning potential ratio (SPR) methodology, with data collected by other marine users (research and monitoring<sup>25</sup>);
6. Management Processes – ensuring appropriate governance and oversight committees (governance and institutions<sup>26</sup>);
7. Sustainable Financing – establishing a GSR Trust to receive fees and charges and provide financial support for community management (financial arrangements<sup>27</sup>); and
8. Integration, Planning, Policy, Legislation, Compliance and Enforcement - including appropriate support for compliance officers and regulatory penalties (enforcement, incentives and penalties<sup>28</sup>).

The themes of Grassroots Community Participation, Awareness, Ownership, Empowerment and Capacity Building and Climate Change should be considered in the development of all priority actions, although some actions will provide greater benefits for these thematic priorities than others.

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<sup>21</sup> See part 4.2. D.xv of the MPA Discussion Paper.

<sup>22</sup> Ibid, xxi-xxii of the MPA Discussion Paper.

<sup>23</sup> Ibid, xiv of the MPA Discussion Paper.

<sup>24</sup> Ibid, xxiii of the MPA Discussion Paper.

<sup>25</sup> Ibid, x of the MPA Discussion Paper.

<sup>26</sup> Ibid, C.xiii of the MPA Discussion Paper.

<sup>27</sup> Ibid, x of the MPA Discussion Paper.

<sup>28</sup> Ibid, E.xxvi of the MPA Discussion Paper.

## 1. Establishing a network of MPAs

At the heart of any marine management system should be a comprehensive, adequate and representative system of no-take MPAs, or marine sanctuaries, providing a core network of biodiversity protection and fisheries recruitment areas.

To date, no-take MPAs in Fiji have largely been identified as *tabus*, supported by the FLMMA model. The strength of this model is the co-management arrangements between CFROs and FLMMA and their partners, including non-government organisations, the Fiji government, research institutes, the private sector, and individuals. The weakness of this system is that FLMMA areas are implemented on an ad hoc basis, and while management plans are developed for FLMMA, these measures remain voluntary, making enforcement difficult beyond that possible through customary law. This issue can be addressed by incorporating *tabu* areas into specific marine protection regulations.

Establishing MPAs using fishing closures under the Fisheries Act is currently problematic, as the Fisheries Regulations still allow fishing in restricted areas where fishing is by hand net, wading net, spear or line and hook (see regulation 11 of the Fisheries Regulations). This means the Fisheries Regulations, which is the current system set up to create restricted areas, cannot be used to establish strict no-take MPAs.<sup>29</sup>

Instead, no-take MPAs will need to be created using dedicated regulations under the Fisheries Act for inshore waters and/or the Offshore Decree for waters outside *iQoliqoli* areas. The fact that the Offshore Decree can expressly override the Fisheries Act means that until an Inshore Fisheries Act is developed, it may be necessary to establish protected areas under both the Fisheries Act and the Offshore Decree for coastal waters. Section 9 of the Fisheries Act allows for the creation of 'restricted areas', and any other matter relating to 'the conservation, protection and maintenance of a stock of fish which may be deemed requisite'. The Offshore Decree explicitly provides for the establishment of MPAs, however the process for doing so is currently unclear. In consequence, any proposals to establish no-take MPAs will need to be strongly supported by local communities to encourage the government to take action. who will need to request and encourage Government action to create no-take MPAs.

At the FELA and the (then) Department of Fisheries *Coastal Fisheries Management Legal Development Forum* at the Tanoa Hotel in February 2016 (**FELA 2016 Fisheries Forum**), the Ministry for Fisheries outlined the process for creating the necessary regulations under the Fisheries Act:

1. Consultations with stakeholders and CFRO's;
2. Information/technical papers compiled with support letters from Agencies (Govt, NGO's, Civil Societies, CFRO's);
3. Cabinet Paper submission with Regulation via approval/vetting from senior Government officials;
4. Approval of Cabinet Paper through Cabinet decision;

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<sup>29</sup> See Appendix B.D.xiv of the MPA Discussion Paper.

5. Gazettal of Regulation;
6. Develop Management Plan and General Operating Guideline; and
7. Use of Private Public Partnership for management: cost effective in terms of monitoring and surveillance.

It is important to note that regulatory protection is more permanent than a customary *tabu* or the current LMMA management plans, where different areas can be managed differently over time in response to new information or changing community needs. Given the strong recognition of the importance of maintaining customary fisheries rights in fisheries legislation, it is vital that local communities are engaged in decisions about where to locate regulated protections and that they support proposals for long-term protection before these protections are 'switched off'. In their presentation to the FELA 2016 Fisheries Forum, Department of Fisheries' staff identified that they were already working in a number of *iQoliqoli* areas to progress regulatory protection for LMMA *tabu* areas.

A more regional partnership focus will be required to identify potential no-take MPAs outside of *iQoliqoli* areas. One way to progress this would be to work with the Permanent Secretary for the Ministry of Fisheries to use their powers (under the Offshore Decree) to appoint one or more committees to consider the offshore areas of the GSR and identify where suitable areas of protection may be. Membership of such a committee would need to include community, government, and NGO representatives as well as fisheries and marine experts, particularly those individuals who are already working to meet Fiji's commitment to achieve a network of MPAs over 30% of their marine waters. Alternatively this role could be undertaken by the existing Offshore Fisheries Advisory Council (**OFAC**), established by the Offshore Decree with the purpose of 'advising the Minister on policy matters relating to fisheries conservation, management, development and sustainable use'. However, there is no requirement for the OFAC to include a representative of CFROs, which risks reducing the integration between MPAs established in inshore and offshore areas.

### *Consultation Focus Areas*

- Which inshore areas should be permanently protected no-take areas?<sup>30</sup>
- Which offshore areas should be permanently protected no-take areas?<sup>31</sup>
- Is there Government support for establishing new regulations and advisory committees?

## **2. Enabling various levels of protection**

Multiple use MPAs and MMAs are complementary management systems designed to protect biodiversity and ensure sustainable use of the marine environment. They provide an opportunity to expand management of marine areas beyond establishing closures or developing Fisheries Management Plans (**FMPs**),<sup>32</sup> and integrate

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<sup>30</sup> See part 4.2. D.xxi of the MPA Discussion Paper.

<sup>31</sup> Ibid.

<sup>32</sup> Under the Offshore Decree, all designated fisheries must have a FMP which is subject to minimum content requirements and required to 'protect the fishing interests of artisanal, subsistence and small scale fishers'.

management of particular areas to support sustainable use of the marine environment. This means management might focus on different issues in different locations, for example in some areas it may prioritise protection of high conservation value areas, others may prioritise important customary or commercial uses, or focus on areas where competing uses need to be managed to reduce social conflict and ensure sustainability.

There are a number of existing legislative tools that would allow for the establishment of multiple use MPAs/MMAs. However, the most effective way of establishing multiple use MPAs/MMAs is likely to be as stand-alone regulations under both the Fisheries Act and Offshore Decree. Specific regulation would ensure that tailored management arrangements can be assigned to specific spatial areas. Creating stand-alone regulations would also allow no-take MPAs and multiple use MPAs/MMAs to be integrated in the same regulation, thus simplifying management arrangements.

Given the lack of clarity surrounding establishing MPAs under existing regulation, clear management arrangements could be implemented by including the need for management committees and management plans in the regulations themselves. FLMMAs are already managed under management plans that utilise a range of marine management tools, including fishing gear restrictions, species-specific harvesting restrictions, and seasonal restrictions. Under this model, the objectives for managing different areas, or zones, could be specified, but the detail of the management tools to achieve those objectives could be delegated to a management plan. This could be developed by a management committee in conjunction with the local community and approved by the Minister for Fisheries (as the minister responsible for the relevant legislation). Management plans could include regular review processes to ensure that new information and changing community needs are incorporated as required. Establishment of multiple use MPAs/MMAs would also support the implementation of criteria for consideration during environmental assessment of proposed new activities. Fees or licences could also be charged to support ongoing management (discussed further below). While recognising the need for flexibility in multiple use MPAs/MMAs, it would be important for any regulation to ensure that no-take MPAs or sanctuary zones cannot be adjusted under management plans, to ensure that long-term benefits of these areas are achieved.

#### *Consultation Focus Areas*

- Which areas should be managed as multiple use MPAs/MMAs?
- Are community and government representatives willing to participate in voluntary regional management committees?

### **3. Sustainable fisheries management**

Fiji is currently undergoing a process designed to strengthen management of customary and commercial fishing, including the development of new legislation aimed at better managing coastal fisheries. FELA prepared a number of recommendations for improving fisheries management in Fiji.<sup>33</sup> However, better

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<sup>33</sup> See for example Fiji Environmental Law Association and EDO NSW (2016) *Regulating Fiji's Coastal Fisheries. Policy and Law Discussion Paper*, Fiji Environmental Law Association, Suva; and

integration of fishing to strengthen management of the GSR does not need to wait for new legislation. Rather, threats to sustainability such as overharvesting and destructive fisheries can, and should, be addressed as comprehensively as possible under the current framework.

Tools that are immediately available to support sustainable fisheries management include licences to take fish and the requirements to register fishing vessels. All commercial fishing must be approved by a licence and every licensed fisher owning or operating a fishing vessel must register that vessel annually, although the Minister is able to exempt a person from the requirement for a licence.<sup>34</sup> The use of quotas is also an important fisheries management tool that is relied on heavily in the Offshore Decree. The requirement that all activities are appropriately licenced and monitored will ensure that decisions made regarding sustainable levels of take are based on the best available information. It is beyond the scope of this paper to comment on the effectiveness of the current fisheries management regime in the GSR, however, it should be noted that the use of multiple use MPAs/MMAs are an important complement to dedicated fisheries management tools. Any new or expanded fisheries activities should also be subject to comprehensive environmental assessment.

As discussed further below, the potential exists to share income received under fishing licences and vessel registrations with a GSR Trust, thereby making funds available for GSR management activities, which would in turn benefit fisheries management. Such an approach could also ensure that changes to CFRO fishing rights are done under appropriate management arrangements.

#### *Consultation Focus Areas*

- How can existing tools (e.g. licence conditions) be better utilised?
- Are there current fishing activities that are not adequately regulated and should be?
- Are there potential additional sources of management funds from fishing permits and licences?
- How will CFRO interests be appropriately incorporated into decision making under the Offshore Decree?

#### **4. Environmental and social impact assessment**

The GSR Management Strategy recognises that appropriate management of the GSR also relies on appropriate management of adjacent onshore areas (the Ridge 2 Reef model).<sup>35</sup> The implication of this is that management of land-based development and activities consider the impact that these activities will have on the adjacent foreshore and marine areas. Current policy in this area is guided by the Integrated Coastal Management Framework<sup>36</sup> which seeks to strengthen sustainable

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*FELA Submission to the National Fisheries Policy*, available at:

<<https://www.fela.org.fj/publications.html>>.

<sup>34</sup> See part 3.2. 1. *Protection of customary rights* of the MPA Discussion Paper.

<sup>35</sup> For more information see: <<http://www.pacific-r2r.org/partners/member-countries/fiji>>.

<sup>36</sup> *Integrated Coastal Management Framework Of The Republic Of Fiji 2011 - Opportunities and issues for managing our coastal resources sustainably* is available at: <<http://www.macbio->

coastal resource management for Fiji. While work on implementing the Framework continues, there are two primary mechanisms available to strengthen the management of GSR in the coastal zone – environmental assessment of activities, and licences and leases under the SLA.

To ensure consistent consideration of ridge to reef impacts, all proposed activities that could significantly impact on coastal catchments and the marine environment should be required to undergo environmental assessment, their potential impact on the GSR should be considered, as should the extent to which the activity complements the GSR Management Strategy. This process also has the potential to generate management funds for the GSR. Where an activity does have the potential to negatively impact on the environment or management of the GSR, such as a logging or a tourism development, but allowing the activity to proceed is considered to be in the broader public interest, proponents could be required to make a financial contribution to the GSR Trust to support strengthened management of the GSR.

A number of development activities, such as logging or use of foreshore areas, occurs on State Lands and require the issuing of a forest licence or a foreshore lease/licence. CFRO must be consulted before the issuing of any SLA licence; however the SLA does not require approval or consultation with CFROs prior to the grant of a foreshore lease that may affect any customary *tabu*. However, the Act provides for compensation by the lessee for any rights that may be infringed by a foreshore lease 'abutting upon or adjoining any alienated or native land'. Standard operative procedures have been developed to ensure that adequate considerations are taken in the decision to grant a foreshore lease, and to bridge customary and statutory governance of foreshore and near shore marine areas. With the support of CFRO's, these funds could be used to grow the GSR Trust and support broader environmental management.

Integration of development activities into broader coastal zone management could be overseen by the NEC. The integrated coastal management committee (ICMC) appointed by the NEC in 2009 was given the mandate to prepare a coastal zone management plan for Fiji. One of the first steps taken in this process was the development of the Integrated Coastal Management Framework which makes recommendations for policy considerations and actions that could strengthen integrated coastal management. One of the main recommendations of the framework which has since been piloted in the province of Ra was to develop provincial-level ICM plans which could be later consolidated into national plans.

A combined bottom-up and top-down approach was undertaken to develop the Ra ICMC Plan. A Ra Integrated Coastal Yaubula Management Committee was established and formally recognised in 2012 by the National ICMC to have oversight of the Ra Provincial ICM Plan. The existing Yaubula Management Support Team Committee (YMST) was used to conduct consultations at the village level.<sup>37</sup> The

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[pacific.info/wp-content/uploads/2017/08/Integrated-Coastal-Management-Plan-Framework-for-the-Republic-of-Fiji-2011.pdf](http://pacific.info/wp-content/uploads/2017/08/Integrated-Coastal-Management-Plan-Framework-for-the-Republic-of-Fiji-2011.pdf).

<sup>37</sup> Yaubula Management Support Teams (YMST) is a strategy developed by FLMMA partners and government ministries to improve resource management at a provincial level. An YMST is essentially a network of stakeholders working to coordinate natural resource management efforts between communities and the government in a particular province or region (FLMMA 2011).

results of these consultations are taken up to the YMST committee who are also members of the RA ICYMC.<sup>38</sup> Consultations are then undertaken with government, NGOs and the private sector and then taken through to the National ICMC.

The ICMC could also be responsible for developing guidelines for consideration by relevant Ministers and government agencies when deciding whether an environmental assessment is required for a development, or when deciding whether to award licences or leases in areas that may impact on the marine environment.

#### *Consultation Focus Areas*

- Which agency would be best placed to coordinate environmental and social impact assessments for projects impacting on the GSR?
- Do current policies regarding the issuing of SLA leases or licences adequately consider impacts on adjoining coastal and marine areas?
- What policy or legislative changes would be required to allow funds from permits and leases to support regional management of the GSR?

### **5. Research and monitoring**

While not requiring any specific legislative framework, data consolidation, research and monitoring are key requirements for informed decision making and appropriate management of the GSR. At the FELA 2016 Fisheries Forum, the Ministry of Fisheries identified that the previous focus on research had declined, but improving the research program in the future is a key priority for the Ministry. This work would complement the existing monitoring activities undertaken by FLMMA and the use of the spawning potential ratio (**SPR**) method designed to engage fishers in the collection of fisheries data.

Under the model proposed in this paper, appropriate data consolidation, research and monitoring would involve MPA/MMA management committees working closely with the Ministry of Fisheries, individual fishers and NGOs to collect and collate data, generate analysis, and apply the results of this research as part of a process of community based adaptive management. The data gathered would also contribute to improved management of fishing license quotas.

#### *Consultation Focus Areas*

- Is the community willing to provide their data to a centralised data collection point?
- Can appropriate industry data be collected or are changes needed to permit and licence reporting requirements?
- Is there Government support for maintaining a central data repository?
- What basic technologies (e.g. phone apps) are available to improve data collection?

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<sup>38</sup> See part 2. 1. *Dual Governance System* of the MPA Discussion Paper.

## 6. Governance and institutions

The governance model proposed for the GSR would include a national lead agency, regional committees, and local community management using the FLMMA model. Existing legislation (including the Fisheries Act, the Offshore Decree and the EMA) allows for the establishment of a number of management structures that could support the implementation of the GSR Management Strategy. These structures either already exist or could be adapted to provide the necessary support to progress the Strategy.

At the national level the PAC, managed by the Department of Environment, is already acknowledged as being the key body responsible for protecting Fiji's marine areas using MPAs. The functions of the PAC match many of the functions identified as being necessary to ensure integrated management of the GSR. It would therefore be appropriate for the PAC to provide advice on implementing the GSR Management Strategy and ensure that the work to protect the GSR is integrated into the broader national framework on protected areas. Such an arrangement would also support existing goals of the PAC to liaise with relevant ministries and departments to integrate protected areas management plans into 'Provincial Development Strategies and Plans' and to ensure that management plans are developed for all protected areas.<sup>39</sup>

However, the PAC is unlikely to have the resources or focus to be responsible for the day to day implementation of the GSR Management Strategy. This is particularly true given that the legislation currently available to drive marine protection is fisheries legislation, managed by the Ministry for Fisheries and Forests.<sup>40</sup> Therefore in the short-term, regional coordination of management of the GSR Management Strategy will likely be most effective if done through the Ministry of Fisheries and Forests.<sup>41</sup>

An important first step in integrating a regional response will be the establishment of a Great Sea Reef Management Committee established under Offshore Decree with Ministry of Fisheries as Secretariat. Membership of this committee will need to include a cross-representation of stakeholders with an interest in the management of the marine environment. This will include relevant Government agencies (including the Ministry of iTaukei Affairs and Provincial Councils<sup>42</sup>), representatives of the PAC, NGOs, communities and industry. A broader stakeholder base will help to ensure that MPAs/MMAs are viewed as one component of the broader environmental protections in Fiji and to ensure that non-fisheries issues are adequately considered in GSR management.

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<sup>39</sup> PAC, '2014-2024 Action Plan'.

<sup>40</sup> The *Environment Management Act* 2005 (EMA) does not contain an express power to create protected areas. The regulation making power under section 61(3)(e) of the EMA appears to come close to providing for such a power but this provision only gives the Minister to make regulations "to establish guidelines, standards and procedures for the conservation, protection or rehabilitation of any land, river or marine area". A power to establish guidelines, standards and procedures, is arguably not the same as a substantive power to establish protected areas. In the latter case, substantive rights and obligations will be affected and created and arguably the Minister would require clear and express powers in order to take such ministerial action.

<sup>41</sup> See part 5.1. vi. of the MPA Discussion Paper.

<sup>42</sup> See the MPA Discussion Paper for further information on the role of Provincial Councils in MPA management.

This committee will be supported at the local level by the existing FLMMA committees, or new FLMMA committees as the program expands to additional areas of the GSR. These committees will continue to function as they currently do but with the additional role of feeding local information into a regional management strategy.

The advantage of this approach is that it primarily uses existing management structures to support integration into existing community activities and government policies. The establishment of a new dedicated Great Sea Reef Management Committee has a clear pathway for establishment through the Offshore Decree, and could form a model for stronger integration of marine management in other areas of Fiji. Each committee will need to have a Terms of Reference to ensure that the role they play in the GSR Management Strategy is clear and the interactions between the different levels of management are unambiguous and responsibilities are understood.

Finally, there will be a need to establish a GSR Trust Management Committee (discussed further below). A summary of the key roles for each committee as it relates to the GSR Management Strategy is outlined in Table 2.

**Table 2: Proposed management framework for GSR Management Strategy**

Committee	Indicative Membership	Role in GSR
PAC (Department of Environment as Secretariat)	National Trust of Fiji Department of Environment Ministry of Fisheries and Forestry Department of Culture and Heritage Native Land Trust Board 6 representatives from NGOs, academia and the private sector Additional members may be accepted 'on the basis of their experience and expertise in the area'	Ensuring GSR protection integrated into national protected areas priorities.
Great Sea Reef Management Committee (Ministry of Fisheries and Forests as Secretariat)	Ministry of Fisheries Ministry of Forest Ministry of Environment Ministry of <i>iTaukei</i> Affairs Ministry of Lands and Mineral Resources Representative of the PAC Representatives of relevant Provincial Councils Representatives of NGOs Representatives of marine industries	Ensure regional management structures complement the FLMMA network and identify and address gaps in management framework.

	Representatives of FLMMA Network	
Local FLMMA management committees (FLMMA Secretariat)	FLMMA Trustees FLMMA Membership FLMMA Partners Government ministries Individual members can submit application stating their interest	Work with local communities to identify and coordinate management of MPAs/MMAs
GSR Trust Management Committee (Ministry of Fisheries as Secretariat)	TBC but including Ministry of Fisheries, Ministry of Environment, representatives of CFROs, and representatives of provincial committees	Administer GSR Trust

### Consultation Focus Areas

- Do you think the proposed bodies and roles are appropriate and effective?
- What, if any, additional governance structures would need to be put in place?
- How would the community identify representatives to participate in relevant governance structures?

## 7. Financial arrangements

In 2016, WWF and the Wildlife Conservation Society commissioned a report on *Options for sustainable financing of Protected Areas in Fiji (Options Paper)*.<sup>43</sup> The Options Paper identified that environmental trust funds can be an effective financial arrangement for protected areas and that such funds typically have four key components, namely:

1. capital assets, which are invested to generate income;
2. legal structures, which stipulate the objectives and procedures of the fund;
3. a supervisory structure, which decides how to use the funds; and
4. a management structure responsible for fund disbursement.

Potential sources of funding identified included a central budget allocation from Government, taxes/levies, developer payments, overseas development assistance and other philanthropic donors. The existing legal framework includes licencing requirements for the taking of fish, the registration of fishing vessels, the issue of leases or licences on State Lands, undertaking development activity, and fines for polluting waters or breaching licence conditions, amongst other things. Each of these activities generates fees that if collected from activities within the GSR could contribute to the management of the GSR, through the establishment of a GSR Trust. While it is unrealistic to suggest that all such funds could be redirected to a GSR Trust, an income sharing arrangement may be possible. Avoiding any loss of revenue to broader Government initiatives may be possible, simply by revoking any fee exemptions currently in place. For example, at the FELA 2016 Fisheries Forum, the Department of Fisheries estimated that allowing fee exemptions for fishing

<sup>43</sup> Nimmo-Bell (2016) *Options for sustainable financing for protected areas in Fiji*. Report for the Wildlife Conservation Society and World Wide Fund for Nature, Suva, Fiji

undertaken by Underwater Breathing Apparatus has cost the Fijian people \$5.8m over three years.

There are a number of existing legal mechanisms that could be used to affect a GSR Trust and allow it to accept funds from sources such as fishing licences. The Options Paper identified the following:

- *Charitable Trusts Act 1945 (Cap 67)*;
- *National Trust for Fiji Act 1970 (as amended 1998)*;
- *Fiji Public Trustee Corporation Act 2006*;
- *Environment Management Act 2005*; or
- A new dedicated Act of Parliament.

While the exact legal mechanisms for forming a GSR Trust will require further development, the intention of a GSR Trust is to receive income from fees and licencing of local activities that can be invested back into supporting managing of MPAs/MMAs in the GSR and the development of sustainable livelihoods for local communities. The GSR Trust would be established in a way that allows it to receive government funding, NGO support and international grants, as required. Funds would be invested in a transparent way with ongoing funds available for day to day management and special funding requests available for communities wishing to develop specific sustainable livelihood projects. One example of the type of structure that may be appropriate is that of the NSW Environmental Trust in Australia.

#### [NSW Environmental Trust](#)<sup>44</sup>

The objectives of the NSW Environmental Trust include to:

- encourage and support restoration and rehabilitation projects that will prevent or reduce pollution or environmental degradation;
- promote research into environmental problems;
- promote environmental education;
- fund the declaration of areas for marine parks and related purposes; and
- fund environmental community groups.

The Trust is guided by the governance structures outlined in the *Environmental Trust Act 1998*. It is comprised of three parts: Trust members, Trust committees, and Trust staff who are housed within the Office of Environment and Heritage (OEH). The Trust members are the NSW Minister for the Environment (Chair), the Chief Executive of OEH, a representative from local government, a representative the Nature Conservation Council of NSW (the State's peak environment group) and NSW Treasury.

To support transparency and accountability, Environmental Trust funds are distributed as grants. All Trust grants include requirements such as project timetables, payment schedules consisting of instalments or milestone payments, progress and final project reports and financial reports.

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<sup>44</sup> Information on the NSW Environmental Trust has been taken from:  
<<http://www.environment.nsw.gov.au/grants/envtrust.htm>>.

The Trust's technical review committees and independent reviewers assess and recommend grant projects and review project progress and final reports. All major programs are overseen by program-specific Trust subcommittees comprised of technical experts in the relevant field. They provide input into the development of program business plans, monitor program implementation and progress, and provide ongoing advice to the Trust.

Another Trust structure that may have some appropriate elements is the Phoenix Islands Protected Area Conservation Trust in Kiribati.

#### [Phoenix Islands Protected Area Conservation Trust<sup>45</sup>](#)

The Phoenix Islands Protected Area (**PIPA**) is the largest designated MPA in the world and is a UNESCO World Heritage Listed site. PIPA encompasses the Phoenix Island Group in Kiribati, covering an area of 408,250 km<sup>2</sup> of marine and terrestrial habitats in the Southern Pacific Ocean. It is home to approximately 500 species of fish, 200 species of coral, 18 species of marine mammals, and 44 species of birds.

The PIPA was established through the *Phoenix Islands Protected Area Regulations 2008*, in accordance with the *Kiribati Environment (Amendment) Act 2007*. The Regulations define 'protected area' to mean 'large, zoned, multi-use land and marine areas managed for conservation and sustainable use under IUCN Category 1b - Wilderness Area'. The Government of Kiribati is responsible for the development of the PIPA Management Plan, developed under the *Environment Act 1999*.

The *Phoenix Islands Protected Area Trust Act 2009* was enacted to establish a Trust Fund organised exclusively for charitable, educational and scientific purposes for the benefit of the public. The primary activities of the Trust are to provide support for the administration and operation of the Trust, the management of the PIPA, and ensuring that exploitation of the resources of the PIPA remains limited or prohibited.

The secondary activities of the Trust are to utilise Trust assets to provide support for:

- sustainable development activities;
- long term data gathering and analysis, documentation and information sharing;
- collaboration with local government and natural resources institutions and other interested parties to build a national commitment to environmental conservation;
- supporting environmental awareness and education programs;
- activities relating to the conservation of the environmental, cultural and historic resources of Kiribati for the benefit of the public.

Revenue for the Trust can be generated via a range of sources including:

- gifts and bequests;
- public and private donations from national and international sources;

<sup>45</sup> Information on the PIPA has been taken from: <<http://www.phoenixislands.org/about.php> and <http://whc.unesco.org/en/list/1325/>>. Information on the PIPA Trust has been taken from the PIPA Regulations and Trust Legislation: <<http://www.environment.gov.ki/wp-content/uploads/2016/09/Phoenix-Islands-Protected-Area-Regulations.pdf>>; and <[http://www.paclii.org/ki/legis/num\\_act/pipacta2009530.pdf](http://www.paclii.org/ki/legis/num_act/pipacta2009530.pdf)>.

- budgetary allocations from the Government;
- foreign aid funds;
- fees, levies, taxes and fines that are specifically allocated to the Trust by national laws, regulations or executive orders;
- revenues from investments;
- proceeds from the sale, lease or transfer of tangible and intangible property;
- proceeds from services provided by the Trust;
- exceptional and miscellaneous income or gains; and
- any other appropriate source of revenue.

The Trust is governed by a Board of Directors, which is made up of between three to nine Directors, as well as an Executive Director, with one Director being appointed by each of the founding members of the Trust. While the Trust Board determines how it can best support the implementation of the PIPA Management Plan, decisions and responsibility for the content of the Management Plan remains with the Government of Kiribati.

The GSR Trust would be governed by a Trust Committee and supported by a Secretariat hosted by the Ministry of Fisheries and Forests, with technical expert sub-committees as required. The Trust Committee members would consist of representatives of key government agencies, namely fisheries, customary owners and environment, and representatives of each of the provincial committees. The accounts of the GSR Trust would be open and independently audited and all decisions and justifications would be minuted. The Trust would report annually and undertake five yearly reviews of how the GSR Trust is contributing to sustainable marine management and the successful integration of MPAs/MMAs across the GSR.

Another option that should be considered is whether it would be more effective to establish a GSR Trust or to establish a broader protected areas Trust Fund that covers the GSR but could include similar arrangements for all marine and terrestrial protected areas in Fiji.

#### *Consultation Focus Areas*

- Would it be more effective to have a nationwide protected areas Trust Fund or a dedicated GSR Trust?
- Would the Government be willing to investigate establishing a GSR Trust?
- Are the proposed governance and reporting systems appropriate?

### **8. Enforcement, Incentives and Penalties**

Ensuring management tools are effectively implemented relies on strong compliance and enforcement. The Fisheries Act, EMA, SLA and *Endangered and Protected Species Act 2002* all create significant offences for legislative breaches, including:

- Failing to undertake appropriate environmental assessment for new developments;
- Contravening a condition for the approval of a development proposal or an approved EIA ;

- Fishing without an appropriate licence, failing to comply with the condition of that licence or any regulation, or using prohibited fishing techniques;
- Failing to have fishing vessels appropriately licenced or obscuring the registration number of vessel to avoid compliance with licencing requirements;
- Failing to provide information on the source of fish, or providing false information, to an authorised officer or obstructing an authorised officer from carrying out their duty;
- Causing pollution from any vessel or facility; and
- Generally, causing a pollution incident which results in harm to human health or safety or severe damage to the environment.

These offences are prosecuted by the State. Concern has been expressed about existing compliance and enforcement activities due to the limited resources available, the more limited scope of enforcement provisions in the Fisheries Act when compared to the Offshore Decree, and the limited ability to apply the Offshore Decree at the local level. Also, any fisheries restrictions or closures that are not made as regulation, such as those developed under FLMMA, cannot be enforced other than through customary approaches. As noted in the MPA Discussion Paper:

[C]ompliance and enforcement of customary tabus in particular is underpinned by respect for the chiefly system and spiritual beliefs. Erosion of traditional knowledge in younger generations reportedly results in noncompliance with tabus, both by members of the CFRO group and members of other communities.

Significant concerns have also been raised in relation to whether honorary Fish Wardens' duty to report breaches is inhibited by family or customary ties with the offender. In addition, unrestricted public access to any surfing area for surfing activities remains protected by the Surfing Decree and the Mining Act may authorise activities incompatible with a MPA/MMA management plan.

A strength of the proposal to create MPAs/MMAs using regulations is that it could create specific offences (in line with those permitted by the primary legislation) and empower fisheries officers and voluntary Fish Wardens to enforce management rules. Existing regulations provide the necessary tools for a strong enforcement system but would be better supported by regulatory amendments that create meaningful penalties and resources for staff to be on the water enforcing the law. Formal compliance mechanisms are currently hindered by a lack of resources and capacity. Having dedicated compliance officers who are responsible for enforcement in specific MPAs/MMAs would ensure a clear line of responsibility and allow communities to know who to approach when they require support to address illegal activities. An important component of this role would be to run community engagement and education to increase familiarity with the new management systems and explain the rules and licensing requirements in order to increase awareness of new rules and minimise illegal activity.

Funding for such a model could involve partnerships between government and the community with recurrent government funding directed to supporting these roles, particularly in compliance and enforcement, and some funding being available from the GSR Trust, particularly in education and awareness raising.

### *Consultation Focus Areas*

- Would the Government be willing to strengthen penalties within legislation and provide greater support for enforcement activities?
- Are there ways that volunteer Fish Wardens can be further empowered to enforce regulations and avoid conflicts of interest?

### **Summary**

Implementing a system of protected and management areas to protect the GSR under the current legislative system is possible but complex. It will require significant input and support from local communities and all levels of government to ensure an integrated and effective system. Some regulation is required in the form of protected areas regulations but primary legislative changes are not. The community will need to be aware of the weaknesses in the system, such as potential exemptions to regulation, to ensure that the intent of the management structures is achieved. However the advantage of such an approach is that the available tools can be tailored to local needs and communities and steps to improve management of the GSR can be undertaken immediately.

### **PART B: LEGISLATIVE REFORM OPTIONS**

Building on the MPA Discussion Paper, this final part of the report briefly notes some options for progression of the 10 Prioritised Thematic Areas through new legislation, namely:

1. Implementing a specific Great Sea Reef Act, supported by a Great Sea Reef Authority.
2. Developing a general protected areas legislative regime that could be applied to the GSR area.

#### **1. Specific Great Sea Reef Act and GSR Authority**

While it will be possible to progress the goals of the GSR Management Strategy using existing legislation, there remains a risk that there will be gaps in the management regime and that some of the inconsistencies in the legislation could undermine the intent of the various management measures. In the longer term, an alternative option for management of the GSR is the development of a dedicated Great Sea Reef Act (**GSR Act**). A GSR Act could legislate for an integrated system of MPAs and MMAs managed by a single authority that has the ability to receive government and non-government funding, including through issuing of permits and licences within the GSR area. Such a system could be based on a scheme like the Great Barrier Reef Marine Park in Australia.

## Great Barrier Reef Marine Park

The Great Barrier Reef is the largest living structure on the planet, stretching over 2,300 kilometres, between 60 and 250 kilometres in width, covering 344,400 km<sup>2</sup> in area. It is home to 600 types of soft and hard corals, more than 100 species of jellyfish, 3,000 varieties of molluscs, 500 species of worms, 1,625 types of fish, 133 varieties of sharks and rays, and more than 30 species of whales and dolphins.<sup>46</sup>

Integrated management of the Great Barrier Reef is implemented primarily by the Australian (national) Government *Great Barrier Reef Marine Park Act 1975*. The main object of the Act is to provide for the long term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region and where consistent with that allow for ecologically sustainable use and enjoyment. The Act establishes the Great Barrier Reef Marine Park Authority as the primary management agency; creates zoning plans and plans of management; establishes a permit system to allow activities while facilitating ecologically sustainable use; and facilitates partnership with traditional owners. The Act includes the creation of an Environmental Management Charge (**EMC**) which is applied to permits issued for most commercial activities, including tourism.

The Authority is directed by a Board who are selected by, and report to, the Australian Government Minister for the Environment. The role the board is to ensure the legislative functions of the Authority are carried out efficiently and effectively. The Board is supported by four Reef Advisory Committees which include stakeholders with expertise and experience in relevant areas; and 12 Local Marine Advisory Committees, which are voluntary community-based committees designed to ensure that management is tailored to address local issues and needs. The Authority also works with approximately 70 Traditional Owner clan groups through its Land and Sea Country Partnerships Program which develops and implements Traditional Use of Marine Resources Agreements, supports Indigenous Community Compliance Programs, and engages Traditional Owners to share and increase their knowledge base in sea country management.

The overarching strategy for managing the marine park is driven by *Reef 2050 Long-Term Sustainability Plan* which coordinates actions and guides adaptive management to 2050.<sup>47</sup> It guides both activities within the Marine Park and adjacent terrestrial activities that impact on the Marine Park. The income received from the EMC supports the day-to-day management of the Marine Park. Day to day operations are undertaken by Authority staff.

Because the Great Barrier Reef occurs in both national and state jurisdictions, the Act also facilitates a partnership between the Australian and Queensland (state) Governments through the Great Barrier Reef Intergovernmental Agreement, which is

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<sup>46</sup> Information on the environment of and management arrangements for the Great Barrier Reef is taken from <[www.gbrmpa.gov.au](http://www.gbrmpa.gov.au)>. See the GBRMPA's website for further information.

<sup>47</sup> It should be noted that Reef 2050 has been criticised, including by WWF-Australia and the Australian Academy of Science, for failing to effectively address the key pressures on the Great Barrier Reef. Despite this, it could provide a useful model to help develop management strategies for the GSR.

driven by the Great Barrier Reef Ministerial Forum comprising two ministers each from the Australian and Queensland governments with relevant responsibilities.

The benefit of establishing a Great Sea Reef Act is that it would support integrated management of the region across all levels of government and the community which can be tailored to meet the needs of the different communities within the region. This is particularly important because *iQoliqoli* in Fiji have substantial rights under both modern and customary law and maintaining and protecting those rights must be an important part of any future legislation.

Progressing a proposal for a Great Sea Reef Act would require significant community consultation and Government support. However, a single management Act could result in:

- Establishment of the formal management boundaries of the GSR area;
- Identification of different management regimes or zones and how they will be applied;
- Creation of a governing body to oversee implementation;
- Establishment of local management and expert advisory committees;
- Specifying EIA and development approval requirements to ensure marine and terrestrial activities impacting on the GSR area are properly considered;
- Integrating management activities with the NEC to ensure land and sea linkages are considered;
- Establishment of a GSR Trust so that income from permits and licences can be used to support ongoing management activities;
- Linking adjacent SLA management so complementary management and fee arrangements can be developed; and
- Incorporating consideration of climate change into management activities.

## **2. New protected areas legislation**

Another longer term option is to develop legislation that would establish a regime for spatial management across all Fiji marine and terrestrial areas, including establishing protected areas. Such legislation would then allow the establishment of a multiple use GSR Marine Park. This type of legislation could be developed immediately or implemented progressively. The MPA Discussion Paper identified three broad options for law reform to achieve integrated MPA management, which can be summarised as:

- Making detailed MPA regulations using the regulation making powers under the existing fisheries legislation (explored in Part A for the GSR);
- Developing a comprehensive MPA or protected areas legal framework by making amendments to existing legislation; or
- Making new MPA or protected areas legislation.

## Making comprehensive protected areas regulations

In this scenario, new regulations would be made under the existing fisheries legislation in order to establish a formal MPA regime. Any new MPAs would then be established in accordance with the terms of the MPA regulation (rather than establishing dedicated regulations for each individual MPA as happens now). While this approach would avoid the need to make new, or amend existing legislation, any regulation made, and the subsequent MPAs, would not have the same permanence as new legislation and the form of the current legislation means that not all activities may be captured by the regulation (for example non-mechanised local fishing). Further, new regulations are limited by the general conditions imposed on the exercise of a regulation making power under section 25 of the *Interpretation Act 1967*. This means new regulations may only relate to powers that have been specifically granted under the existing legislation. The limitations discussed in Part A of this report would therefore continue to apply, including difficulty establishing an independent oversight agency for MPAs, securing financing arrangements, providing for compensation to CFROs, or make relevant amendments to the EIA process. Again, it may be necessary to make regulations under both the *Offshore Decree* and any management provisions related to coastal and foreshore management and environmental protection would also need to be considered separately.

## Amending existing or making new legislation

Other options include inserting a new MPA or protected areas framework into the *Fisheries Act* and/or *Offshore Decree* and/or the EMA; or establishing new standalone legislation for protected areas or MPAs. Creating new MPA legislation for Fiji was also recommended in the Marine and Coastal Biodiversity Management in Pacific Island Countries Project Report (**MACBIO Report**).<sup>48</sup>

If proposals were made to amend or make new legislation, the following issues, amongst others, would need to be considered:

- Would any new regime cover both terrestrial and marine areas, or simply be limited to marine areas?
- Which government agency would be best placed to take responsibility for MPAs – the Ministry of the Environment or the Ministry of Fisheries?
- How could LMMAs be best incorporated into the formal legal system? The ‘aquatic protected areas’ provisions and the customary fisheries management and development plan (**CFMDP**) provisions of the Draft Inshore Fisheries Decree both include provisions that will warrant further consideration.
- What are the consequential and complementary amendments required in related legislation?

One advantage of creating new legislation is that it could establish a framework for marine management across all of Fiji, even if the initial intention was to apply the legislation in the GSR. Such legislation could establish a framework for creating

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<sup>48</sup> Marine and Coastal Biodiversity Management in Pacific Island Countries (MACBIO) Project (2016) *Review of Legislation, Policies, Strategies and Plans Relating to the Development of Marine Protected Areas in Fiji - Revised Final Report*.

MPAs and MMAs across all Fiji waters and then specifying areas of focus, whether it is for MPAs, customary or commercial fishing, or other extractive industries. This would allow the management objectives for each region to be clearly articulated and ensure that all activities and developments impacting on that region are appropriately considered, assessed and managed. Associated governance structures would identify lead agencies and clarify how national, regional and local governments and communities would be involved in decision making and day to day management and contribute to the Green Blue economy.

As set out in the MPA Paper, to progress any law reform program, a clear roadmap for reform, including consultation with all relevant stakeholders, should be developed. This may include the following components:

- Protecting high priority conservation areas: Whilst work is being undertaken to develop a comprehensive MPA framework, high priority conservation areas can be identified and protected, utilising the existing regulations as outlined in Part A. These MPAs can then be transitioned into any new regime.
- Developing a comprehensive oceans or MPA policy: Early policy development will inform and assist subsequent analysis and legislative drafting.
- Determining the preferred approach to legislative reform: Appropriate stakeholder consultation will help to guide the preferred approach.
- Drafting and implementation of new MPA or protected areas legislation: Depending on the preferred approach, new MPA or protected areas legislation can be drafted and implemented in consultation with all key stakeholders.