



The Cook Islands Marine Park

A legal review preparatory to its establishment

Justin Rose

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List of abbreviations

CBD	Convention on Biological Diversity
CCA	Community Conservation Area
CCD	United Nations Convention to Combat Desertification
CEL	IUCN Commission on Environmental Law
CI	Cook Islands
CIMP	Cook Islands Marine Park
CINHT	Cook Islands Natural Heritage Trust
CITC	Cook Islands Tourism Corporation
CM	Cabinet Memoranda
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organisation of the United Nations
FY	Financial Year
GBRMP	Great Barrier Reef Marine Park
GBRMPA	Great Barrier Reef Marine Park Authority
GEF	Global Environment Facility
GPAL	IUCN Guidelines for Protected Area Legislation
IUCN	International Union for Conservation of Nature
MEAs	Multilateral Environment Agreement
MFEM	Cook Islands Ministry of Finance and Economic Management
MMR	Cook Islands Ministry of Marine Resources
MoA	Cook Islands Ministry of Agriculture
MOU	Memorandum of Understanding
MPA	Marine Protected Area
MPFA	Manihiki Pearl Farmers Association
MSP	Marine Spatial Planning
NBSAP	National Biodiversity Strategy and Action Plan
NEC	National Environment Council
NES	Cook Islands National Environment Service
NESAF	(draft) National Environment Strategic Action Framework 2014-2017
NGO	Non-Governmental Organisation
NSDP	National Sustainable Development Plan
OPM	Cook Islands Office of the Prime Minister
PA	Protected Area
PAN	Protected Area Network (Palau)
PANF	Protected Areas Network Fund (Palau)
PIC	Pacific Island Countries
PICTs	Pacific Island Countries and Territories

PIPA	Phoenix Islands Protected Area
PIROP	Pacific Islands Regional Ocean Policy
PNA	Parties to the Nauru Agreement
PoWPA	CBD's Programme of Work on Protected Areas
R2R	Ridge to Reef
RPPL	Republic of Palau Public Law
SAP	Strategic Action Plan (for Kiribati PIPA)
SIDS	Small Island Developing States
SMA	Cook Islands Seabed Minerals Authority
SPREP	South Pacific Regional Environment Program
TIS	Taporo'poro Ipukarea Society
TMS	Total Marine Sanctuary (Palau)
UNCLOS	United Nations Convention on the Law of the Sea
USA	United States of America
WCPA	IUCN World Commission on Protected Areas
WCPFC	Western and Central Pacific Fisheries Commission

Introduction

1.1 At the 2012 Pacific Islands Forum, Prime Minister of the Cook Islands, Hon. Henry Puna, announced the Cook Islands Marine Park (CIMP) encompassing approximately 1.1 million square kilometres, including the southern half of the Cook Islands Exclusive Economic Zone. “By creating the Park, the Government signalled its commitment to sustainable development and its intention to balance economic growth interests in sectors such as such as tourism, fishing and agriculture, with biodiversity conservation objectives.” (NES, 2013).

1.2 The CIMP announcement was the culmination of discussions and deliberations of a proposal originally advanced by Mr Kevin Iro. In September 2011 a CIMP Steering Committee with representatives from relevant ministries, agencies and non-government organisations was established by decision of Cabinet. The purpose of the Steering Committee is to provide advice on the design, establishment and initial management of the CIMP, of a CIMP Charitable Trust and of financial mechanisms to support the CIMP (Cabinet CM 11/381).

1.3 This review is intended to contribute to the work of the CIMP Steering Committee in its task of developing and operationalising the legal and institutional aspects of the CIMP. It was funded and facilitated by IUCN Oceania Regional Office in accordance with a Memorandum of Understanding between Conservation International, IUCN and the Government of the Cook Islands in support of CIMP.

Purpose, structure and method of the review

2.1 In February 2012 the CIMP Steering Committee developed a 'CIMP Framework' outlining principles, outcomes and focus areas for further work and development. One of the focus areas of the CIMP Framework is 'Legislation', and the related objective is "to provide simple, effective and culturally appropriate legislation at all levels that facilitate the effective implementation of the CIMP framework."

2.2 To achieve this aim the Framework outlines a strategy of:

- Examining relevant legislation to identify inadequacies, unnecessary duplication and anomalies;
- Providing for public participation in the preparation of new and amended legislation; and
- Amending existing legislation or enacting new legislation to resolve problems.

2.3 This review, divided into two parts (A and B), advances the first stage of that strategy.

2.4 The terms of reference for Part A of this review state that the objective is "to undertake a legal analysis of the issues and options for the legal designation, establishment, design and management of the Cook Islands Marine Park". The Part A terms of reference require a draft report on the legal, policy and institutional options and recommendations for the legal designation and design of CIMP based on:

- Existing national legislation and policies;
- Newly drafted and currently reviewed legislation and policies;
- Appropriate legal framework examples from protected areas in the region;
- The IUCN Guidelines for Protected Areas legislation and other relevant literature.

2.5 The draft report was distributed to stakeholders in early February 2014 and was discussed at a stakeholder workshop held in Rarotonga on 5 March 2014.

2.6 The legal review also includes a second aspect - 'Part B' - relating to the optimal strategy for inclusion of traditional Maori law and the *ra'ui* in the CIMP. The terms of reference state the objective of Part B is "to undertake a review of traditional management systems including *ra'ui* and *atinga* and identify options for integrating these within the Cook Islands Marine Park framework".

2.7 The Part B scope of work involved:

- i) Reviewing existing Cook Island Maori culture and traditional management approaches, for the successful establishment of the marine park;
- ii) Consulting with the House of Ariki and Koutu Nui in Rarotonga, as well as a selection of the outer island traditional leaders;
- iii) Consulting with key people involved in the re-establishment of *ra'ui* on Rarotonga in 1998 and again in 2000 to determine lessons learnt regarding the use of a traditional marine resource management practice/customary law in modern society; and
- iv) Obtaining feedback from the Cook Islands Marine Park Steering Committee and options for strengthening Maori laws.

2.8 This report contains the analyses, findings and recommendations of Part A only; the draft outcomes of Part B are presented in a separate document. This report has been revised to take into account feedback and corrections received at the 5 March 2014 CIMP legal review workshop. The nature of workshop was primarily an opportunity to bring CIMP stakeholders together to hear and discuss key issues identified in the review document. This final review does not document all of the comments made by stakeholders at the workshop; revisions to the draft report reflect only those comments with significant and direct bearing on the report's analyses and findings.

2.9 The author of Part A is Justin Rose (jrose4@une.edu.au); the author of Part B is Janet Maki (tagilaei@gmail.com).

2.10 The terms of reference for Parts A and B of this review are reproduced at Appendix 7. Rose and Maki visited Rarotonga for the purpose of undertaking preliminary consultations with members of the CIMP Steering Committee in October and November 2013 and a list of their meetings is provided at Appendix 8.

2.11 In preparing this report the author:

- Discussed the CIMP with key stakeholders, including representatives of most CIMP Steering Committee member organisations (A list of these meetings is supplied in Appendix 7);
- Reviewed Cook island policy and planning documents relevant to protected areas, marine conservation and marine resource management, including drafts in preparation (A summary of the policy and institutional context for CIMP establishment is provided in Appendix 2);
- Reviewed regional and international policies and planning documents relevant to establishing the CIMP; (A summary of regional international policies and plans for CIMP establishment is provided in Appendix 3);
- Reviewed Cook Island law relating to protected areas, marine conservation and marine resource management, including drafts in preparation (A summary of the legal context for CIMP establishment is provided in Appendix 4);
- Reviewed relevant examples of laws and institutional structures supporting MPAs and MPA systems from other jurisdictions: Phoenix Island Protected Area in Republic of Kiribati, Great Barrier Reef Marine Park in Australia, and the Protected Areas Network in Palau. (A summary of these examples is provided in Appendix 6);
- Reviewed the key literature outlining best-practices in the development of legislation supporting marine protected areas, in particular the *IUCN Guidelines for Protected Area Legislation* (2011) and the *IUCN Draft Guidelines for the Design and Management of Large Scale Marine Protected Areas* (2013). (A summary of these best practices as they relate to CIMP is provided in Appendix 5); and
- Attended and participated in the CIMP legal review stakeholder workshop on 5 March 2014.

2.12 After completing the research and activities outlined above, the author prepared the analysis and findings regarding the legal and institutional aspects of the CIMP that is here presented.

2.13 The main report is designed to be succinct in order to maximise its utility for stakeholders who are already familiar with the contextual material and legal and policy detail. The information upon which the analyses and findings are based has been placed in the appendices.

2.14 Hyperlinks to the legislation cited are provided in the bibliography, wherever available.

Cook Islands Marine Park: Current status

3.1 As a first step towards identifying and discussing options for the legal establishment of CIMP the following section draws upon a selection of policy documents in identifying those elements of CIMP's planning and design that are agreed either at whole-of-government level or within the CIMP Steering Committee. Sources are Cabinet Memoranda 10/154, 10/221, 10/391, 11/259, 11/381, 12/207; National Sustainable Development Plan 2011-2015 (NSDP), draft National Environment Strategic Action Framework 2014-2017 (NESAF), CIMP Framework (2012).

What is agreed among CIMP stakeholders?

3.2 The CIMP will be established and will include the Cook Island's exclusive economic zone to the south of the 15th parallel south (Cabinet, NSDP, NESAF, CIMP Framework).

3.3 The CIMP will be a 'multi-use' marine protected area wherein conservation objectives are achieved while also allowing other uses. This will be done by dividing the area into zones wherein different rules of access and use apply (Cabinet, CIMP Framework).

3.4 The CIMP will be guided by certain principles including sustainability, the precautionary principle, cultural mana, stakeholder participation and equity both among stakeholders and between generations, (Cabinet, CIMP Framework).

3.5 CIMP will be characterized by integrated planning ensuring consistency and complementarity in the management of different areas within CIMP, as well as areas outside CIMP that may impact CIMP (e.g. land-based pollution caused by agricultural practices) (NSDP, CIMP Framework)

3.6 The governance and management of the CIMP will be fair and transparent (Cabinet, CIMP Framework).

3.7 The CIMP will be accompanied and assisted by programs of research and ecosystem and species monitoring (CIMP Framework).

3.8 The CIMP will include programs that help to educate and involve the public (CIMP Framework).

3.9 CIMP requires financing arrangements to provide for its ongoing operation (Cabinet, CIMP Framework).

3.10 There will be community-based management arrangements put in place for significant parts of CIMP including incorporating ra'ui (the mechanism for doing this is not known; this issue is dealt with under Part B) (CIMP Framework).

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It was noted that the relevant Cabinet decision included a statement indicating that consideration would be given to possibly including the Northern Islands in 2015; and

There was agreement that CIMP would be managed in a way that encouraged collaboration with other countries, organisations and institutions that either have created large scale MPAs or are contributing to the management of other large scale MPAs.

Key issues yet to be agreed regarding CIMP

3.11 The issues discussed below were identified during the course of the preparatory research and discussion as being both unresolved, and centrally important to providing an effective legal and institutional foundation of CIMP. The following unresolved issues are discussed in turn:

1. Will new legislation be required to establish CIMP?
2. Will there be an agency, body or organisation that will take the lead role in managing and coordinating the CIMP and if so, what type of agency, body or organisation will it be (ministry, executive agency, statutory agency, management committee)?
3. Will establishing CIMP also mean creating a national Protected Area (PA) or Marine Protected Area (MPA) 'system' or 'network'?
4. Will establishing CIMP also mean strengthening and/or broadening existing systems for integrated cross-sectoral marine spatial planning?
5. Will CIMP end at the high water mark and how will issues of land-based activities threatening ecosystems within CIMP be addressed?
6. Will the CIMP be accompanied by a special funding mechanism of some kind, and if so, how will it be established and governed?

3.12 All except the first are primarily questions of policy and governance, but all are relevant to key aspects of the law. Each is the subject both of discussion among stakeholders in Cook Islands as well as being addressed in literature relating to law and governance of marine protected areas.

Q - Will new legislation be required to establish CIMP?

3.13 Even though there are various existing Cook Islands laws addressing issues of marine resources management and conservation, protected areas, and coastal management, options for establishing the CIMP under existing law are limited.

3.14 The *Environment Act 2003* is the centerpiece of Cook Islands environmental legislation. It has limited application however; it does not apply to all of the outer islands, and allows each island government freedom to decide whether to 'opt-in' to coverage under the Act, as well the ability to legislate to override its provisions as they relate to their islands. The Act does cover the territorial sea and the EEZ. (the *Environment Act 2003* is summarized in Appendix 4).

3.15 Part 6 of the *Environment Act 2003* is titled 'Management Plans and Protected Areas' and creates a process by which these may be created. This process could not be applied to establish CIMP – at least not the EEZ aspects of it – because it is Island Environment Authorities that must initiate both management plans and protected areas, and their jurisdiction is limited to their own islands. (sections 37 and 41). [Part B of the review may consider whether Part 6 of the *Environment Act 2003* is an appropriate legal basis for aspects of the CIMP]. It is noted that no management plans or protected areas have to date been declared under Part 6 of the Act.

3.16 Instead, similar aims to those of Part 6 have been sought by applying the broad regulation-making power provided in sections 70-71 of the Act, e.g. the *Environment (Takuvaive Water Catchment) Regulations*. Regulations are a more familiar legislative instrument than a management plan, they have the greater legitimacy conferred by Cabinet approval, and the processes guiding their preparation and their enforcement are well established within government.

3.17 Subsection 70(2)(h) provides a broad authority to make regulations creating protected areas anywhere in Cook Islands that is covered by the *Environment Act 2003*, including the territorial sea and the EEZ.

3.18 There are however significant problems and limitations in taking this approach, summarized as follows:

- The *Environment Act 2003* does not apply throughout the whole country;
- The *Environment Act 2003* relies upon the concept of ‘permitting authorities’ – for the outer islands these are their Island Environment Authorities, for Rarotonga it is NES, and for the marine space it is a body titled the “National Environment Council” (NEC – see sections 20-23 of the Act). Permitting authorities make decisions regarding permits, etc. The NEC only convenes at the behest of the Director of NES, has never met, and as currently constituted in the Act is inappropriate to be the central decision-making body of CIMP;
- Regulations to establish CIMP under the *Environment Act 2003* could only be enforced by National Environment Officers, employees of NES. NES has no marine enforcement capacity.
- NES has indicated that it is unable to be the lead agency to manage or coordinate the CIMP.

3.19 Despite the above it may, at least in theory, be possible to create CIMP under section 70 of the *Environment Act 2003*.

3.20 The *Marine Resources Act 2005* contains a number of provisions relating to conservation (particularly Part 3), but the only possible avenue for creating a protected area under the Act would again be via regulations. Unlike section 70 of the *Environment Act 2003*, section 92 of the *Marine Resources Act 2005* does not specifically contemplate the creation of protected areas. The most relevant head of power is provided in subsection 92(2)(a) “prescribing measures for the conservation, management, development, licensing and regulation of fisheries or any particular fishery”. Section 92 of the *Marine Resources Act 2005* is not an avenue via which CIMP could be established with either confidence in its legal underpinnings, or with sufficient regulatory scope to achieve its objectives (the *Marine Resources Act 2005* is summarized in Appendix 4).

3.21 The options of providing a legal basis for CIMP via amendments to the *Environment Act 2003* or the *Marine Resource Act 2005* are discussed in section 4 below, including consideration of the draft *Marine Resources Bill 2014*.

3.22 In the other jurisdictions considered: in Kiribati amendments to their *Environment Act* in 2007 introduced powers and procedures to create protected areas generally, and in 2008 the *Phoenix Island Protected Area Regulations* were promulgated, followed by the *Phoenix Islands Protected Area Conservation Trust Act* in 2009. The Great Barrier Reef Marine Park was established by the *Great Barrier Reef Marine Park Act* of 1975. (See Appendix 6).

3.23 In summary, while it may be possible to establish CIMP via regulations made under section 70 of the *Environment Act 2003*, this is not an optimal course of action. Instead, legislative amendment or a new enactment would be more able to provide an appropriate institutional and legislative basis for CIMP.

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This issue was discussed in broad terms; there was no apparent disagreement with the review’s finding that new legislation will be required to implement CIMP.

Q - Will there be an agency, body or organisation that will take the lead role in managing and coordinating the CIMP and if so, what type of agency, body or organisation will it be?

3.24 Legislation creating a large MPA or a system of MPAs typically identifies (or establishes) an entity responsible for the overall system. Even if management and decision-making functions are shared or coordinated among a range of agencies or entities, a ‘lead agency’ is identified to take primary responsibility for administering the MPA law. At site

level, if different entities or authorities manage different sites, the legislation clearly provides for the designation of such authorities and typically specifies whatever powers and responsibilities are involved.

3.25 The NSDP seems to identify NES as the lead agency for the CIMP (page 63). Discussions with NES officers indicate however that the agency, while supportive of the CIMP and planning to undertake activities that will complement it, does not have the capacity or the authority to take on this role. It is noted that the NSDP was drafted prior to the CIMP Steering Committee being established.

3.26 The NSDP also identified MMR as playing a significant role in the CIMP. MMR has much greater capacities than any other agency of the Cook Islands Government to monitor and enforce laws within Cook Islands EEZ and other marine zones. In discussion, many key stakeholders expressed a preference that MMR should not be the lead agency for the CIMP. The MMR officer who spoke to the reviewer was non-committal regarding the prospect of MMR being the lead agency for the CIMP; the availability of adequate resources was a key concern. The MMR Business Plan for 2013/2014 does not indicate that MMR expects to coordinate or manage the CIMP.

3.27 Two other possibilities for CIMP lead agency are a new unit created within the Office of the Prime Minister, or a new special-purpose statutory authority. These are discussed as options 3 and 4 in section 4.

3.28 The IUCN Guidelines for Protected Area Legislation lists the following examples of institutional structures supporting PAs:

- (a) Strong central authority (governmental, statutory corporation or mixed) with delegation of staff and resources directly from headquarters on all matters;
- (b) Central authority with overall power, and decentralized units for the management of specific sites, supervised from the centre;
- (c) Single central authority for policy oversight and coordination, and strong decentralized and independently operating institutions with their own staff and institutional resources for specific regions or sites;
- (d) Multi-agency authority (for example, an inter-agency commission or board) at the central or decentralized level with overall decision-making powers for system-wide planning, management and coordination, with delegation of responsibilities for management of individual sites to other governmental or non-governmental entities;
- (e) Any of the options above for centralized oversight, with individual site management including local government authorities, local community entities and indigenous or traditional peoples managing or co-managing their own conserved areas that have been recognized as part of the protected areas system;
- (f) Any of the options above for centralized oversight, with individual site management including private landowners managing or co-managing their own conserved areas that have been recognized as part of the protected areas system.

3.29 In the Cook Islands context, as a matter of administrative efficiency necessary for small governments, it is likely that CIMP will be established as a variant of '(c) or (d)' and '(e)' in the list above. That is, whatever entity is the 'lead agency' for CIMP, the aim will not be for that entity to take over functions that are already being performed by existing agencies or ministries, but to coordinate those functions. For example, MMR will continue to be responsible for offshore marine surveillance, and NES will manage environmental assessments within CIMP, even if neither is the CIMP lead agency.

3.30 In practice, selecting which existing or newly-created agency will be the lead agency for CIMP will be important for many reasons and will influence significant choices regarding the design of the law.

3.31 The IUCN GPAL provides the following checklist for MPA laws regarding provisions creating institutional arrangements:

- (a) The legislation must identify, designate or create an agency that is responsible for its implementation. This institution should be clearly defined, and should possess the necessary capacity and professional competence.
- (b) Legislation may designate the head or director of this agency to exercise powers and carry out duties. This will normally be the chief executive officer in the case of a statutory corporation. This position should be directly answerable to the minister in charge.
- (c) The functions, duties and powers of the lead agency or statutory corporation should be indicated with sufficient clarity so that the agency can be held accountable.
- (d) Performance and accountability of the agency and its head should be measured in terms of effectiveness in achieving the objectives of the MPA legislation.
- (e) In most cases, it is inappropriate to select a government entity or statutory body whose primary responsibilities (for example, industry or commerce) do not directly complement the primary objectives and purposes of protected areas.

3.32 In the other jurisdictions considered: in Kiribati, the PIPA Regulations are made under the Environment Act and are administered by the staff of the environment ministry. However, the PIPA Regulations create the PIPA Management Committee; its members are mostly representatives of Kiribati Government ministries and agencies. The committee is responsible for developing the management plan and inter-agency coordination in relation to PIPA.

3.33 In Palau, each protected area site is established under state (local) law, and the Protected Areas Network is coordinated under national law by the Ministry of Resources and Development.

3.34 Separately to the management bodies, both Kiribati and Palau have enacted legislation establishing an independent nonprofit 'trust' or 'fund' to manage funds associated with their respective protected areas.

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This issue was discussed in broad terms; there was no disagreement with the review's finding that the CIMP will require a lead agency.

Participants discussed possible benefits of existing or new agencies, and some individuals identified specific preferences of which agency should or should not be appointed lead agency for CIMP. There was no agreement on this issue.

Q - Will establishing CIMP also mean creating a national PA or MPA 'system' or 'network'?

3.35 This issue is identified as a key issue for the CIMP for four reasons. The first is that there are various policy and planning documents that make reference to a future 'system' or 'network' of protected areas, but how this relates to CIMP is unclear; The second is that the CBD requires state parties to establish a *system* of protected areas; The third is that there is documented in the literature wide agreement that the best strategy for protected area design and management is for governments to plan and develop their protected areas not as isolated sites, but as interconnected *systems*; Finally, as a practical consideration, the creation of 1 million square kilometer multi-zoned multi-use marine park necessitates that it be conceptualized as a system, rather than a site.

3.36 Governments updating their MPA legislation are increasingly enacting laws creating

systems of MPAs, rather than regarding each MPA as an isolated site unconnected (in a planning sense) to the other MPAs under management.

3.37 “System planning is an organized way to carry out conservation planning for protected areas at the macro level. It is recognized as a key management principle for effective nature conservation. When system planning is applied to protected areas, it aims to maximize the desirable characteristics of a national protected areas system. System planning in relation to protected areas is about:

- (a) defining the priority of protected areas as a worthwhile national concern;
- (b) defining the relationships between different units and categories of protected areas, and between protected areas and other relevant categories of land or sea;
- (c) taking a more strategic view of protected areas;
- (d) defining roles of key players in relation to protected areas and the relationships between these players; this may include building support and a constituency for protected areas;
- (e) identifying gaps in protected area coverage (including opportunities and needs for connectivity) and deficiencies in management; and
- (f) identifying current and potential impacts—both those affecting protected areas from surrounding land or sea, and those emanating from protected areas which affect surrounding land or sea.” (IUCN GPAL p19).

3.38 System planning assists in understanding the role of existing sites in fulfilling national biodiversity goals so that management objectives can reflect that role. It also aids in filling gaps in coverage in order to more fully represent the full range of biodiversity and other features of natural and cultural value in the country. Taking a system approach to planning is also consistent with new governance types in situations where MPAs may be situated in private or customary waters and managed by local communities applying customary law or participating in some form of co-management arrangements.

3.39 The draft NESAF 2014-2017 clearly indicates the intention on the part of the Cook Islands Government to create networks of protected areas. The relationship between the development and management of these networks and the development and management of CIMP needs to be clarified prior to developing legislation. If there were a national network or system of protected areas created the CIMP would be able to be managed alongside existing PAs such as Suwarrow.

3.40 It is apparent that the uniquely large scale of CIMP requires that a system approach be taken to its planning and implementation, guiding processes such as zoning. In this sense it is similar to the Great Barrier Reef Marine Park. Palau has strongly taken a ‘system’ approach in creating its Protected Area Network.

3.41 An open question is whether in the Cook Islands the system will only be within CIMP, or if it might also include existing protected areas; perhaps even those above the mean high tide mark or the 15th parallel south?

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This issue was discussed and there was broad agreement that implementing a MPA on the scale of CIMP will necessitate the adoption of a system approach.

Several stakeholders also noted that there was strong support among people consulted for the CIMP to include the whole of the Cook Islands, specifically including the Northern Islands.

Q - Will establishing CIMP also mean strengthening and/or broadening existing systems for integrated cross-sectoral marine spatial planning?

3.42 The question of whether creating CIMP will also entail strengthening or broadening

existing the Cook Islands marine spatial planning (MSP) systems is identified as an issue for the CIMP legal review because MSP has both been endorsed by all Pacific island governments as part of the Pacific Oceanscape, and because it is increasingly being promoted as the best-practice mechanism for managing multiple uses across a whole EEZ. Put simply, if the aim of managing the area is to integrate conservation objectives with other uses, why not consider a system that 'integrates' management for all purposes: conservation, fishing, tourism, mining, shipping, border security?

3.43 Foley et al (2010) explain that MSP "is a process that informs the spatial distribution of activities in the ocean so that existing and emerging uses can be maintained, use conflicts reduced, and ecosystem health and services protected and sustained for future generations. Because a key goal of ecosystem-based MSP is to maintain the delivery of ecosystem services that humans want and need, it must be based on ecological principles that articulate the scientifically recognized attributes of healthy, functioning ecosystems."

3.44 The Pacific Oceanscape contains the following in relation to MSP:

3.45 "Action 3b – PICTs explore and build on marine spatial planning mechanisms for improved EEZ management to achieve economic development and environmental objectives. Develop and strengthen appropriate security and enforcement mechanisms and spatial planning systems that guide multiple use for economic growth while maintaining ecosystem function and biodiversity integrity of coastal and ocean areas. These higher order management systems provide the fundamental basis for the use of spatial management tools in a nested fashion drawing from experiences in strict traditional closures, locally managed areas and large multiple use managed and protected areas. Aspects such as cross border security, food security, monitoring control and surveillance are fundamental for effective management systems."

3.46 Regarding the growth of MSP, Jay, Ellis and Kidd (2012) note: "From conservation-inspired beginnings in Australia, marine spatial planning has increasingly been seen as a pathway to sustainable use of the seas by arbitrating competing human activities with the long-term well-being of the natural environment. Furthermore, by providing a coordinated, cross-sectoral and future-orientated approach to marine management, it offers the potential of establishing more harmonious and rational spatial patterns of sea use. Such aspirations have led a number of maritime jurisdictions, especially in North America, northern Europe and the western Pacific, to formalize legislative and institutional arrangements for marine planning over the last few years, whilst international organizations, NGOs and stakeholder groups have also advanced its uptake."

3.47 Regarding other jurisdictions, the Great Barrier Marine Park is often cited as the first and most successful example of broad scale marine spatial planning (e.g. Jay, Ellis and Kidd, 2012).

3.48 This review makes no recommendation regarding possible linkages between CIMP and MSP beyond noting that this is an issue that deserves further consideration, and the approach taken to this issue may influence both the role of the CIMP lead agency and the design of any CIMP legislation.

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It was agreed that the wording of this issue be amended to reflect the fact that there are already systems of marine spatial planning operating in the Cook Islands. The phrase 'strengthening and/or broadening' replaced 'creating'.

Q - Will CIMP end at the high water mark, and how will issues of land-based activities threatening ecosystems within CIMP be addressed?

3.49 In discussion with the reviewer stakeholders emphasized that the greatest threats to Cook Islands marine environments are frequently caused by land-based activities such as inappropriate coastal development or agricultural practices. This view is confirmed by published assessments of Cook Islands environmental status and threats, such as the 4th Report to the CBD.

3.50 Agencies of the Cook Islands Government are adopting plans and policies supporting integrated coastal zone management approaches to reduce and avoid land-based threats to marine ecosystems. Examples are the draft NESAF and the GEF Project Identification Form for the Cook Islands Ridge to Reef Project to be implemented jointly by NES, MMR and MoA.

3.51 This question raises issues that will primarily be addressed under Part B of the legal review.

3.52 It is noted that clarity regarding these issues will be important in clearly defining the scope of various authorities, powers, and obligations relating to CIMP.

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This issue was not discussed in isolation as stakeholders were of the view that it was dealt with in discussing the issue of whether CIMP should adopt a 'system planning' approach.

Q - Will the CIMP be accompanied by a special funding mechanism of some kind, and if so, how will it be established and governed?

3.53 It will not be possible to establish and operate CIMP without incurring additional costs. Various policy documents relating to the CIMP have noted the need to consider the financial aspects; the terms of reference for the CIMP Steering Committee note the need for a charitable trust to accompany CIMP. In terms of possible income streams, the GEF Project Information Form for the Ridge to Reef Project raises the possibility of allocating a portion of the departure tax proceeds, or fishing licence income, to the CIMP. Seabed minerals may in the future offer an alternate income stream to be considered in this context.

3.54 Addressing the legal and institutional aspects of a possible charitable trust was not a focus of this review. It is however noted that there are two recent examples of similar aims being achieved through special legislation, summarized in appendix 6. Kiribati in 2009 enacted the *Phoenix Islands Protected Area Conservation Trust Act*, establishing the PIPA Trust exclusively for charitable, educational and scientific purposes for the benefit of the public. The Trust's primary activity is to use the assets of the Trust to provide support for —

- (a) administration and operation of the Trust;
- (b) management of the Phoenix Islands Protected Area; and
- (c) ensuring that exploitation of the resources of the Phoenix Islands Protected Area remains limited or prohibited.

3.55 Uniquely in relation to the manner in which Kiribati is seeking to be compensated for lost fishing licence revenue, "the PIPA Trust may provide the Government with compensation for loss of revenue occasioned by measures to limit or prohibit exploitation of the resources of the Phoenix Islands Protected Area, to the extent agreed to between the Trust and the Government from time to time pursuant to the terms of the Conservation Contract." The terms of the 'conservation contract' are yet to be agreed.

3.56 In Palau, subchapter 2 of chapter 34 of the Palau National Code creates the 'Protected Areas Network Fund' as a body 'independent and free from government influence and perpetual in existence'. The Fund is governed by a Board of Directors and its purpose is to receive and manage funds generated or received through all sources of financing and

shall disburse these funds to the PAN sites and PAN Office according to the procedures provided in law.

At the 5 March 2014 stakeholder workshop >

Discussion among stakeholders regarding sources of funding to support CIMP highlighted some disagreements. A key government official noted that the CIMP was 'sold to the government' on the basis that it would not be an additional cost to government.

Another stakeholder suggested that the review does not document the full range of options that may be available to generate funding to support CIMP's operations and that an options paper be prepared to identify and assess all such opportunities.

Assessing options for legislation to establish CIMP

4.1 Given the high degree of uncertainty over many key aspects relating to the design CIMP institutional arrangements outlined above, the discussion of legal options presented here is necessarily limited to matters of broad design rather than fine details. As examples to progress discussion, four possible options are examined in this section:

1. Amending the Environment Act 2003;
2. Amending the Marine Resources Act 2005;
3. New legislation for CIMP, lead agency located in Office of Prime Minister;
4. New legislation for CIMP, special-purpose agency created by law.

4.2 Each option is described in broad terms only; except for option 2 which examines the draft *Marine Resources Bill 2014*, no hypothetical provisions are presented. There is also a range of design principles that apply to all options; these are outlined below.

Principles of marine protected area legislation

4.3 There are key principles relating to best-practice design of MPA laws that are relevant in the development of legislation to establish the CIMP, whether via a new or an amended Act. These principles are listed below, are described and discussed in Appendix 5, and are examined in detail in the *IUCN Guidelines on Protected Area Legislation* Parts I and III. It is noted that these principles are generally consistent with and supportive of agreed plans and policies relating to CIMP, and Cook Islands protected area policy more broadly.

4.4 MPA laws should:

- provide clear legal obligations for MPAs to be designed and managed with conservation outcomes as primary objectives;
- establish each MPA as an important and perpetual feature of ocean and coastal governance;
- require that MPAs be administered having regard to best available scientific evidence and data;
- place obligations upon persons responsible for exercising duties and performing functions in relation to MPAs to do so in a manner consistent with the precautionary principle;
- create *systems* of MPAs or PAs; they should require whole-of-jurisdiction approaches be taken to selecting, designating and managing PA's across an entire country, applying tools such as marine spatial planning and zoning, integrated coastal zone management and ecosystem based management;
- require plans to be prepared setting out the management approach and goals, together with a framework for decision making, to apply at both site and system level over a given period of time;
- establish mechanisms guaranteeing a public right to access information regarding MPAs, as well as opportunities to participate in deciding if and where MPAs should be declared and the rules by which it will be managed;
- be designed in a manner that enables MPAs based in varying forms of governance and law – including MPAs created under custom, by voluntary landowner agreement, by communities co-managing sites with government officers, or via local government laws – to be recognized and supported by the country's PA system; and
- be drafted having regard to the 'generic elements of MPA legislation' identified and discussed in appendix 5.

4.5 It is emphasized that the CIMP legislation, whilst taking account of the above, will also need to be cognizant of other considerations. These include all of the issues addressed under Part B of this review.

4.6 Also important will be considerations of administrative efficiency; the financial resources available to support CIMP will inevitably be limited, and probably meager in comparison to a site such as the Great Barrier Reef Marine Park. Planning for the legal and institutional aspects of CIMP needs to account for this limitation; there is little to be gained by enacting a law the implementation of which cannot be supported due to deficits in financial and other capacities.

Option 1: CIMP established via amendments to Environment Act 2003

4.7 This option draws upon the example of Kiribati, in suggesting that the *Environment Act 2003* could be amended to fully enable it to provide the legislative basis of CIMP.

4.8 Using the framework already provided in the Act, this might be achieved by expanding the scope of Part 6 to provide for proposals by [Minister], [NES Director], [re-constituted National Environment Council] to establish protected areas beyond the jurisdiction of any island.

4.9 The existing process established by sections 41-43 is designed for island-specific terrestrial PAs and could not be sensibly applied to CIMP and so an alternate set of provisions would be required. There are many possibilities for how these would be presented, but the Kiribati law provides an adequate illustration. As amended in 2007, Part 2 of Division V of the *Kiribati Environment Act 1999* enables protected areas to be prescribed by regulation (s43). The law also:

- requires processes of stakeholder and public consultation;
- specifies processes of landowner negotiation and agreement if the proposed protected area will impact proprietary interests;
- requires all protected areas to be managed having regard to core principles of participation, conservation, education and intergenerational equity;
- empowers the Minister to appoint a management committee to oversee any PAs created by regulation. The committee may draft management plans, make management decisions, monitor management of PA, advise the Minister; and
- empowers the Minister to finalise PA management plans and specifies the scope and authority of PA management plans.

4.10 Comparable provisions could be inserted into Part 6 of the Cook Islands *Environment Act 2003*, possibly (but not necessarily) combined with amendments re-constituting the National Environment Council. Similar to PIPA, it is anticipated that if a management committee is created for CIMP that it would include representatives from relevant government ministries and agencies, and would be tasked with managing inter-agency coordination.

4.11 For the above to be effective, consequential amendments would need to be made to the *Marine Resources Act 2005* and its regulations. Subsection (4) of section 3 would require amendment to make the *Marine Resources Act 2005* subject to the *Environment Act 2003* and its regulations. Other amendments to the *Marine Resources Act 2005* would require decisions affecting CIMP (such as those relating to commercial fishing) be consistent with CIMP regulations and management plan. Documents such as licence conditions would also require revision.

4.12 Discussion: The above is feasible from a legal perspective. Whether or not it is a 'good' option relies upon 2 things: 1) whether it is decided that NES should be the lead agency for CIMP, 2) whether Part B of the legal review recommends that the *Environment Act 2003* could provide a basis for the integration of community-level initiative in CIMP. If the response in each case is 'yes', then amending the *Environment Act 2003* is a sensible choice.

4.13 Strengths of this approach include:

- NES is the existing agency a portion of whose work is most clearly focused on biodiversity conservation, conservation planning, developing networks and systems of protected areas;
- The *Environment Act 2003* is the law that is most clearly focused on conservation objectives;
- NES is the existing agency most concerned with integrated coastal zone management and reducing land-based threats to marine environments;
- Provides for whole-of-government (and potentially also non-government stakeholder) input into CIMP; and
- Avoids the expense of creating new agency.

4.14 Weaknesses of this approach include:

- NES has no capacity for monitoring or compliance of marine environments;
- Unless scope of *Environment Act 2003* is expanded, it couldn't cover islands that are yet to submit to the Act's jurisdiction; and
- NES has stated that it would prefer not to be the lead agency for CIMP.

Option 2: CIMP established via amendments to Marine Resources Act 2005

4.15 The reviewer was provided with a draft of the *Marine Resources Bill 2014*. It contains provisions that when enacted will expand and update the 2005 Act in various ways, including changes responding to recent developments in international fisheries treaty regimes.

4.16 Of most immediate interest are provisions in Part 3 of the Bill (Marine Reserves and Parks) that if enacted would enable the Minister for Marine Resources to establish CIMP. These provisions, read in conjunction with the regulation-making power in section 118 of the Bill, are here considered as the second option for providing the legal basis for CIMP. Part 3 of the Bill is reproduced in full below:

Part 3 - Marine Reserves and Parks

20 Declaration of areas

1. The Queens' Representative may, by Order in Executive Council, declare any area of the fishery waters to be a marine reserve or marine park where he considers that special management measures are necessary—
 - (i) to afford special protection to the flora and fauna of such areas;
 - (ii) to protect and preserve the natural breeding and nursery grounds and habitats of aquatic life;
 - (iii) to allow for the replenishment or restoration of aquatic life in areas where such life has been depleted;
 - (iv) to sustain livelihoods which rely on aquatic living resources;
 - (v) to promote scientific study and research in respect of such areas; or
 - (vi) to preserve and enhance the biodiversity and natural beauty of such areas.
2. The Queens' Representative may, by Order in Executive Council, declare zones within any declared marine reserve or marine park within which certain activities may be conducted or prohibited.
3. Any person who, in any marine reserve or marine park, without permission granted under subsection (4)—
 - (i) fishes, attempts to fish or conducts any related activities:

- (ii) takes or destroys any flora or fauna:
 - (iii) dredges, extracts coral, sand or gravel, discharges or deposits waste or any other polluting matter, or in any way disturbs, alters or destroys the natural environment:
 - (iv) constructs or erects any buildings or other structures on or over any land or waters within such a reserve or park; or
 - (v) does any other thing or takes action which is in violation of this law or any other law relating to marine reserves or marine parks:
 - (vi) commits an offence and is liable on conviction to a fine not exceeding \$500,000.
4. The Minister, or any person authorized by him in writing, may give written permission to do any of the things prohibited under this section provided that in so doing the authorization does not undermine the effective implementation of a fishery management plan for that reserve or park.
 5. Where an activity that could have a detrimental impact on a marine reserve or marine park is planned within that marine reserve or marine park by any ministry or entity pursuant to any other Act or law, the ministry or entity under whose management that activity is planned shall require the written consent of the Minister, to be given or denied, after consultation with and consideration of, any recommendations made by an advisory committee established in respect of that reserve or park before commencing any activity in that marine reserve or marine park.

21 Advisory Committee—

- a. The Minister may—
 - i. establish an advisory committee for each marine reserve or marine park or any combination of reserves or parks:
 - ii. determine the terms of reference of any advisory committee established under paragraph (a):
 - iii. do any other thing or take any action necessary for the protection and preservation of a marine reserve marine park.
- b. Where the reserve or park no longer serves the purpose for which it was declared the Minister may, by Order published in the Gazette, declare that the reserve or park no longer has that status from the date stated in the order.
- c. Prior to making a declaration under this section, the Minister must hold such other public consultations with persons having an interest in the reserve, including users of the area.

118 Regulations

- 1) The Queen's Representative may, by Order in Executive Council, make such regulations as may be necessary to give effect to the provisions of this Act and for due administration thereof.
- 2) Without, limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following—
 - i. conservation—
 1. prescribing measures for the conservation, management, development, licensing and regulation of fisheries or any particular fishery including the designation of any fishery and the provision of any fishery Plan:
 - ii. marine reserves and parks—
 1. for the general management of marine reserves or marine parks:
 2. setting fees for entrance to and activities in a marine reserve or marine park:

3. providing for the development and adoption of management plans in respect of marine reserves or marine parks:
4. providing for research permits and fees for issuance of such permits:
5. providing for management plans for marine reserves or marine parks which shall include—
 - a. physical, biological, socio-economic and cultural aspects of the marine reserve or marine park:
 - b. conservation and management objectives and management programmes:
6. providing for the setting up of advisory committees for particular fisheries or marine reserves or marine park:
7. rau'i - providing for the temporary closure of an area or areas, or species, in consultation with the Aronga Mana of the area concerned.

4.17 Discussion: Reviewing the above provisions in light of best-practice principles for protected area legislation reveals some shortcomings, and the following comments are provided in that context:

- Objectives justifying why the Minister would create marine reserves and parks should be expressed, including a clear focus on providing a system of marine areas that conserve a representative selection of Cook Islands marine ecosystems; that MPAs be managed having regard to the precautionary principle; that MPA designation and management be guided by participatory processes; and that management of each PA be consistent with the conservation objectives expressed in the law.
- The question of exemptions should be decided upon a more transparent and rigorous basis than written permission from the Minister (see Bill s20(4)).
- Management committees should be compulsory rather than discretionary, and their terms of reference and ongoing operations should be guided by principles expressed in the legislation (as above) and a list of specific responsibilities (e.g. draft management plan), not simply 'as determined by the Minister'.
- Subsections 21 (b) and (c) empower the Minister to dissolve a marine park by order published in the Gazette following consultation with interested persons. No MPA should be able to be dissolved except by decision of the same high-level body that created it

4.18 The above option for providing a legal foundation is feasible in legal terms. Similar to option 1, whether it may be the 'best' option depends on whether it is decided that MMR should be the lead agency for CIMP.

4.19 Strengths of this approach are:

- MMR has substantial technical expertise and capacity in the area of marine monitoring and surveillance;
- MMR has officers located throughout Cook Islands who could assist in implementing CIMP; and
- MMR could manage and coordinate most tasks related to the CIMP internally, thus (possibly) reducing the need for inter-agency coordination.

4.20 Weaknesses of this approach are:

- MMR's plan and activities focus primarily on maximizing income from fisheries while ecosystem conservation is a secondary concern, thus MMR is not an ideal choice to be CIMP lead agency;

- None of the stakeholders consulted regarding the CIMP suggested that MMR would be their preferred choice of lead agency; and
- A CIMP established under the *Marine Resources Act 2005* would not be able to adequately take account of land-based threats to marine environments.

Option 3: CIMP established by new legislation and coordinated by OPM

4.21 The third option locates the centre of planning and coordination for CIMP in the Office of the Prime Minister (OPM). This option is considered for two reasons; the first is that the Prime Minister has a special interest in CIMP and OPM chairs the CIMP Steering Committee; the second is that OPM has in recent years taken on responsibility for cross-cutting issues that are important and relevant in multiple sectors, such as climate change and disaster risk management. Accordingly, this option may be seen to be consistent with recent Cook Islands Government practice. The institutional aspects of the proposal below are modeled upon Parts 1 and 2 of the Cook Islands *Disaster Risk Management Act* of 2007.

4.22 A new Act, titled [Cook Islands Marine Park Act], [Cook Islands Marine Conservation and Planning Act], [[Cook Islands Conservation and Planning Act] has an object of:

- [designating and coordinating a system of marine protected areas];
- [designating and coordinating a system of protected areas];
- [implementing a national system of marine spatial planning]; or
- providing for the designation, zoning and ongoing ecologically sustainable management of the CIMP.

4.23 The Act would create a new body [name to reflect title of Act, say 'CIMP Agency'] with clearly defined functions. A Director with functions and powers clearly defined in the law, responsible to the Prime Minister, would lead the body.

4.24 The Act would also create a body (e.g. 'Conservation Council') with membership from all relevant ministries and agencies (and possibly other organisations) to provide interagency participation and coordination.

4.25 The development of plans – for all CIMP, [for a possible national PA system], [a possible multi-sectoral national marine spatial plan], and for each local site or discrete area requiring a specific management regime - would be central to the operation of the law.

4.26 The new CIMP Agency would coordinate planning processes, particularly for the CIMP-wide or system-wide plans including zoning decisions. Beyond planning, most of the efforts of the Agency would be liaising between various government agencies and non-government and community organisations, at the local and national levels, providing the guidance, coherence and linkages required to be able to make CIMP function in the manner it is intended. The Agency would also serve the Conservation Council.

4.27 The Conservation Council would be given authority to approve the plans. The Council may also be authorized to make policy, advise or direct the Agency on matters regarding CIMP management, advise the Prime Minister on matters regarding CIMP management or various other responsibilities.

4.28 Other agencies and organisations, such as MMR, NES, local governments, NGOs, communities, would be tasked with implementation at site level in accordance with relevant agreed plans and legal provisions contained in both the principle Act as well as regulations. There would need to be consequential amendments to other legislation, such as those outlined for the *Marine Resources Act 2005* in the discussion of option 1.

4.29 The Act would otherwise be consistent with best-practice principles of protected area legislation outlined at the commencement of this section, and be drafted with regard to the elements of protected area legislation summarized in appendix 5.

4.30 Discussion – The prospect of new legislation allows a broad range of options and the example outlined above is just one of these. It is an attempt to place in a Cook Islands context the institutional type described in the IUCN GPAL: “(d) Multi-agency authority at the central level with overall decision-making powers for system-wide planning, management and coordination, with delegation of responsibilities for management of individual sites to other governmental or non-governmental entities”.

4.31 Strengths –

- Creating a new law and a new administrative body provides complete flexibility in setting the scope of authority and creating whatever institutional structure is best-suited to CIMP;
- Placing the coordinating agency in OPM may keep CIMP higher on the list of national priorities than would otherwise be the case;
- OPM may be more able to successfully address communication failures or interagency conflict than another ministry or agency;

4.32 Weaknesses

- There will be a cost of creating and staffing a new unit within OPM;
- The lead agency will be heavily reliant on the performance of other agencies in achieving the objectives of CIMP.

Option 4: CIMP established by new legislation and managed by a new statutory authority

4.33 This option essentially mirrors the previous one except that the coordinating agency would be a statutory authority of some kind. The Cook Islands Government has in the recent past created special-purpose statutory authorities, an example being the Seabed Minerals Authority created under the *Seabed Minerals Act 2009* (entered into force 2012).

4.34 Statutory authorities differ from departments and executive agencies in the following ways:

- o They are always created by statute, whereas departments and executive agencies are sometimes created by administrative orders of the Executive arm of government;
- o They are created to undertake a specific function(s), as set out in legislation;
- o The involvement of government, through the Minister, in the operations of a statutory authority is limited by the powers set out in the enabling legislation.

4.35 Statutory authorities undertake functions of government or provide services to the community on behalf of government. They are generally established where it is desirable for particular activities to operate outside departmental structures so as to promote efficiency and/or objectivity. More specifically:

- o Separating specialised activities from the broader and more complex requirements of a portfolio and providing an authority with a narrow and clearly defined range of functions (with separate funding for those functions) allows management of the authority to specialise and focus on its role.
- o Codifying the role of the authority and defining the powers of the Minister in relation to the authority provides a degree of independence.

4.36 An important issue in considering establishing a statutory authority for CIMP is the form of corporate structure to apply. A review of the Great Barrier Reef Marine Park Act in 2006 addressed the issue of the structure of the Great Barrier Reef Marine Park Authority (a statutory corporation reporting to the Minister), providing the following analysis of direct relevance to CIMP (Commonwealth of Australia, 2006, 149)

4.37 “There are two structures designed to provide for good governance of statutory authorities—a governing board and executive management. Under the governing board structure, governance is primarily provided by a board of individuals selected for their relevant business and commercial experience. The board determines strategy and direction for delivering on the authority’s legislative functions and financial goals, and supervises and holds management accountable for implementation.

4.38 Under an executive management structure, an executive management group is responsible for efficient and effective performance of the legislative functions of the authority and is overseen by and accountable to the Minister.

4.39 In determining the appropriate governance model the key factor is the extent to which the authority is delegated power to act, that is, the power to determine and oversee the implementation of strategy and direction by management. This in turn depends on the functions of the authority.

4.40 Some statutory authorities are established to undertake commercial activities. It is generally appropriate to delegate full power to act to such authorities, as their operations, policies and strategies are commercial in nature and are driven by the imperatives of the market. In this circumstance a governing board structure may be appropriate, as the board can be provided with the power and independence necessary to function with ‘entrepreneurial’ freedom in response to market imperatives and thereby to add value.

4.41 Most statutory authorities, however, are not commercial in nature. Instead, they are directed at providing outcomes that the market would not ordinarily deliver, which inevitably affects the allocation of resources between competing interests. This is a uniquely government role. Governments are elected on the basis of the policies, objectives and priorities that guide performance of this role and are held accountable for the outcomes achieved.

4.42 Because of this role and accountability of government, it is generally inappropriate to grant this latter form of authority full power to act. Instead, government should be involved in the governance of the authority. An executive management structure is designed to provide for this. It provides government with a role in setting the overarching objectives and priorities of the organisation, while also preserving an appropriate level of independence for the authority. Executive management is then overseen by and accountable to government for performing the functions of the authority consistently with the identified objectives and priorities.”

4.43 This assessment translates into a Cook Islands context to indicate that if the CIMP lead agency is a statutory authority, that it should be governed under an executive structure reporting to the Minister or the Prime Minister, and not by a governing board. This structure would in effect be similar to that of the third option. A governing board structure providing complete independence from government would be appropriate for any charitable trust or fund that may be established in association with CIMP.

4.44 Discussion – Again, in legal terms this is a feasible option and shares the advantage of the previous one in providing the ‘clean sheet’ of a new enactment. The strengths and weaknesses of this option largely mirror those of option 3, except for the following differences.

4.45 If there are perceived benefits in the CIMP somehow being separate or at arms length from government, such as a greater ability to include or make alliances with non-government and community-level stakeholders, or to improve possibilities of donor support, then there may be advantages to establishing a statutory authority.

4.46 It is also the case however that implementing CIMP will be a complex exercise that will sometimes require the balancing of many legitimate competing interests. The analysis

quoted from the GBRMPA review suggests that these are decisions that should not be too removed from democratically accountable processes of executive government.

4.47 Another consideration here is that the main role of a CIMP lead agency is likely to be planning and coordinating activities and programs across ministries and agencies; this is a role that may be best performed from within the internal processes of government.

4.48 Strengths

- A new law and a new administrative body provides complete flexibility in setting the scope of authority and creating whatever institutional structure is best-suited to CIMP;
- Creating a special-purpose statutory authority as the CIMP lead agency would allow that body to focus solely and specifically on managing and coordinating CIMP;
- A statutory authority with some independence from government may be able to develop partnerships across all sectors more effectively than a ministry.

4.49 Weaknesses

- There will be a substantial cost of creating and staffing a new statutory authority;
- The CIMP lead agency will be heavily reliant on the performance of other agencies in achieving the objectives of CIMP, but if it is a statutory authority it may be limited in its ability to respond to issues of suboptimal interagency cooperation;
- Implementing CIMP will require the balancing of competing interests, and sometimes may involve picking 'winners' and 'losers'; it may not be appropriate for a statutory authority to be making decisions such as these.

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The reviewer overviewed the above options in broad terms, but time constraints prevented detailed discussion of them.

A few stakeholders indicated a preference for option 3, but in response other stakeholders raised issues of concern with this option.

There was no agreed preference for any of the options indicated by stakeholder's comments at the workshop.

The CIMP Steering Committee Chair concluded the discussion by indicating that this issue would in the near future be considered by members of the Steering Committee with a view to determining the best course of action for future legal development.

CIMP legal review findings

5.1 It would be possible to establish the CIMP under existing legal provisions (*Environment Act* section 70), but this is not recommended as a preferred option because the highly complex nature of establishing, administering and managing an MPA on the unprecedented scale of the CIMP is not adequately provided for in existing provisions (see paragraph 3.18 above).

5.2 Notwithstanding the theoretical possibility noted above, new legislation will be required to establish the CIMP. This could take the form of either substantial amendment of the *Marine Resources Act 2005* or the *Environment Act 2003*, or a new special-purpose Act of Parliament to be administered either by a new statutory authority or by a unit within the Office the Prime Minister.

5.3 No new legislation will ensure the success of the CIMP in the absence of other key elements of good environmental governance. In particular, effective interagency cooperation and coordination will be very important in successfully establishing and administering CIMP.

5.4 Any of the routes for possible new legislation noted above could result in laws that will effectively and efficiently achieve the objectives of establishing and implementing the CIMP. Each has both advantages and disadvantages when compared.

5.5 On balance however, new special-purpose legislation is considered preferable to amending either the *Marine Resources Act 2005* or the *Environment Act 2003* because:

- Neither MMR or NES are ideal choices to be CIMP lead agency; NES is focused primarily on terrestrial issues and is reluctant to take on the role of coordinating CIMP, MMR is the most likely of existing agencies to be charged with managing CIMP but all other stakeholders consulted expressed reservations regarding this possible outcome. A third choice of lead agency necessitates a new Act.
- If the CIMP is to achieve protection of inshore marine environments from both land-based as well as marine-based threats, this goes beyond the existing scope of authority of any ministry or agency of the Cook Islands Government;
- The scale and complexity of the CIMP means that it will require the cooperation and involvement of multiple ministries and agencies, as well traditional leaders, non-governmental and community-based organisations, the business community and the donor community. A special-purpose agency may be best-placed to fulfill this coordinating function; and
- This outcome was the preference in terms of institutional arrangements indicated to the reviewer by most key stakeholders.

5.6 There are key principles relating to best-practice design of MPA laws that should be applied when designing legislation to establish the CIMP, whether via a new or an amended Act:

- Provide clear legal obligations for MPAs to be designed and managed with conservation outcomes as primary objectives;
- Establish each MPA as an important and perpetual feature of ocean and coastal governance;
- Require that MPAs be administered having regard to best available scientific evidence and data;
- Place obligations upon persons responsible for exercising duties and performing functions in relation to MPAs to do so in a manner consistent with the precautionary principle;
- Create *systems* of MPAs or PAs; they should require whole-of-jurisdiction approaches be taken to selecting, designating and managing PA's across an entire country, applying tools such as marine spatial planning and zoning, integrated coastal zone management and ecosystem based management;
- Require plans to be prepared setting out the management approach and

goals, together with a framework for decision making, to apply in the MPA or the PA system over a given period of time;

- Establish mechanisms guaranteeing a public right to access information regarding MPAs, as well as opportunities to participate in deciding if and where MPAs should be declared and the rules by which it will be managed;
- Be designed in a manner that enables MPAs based in varying forms of governance and law – including MPAs created under custom, by voluntary landowner agreement, by communities co-managing sites with government officers, or via local government laws - to be recognized and supported by the country's PA system; and
- Be drafted having regard to the generic elements of MPA legislation identified and discussed in appendix 5, as well as imperatives of administrative efficiency and local protocol.

5.7 In further developing the institutional foundation of CIMP with a view to generating a sustainable level of finances that are efficiently managed through transparent accounting processes to support the objectives of the CIMP, Cook Island stakeholders may benefit from considering the full range of options that are available to achieve this goal. An appropriate method for this would be to engage an expert or team of experts to prepare an options paper examining sustainable sources of funding for CIMP.

Appendix 1

Environmental context and overview of marine resource use

A1.1 Geographically, Cook Islands is a group of 15 small islands with a total landmass of 240 km², spread over an ocean area of approximately 2 million km² between 9° and 23°S latitude and 156° and 167°W longitude. The islands are divided into two regions, a northern group and a southern group. The Northern Group consists of five atolls (Pukapuka, Rakahanga, Manihiki, Suvarrow and Penrhyn) and a sand cay (Nassau). The Southern Group consists of four makatea islands (Mangaia, Atiu, Mauke and Mitiaro), two atolls (Palmerston and Manuae), one almost-atoll (Aitutaki), one sand cay (Takutea) and one high island (Rarotonga). Twelve of the islands are permanently settled; the three uninhabited islands - Suvarrow, Takutea, and Manuae - are wildlife reserves.

A1.2 The marine environment of the Cook Islands is yet to be thoroughly researched or investigated and so knowledge regarding its biodiversity is limited. There is ecosystem diversity between the high islands in the south with shallow lagoons and fringing reefs, and atolls in the northern group characterized by large, deep lagoons encircled by coral reef. Marine ecosystems represented include lagoonal coral reefs, reef slopes, seamounts, seabed, and the open ocean water column. The country's isolation from the centre of marine biodiversity in the west Pacific Ocean has resulted in fewer marine species establishing themselves in the Cook Islands than in countries within or neighboring the Coral Triangle.

A1.3 The only National Park in the Cook Islands is the uninhabited island of Suvarrow, an atoll with land area of 0.4km² but a much larger enclosed lagoon. Suvarrow hosts large populations of native breeding and migratory species including the Teue and 9% of the world's population of Lesser Frigatebird or Kotaa Iti (*Fregata ariel*). Suvarrow is also home to 3% of world population of Tavahe and has the Cook Islands only large colony of Tara or Sooty Terns (*Sterna fuscata*). Its enclosed lagoon provides habitat for various species of reef shark and nursing Humpback Whales. (CI NES Report to CBD 2011). While Suvarrow is the only National Park, there are also numerous protected areas established outside of the formal legal system. Most of these are ra'ui located in inshore marine areas.

A1.4 As the focus of this review is law, policy and institutions, readers seeking detailed descriptions and assessments of the geography and ecology of the Cook Islands, as well as analyses of threats to its ecosystems, are encouraged to find them in other sources including the National Biodiversity Strategy and Action Plan 2002, the 4th National Report to the Convention on Biological Diversity 2011, and the draft National Environment Strategic Action Framework 2014-2017. The draft Cook Islands Marine Park Profile provides an overview of the ecosystems and biodiversity in CIMP.

Marine Resource Use

A1.5 Marine resources are of great importance to the Cook Islands. Financially, existing commercial production in the marine sector is important in generating revenue and employment, and the advent of seabed mining will further elevate the priority of marine resources to the Cook Islands economy. A healthy marine environment is also highly valued as an asset for foreign tourism, the Cook Island's largest industry.

A1.6 Marine products are important in the diets of virtually all Cook Islanders and are a main source of protein particularly for people living in outer islands. Marine resources and environments also occupy a central place in the historical, cultural and recreational life of Cook Island society and are accordingly also valued highly for those reasons. (FAO)

A1.7 The most significant offshore fishery operating in the Cook Islands targets albacore tuna (*Thunnus alalunga*) north of 15°S latitude, sending the catch to a cannery in American Samoa. Although vessels seldom venture south of 15°S latitude, some vessels operating in

the northern fishery unload bycatch to Rarotonga as part of a licensing incentive scheme.

A1.8 Vessels operating in the southern fishery are based out of Rarotonga. These vessels generally target tuna and billfish species, and sell a wide range of bycatch species to the local market. Exporting to USA, Japanese and New Zealand markets has diminished over the years mainly due to economic reasons, with higher returns gained on the local market.

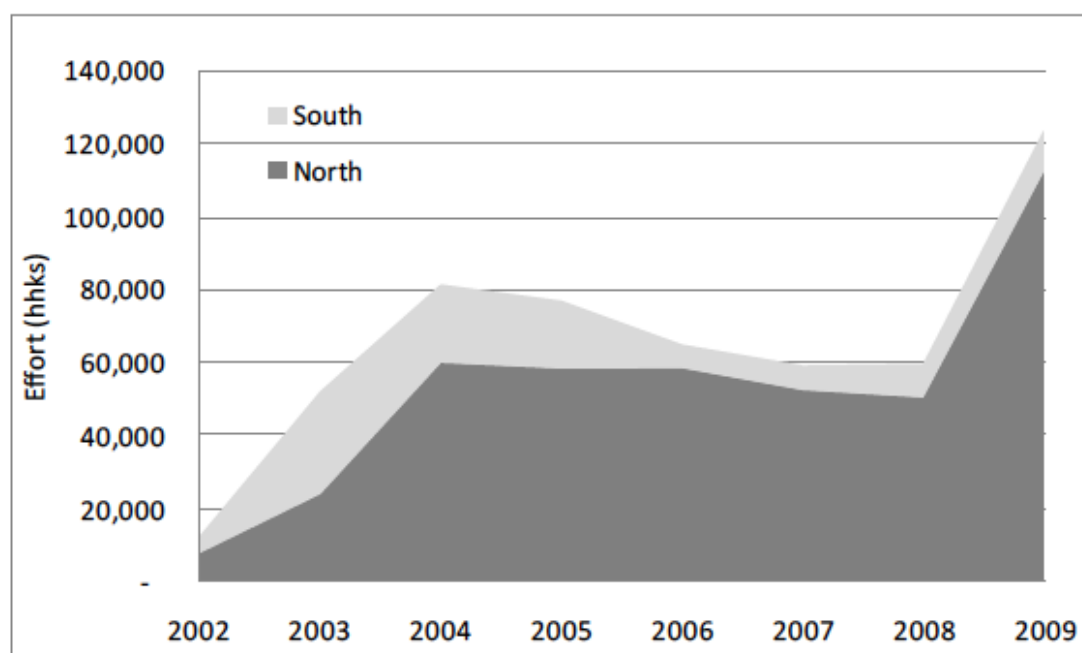


Figure - Northern and Southern offshore fishery effort in Cook Islands EEZ (source: CI Report to WCPFC 2010).

A1.9 Coastal fisheries, with participation from around half of all households supplying both subsistence needs as well as local markets, are also vitally important; fish is an important element of food security in the Cook Islands. The FAO Food Balance Sheets show that in 2007 fish contributed an average of 21.6% of all protein to the diet and in rural areas of the country the contributions are much higher. For example, Passfield (1997) calculated the annual per capita consumption of fish in Tongareva Island as being 219.0 kg. Animal protein alternatives for fish consist of various types of imported meat, much of which is extremely fatty and has negative health implications.

A1.10 A response to the increasing need to improve management of coastal fisheries and to conserve inshore marine environments has been the application of ra'ui, a method of conservation drawing upon Cook Islands' long tradition of sustainable marine resource management. Part B of this review considers the ra'ui in detail.

A1.11 The culture of black pearls, which commenced in the 1980s, is the most important aquaculture activity in the Cook Islands. Dozens of pearl farms on islands including Manihiki and Penrhyn culture and seed blacklip pearl oysters (*Pinctada margaritifera*) to produce highly valued black pearls. The Ministry of Marine Resources estimated the gross value of the pearl harvest at the farm gate in 2007 to be USD 2.2 million.

A1.12 There are a number of commercial sport fishing operators in Rarotonga and Aitutaki providing services primarily to foreign tourists. There are also two export oriented coastal fisheries: aquarium fish and trochus.

A1.13 A 2011 FAO report stated that the main trends in the Cook Island fishery sector include:

- Increasing exploitation of the coastal resources, especially those close to urban markets;

- The total longline catch in the Cook Islands zone remaining steady in most of the 2000s, until 2008 when foreign license issuance was suspended and the catch dropped;
- The Rarotonga-based longline fleet declining in numbers in recent years, with companies selling off boats and processing facilities;
- Increasing pearl production in the mid-2000s;
- The industrial troll fleet declining over the years, with only one vessel remaining;
- Increasing attention by the government and NGOs to the quality of the inshore marine environment of Rarotonga; and
- Increasing use of traditional protected areas (ra'ui) as a fisheries management tool.

A1.14 The same report indicated that some of the major issues in the Cook Islands fisheries sector are:

- Labour for industrial-scale tuna fishing is scarce and considering population trends, the labour pool is not likely to grow in the future;
- Operating longliners out of Rarotonga is very expensive relative to other locations in the Pacific Islands region;
- The country has had a dynamic pearl culture industry but is facing a situation of expanded supply in international markets and increasing competition; and
- The rising fuel prices are having an increasing impact on motorized small-scale fishing activities.

A1.15 Significant marine environmental issues in the Cook Islands include impacts from climate variability and climate change, habitat loss and the effects of coastal modification and development, the introduction of invasive species, fishing pressure (including destructive practices), increased sedimentation and nutrient loading from land-use activities, solid and liquid waste and other sources of land and marine pollution. The draft Cook Islands National Environment Strategic Action Framework 2014-2017 provides a summary of the issues and challenges for coastal zones and marine environments:

A1.16 "Tourism related construction accounts for the majority of foreshore problems such as erosion damage to properties and beaches. Discharge of nutrients from sewage, soil erosion, old landfills, and agricultural chemical and farming wastes contribute to the pollution of streams and coastal waters. Increased freshwater runoff, increases in sedimentation and salinity are threats to coastal zones and coral reefs along with coral bleaching, inundation, increased storm surge and habitat shifts.

A1.17 "There are calls to strengthen the management and sustainable harvesting of fisheries resources in lagoon and ocean due to excessive fishing such as uncontrolled giant clam harvesting and growth in the long-line fishery. Monitoring the welfare and health of pearl producing lagoons remains a concern. Threats to the outer reef coral systems from regular and increasing diving ventures and visiting cruise liners anchoring could cause damage to the corals. Population explosions of some species like taramea (crown of thorns) are causing an imbalance in reef ecosystems. The need for construction aggregates continues to affect sand and gravel deposits around foreshore areas and beaches. Climate change impacts also threaten marine resources with freshwater runoff, salinity changes and sedimentation and changes in migration and distribution patterns."

Appendix 2

National policy context for the Cook Islands Marine Protected Area

A2.1 The Te Kaveinga Nui is the central policy and planning document guiding all sectors of governance in the Cook Islands. It is described as a 'Visionary Framework' encompassing the period 2007–2020. The national vision annunciated in the Te Kaveinga Nui is "to enjoy the highest quality of life consistent with the aspirations of our people in harmony with our culture and environment". Included among the five outcomes sought by the Te Kaveinga Nui are "Outcome 1: Sustainable economic growth in harmony with our social values, culture & environment", and "Outcome 3: Enhanced Cultural and Environmental Values".

A2.2 Subsidiary to the Te Kaveinga Nui are the National Sustainable Development Plans, the current iteration of which covers the period 2011–2015. The NSDP states that development during 2011–2015 is based on seven guiding principles; leadership, partnership, transparency and accountability, social cohesion, equity, sustainability and national development.

A2.3 "Sustainability: A sustainable future for our nation requires us to effectively integrate economic, social and environmental issues in order to make the wisest use of our capital stocks to meet the needs of current and future generations. We recognise that economic, social and environmental problems and solutions are inter-connected and that an integrated approach to address these issues, underpinned by good governance and fundamental cultural values to address these issues will ensure that our development is sustainable." (CI NSDP p14).

A2.4 The NDSP 2011–2015 identifies eight 'Priority Areas', each with it's own goal, objectives, strategies and success indicators. Priority Area 6 is Ecological Sustainability, the goal being to "a Cook Islands where we sustain our ecosystems and use our natural resources efficiently". The Priority Area 6 objectives are:

1. The use of all natural resources is managed well to ensure their sustainability.
2. Our scarce and degraded natural resources are effectively monitored and restored.
3. The pollution of air, water and land resources is managed so that impacts are minimised and community and ecosystem health is not adversely affected.
4. Irreversible loss and degradation of biodiversity (marine, terrestrial, aquatic ecosystems) is avoided.
5. Our actions to protect and manage our ecosystems and natural resources will include CCA and emissions reduction measures.
6. Taking care of our natural environment is 'everybody's business'.

A2.5 Of the six Priority Area 6 strategies, the fourth, Implement an Ecosystem Approach to the Management of Marine Resources, and the sixth, Protect our Biodiversity and Ecosystems, are most relevant to the CIMP:

A2.6 "Our view of our marine resources is that we hope to accommodate competing interests for the resources while sustaining productive, resilient, healthy marine ecosystems. We anticipate that this will allow us to address the long-term consequences of today's decisions by thinking of the various resources and interrelated parts of systems rather than as individual components to separately manage. . . We **will develop and implement integrated management plans for utilising our marine resources** in consultation and collaboration with our communities". (CI NSDP 2011–2015 p 36)

A2.7 "In 2011–2015 we will intensify our efforts to protect our biodiversity and ecosystems. We will identify key biodiversity areas for conservation and extend the number and area of protected areas **including the establishment of a significant component of**

our exclusive economic zone as a marine park. Additionally, we will legislate for the protection of endangered flora and fauna species, while stepping up our efforts to actively control invasive species. As in other areas impacting on our natural resources, we will establish a more integrated biodiversity management system to ensure collaboration across sectors and with our communities.” (CI NSDP 2011-2015 p 36).

A2.8 Each Ministry and Agency of the Cook Islands Government prepares an annual Business Plan outlining short and long-term objectives, recent achievements and goals, and key deliverables for the coming 12 months. The business plans should be consistent with Te Kaveinga Nui, the current National Sustainable Development Plan and other relevant policy commitments of the Cook Islands Government, such as those contained in sectoral plans or strategies. Contents of the business plans of the National Environment Service, the Ministry of Marine Resources, the Seabed Minerals Authority, and possibly the Office of the Prime Minister, will be relevant to policy for CIMP establishment and management.

A2.9 There are a number of other policy and planning documents that are relevant for the establishment of the CIMP. These include the National Biodiversity Strategy and Action Plan (NBSAP) and the draft National Environment Strategic Action Framework 2014-2017 (NESAF). The NBSAP focuses on eight themes, each with its own strategic goal/s and actions:

- Theme A: Endangered Species Management
- Theme B: Invasive Species Management
- Theme C: Ecosystem Management
- Theme D: Equitable Sharing of Benefits and Access to Biodiversity
- Theme E: Management of Knowledge Related to Biodiversity
- Theme F: Biodiversity Awareness and Education
- Theme G: Mainstreaming of Biodiversity
- Theme H: Financial Resources and Mechanisms for Biodiversity

A2.10 All eight themes are relevant to the CIMP, with the most relevant being Ecosystem Management, the goal of which is to “conserve important ecosystems through a system of protected areas with regulated and monitored activities”.

A2.11 Actions planned to achieve this goal are:

- a) Establish an independent Suvarrow National Park Authority to administer the Cook Islands’ only national park on behalf of all the major stakeholders. A management group with the responsibility to conserve the atoll’s wildlife, and to monitor and control revenue-generating activities.
- b) Develop a programme to select areas to establish a national system of community-based protected areas to protect important terrestrial ecosystems.
- c) Develop a programme to select areas to establish a national system of community-based protected areas to protect important reef and lagoon ecosystems.

A2.12 The 4th CI report to the CBD provides an assessment of progress on NBSAP goals, some of which have been advanced and others have not. “Success has been achieved in relation to Goal 2, promoting the conservation of species diversity. Areas where achievements have not met the targets include percent coverage of protected areas, and effective mainstreaming of biodiversity. Another area where more effort is required is in the formulation and implementation of effective management plans for major alien species that threaten ecosystems, habitats or species.” The CI NBSAP is now more than a decade old and, in line the Aichi Targets, is due to be revised in coming months.

A2.13 The Cook Islands Government sought to rationalize and mainstream biodiversity-related policy by integrating aspects of the NBSAP into the 2005-2009 NESAF. Linked to the high-level national goals and priorities in the NSDP and the Kaveinga Nui, the NESAF provides sector level focus for stakeholders. It provides strategic links to guide the plans, priorities and operations of a range of agencies and stakeholders.

A2.14 The 2005-2009 NESAF replaced the 1992 National Environment Management Strategy that provided an initial foundation for managing the country's environment programs. It built on the introduction of the National Environment Act in 2003 and "recognized the significance of sustainable development as the country came to terms with changing weather patterns, unchecked tourism development, increasing waste, contaminated lagoons, and struggling infrastructure and utility services".

A2.15 The 2005-2009 NESAF sought to encompass policy and strategy for all environment-related issues, concerns and commitments in the Cook Islands. Since 2005 a number of related strategies and policies have been developed and are operational. This altered the purpose for the National Environment Strategic Framework (NESF) 2013-2017 from defining policy and plans for the whole environment sector to filling gaps and ensuring linkages and alignments with related policies and strategies. Related policies and strategies include the Renewable Energy Chart, the Climate Change Adaptation and Disaster Risk Management Strategic National Action Plan, the National Biodiversity Strategy and Action Plan, the National Action Plan for Sustainable Land Management and National Waste Strategy.

A2.16 The 2013-2017 NESAF identifies four environment thematic areas as the basis for delivering strategies and actions: 1) Natural Resource Conservation, Use and Management 2) Increasing Resilience to Climate Change 3) Waste Management and Pollution Control, and 4) Governance, Management, Planning and Finance. All of these have relevance to aspects of the CIMP with the first being the most significant.

A2.17 The mission statement for the first thematic area is to: "Ensure that Cook Islands biodiversity and natural resources are effectively and efficiently conserved, sustainably used, managed and recorded to achieve the sustainable economic, social, cultural and environmental development of the country."

A2.18 The following Strategic Goals support the achievement of the mission statement:

- 1.1 Conserve biodiversity, natural resources and natural ecosystems
- 1.2 Enhance the management and sustainable use of biodiversity and natural resources
- 1.3 Strengthen, maintain and manage scientific knowledge relating to biodiversity to support decision making regarding protection and management of Cook Islands biodiversity and natural resources
- 1.4 Maintain and develop the ability for cultural and traditional management and practices as it relates to biodiversity and natural resource management
- 1.5 Recognise, protect and promote traditional knowledge and practises related to biodiversity and natural resources

A2.19 The targets, actions, indicators and responsible agencies outlined in the draft 2014-2017 NESAF under Theme 1 reflect the most recent decisions of the Cook Islands Government, in consultation with stakeholders, regarding policy and plans for the conservation of biodiversity and ecosystems.

A2.20 The NESAF provides strong policy underpinnings for Cook Islands to greatly expand and enhance its biodiversity conservation programs, including specific support for establishing the CIMP and a national system of PAs. The first strategic goal under theme 1 is 'Effective establishment and management of protected areas (PA)' and the related activities are (bold added here for emphasis):

- **Define, identify and map key biodiversity areas for protection using an ecosystem approach;**
- Consider the use of appropriate PA classifications and categories e.g. IUCN categories, to guide national PA establishment;
- Define and include all water catchment areas as protected areas;
- Ensure community and stakeholder consultations to support PA designation and management;

INSTITUTION	EXPECTED OR POSSIBLE ROLE IN CIMP
Office of the Prime Minister (OPM)	In addition to its role as the Government's central policy and planning agency, OPM has in recent years taken an expanded role in certain cross-cutting issues of national importance such as disaster risk management and emergency response, climate change adaptation, local government, information and communications technology and renewable energy. OPM is chair of the CIMP steering committee and it is likely that even if OPM is not assigned the role of CIMP lead agency that it will play a significant role in supporting CIMP.
National Environment Service (NES):	The National Environment Service is the Cook Islands Government Agency responsible for implementing the CBD, the CCD, and related MEAs. The key units within the Agency that are responsible for conservation activities include biodiversity conservation, education and awareness and environmental monitoring. It is likely that even if NES is not assigned the role of CIMP lead agency that it will play a significant role in supporting CIMP. MORE DETAILS PROVIDED BELOW
Ministry of Marine Resources (MMR)	The Ministry of Marine Resources has the principal function and authority for conserving, managing, and developing the living and non-living resources in the fishery waters. It is likely that even if MMR is not assigned the role of CIMP lead agency that it will play a significant role in supporting CIMP. MORE DETAILS PROVIDED BELOW.
Crown Law Office	The Crown Law Office provides legal services to the Government of the Cook Islands.
Cook Islands Tourism Corporation	CITC promotes tourism and accredits tourism related businesses (accommodations, restaurants etc.). CIMP is intended and expected to enhance tourism in Cook Islands and one of the role of the CITC will be to maximize this outcome by highlighting the importance of biodiversity and the achievement of Cook Islands in establishing CIMP.
Cook Islands Natural Heritage Trust (CINHT):	The Natural Heritage Trust was established in 1999 to investigate, identify, research, analyse, study, classify, record, integrate and preserve scientific information and traditional knowledge of and practices relating to flora and fauna in Cook Islands. By doing this the Natural Heritage Trust played a key role during NBSAP development and implementation. The Trust also has developed and maintained a biodiversity database, which comprises nearly 2 decades of baseline biodiversity information specifically to the Cook Islands. The Natural Heritage Trust will be a key stakeholder and contributor in the CIMP design and development.
Ministry of Finance and Economic Management (MFEM)	MFEM serves four functions, namely, 1) Treasury Operations concerning fiscal and financial management of public expenditure, 2) Revenue collection (tax and customs), 3) Collection and dissemination of statistics, and 4) Responsible for the planning and overall management of donor program and project activities. It is likely that the establishment and operation of the CIMP will have substantial budgetary implications, on both expenditure and revenue.
The House of Ariki and Te Koutu Nui:	The House of Ariki represents the tribal leaders across the Cook Islands. Given the strong traditional land tenure, their involvement and support for CIMP design and implementation will be critical for the success of the CIMP.
Taporo'poro Ipukarea Society (TIS):	TIS is an environmental NGO with a wide remit, primarily as an environmental watchdog, advocate of reduction of chemical use and pollution, waste management, recycling and conservation of biodiversity. TIS has worked on a recovery program for the endangered Rarotonga Monarch (<i>Pomarea dimidiata</i>), and a successful "Save Our Suvarrow" campaign amongst others. TIS is currently involved in promoting and supporting the establishment of the CIMP. TIS has been delegated by the CIMP steering committee to receive external funding from marine conservation philanthropists. They are expected to play a role in local capacity building in support of the CIMP.

Seabed Minerals Authority (SMA):	The Cook Islands Seabed Minerals Authority was established in 2012. SMA's functions include regulating seabed mining in the Cook Islands in accordance with the Seabed Minerals Act 2009 and regulations; making recommendations concerning the negotiation and conclusion of Seabed Mineral Agreements; promoting co-operation amongst government ministries, departments, local authorities, the private sector, research bodies, non-governmental and other organisations, concerning seabed minerals of the Cook Islands. CIMP area includes substantial deposits of seabed minerals and it is likely that SMA will advocate regulated mining be among the activities allowed within some zones of the CIMP. SMA will therefore play a significant role in the design and implementation of CIMP.
Ministry of Agriculture (MoA):	MoA's primary role is to support crop development and food security. MoA also has a role in conserving agricultural biodiversity and ensuring that land and water resources are sustainably managed. MoA may be called upon to assist other stakeholders in protecting CIMP's ecosystems by promoting forms of agriculture that reduce threats caused by land based sources of pollution, particularly from pesticides and fertilisers. MoA is also responsible for administering the national biosecurity regime which is vitally important in protecting CIMP from invasive species.

- Review and establish the necessary legislative and regulatory frameworks;
- Designate and declare the protected areas using appropriate legislation and traditional authority, including the use of management and monitoring plans;
- Strengthen and expand the system of Ra'ui and other community based protected areas;
- **Consolidate and integrate these protected areas into networks by island and at the national level;**
- **Contribute to the establishment and management of the Cook Islands Marine Park;**
- Contribute to the conservation and sustainable management of marine species and ecosystems including reef, pelagic and abyssal ecosystems through effective PA management;
- Utilize Programme of Work on Protected Areas (PoWPA) as a coordination tool for effective PA establishment and management.

National Institutional Context for the CIMP

A2.21.14 There are multiple institutions in Cook Islands, both within and outside government, playing significant roles in the management of marine resources, ecosystems, coastal zones and the environment more generally. It can be reasonably expected that many of these institutions will also contribute significantly to the design, establishment and operation of the CIMP.

A2.22 Institutions currently represented on the CIMP Steering Committee are:

- Office of the Prime Minister (Chair)
- Ministry of Marine Resources
- National Environment Service
- Crown Law Office
- Ministry of Finance and Economic Management
- Cook Islands Tourism Corporation
- House of Ariki
- Koutu Nui
- Te Ipukarea Society

A2.23 No decision or position has yet been taken regarding which, if any, of these institutions will be the 'lead agency' responsible for the CIMP.

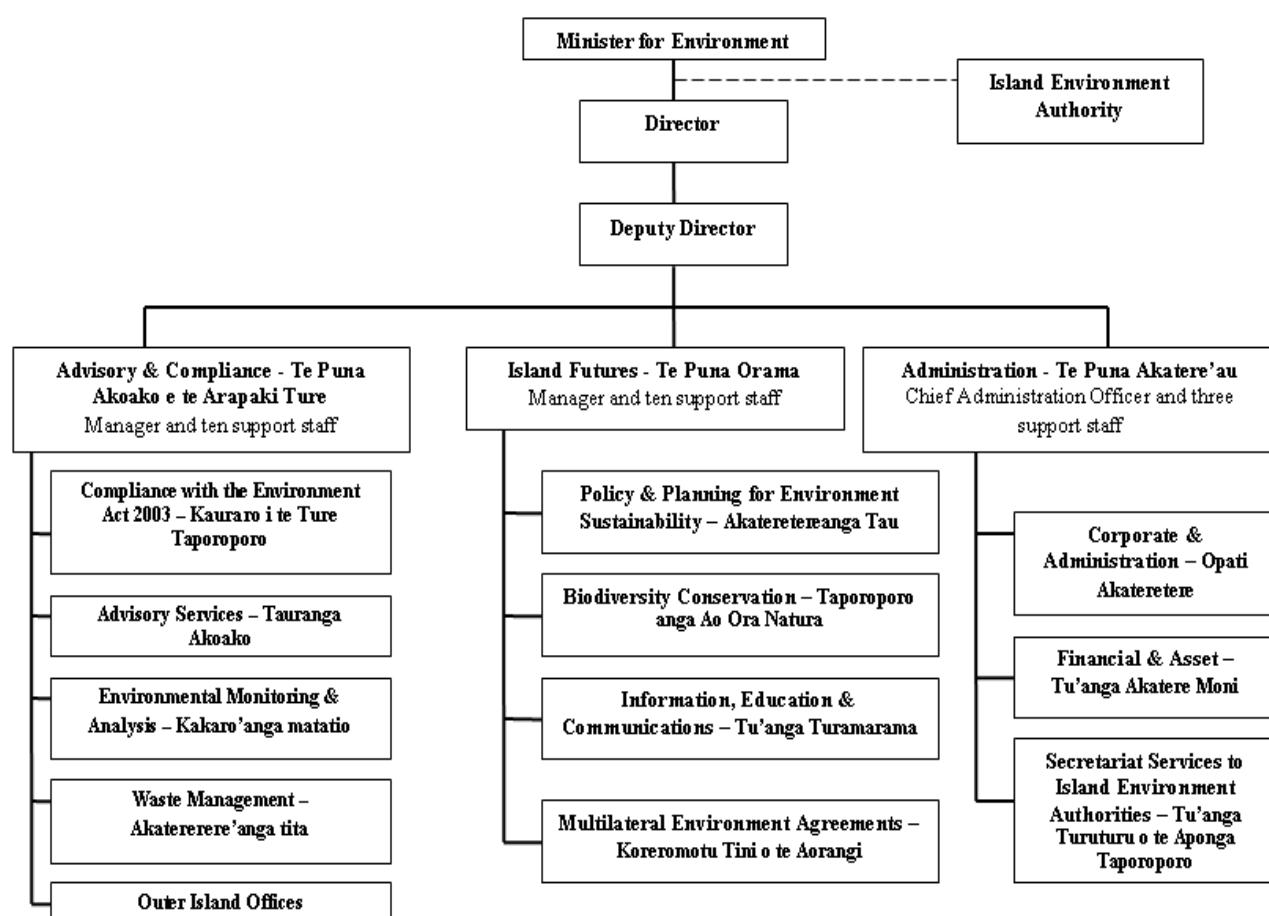
A2.24 Following table summarises the roles played by the above institutions in relation to marine protected areas:

A2.25 Two agencies of the Cook Islands Government play substantial and active roles in marine and coastal resource conservation and management: MMR and NES. The central laws administered by these two organisations are summarized and discussed in appendix 4 below.

A2.26 Conserving biodiversity is a key function of NES, the vision of which is “to protect, conserve and manage the environment of the Cook Islands, Our Heritage, in a sustainable manner through promoting community participation for the benefit of current and future generations”. Its objectives are to:

- Help ensure an acceptable level of environmental health through guidelines, standards and monitoring.
- Conserve or preserve natural resources and biodiversity, through sustainable management of marine, freshwater and terrestrial ecosystems of the Cook Islands.
- Minimise impacts of and risks to development in the environment through compliance, enforcement and monitoring.
- Promote community participation in the sustainable management of the environment by incorporating environmental considerations from economic and social development policies, plans and activities on an ongoing basis.
- Contribute to international efforts to find solutions to global environmental threats through national actions.

A2.27 The NES organizational chart is provided below:



A2.28 NES is legally empowered to designate and take measures to protect threatened species; to otherwise provide for the protection, conservation and management of wildlife; to regulate or prohibit trade and commerce in wildlife, protected species, or both; and to establish protected areas and to regulate or prohibit activities within protected areas. However, the Cook Islands 4th National Report to the CBD provided the following assessment of the biodiversity conservation capacities of NES: (p69)

A2.29 “Despite this legislated mandate, the country has witnessed a progressive dilution of capacity for hands-on conservation management within government. Though the National Environment Service (then the Conservation Service) has grown from an initial staff of 3 in 1988 to number 27 today there are only 2 staff members working full time in the biodiversity sector. Thus the responsible government agency does not have an operational capacity to effectively manage biodiversity. In addition to this, the legislative shift from a conservation focus to an environmental management focus resulted in less attention on conservation activities and more on overall environmental management, including more focus on development monitoring and management.

A2.30 This vacuum has been filled to some extent by the formation of the Cook Islands Natural Heritage project, though also with a staff of only one. To fill the gap, a number of non-government organisations have become actively involved in biodiversity conservation at the community level. For example the traditional leaders, supported by NGOs, have made progress in the promotion of the raui system (traditional resource management system) for marine conservation.”

A2.31 NES will in coming months receive a substantial boost in its biodiversity conservation capacity, having recently received news that the Global Environment Facility Council has endorsed a proposal titled: “*Conserving biodiversity and enhancing ecosystem functions through a “Ridge to Reef” approach in the Cook Islands*” (R2R project) The R2R Project will contribute a total of approximately US\$4.26 million over four years in two components:

- 1) Strengthening national system of protected areas (US\$3 million) and
- 2) Effective mainstreaming of biodiversity in key sectors to mitigate threats to protected areas from production landscapes (US\$ 1 million).

A2.32 NES has requested that it be clarified for readers that funds received from the GEF under this program, while complementary of the CIMP, does not represent a direct investment in it; the executing local agencies are NES, MMR, MoA and CITC.

A2.33 The first of the R2R programs is explicitly intended to support the establishment of the CIMP; its first intended outcome is “Operationalization of management in the Cook Islands Marine Park: National agencies responsible for marine and terrestrial PA management (currently by the Ministry of Marine Resources and the National Environment Service respectively) are effectively delivering PA management functions across the CIMP, including Community Conservation Areas (planning; financing; monitoring, enforcement).”

A2.34 There are three outputs expected from the first R2R program:

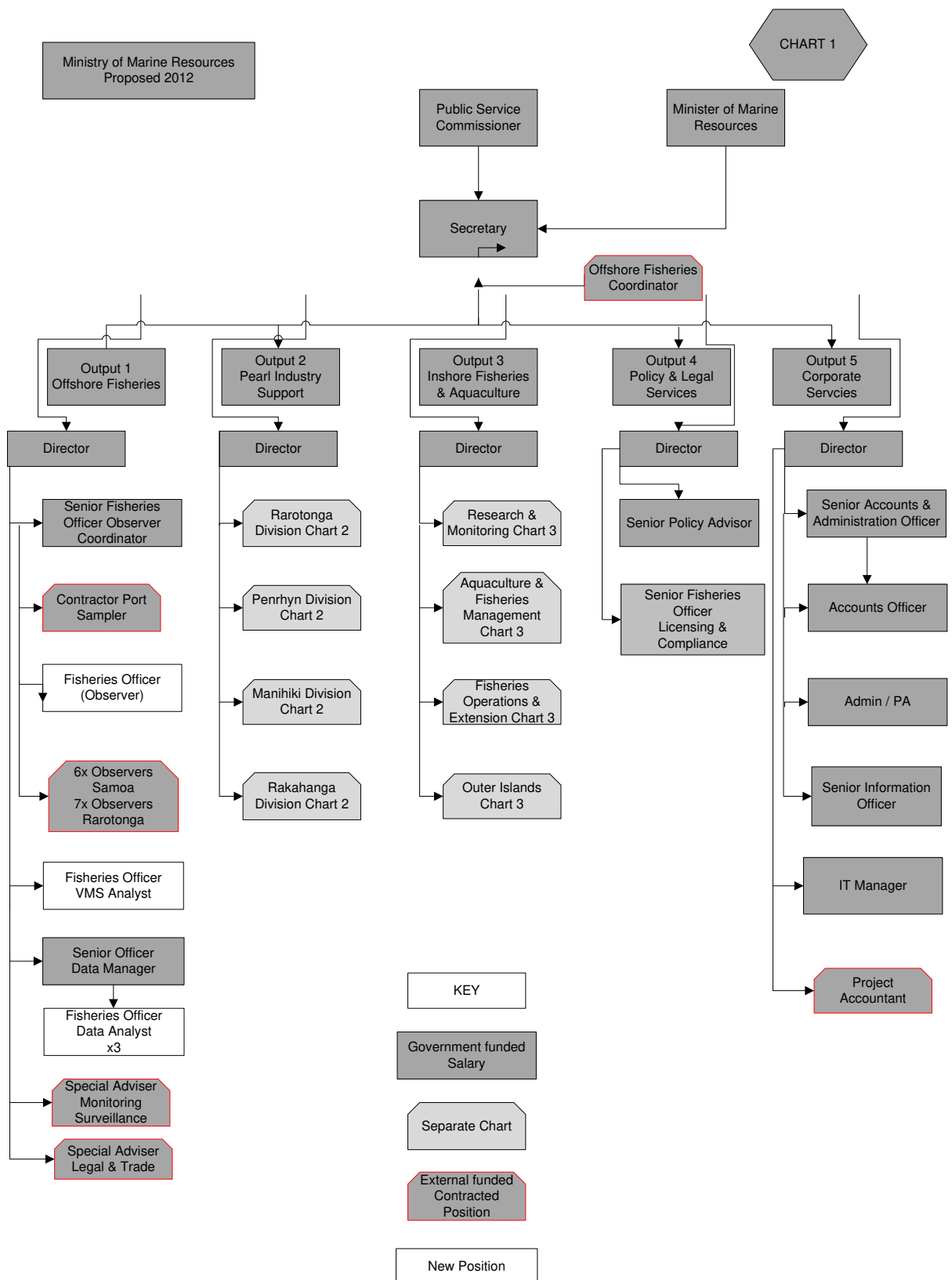
- 1) Legal framework for CIMP clarified and legal regime for PA management updated (configuring the management structure and responsibilities for PA management, financing arrangements, and the inclusion of traditional conservation areas within the PA system);
- 2) Enhancing institutional capacities for the management of Protected Areas nationally (government capacities and institutional mechanisms for participatory planning, surveillance, enforcement and reporting – including joint work between MMR and the NES; national system of support to community conservation areas and cross learning between CCAs);
- 3) Developing financial sustainability framework for Protected Areas System through

- ecosystem services and financial benefits of PAs quantified; costing for effective management worked out nationally;
- brokerage of annual budgetary appropriations to underwrite the costs of PA functions at the new MPA (staff/ equipment, infrastructure and maintenance) from government budgets;
- additional sources of financing identified and mechanisms detailed to access and utilize such funds (such as through re-vitalization of a percentage of airport departure tax being provided for environment fund; use of part of international fishing licenses for conservation).

A2.35 An important aspect of the R2R Project is the clear intention that it result in “a paradigm shift in the management of marine and terrestrial PA sites from a site centric approach to a holistic “ridge to reef” management approach, whereby activities in the immediate production landscapes adjacent to marine and terrestrial protected areas will be managed to reduce threats to biodiversity stemming from key production activities (tourism and agriculture).”

A2.36 The other agency of the Cook Islands Government that has a very significant role in the management and conservation of marine environments and resources is MMR. MMR’s vision is “working in partnership with communities, businesses and other agencies so that the people of the Cook Islands are receiving maximum long-term benefits from the sustainable development and utilisation of marine resources - throughout the nation.”

A2.37 MMR’s 2013/2014 Business Plan outlines programs designed to deliver 5 key outputs: 1) Offshore fisheries, 2) Pearl sector, 3) Inshore fisheries and aquaculture, 4) Policies and legislation, and 5) Corporate services. In terms of staff capacity, the Business Plan reports “MMR human resource levels are the highest ever, reflecting the diverse and expanded work programs, with approximately sixty full-time and part-time public servants, contractors and a pool of six Samoan based MMR fisheries observers”. A diagram of MMR’s organizational structure is provided below:



A2.38 While CIMP is not a focus of the MMR Business Plan, the plan does describe a diverse work program and numerous recent significant achievements and developments including many that are relevant for the CIMP and/or this legal review, such as:

- MMR has developed significant inhouse capacity for developing regulations to strengthen its fisheries management regime. For example: Marine Resources (Large Pelagic Longline Fishery) Regulations 2012 and Marine Resources (Licensing) Regulations 2012 repealed the Marine Resources (Large Pelagic Longline Fishery) Order 2011 and Marine Resources (Licensing and Regulation of Fishing Vessels) Regulations 1995 respectively.
- Significant prosecutions under the Marine Resources Act and financial settlements for illegal fishing using the Western Central Pacific Fisheries Commission (WCPFC) process have taken place.
- Maritime surveillance assets and agreements with defense partners are resulting in highly sophisticated fisheries patrols taking place within the Cook Islands Exclusive Economic Zone (EEZ).
- Technical services provided under the Water Quality Monitoring Network has expanded the role of the MMR from monitoring Environmental Health of the lagoon such as nutrient levels to also monitoring the parameters that affect the Public Health such as bacteria levels. These skills are being further applied to provide Food Safety certification targeting tuna exports and monitoring for parameter such as radioactive levels.
- The demise of the pearl industry has directed the Ministry to expand its role from primarily ensuring environmental management of lagoon and assisting the Island Council in governance to taking a more hands on role in building up business acumen of farmers and the capacity of the Manihiki Pearl Farmers Association (MPFA).
- Cabinet approved the establishment of a Fisheries Development Facility to direct licensing revenue to support fishing clubs and artisanal fishers. This is a significant policy shift in that a direct contribution from the fishing licenses can be returned to the supporting the local fishing sector.
- In 2012/13 the Seabed Minerals was part of MMR as Output 6. In FY2012-13 the Seabed Minerals Commission was established as a 'stand-alone' entity.
- Emphasis on compliance and enforcement at local levels with a Compliance Unit established within MMR to enforce regulations for inshore fisheries as well.
- Boundary Delimitation Agreements signed between the Government of the Cook Islands and the Government of New Zealand for Tokelau; the Government of the Cook Islands and the Government of Niue; and the Government of the Cook Islands and the Government of the Republic of Kiribati.

Appendix 3

Regional and international policy context for the Cook Islands Marine Protected Area

A3.1 Regional and international fora and institutions have also produced a number of relevant agreed statements, policies, plans and strategies may support and guide establishing the CIMP.

A3.2 At the global level the CBD's 20 Aichi Biodiversity Targets are directly relevant, especially Target 11 – “By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well-connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes”. Other Aichi Targets the achievement of which will be advanced by the CIMP include Target 6 – sustainable fisheries; Target 8 – nutrient pollution of ecosystems; Target 10 – reducing pressures on coral reefs; Target 12 – protection of threatened species; and Target 18 – respect and application of indigenous knowledge regarding biodiversity.

A3.3 The Rio Oceans Declaration is another global policy statement urging countries to take bold and ambitious oceans management initiatives such as establishing large MPAs. The Oceans Declaration was developed during the 2012 Rio+20 Summit with strong involvement from small island developing States. Some key excerpts are copied below:

A3.4 “The Co-Chairs of the Oceans Day at Rio+20, a high-level ocean event that gathered over 375 participants from 169 organizations and 46 countries, call for strong and immediate action on oceans, coasts, and small island developing States, including:

- Scaling up successful ecosystem-based management/integrated ocean and coastal management efforts nationally and regionally and in marine areas beyond national jurisdiction.
- Developing an integrated approach to addressing the interlinked issues of oceans, climate change, and security that includes provisions for:
 - Stringent reductions in greenhouse gas emissions;
 - Ecosystem-based adaptation strategies through integrated coastal and ocean management;
 - Sufficient funding to support adaptation for coastal and island communities that are at the frontline of climate change;
 - Conservation of coastal ecosystems as major carbon sinks; and
 - Moving towards a low-carbon economy through, inter alia, emissions reductions from marine industries and the development of offshore renewable energy.
- Enhance the capability of small island developing States and developing coastal countries to benefit from, and sustainably manage, their marine resources and to adapt to climate change through increased financing, technology transfer, commensurate with the needs and challenges facing developing countries and SIDS, and ocean use agreements to ensure that the benefits derived from the sustainable use of resources in the EEZs of SIDS and developing coastal countries accrue to them.

A3.5 Also, in the context of the CBD's Programme of Work on Protected Areas, state parties are committed to establishing an effectively managed, representative, global system of marine protected areas covering 10% of all marine ecological regions, comprising both multiple use areas and strictly protected areas.

A3.6 In the Pacific region, in 1999 the 22 Pacific Island Forum countries endorsed the

Pacific Islands Regional Ocean Policy (PIROP) that presents a framework for the sustainable development, management and conservation of the marine resources and habitats within the region. PIROP provides guiding principles for action to promote responsible stewardship of the Pacific Ocean for regional and global benefit. While not a legal document, PIROP's guiding principles are supportive of and consistent with PICs responsibilities under the CBD, the United Nations Convention on the Law of the Sea and the Noumea Convention.

A3.7 PIROP's vision is "a healthy ocean that sustains the livelihoods and aspirations of Pacific Island communities". PIROP's goal is to ensure the future sustainable use of our ocean and its resources by Pacific Islands communities and external partners".

A3.8 PIROP's guiding principles are:

- improving our understanding of the ocean;
- sustainably developing and managing use of ocean resources;
- maintaining the health of the ocean;
- promoting the peaceful use of the ocean; and
- creating partnerships and promoting cooperation.

A3.9 In order to better operationalise PIROP Pacific Island Forum Leaders have endorsed a Pacific Oceanscape Framework, under which countries aim for closer coordination and collaboration on ocean conservation and management. The Oceanscape has three objectives, the first is Integrated Ocean Management – "to focus on integrated ocean management at all scales that results in the sustainable development, management and conservation of our island, coastal and ocean services". The other objectives are Adaptation to Environmental and Climate Change, and Liaising, Listening, Learning and Leading.

A3.10 Under Strategic Priority 1 PICs are encouraged to delineate their maritime zones and EEZs using base-point coordinates and charts, and to deposit these with the United Nations as allowed by UNCLOS. This will assist in both clarifying the precise boundaries of each countries various maritime zones, including the EEZ, and will reduce the risk of loss of sovereign resources due to the future impacts of climate-induced sea level rise. For Cook Islands, clarifying the boundaries in that manner will also assist the establishment and implementation of the CIMP.

A3.11 Oceanscape Strategic Priority 2 is Good Ocean Governance, and among the related actions is one directing PICs to put in place clear coordinated institutional arrangements for integrated ocean and coastal management. "Embracing integrated national approaches to ocean and coastal management across relevant sectors such as fisheries, minerals, transport, tourism, energy and environment will require institutional reform seeking to avoid duplication and clarifying responsibilities in the interests of cost effectiveness and efficiency."

A3.12 Linked to the third Strategic Priority, Sustainable Development, Management and Conservation, are a number of actions directly relevant to establishing the CIMP. The first of these calls upon PICs to implement integrated coastal resource management arrangements. "PICTs are increasingly demonstrating the key role their communities play in managing local resources. These efforts should be supported and coordinated at provincial and national levels to ensure enforcement and information is supplemented where necessary and that wider ecosystem and national interests can be incorporated into joint action."

A3.13 Another action under Strategic Priority 3 calls upon PICs to implement systems of marine spatial planning and management. "Develop and strengthen appropriate security and enforcement mechanisms and spatial planning systems that guide multiple uses for economic growth while maintaining ecosystem function and biodiversity integrity of coastal and ocean areas. These higher order management systems provide the fundamental basis for the use of spatial management tools in a nested fashion drawing from experiences in strict traditional closures, locally managed areas and large multiple use managed and protected areas."

A3.14 The final three Strategic Priorities are Liaising, Listening, Learning and Leading (4), Sustaining Action (5), and Adapting to a Rapidly Changing Environment (6). Each of these also provides guidance and commitments consistent with and supportive of establishing the CIMP.

A3.15 The announcement of the CIMP is arguably the most significant commitment made by a PIC in support of meeting the ambitious targets and objectives announced in the Pacific Oceanscape.

Appendix 4

Overview of Cook Islands law relevant to CIMP

A4.1 The **Territorial Sea and Exclusive Economic Zone Act 1977** makes provision with respect to the territorial sea of the Cook Islands; establishes an exclusive economic zone of the Cook Islands adjacent to the territorial sea, and also for the exploration and exploitation, and conservation and management, of the resources of the zone; and for matters connected with those purposes

A4.2 Section 8 provides that the exclusive economic zone of the Cook Islands comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea of the Cook Islands, having as their outer limits a line measured seaward from the baseline described in section 5 of the Act, every point of which line is distant 200 nautical miles from the nearest point of the baseline.

A4.3 The Act was initially administered by the Ministry of Economic Services and Natural Resources, but is now administered by MMR as a result of the **Territorial Sea and Exclusive Economic Zone (Amendment) Act 2011**.

A4.4 The **Territorial Sea and Exclusive Economic Zone (Amendment) Act 2012** established a contiguous zone adjacent to the 12nm Territorial Seas, which now enables the Cook Islands to exercise its' sovereign rights to make provisions for customs, immigration, fiscal and sanitary laws and regulations and extends its jurisdiction in regards to those out to 24 nautical miles.

A4.5 The **Marine Resources Act 2005** and associated regulations establish the administrative and regulatory regime for fisheries and aquaculture governance in the Cook Islands. This legislation has been under revision for some time and a Bill replacing it was provided to the consultant. This section first summarises the 2005 Act, and then summarises key elements of the revised provisions contained in the *Marine Resource Bill 2014*.

A4.6 The 2005 Act divided into ten parts:

- Part 1: Fisheries conservation, management and development
- Part 2: Fishing and related activities
- Part 3: Conservation measures
- Part 4: Licensing
- Part 5: Monitoring, control and surveillance
- Part 6: Jurisdiction and evidence
- Part 7: Sale, release and forfeiture of retained property
- Part 8: Miscellaneous
- Part 9: Regulations
- Part 10: General

A4.7 Section 2 provides various definitions; under the Act 'sustainable use' means conserving, using, enhancing, and developing marine resources to enable people to provide for their social, economic, and cultural wellbeing while –

- a) maintaining the potential of marine resources to meet the reasonably foreseeable needs of future generations; and
- b) avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment;

A4.8 Section 3 provides that the principal objective of the Act and the Ministry of Marine Resources is to provide for the sustainable use of the living and non-living marine resources for the benefit of the people of the Cook Islands; that the Ministry of Marine Resources has

the principal function of, and authority for the conservation, management, development of the living and non-living resources in the fishery waters; and that the Act prevails over all other law except the Constitution.

A4.9 Matters that must be taken into account by the Minister or Secretary when exercising powers and performing functions under the Act are stated in Section 4:

- a) environmental and information principles in relation to achieving the sustainable use of fisheries and the need to adopt measures to ensure the long term sustainability of the fish stocks –
 - i. decisions should be based on the best scientific evidence available and be designed to maintain or restore target stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors;
 - ii. the precautionary approach should be applied;
 - iii. impacts of fishing on non-target species and the marine environment should be minimised;
 - iv. biological diversity of the aquatic environment and habitat of particular significance for fisheries management should be protected;
- b) principles and measures for the exploration and exploitation of the non-living resources of the fishery waters, seabed and subsoil –
 - i. the orderly, safe and rational management of the non-living resources, including the efficient conduct of activities, and in accordance with the principles of conservation, the avoidance of unnecessary waste;
 - ii. measures to ensure effective protection for the aquatic environment from harmful effects which may arise from exploration or exploitation of non-living resources, including rules, regulations and procedures for, inter alia –
- c) the prevention, reduction and control of pollution and other hazards to the aquatic environment, and of interference with the ecological balance of the marine environment;
- d) the protection and conservation of the natural resources of the fishery waters and the prevention of damage to the flora and fauna of the aquatic environment;
- e) measures to ensure effective protection of human life.
- f) principles and measures for the development and management of aquaculture –
 - i. aquaculture development should be ecologically sustainable
 - ii. the impacts of aquaculture on aquatic ecosystems and other uses of aquatic resources should be assessed;
 - iii. the need to minimise pollution from aquaculture;
- g) social, cultural and equity principles –
 - i. the maintenance of traditional forms of sustainable fisheries management
 - ii. protection of the interests of artisanal fishers, subsistence fishers and local island communities, including ensuring their participation in the management of fisheries and of aquaculture; and;
 - iii. broad participation by Cook Islanders in activities related to the sustainable use of marine resources.

A4.10 Section 5 provides that the Secretary may prepare a report to the Minister recommending the approval of an exploratory fishery under defined circumstances.

A4.11 Designated fisheries may be declared under Section 6 where, having regard to scientific, social, economic, environmental and other relevant considerations, it is determined that the fishery –

- (a) is important to the national interest; and
- (b) requires management measures for ensuring sustainable use of the fishery resource.

A4.12 This requires an Order of the Queen's Representative in Executive Council. Section 6 empowers both the Secretary and local authorities to prepare a fishery management plan for each designated fishery within their jurisdiction. A plan includes various elements relating

to defining the area and the parameters for resource use, but Section 6 also includes a general authorization to 'make provision in relation to any other matter necessary for sustainable use of fishery resources'.

A4.13 Section 8 empowers a local authority to take measures for the conservation, management and development of any fishery of local interest or aquaculture within its area of authority in accordance with the principles and provisions of the Act, in addition to the measures in respect of designated fisheries. This requires either fisheries plans to be prepared in cooperation with the Ministry or by-laws to be drafted and approved by Cabinet.

A4.14 Under Section 9, the Minister may enter into access agreements and fisheries management agreements providing, inter alia, for fisheries access, related activities, cooperation in fisheries management, exploration or exploitation of non-living marine resources.

A4.15 Subsection 3 of Section 9 states that fishery allocations under access agreements shall:

- (a) not exceed a level consistent with the long-term conservation and sustainable use of fishery resources and the protection of fishing by Cook Islanders;
- (b) be consistent with any applicable fishery management plan; and
- (c) be made taking into account, inter alia, the following considerations as may be appropriate -
 - (i) past and present fishing patterns and practices;
 - (ii) submission of information for the conservation, management and development of fish stocks;
 - (iii) contributions to research in the fishery waters; and
 - (iv) whether such allocations would advance development of the fishing industry in the Cook Islands.

A4.16 Sections 10 to 18 of the Act provide detail regarding establishing and administering fishing rights under agreements, and fishery plans.

A4.17 Part 2 (Sections 19 to 23) contain the core offenses and penalties for illegal entry, unlicensed fishing, unauthorised fishing by Cook Islands vessels outside the country, and unauthorized use of vessels. Minimum penalties are fines of \$100,000 and maximum penalties are \$1,000,000.

A4.18 Part 3 Act (Section 24-34) contains a variety of conservation measures, including offenses and penalties for each:

- 24. Prohibited fishing methods
- 25. Introduction or removal of fish or marine resources into or from fishery waters
- 26. Prohibition of removal of fish from nets, traps, etc.
- 27. Protection of fish aggregating devices, floats, trays, etc
- 28. Use or possession of prohibited fishing gear
- 29. Driftnet Fishing Activities
- 30. Prohibition of trade in fish, fish products, or other marine resources
- 31. Commercial sale of endangered species
- 32. Export of fish, fish product or other marine resources
- 33. Application of laws of other States
- 34. Contamination of the fishery waters

A4.19 Part 4 provides for the issue of licenses, including those required for scientific research operations and transshipment activities.

A4.20 Part 5 establishes powers for monitoring, control and surveillance, including the appointment of authorised officers (section 45), powers of entry and search (section 46), power to question persons and require production of documents (section 47), power of arrest (section 48), power to give directions to master (section 49), power to use reasonable force and take copies of documents (section 50), powers of seizure (section 51), and

protection of authorised officer from liability (section 54). Sections 60 and 61 establishes vessel monitoring systems, while section 62 establishes the evidentiary validity of Automatic Location Communicators.

A4.21 Part 6 covers jurisdiction and evidentiary matters, including liability for loss, damage or costs incurred (section 66), and liability of Directors and Managers (section 74). Part 7 provides for the Sale, Release and forfeiture of retained property. Part 9 provides for the promulgation of Regulations under the Act.

A4.22 Regulations under the Act of relevance to CIMP include

- Marine Resources (Purse Seine Fishery) Regulations 2013
- Marine Resources (Large Pelagic Longline Fishery) Regulations 2012
- Marine Resources (Licensing) Regulations 2012.
- Marine Resources (Aitutaki and Manuae Bonefish Fishery) Regulations 2010
- Marine Resources (Shark Conservation) Regulations 2012

A4.23 The reviewer was also provided with a draft of the *Marine Resources Bill 2014*. It contains provisions that when enacted will expand and update the 2005 Act in various ways, including changes responding to recent developments in international fisheries treaty regimes.

A4.24 The most significant addition in the 2014 Bill in relation to establishing CIMP is Part 3, Marine Reserves and Parks. As these provisions, read in conjunction with the regulation-making power in section 118 of the Bill, may provide the legal basis for CIMP it is appropriate that they be reproduced here:

Part 3 - Marine Reserves and Parks

22 Declaration of areas

1. The Queens' Representative may, by Order in Executive Council, declare any area of the fishery waters to be a marine reserve or marine park where he considers that special management measures are necessary—
 - (a) to afford special protection to the flora and fauna of such areas:
 - (b) to protect and preserve the natural breeding and nursery grounds and habitats of aquatic life:
 - (c) to allow for the replenishment or restoration of aquatic life in areas where such life has been depleted:
 - (d) to sustain livelihoods which rely on aquatic living resources:
 - (e) to promote scientific study and research in respect of such areas; or
 - (f) to preserve and enhance the biodiversity and natural beauty of such areas.
2. The Queens' Representative may, by Order in Executive Council, declare zones within any declared marine reserve or marine park within which certain activities may be conducted or prohibited.
3. Any person who, in any marine reserve or marine park, without permission granted under subsection (4)—
 - (a) fishes, attempts to fish or conducts any related activities:
 - (b) takes or destroys any flora or fauna:
 - (c) dredges, extracts coral, sand or gravel, discharges or deposits waste or any other polluting matter, or in any way disturbs, alters or destroys the natural environment:
 - (d) constructs or erects any buildings or other structures on or over any land or waters within such a reserve or park; or
 - (e) does any other thing or takes action which is in violation of this law or any other law relating to marine reserves or marine parks:
 - (f) commits an offence and is liable on conviction to a fine not exceeding \$500,000.
4. The Minister, or any person authorized by him in writing, may give written permission to do any of the things prohibited under this section provided that in

so doing the authorization does not undermine the effective implementation of a fishery management plan for that reserve or park.

5. Where an activity that could have a detrimental impact on a marine reserve or marine park is planned within that marine reserve or marine park by any ministry or entity pursuant to any other Act or law, the ministry or entity under whose management that activity is planned shall require the written consent of the Minister, to be given or denied, after consultation with and consideration of, any recommendations made by an advisory committee established in respect of that reserve or park before commencing any activity in that marine reserve or marine park.

23 Advisory Committee—

- a. The Minister may—
 - i. establish an advisory committee for each marine reserve or marine park or any combination of reserves or parks;
 - ii. determine the terms of reference of any advisory committee established under paragraph (a);
 - iii. do any other thing or take any action necessary for the protection and preservation of a marine reserve marine park.
- b. Where the reserve or park no longer serves the purpose for which it was declared the Minister may, by Order published in the Gazette, declare that the reserve or park no longer has that status from the date stated in the order.
- c. Prior to making a declaration under this section, the Minister must hold such other public consultations with persons having an interest in the reserve, including users of the area.

119 Regulations

- 1) The Queen's Representative may, by Order in Executive Council, make such regulations as may be necessary to give effect to the provisions of this Act and for due administration thereof.
- 2) Without, limiting the generality of subsection (1), regulations made pursuant to this section may provide for all or any of the following—
 - i. conservation—
 1. prescribing measures for the conservation, management, development, licensing and regulation of fisheries or any particular fishery including the designation of any fishery and the provision of any fishery Plan:
 - ii. marine reserves and parks—
 1. for the general management of marine reserves or marine parks:
 2. setting fees for entrance to and activities in a marine reserve or marine park:
 3. providing for the development and adoption of management plans in respect of marine reserves or marine parks:
 4. providing for research permits and fees for issuance of such permits:
 5. providing for management plans for marine reserves or marine parks which shall include—
 - a. physical, biological, socio-economic and cultural aspects of the marine reserve or marine park:

- b. conservation and management objectives and management programmes:
- 6. providing for the setting up of advisory committees for particular fisheries or marine reserves or marine park:
- 7. rau'i - providing for the temporary closure of an area or areas, or species, in consultation with the Aronga Mana of the area concerned.

A4.25 Of all of the existing or proposed Cook Islands legislation the above provisions of the *Marine Resources Bill 2014* are the only ones designed to meet a purpose of that kind. They contain all of the essential legal powers and components required to establish CIMP, although reviewing the Bill in light of best-practice principles for protected area legislation reveals a few gaps and omissions. A counterpoint to that is the possible advantage conferred by Part 3's brevity and simplicity, and the capacity to reflect such principles in subsequent regulations.

A4.26 Subsections 21 (b) and (c) are particularly curious in that their content bears no relation to the section title and empowers the Minister to dissolve a marine park by order published in the Gazette following consultation with interested persons.

A4.27 The ***Environment Act 2003*** repealed the *Rarotonga Environment Act 1994-95* and replaced it with a substantially expanded and revised legal and administrative regime for the protection, conservation, and management of the environment.

A4.28 Section 4 provides for the Act's application, which includes the territorial sea and exclusive economic zone and the islands of Rarotonga, Atiu, Aitutaki and Mitiaro "but does not apply to any other Outer Island unless otherwise specified by the Queen's Representative by Order in Executive Council." In practice this means that the outer island governments are free to decide whether or not to 'opt in' to be covered by the national environmental legislation of the Cook Islands Government. The current situation is that the Act does not operate on most of the outer islands.

A4.29 Section 4 also provides that "(4) If any regulation or order made under this Act is inconsistent with an Island State Government bylaw, or a provision in a shared resource management agreement or management plan, the regulation or order shall prevail." This means that even on islands where the Act does apply, it is subject to island government enactments that may contradict or limit its provisions; the local law prevails in the case of inconsistency.

A4.30 Section 4 of the Act is important in considering CIMP for two reasons. The first is to note the substantial limitations in its application; it does not cover all the outer islands and is subject to local government laws. The second is to note that it does apply to the territorial sea and the EEZ.

A4.31 Part 1 creates Tu'anga Taporoporo, the National Environment Service as statutory corporation under the leadership of a Director tasked with implementing the Act. Section 9 provides NES with a broad range of functions:

- a) protect, conserve, and manage the environment to ensure the sustainable use of natural resources;
- b) protect, conserve, and manage wildlife, in particular protected species;
- c) protect, conserve and manage the environment in relation to Cook Islands waters;
- d) prevent, control and correct the pollution of air, water, and land;
- e) carry out investigations, research and monitoring relevant to the protection and conservation of the natural resources of the Cook Islands;

- f) protect, manage, and prevent damage to any beach, land, internal waters, inland waters, drain, building, market place and any area used or frequented by members of the public;
- g) monitor and evaluate activities which significantly affect the environment;
- h) provide secretarial and administrative services (including technical advice) to each Island Environment Authority, and, where requested by an Island Environment Authority, to any sub-committee appointed by the Island Environment Authority;
- i) monitor and report on the state of the environment of an island or any other part of the Cook Islands, at the request of the Minister, the Director, or the Island Environment Authority for the island concerned;
- j) recommend regulations to be made and advise the Government in relation to the making of regulations under this Act;
- k) enforce this Act and any regulations made under it;
- l) ensure environmentally safe disposal of toxic chemicals and wastes;
- m) recommend to the Minister the ratification of regional or institutional convention, treaties, protocols or agendas relating to the environment, and review progress of the implementation of ratified instruments;
- n) implement, coordinate and negotiate any projects provided under any regional or international conventions, treaties, protocols or agendas relating to the environment, which the Cook Islands has ratified or to which the Cook Islands has acceded or become a signatory;
- o) make recommendations and provide, advice to the Government in relation to any regional or international obligations arising from any regional or international conventions, treaties, protocols or agendas relating to the environment, which the Cook Islands has ratified, or to which the Cook Islands has acceded or become a signatory;
- p) provide, and assist in the provision of, training in the skills associated with performing any of the Service's functions;
- q) provide secretarial and administrative services (including technical advice) to the National Environment Council and the Forum;
- r) do anything incidental or conducive to the performance of any of the foregoing functions.

A4.32 Part 2 provides for the establishment, functions and procedures of Island Environment Authorities on the islands where the Act applies. These bodies are provided with substantial decision-making authority to determine consents for development and other matters under sections 36, 50, 51, 57, and 58.

A4.33 Part 3 provides for a National Environment Council. It is understood that this body has never convened. Previous reviews of the Act have recommended amendments that would reconstitute the Council in order to provide representation for every island (not only those covered by the Act).

A4.34 Part 4 makes provision for the appointment, empowerment and protection of environment officers.

A4.35 Part 5 sets out environmental impact assessment requirements procedures. In allocating authority to determine EIAs the part refers to 'permitting authorities', which may variously be NES for Rarotonga, Island Environment Authorities for other islands, or the National Environment Council 'in any other case' which would include the EEZ. Note that the Council has never convened.

A4.36 Part 6 is titled management plans and protected areas. It empowers NES, upon request of an Island Environment Council, to draft management plans for certain areas as listed in section 37. It is not clear whether the section 37 list includes marine areas; it would almost seem to have been drafted to intentionally exclude them and it certainly does not include the EEZ. It is the Island Environment Council that make final decisions regarding management plans.

A4.37 A comment is that due to the paucity of necessary detail that any fine levied under section 40 may not be enforceable. This is of little practical importance because no management plans have been developed under Part 6.

A4.38 Part 6 also includes a series of provisions creating a process by which Island Environment Councils may create protected areas with the assistance of NES. Part B of this review may assess these provisions in terms of their appropriateness (or otherwise) as a possible foundation for ra'ui or other forms of community conservation. It is noted that no conservation areas have been declared by applying the process of Part 6 of the Act.

A4.39 Instead, where outcomes of the kind foreseen by the drafters of Part 6 have been required NES has achieved these by using the regulation-making power provided in sections 70-71 of the Act. This is the case with the *Environment (Takuvaive Water Catchment) Regulations*, and the *Environment (Atiu and Takutea) Regulations 2008*, and the *Environment (Mitiaro) Regulations 2008*.

A4.40 Regulations are a more familiar legislative instrument than a management plan, they have a perception of greater legitimacy having been approved by Cabinet, and the processes guiding their preparation and their enforcement are well established within government.

A4.41 In the context of examining all possible legal avenues to establish the CIMP, sections 70, 71 and 72 of the Environment Act are very significant and for that reason are reproduced in full below:

70. Regulations –

(1) The Queen's Representative may from time to time by Order in Executive Council make such regulations as are contemplated by any provision of this Act or are necessary for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), regulations may be made for all or any of the following purposes:

(a) designating animals and plants as protected species for the purposes of this Act;

(b) providing for the protection, conservation, and management of wildlife, protected species, or both;

(c) regulating or prohibiting trade and commerce in wildlife, protected species, or both;

(d) regulating or prohibiting the pollution of air, water, or land, and the depositing, or dumping of litter, rubbish, or any substance of a dangerous, noxious, or offensive nature;

(e) regulating or prohibiting the exportation, importation, or transportation of hazardous wastes into or out of the Cook Islands, for the purpose of implementing any regional or international conventions, treaties, protocols, or agendas;

(f) controlling soil erosion and siltation, and regulating or prohibiting the taking of gravel, sand, soil, rock, coral or like materials;

(g) providing for the preservation, protection and conservation of trees and the prevention and control of the clearing, cutting, lopping, trimming, felling, burning, or removal of trees and other plants;

(h) establishing protected areas (which may include any protected areas notified under section 41) **and regulating or prohibiting activities within these protected areas;**

(i) prescribing procedures for the preparation of and giving effect to any management plan;

(j) prescribing forms required to be used for the purposes of this Act;

(k) prescribing offences against the regulations, and prescribing fines for such offences not exceeding not exceeding \$50,000 and, in the case of continuing offences, a fine not exceeding \$1000 for every day on which the offence continues;

- (l) providing for the taking of samples and their testing by laboratories;
- (m) prescribing procedures for entry, inspection, or search of premises, arrest of a person, and seizure or forfeiture of property, in the exercise of powers conferred by this Act;
- (n) regulating the operation of the Environment Protection Fund;
- (o) prescribing procedures for the registration of organisations under Part 12 of this Act;
- (p) prescribing procedures for making an application for a permit or consent under this Act;
- (q) prescribing guidelines restricting or otherwise regulating the issuance of permits and consents by permitting authorities;
- (r) prescribing fees for applications made under this Act, and the issue of permits and consents, and for the provision of advisory and other services;
- (s) prohibiting or regulating the importation or disposal of recyclable or non-recyclable products;
- (t) imposing further reporting obligations on the Service;
- (u) Providing for any matter incidental to or connected with any of the foregoing.

71. General provisions as to regulations –

- (1) Any regulation made under this Act may
 - (a) Apply generally throughout the Cook Islands or within a specified part of the Cook Islands;
 - (b) Apply generally or with respect to different classes of activities, places, or things;
 - (c) Apply generally or at any specified time of the year.
- (2) Regulations may confer power on an Environment Officer or a permitting authority to give, issue, serve, or make a direction, notice, order, or requirement, for the purposes of this Act.
- (3) Regulations may authorise a permitting authority to exempt any person, activity, place, or thing from any requirement of those regulations, if the permitting authority is satisfied that, in the circumstances, the imposition of the requirement on that person, activity, place, or thing, is not necessary.
- (4) Notwithstanding any other provision in this Act, no regulation may be made under this Act that applies to an island or any part of an island, except after consultation (to the extent reasonable under the circumstances) with the Island Environment Authority for the island concerned.
- (5) In this section, "thing" includes a species of plant or animal.

72. Adoption of Outer Island by-laws –

- (1) An Island State Government may refer to the Minister for approval a by-law made by it under the Island State Government Act 2003 relating to the protection or management of the environment.
- (2) If the Minister considers it appropriate the Minister may by notice in the Gazette approve that by-law.
- (3) A by-law approved by the Minister under this section shall be deemed to have the force of a regulation made under this Act.
- (4) Notwithstanding any provision of the Island State Government Act 2003 to the contrary, every person who commits an offence against a by-law approved by the Minister under this section shall be liable to a fine not exceeding \$50,000, and in the case of a continuing offence, to an additional fine not exceeding \$1,000 for every day on which the offence continues.

A4.42 Read together with sections 2 and 4, the above sections provide a very broad authority to develop sophisticated and enforceable regulations to create protected areas, including marine protected areas within the EEZ.

A4.43 Significant problems in taking this approach with respect to the CIMP are firstly that the 'permitting authority' under the Environment Act for matters beyond Rarotonga or an outer island is the National Environment Council. As currently constituted – a body that only meets when required to make a decision, only includes representatives from certain islands, and that is called upon and disbanded by the Director of NES – is inappropriate to be the central governing body of CIMP responsible for making decisions. Also, under the Act as currently drafted regulations of that kind could only be enforced by National Environment Officers who are employees of NES which has no marine enforcement capacity.

A4.44 Part 7 relates to the control of litter.

A4.45 Part 8 of the Act is titled Specific Areas of Concern and prohibits certain behavior such as removing material from the foreshore, polluting marine and freshwater or inappropriately disposing of toxic chemicals.

A4.46 Part 9 creates an Environment Fund. It is understood that the Fund was operational while a proportion of the airport tax was allocated towards it under section 6 of the *Departure Tax Act 2005*, but when this section was repealed by the *Departure Tax Act (Amendment) 2008*, the fund ceased to function.

A4.47 Part 10 is titled financial provisions and deal with the accounting and fiscal controls imposed on NES. Part 11 creates a Cook Islands Environment Forum to be convened by the Minister with 12 months of the Act coming into force and occasionally thereafter as a national stakeholder consultative and strategizing body. Part 12 deals with registration of non-government environment organisations and Part 13 has miscellaneous provisions including the regulation-making power outlined above and repeals of redundant legislation.

A4.48 The **Seabed Minerals Act 2009** was passed by the Parliament in 2009 and came into force in mid-2012. The aim of the Act is to establish a legal framework for the efficient management of seabed mineral extraction within the Cook Islands Exclusive Economic Zone. Regulations are required but are yet to be drafted to support the Act.

A4.49 The Act has 339 sections; it is unnecessary for the purposes of this review to provide a complete summary. The Act applies environmental protection standards and processes throughout the process of application, exploration and mining. The detail that comprises these standards and processes is however mainly left to regulations and associated documents such as license conditions, all of which are yet to be drafted and so are unavailable for review.

A4.50 Part 8 of the Act is titled Environmental Protection and commences by stating: "Nothing in this Act shall exempt a person from complying with any law concerning the protection of the environment of the Cook Islands". It proceeds to state that no person will receive a licence, permit or lease under the Act without first obtaining a permit under the Environment Act 2003. No exemptions are contemplated. The NES is currently developing standards and regulations to enable these processes to be put in place.

A4.51 The efficacy of these systems, which currently only exist in framework as the subsidiary instruments are yet to be developed, will not be known until they have been finalized and then applied in practice.

A4.52 The **Natural Heritage Trust Act 1999** creates the Cook Islands Natural Heritage Trust, the objects of which are to investigate, identify, research, analyse, study, classify, record, integrate and preserve scientific information and traditional knowledge of and

practices relating to flora and fauna; to make that information available to the public and Government.

A4.53 “Flora and fauna” is defined as all terrestrial and marine flora and fauna, whether exotic or native, which live in, inhabit, or migrate from time to time through, any part of the area which includes the islands, the territorial sea and the exclusive economic zone of the Cook Islands, and includes the natural environment, ecosystems and habitats on which those flora and fauna depend for their survival. “Territorial sea” and the “exclusive economic zone” have the meaning defined under the Territorial Sea and Exclusive Economic Zone Act 1977.

A4.54 The Trust is governed by a Board consisting of a chair appointed by the Minister, as well as the Director of NES and appointees variously selected by the Secretaries of Finance, Education, Agriculture and Marine. The Board The Trust may acquire and dispose of property, and receive and make grants for studies or investigations related to its objects.

A4.55 The activities of the Trust are consistent with and complementary to the CIMP.

A4.56 The **Prevention of Marine Pollution Act 1998** provides for the prevention of marine pollution, the dumping and transportation of other waste in Cook Islands Waters by vessels and to give effect to various international conventions on marine pollution and protection of the marine environment:

- (a) International Convention for the Prevention of Pollution from Ships, 1973; and the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL 73/78);
- (b) Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 (The London Dumping Convention);
- (c) Convention for the Protection of the natural Resources and Environment of the South Pacific Region 1986 (SPREP Convention), including the –
 - (i) Protocol for the Prevention by Pollution of the South Pacific Region by Dumping, 1986;
 - (ii) Protocol Concerning Co-operation in Combating Pollution Emergencies in the South Pacific Region; International Convention relating to Intervention on the High Seas in cases of Oil Pollution Casualties (1969); and the Protocol relating to Intervention on the High Seas in in cases of Pollution by Substances other than Oil, 1973;
- (d) International Convention relating to Intervention on the High Seas in in case of Oil Pollution Casualties (1969); and the Protocol relating to Intervention on the High Seas in in cases of Pollution by Substances other than Oil, 1973;
- (e) International Convention on Civil Liability for Oil Pollution Damage, 1969 and the 1976, 1984 and 1992 Protocols to the Civil Liability Convention (CLC 1969); and
- (f) International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1976,1984 and the 1992 Protocols to the Fund Convention (FUND 1971);
- (g) International Convention for the Safety of Life at sea 1974, (SOLAS 1974) and its Protocol of 1978;
- (h) International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, (STCW 1978) as amended in 1995, (STCW-95).

A4.57 The **Biosecurity Act 2008** revised and updated the systems of quarantine and biosecurity controls in the Cook Islands. Effective biosecurity is essential in protecting against the introduction and spread of invasive alien species. This is vital for successful implementation of the CIMP.

A4.58 The **Maritime Transport Act 2008** regulates shipping and related matters in Cook Islands. Section 6 lists the Act’s purposes, which are_(a) To provide for the maritime safety of

the Cook Islands and Cook Islands vessels; (b) To enable the implementation of Cook Islands' obligations under international maritime agreements; (c) To ensure that participants in the maritime transport system are responsible for their actions; and (d) To protect the marine environment.

A4.59 The Act contains 178 sections dealing with various aspects of the regulation of shipping and other maritime activity. In line with modern best-practice, obligations are placed upon both operators and administrators to apply standards ensuring that their actions and decisions are consistent with the protection of the marine environment.

A4.60 Part 12 of the Act is titled Making of Marine Protection Rules and Regulations and Taking of Other Measures to Protect Marine Environment and empowers the Minister to make enforceable marine protection rules in respect of vessels, or any installation, facility or marine operation used for any purpose associated with maritime transport.

A4.61 The Act, in providing a regulatory regime controlling and minimizing the impact of shipping on the marine environment of Cook Islands, is consistent with and complementary to the CIMP.

Appendix 5

Summary of guiding principles and generic elements for marine protected area legislation

A5.1 Over time many valuable lessons have been learned regarding the most effective and appropriate legal principles and mechanisms that may be applied in the creation and management of marine protected areas. This section summarizes guidance drawn from this experience that may be relevant and important for the legal foundation of the Cook Island Marine Park.

A5.2 The principal sources for this section are the *IUCN Guidelines for Protected Area Legislation* (2011) and the *IUCN Draft Guidelines for the Design and Management of Large Scale Marine Protected Areas* (2013).

Guiding principles for Marine Protected Area Legislation

1 - Management for conservation objectives

A5.3 IUCN defines a PA as ‘a clearly defined geographical space recognized, dedicated and managed, through legal and other effective means, to achieve the long term conservation of nature with associated ecosystem services and cultural values’.

A5.4 The priority goal of establishing a protected area is conserving nature. This is the fundamental justification for setting up MPAs and MPA systems. Also, legislation establishing MPAs should seek to ensure that management of an MPA is in accordance with the goals and objectives for which the site was originally designated. (IUCN GPAL, p25).

A5.5 The above is not intended to suggest that there may be no ancillary goals for establishing MPAs, such as benefits to food security, tourism or fisheries. Nor is it suggested that there should be no activities allowed within MPAs that are undertaken for purposes other than conservation. To the contrary, some MPAs includes areas or zones wherein extractive activities such as commercial, subsistence and recreational fishing may be legitimately undertaken, as envisaged in IUCN’s PA categories V and VI. What is meant is that for an MPA to be legitimately and genuinely a “protected area”, conserving biodiversity and ecosystems must be a primary component in the legal provisions announcing the MPA’s objective and guiding its ongoing management.

A5.6 Parties to the CBD use slightly different definitions of PA and MPA. Article 2 of the CBD defines a PA as ‘a geographically defined area that is designated or regulated and managed to achieve specific conservation objectives’. The CBD’s Ad Hoc Technical Expert Group on Marine and Coastal Protected Areas uses the following definition of an MPA:

[A]ny defined area within or adjacent to the marine environment, together with its overlying waters and associated flora, fauna and historical and cultural features, which has been reserved by legislation or other effective means, including custom, with the effect that its marine and/ or coastal biodiversity enjoys a higher level of protection [than its] surroundings.

2 - Perpetual integrity of the MPA

A5.7 Note that the IUCN definition of a PA states that an area should have secure conservation status over the long term, with ‘long term’ meaning the “protected area should be managed in perpetuity and not as a short-term or temporary management strategy”. This is a central criteria distinguishing whether or not an area is a protected area.

A5.8 ‘Perpetuity’ means forever, but in practical terms this can be understood to be for the long term with no definite horizon. Best-practice MPA legislation applies decision-making processes, incentives and management tools that promote the long-term security of a protected area designation. Obvious examples are requirements that MPAs can only be designated, altered or dissolved at the highest level of government decision-making.

A5.9 “Other generic elements of protected areas legislation help secure a decision to establish a protected area and maintain its status over the long term. These are related to universally accepted good governance principles that promote public participation, access to information, equity and justice for stakeholders in the decision-making process.” (IUCN GPAL p18).

3 - The precautionary approach and science-based decision making

A5.10 The precautionary principle, recognized in international law and policy since the 1970s, provides that where knowledge is limited and there is lack of certainty regarding the threat of a serious environmental harm, this uncertainty should not be used as an excuse for not taking action to avert that harm. The principle is increasingly being applied in legal frameworks as a basis to anticipate, avoid and mitigate threats to the natural environment. The precautionary principle is particularly important to include in marine protected area legislation, because MPA design and management often takes place in contexts of uncertainty and complexity, particularly about future global forces such as climate change and invasive alien species.

A5.11 A related principle is that of UNCLOS Art 61 (2) requiring coastal states, in exercising EEZ management and conservation responsibilities over living marine resources, to take into account the “best scientific evidence available”.

4 - System planning (the ecosystem approach, marine spatial planning, buffer zones and connectivity, integrated coastal management, reviewing and updating)

A5.12 Jurisdictions updating their MPA legislation are increasingly enacting laws creating *systems* of MPAs, rather than regarding each MPA as an isolated site unconnected (in a planning sense) to the other MPAs under management.

A5.13 “System planning is an organized way to carry out conservation planning for protected areas at the macro level. It is recognized as a key management principle for effective nature conservation. When system planning is applied to protected areas, it aims to maximize the desirable characteristics of a national protected areas system. System planning in relation to protected areas is about:

- a) defining the priority of protected areas as a worthwhile national concern;
- b) defining the relationships between different units and categories of protected areas, and between protected areas and other relevant categories of land or sea;
- c) taking a more strategic view of protected areas;
- d) defining roles of key players in relation to protected areas and the relationships between these players; this may include building support and a constituency for protected areas;
- e) identifying gaps in protected area coverage (including opportunities and needs for connectivity) and deficiencies in management; and
- f) identifying current and potential impacts—both those affecting protected areas from surrounding land or sea, and those emanating from protected areas which affect surrounding land or sea.” (IUCN GPAL p19).

A5.14 System planning assists in understanding the role of existing sites in fulfilling national biodiversity goals so that management objectives can reflect that role. It also aids in filling gaps in coverage in order to more fully represent the full range of biodiversity and other features of natural and cultural value in the country. Taking a system approach to planning is

consistent with new governance types in situations where MPAs may be situated in private or customary waters and managed for conservation by local communities, applying customary law or participating in some form of co-management arrangements.

A5.15 “While the concept of system planning started with terrestrial protected areas, there is now broad scientific consensus that a similar emphasis is needed with respect to MPAs. This is approached through the concepts of **marine spatial planning** and networks of MPAs. IUCN’s 2009 plan of action for MPAs focuses on marine ecosystem health, stressing that: *networks of MPAs are vital tools to support marine ecosystem health. Networks of MPAs, within single ecosystems but spanning entire seas and ocean realms such as the High Seas, are necessary to ensure that biological connections are maintained between interdependent MPAs* (Laffoley, 2008).” (IUCN GPAL p20).

A5.16 Importantly for the Cook Islands, conservation specialists recognize system planning as a critical step for protected areas to be as resilient as possible to projected climate change impacts; an important early step for climate change adaptation is to build a representative network of protected areas free from other stresses. Ideally, this would involve a gap analysis and planning to fill existing gaps in coverage to represent biodiversity values as fully as possible. Also in relation to climate adaptation, PA system planning helps in designing new sites with a view to their adaptability and resilience to future impacts, and ensuring that management is effective in reducing non-climate threats such as pests, invasive species and illegal fishing, which will weaken the ability of natural systems to adapt and adjust to climate change.

A5.17 Protected area system planning, marine spatial planning, and related concepts such as the ecosystem approach, integrated coastal management, or in a Pacific context, ridge-to-reef initiatives, are consistently endorsed in international and regional law and policy:

A5.18 The CBD requires countries, as far as possible and as appropriate, to “establish a system of protected areas or areas where special measures need to be taken to conserve biodiversity” (Art. 8(a)). CBD Parties have also adopted the Aichi Target of conserving or managing at least 10% of marine and coastal areas by 2020.

A5.19 The Rio+20 Ocean Governance Declaration (2012) requires countries to undertake ecosystem-based approaches for ensuring the conservation and sustainable use of marine biodiversity in the context of integrated ocean governance, including through marine spatial planning and networks of marine protected areas; the Declaration also endorses scaling up ecosystem-based management and integrated ocean and coastal management efforts, and the strengthening of institutions and decision-making processes for integrated ocean and coastal management, including through the enactment of ocean and coastal laws.

A5.20 The Pacific Oceanscape Framework, endorsed by all PICs in 2010, includes strong statements supporting a system planning approach:

Action 3a – PICTs implement integrated coastal resource management arrangements drawing on the strengths and traditions of community, district, provincial and national levels of government to achieve sustainable island life.

Action 3b – PICTs explore and build on marine spatial planning mechanisms for improved EEZ management to achieve economic development and environmental objectives. These higher order management systems provide the fundamental basis for the use of spatial management tools in a nested fashion drawing from experiences in strict traditional closures, locally managed areas and large multiple use managed and protected areas.

A5.21 Lastly in relation to marine protected area system planning, consideration needs to be given to whether in a Cook Island context any system plan should include all protected areas, both marine and terrestrial because, defined broadly, all land in Cook Islands is coastal.

A5.22 “There is high natural connectivity between marine, coastal and inland systems. This precludes the effective management of a marine area independent of its adjoining coastal and inland areas, including coastal estuaries, wetlands and rivers. MPAs may be positively or negatively affected by activities on land, particularly in the case of coastal or nearshore protected areas. Land-based sources of marine pollution represent a broadly shared threat to MPAs worldwide.” (IUCN GPAL p215).

5 – MPA management planning and PA categories

A5.23 While MPA system planning addresses the national or macro level, an associated best practice management principle is the need for all designated protected areas to have a management plan.

A5.24 “Such a plan guides actions and directs resources within the boundaries of a protected area, consistent with and in furtherance of its conservation objectives. Modern protected areas legislation, in response to best management practice and international policy and guidelines, includes the requirement for a protected area management plan to give managing authorities a clear legal mandate for allocating resources and for preparing the plan following a common framework.

A5.25 IUCN defines a management plan for a protected area as follows: *a document which sets out the management approach and goals, together with a framework for decision making, to apply in the protected area over a given period of time. Plans may be more or less prescriptive, depending upon the purpose for which they are to be used and the legal requirements to be met. The process of planning, the management objectives for the plan and the standards to apply will usually be established in legislation or otherwise set down for protected area planners* (Thomas and Middleton, 2003).” (IUCN GPAL p29).

A5.26 An approach linked to both marine protected area system and site management planning is applying protected area categories and zones within marine protected areas wherein different rules apply to access and resource use. “The categories provide a framework, from strict protection to multiple use, which can be applied to the entire protected areas system.” The IUCN PA categories, which have been endorsed for use for international reporting purposes, are reproduced in the box below. The IUCN categories are a useful starting point but it should be borne in mind that “experience suggests that a protected areas system is best served and conservation is most effective when the categories used, whatever the framework, reflect the full range of conservation objectives relevant for the country’s needs overall.” (IUCN GPAL p25).

The IUCN categories:

Category	Definition by management objectives
Category I a: Strict nature reserve	Strictly protected areas set aside to protect biodiversity and also possibly geological or landform features, where human visitation, use and impacts are strictly controlled and limited to ensure protection of conservation values. Such protected areas may serve as indispensable reference areas for scientific research and monitoring.
Category I b: Wilderness area	Protected areas are usually large unmodified or slightly modified areas, retaining their natural character and influence without permanent or significant human habitation, which are protected and managed so as to preserve their natural condition.
Category II: National park	Protected areas are large natural or near-natural areas, set aside to protect large-scale ecological processes along with the complement of species and ecosystems characteristic of the area, which also provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities.
Category III: Natural monument or feature	Protected areas are set aside to protect a specific natural monument, which can be a landform, sea mount, submarine cavern, geological feature such as a cave or even a living feature such as an ancient grove. They are generally quite small protected areas and often have high visitor value.
Category IV: Habitat/species management area	Protected areas aim to protect particular species or habitats, and management reflects this priority. Many category IV protected areas will need regular, active interventions to address the requirements of particular species or to maintain habitats, but this is not a requirement of the category.
Category V: Protected landscape/seascape	A protected area where the interaction of people and nature over time has produced an area of distinct character with significant ecological, biological, cultural and scenic value, and where safeguarding the integrity of this interaction is vital to protecting and sustaining the area and its associated nature conservation and other values.
Category VI: Protected area with sustainable use of natural resources	Protected areas that conserve ecosystems and habitats, together with associated cultural values and traditional natural resource management systems. They are generally large, with most of the area in a natural condition, where a proportion is under sustainable natural resource management and where low-level non-industrial use of natural resources compatible with nature conservation is seen as one of the main aims of the area.
<i>Source: Dudley, 2008, pp. 13–23.</i>	

6 - Public participation, access to information, social equity and justice

A5.27 The administrative processes established in modern MPA laws typically include mechanisms guaranteeing the public has a right to access information regarding MPAs, as well as opportunities to participate in deciding whether an MPA should be declared and the rules by which it will be managed.

A5.28 “As applied to protected areas, the principle of social equity and justice requires that stakeholders, particularly those holding or claiming rights over land, sea or resources, should be respected and engaged in protected area design, establishment and management, and should have legal recourse if their rights are violated. In addition, the principle requires the fair and equitable distribution of costs and benefits among the social groups and individuals involved in or affected by the establishment and management of formal protected areas.” (IUCN GPAL p46).

[this section may be revised or lengthened after the report of Part B is available]

7 - Integrating multiple forms of law and approaches to MPA management

A5.29 In the Cook Islands as in many other countries the various existing MPAs rely upon a combination of traditional and formal legal bases. The ra’ui are founded in Maori custom whereas Suwarow and some other MPAs arise from the laws and regulations of the Cook Islands Government. Private landowners or corporations can create PAs under voluntary covenants. Co-management regimes, wherein communities cooperate with government

agencies in managing MPAs, are also becoming common in many places including other PICs.

A5.30 Laws creating MPA systems can be drafted in a manner that recognizes all types of MPA. Depending on the detail in the law, recognition of this kind for private or community MPAs might simply be recognizing the area as part of the national system, or it may bring with it rights (e.g. to receive training or other assistance) and duties (e.g. to prepare and follow an MPA management plan).

[this section may be revised or lengthened after the report of Part B is available]

8 - Sustainable MPA financing

A5.31 Levels and potential sources of MPA funding will be relevant in considering the design of the law establishing the MPA or the MPA system. There is little point in enacting a law requiring government and other stakeholders to undertake actions, investigations, reporting etc. where deficits in financial, human and technical capacity render unfeasible the effective delivery of those things.

A5.32 The IUCN Draft Guidelines on the Design and Management of Large MPAs suggest the following 'creative approaches' to consider in sustaining financing of large MPAs:

- Consolidate the suite of financial resources that are available to the site within a 'portfolio' of investments that are managed by qualified financial managers/expertise and are continually diversified and grown;
- Develop financing partnerships with agencies and non-government organizations that allows for the sharing of costs of staff (shared between partner organizations), facilities (e.g., shared office space), and research platforms (e.g., marine laboratory; research vessel);
- Explore opportunities to develop public-private partnerships that will co-finance specific aspects of the site's operations (e.g., visitor's center), including the ecological services rendered from the site and commensurate economic value of such services; this may include wealthy individual donors ("benefactors") and private sector companies ("sponsors");
- Promote the large size, bold vision, and wide legislative scope of your site as an opportunity to attract private and non-traditional investment partners (e.g., crowd sourcing funding) into the financing of your site;
- Use threat assessment and strategic planning exercises as an opportunity to involve and invite partnership with potential investors.

A5.33 Potential sources of non-government funding may include licensing, use permit, and/or landing fees for both extractive (e.g., fishing, mining) and non-extractive (e.g., tourism revenues) uses; for example fees/taxes generated within the Great Barrier Reef Marine Park by commercial fishing operations outside of no-take areas.

A5.34 Sometimes MPA legislation creates a discrete fund to receive monies from all or specified sources for the purpose of MPA management. There are examples of specific revenue streams being created by MPA legislation, or related amendments, (e.g. an amount of airport departure tax per head, a percentage of fisheries license revenues, or seabed mineral royalties) to collect and distribute money to support MPA management.

9 - Generic elements of Marine Protected Area Legislation

A5.35 This section summarizes what the IUCN Guidelines for Protected Areas Legislation terms 'generic elements' for protected area legislation. They are not intended as prescriptive instructions or a model act. The development of every MPA law is a process requiring careful consideration and stakeholder dialogue in order to be responsive to social, cultural, economic and ecological circumstances, as well as government priorities for protected areas and biodiversity conservation, which vary substantially between countries.

A5.36 “In addition, each jurisdiction has its own legal traditions and practices, hierarchy of legal instruments, and rules for their use. For example, some countries have general enabling legislation in a principal law or act of parliament or the legislature for the national system of protected areas and this principal law authorizes specific sites to be designated by schedules or subsequent instruments in a form provided by the law. Other jurisdictions choose to enact self-contained legislation for individual sites. Still others use a combined approach, providing for national protected areas legislation overall, designating specific sites at the time of enactment or subsequently, with separate legal instruments for some protected areas with special features.

A5.37 It should be stressed that not all elements presented here may apply or be relevant in every country or jurisdiction. The intention of these protected areas legislation guidelines is to provide the legal drafter and protected area authorities with the full array of legal considerations. Subject to local needs and legal practice, legal drafters working with protected area authorities are best equipped to examine, select, adapt and apply those elements that are responsive to and feasible for their legislative needs.” (IUCN GPAL p107).

10 - Scope of the law and relation to other laws

A5.38 New MPA legislation may apply to an entire country, or to a distinct part of the country or jurisdiction - for example, where the law creates a single and discrete MPA.

A5.39 The MPA legislation should be harmonized with environmental and resource management legislation already in force; it should be clear how the MPA law relates to these legal frameworks. Other legislation may include an umbrella environmental protection law, or pollution control, environmental assessment, fisheries, mining. “Normally, protected areas legislation is to be applied in a manner consistent with other umbrella environmental legislation unless there is a conflict, uncertainty about specific applications, or outdated environmental legislation, in which case the protected areas legislation would prevail.” (IUCN GPAL p115)

11 - Policy and objectives

A5.40 National-level policy for biodiversity conservation is an important precursor and foundation for MPA legislation, providing guidance, authority and an enabling environment for enacting new laws or amending existing provisions. “A policy may be transformed into an overarching goal for the legislation, from which more specific objectives are defined.” (IUCN GPAL p116)

A5.41 Sources of policy may include National Sustainable Development Plans (or similar), strategic plans for the environment or marine sectors, the National Biodiversity Strategy and Action Plan, relevant international treaties, or (in some countries) constitutional rights and protections.

A5.42 Where there are proposals for MPA legislation that are substantially different, or more expansive and ambitious, than what is described in existing policy documents, there may be a need to precede the drafting of the law with a process of policy development.

A5.43 Ideally, MPA policy is supported, endorsed and championed at the highest levels of political decision-making, as well as being sufficiently detailed to provide an unequivocal mandate and a clear roadmap for designating and managing the MPA or MPA system. A well-drafted MPA policy document that does not enjoy interest or support outside a specific ministry or department of government is unlikely to result in new legislation being enacted. Equally, if the foundation for a new MPA law is limited to a broad commitment by a senior political leader, the development of the law may be delayed by confusion or disagreement over basic elements such as scope, objectives or which government agencies will be responsible for managing it.

A5.44 As noted above, the objectives of the MPA will likely be derived from policy, and they will be included as key provisions of the MPA law. The objectives will guide and influence the future implementation and interpretation of the law. The IUCN GPAL discusses and provides examples of protected area objectives at pages 119-123.

12 - Institutional considerations

A5.45 Institutional arrangements for MPA systems and sites varies greatly between countries, the differences reflecting the form of government and how it is organized, budget levels, roles and capacities of agencies with existing protected area responsibilities, community and private involvement in protected areas management, and local custom and practice. Regardless of the specific institutional arrangement decided upon, it is essential that the powers and duties it creates be clearly assigned to specific persons or legal entities. This is essential for establishing accountability.

A5.46 The IUCN GPAL lists the following examples of institutional structures supporting PAs:

- (a) strong central authority (governmental, statutory corporation or mixed) with delegation of staff and resources directly from headquarters on all matters;
- (b) central authority with overall power, and decentralized units for the management of specific sites, supervised from the centre;
- (c) single central authority for policy oversight and coordination, and strong decentralized and independently operating institutions with their own staff and institutional resources for specific regions or sites;
- (d) multi-agency authority (for example, an inter-agency commission or board) at the central or decentralized level with overall decision-making powers for system-wide planning, management and coordination, with delegation of responsibilities for management of individual sites to other governmental or non-governmental entities;
- (e) any of the options above for centralized oversight, with individual site management including local government authorities, local community entities and indigenous or traditional peoples managing or co-managing their own conserved areas that have been recognized as part of the protected areas system;
- (f) any of the options above for centralized oversight, with individual site management including private landowners managing or co-managing their own conserved areas that have been recognized as part of the protected areas system.

A5.47 A modern MPA system law will identify the institution (or, in some cases, establish an entity) responsible for the overall system. Even if management and decision-making functions are shared or coordinated among a range of agencies or entities, a 'lead agency' is identified to take primary responsibility for administering the MPA law. At site level, if different entities or authorities manage different sites, the legislation clearly provides for the designation of such authorities and specifies powers and responsibilities involved.

A5.48 In practice, the selection of which existing or newly-created agency will be the lead agency for the MPA or MPA system is critically important for many reasons. In the current context it is noted that the selection of a lead agency will almost certainly influence very significant choices regarding the design of the law. If the marine resources department is selected to lead implementation of the MPA system, it is very unlikely that the law be developed as amendments to an existing Act administered by another department, and quite likely that the law for the MPA system be enacted as amendments to the primary marine resources legislation. Equally, if a new entity is to be created to administer the MPA law it is likely new discrete legislation will be developed.

A5.49 The IUCN GPAL provides the following checklist for MPA laws regarding provisions creating institutional arrangements:

- a) The legislation must identify, designate or create an agency that is responsible for its implementation. This institution should be clearly defined, and should possess the necessary capacity and professional competence.
- b) Legislation may designate the head or director of this agency to exercise powers and carry out duties. This will normally be the chief executive officer in the case of a statutory corporation. This position should be directly answerable to the minister in charge.
- c) The functions, duties and powers of the lead agency or statutory corporation should be indicated with sufficient clarity so that the agency can be held accountable.
- d) Performance and accountability of the agency and its head should be measured in terms of effectiveness in achieving the objectives of the MPA legislation.
- e) In most cases, it is inappropriate to select a government entity or statutory body whose primary responsibilities (for example, industry or commerce) do not directly complement the primary objectives and purposes of protected areas.

A5.50 Some countries choose to establish independent statutory corporations (or authorities, trusts etc.) since they are regarded to have greater autonomy from government in decision-making, and may have advantages in raising funds and partnering with other entities. A relatively independent status may attract more direct participation from communities, business groups, NGOs and volunteer associations than might be possible or appropriate with a government agency. The chief executive of a statutory authority may report to a governing board (as with the Cook Islands Natural Heritage Trust) or directly to a minister of government (as with Cook Islands Seabed Minerals Authority).

A5.51 A related institutional issue is the creation or recognition in the MPA law of consultative, advisory or governing bodies at either the system or the site level. These may have various objectives including providing technical advice, coordinating activities or programs across ministries or with non-government partners, providing a forum for interested stakeholders, or making decisions about the management of a single site or the whole system. The membership of any potential boards or committees should reflect their scope and purpose, and the method of selecting members will normally follow established protocols in each jurisdiction.

A5.52 Finally in relation to institutional arrangements, the MPA law may require different ministries, departments or agencies of government coordinating and cooperating to achieve objectives such as marine spatial planning, environmental assessment or surveillance and enforcement.

13 - Functions, Powers and Duties

A5.53 MPA legislation will typically set out the main functions, duties and powers of the agency managing the system overall (whether a government ministry or statutory corporation), and also where applicable the functions, duties and powers of designated site management authorities.

A5.54 The IUCN GPAL identifies the following as typical functions, powers and duties allocated to agencies in MPA laws:

Commonly recognized powers and duties of the protected areas authority with overall responsibility for implementing protected areas legislation include the following:

- a) Prepare, review and update as required the protected areas system plan;
- b) Recommend new sites or amended sites to be designated, based on scientific analysis and consistent with the protected areas system plan;

- c) Review, advise on and approve site management plans, subject to ministerial consent;
- d) Promote expansion or inclusion of new sites through donation, trade or other authorized means;
- e) Implement relevant obligations under international and regional conventions, and participate in related international and regional forums in furtherance of the legislation;
- f) Pursue cooperation and consultation at the technical level on all relevant matters affecting or affected by protected areas;
- g) Negotiate and enter into co-management agreements with other government agencies, public or private entities, communities, indigenous peoples, NGOs or individuals (conclusion of such agreements may require ministerial approval);
- h) Identify and propose recognition of indigenous peoples' conserved areas, local community conserved areas and PPAs as part of the protected areas system where the areas meet the legal requirements, based on scientific analysis and negotiation of a conservation agreement with the entities concerned (ministerial approval may be required);
- i) Undertake fund-raising, and administer trust funds;
- j) Set up sub-committees and other formal and informal arrangements to help carry out responsibilities under the legislation;
- k) Enter into contractual arrangements;
- l) Make investments in public infrastructure and other facilities, and services and concessions;
- m) Provide technical advice and assistance to other public authorities and the private sector;
- n) Delegate powers and assign duties.

Additional powers and duties of the overall authority or site management entity, as applicable, commonly include the following:

- a) Prepare, implement and regularly update the management plan for the site;
- b) Manage the site consistent with the management plan;
- c) Ensure transparency, public access to information, and meaningful participation of stakeholders and the public in decision-making;
- d) Undertake public education and outreach to build public support and encourage participation;
- e) Undertake or authorize scientific research, monitoring and adaptive management as necessary to fulfill the conservation objectives of the system or site, as applicable;
- f) Coordinate activities with other public bodies, professional groups, scientific institutions, NGOs and local communities, as relevant;
- g) Make expenditures and enter into contracts for the care, supervision, maintenance and protection of the protected area, as appropriate, and for specific services and concessions;
- h) Employ agents and staff;
- i) Prepare regular reports to the government and the public, including 'state of the protected areas' reports;
- j) Prepare and maintain budgets and best practice accounting systems, and prepare annual financial reports for the system or site, as appropriate.

14 - Site-level management options

A5.54 (a) Much flexibility is possible in establishing site-level management options across a protected area management system.

These may be undertaken by various government agencies at either national or local level, they may be a form of co-management (cooperation between government and non-

government institutions) or may be founded in customary institutions or undertaken by private landowners.

Part B of the legal review discusses the potential site-level management options for CIMP in detail, with specific context for Cook Island laws, traditions and stakeholders.

15 - System planning

A5.55 The option of taking a MPA system planning approach is outlined and discussed in the previous section. IUCN GPAL (pp138-140) presents the elements of MPA system planning to be considered when preparing legislation.

16 - Other elements of MPA legislation

A5.56 These may include provisions:

- defining categories or zones that will be subject to different legal requirements and managed to achieve specific conservation objectives;
- establishing procedures for declaring, recognizing or altering protected areas;
- setting out requirements for site-level planning;
- identifying what activities are allowed prohibited or regulated in the various zones within the MPA or MPA system, as well as provisions identifying when environmental impact assessments must be undertaken to avoid harm to the MPA;
- establishing powers and processes of compliance and enforcement;
- of miscellaneous kinds relating to transition from the previous to the new law, repeal or amendment of existing laws.

A5.57 All of the issues discussed in this part of the report are discussed in greater detail in Parts I – III of the IUCN GPAL.

Appendix 6

Overview of relevant laws from selected jurisdictions

Phoenix Island Protected Area, Kiribati

6.1 In February 2008, the Government of Kiribati promulgated the *Phoenix Islands Protected Area Regulations 2008*, thereby creating in law the Phoenix Islands Protected Area (PIPA), what was at that time the largest marine protected area in the world.

6.2 By creating the institutions of PIPA in the manner that it has the Kiribati Government is experimenting with new models of financing MPAs in developing island and coastal states. In cooperation with external partners Conservation International and the New England Aquarium, the three partners are seeking to create a mechanism by which conservation activities in the PIPA may be funded and the Government will be compensated for fishing revenue lost through reduction of fishing effort in PIPA. The parties have jointly established a trust fund to receive donations from those who wish to support the efforts of the Government in preserving PIPA. The hope is that sufficient money will be available to fund both the conservation activities and the reduction in the fishing effort.

6.3 Four instruments provide the legislative foundation of PIPA:

Republic of Kiribati Environment Act 1999 as amended by Republic of Kiribati Environment (Amendment) Act 2007

Phoenix Island Protected Area Regulations 2008

Phoenix Island Protected Area Trust Act 2009

Phoenix Island Protected Area Management Plan 2010-2014

6.4 Included in the substantial 2007 revision of Kiribati's **Environment Act** was broadening the objectives to include protecting and conserving the environment and promoting the conservation of biological diversity (section 3) and the addition of provisions that establish a framework for the establishment of protected areas, both marine and terrestrial, in Kiribati. (Part V Conservation, Division 2 Protected Areas, sections 42-48):

Section 42 Purpose –purpose of division is to ‘establish a list of areas to be protected for conservation purposes’.

Section 43 Prescribing PAs – by regulations made the Minister upon advice of Cabinet under the power given by section 86 of the Act. Minister must first consult stakeholders and seek to make an agreement with anyone holding interests in the land or waters to be declared a PA. Only the legislature can revoke a PA (by declaration).

Section 44 Proprietary interest or rights over PA – if no agreement is reached with persons holding proprietary rights in the area, a subsequent prescription of the PA and the management plan does not apply to the exercise of those rights.

Section 45 Management of PAs – to be undertaken by Principal Environment Officer (in practice, officials of the Environment Department) according to six principles focused on conservation of biodiversity, public participation and education.

Section 46 Management committees – the Minister may establish committees to assist in the management of one or more PAs. Very broad discretion on number of committees, membership size and composition, etc. Purpose of committees to develop draft management plans, to guide the management of the PA and to advise the Minister on relevant matters.

Section 47 Management plans – made by Minister following public consultation and Cabinet advice. Sets out detail of activities allowed, regulated or prohibited and the measures taken in regulating activities. May include collection of fees. May include offenses punishable with fines of up to \$100,000 or 5 years imprisonment.

Section 48 World Heritage – special provisions setting out procedures if an area is to be proposed for listing as a World Heritage Site.

6.5 The Act does not list or name any specific PAs; it instead establishes a process by which PAs may be prescribed. The language of the division allows the Minister broad discretion in the methods and timeframes of various matters, such as public consultation. All prescriptive detail is devolved to regulations and management plans. This includes compliance matters – offenses created in regulations may carry a 10 year prison term or fines of up to \$200,000.

6.6 The Act, despite being a framework for the creation of multiple PAs, does not require or envisage managing Kiribati's PAs as a system. At least in legal terms, each PA in Kiribati is managed in complete isolation to the others. The Act also expressly states that PAs may be prescribed temporarily, which is contrary to the principle of perpetual management.

Phoenix Island Protected Area Regulations 2008

6.7 These regulations made under the Environment Act establish the Phoenix Island Protected Area (PIPA).

R5 – defines the precise boundaries of PIPA by listing a series of latitudinal and longitudinal coordinates.

R6 – creates a PIPA management committee consisting of 3 environment officers and representatives of the fisheries, tourism, Phoenix Island, finance, foreign affairs and commerce ministries, as well as the Office of Attorney General, the Police and the Atoll Research Centre of USP. The committee is responsible for drafting a management plan, resolving inter-departmental differences in relation to PIPA, advising the Minister and monitoring the management of PIPA.

R8 – provides detail regarding what is to be covered in management plan.

R11 – provides that access licenses held by companies from distant water fishing nations will not be affected the PIPA and will remain valid and unaffected by PIPA until otherwise decided by Cabinet.

R12 – requires a report to be prepared every 5 years on the state of PIPA environment.

Phoenix Island Protected Area Trust Act 2009

6.8 The Act gives the Phoenix Islands Protected Area Conservation Trust a legal identity under the laws of Kiribati. It is important to note that this Act does not make provision for how the PIPA will be managed – that is a matter for the PIPA management plan. The Board of the Trust will not make any decisions about the content of the management plan (which

remains the sovereign responsibility of the Kiribati Government), it simply determines how best the Trust can support the implementation of the plan.

6.9 Part I of the Act provides for a number of preliminary matters, including definitions. Of special note is the definition of the expression ‘special majority vote’ in section 3. Under the Act, the special position of the Government, Conservation International (CI) and the New England Aquarium and (NEAq) as the founder members of the Trust is preserved by having certain decisions require the unanimous support of all three parties.

6.10 In Part II, Section 5 restricts the Trust to charitable, educational and scientific purposes, while sections 6 and 7 set out the Trust’s primary and secondary activities. The primary activity is to support: the administration of the Trust; management of the PIPA; and the limitation of exploitation of the PIPA’s resources (through payment of compensation for lost revenue referred to above, under what the Act terms a “Conservation Contract” s6 made between the Trust and the Government). Section 6 of the Act sets out the ‘primary activity’ of the Trust and is copied below in full:

6 (1) The primary activity of the Trust (the ‘primary activity’) shall be to utilise the assets of the Trust to provide support for the following—

- (a) administration and operation of the Trust;
- (b) management of the Phoenix Islands Protected Area; and
- (c) ensuring that exploitation of the resources of the Phoenix Islands Protected Area remains limited or prohibited.

(2) The Trust may provide the Government with reasonable compensation for loss of revenue occasioned by measures to limit or prohibit exploitation of the resources of the Phoenix Islands Protected Area, to the extent agreed to between the Trust and the Government from time to time pursuant to the terms of the Conservation Contract.

6.11 Where funds permit, the Trust’s assets can also be used to support conservation activities under section 7.

6.12 Part III provides for:

- o the composition of the Trust’s Board of Directors (section 10);
- o the Directors’ term of office (section 11);
- o the role of the Chairman, Vice-Chairman and Treasurer (section 12);
- o the functions and responsibilities of the Executive Director (section 13);
- o the Board’s powers and duties (section 15);
- o the duty of care owed by each of the Directors to the Trust (section 16);
- o limited liability for Directors and officers of the Trust, together with (in certain circumstances) the founder members (section 17);
- o conflicts of interest (section 18); and
- o removal and remuneration of Directors (sections 19 and 20).

6.13 Part IV deals with some of the formalities of the finances of the Trust. Any payment out of the Trust’s assets must be authorized by the Board (section 21(3)). Section 22 sets out from where the revenues of the Trust might come, but also allows the Board to reject an offer of funds where acceptance of those funds would be contrary to the best interests of the Trust. The assets of the Trust do not in any way form part of the government funds, and there are no restrictions on the ability of the Trust to transfer funds into and out of Kiribati (section 23). Sections 24 and 25 deal with the annual budget of the Trust and the requirement to keep accounts and have them audited, respectively.

6.14 Part V provides for a number of miscellaneous matters. Section 26 requires the Trust and the Government to negotiate the Conservation Contract as soon as possible after the

approval of the management plan for the PIPA. It is under the Conservation Contract that payments to Government are to be made to offset reductions in fisheries revenue. At the time of writing no conservation contract was in place.

6.16 Section 27 provides for Kiribati to be the legal domicile of the Trust. Section 28 exempts the Trust from payment of income tax, customs duty and other similar taxes. Section 29 makes provision for the possible dissolution of the Trust.

6.17 Section 30 limits the future ability of the legislature to unilaterally repeal or amend the Act. This is in recognition of the fact that the Trust is a partnership between the Government, CI and NEAq. The Board will have the right to be heard on the matter of amendment or repeal but, once heard, cannot further influence the matter.

Phoenix Island Protected Area Management Plan 2010-2014

6.18 The PIPA Management Plan is the instrument that provides most of the substantive detail, and sets out most of the rules, regarding PIPA. It is a document that serves as a plan and guideline for managers of PIPA, as well as presenting detailed information about PIPA to all interested readers. It is also a legal instrument that can create offenses with maximum penalties of up to 5 years imprisonment or \$100,000 fines, although it is possible that drafting errors and omissions have rendered that aspect of the plan unenforceable.

6.19 It is set out as follows – after a foreword and introduction there are sections describing PIPA's:

- geographical and ecological features, environmental values;
- institutional, political and treaty-related context;
- preparatory planning;
- historic and current human uses;
- management issues and challenges; and
- vision, mission, guiding principles and management objectives.

6.20 Thereafter is presented a detailed Strategic Action Plan (SAP), with the following sub-headings:

SAP 1. PIPA Core Management:

Decision making, Administration, Core Management and Resourcing

- o SAP 1.1 Government, Minister and Cabinet
- o SAP 1.2 PIPA Management Committee
- o SAP 1.3 PIPA Managerial Operation
- o SAP 1.4 PIPA Regulations, Licenses and Permits and Penalties
- o SAP 1.5 PIPA Zonation
- o SAP 1.6 PIPA Surveillance and Enforcement
- o SAP1.7 PIPA World Heritage Listing
- o SAP 1.8 PIPA Partnerships, Transboundary & International Collaboration
- o SAP 1.9 PIPA Information Management, Education and Outreach
- o SAP 1.10 PIPA Science and Research
- o SAP 1.11 PIPA Tourism
- o SAP 1.12 PIPA Kanton Atoll – Sustainable Resource Plan
- o SAP 1.13 PIPA Monitoring and Evaluation
- o SAP 1.14 PIPA Sustainable Financing, Resourcing and Business Planning
- o SAP 1.15 PIPA Annual Operational Work Plan & Report

SAP 2. PIPA 'Issues to Results'

- SAP 2.1 PIPA Atoll& Reef Islands Restoration & Biosecurity
- SAP 2.2 PIPA Coral Reefs and Coastal Management
- SAP 2.3 PIPA Endangered and Threatened Species
- SAP 2.4 PIPA Offshore Fisheries

- SAP 2.5 PIPA Cultural and Historical Heritage
- SAP 2.6 PIPA Seamount & Deep Sea Conservation
- SAP 2.7 PIPA Climate Change

SAP 3. State of PIPA Report 2014

6.21 Four levels of protection (zones) are incorporated into the PIPA Management Plan:

1. No-Take Zones – total ban of all extractive activities, and strict control of all activities to ensure no impact to marine and terrestrial species or habitats. This is the strictest level of protection and all activities must be explicitly assessed and permitted by PIPA-MC.
2. Restricted Use – sustainable and subsistence use of resources are allowed in this zone, allowing some “take” of specified allowable species, and construction/habitat alteration that has the purpose of enhancing the management and use of PIPA, but is assessed to have non-significant impacts on species and habitats. Currently, this designation applies solely to Kanton Island, and all activities are managed under a Kanton Sustainable Use Plan (SAP 1.12). Marine and Terrestrial. Permits to be assessed and provided by PIPA-MC.
3. Fisheries Exclusion zone – commercial extraction by purse seines is prohibited, but longlines are allowed. Based on Fisheries Regulation, this applies to a belt from 12-60 nm around an atoll. In PIPA, this designation applies solely to Kanton Island. Marine. Permits to be assessed and provided by the Ministry of Fisheries and Resource Development.
4. Ocean buffer zone – The remainder of PIPA excluding zones 1, 2 and 3 above. Fishing activities are allowed under permits as per the current rules and regulations governing fishing in Kiribati. All other activities in the sea or on/under the seafloor must be assessed and permitted by the PIPA-MC. All activities in this zone should be commensurate with the objectives of PIPA.

6.22 See also: “The Reverse Fishing License Mechanism for Kiribati's Phoenix Islands Protected Area: An Experiment in MPA Financing”
(<http://depts.washington.edu/mpanews/MPA133.htm> - PIPA)

Great Barrier Reef Marine Park, Australia

6.23 The Great Barrier Reef Marine Park (GBRMP) is a large MPA in north-eastern Australia. It is a multiple-use zoned area totaling around 345,000 km²: (strict nature reserve 865 km², national park 114,715 km², habitat/species management area 15,040 km² and protected area with sustainable use of natural resources 213,780 km²). In GBRMP conservation of the area is undertaken alongside a range of other activities including fishing, ports and shipping, recreation, defense operations, tourism, research and indigenous traditional resource use. In the process of defining locations for allowable activities, zoning plays a significant role in the achievement of environmental, social and economic objectives.

6.24 Great Barrier Reef Marine Park legislation

Great Barrier Reef Marine Park Act 1975 is the primary Act in respect to the Great Barrier Reef Marine Park.

Great Barrier Reef Marine Park Regulations 1983 are the primary Regulations in force under the *Great Barrier Reef Marine Park Act 1975*.

Great Barrier Reef Marine Park (Aquaculture) Regulations 2000 regulate the discharge of waste from aquaculture operations outside the Marine Park which may affect animals and plants within the Marine Park.

Great Barrier Reef Marine Park (Environmental Management Charge–Excise) Act 1993 and *Great Barrier Reef Marine Park (Environmental Management Charge–General) Act 1999* govern operation of the environmental management charge.

Great Barrier Reef Marine Park Zoning Plan 2003 is the primary planning instrument for the conservation and management of the Marine Park.

Cairns Area Plan of Management 1998, Whitsundays Plan of Management 1998, Hinchinbrook Plan of Management 2004 and Shoalwater Bay (Dugong) Plan of Management 1997 establish more detailed management arrangements for specific areas of the Marine Park.

6.25 The GBRMP is established by the **Great Barrier Reef Marine Park Act 1975**, which also creates the Great Barrier Marine Park Authority to manage GBRMP.

6.26 The Act is divided into 13 parts and one schedule. Part I deals with preliminary matters including defining the main object of the Act, which is "to provide for the long-term protection and conservation of the environment, biodiversity and heritage values of the Great Barrier Reef Region".

6.27 Other objects of the Act include

- Sustainable use of GBRMP for the purpose of public enjoyment and appreciation;
- Recreational, economic and cultural activities;
- Meeting international obligations with respect to environmental protection;
- Protection of designated World Heritage sites;
- Encouraging community and stakeholder participation in the protection and management of GBRMP; and
- Meeting Australia's international obligations under the World Heritage Convention.

6.28 The Act seeks to achieve its objects by

- providing for the establishment, control, care and development of GBRMP;
- establishing the Great Barrier Reef Marine Park Authority;
- providing for zoning plans and plans of management;
- regulating, including by a system of permissions, use of GBRMP in ways consistent with ecosystem-based management and the principles of ecologically sustainable use;

- facilitating partnership with traditional owners in management of marine resources; and
- facilitating a collaborative approach to management of the Great Barrier Reef World Heritage area with the Queensland government.

6.29 Certain definitions are pivotal to the manner in which the Act and the Great Barrier Reef Marine Park Regulations are implemented. Two of these are 'ecologically sustainable use' (Section 3AA) and 'principles of ecologically sustainable use' (Section 3AB). Section 7A of the Act requires the GBRPM Authority to perform its functions having regard to principles of ecologically sustainable use, meaning

- (a) decision-making processes should effectively integrate both long-term and short-term environmental, economic, social and equitable considerations;
- (b) the precautionary principle;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

6.30 The Act defines the precautionary principle as "the principle that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage". Ecosystem-based management is defined as "an integrated approach to managing an ecosystem and matters affecting that ecosystem, with the main object being to maintain ecological processes, biodiversity and functioning biological communities".

6.31 Parts II and III of the Act establish and provide the functions and powers of the GBRMP Authority. It is created to be an incorporated statutory authority having perpetual succession and the capacity to sue and be sued, comprised of a full-time Chairperson and between 2 and 4 part-time members. This structure provides a degree of independence from government, but Section 7(2) states that the Authority must act in accordance with Ministerial directions provided they are not inconsistent with the Act. Appointments are made for up to five years and members are eligible for reappointment.

6.32 Important functions of the Authority include

- making recommendations to the Minister with respect to the care and development of GBRMP;
- carrying out research (individually or collaboratively);
- preparing the GBRMP management and zoning plans;
- providing information and advice to the Minister in relation to the Intergovernmental Agreement between the Commonwealth and Queensland governments; and
- granting financial assistance from the Commonwealth Government to the Queensland Government in respect of GBRMP issues.

6.33 Under Section 40, the Authority is a statutory body for the purposes of the *Commonwealth Public Services Act 1999*, empowered to appoint staff, including inspectors who may exercise powers under both the GBRMP Act as well as under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

6.34 The GBRMP Authority website provides information about the corporate structure of the Authority as well as the laws, plans and policies its is responsible for administering, see:

<http://www.gbrmpa.gov.au/about-us>
<http://www.gbrmpa.gov.au/zoning-permits-and-plans/legislation-regulations-and-policies>
<http://www.gbrmpa.gov.au/zoning-permits-and-plans/plans-of-management>

6.35 The GBRMP is established by Section 30 (Division 1 of Part V) and Section 31 sets out the process by which the Governor General may by proclamation include areas of the Great Barrier Reef Region to be within the GBRMP.

6.36 Division 2 of Part V of the Act creates the system of zoning plans and procedures. As soon as practicable after an area is declared to be a part of GBRMP under Section 30, the Authority must prepare a zoning plan, designating each zone within it. Section 32C requires a notice of intention to prepare a zoning plan and consideration of any comments made by the public with respect to the notice before preparing a zoning plan. Detailed provisions for preparing zoning plans by the Authority are outlined in Section 34, which requires the plans address socioeconomic and environmental objectives. Accordingly the process of developing zoning plans includes assessments of related socio-economic and environmental effects.

6.37 The GBRMP Authority website provides information about zoning, including a range of maps indicating zone boundaries throughout the region, and detailed information about what activities are allowed or prohibited within specific areas, see:

<http://www.gbrmpa.gov.au/zoning-permits-and-plans>

6.38 Section 35A lists issues the Authority must consider when preparing zoning plans for the Minister's approval and presentation to both Houses of the Parliament as required by Section 38 of the *Commonwealth Legislative Instruments Act 2003*. When in force zoning plans are binding and play a central role in determining how the Authority performs its duties.

6.39 Division 3 of Part V places a general duty upon users of GBRMP to take all reasonable steps to prevent or minimise harm to the marine environment in the region. The Act defines "harm" to include direct and indirect harm resulting in adverse effects on GBRMP, and provides guidance in determining reasonable steps for prevention and minimisation of harm.

6.40 Part VAA details various offences and sets penalties for each, which may be up to a maximum of three years' imprisonment or 2,000 penalty units or both for an aggravated offence and a civil penalty for an aggravated contravention of relevant law of up to 5,000 penalty units for an individual and up to 50,000 penalty units for a body corporate. Division 6 makes provides that some offenses are subject to collective and vicarious liability, and Division 7 creates a range of aggravated offenses.

6.41 Part VA empowers the Authority to collect the environmental management charges imposed under the *Great Barrier Reef Marine Park (Environmental Management Charge-General) Act 1993* and the *Great Barrier Reef Marine Park (Environmental Management Charge-Excise) Act 1993*. Included are many detailed provisions dealing with the manner in which the charges are collected, penalties for late payments, rights of review and appeal for aggrieved parties, record-keeping and enforcement powers of the Authority relating to the charge-collection function.

6.42 Part VB relates to management plans, detailing their possible scope, objectives and process of development and approval. Section 39X provides:

The Authority may prepare plans of management for the following:

- (a) one or more areas of the Marine Park;
- (b) one or more species within the Marine Park or within an area or areas of the Marine Park;
- (c) one or more ecological communities within the Marine Park or within an area or areas of the Marine Park.

6.43 Part VI deals with important administrative matters relating to the Authority's power to hire staff, appoint inspectors and delegate functions. Finance and reporting requirements are provided in Part VII which establishes a special account for the purposes of the

Commonwealth's Financial Management and Accountability Act 1997 for the management, protection and maintenance of the GBRMP. Annual reports are prepared each year and an 'Outlook Report' is to be published every five years. Links to the most recent Annual and Outlook Reports are provided below:

<http://www.gbrmpa.gov.au/about-us/corporate-information/annual-report>
<http://www.gbrmpa.gov.au/outlook-for-the-reef/great-barrier-reef-outlook-report>

6.44 Part VIIA addresses compulsory pilotage of regulated ships within a specified compulsory pilotage area, including exemptions and powers of enforcement.

6.45 Part VIII deals with enforcement, including powers of monitoring and monitoring directions, enforceable undertakings and directions, emergency directions, and creates various offenses and civil penalties for failing to comply with directions and undertakings. Also included are provisions for injunctions, remediation orders and powers for the Minister or Authority to publicize convictions.

Total Marine Sanctuary Proposal and Protected Areas Network, Palau

Total Marine Sanctuary Proposal

6.46 Palau is another Pacific island country that has recently made announced the likely creation of a large marine protected area, or 'total marine sanctuary' (TMS) in the words of Palau President Tommy Remengesau who noted in a statement to the UN General Assembly in September 2013; "We have recently committed ourselves to pursue Palau's most ambitious commitment to date, to establish the world's first comprehensive marine sanctuary that will close Palau's EEZ to commercial fishing."

6.47 It is understood that a 'study group' is examining options for how to establish Palau's TMS, and also strategies to offset the consequent loss of fishing license revenue. Palau's Minister of Natural Resources, Environment, and Tourism Umiich Sengebau was reported in 2013 to say the TMS study group is exploring all possible options for offsetting that revenue loss, including a reverse fishing license mechanism like PIPA's (in Kiribati, described above).

6.48 Palau is not as reliant upon tuna revenues as its neighbours because Palauan waters are not as tuna-rich as other nations in the region. Palau has in recent years focused on building other revenue sources, particularly marketing itself to foreign eco-tourists and SCUBA divers. There are also suggestions that Palau is hoping to sell its quota of fishing days to the more tuna-rich PNA members thereby avoiding any revenue loss. The following was published in Islands Business in July 2013:

6.49 "Compared to revenues Palau is producing from its tourism industry, Remengesau called fisheries money "negligible. It's a drop in the bucket." Because Palau is on the fringe of the Parties to the Nauru Agreement (PNA) fishing area where 70 percent of the region's skipjack tuna is caught, most commercial fishing is concentrated to the south and east of Palau. Palau is not as dependent on fisheries revenue as are other PNA members, making it easier for Remengesau to take this step. Under the PNA arrangement, Palau is allotted about 500 fishing days a year, out of approximately 50,000 annually. At the current minimum sales price of US\$5,000 per day, Palau's potential PNA day sales translate to US\$2.5 million. "There really is not much tuna fishing in our EEZ," Remengesau said. "We can sell our fishing days to augment other (PNA members)."

6.50 "This way, Palau can have its cake and eat it too. Even without fishing in Palau waters, it can generate fisheries revenue by selling its fishing days to other PNA members, which it has done successfully in the past. The business community will be concerned about revenue and job loss if fewer fishing vessels visit Koror for fuel, supplies and crew changes. But Palau has already established a name for itself in the conservation world by

effectively implementing marine “protected area networks” at the village level around Palau and by banning shark finning in its 200-mile EEZ.”

6.51 At the time of writing the TMS has not been officially declared and detailed information regarding the deliberations of the Palau TMS study group was not available for this review.

Palau Protected Areas Network

6.52 Some decades ago Palau’s municipalities (or states, as they are now called. Palau has 21, 000 residents and 16 states) drew upon traditional practices in managing local marine resources at community-level and commenced declaring and managing local marine protected areas. In 2011, 43 of these community-based protected areas had been established.

6.53 In 2003 the Palau National Government decided to support the conservation efforts of the state governments by enacting the *Protected Areas Network Act*. The following is an excerpt from the findings that accompany the law:

“The Olbiil Era Kelulau (Palau National Legislature) finds that Palau is in critical need of a nationwide system to support the states’ efforts in protecting these natural resources. The crucial first step is to identify representative high biodiversity areas and unique marine and terrestrial sites for priority treatment as parts of a nationally recognized network of protected areas. This legislation, the Protected Areas Network Act, will encourage and support the states in the designation of new protected areas. Until now states have designated protected areas but there has been no system by which the national government recognized these areas or assisted the states in identifying, designating and maintaining these valuable resources. A nationwide approach is necessary to ensure that examples of the full range of biodiversity are preserved in protected areas across Palau.

“The Protected Areas Act will better enable the national government to assist the states in several ways. This will include technical assistance to those states that choose to designate areas of unique biodiversity and significant habitats for protection by facilitating access to grant monies and programs for which the individual states are not ordinarily eligible . . . The national system will also facilitate cooperation among the states where areas of high biodiversity and unique habitats cross state boundaries.”

6.54 The law supporting Palau’s Protected Area Network is now Chapter 34 of Title 24 of the Palau National Code, originally enacted by RPPL 6-39 in 2003 and amended by RPPL 7-32 in 2007.

6.55 Subchapter 1 of the Act essentially creates the PAN, defining key terms, requiring the development of protected area categories and management plans for both the whole system and for each site. Much of the detail is left to the PAN Regulations, the most recent iteration of which was promulgated 11 April 2007. The Act does set out the powers and duties of both the national and state governments in relations to PAN. States or sites are not coerced by the law into joining the network; rather they may voluntarily choose to seek to have their site or sites accepted into the PAN with the incentive being a share of funding and other forms of assistance from the National Government. Their applications will be considered according to criteria that are set out in the Regulations:

- 1) Ecological criteria, such as biodiversity, critical habitats, integrity/intactness, buffering; and
- 2) Resilience criteria, resistant communities, bleaching resistant communities,

- representative habitats, viability, water quality, functional group representation; and
- 3) Economic criteria, such as extractive, non-extractive, eco-system services value; and
 - 4) Social criteria, such as subsistence resource usage, cultural, historical, recreation, aesthetics, research, education; and
 - 5) Threats, such as invasive species, existing human impacts, potential development impacts, pathogens; and
 - 6) Feasibility, such as whether the area is an established protected area, has local support, has management capacity, funding, monitoring, enforcement, and partnership; and
 - 7) Biogeographic significance, such as local, national, regional, and global significance.

6.56 The Act requires the establishment of a PAN Management Committee and a PAN Technical Committee, and the Regulations add a PAN Steering Committee. The Management Committee includes representatives of the relevant Ministers, representatives from each State with a PAN site, a representative from each of the Council of Traditional Chiefs, Governors' Association and the Public Lands Authority, as well as two citizens. Many or all of the PAN sites have finalised management plans as required by the law, but it seems no system-wide PAN management plan has yet been developed.

6.57 The final section of subchapter 1 provided for the collection of a "green fee" of US\$15 from each visitor departing Palau. The money is required by law to be kept separate from general revenue and to be used to support the PAN. The

6.58 Subchapter 2 of title 34 creates the Protected Areas Network Fund (PANF) as an independent trust to receive and manage the green fee money, as well as other funds received in support of PAN. PANF has a board of nine directors and much of the detail of the subchapter focuses on the appointment, meetings and procedures of the board. In essence however, the role of PANF is to receive, responsibly manage, and disburse money with the object of supporting the PAN.

New Caledonia Large Marine Protected Area Proposal (in box below)

New Caledonian Coral Sea MPA

By Anne-Claire Goarant, Office of Regional Cooperation and External Relations, Government of New Caledonia.

<http://openchannels.org/news/mpa-news/cook-islands-and-new-caledonia-declare-intent-designate-large-multi-use-mpas>

On the timeframe:

The 1.4-million km² marine protected area in New Caledonia will be officially designated after a thorough, participative marine spatial planning analysis. Bearing in mind the research carried out since 1993 within the framework of the multidisciplinary ZoNéCo programme (aimed at assessing both living and non-living resources of New Caledonia's EEZ and lagoons; www.zoneco.nc) and the amount of scientific data that has been acquired, this work should take two to three years.

We expect the New Caledonian Coral Sea MPA to be designated by 2015.

On what activities will be allowed:

The marine protected area will include zones with different management objectives and adapted legal frameworks. The purpose is to have a multiple-use MPA where each zone is managed in a sustainable way through a management plan. This MPA will be a tool for the New Caledonian government to ensure the long-term conservation and development of its EEZ over the next 15 years and beyond.

New Caledonia aims to sustainably manage its marine natural resources. This means that the future MPA will apply protection status based on several factors, including:

- Conservation targets (such as for species, habitats, and oceanographic processes) and examples of ecologically and biologically significant areas;
- Existing and potential human activities that promote best practices, including recreational and commercial fishing as well as mining and exploration; and
- Connectivity between different zones.

Allowed fishing activity, for example, will need to be able to ensure the sustainability of the targeted fish stock.

Deep sea mining is currently in an exploratory phase in New Caledonia, although no active exploitation is planned in the near future. The marine spatial planning process will detect where the potential areas and stakes are and how to manage these areas, including potentially inside the MPA. This will be a way to strengthen the existing mining code in New Caledonia, which does not currently govern marine mining activities. The work being done by the Secretariat of the Pacific Community, funded by the EU under the European Development Fund, will help address the issues related to deep sea mining in the South Pacific.

On enforcement of such a large area:

The New Caledonian Coral Sea MPA will be monitored and enforced with the strong support of the French Navy, as well as other existing or potential partnerships in the Pacific region.

The establishment of a large MPA in New Caledonia with clear legal rules may be a first step toward building a multilateral commitment and partnership for MPA enforcement across the Coral Sea and South Pacific region.

Appendix 7

Terms of Reference for legal review

ANNEX 1: TERMS OF REFERENCE (“the Services”) (clause 2.1)

General Background

In the context of the Convention on Biological Diversity Programme of Work on Protected Areas state parties have committed themselves to establish an effectively managed, representative, global system of marine protected areas covering 10% of all marine ecological regions, comprising both multiple use areas and strictly protected areas. Based on the Pacific Islands Regional Ocean Policy (PIROP) the Pacific Island Forum Leaders have endorsed a Pacific Oceanscape Framework, under which countries aim for closer coordination and collaboration on ocean conservation and management.

On 7 September 2012, Prime Minister Henry Puna of the Cook Islands announced the designation of a Marine Park across roughly half its exclusive economic zone, covering one million square kilometres as their commitment to the Pacific Oceanscape. A national Steering Committee has been established under the Prime Minister’s office to coordinate and oversee the development of the design and establishment of the park including the zoning and management plan.

To ensure the success of Cook Islands Marine Park (CIMP), it needs to be embedded in a strong policy and legislative framework, while valuing, recognising and incorporating the traditional Maori laws of the Cook Islands. Therefore an international and a local consultant will be hired to undertake a legislative review, working in close coordination and in tandem together. This review will be done under collaboration between IUCN Oceania (funded by Global Blue) based in Suva, Fiji, and the Te Ipukarea Society (funded by Oceans 5) based in Rarotonga, Cook Islands.

Part A. Legal analysis of Cook Island laws, regulations and policies (led by IUCN)

The Cook Islands government and partners require an expert to lead a legal analysis of the relevant legal, policy and institutional framework in order to provide recommendations and legal options for the establishment of the marine park and a zoning and management plan.

This work should be carried out by a regional consultant in consultation with key national legal experts (e.g. Crown Law, National Environment Services, Ministry of Marine Resources), as well as external experts in IUCN’s Commission on Environmental Law (CEL) and the World Commission on Protected Areas (WCPA). The findings of this work should provide guidance to the CIMP Steering Committee on the legal, policy and institutional framework that will underpin the full legal establishment of the CIMP and support its long term management.

Funding for this work is provided by Global Blue, a financial services company headquartered in Switzerland through a project grant agreement to IUCN. This project supports and is in line with a Memorandum of Understanding (MOU) between IUCN, regional partners South Pacific Regional Environment Program (SPREP) and Conservation International (CI), and the Government of the Cook Islands through the office of the Prime Minister. This contract contributes to Objective 2 in the proposal to Global Blue, and Section 2.1 in Annex 1 of the abovementioned MOU relating to the “Marine Park Legal Analysis.”

Objective: Undertake a legal analysis of the issues and options for the legal designation, establishment, design and management of the Cook Islands Marine Park.

Scope of work:

Under this objective, the regional consultant will:

- i) Review all existing or proposed legislation, policies and institutional arrangements in Cook Islands relating to marine resource management and protected areas;
- ii) Analyse and assess these legislation, policies and institutions in relation to legally constituting the CIMP consistent with the vision for the Cook Islands Marine Park;
- iii) Take into consideration Cook Island Maori culture and traditional management approaches, for the successful establishment of the marine park, undertaken by a local consultant as detailed in Part B below;
- iv) Establish linkages between national legal experts and external legal experts in IUCN's CEL and/or WCPA; and
- v) Obtain feedback from the Cook Islands Marine Park Steering Committee and parties to the MOU on the legal review and issues and options for the CIMP's establishment.

Deliverables

The contractor will undertake the following:

- a. Undertake a review and submit a Draft Report on the legal, policy and institutional options and recommendations for the legal designation and design of Cook Islands marine park, based on:
 - Existing national legislation and policies;
 - Newly drafted and currently reviewed legislation and policies;
 - Appropriate legal framework examples from protected areas in the region; and
 - The IUCN Guidelines for Protected Areas legislation and other relevant literature.
- b. In close coordination with the local consultant, incorporate the results and findings of Part B, into a single report.
- c. In coordination with the local consultant for Part B, present at a national workshop the legal and policy options for the declaration and management of a CIMP, outlining the results of the analysis in the report produced under Part A, and obtain the feedback and comments of the CIMP Steering Committee and other relevant stakeholders.
- d. Incorporate comments from the national workshop and the Cook Islands Steering Committee, and finalise the report with its recommendations and submit to IUCN and TIS.

PART B: Review of Maori laws in Cook Islands (led by TIS)

Objective: Undertake a review of traditional management systems including *ra'ui* and *atinga* and identify options for integrating these within the Cook Islands Marine Park framework.

Scope of work:

Under this objective, the consultant will:

- v) Review existing Cook Island Maori culture and traditional management approaches, for the successful establishment of the marine park;
- vi) Consult with the House of Ariki and Koutu Nui in Rarotonga, as well as a selection of the outer island traditional leaders;
- vii) Consult with key people involved in the re-establishment of *ra'ui* on Rarotonga in 1998 and again in 2000 to determine lessons learnt regarding the use of a traditional marine resource management practice/customary law in modern society; and
- viii) Obtain feedback from the Cook Islands Marine Park Steering Committee and options for strengthening Maori laws.

Deliverables

The contractor will undertake the following:

- a) Undertake a review on traditional management systems including *ra'ui* and *atinga* and identify options for integrating these into the establishment, design and management of the Cook Islands Marine Park.
- b) In consultation with the regional consultant for Part A, produce a report in a format for inclusion into a single report.
- c) In coordination with the regional consultant for Part A, present at a national workshop the findings of the review, outlining the results of the analysis in the report produced under Part B, and obtain the feedback and comments of the CIMP Steering Committee and other relevant stakeholders.
- d) Support the regional consultant to incorporate comments from the national workshop and the Cook Islands Steering Committee, and finalise the report with its recommendations and submit to IUCN and TIS.

Timeline

This work will be completed within the period 1 October 2013 and 31 March 2014.

Appendix 8

List of meetings

Legal Reviewers – Justin Rose (Part A), Janet Maki (Part B)

Rarotonga Meeting Dates - 29 October 2013 – 1 November 2013

Meetings

Elizabeth Wright-Koteka (Chief of Staff), Office of the Prime Minister and Chairperson of the Cook Islands Marine Park Steering Committee

Kelvin Passfield (Director) Teina MacKenzie (Sea Bed Minerals) Jacqui Evans (Marine Park Project Manager), Te Ipukarea Society

Cheryl King (Crown Counsel), Crown Law Office

Mathilda Miria-Tairea (Legal Advisor), Ministry of Marine Resources

Joseph Brider (Deputy Director) Elizabeth Munro, National Environment Service

Alex Herman (Legal Advisor), Seabed Minerals Office

Metua Vaiimene (Director Destination Development), Cook Islands Tourism Corporation

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