

# TUVALU

# **REVIEW OF NATURAL RESOURCE AND ENVIRONMENT RELATED LEGISLATION**



Prepared by Secretariat of the Pacific Regional Environment Programme (SPREP) and EDO NSW

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# INTRODUCTORY NOTE

The following review, prepared jointly by the Secretariat of the Pacific Regional Environmental Programme (SPREP) and the Environmental Defenders Office Ltd (EDO NSW), updates and builds on the reviews conducted in the early 2000s under the International Waters Project.

The review offers a brief overview of environmental legislation in force in each Pacific Island country identified and is current as of January 2018.

A number of sources were referenced for this update, including:

- Prior reviews prepared by SPREP;
- Pacific Islands Legal Information Institute Paclii;
- ECOLEX an information service on environmental law, operated jointly by FAO, IUCN and UNEP; and
- Government websites.

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This review is for information purposes only. It is not intended to be a complete source of information on the matters it deals with. Individuals and organisations should consult a local lawyer for legal advice on specific environmental matters.

If you have any feedback in relation to this review, please forward your comments to: registry@sprep.org.







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# TABLE OF KEY ENVIRONMENTAL LEGISLATION

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# CONSTITUTIONAL AND ADMINISTRATIVE STRUCTURE

# 1.1 **The Constitution of Tuvalu**

The *Constitution* is the Supreme Law in Tuvalu, which was in effect from 1 October 1986. This law provides the basis for law-making in Tuvalu, sets the limits of Tuvalu's jurisdiction and has many other provisions which enable the management of the environment by the responsible Minister and officers of the Public Service.

There are no specific references in Tuvalu's Constitution to the conservation of resources or sound environmental or resource management. The rights of future generations, however, are acknowledged in the *Principles of the Constitution* as follows:

"The rights of the people of Tuvalu, both present and future, to a full, free and happy life, and to moral, spiritual, personal and material welfare is affirmed as one given to them by God".

## **1.2 Local Government**

Tuvalu has integrated the need to have a governmental administrative structure in all its Islands with the need to respect and conciliate the customs and traditions of each Island. Responsibility for the management of the environment is spread right across the levels of government.

#### Falekaupule Act 1997

This Act provides for the establishment of Falekaupule<sup>1</sup> and Kaupule<sup>2</sup> for each of the nine islands that compose Tuvalu: Funafuti atoll, Nanumaga atoll, Nanumea, Niutao and Niulakita atoll, Nui atoll, Nukufetau, atoll, Nukulaelae atoll and Vaitupu atoll. The purpose of the Act is to provide for making the Falekaupule and Kaupule of each island of Tuvalu the local government structure.

The Falekaupule is the traditional assembly in each island of Tuvalu which is composed in accordance with the traditional local customs and usages of each island. The executive arm of the assembly is the Kaupule which is composed of six elected members. Provisions for the election of the Kaupule are included in the Act.

Part V Prescribes the functions of Falekaupule and Kaupule, including provisions for:

- Prevention of crime;
- Powers of public officers;
- Power to enforce functions;
- Expenses in respect of transferred functions; and
- Powers in emergency.
- Schedule 3 Prescribes functions of the Falekaupule that must be performed in conjunction with any other authority empowered to implement the Act. Many of the functions and powers of Falekaupule exercised through their Kaupule and officers relate to environmental management matters, the main areas being:
  - agriculture, crops and forestry management;
  - livestock and fisheries management;

<sup>&</sup>lt;sup>1</sup> **Falekaupule** is the traditional assembly in each island of Tuvalu which, is composed with the Aganu of each island – **Aganu** means the traditional local customs and usages of an island.

<sup>&</sup>lt;sup>2</sup> **Kaupule:** The Kaupule on each island shall be the executive arm of the Falekaupule and shall in the Falekaupule area perform all the functions conferred on the Falekaupule.

- building and town or village planning; and
- prevention and control of land erosion.
- Section 53 In fulfilling its mandate, the Kaupules may make bye-laws in relation to their functions.
- Section 122 The Act requires that each Falekaupule prepare a Local Development Plan which will set out programmes and priorities for social and economic developments for that area.
   Section 129 The Minister may, after consultation with each Falekaupule, make regulations applying to all Falekaupule areas or to a particular Falekaupule area for the better carrying into effect of the provisions of the Act.

# 1.3 Laws and Law Making Powers

#### Laws of Tuvalu Act 1987

The purpose of this Act is to declare the sources of law of Tuvalu. Section 4 defines the hierarchy of the laws and declares the *Constitution* as the supreme law. The other laws of Tuvalu are:

- Legislation;
- Customary law;
- The common law of Tuvalu; and
- Every applied law.

Customary law comprises the customs and usages existing from time to time of Tuvalu natives. Customary law shall have effect as law in Tuvalu except to the extent that it is inconsistent with an Act or applied law, and subsidiary legislation made under them.

#### The preamble of the Constitution affirms that:

"The happiness and welfare of the people of Tuvalu, both present and future, depend very largely on the maintenance of Tuvaluan values, culture and tradition, including the vitality and the sense of identity of island communities and attitudes of co-operation, self-help and unity within and amongst those communities... [and affirms that] the people of Tuvalu recognise that in a changing world, and with changing needs, these principles and values, and the manner and form of their expression (especially in legal and administrative matters), will gradually change, and the Constitution not only must recognise their fundamental importance to the life of Tuvalu but also must not unnecessarily hamper their expression and their development".

#### Interpretation and General Provisions Act 1988

Passed in 1988, this Act has the purpose of consolidating and amending the law relating to the construction, application, interpretation and operation of written laws. It contains provisions related to the interpretation of all laws, and in relation to the making of regulations under Acts. These matters are important if any newly enacted environment law is to rely on regulations to give it full effect.

Key provisions include the following:

Section 25 Every law shall be published by exhibition at the Government buildings, and in due course in the Gazette. A notice of the coming into effect of any law shall be given by radio broadcast and a local paper before its commencement, or as soon as possible after commencement.

- Section 40 Subsidiary legislation has the same force and effect and is binding and is construed for all purposes as if it has been contained in the Act under which it is made, and that any act done under subsidiary legislation is deemed to have been done under the relevant Act.
- Section 41 Subsidiary legislation may constitute offences and prescribe penalties.

# ENVIRONMENTAL PLANNING AND ASSESSMENT

## 2.1 National Environmental Law

#### **Environment Protection Act 2008**

This Act passed in 2008 is the most comprehensive law that makes express provision concerning the responsibility for managing the environment. Some of the areas that the Act regulates are:

- the conduct of environment impact assessments;
- the regulation and control of pollution and wastes;
- all matters concerning the implementation of international environment related conventions;
- the protection of the biodiversity; and
- responses to climate change.

The Act has a wide range of objectives that include the following:

- coordinate the role of government in relation to environmental protection and sustainable development;
- facilitate the compliance and implementation of obligations under any regional and international agreements or conventions;
- provide a mechanism for the development of environmental policy and law;
- prevent, control, monitor and respond to pollution;
- reduce the production of wastes, and at the same time, promoting the environmentally sound management and disposal of all wastes; and
- facilitate the assessment and regulation of environmental impacts of certain activities.

Key provisions of the Act include:

- Sections 5 Vests administrative responsibilities with the Minister, who is responsible for the proper administration of the Act.
- Section 7 Sets out responsibilities of the Director of Environment, which includes proper administration and implementation of the Act as delegated from the Minister, subject to the direction of the Permanent Secretary of the Ministry.
- Section 11 Confers powers to environmental officers in order to facilitate the fulfilment of their functions.
- Section 14 Establishes a National Environment Forum and Council.
- Section 16 Enables a Kaupule to establish Island Environment Committees.

#### **Environment Protection (Environment Impact Assessment) Regulations 2014**

The *Environment Protection (Environmental Impact Assessment) Regulations 2014* regulate the environmental impact assessment process to be applied in Tuvalu, detailing the forms of assessment, administrative responsibilities, the application process for development, and the establishment of an environmental task force for environmental assessment.

# 2.2 Land Legislation and Planning

#### Native Lands Act 1956

The purpose of this Act is to make comprehensive provisions in relation to native land and the registration of title to native lands.

#### Foreshore and Land Reclamation Act 1969

This is an Act to declare ownership of the foreshore and to regulate reclamation projects, defined as the "construction of causeways, bridges, viaducts, piers, docks, quays, wharves, embankments, sea-walls, landing-places and other structures".

#### Crown Acquisition of Lands Act 1954

This Act makes provision for the acquisition of lands by the Crown for public purposes. Lands may be acquired under this Act for any public purpose, which is defined broadly and can include environment protection and the conservation of the natural resources of Tuvalu.

#### **Neglected Lands Act 1959**

This law provides for the purchase of neglected lands and regulates the sale of such lands to impoverished native peoples (the expression used in the 1959 Act is "indigent natives"). This law seeks to ensure the effective utilisation of Tuvalu's limited land resources.

#### Land Planning

While there is a broad and developed legislation that provides for land ownership and land acquisition, there is no specific legislation regulating land and development planning. The functions of maintaining and managing the land areas are partially devolved to the Falekaupule through the *Falekaupule Act 1997*.

The *Falekaupule Act* provides under schedule 3 that the functions of the Falekaupule are:

- related to land: prevent and control erosion of land by the sea or other cause; and
- related to public utilities: to make, alter, divert and maintain roads, streets, parking areas, paths, culverts, causeways, bridges, drains and water-courses, but also to regulate through establishment and management of bye-laws to regulate recreation grounds, open spaces and parks.

# **BIODIVERSITY CONSERVATION**

#### 3.1 **Protection of Biodiversity and Reserves**

While there are a number of laws that relate to biodiversity in Tuvalu, legislation that covers this area is quite heterogeneous with some being outdated. As a consequence, current laws do not comprehensively provide for the conservation of biodiversity.

#### Wildlife Conservation Act 1975

This Act's main objective is providing for the conservation of wildlife. The wildlife protection provisions in this Act focus on the protection of species.

Substantive provisions of the Act include:

- Section 3 The Minister can declare any bird or other animal (other than a fish) to be fully protected or partially protected (protected just during specifically declared seasons) for the purposes of this Act. The bird or animal can be protected either in a closed area (wildlife sanctuary) or throughout Tuvalu.
- Section 8 The Minister may declare wildlife sanctuaries for the purposes of the Act. No person may enter these areas without a valid licence.
- Sections 5-6 Prohibitions apply to prevent the hunting, killing or capturing of any bird or other animal (other than a fish) or searching for, taking or wilfully destroying, breaking or damaging the eggs or nest of any bird or other animal except in accordance with an appropriate licences.
- Section 10 Any person who contravenes the Act is liable to a fine of \$200 and to imprisonment for 6 months. A contravention of this Act shall be a cognizable offence for the purposes of the *Criminal Procedure Code Act*.

## **Closed Districts Act 1936**

This Act provides for the declaration of 'closed districts'. The Minister may, by notice, declare any islands, island or part of an island to be a closed district. This may include declaration for conservation purposes.

#### **Conservation Areas Act 1999**

The main purpose of this Act is to make provisions for the declaration and management of conservation areas. The Act defines a conservation area as inclusive of marine areas within the territorial sea, and any terrestrial area including swamps, islets, reef flats, channels, sand banks and coral reef.

Section 3 provides that the Minister may, by order in the Gazette, declare any part of the territory of Tuvalu as a conservation area upon receipt of a report of a Kaupule and after due consultation with the Kaupule recommending the establishment of a conservation area.

Conservation areas may be established for any objective listed at section 4. This includes preservation of the biological diversity of the conservation area, especially for species which are endemic, threatened, or of special concern and the coastal and marine habitats upon which the survival of these species depend.

# 3.2 Natural Resources Management

#### Marine Resources Act 2006

This Act seeks to ensure the long term conservation and sustainable use of the living marine resources for the benefit of the people of Tuvalu. This is a comprehensive law that promotes the sustainability and effective conservation of the fisheries resources of Tuvalu, whilst regulating their exploitation and giving effect to international agreements permitting access to the resources.

Unless a contrary intention appears, this Act applies to:

- all fishing and related activities and any other matter falling within the scope of this Act;
- all persons, vessels, vehicles, aircraft, export or import facilities or other craft or place engaged in or otherwise connected with any activity falling within the scope of this Act; and
- all persons (including non-citizens of Tuvalu), and to all vessels (including foreign fishing vessels)

2012 amendments introduced a power for the Minister to establish such committees or bodies as he/she may consider necessary for the purpose of providing technical assistance or other advice.

#### Fisheries (Trochus) Regulations 1990

Under these regulations fishing of the *Trochus niloticus* shell fish species is prohibited in Tuvalu.

#### Mineral Development Licensing Act 1977

The main objective of this Act is to provide for the grant of licences to search for and win minerals in Tuvalu. It prohibits any person from conducting any reconnaissance for, prospect for or mine any minerals in Tuvalu except under the authority of a licence issued under and in accordance with the Act.

#### 3.3 Biosafety

Effective quarantine arrangements are aimed at preventing the introduction of plant diseases and pests and are an important aspect of a nation's environmental protection regime, particularly for an island nation.

## **Quarantine Act 1929**

The objective of this Act is to make comprehensive provisions in relation to quarantining vessels, persons and goods through the effective imposition of quarantine arrangements and requirements.

#### Biosecurity Bill (Model Law) 2004

Draft legislation has been developed in Tuvalu in order to pursue biosecurity. Its objective is to protect the health, environment and agriculture of Tuvalu and to facilitate trade in its animal and plant products.

The draft law seeks to make comprehensive provision for biosecurity related issues and processes, and to harmonise these in the region.

The purposes of the law are to control the introduction and spread of new pests and diseases affecting plants and animals, control those pests that are already present in Tuvalu, provide for the safe import and export of animals and animal products and plants and plant products, and facilitate cooperation in the prevention of the international movement of pests and diseases affecting plants and animals. However, the Bill does not require application of the precautionary principle.

# Plants Act 1977

The purpose of this Act is to provide for the protection of plants within Tuvalu through conferring powers on quarantine officers and imposing restrictions on the importation of plants to prevent the introduction and spread of plant diseases.

For the purpose of protecting agriculture and livestock against the introduction of pests and plant diseases from outside Tuvalu, the Minister may, by order, prohibit the importation or introduction of any plants, whether generally or over specified places or species, and prohibit absolutely or subject to specified conditions or restrictions.

Regulations created under the Act cover shipping, prevention of disease and pests, quarantine disembarkation cards and spraying of aircrafts.

The objective of this Act is to regulate the importation of animals into Tuvalu.

Under this Act the Minister may make regulations in respect of a matters listed in regulation 3, such as:

- prescribing the ports and parts of ports at which imported animals may be landed;
- defining parts of ports;
- prohibiting or regulating the movement of imported animals into, in or out of a defined part of a port;
- prohibiting or regulating the landing of imported animals, or of any specified kind thereof, or of carcases, fodder, litter, dung or other thing brought from any specified country or from any specified part thereof;
- prescribing and regulating the inspection and the examination and the mode, time and conditions of slaughter of imported animals in a defined part of a port; and
- prescribing and regulating the seizure, detention, quarantine, isolation or destruction of any imported animal, carcase, fodder, litter or dung.

# WASTE MANAGEMENT AND POLLUTION

# 4.1 Waste Management

# Wastes Operations and Services Act 2009

This Act outlines the roles and responsibilities for waste management in Tuvalu, and provides for the collection and disposal of solid wastes and other waste-related operations and service in designated areas of Tuvalu. The Act defines specific categories of waste that need to be disposed in defined ways, including bulk waste, hazardous waste and solid waste.

Key provisions of the Act include:

- Section 4 Outlines the responsibilities for waste management. In particular, the Department of Environment is responsible for the management of waste and for the implementation of the obligations under international conventions relating to the management of hazardous wastes.
- Section 4 The regulatory control over waste dumps and waste disposal sites is to be exercised jointly by the Department of Environment, the Marine Department and the Ministry of Health depending on the type of waste, and by designated waste management operators. This function has to be carried out in accordance with environmental impact assessment procedures.
- Section 7 Environmental standards relating to waste management practices and facilities may be prescribed by the Minister for Environment, and the Department of Environment is responsible for the monitoring and enforcement of the approved standards.
- Section 15 With regards to solid waste, the designated waste management operators are the relevant Kaupule for that area. The Kaupules may exercise their authority under this Act as designated waste management operators by making by-laws under the *Falekaupule Act*.

The section also establishes a Solid Wastes Agency, where the need exists for additional technical and operational capacity for the proper disposal of wastes. The Agency is a designated waste management operator for the purposes of performing specific functions specified in section 16.

Section 6 The Solid Wastes Agency shall have principal responsibility for formulating and implementing a National Wastes Strategy, and the implementation of programs and projects in support of the Strategy.

# 4.2 Marine Pollution

## Marine Pollution Act 1992

This Act has the objective of making provision for preventing and dealing with pollution of the sea, and to give effect to international conventions for the prevention of marine pollution and the protection of the marine environment. These conventions are:

- the International Convention for the Prevention of Pollution From Ships 1973, as supplemented by the Protocol thereto of 1978;
- the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter 1972; and
- the Convention for the Protection of the Natural Resources and Environment of the South Pacific Region 1986.

The *Marine Pollution Act* is a comprehensive law dealing with marine pollution and the dumping and incineration of wastes at sea. The Act makes provisions on environmental liability in relation to the prevention and remediation of environmental damage caused by oil, sewage, garbage and other pollutants. The discharge or escape of pollution, voluntarily or caused by omission, is considered an offence to the country. Where a person is charged with an offence under the Act, it is a defence to prove that the oil, pollutant, garbage or sewage was discharged for the purpose of securing the safety of the ship, platform or other man-made structure, or of saving life at sea.

Additionally, the Act includes important provisions on:

- reception facilities in port for disposal of oil and pollutant residues, garbage and sewage from those ships;
- dumping and incineration of waste; and
- marine casualties.

# Harbours Act 1957

This Act provides that derelict vessels can be cleared from the harbor and that it is an offence to throw anything into a harbour or to allow it to fall in, whether it comes from land or from a vessel. The Act also outlines that it is an offence to let something fall onto land from where it may enter a harbour. Timber and vessels no longer fit for service must not be placed or left in a harbour. The *Harbours Regulations 1958*, provides that it is an offence for the master or owner of a vessel or shore installation to discharge oil into a harbour, or allow oil to enter into a harbour.

This Act provides for the control and safety of shipping on the lagoons and inland waters of Tuvalu. Certain provisions may also have relevance to the prevention of pollution.

#### Merchant Shipping Act 1987

The objectives of this Act are to make provision for the registration of ships and the control of merchant shipping, including proper qualification of persons employed in service at sea and regulation of their employment terms and conditions. This Act makes comprehensive provision in relation to shipping and the registration of ships, setting the ground for the control of shipping activities.

## Wreck and Salvage Act 1966

The main objective of this Act is to make comprehensive provisions in relation to ship wrecks and their salvage. The environmental relevance is to ensure debris from such wrecks are not left to interfere with the marine and coastal environment.

# 4.3 Hazardous Substances

## **Ozone Layer Protection Act 2007**

The Ozone Layer Protection Act is an Act to control ODS (Ozone Depleting Substances) in Tuvalu, in accordance with the obligations applying under the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol.

The Act provides for the prohibition of the:

- importation of certain Ozone Depleting Substances;
- importation of goods manufactured with Ozone Depleting Substances; and
- export of certain controlled substances.

Exemptions can be made through permits for specific reasons, for example medical or quarantine reasons.

# Pesticides Act 1990

This is an Act to control the importation and use of pesticides. The Act provides that no person shall supply, sell, offer for sale or use any pesticide in Tuvalu which is not registered under the Act. Section 7 prohibits a person from importing any pesticide unless it is registered under the Act and he/she holds an import permit. The Act also establishes the Office of Registrar of Pesticides and a Pesticides Committee.

#### Petroleum Act 1965

This Act passed in 1965 and has been amended several times (1971, 1972, 1990 and 2009) and has the purpose of regulating the importation, storage and sale of petroleum. Thus, the law does not regulate the management of petroleum as a natural resource, but sets some conditions that may relate to storage and similar procedures which may protect the environment. The *Petroleum Act - Petroleum (Control of Storage) Regulations* have been adopted under this Act.

# OTHER

# 5.1 Water

Water Supply Act 1967

This is one of the few laws in Tuvalu that makes provision for dealing with the country's water supplies. The provisions of this Act relate exclusively to matters of water supply. No provision is made in relation to issues of management, conservation or quality.

The Minister appoints an "Authority", who has power to construct channels, feeders, catch-drains, reservoirs, aqueducts, pipes, filters, trenches, mounds, engines, works and machinery as are necessary for providing adequate supplies of water.

Offences are prescribed in relation to the contamination of water in reserves. Section 9 prescribes a number of offences relating to polluting water, including the following activities if they affect the water supply:

- washing animals and clothes;
- casting dead animals and filth;
- bathing in water for human consumption;
- causing sewers or drains to run into water supplies; and
- any other thing which causes the water supply to be soiled, fouled, corrupted or injured.

# 5.2 Disaster Risk Management

## **Emergencies and Threatened Emergencies Act 1987**

The objective of this Act is to empower the Head of State to make regulations to deal with threatened public emergencies and for regulations to have effect during periods of public emergency.

This law may have some relevance to the management of the environment during periods of emergency or threatened emergency.

The Act provides that during periods of emergency, emergency regulations may be made that are reasonably justifiable for dealing with the emergency, and which may provide inter alia:

- for the detention of people or the restriction of movements;
- for the compulsory evacuation of islands or areas;
- for the taking of control of any property;
- for the regulation or control of supplies and services and the use of food, water, fuel or light;
- for the restoration of essential services; and
- for emergency health measures.

# 5.3 Public Health

Issues of public health have clear relevance as a reflection and consequence of environment management.

# Public Health Act 1926

The Minister may make regulations for the purpose of protecting and advancing public health, and specifically relating to:

- latrines, dustbins and drains;
- scavenging, cleaning and disinfecting ;
- removal and disposal of night-soil and house refuse;
- abatement of nuisances injurious to public health;
- preventing the spread of infectious diseases;

- regulating the carrying on of any trade declared to be offensive;
- regulating the sale of milk;
- securing the cleanliness of tanks, vats, cisterns and other water storage devices;
- regulating the use of any rain, stream, well or water source and the prevention of water pollution;
- common lodging-houses;
- bakehouses;
- mosquitoes;
- protection of food for sale;
- manufacture of aerated waters for sale;
- slaughter-houses; and
- laundries.

# MULTILATERAL ENVIRONMENTAL AGREEMENTS

INTERNATIONAL ENVIRONMENTAL INSTRUMENT	STATU
BIODIVERSITY	
Convention on Biological Diversity (CBD)	R
Cartagena Protocol on Biosafety	-
<ul> <li>Nagoya Protocol on Access and Benefit-Sharing</li> </ul>	-
Convention on International Trade in Endangered Species (CITES)	-
Convention on Migratory Species (CMS)	-
Convention on Wetlands (RAMSAR)	-
World Heritage Convention (WHC)	-
WASTE AND POLLUTION	
Hazardous waste and pollution	-
Basel Convention	-
Rotterdam Convention	-
Stockholm Convention	Α
Atmospheric Pollution	
/ienna Convention	Α
Montreal Protocol	Α
Ship-based pollution	
UNCLOS (Part XII : Protection and Preservation of the Marine Environment)	R
London Convention - Convention on the Prevention of Marine Pollution by Dumping	
of Wastes and Other Matter	-
London Protocol	-
CLIMATE CHANGE	
JNFCCC	R
Kyoto Protocol	R
Paris Agreement	R
AND DEGRADATION	
JNCCD	А
REGIONAL AGREEMENTS	STATU
Naigani Convention	А
Noumea Convention	S
Dumping Protocol	S
Emergencies Protocol	S

Ratification (R), Acceptance (Ac), Accession (A), Signed (S)