

Environmental Law in the Federated States of Micronesia: A Review

1. Introduction

This report reviews environmental law in the Federated States of Micronesia, including recommendations for changes to aspects of the law. The focus of this review is upon environmental law at the national level in FSM, although section 5 includes information on Pohnpei State environmental law. The review was arranged and funded by the Secretariat of the Pacific Regional Environment Program (SPREP). The terms of reference for the review are reproduced at Appendix I.

A previous Review of Environmental Law in FSM, authored by Elizabeth Harding, was published in 1992 as one of the preparatory activities of the National Environmental Management Strategy (NEMS) process. This document is referred to hereinafter as the 'NEMS Review'. The NEMS Review provided an excellent baseline for FSM environmental law and to a significant degree assisted in guiding environmental law development in the country in the years following its publication.

This review of FSM environmental law is smaller in scope than the NEMS Review; this document can be read as a partial updating of the NEMS Review. As well as covering each of the states, the NEMS Review described in some detail matters such as geography and demography, governance history, as well issues of administrative arrangements and structures. This current review is, by necessity, more narrowly focused upon laws, regulations and treaties.

During the 16 years that have passed since publication of the NEMS review, environmental law and governance in the FSM has matured and 'bedded in'. Accordingly, this review places substantial weight upon the practices and arrangements that are already in place. Some of what may originally have been envisioned, upon independence in 1986, as national responsibilities are now being undertaken at the state level. As described in the following section on constitutional arrangements, FSM's state governments are the primary implementers of environmental law. This review avoids recommending actions that would duplicate activities at the national and state levels. In preparing this document the consultant was also mindful of the financial and technical constraints of environmental administration in FSM.

Despite the states' primary role, the FSM National Government is also tasked with various important roles in the country's environmental governance. Among these is the regulation of fisheries and other resource use in the exclusive economic zone, as well as ensuring implementation of multilateral environment agreements (MEAs). The FSM has ratified numerous MEAs (see table in section 3) and most of these require domestic implementing legislation to fulfill national obligations. FSM is yet to enact much of this legislation and this need is outlined in this review. A draft bill was prepared as part of this technical assistance project, which if enacted would implement the Montreal Protocol as well as the Stockholm, Basel, Waigani and Rotterdam Conventions in FSM.

The review's author is Dr Justin Rose of the University of New England, Australia. Dr Rose's 16 years of experience in environmental law includes roles in national and state environment departments in Australia, three years with the Kosrae State Government, as well as subsequent academic and specialist consulting appointments. Dr Rose visited Pohnpei to meet stakeholders and undertake research for the purpose of this technical assistance project in March 2009. Dr Rose had discussions with:

1. Andrew Yatilman, Director, FSM Office of Environment and Emergency Management.
2. Cindy Ehmes, FSM Office of Environment and Emergency Management.
3. Simpson Abraham, FSM Office of Environment and Emergency Management.
4. Joe Konno, FSM Office of Environment and Emergency Management.
5. Marion Henry, FSM Department of Resources and Development.
6. Bernard Thoulag, Executive Director, National Oceanic Resource Management Agency
7. John Uwas, Assistant Secretary, Division of Customs and Tax Administration, FSM Department of Finance and Administration
8. Maketo Robert, Secretary, FSM Department of Justice
9. Alik Jackson, Staff Attorney, Congress of FSM
10. Hon. Joe N. Suka, Floor Leader, FSM Congress
11. Lori Johnson-Asher, Assistant Attorney-General, FSM Department of Justice
12. Moses Pretrick, Manager, Environmental Health and Preparedness Unit, Division of health services, FSM Department of Health and Social Affairs
13. Rufino Mauricio, Director, FSM National Office of National Archives, Culture and Historic Preservation

14. Director and Donna Scheuring, Pohnpei State EPA
15. Donald David, Chief, Marine Development, Department of Land and Natural Resources, Pohnpei State Government.
16. Saimon Lipai, Pohnpei State Forestry, Department of Land and Natural Resources

17. Willy Kostka, Micronesia Conservation Trust.
18. Bill Raynor, The Nature Conservancy
19. Mr Patterson Shed, Conservation Society of Pohnpei
20. Ms Cathy Smithson, AusAID Representative, Australian Embassy in Pohnpei

The review is structured as follows:

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|-----------|----------------------------------------------------------------------------------|
| Section 2 | FSM Constitution and the environment |
| Section 3 | FSM National Government administrative arrangements for environmental protection |
| Section 4 | Title 25 of the FSM Code |
| Section 5 | International Environmental Treaty Implementation |
| A | Compact of Free Association |

- B Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific Ocean
- C The Stockholm Convention
- D The Basel and Waigani Conventions
- E The Vienna Convention and the Montreal Protocol
- F The Rotterdam Convention
- G The Convention on Biological Diversity
- H The Climate Change Convention

Section 6 Oceanic Fisheries

Section 7 Pohnpei State Environmental Law

- A Constitutional Provisions and Administrative Arrangements
- B Pohnpei Environmental Protection Act and regulations
- C Marine Conservation
- D Forestry

Section 8 Conclusions regarding needs, gaps and future action

- A Summary of Recommendations
- B Outline of Suggested Environmental Law Technical Assistance Projects

2. FSM Constitution and the Environment

The terms of reference for this project require an assessment clarifying the respective jurisdictional responsibilities between the national and state governments in FSM with regard to environmental matters. The starting points for this assessment are Articles VIII and IX of the FSM Constitution.

Section 1 of Article VIII of the FSM Constitution provides: “A power expressly delegated to the national government, or a power of such an indisputably national character as to be beyond the power of a state to control, is a national power.” Section 2 of Article VIII states that “A power not expressly delegated to the national government or prohibited to the states is a state power.” Article IX, listing the legislative powers of the Congress, makes no reference to ‘environment’, and on matters of ‘natural resources’ provides only that the Congress has authority “to regulate the ownership, exploration, and exploitation of natural resources within the marine space of the Federated States of Micronesia beyond 12 miles from island baselines” (Article IX, section 2(m)). The basic position therefore is that environment-related issues are the responsibility of the state governments.

While it is the case that the states are the primary custodians of environmental responsibility in FSM, other provisions of the FSM Constitution allow the national government a significant role in this area, although the precise limits of that role will not ultimately be determined until and unless these issues are considered by FSM’s courts.

The heads of power in the FSM Constitution allocating the national government some responsibility with regard to environmental matters are firstly, Article IX (2)(r) which provides Congress legislative power “to promote education and health by setting minimum standards, coordinating state activities relating to foreign assistance, providing training and assistance to the states and providing support for post-secondary educational programs and projects”; and secondly Article XIII (2) stating, “Radioactive, toxic chemical, or other harmful substances may not be tested, stored, used, or disposed of within the jurisdiction of the Federated States of Micronesia without the express approval of the national government of the Federated States of Micronesia.”

Another potential source of power for the FSM national government with regard to environmental issues relates to the Congress’ power to ratify international treaties (Constitution Article IX(2)(b)), and the extent to which such ratifications bring with them the corollary power to implement the subject matter of ratified treaties. Given the numerous international environmental treaties ratified by the FSM this is a very important issue that has not, to the author’s knowledge, been considered or resolved by any previous report, or by judicial determination. This issue is discussed in more detail below.

A lack of jurisdictional clarity over environmental matters in the FSM Constitution was a key issue raised by the NEMS Review: “The lack of certainty regarding the appropriate venue for environmental management controls has created both under and over-regulation. In some instances, two sets of very similar regulatory instruments control the same behaviour, one at the National and one at the State level. In other instances, no law is created, or no jurisdiction enforces the law.” (p11).

The NEMS Review urged FSM’s governments to clarify their respective environmental jurisdictions, and one of the important outcomes of the NEMS process was the coming together of FSM’s national and state attorneys general in considering precisely this issue. These discussions resulted in the drafting of a ‘Tentative Joint Opinion on National-State Environmental Responsibilities under the FSM Constitution’ in 1992. While a very useful document, this opinion was unfortunately never finalized and remained in draft form, due to an inability to reach agreement regarding which level or levels of government had responsibility for chemical and waste management.

No copy of the draft Tentative Joint Opinion was available to the consultant during this project and thus he was unable to report upon its specific terms. However, there are other documents that report its substance, such as the 1997 Climate Change National Communication quoted at length below:

‘The FSM National Constitution gives those powers to the states that are not expressly delegated to the national government or prohibited to the states. National power is that which is expressly delegated to the national government, or that which is clearly national in character and beyond the power of the states to control. The FSM Constitution does not expressly delegate regulation of the “environment” to the national government, although it does express the power of the national government to exclusively regulate education and health. To date, in most cases, control and management of environmental resources have been delegated to or assumed by the states.

The lack of a clear constitutional allocation of power regarding environmental matters has in the past led to jurisdictional disputes. Given the absence in the FSM Constitution of explicit delegation of environmental control to the national government, proponents of state control argue that by default the power belongs to the states. In the early 1990s, in an attempt to clarify jurisdictional issues, the National and State Attorneys General met and formulated a tentative joint opinion regarding national and state jurisdiction over certain environmental concerns.

While this tentative joint opinion provides practical guidance on implementation of environmental controls, the ultimate determination of jurisdiction over environmental matters still rests with the judicial branch. The tentative joint opinion interprets the FSM Constitution as follows:

The national government has the power to set minimum standards in all areas related to public health, including air quality, water quality, and waste management. The states can adopt these standards or formulate stricter standards. The national government will intervene if a state is unable to ensure that the minimum standards are being met.

The national government is responsible for coordinating all state activities related to or initiated through foreign assistance.

The national government can be involved in any environmental matters that involve (1) a threat to public health; (2) the traditions of the people of the FSM; (3) clear effects on foreign or interstate commerce; (4) all mining, mineral, and marine resource issues 12-miles beyond island baselines; and (5) foreign technical or financial assistance for biodiversity protection.

The states generally have jurisdiction over (1) all mining, minerals, and marine resources within 12-miles of island baselines; (2) zoning and regulation of earthmoving; (3) agriculture; (4) forestry; (5) watershed protection; and (6) protection of ecosystems. The national government can intervene in most of the above areas when certain conditions are identified, such as threats to public health or clear effects on foreign and interstate commerce.

Both the national and state governments have jurisdiction over the protection of endangered species and the establishment of wildlife preserves. States are recognized as usually having the lead role in these areas, however.”

Table 1 below reproduces Appendix 2 of FSM’s National Environmental Management Strategy (1993) which summarized the draft Tentative Joint Opinion.

Table 1 – Summary of the Constitutional Division of Environmental Responsibilities as Described in the 1992 Tentative Joint Opinion of FSM’s National and State Attorneys General.

Regulatory Field	Primary Responsibility	Comment on Responsibility
Air Quality	National	In any area of public health the national government has power to set minimum standards. Only if a State is unable to meet the minimum standard would the NG have authority to ensure the State meets the minimum standards. States may always set stricter standards.
Water Quality	National	As above
*Chemicals	<i>National</i>	<i>Toxic chemicals and other hazardous substances cannot be tested, stored, used, or disposed of without the permission of the NG. It is unclear whether State permission is also required.</i>
Waste management-toxic	National	Toxic wastes cannot be tested, stored, used, or disposed of without the permission of the NG. It is unclear whether State permission is also required.
Waste management-non-toxic	National	The state governments probably have concurrent authority with regard to non-toxic waste.
Coordination of state activities initiated through, or related to foreign assistance	National	
Zoning and regulation of earth moving	State	Where (1) the traditions of the FSM are threatened, the NG may then protect them by statute; or (2) there is a threat to public health.
Agriculture	State	Where (1) use of fertilizers, defoliants and biocides, (2) where there is a clear effect on foreign or interstate commerce; or (3) if it concerns public health, the NG has authority to act.
Forestry	State	As for agriculture
Watershed Protection	State	As for agriculture
Mining (within 12 mile limit)	State	Where (1) toxic or harmful substances are used, or (2) where there is a clear effect on foreign or interstate commerce, or (3) if it concerns public health, the NG has authority to act.
Mining (beyond 12 mile limit)	National	
Ecosystem	State	NG has no power except where there is a

protection		threat to public health or to traditions of the people.
Protection of animal life (within 12 mile limit)	State	
Protection of animal life (beyond 12 mile limit)	National	
Protection of migratory species	State/National	Where (1) a lack of management in one State may affect harvest in another State (such as turtle eggs), then the NG can exercise power to protect traditions of the people; (2) the NG has power to act where a species comes under international treaty.
Endangered species, (incl. wildlife reserves)	State/National	Under normal circumstances the protection of endangered species and the establishment of wildlife reserves is a State responsibility. But, as the traditional way of life includes native species, the NG may act to protect endangered Micronesian species.
Fiscal control	National	NG establishes programs with environmental conditions for State access to monies.

* This row added, does not appear in original.

While the NEMS process assisted greatly in clarifying many issues of environmental responsibility under the FSM Constitution, two significant issues remain unresolved: chemical and waste management, and international treaty implementation.

With regard to current activities on chemical and waste regulation there is disjuncture between the practical situation and the legal situation. In practice it is the state governments which regulate chemical and waste management whereas the FSM Constitution in Articles IX (2)(r) and XIII (2) mandate the national government as providing the primary regulatory oversight of these matters, especially for ‘toxic’ substances. A plain reading of Article XIII (2) provides, in part, that no harmful substance may be stored, used or disposed of anywhere in FSM without the express approval of the national government. In discussions relating to this project the consultant encountered a lack of awareness in FSM government circles that Article XIII (2) goes beyond a constitutional prohibition on radioactive substances. (It may be speculated that such a prohibition was the primary intention of the drafters of the FSM Constitution when including Article XIII (2)). This provision, and its implications, was the primary reason why the 1992 draft Tentative Joint Opinion was not finalised.

The FSM Congress is yet to enact any law dealing specifically with any “radioactive, toxic chemical, or other harmful substances”. Even a restrictive interpretation of the term ‘harmful substance’ would include a wide class of materials and products. As a result of the above, a compelling legal argument could thus be made that all use of chemicals and other harmful substances in FSM, for any purpose and in any volume, is illegitimate by virtue of being contrary to the FSM Constitution. It may be further

suggested that state laws conditionally permitting such storage, use or disposal, such as state level environmental impact assessments, are invalid to the extent they are contrary to Article XIII (2) of the FSM Constitution.

Having never been raised in judicial proceedings, the issue described above is not currently recognised as an acute problem within FSM government circles. Nevertheless, the risk of not addressing this issue is that, following a major environmental incident involving chemicals or wastes for which an FSM state government may seek to prosecute a person or company under their environmental laws, that person or company may seek to avoid liability by arguing in legal proceedings that the state laws are invalid for the reasons described above.

In this context it is unfortunate that a copy of the 1992 Tentative Joint Opinion was unavailable for this project. From memory (the consultant read the document in 1999 in his previous capacity as environmental lawyer with the Kosrae State Government) the position taken by the FSM Attorney General was that the national government had exclusive jurisdiction over waste management, whereas the State Attorneys General claimed that responsibility for waste management was shared by both levels of government. This recollection is consistent with the summary of the draft Tentative Joint Opinion published in the FSM NEMS as appendix 2, reproduced herein in the table above. However without a more recent reading of the document no opinion can be offered regarding which position, the national or the state, is most persuasive. In any case, the opinion of this consultant on specific matters of FSM constitutional law is of less import than that of FSM's current attorneys general, and the issue could not be ultimately settled until given judicial consideration.

Even without referring to the draft Tentative Joint Opinion, it can be stated with confidence, especially regarding hazardous chemicals, wastes and substances, that the FSM Constitution requires national legislative control over their storage, use and disposal.

In terms of recommending a solution to this problem it is important to note that the FSM national government does not have the financial or technical capacity, nor the on-the-ground presence, necessary to implement a comprehensive system of chemical or waste regulation. In contrast, the state governments do have some capacity in this area and to varying degrees they do regulate the storage, use and disposal of hazardous chemicals and wastes in their territories. The FSM national government officers consulted regarding this issue are not seeking to either duplicate these functions, or to remove them from the states. Nor is there reason to believe or suggest that FSM's state governments would seek to forego these regulatory functions. Therefore, the most appropriate solution for this problem seems one of finding a way for the law to match the current regulatory practice.

The issue of jurisdiction over chemicals and wastes deserves detailed consideration by officers fully familiar with FSM Constitutional Law from the Office of the FSM Attorney-General. The alternatives available for resolving the current disjuncture between the jurisdictional allocation of responsibilities and current regulatory practice will be reliant upon a determination as to whether the national governments powers over chemicals and wastes is exclusive or concurrent.

The other issue of environmental responsibility under the FSM Constitution that remains uncertain is whether ratifying an international environmental treaty empowers the national government to implement domestically the requirements of the treaty, even if that necessitates legislating in an area that would otherwise be solely within state jurisdiction. This issue was not addressed in the draft Tentative Joint Opinion, but since that document was drafted FSM has become a party to nine international environment treaties and may ratify others in the future. This issue is therefore of much significance and could greatly affect the scope of the national government's environmental powers. It is important to note that the question of whether the FSM national government has the authority to legislate in a field that would otherwise be within the sole authority of FSM's state governments is a separate issue to whether it should do so.

An illustration is FSM's ratification of the Convention on Biological Diversity (CBD). Under Article 8(a) of the CBD the FSM is obligated to establish a system of protected areas where special measures need to be taken to conserve biological diversity. As can be seen from the table summarising the draft Tentative Joint Opinion above, the national government has no power under the Constitution to protect ecosystems, and the national government's power to legislate with regard to endangered species is limited to circumstances in which a failure to do so would damage Micronesian's traditional way of life. Was this limitation on national government legislative power affected by FSM's ratification of the CBD in 1994?

The FSM Supreme Court is yet to decide this issue, but a 1988 judgement by Chief Justice Edward C. King provides some relevant comment. In *Federated States of Micronesia v. Sylvester Oliver* (FSM Crim. No. 1988-562) the court considered the case of a Pohnpei national charged by the national government for killing sea turtles in violation of a Trust Territory provision that is now FSM Code Title 23 s105(3). The defendant argued successfully that the national government was not empowered under the Constitution to regulate marine resources within 12 miles from the baseline of islands. In deciding this case Chief Justice King confirmed that the FSM national government has no power to control marine resources within the 12 mile zone. In the current context the case is of most interest because the national government argued in part that the law was valid by virtue of the FSM's obligations under the Compact of Free Association between the FSM and the United States, an international treaty. Chief Justice King's judgement on this matter is the only guidance yet provided in FSM law on this fundamentally important issue and is thus quoted at some length below:

“[T]he final issue at hand, namely, whether the national government has power to enforce this statute, constituting state law, within the twelve mile zones over which states have primary control. Even when the constitution assigns primary lawmaking powers to the states, the national government may be empowered to act pursuant to its other general powers. In this case, the national government points out that it is obligated under the Compact of Free Association between the Federated States of Micronesia and the United States to "develop standards for environmental protection substantially similar to those required of the Government of the United States" and to "enforce those standards."

Compact of Free Association, art. VI, § 161. The government also contends that turtles of the kind allegedly taken by the defendant are a protected species under United States laws. 16 U.S.C. § 1531 et seq.

“Thus, the national government asserts that it may be obligated by treaty to assure that the taking or killing of turtles is carefully regulated or prohibited throughout the waters of the FSM, including waters within the twelve-mile area.

“If such were indeed the case, it is quite possible, although the Court does not decide the issue here, that the Constitution gives the national government, as a corollary to its power to enter into treaties, whatever powers are necessary and proper to fulfil this nation's obligations under those treaties. Cf. *Missouri v. Holland*, 252 U.S. 416, 40 S. Ct. 382, 64 L. Ed. 641 (1920). This could conceivably include the power to enact national law to assure protection of turtles within the twelve mile area. . . .

“However, a determination to assert national government powers in areas which fall primarily within the range of state powers will necessarily involve a delicate weighing of conflicting duties. To determine the national role concerning the taking of turtles within the twelve-mile zone will require weighing the national interest in carrying out international treaty commitments against principles of federalism calling for states to control marine resources within the twelve-mile area. Resolution of sensitive issues through such a balancing of interests is essentially a political endeavor. The judiciary, intended as it is to be insulated from many of the political forces to which the other two coordinate branches are expected to be most sensitive, is not well suited to perform this kind of essentially political policymaking function.

“As a general proposition then, the Court will not lightly assume that the Congress intends to assert national powers which may overlap with, or encroach upon, powers allocated to the states under the general scheme of federalism embodied in the Constitution. While Congress may have the power to prohibit the taking and killing of turtles within the twelve-mile area as a matter of national law, it should lie with Congress, and not the Court, to determine whether the power should be exercised.

“Here, the government has based its prosecution on a weakly offered assertion that it may be obligated by treaty to protect sea turtles within twelve miles of FSM baselines. That is not enough to justify a conclusion that Congress intended to assert its power in an area the Constitution assigns primarily to the states. Moreover, nothing in the language of the statute or in the legislative history indicates that Congress made an affirmative determination to enact national legislation applicable within the twelve mile area. For these reasons, there is no basis for departing from the constitutional norm.”

Even though CJ King expressly avoided deciding the general proposition of whether Congress would be empowered by virtue of international treaty obligations to legislate in an area otherwise within the power of the states, his comments are indicative of the view of the Supreme Court on this issue. Put simply, it is more likely than not that the national government does accrue power to implement treaty obligations upon ratifying the treaty, but in order to exercise these powers it must enact legislation that clearly indicates its positive intention in this regard.

Returning to the CBD illustration of ecosystem protection, following *Federated States of Micronesia v. Sylvester Oliver* it is likely that the national government has the power to legislate for a system of protected areas, but in doing so it would need to make express reference to its obligations under the CBD. Conversely, if the national government attempted another prosecution under FSM Code Title 23 s105(3) where the turtles had been taken within the 12 mile zone it may well again fail, despite its obligations under CBD Article 8(k) to “develop or maintain necessary legislation for the protection of threatened species and populations”.

Recommendations regarding constitutional issues:

It is recommended that FSM's state and national governments revisit the discussions that were held in 1993 regarding the allocation of powers over environment and natural resources of the FSM Constitution. These discussions should include representatives of both the legal agencies as well as those tasked with environmental regulation. There are two outstanding issues that require resolution. The first is the point of disagreement in the 1993 joint opinion – the management of hazardous wastes and chemicals and whether jurisdiction over these materials resides exclusively with the national government, or is exercised concurrently by the national and the state governments. The outcome of these discussions should not be limited to a final legal opinion, but should also aim for a resolution that would enable the state government environment agencies to continue to administer their regulatory functions with regard to chemicals, wastes and associated matters including environmental impact assessments, in absolute confidence of their constitutional validity.

The second issue that requires consideration is whether FSM's ratification of international treaties empowers the national government to implement domestically the requirements of the treaty, even if that means legislating over matters that would otherwise be solely within state jurisdiction. The outcome of this discussion would impact the operation of various aspects of FSM law, particularly in the areas of endangered species, ecosystem protection and biodiversity conservation.

3. FSM National Government Administrative Arrangements for Environmental Protection

Prior to 2008 the FSM National Government did not operate an agency specifically devoted to environmental matters, with environment-related issues split between the Department of Health and Social Affairs and the Department of Economic Affairs.

In September 2007 FSM Public Law 15-09 was enacted thereby reorganizing FSM National Government Administration. PL 15-09 is supplemented by Presidential Order No 1 which set out the specific roles of each Department and Office. Section X of P.O. No 1 establishes the Office of Environment and Emergency Management (OEEM), which is now the primary location for environment-related matters in the FSM National Government:

“The office shall coordinate efforts at the national government to ensure that environmental considerations are integrated into the strategic policy formulation process. It is also responsible for assisting the States to prevent, prepare for and recover from natural and human-induced disasters. The office shall also have these duties and functions under the following internal Divisions:

A. Division of Environment and Sustainable Development

Its duties and functions are as follows:

- (1) To administer Title 25 of the FSM Code; coordinate and facilitate efforts to ensure that resources are effectively conserved and that the

utilisation of resources is done in an environmentally sound manner that will improve quality of life;

- (2) Coordinate measures to address climate change issues particularly mitigation (emissions reduction) and adaptation;
- (3) Advise, make recommendations and formulate policy on matters affecting environmental management and sustainable development, ensuring that environmental considerations are integrated into the strategic policy formulation process; including working with related agencies to develop policies and programs regarding pesticide regulations, hazardous waste, water and air quality and protection, earth moving and environmental impact assessment and enforcement;
- (4) [no text at 4]
- (5) Facilitate and provide research and technical assistance and other resources to build capacity of the State and National counterparts;
- (6) Monitor and ensure that international responsibilities and obligations of the FSM with regard to treaties, conventions and protocols related to environment protection and sustainable development are implemented;
- (7) Facilitate development of projects and coordinate assistance from multilateral and bilateral donors on environment and sustainable development;
- (8) Coordinate and where appropriate manage and maintain environmental protection, water quality and other related activities in the FSM in close consultation with State EPAs and appropriate authorities; and
- (9) In coordination with the States, to set national standards in environmental science, research education and assessment reports.”

With regard to (6) above, the following table lists the multilateral environment agreements ratified by FSM and the dates of ratification:

Compact of Free Association between the FSM and the United States of America (section 161(b))		3/11/1986
UN Framework Convention on Climate Change		18/11/1993
Convention on Biological Diversity		20/6/1994
	Cartagena Protocol	1/9/2003
Vienna Convention for the Protection of the Ozone Layer		3/8/1994
	Montreal Protocol	6/9/1995
Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal		6/9/1995
Waigani Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement And Management of Hazardous Wastes		26/1/1996
UN Convention to Combat Desertification in those Countries Experiencing Drought and/or Desertification		25/3/1996
Convention for the Conservation and Management of Highly Migratory Fish		20/12/2002

Stocks in the Central And Western Pacific Ocean		
Stockholm Convention on Persistent Organic Pollutants		27/1/2005

PO No 1 (section IV) identifies the Department of Health and Social Affairs (DHSA), through its Environmental Health and Public Health Preparedness and Response Unit, as being the focal point for the Stockholm, Basel and Waigani Conventions. Nevertheless, these functions are now being performed by the OEEM.

Fisheries management and conservation is shared between the National Oceanic Resource Management Agency (NORMA) and the Division of Resource Management and Development of the Department of Resources and Development (DR&D). (P.O. No 1, Section II). Administrative issues and programs related to the Convention on Biological Diversity are split between DR&D and OEEM.

Technical legal support is provided to all of the Offices and Departments noted above by the Department of Justice.

In conclusion it is noted that the creation of OEEM has provided much-needed focus for FSM national government environment administration. The division of functions is appropriate, although it may be preferable to locate the Convention on Biological Diversity implementation in a single agency. The listing in the presidential order of DHSA as the focal point for the Stockholm, Basel and Waigani Conventions seems anomalous.

A related matter is the Sustainable Development Council (SDC). The SDC is a coordinatory and consultative interdepartmental committee with a mandate over issues related to the environment and sustainable development. In previous times the SDC included state representatives. The SDC remains formally in existence, but has not met for some time. The SDC played an important role coordinating the environment-related functions of the National Government. If the SDC included State representation it would also be effective in providing a consultative and information-sharing function for all environment-related government functions in FSM. The SDC has operated in this manner in the past to positive effect.

Recommendations regarding administrative arrangements:

It is recommended that OEEM be officially identified as the focal point for the Stockholm, Basel and Waigani Conventions (cf PO No1 section IV).

It is recommended that the responsibilities for implementing the Convention on Biological Diversity be located in a single agency.

It is recommended that the Sustainable Development Council meet on a regular basis, and that a process is put in place to either facilitate the direct involvement of representatives of FSM's state governments as SDC members, or to enable them to otherwise be aware of and have an input into SDC discussions.

4. Title 25 of the FSM Code

Title 25 of the FSM Code remains the centerpiece of national environmental legislation in FSM. This is problematic for numerous reasons. (<http://www.fsmlaw.org/fsm/code/index.htm>) The most significant problem with T25 is the fact that it requires the administration at the national level of functions that are undertaken by the State governments. Neither the OEEM nor any other national government department or office has staff or budget to implement Title 25 in its current form, and to do so would be to duplicate most of the functions of the State EPAs. Title 25 is a dead letter – a law that remains in form but is no longer implemented or enforced.

The majority of T25, all of subtitle I, comprises law dating from the pre-1986 Trust Territory times. It establishes an inter-departmental “Environment Protection Board” comprising “the director of Health Services, director of Public Works, director of Resources and Development, and six citizens of the Trust Territory, to be appointed by the High Commissioner with the advice and consent of the Congress of Micronesia; provided that such appointments shall include one representative from each of the six administrative districts”. (section 201). The Environment Protection Board has not been constituted for at least the past 20 years, and in discussions with relevant officers of the FSM Government there is no plan or perceived need to reform it. The same comments are valid with respect to the District Advisory Boards created by section 401 of FSMC Title 25.

The 1993 NEMS Review makes the following comment with regard to FSMC T25 “As well as suffering from the lack of an interdisciplinary advisory body, the current Act also incorporates outmoded Trust Territory Regulations. . . . Decade-old Trust Territory pronouncements may not adequately reflect new FSM environmental concerns.”

If the above were true in 1993, it is doubly so in 2009. Equally important, if not more so, than an updating of the law, is to ensure that the efforts of the State governments are not duplicated at the national level. As detailed in later sections of this review, the national government has many responsibilities in relation to environmental administration to which it may allocate its scarce resources without retaining old laws that, if implemented, would duplicate the efforts of the State EPAs.

Section 208 of FSMC T25 states that “the Board is authorized and empowered to:

- (1) adopt, approve, amend, revise, promulgate, and repeal regulations, in the manner which is or may be provided by law, to effect the purposes of this title, and enforce such regulations which shall have the force and effect of law;
- (2) adopt, approve, amend, revise, promulgate, and repeal primary and secondary drinking water regulations, including the establishment of an underground injection control program, which program shall conform to all requirements of the Safe Drinking Water Act (U.S. Public Law No. 93-523) and any applicable regulations promulgated thereunder, and enforce such regulations which shall have the force and effect of law;

(3) accept appropriations, loans, and grants from the United States government or any agency thereof and other sources, public or private, which loans, grants, and appropriations shall not be expended for other than the purposes of this title;

(4) adopt and provide for the continuing administration of a Trust Territory-wide program for the protection of the environment, human health, welfare, and safety, and for the prevention, control, and abatement of pollution of the air, land, and water, including programs for the abatement or prevention of the contamination of drinking water systems of the Trust Territory, and from time to time review and modify such programs as necessary;

(5) establish criteria for classifying air, land, and water in accordance with present and future uses;

(6) adopt and implement plans for the certification of applicators of pesticides, for the issuance of experimental use permits for pesticides and a plan to meet special local needs, and such other measures as may be necessary to carry out the purposes of the Federal Insecticide, Fungicide, and Rodenticide Act (U.S. Public Law No. 92-516);

(7) establish and provide for the continuing administration of a permit system whereby a permit shall be required for the discharge by any person of any pollutant in the air, land, or water, or for the amount by any person of any activity, including but not limited to the operation, construction, expansion, or alteration of any installation, which results in or may result in the discharge of any pollutant in the air, land, or water, provide for the issuance, modification, suspension, revocation, and termination of such permits, and for the posting of an appropriate bond;

(8) collect information and establish record keeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this title.”

It was intended that T25 subtitle I would be repealed upon the triggers in T25 section 708 (3), relating to changes in FSM’s US grantee status, being activated. The consultant has made enquiries regarding section 708, but is yet to receive a response from the FSM Department of Justice. Regardless of its status in this regard, this review recommends the repealing of T25 subtitle I.

Subtitle II of Title 25 is in effect a set of streamlined provisions that mirror subtitle I. Subtitle II redefines the Environmental Protection Board to mean the Secretary of the Department of Human Resources. This is not ideal from the perspective of transparency; if the primary decision-maker is the head of single agency this fact should not be concealed behind language indicating otherwise.

The NEMS Review recommended that the Environmental Protection Board be reconstituted to include state and community representatives. Along these lines, one outcome of the NEMS process was the setting-up of the Sustainable Development Council. The SDC did not exercise regulatory authority.

Section 610 of Title 25 was intended to supersede section 208 upon the repealing of subtitle I of T25. It provides “the Board [i.e. the Secretary of Human Resources, now Director of OEEM] is authorized and empowered to:

(1) adopt, approve, amend, revise, promulgate, and repeal regulations, in the manner which is or may be provided by law, to effect the purposes of this subtitle, and enforce such regulations which shall have the force and effect of law;

(2) adopt, approve, amend, revise, promulgate, and repeal primary and secondary drinking water regulations;

(3) accept appropriations, loans, and grants from the United States Government or any agency thereof and other sources, public or private, which loans, grants, and appropriations shall not be expended for other than the purposes of this subtitle;

(4) adopt and provide for the continuing administration of nationwide programs for the protection of the environment, human health, welfare, and safety, and for the prevention, control, and abatement of pollution of the air, land, and water, including programs for the abatement or prevention of the contamination of drinking water systems of the Federated States of Micronesia, and from time to time review and modify such programs as necessary;

(5) establish criteria for classifying air, land, and water in accordance with present and future uses;

(6) establish and provide for the continuing administration of a permit system whereby a permit shall be required for the discharge by any person or any pollutant in the air, land, or water, or for the conduct by any person of any activity, including, but not limited to, the operation, construction, expansion, or alteration of any installation, which results in or may result in the discharge of any pollutant in the air, land, or water, provide for the issuance, modification, suspension, revocation, and termination of such permits, and for the posting of any appropriate bond;

(7) collect information and establish recordkeeping, monitoring, and reporting requirements as necessary and appropriate to carry out the purposes of this subtitle; and

(8) conduct a study of those United States environmental protection laws which contain standards applicable to the Government of the Federated States of Micronesia, pursuant to section 161(b) of the Compact of Free Association, and make recommendations as to any necessary modifications of those laws in light of the particular circumstances of the Federated States of Micronesia.”

The NEMS Review describes eight regulations in force under Title 25:

- *Trust Territory Air Pollution Control Standards & Regulations*
- *Trust Territory Pesticides Regulations*
- *Public Water Supply Systems Regulations*
- *Marine and Fresh Water Quality Standard Regulations*
- *Trust Territory Solid Waste Regulations*

- *Toilet Facilities and Sewage Disposal Regulations*
- *FSMEPA Earthmoving Regulations*
- *FSM EPA Environmental Impact Assessment Regulations*

Despite P.O. 1 requiring OEEM to implement Title 25, the above regulations are not implemented by OEEM and have not been implemented by any of its predecessors for some time. This situation, while not ideal, does not indicate a regulatory vacuum in these areas as these responsibilities are undertaken by state agencies under state laws. (See the sections on Pohnpei State environmental law below).

Section 701 of Title 25 envisages a situation wherein the States may perform some or most of the regulatory functions of Title 25 under cooperative agreements with the National government. Instead, the States have chosen to do this under their own legislation. The National Government officers consulted during this project do not regard this as problematic.

Recommendations regarding Title 25:

Subtitle I of Title 25 is redundant and should be repealed.

Subtitle II of Title 25 should be amended in a way that retains the capacity of the National Government, through OEEM, to regulate the issues with which it deals if the State governments are not, or cease to, undertake those functions. In effect, the National Government, instead of being required by law to undertake the functions described in Title 25, would retain authority that may be exercised in the absence of state action on these matters. Also, development activities undertaken in the EEZ, such as undersea cable placement, oil drilling or sea bed mining, would require environmental impact assessment and approval, administered by OEEM.

Title 25 should be amended to identify its primary decision maker as the Director of OEEM, rather than referring to a defunct Environmental Protection Board.

Title 25 should be augmented to include provisions to implement the international environment treaties ratified by FSM that require domestic legislative frameworks to operate effectively. These include the Basel, Waigani, Stockholm Conventions and the Montreal Protocol.

The FSM National Government should consider ratification of the Rotterdam Convention. If ratified this instrument would allow FSM much greater control over the import and export of hazardous chemicals. If FSM decided to ratify the Rotterdam Convention Title 25 would require amendment for its implementation.

5. International Environmental Treaty Implementation

A. The Compact of Free Association

The Compact of Free Association is a binding bilateral treaty between the Federated States of Micronesia and the United States. It provides for U.S. economic assistance, to be given to the FSM (including eligibility for certain U.S. federal programs); for defence of the FSM; and for other benefits. These are provided in exchange for U.S. defence and certain other operating rights in the FSM; denial of access to FSM territory for other nations; and other related matters.

The Compact of Free Association was signed by negotiators in 1982 and was approved by the citizens of the FSM in a plebiscite in 1983. Legislation on the Compact was adopted by the U.S. Congress in 1986 and signed into law later that year.

For present purposes the relevant section of the Compact of Free Association is 161(b), which provides:

The Government of the Federated States of Micronesia shall develop standards and procedures to protect their environment. As a reciprocal obligation to the undertakings of the Government of the United States under this Article, the Government of the Federated States of Micronesia, taking into account their particular environment, shall develop standards for environmental protection substantively similar to those required of the Government of the United States by Section 161(a)(3), and, as a further reciprocal obligation, shall enforce those standards.

161(a)(3) lists the following US Law:

- the Endangered Species Act of 1973;
- the Clean Air Act;
- the Clean Water Act (Federal Water Pollution Control Act);
- the Ocean Dumping Act;
- the Toxic Substances Control Act;
- the Resources Conservation and Recovery Act of 1976.

It is beyond the scope of this project to examine in detail the requirements of each of these US laws. It is suffice for present purposes to note that FSM is obliged under the Compact of Free Association to develop and implement standards for environmental protection substantively similar to those required of the Government of the United States under the laws listed above.

As noted in section 2 of this report, it was decided in 1986 by the FSM Supreme Court in *Federated States of Micronesia v. Sylvester Oliver* (FSM Crim. No. 1988-562) that section 161(b) of the Compact, and other international treaties, may empower the National Government to regulate matters that would otherwise be solely within the jurisdiction of the States, but that in order to accrue this legislative authority the Congress must adopt language specifically referring to the relevant international law.

Recommendations regarding the Compact of Free Association:

T25 section 610(8) requires the Secretary of Human Resources (now the Director of OEEM) to conduct a study of those United States environmental protection laws which contain standards applicable to the Government of the Federated States of Micronesia, pursuant to section 161(b) of the Compact of Free Association, and make recommendations as to any necessary modifications of those laws in light of the particular circumstances of the Federated States of Micronesia.

The consultant was unable to discover whether this study was undertaken, but he assumes that it was and that its outcomes are reflected in Titles 23-25 of the FSM Code. Given that much of this law is no longer implemented by the National Government, that some of it has been found to be invalid by the FSM Supreme Court, and that much environmental law has been enacted at state level since 1986, it is recommended that a specific study be undertaken with the same aims as that described in FSMC Section 610(8). This study should include the current laws of FSM's states, and should assess whether FSM's current environmental law, considering both national and state provisions, complies with section 161(b) of the Compact of Free Association, and whether new legislation should be considered to fulfil those obligations, and in which jurisdiction/s.

It is noted that many of the obligations arising under section 161(b) of the Compact of Free Association are duplicated in other international obligations, such as the obligations under the Convention on Biological Diversity to protect endangered species. Accordingly, effective implementation of FSM's other international environment obligations will go some way towards fulfilling its obligations under section 161(b) of the Compact of Free Association.

B. Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific Ocean

In 2002 the FSM ratified the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific Ocean*. Legal issues related to this convention are dealt with in the section 5 on Oceanic Fisheries below.

C. The Stockholm Convention

In December 2000 negotiations were concluded by 122 countries on the text of the *Stockholm Convention on Persistent Organic Pollutants* and it entered into force in May 2004. The treaty calls for the elimination of some of the world's most dangerous chemicals. POPs pose a particular hazard because of four common characteristics: they are toxic; they are persistent, resisting the normal processes that break down contaminants in the body and the environment; they bioaccumulate in food chains; and they can travel great distances on wind and water currents. Eight of the 12 targeted POPs are identified for immediate bans upon the Convention entering into force. For the other intentional POPs (DDT and PCBs) and the by-product POPs (hexachlorobenzene, dioxins and furans), elimination remains a goal of the Convention.

The Convention has as its objective "to protect human health and the environment from persistent organic pollutants" by:

- Banning 8 POPs pesticides - aldrin, endrin, dieldrin, chlordane, heptachlor, hexachlorobenzene, mirex, and toxaphene - immediately. The bans will take effect as soon as the new treaty enters into force, which is expected in 3-4 years.
- Prohibiting production of PCBs immediately and phasing out their remaining uses over time. The treaty calls on countries to make determined efforts to remove from use all electrical transformers and other equipment containing PCBs, starting with high-volume equipment, to achieve a PCB phaseout by 2025.
- Limiting DDT use to disease vector control while setting a long-term goal of its elimination. Countries that need to will be allowed to continue using DDT against malaria, until effective and affordable alternatives are available to them.
- Promoting action to minimize the release of industrial by-product POPs like dioxins. The treaty states that the aim of these actions is the ultimate elimination of by-product POPs where feasible.
- Employing a precautionary approach to identify and take action against additional POPs. The treaty establishes a scientific POPs Review Committee to evaluate additional chemicals - based on the criteria of toxicity, persistence, bioaccumulation, and long-range transport - for inclusion in the treaty. Acknowledging the need for precaution, it states that "lack of full scientific certainty shall not prevent" a POP from being included.
- Building the capacity of all countries to eliminate POPs. The agreement will channel funds and technical assistance from developed countries to their less developed partners, thus enabling these countries to take effective action under the treaty.
- Emphasizing preventive measures to address POPs at their source. The treaty encourages national regulations to prevent the development of new chemicals with POPs characteristics, and promotes changes in industrial materials, processes, and products that can create POPs.

The Pacific regional project, "POPs in PICs" was implemented in FSM and achieved a great deal in terms of ridding the FSM of POPs stockpiles and for providing a baseline of POPs use, storage and contamination.

Thereafter, beginning in 2002 there was a process put in place to develop a National Implementation Plan (NIP) for POPs. A National POPs Coordinating Committee, composed of representatives of community groups as well as the relevant national and state government departments and some non-government organisations (NGOs) was formed. A draft of the POPs NIP was completed in January 2007, calling for, among other things, the development of a legal framework for the safe management of POPs and other hazardous substances.

The NIP is a substantial planning document setting out detailed plans of action for the management of hazardous chemicals in all FSM jurisdictions. Given its direct relevance for this project the following quotes at length the section of the FSM NIP calling for legislative development:

“Although the national and state governments’ respective constitutions address the issue of managing hazardous substances, the weak management of hazardous substances in the country still exists due to the absence of more specific and uniform laws and regulations at the national and state level.

Almost all of the existing laws and regulations at the national and state levels are primarily based on the former Trust Territory laws and regulations relating to pesticides and solid waste. There is need for these to be reviewed and updated.

Goals and Objectives:

The main goal for this action plan is to develop and implement an effective legal framework for the environmentally sound management of POPs and other hazardous substances in order to: (1) protect the health of the people of the FSM and their environment from such pollutants; and (2) comply with the FSM’s international obligations under the Stockholm Convention and other international and regional conventions.

To effectively and efficiently meet this goal, the following five objectives must be effectively and efficiently carried out. The five objectives are:

1. To recruit, by 6 MAPSD, the necessary legal expertise to carry out Objective #s 2 through 5 in this action plan..
2. To draft and present, within 18 MAPSD (or one year following the completion of Objective #1), to the respective legislative bodies in the national and state governments, legislative bills directing that reasonable, environmentally sound measures be implemented to eliminate, or reduce to the greatest extent possible, the use of POPs; eliminate the unintentional creation and release of POPs; and provide for the safe disposal of stockpiles of POPs and other hazardous substances and hazardous substances.
3. To have enacted, within 30 MAPSD (or one year following completion of Objective #2), the legislative bills presented to the respective state and national legislative bodies under Objective 2.
4. To promulgate, within 36 MAPSD (or six months following completion of Objective #3), regulations detailing the procedures for the effective implementation and enforcement of laws enacted under Objective 3.
5. To conduct, within 48 MAPSD (or one year following completion of Objective #4), a national workshop to assess the progress, strengths, and weaknesses of the implemented legal mechanism and to determine whether or not further amendments to the laws and regulations are necessary, and if so prepare such further amendments.

Relevant Management Options

One option is to contract a lawyer or a consultant specialized in chemical management to draft legislation to manage POPs and other hazardous substances in the FSM. This individual would consult with the state and national legal departments. A second option is to utilize the existing national and state legislature lawyers, AG's Offices and EPA lawyers to form a National Hazardous Substances Legal Framework Development Task Force.

Criteria for Evaluation and Prioritization of Options

It is highly recommended that Option 1 should be chosen. This recommendation is supported by the following considerations:

1. A concentrated approach to this action plan is crucial and having a lawyer to focus on the issues of this action plan while assisting the respective state's legal groups would be more effective as this work will be the individual's only assigned task.
2. The state and national lawyers would always still be involved with the drafting of laws and regulations and thus unable to entirely focus attention on the POPs work.
3. It eliminates the possibility that this action plan will be placed on hold due to pressing matters unrelated to the POPs issue.

Action Plan Implementation Strategy

The strategy to be employed for this action plan is to secure technical assistance to complete a review of the existing legislation and regulations in the country and also examine relevant legislation and regulations in other Pacific island countries that have similar situations to the FSM. Following this review, the necessary new legislation will be drafted and submitted to the national and state legislative assemblies for action, while a public education effort is conducted to generate awareness of the POPs and other hazardous substance situation in the nation. New laws and regulations will be established with public hearings conducted to get input from the public. Finally, after the laws and regulation have been in effect for a year, a national workshop will be held to analyse the impact and make recommendations for needed changes."

The above plan sets out a thorough approach to legislative development for hazardous substance management, including activities at both national and state level. If funded, this would be a positive development in terms of providing the FSM with a sound legal framework for the management of hazardous chemicals.

The draft POPs NIP was completed in January 2007 but has not yet been finalised. The consultant was told that the NIP will be considered final when it is endorsed by the President.

Despite the fact that the NIP has yet to receive final endorsement, with the agreement of the OEEM as part of this project the consultant prepared a draft law that incorporates the requirements of the Stockholm Convention.

Core Elements for National Stockholm Convention Implementation

Provision	Ref	Implementation issues (focus on Pacific island Parties)
Measures to reduce or eliminate POPs releases from intentional production and use.	3	<ul style="list-style-type: none"> - Eliminate production and use of POPs in Annex A, - Restrict production and use of Annex B POPs in accordance with that Annex. - Restrict trade in POPs in both Annexes.
Register of specific exemptions	4	Any Party may register exemptions to their obligations under Article 3. Exemptions may be extended and will be subject to a review process.
Measures to reduce or eliminate POPs releases from unintentional production.	5	<p>Parties must develop a comprehensive action plan (or regional action plans) to prevent and address the release of the chemicals listed in Annex C.</p> <p>Article 5 also places many obligations on Parties to implement preventive strategies and best environmental practices for Annex C chemicals.</p>
Measures to reduce or eliminate releases from stockpiles and wastes	6	<p>Parties to identify and manage, using environmentally sound practices, stockpiles of Annex A and B chemicals.</p> <p>Takes measures to ensure that POPs wastes are appropriately managed and disposed.</p>
Implementation Plans	7	Plans to be developed and submitted.
Listing of chemicals in the Annexes	8	Parties may submit chemicals for inclusion.
Information exchange	9	Parties shall share information on the reduction and elimination of POPs.
Public information, awareness and education.	10	Parties shall promote and facilitate, within their capabilities, comprehensive programs of public information, awareness, education, research, development and monitoring for POPs.
Research, development and monitoring	& 11	
Technical assistance " Parties recognize that rendering of	12	Mutually agreed and appropriate technical assistance to be provided

<i>timely and appropriate technical assistance in response to requests from developing country Parties is essential to the successful implementation of this Convention"</i>		to developing country Parties. <i>"The Parties shall, in the context of this Article, take full account of the specific needs and special situation of small island developing states in their actions with regard to technical assistance"</i> .
Financial resources and mechanisms - <i>"The developed country Parties shall provide new and additional financial resources to enable developing country Parties to fulfill their obligations under this Convention. Other Parties may also on a voluntary basis and in accordance with their capabilities provide such financial resources. Contributions from other sources should also be encouraged."</i>	13	All Parties must provide financial resources to achieve the objectives of the Convention within its jurisdiction (within its capabilities).
Reporting	15	Reporting requirement.
Non-compliance	17	Procedures to be developed by Parties as soon as practicable.

Recommendations with regard to implementation of the Stockholm Convention.

That FSM consider the draft provisions relating to hazardous chemicals and wastes provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

That FSM finalise its POPs NIP and proceed with plan of action no. 1 provided at pages 35-42 for the development of national and state level legislation for the environmentally sound management of hazardous chemicals and substances.

D. The Basel and Waigani Conventions

The *Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal* regulates transboundary movements of hazardous wastes and obliges Parties to ensure that such wastes are managed and disposed of in an environmentally sound manner. The core principles of the Basel Convention are:

- Transboundary movements of hazardous wastes should be reduced to a minimum consistent with their environmentally sound management.
- Hazardous wastes should be treated and disposed of as close as possible to their source of generation.
- Hazardous waste generation should be reduced and minimized at source.

During its first ten years (1989-1999), the Convention was principally devoted to establishing a framework to control the movement of hazardous wastes across international frontiers. During the second decade (2000-2010), the Convention's Parties built on this framework by emphasizing implementation and enforcement of the treaty's more progressive commitments, such as the minimizing hazardous waste generation.

The *Convention to Ban the Importation Into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes Within the South Pacific Region* (the Waigani Convention) is the Pacific island regional equivalent of the Basel Convention. Negotiation of the final text of the Waigani Convention was concluded in 1995, and it entered into force on 21 October 2001 thirty days after Tuvalu became the tenth ratifying Party.

The provisions of the Waigani Convention largely mirror those the Basel Convention, with three key distinctions; firstly, it applies exclusively to the Pacific islands, Australia and New Zealand; secondly, it applies an import ban on transboundary movements to the Pacific islands; finally, radioactive waste imports are included in the import ban (but not the waste minimization and notification procedures).

FSM became a party to the Basel Convention in September 1995 and the Waigani Convention in January 1996. There are no regular transboundary movements of hazardous wastes in or out of the FSM; the export of persistent organic pollutants in 2001 is the only known event of this kind in the recent past. Nevertheless, to fully comply with these two international conventions it is necessary for FSM to pass implementing legislation in accordance with their requirements. The consultant has prepared a draft law that incorporates the requirements of the Basel and Waigani Conventions.

Core Elements for National Implementation

Provision	Basel Ref	Waigani Ref	Implementation issues
Scope - this is the definition of "hazardous waste" for the conventions purposes. Wastes destined for recycling/recovery are included. The definition is a formula referring to annexes listing waste streams, waste contaminants and hazard characteristics. Wastes defined as hazardous wastes under a country's national legislation are also considered covered for movements involving that country.	1	2	These Conventions by no means cover every material that could be considered "hazardous waste". The Basel formula is fairly robust, not necessarily straightforward. Australia, for example, found it necessary to create and fund a "Hazardous Waste Technical Group" of experts to, amongst other things, resolve uncertainties arising from the regularly asked question "is this material covered?"

Waigani uses a very similar formula to define wastes, and Waigani Article 2 also defines its area of coverage.			The Basel Parties have been working to reduce the 'grey-areas' in the waste definition (e.g. by defining cut-off levels for contaminants.)
Definitions.	2	1	Note in Waigani the definitions of "convention area" and the inclusion of a definition for "precautionary principle".
National definitions of hazardous waste.	3	3	Parties to inform secretariat of national definitions. Under this provision Parties can expand the Convention's procedures to include wastes that may, or may not, be intrinsically hazardous, but become so due to local management (e.g. almost bald car tyres from Japan may quickly become toxic incineration fuel in Micronesia).
General obligations. Basel - import ban option, prior informed consent, hazardous waste minimization, environmentally sound management and disposal, pollution prevention, minimize transboundary movements, oppose illegal traffic, no Party/non-Party movements, implement national legislation, licensing, labeling, movement tracking. (Basel ban on imports to developing country Parties was inserted as article 4A but is not yet in force).	4	4	Waigani article 4 differs considerably from Basel article 4. It includes the import ban, cites existing obligations against sea dumping and radioactive waste management, and includes a simplified version of the general obligations re pollution prevention and waste minimization (e.g. develop national strategy consistent with regional programme).
Competent Authorities	5	5	Designate a competent authority to be responsible for implementing the Conventions.
Notification procedures for transboundary movements of hazardous waste.	6 & 7	6	These procedures (accompanied by forms and a manual) ensure that there is written permission from the state of import prior to a transboundary movement taking place. They also discourage unnecessary

			movements and ensure that the wastes are management and disposed/recycled in an environmentally sound manner.
Duty to re-import	8	8	Duty on exporters where authorized movements cannot be completed. Para 2 notes exceptions
Illegal Traffic - defines IT, requires return of wastes and punishment of offenders	9	9	
International Cooperation	10	10	Includes information sharing and technology transfer, with special recognition of the needs of developing countries (Basel) and Pacific islands (Waigani).
Bilateral, multilateral and regional agreements. These are agreements that facilitate the transboundary movements under procedures that are different, but no less environmentally sound, than the Convention's procedures.	11	11	Under Basel, Parties may make these with non-Parties or Parties. Under Waigani they may only be made with non-Parties. This is important for FSM in case of exports to US
Financial aspects	14		Under Basel article 14 regional or sub-regional centres for training and technology transfer for hazardous and other waste management may be established.
Secretariat	16	14	SPREP is the Waigani Secretariat.

Recommendations with regard to implementation of the Basel and Waigani Conventions:

That FSM consider the draft provisions relating to hazardous chemicals and wastes provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

E. The Vienna Convention and the Montreal Protocol

The *Montreal Protocol on Substances that Deplete the Ozone Layer* is an international agreement developed under the *Vienna Convention for the Protection of*

the Ozone Layer setting out a mandatory timetable for the phase out of ozone depleting substances. This timetable has been under constant revision, with agreed phase out dates accelerated in accordance with scientific understanding and technological advances.

Pursuant to an agreement with SPREP made in 2003 the FSM has received support to implement the requirements of the Montreal Protocol, including various types of training for FSM government officers. As part of this agreement, FSM committed to enacting national legislation to implement the requirements of the Montreal Protocol. When the consultant visited Palikir in March 2009 this legislation had been drafted, but due to high levels of staff turnover in the FSM Department of Justice, a bill had not yet been finalised.

The consultant integrated the draft provisions provided by the FSM Department of Justice into the draft bill on hazardous chemicals and substances prepared as part of this project.

Core Elements for National Implementation

Refer to the draft Bill prepared by the FSM Department of Justice in conjunction with OEEM. This is available upon request.

Recommendations with regard to implementation of the Montreal Protocol:

That FSM consider the draft provisions relating to hazardous chemicals and wastes, including ozone depleting substances, provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

Should the FSM decide not to progress the draft bill prepared by the consultant as part of this project that the FSM OEEM and Department of Justice prioritise the finalisation of the draft bill on ozone depleting substances that it has prepared, with a view to presenting it to Congress for enactment.

F. The Rotterdam Convention

In 1998, after two years of negotiations, 95 governments finalized the text of the *Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals in International Trade*. The text of the convention was adopted and opened for signature in Rotterdam in September 1998 and entered into force in 2004.

The Convention aims to establish a global system to monitor and control the trade in dangerous chemicals. It gives importing countries the power to decide which chemicals they want to receive and to exclude those they cannot manage safely. If trade does take place, requirements for labelling and provision of information on potential health and environmental effects promotes the safe use of these chemicals.

These are important steps towards protection from the hazards caused by trade in dangerous chemicals, particularly for developing countries. Thorough and

widespread implementation of the Rotterdam Convention will provide countries greater ability to protect themselves against the risks of toxic substances and will and raise global standards for protection of human health and the environment.

The procedures and requirements contained in the Rotterdam Convention grew out of two pre-existing (voluntary) international regulatory mechanisms; the *International Code of Conduct on the Distribution and Use of Pesticides* (FAO) and the *London Guidelines for the Exchange of Information on Chemicals in International Trade* (UNEP). Both the Code of Conduct and the London Guidelines include provisions aimed at making information about hazardous chemicals more freely available, thus permitting national governments and other stakeholders to assess the risks associated with use of chemicals in their own country. Procedures supporting the principle of Prior Informed Consent (PIC) were added to these mechanisms in 1989, and PIC forms the core of the Rotterdam Convention.

The PIC procedure is a means for formally obtaining and disseminating the decisions of importing countries as to whether they wish to receive future shipments of specified hazardous chemicals. PIC:

- helps participating countries learn more about the characteristics of potentially hazardous chemicals that may be shipped to them;
- initiates a decision making process on the future import of these chemicals by the countries themselves and;
- facilitates the dissemination of this decision to other countries.

The FSM has not yet ratified the Rotterdam Convention. This issue was discussed with Mr Moses Pretrick of the FSM Department of Health and Social Affairs, the focal point in the national government for international chemicals issues prior to the creation of OEEM. He stated that the matter had been considered, but that no final decision had been made.

Ratification of the Rotterdam Convention would enable the FSM greater control and more information regarding the import into the country of hazardous chemicals, and would provide a mechanism not only to ban the least desirable and most dangerous of these, but to oblige the governments of countries from which these chemicals might come to implement controls preventing such traffic. It is of course preferable to prevent or avoid problems relating to hazardous chemicals, rather than attempting to solve them once they arise.

One reason weighing against ratification of the Rotterdam Convention is the fact that the United States is not a party. According to the FSM POPs NIP the US is the main source of chemical imports into the FSM. Nevertheless, according to the USEPA website, ratification processes are underway for the US to join the Rotterdam Convention as a Party, and it appears that the USEPA already requires US exporters to follow PIC procedures. Also, the FSM POPs NIP states that many chemicals are now being imported into the FSM from Asian countries such as China, Japan and Korea, and these countries are parties to the Rotterdam Convention.

Ratification of the Rotterdam Convention would support the aims of the FSM POPs NIP, which is not limited to POPs but refers to dangerous substances generally.

Core Elements for National Implementation

Provision	Ref.	Implementation issues
Designate national authority (NA)	4(1)	Identify an agency within national govt. to manage PIC procedure and related matters.
Provide adequate resources to NA	4(2)	An effective NA would need trained personnel, administrative materials and support, budgets for national stakeholder outreach,
Notify PIC Secretariat of all "Final Regulatory Actions" (the banning or severe restriction of a chemical)	5(1) & (2)	The international notification procedure.
Option for developing country Parties to propose the listing of a severely hazardous pesticide for PIC	6(1)	This is an invaluable protection recognised as necessary by the international community.
Implement laws or administrative measures to ensure decisions on the <i>import of chemicals</i> in Annex III	10	Annex III is titled 'chemicals subject to the PIC procedure', and 10(1) requires Parties to say whether, and under what conditions they will accept imports of these substances.
<i>If exporting any PIC substances</i> , implement laws or administrative measures to ensure exporters and other chemical industry stakeholders are aware of PIC requirements, and comply with them.	11 & 12	The administrative burden associated with this requirement depends on the level of chemical exports. FSM has few chemical exports.
<i>If exporting any PIC substances</i> , to assist importing Parties, upon request, to obtain information on imported chemicals and to strengthen their capacity for safe life-cycle chemical management.	11(1)(c)	Again, the administrative burden associated with this depends on the level of chemical exports.
Facilitate information exchange on chemicals and related domestic regulatory actions.	14	FSM would not be expected to generate a great deal of this, other than describing their own activities and regulatory actions.
A general requirement to establish or strengthen national infrastructure to implement the Convention (gives examples of registers, databases, chemical	15	FSM may need assistance in establishing such infrastructure.

safety initiatives etc).		
Technical assistance for effective life-cycle management of chemicals to be provided by developed country Parties to developing country Parties.	16	
<i>Non-compliance - measures yet to be developed</i>	17	

Recommendations with regard to implementation of the Rotterdam Convention:

It is recommended that the FSM National Government consider whether or not to ratify the Rotterdam Convention. The opinion of this consultant is that ratification would be consistent with many pre-existing commitments of the FSM, including the National constitutional provision with regard to strict national controls on toxic chemicals, obligations under the Compact of Free Association to implement laws that are substantively similar to those in the US controlling toxic chemicals, the National Implementation Plan on POPs, and the Presidential Order No 1 creating OEEM with responsibilities including the regulation of chemicals and other hazardous substances.

If it is decided that the Rotterdam Convention should be ratified, to consider the draft provisions relating to hazardous chemicals and wastes provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

G. The Convention on Biological Diversity

FSM became a party to the Convention on Biological Diversity in June 1994. Between June 2000 and April 2002 the FSM undertook a national multi-sectoral process to develop its National Biodiversity Strategy and Action Plan. This process included all relevant state and national government agencies, as well as representatives of non-government organisations. The result is a substantial document setting out a comprehensive plan of action for the protection of FSM's biological diversity, available on the internet at www.fsmgov.org/biodiv02.pdf.

Each of the states has also prepared biodiversity strategy and action plans. It was beyond the scope of this project to review these.

The FSM NBSAP identifies the need for legislative action in the following areas:

- Ecosystem management plans;
- Destructive harvesting practices;
- Bioprospecting;
- Access and benefit sharing for traditional biological knowledge;
- Biosecurity;
- Oil pollution;
- Hazardous chemicals imports and use;
- Air, noise, light and thermal pollution; and

- Empowerment of resource owners in law enforcement and in environmental impact assessment.

These issues were raised by the consultant in discussions with relevant officers in the FSM national government, Pohnpei state government and with representatives of non-governmental organisations. Based upon these discussions it is apparent that the NBSAP did not call for national law to establish protected areas because this issue was considered to be best left to the state governments, NGOs and community groups. The reason for this is that the most effective and successful action on ecosystem protection via the establishment of protected areas in FSM has been by application of community-based methods that either reside wholly within the purview of community groups in partnership with NGOs, or result from a close collaboration of community groups, NGOs and state government agencies.

Oil pollution is regulated by the state governments, as is environmental impact assessment and destructive harvesting practices (such as dynamite fishing and fishing with poisons). The national government is not seeking to duplicate these regulatory efforts.

The FSM has obligations under other international agreements with regard to hazardous chemical import and use, and these matters are dealt with herein in the sections on the Stockholm and Rotterdam Conventions.

Many of the national government officers, as well as NGO representatives, consulted in relation to this review regarded the most urgent need in terms of legislative implementation of the CBD by the FSM national government to be controls on bioprospecting and access and benefit sharing for uses of traditional biological knowledge. While ecosystem protection, endangered species protection and the establishment of protected areas were all considered to be best left to the state governments partnering with NGOs and resource owners, bioprospecting and access and benefit sharing was recognised as a matter that needed to be dealt with by the FSM national government. It was noted by all concerned that while the development of law on this issue was a high and urgent priority, that it would also be a sensitive topic that would require thorough consultation with state governments and FSM's public. Copies of the Pacific Model Regional Law on Traditional Biological Knowledge, Innovations and Practices were provided by the consultant to relevant officers of the national government, as well as the Micronesia Conservation Trust.

With regard to biosecurity, FSM has substantial quarantine controls. These are provided by the *Plant and Animal Quarantine Regulations* (last revised in 2000), promulgated under FSMC Title 22 section 402. The consultant was informed that a revised biosecurity plan was developed by a specialist consultant in 2007, including revisions to the quarantine regulations that take account of the requirements of the Cartagena Protocol. The consultant for this project was not provided with a copy of this plan and so cannot comment upon it.

Recommendations with regard to implementation of the CBD:

It is recommended that the FSM implement the outcomes of the recent review of its biosecurity controls which, it is understood, included the requirements of the

Cartagena Protocol. Without a copy of the report from this review it is not possible to be more specific in this regard.

It is recommended that the FSM state governments be encouraged to review their laws in order to support the activities of community groups and NGOs in the establishment of community based protected areas (see also the section on Pohnpei State environment law).

It is recommended that the FSM National Government plan and implement a program of action with the aim of consulting upon and developing a legislative framework to regulate bioprospecting and access and benefit sharing in relation to traditional biological knowledge, innovations and practices. This is an urgent priority, but should be undertaken with a view to attaining the understanding and support of all of FSM's state governments and to the greatest possible extent, its communities of resource owners.

H. The Climate Change Convention

The FSM is actively implementing the UN Framework Convention on Climate Change. In discussing Climate Change Convention-related matters with officers of OEEM it was apparent that OEEM had considered options to address various climate change-related matters through legislation and had decided not to do so. The Climate Change Convention does not require, by necessity, legislative implementation.

This review makes no Climate Change Convention-related recommendations.

5. Oceanic Fisheries

FSM's most significant commercial natural resource is its oceanic fishery and accordingly the laws regulating its fisheries are very important to the nation. As noted in Section 3 above, fisheries regulation in FSM is controlled by a dedicated agency, the National Oceanic Resource Management Authority (NORMA).

The law regulating FSM's oceanic fishery is contained in Title 24 of the FSM Code, also known as the Marine Resources Act. Title 24 was thoroughly revised and expanded in 2002 and, as a general comment, it provides a comprehensive and modern system regulatory controls for commercial oceanic fishing in FSM.

The following regulations are in force under Title 24, administered by NORMA:

The National Oceanic Resource Management Authority Administrative Penalty Regulations;

The Domestic Fishing and Local Fishing Vessel Licensing Regulations;

The Interim Research and Training Vessel Licensing Regulations;

The Reefers and Fuel Tankers Licensing Regulations; and

The Vessel Monitoring System Regulations.

Also of relevance in this regard is Title 19 of the FSM Code, the *National Maritime Act of 1997*, and its subsidiary regulations.

FSM is a party to the *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific Ocean* (WCPF Convention), described below. The 2002 revision of Title 24 was undertaken with a view to bringing FSM into compliance with the WCPF Convention.

The WCPF Convention is one of the first regional fisheries agreements to be adopted since the conclusion in 1995 of the UN Fish Stocks Agreement. It was opened for signature at on 5 September 2000 and entered into force on 19 June 2004. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean in accordance with the 1982 *United Nations Convention on the Law of the Sea* and the 1995 *UN Fish Stocks Agreement*. For this purpose, the Convention establishes a Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The Contracting Parties to the Convention are members of the Commission.

The Convention applies to all species of highly migratory fish stocks. Conservation and management measures (CMMs) under the Convention are to be applied throughout the range of the stocks, or to specific areas within the Convention Area, as determined by the Commission. Eighteen CMMs passed by the Commission are currently in force.

Core Elements for National Implementation

A legal review was undertaken in 2006 or 2007 comparing the requirements of the WCPF Convention and its CMMs with those of Title 24 and its subsidiary regulations. The consultant was provided with a copy of the report from this review by NORMA. The review identified numerous amendments that are necessary to bring Title 24 and its regulations into full compliance with the WCPF Convention and its CMMs. The following summarises the issues identified in that review:

Article 23(5): Upon request from another member and where provided with the relevant information, Commission members must investigate any alleged violation of the Convention or conservation and management measures adopted by the Commission by their nationals, or vessels owned or controlled by their nationals. A progress report of the investigation and a report at the conclusion of the investigation must be provided to the requesting member State and the Commission.

> The FSM's *Domestic Fishing and Local Fishing Vessel Licensing Regulations* need to be amended to comply with the above requirement.

Article 24(1): Flag States shall ensure its vessels comply with the provisions of the Convention and the conservation and management measures adopted by the Commission.

> While section 303 of Title 24 requires compliance with Art 24(1), FSM's *Domestic Fishing and Local Fishing Vessel Licensing Regulations* require amendment to incorporate the specific procedures of the Convention and its CMMs.

Article 24(1): Flag States shall ensure their vessels do not conduct unauthorized fishing in areas under the national jurisdiction of any contracting party.

> While section 301 of Title 24 requires compliance with Art 24(1), FSM's *Domestic Fishing and Local Fishing Vessel Licensing Regulations* require amendment to incorporate the specific procedures of the Convention and its CMMs.

Article 24(2): Flag States shall not allow their vessels to fish on the high seas unless authorized to fish on the high seas. Such authorization shall only be issued where the member is able to effectively exercise its responsibilities in respect of such vessels under the 1982 United Nations Convention on the Law of the Sea, 1995 UN Fish Stocks Agreement and the WCPF Convention.

> While section 301 of Title 24 requires compliance with Art 24(2), FSM's *Domestic Fishing and Local Fishing Vessel Licensing Regulations* require amendment to incorporate the specific procedures of the Convention and its CMMs.

Article 24(3): Where the vessel of a flag State operates on the high seas, it does so in accordance with the requirements of Annex III of the WCPF Convention. Annex III stipulates minimum terms and conditions for fishing by flag vessels within the Convention Area.

> FSM's *Domestic Fishing and Local Fishing Vessel Licensing Regulations* require amendment to incorporate the specific requirements of Articles 2-6 of Annex III of the WCPF Convention.

Article 25(4): Vessels of Flag States that are found to have committed serious violations of Convention provisions must cease to operate until all outstanding sanctions have been complied with.

> FSM's *Domestic Fishing and Local Fishing Vessel Licensing Regulations* require amendment to incorporate the requirements of Article 25(4) of the WCPF Convention.

CMM-2004-03 *Specifications for the Marking and Identification of Fishing Vessels*, requires provisions to:

- ensure that vessels are marked in accordance with the measure: the WCPFC Identification Number (WIN) (paras 2.1.2 and 2.1.3(a));
- require the marking of fishing vessels with the WIN as a condition for authorization to fish in the Convention area beyond areas of national jurisdiction (para 2.1.3(b))
- make non-compliance with the specifications for vessel marking and use of WIN as offence under national legislation (para 2.1.3(c)).

> FSM's *Domestic Fishing and Local Fishing Vessel Licensing Regulations* require amendment to incorporate the requirements of CMM-2004-03.

CMM-2006-01 *Conservation and Management Measures for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean*, requires provisions to prohibit landings, transshipment and commercial transactions in tuna and tuna products that are positively identified as originating from fishing activities that contravene any element of the Commission's conservation and management measures (para 10).

This CMM also requires policy and management measures to:

- to ensure that the total capacity of national commercial tuna fisheries for BET and YFT, including purse seining that occurs 20 north and 20 south, but

excluding artisanal fisheries and those fisheries taking less than 2000 tonnes of BET and YFT, do not exceed the average level for the period 2001-2004 or 2004 (paras 1 and 3);

- to develop management plans for the use of FADs (anchored and drifting) in areas beyond national jurisdiction to be submitted to the Commission by 1 January 2008 (para 4);
- to develop plans to require all purse seine vessels to retain on board and then land all skipjack, yellowfin, and bigeye tuna, except for fish unfit for human consumption for reasons other than size, including provisions outlining how such requirement would be implemented and enforced (para 9).

> Title 24 requires amendment to implement CMM-2006-01.

CMM-2006-08 *Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures*. To be able to undertake high seas boarding and inspection, each member would need to ensure that it has adequate legislative provisions:

- empowering its boarding and inspection officials to carry out boarding and inspection on the high seas of fishing vessels engaged in or reported to have engaged in fishery regulated pursuant to the Convention (para 5);
- to ensure that vessels flying the flag of a member accept boarding and inspection by authorized inspectors in accordance with the procedures established under CMM 2006-08 (para 7).

> Sections 603 and 604 of Title 24 provide for substantial powers of boarding and inspection. The review recommended regulations be promulgated that match the requirements and procedures of CMM 2006-08.

More recently than the matters noted above, the NORMA Director informed the consultant that additional agreements had been reached between the parties to the Convention regarding restrictions on the use of fish aggregating devices, the closure of high seas pockets, and the retention of by-catch. The NORMA Director informed the consultant that amendments were soon to be prepared to implement these changes by the FSM Department of Justice.

Recommendations with regard to Oceanic Fisheries:

It is recommended that the FSM proceed with amendments to Title 24 and its subsidiary regulations as summarised above.

6. Pohnpei State Environmental Law

A. Constitutional Provisions and Administrative Arrangements

The following provisions of the Constitution of Pohnpei relate to environmental issues:

Article 7, Section 1. Resources and Environment.

The Governor of Pohnpei shall establish and faithfully execute comprehensive plans for the conservation of natural resources and the protection of the environment.

Article 13, Section 2. Harmful Substances.

(1) Nuclear, chemical, gas, and biological weapons, nuclear power plants, and waste materials therefrom, including high-level and low-level radioactive waste, shall not be introduced, stored, used, tested, or disposed of within any part of the jurisdiction of Pohnpei, except if such action is specifically and expressly permitted by a majority of votes cast in a referendum by the people of Pohnpei.

(2) The Legislature shall provide by statute for the strict control of harmful substances not listed under Subsection 1 of this Section, limiting their introduction, storage, use, and disposal within the jurisdiction of Pohnpei to activities necessary for the enhancement of public health, public safety, and economic development.

The executive branch of the Pohnpei State Government was restructured in 2004. Following this re-organisation, the environment-related responsibilities are located in the Department of Economic Affairs (Division of Agriculture, Division of Fisheries and Aquaculture), Department of Land and Natural Resources (Division of Forestry and Marine Conservation, Division of Historic Preservation), and in the Environmental Protection Agency. The EPA is somewhat independent from the executive branch in that it is governed by a Board.

B. Pohnpei Environmental Protection Act and regulations

As noted by the NEMS Review, prior to 1992 the Pohnpei State Government implemented the provisions of Title 25, Subtitle I, the Trust Territory Environmental Quality Protection Act.

In 1992 the Pohnpei State Legislature passed State Law No 3L-26-92, the *Pohnpei Environmental Protection Act*. This law, an updated version of the Trust Territory Environmental Quality Protection Act, establishes the Environmental Protection Agency, governed by its own Environmental Protection Board. State Law No 3L-26-92 is amended by State Law No 3L-45-93 (relating to regulations of the Environmental Protection Agency pertaining to mining and dredging and the removal of mined and dredged materials).

Section 9 of State Law No 3L-26-92 provides in part:

Powers and duties of the Agency. The Agency shall have the power and duty to protect the environment, human health, welfare, and safety and to abate, control, and prohibit pollution or contamination of air, land and water in accordance with this act and with the regulations adopted and promulgated under this act and any administrative directive issued by the Governor pursuant to this act, balancing the needs of economic and social development against those of environmental quality. To fulfill this obligation and the public policy stated herein, the Agency shall do the following:

(1) Establish rules and regulations within one year of the appointment of an executive officer to effect the purposes of this act, which rules and regulations shall have the force and effect of law when issued as provided by S.L. No. 2L-12-80, to include but not to be limited to the following:

- (a) Earthmoving and dredging regulations;
- (b) Environmental impact assessment regulations;
- (c) Water supply systems regulations;
- (d) Pesticide regulations;
- (e) Sewage regulations;
- (f) Solid waste regulations;
- (g) Marine and fresh water quality regulations;
- (h) Air pollution regulations;
- (i) Groundwater regulations; and
- (j) Hearing procedure regulations for the Board.

(2) Establish and administer a system requiring a permit for any person to discharge a pollutant into the air, land or water, or for any person to conduct any activity that results or may result in the discharge of any pollutant into the air, land or water such as the operation, construction, expansion or alteration of any facility; provide for the issuance, modification, suspension, revocation and termination of such permits; and require the applicable payment of a reasonable fee and the posting of a bond as deemed appropriate.

The Pohnpei EPA currently administers 20 regulations pursuant to State Law No 3L-26-92:

1. *Air Pollution Control Standards and Regulations* 30/3/95
2. *Barber Shop and Beauty Parlor Regulations* 3/30/95
3. *Carnival, Fair and Food Sale Regulations* 3/30/95
4. *Drinking Water Regulations* 3/30/95
5. *Earthmoving Regulations* 4/2/2008
6. *Environmental Impact Assessment Regulations* 3/30/95
7. *Food Store Regulations* 02/09/98
8. *Hearing Regulations* 3/30/95
9. *Mosquito and Fly Control Regulations* 3/30/95
10. *Pesticide Regulations* 3/30/95
11. *Regulations on Public Access to EPA Records* 5/15/96
12. *Public Buildings and Places of Public Assembly Environmental Standards Regulations* 3/30/95
13. *Restaurant and Food Selling Places Regulations* 3/30/95
14. *Rodent Control Regulations* 3/30/95
15. *Sakau Bar Regulations* [Effective Date?]
16. *Ship Environmental Health Inspection Regulations* 3/30/95
17. *Solid Waste Regulations* 3/30/95

18. *Swimming Pools Regulations* 3/30/95
19. *Toilet Facilities and Sewage Disposal Regulations* [Effective Date?]
20. *Marine and Fresh Water Quality Standard Regulations* 3/30/95

Taken together, this body of environmental law, at least in form, comprises a thorough regulatory system dealing with the full range issues related to environmental health and pollution control. The limited scope of this project did not enable the consultant to investigate the effectiveness of implementation activities for these regulations.

The EPA also administers Pohnpei State Law No 6L-66-06, which provides for a program of litter abatement and the proper disposal of solid wastes; establishing an Environmental Quality Fund and Litter Reward Fund; and providing for a shipping container and motor vehicle waste disposal fee.

This is an interesting law that includes some innovative provisions specifically suited to Pohnpei's circumstances. Section 17 of State Law No 6L-66-06 creates a pre-disposal fee to be applied to imported products: US\$100 for each shipping container and US\$100 for each motor vehicle. These monies are paid into an Environmental Quality fund to be used for the conduct of public education, environmental awareness, and clean-up programs pursuant to the objectives of the law. This is a good example of putting the polluter-pays principle into action through law. The inclusion of motor vehicles is an example of well-targeted regulatory action addressing what in Pohnpei is a particularly problematic waste stream, given the relatively large numbers of imported second-hand vehicles which have a short useful life span in Pohnpei's coastal environment, and are difficult to dispose of in an environmentally sound manner. State Law No 6L-66-06 (section 18) also creates a Litter Reward Fund to reward people who provide information or evidence leading to convictions of persons that violate the law.

During discussions the Pohnpei EPA Director informed the consultant that the agency was in the process of drafting the following amendments:

- to restaurant regulations;
- to raise the total of emergency response funds held in the State Environmental Quality Revolving Account (under section 12(1)(c)) from \$50,000 to \$100,000;
- to enable cost recovery for shipping inspections;
- to enable cost recovery for other services, such as water testing;
- to enable officers authorized under the EPA Act to issue on-the-spot citations.

C. Marine Conservation

Possibly the most significant post-1992 development in environmental law at state level in the FSM is the passage of the *Pohnpei Marine Sanctuary and Wildlife Refuge Act 1999*. Pohnpei State Law No 4L-115-99. Section 3 provides the statement of purpose:

To identify and designate ecologically significant areas of the terrestrial and marine environment as state marine sanctuaries and wildlife refuges; to provide authority for comprehensive and coordinated conservation and management of these terrestrial and marine areas, and activities affecting them.

Also included in Section 3 are references to scientific research, public awareness and coordination with other levels of government, including “global programs”. Section 5 establishes the “Pohnpei State Marine Sanctuary and Wildlife Refuge System”, and creates seven marine sanctuaries under ss 18-24. Section 7 greatly restricts activities that may be undertaken within designated sanctuaries and refuges, particularly sub-section (b), which states: “No person shall take or possess any fish, bird, mammal, or other wild vertebrate or invertebrate animals or part, or nest, or egg thereof within any such area unless otherwise allowed by regulations issued under this Act.” Section 8 empowers the Director to permit non-commercial and subsistence fishing, recreational activities and scientific research within the designated sanctuaries and refuges. Until 2003 there were no regulations promulgated for the Act and so the legal effect of s 7 was the prohibition of all resource-use activities, including subsistence uses, within Pohnpei’s protected areas. Under the 2003 regulations full-time residents of Oruluk Atoll may fish for subsistence purposes within the Oruluk Sanctuary.

The *Pohnpei Marine Sanctuary and Wildlife Refuge Act* represents a significant advancement in the governance of Pohnpei’s natural resources. It makes biodiversity conservation a priority, specifically identifies seven areas of high conservation value, and provides for their monitoring. The significant administrative and regulatory burden placed upon the agencies responsible for the Act’s implementation was addressed in 2002 with the employment of five Marine Conservation Officers. There are now 8 MCOs. Concerns remain, however, that the State Government is unable to effectively monitor the marine sanctuaries due to limitations on budgets, equipment and hours of work.

Also potentially problematic is the authorisation under s 6(1)(c) for the Director “[t]o acquire lands, waters or interests [over designated areas] by exchange of public lands for private lands, or for interests in public lands ... or by eminent domain”. The issue of land acquisition for marine sanctuaries and wildlife refuges has yet to arise in practice because the seven marine sanctuaries created in 1999 are within marine or tidal areas rather than private lands. Pohnpei State Government acquisition of private lands through the use of powers of eminent domain would be very controversial and likely to result in high levels of state-citizen antagonism.

The *Pohnpei Marine Sanctuary and Wildlife Refuge Act* is drafted as a fairly typical “national parks” law and its design takes little account of Pohnpei’s social and historical context of customary land tenure and local resource control. The requirement for the Director to consult with traditional and municipal leaders on the development of regulations is the only aspect of the law seeking to address issues of this nature. The laws processes, on paper, could not be described as “community-based”.

Despite the reservations noted above, partnerships forged between the Pohnpei Conservation Society, communities of resource owners and agencies of the Pohnpei

State Government, built around ongoing and cooperative stakeholder dialogue, has enabled the *Pohnpei Marine Sanctuary and Wildlife Refuge Act 1999* to provide a workable legal framework for a successful program of community-based marine protected area management in Pohnpei.

Led by the Conservation Society of Pohnpei (CSP), since 2001 there have been seven additional Marine Protected Areas (MPAs) declared under the *Pohnpei Marine Sanctuary and Wildlife Refuge Act 1999*. These newer MPAs are “community-based” in that they have been established with the agreement of the communities of resource owners residing in the adjacent localities following substantial periods of discussion and planning (see <http://www.serehd.org/html/marine.html#MPAnetwork>). These areas are no-take zones and community members (Community Conservation Officers or CCOs) assist in both the enforcement of restrictions and with monitoring the ecological health of the areas. CCOs receive regular training for both monitoring and enforcement activities, arranged by CSP.

Each of the sanctuaries declared under the *Pohnpei Marine Sanctuary and Wildlife Refuge Act 1999* since 2000 has required an amendment to the law approved by the Pohnpei State Legislature. CSP commented that it would be better if this were not required and the executive branch were empowered to declare new MPAs under the Act. Both the CSP and Pohnpei Fisheries suggested that the law would be much improved if its terms recognised the central role played by community planning, monitoring and enforcement in the development and operation of the MPAs. The most recent legal amendment in relation to the MPAs was the expansion of the Kehpara MPA (a grouper spawning aggregation site) to include the spawning areas of three, rather than one, species.

Apart from the MPAs, the Pohnpei Division of Fisheries is currently working with the state Attorney-General’s office in the development of new fishing regulations relating to restrictions on fishing gear, restrictions on spear fishing at night, restrictions on small mesh nets, and on establishing size limits for some of Pohnpei’s target species. Another legal change related to the enforcement of marine conservation law in Pohnpei is an administrative one; the proposed transfer of the eight Marine Conservation Officers from the Department of Land and Natural Resources to the Department of Public Safety (Police). If this occurs it is anticipated that they will be a more effective enforcement group working closely with the Police Department, and may also be empowered to issue on-the-spot citations, which will be a significant improvement upon the current practice of needing to bring all people accused of violating Pohnpei’s fishing regulations to the State Court for prosecution.

D. Forests

The *Pohnpei Watershed Forest Reserve and Mangrove Protection Act 1987* (State Law No 1L-128-87) was enacted in 1987 with the aim of providing for the conservation and sustainable use of Pohnpei’s watershed and mangrove forests. The boundaries of the watershed forest reserve includes 5100 ha within the uppermost reaches of Pohnpei’s watershed. Section 6 of the Act defines “important watershed areas”, which are the forested slopes below the watershed reserves where soils were

identified by the US Soil Conservation Service as highly erodible. The law includes severe restrictions upon land uses within both of these zones.

The NEMS Review accurately describes the Act as a “very strong legislative statement”, with “ringing declarations of the value of environmental protection”. The following observation describes what happened in 1987 when officers of the then Pohnpei Department of Resource Management and Development (DRMD) attempted to enforce the law:

Forestry officials, ecstatic about the passage of the law, held a series of poorly-attended municipal information meetings and then set out to mark the boundaries of the Watershed Forest Reserve with the assistance of GPS technicians from the US Forest Service. However, boundary survey teams were turned back by angry villagers with guns and machetes who considered the reserve a government land grab in direct conflict with traditional Pohnpei resource use and authority.¹

The law, “failing to recognize traditional Pohnpeian resource use in the upland forest areas, was almost universally rejected”.² Physical placement of indicators to mark the watershed forest reserve boundary was necessary to implement the remainder of the Act’s provisions, but an ongoing state-citizen stand-off prevented this from occurring for the first 14 years of the Act’s operation. In some areas of Pohnpei this conflict continues to the present.

More positively, again after the building of community-NGO-government partnerships and dialogues, the watershed boundary has in recent years been marked in 2 of Pohnpei’s five Municipalities; Madolenihmw and U. In these areas the destructive practice of illegal sakau (kava) planting has been greatly reduced. These improvements occurred only after substantial efforts had been made to redirect the watershed conservation programs away from coercive centralised regulatory approaches, towards bottom-up planning and multi-stakeholder dialogues.

In U Municipality in 2002 the Nahnmwarki (paramount chief) backed the enforcement of the watershed boundary line with a customary edict threatening to remove the traditional titles of any man (or his father) who planted sakau in contravention of the law. The effectiveness of this was subsequently proven by monitoring undertaken in U by CSP indicating that new plantings had all but ceased.

The most recent development in this regard is the drafting of a Memorandum of Understanding involving seven parties (Pohnpei State Government, Nett Municipal Government, CSP, College of Micronesia, Pacific Survey Company and Micronesia Conservation Trust) in a cooperative agreement for the marking of the watershed boundary in Nett Municipality (in draft form in March 2009).

Conversely, the watershed boundary remains unmarked in Kitti Municipality and more than 22 years after the passage of State Law No 1L-128-87 there remains antagonism over the issue between the State Government and Kitti’s traditional leaders and communities. There have been major landslides in Kitti directly attributed

¹ C Dahl and W Raynor, “Watershed Planning and Management: Pohnpei, Federated States of Micronesia” (1996) 37 *Asia Pacific Viewpoint* 235.

² Ibid.

to the clearance of groundcover above the watershed line for the purpose of sakau farming.

The experience of the passage and stalled implementation of State Law No 1L-128-87 indicates the limitations of environmental legislation in Pohnpei in situations where it is not accompanied by thorough stakeholder dialogue undertaken in an atmosphere of genuine respect for cultural values associated with traditional forms of land tenure and resource control.

Representatives of both CSP and the Pohnpei Division of Agriculture suggested that State Law No 1L-128-87 should be amended to recognise the role of local communities of resource owners in the sustainable management of Pohnpei's watershed forests.

7. Conclusions regarding Needs and Gaps in FSM Environmental Law

A. Summary of Recommendations

Clarification of Constitutional Allocation of Powers

It is recommended that FSM's state and national governments revisit the discussions that were held in 1993 regarding the allocation of powers over environment and natural resources of the FSM Constitution. These discussions should include representatives of both the legal agencies as well as those tasked with environmental regulation. There are two outstanding issues that require resolution.

The first is the point of disagreement in the 1993 joint opinion – the management of hazardous wastes and chemicals and whether jurisdiction over these materials resides exclusively with the national government, or is exercised concurrently by the national and the state governments. The outcome of these discussions should not be limited to a final legal opinion, but should also be geared towards a resolution that would enable the state government environment agencies to continue to administer their regulatory functions with regard to chemicals, wastes and associated matters including environmental impact assessments, in absolute confidence of their constitutional validity.

The second issue that requires consideration and resolution is whether FSM's ratification of an international treaty empowers the national government to implement domestically the requirements of the treaty, even if that means legislating over matters that would otherwise be solely within state jurisdiction. The outcome of this discussion would impact the operation of various aspects of FSM law, particularly in the areas of endangered species, ecosystem protection and biodiversity conservation.

The Legislative and Administrative Functions of the National Government (OEEM)

It is recommended that OEEM be designated as the focal point for the Stockholm, Basel and Waigani Conventions (cf PO No1 section IV).

It is recommended that the responsibilities for implementing the Convention on Biological Diversity be located in a single agency.

It is recommended that the Sustainable Development Council resume meeting on a regular basis, and that a process is put in place to either facilitate the direct involvement of representatives of FSM's state governments either as SDC members, or in another way as would enable the states to be aware of and have an input into SDC discussions.

Subtitle I of Title 25 is redundant and should be repealed.

Subtitle II of Title 25 should be amended in a way that retains the capacity of the National Government, through OEEM, to regulate the matters with which it deals if the State governments are not, or cease to, undertake those functions. In effect, the National Government, instead of being required by law to undertake the functions described in Title 25, would retain authority that may be exercised in the absence of state action on these matters. Also, development activities undertaken in the EEZ, such as undersea cable placement, oil drilling or sea bed mining, would require environmental impact assessment and approval, administered by OEEM.

Title 25 should be amended to identify its primary decision maker as the Director of OEEM, rather than referring to a defunct Environmental Protection Board.

Title 25 should be augmented to include provisions to implement the international environment treaties ratified by FSM that require domestic legislative frameworks to operate effectively. These include the Basel, Waigani, Stockholm Conventions and the Montreal Protocol.

The FSM National Government should consider ratification of the Rotterdam Convention. If ratified this instrument would allow FSM much greater control over imports of hazardous chemicals. If FSM decided to ratify the Rotterdam Convention Title 25 would require amendment for its implementation.

MEA – Compact of Free Association

It is recommended that a specific study be undertaken with the same aims as that described in FSMC Section 610(8), such study including the laws of all of FSM's states, and if these are found not to fulfill section 161(b) of the Compact of Free Association, that new legislation fulfilling those obligations be prepared.

MEA – Stockholm Convention

That FSM consider the draft provisions relating to hazardous chemicals and wastes provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

That FSM finalise its POPs NIP and proceed with plan of action no. 1 provided at pages 35-42 for the development of national and state level legislation for the environmentally sound management of hazardous chemicals and substances.

MEA – Montreal Protocol

That FSM consider the draft provisions relating to hazardous chemicals and wastes, including ozone depleting substances, provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

Should the FSM decide not to progress the draft bill prepared by the consultant as part of this project that the FSM OEEM and Department of Justice prioritise the finalisation of the draft bill on ozone depleting substances that it has prepared, with a view to presenting it to Congress for enactment.

MEA – Basel and Waigani Convention

That FSM consider the draft provisions relating to hazardous chemicals and wastes provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

MEA – Rotterdam Convention

It is recommended that the FSM National Government consider whether or not to ratify the Rotterdam Convention. The opinion of this consultant is that ratification would be consistent with many pre-existing commitments of the FSM, including the constitutional provision with regard to strict national controls on toxic chemicals, obligations under the Compact of Free Association to implement laws that are substantively similar to those in the US controlling toxic chemicals, the National Implementation Plan on POPs, and Presidential Order No 1 creating OEEM with responsibilities including the regulation of chemicals and other substances.

If it is decided that the Rotterdam Convention should be ratified, to consider the draft provisions relating to hazardous chemicals and wastes provided by the consultant as part of this project with a view to presenting it, or a revised version thereof, to Congress for enactment.

MEA – Convention on Biological Diversity

It is recommended that the FSM implement the outcomes of the recent review of its biosecurity controls which, it is understood, included the requirements of the Cartagena Protocol. Without a copy of the report from this review it is not possible to be more specific in this regard.

It is recommended that the FSM state governments be encouraged to review their laws in order to support the activities of community groups and NGOs in the establishment of community based protected areas (see also the section on Pohnpei State environment law).

It is recommended that the FSM National Government plan and implement a program of action with the aim of consulting upon and developing a legislative framework to regulate bioprospecting and access and benefit sharing in relation to traditional biological knowledge, innovations and practices. This is an urgent priority, but should

nevertheless be undertaken with a view to attaining the understanding and support of all of FSM's state governments and to the greatest possible extent, its communities of resource owners.

Fisheries

It is recommended that the FSM proceed with amendments to Title 24 and its subsidiary regulations detailed in section 5 of this report in order to bring FSM into full compliance with the WCPF Convention.

B. Outline of Suggested Environmental Law Technical Assistance Projects

TA Project 1 – Facilitating the Finalization of National Hazardous Chemicals and Wastes Bill.

This project involves two components. The first is the preparation of a detailed plain-English explanatory memorandum for executive and legislative decision-makers, as suggested by FSM Congress Staff Attorney. Given the complexity of the draft bill, this would be an important, perhaps essential, step towards gaining the full understanding and support of the relevant decision-makers. The second component is a return visit to FSM to work with officers of OEEM, the FSM Department of Justice and the Congress in reviewing and finalizing the provisions of the bill. This visit would also involve another round of consultations with key personnel.

10 days per diem	1,040
15 days specialist consulting	4,500
Airfare to FSM	1,700
	7,240

TA Project 2 – Implementation of Action Plan #1 of the FSM National Implementation Plan for the Stockholm Convention on Persistent Organic Pollutants - Legal Framework for the Safe Management of POPs and other Hazardous Substances

For a detailed description of the tasks envisioned in this project please refer to pages 35-42 of the FSM NIP. The NIP budgets a total of \$154,400 for this action plan, including \$80,000 for 18 months of specialist legal consulting services. It is the view of this consultant that the NIP perhaps underestimates the fees charged by specialist legal consultants, but also perhaps overestimates the total amount of time required to undertake the work.

In addition to the matters described in pages 35-42 of the FSM NIP, this project could also incorporate a review of FSM state-level laws with a view to assessing compliance with the requirements of the Compact of Free Association, as well as including the facilitation of discussions on the constitutional issues raised in this review.

40 days per diem	4,160
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90 days specialist consulting	27,000
Airfares	7,000
	38,160

TA Project 3 – Development of Legislation for Access and Benefit Sharing Relating to Traditional Biological Knowledge, Innovations and Practices

This project involves the development of an FSM-specific, sui generis legal framework for regulation of ABS for traditional biological knowledge, innovations and practices. This project would emphasise the involvement of all relevant stakeholders, including a minimum of three visits to each state at different project phases.

60 days per diem	6,240
80 days specialist consulting	24,000
Airfares	12,000
	42,240

TA Project 4 – Preparation of legislative amendments to implement WCPF Convention

This work is already at an advanced stage and may not require the input of a specialist consultant. It is included here as it is important work that has not been progressed for some months due to high workloads and staff turnover within the FSM Department of Justice.

10 days per diem	1,040
15 days specialist consulting	4,500
Airfare	1,500
	7,040

TA Project 5 – Community-Based Conservation laws at state level (2 states)

This project is suggested in light of (1) the outcomes of discussions in Pohnpei State and Yap State indicating that there are advanced and successful programs relating to community-based protected areas in those states, and an awareness of similar activities occurring in Kosrae, that would benefit from legal amendments endorsing the central role of community-based planning and management; and (2) the need for FSM to implement its obligations under the Convention on Biological Diversity for in-situ conservation.

30 days per diem	3120
55 days specialist consulting	16,500
Airfares	6000
	25,500

Total for TA Projects 1-5 120,180

Integrated Alternative to TA projects 1-5

This is an alternative to the project-by-project approach proposed above.

12 months specialist consulting (residing in country)	70,000
Relocation expenses for consultant (incl. 3 dependents)	18,000
Housing allowance	6,000
Travel expenses	17,500
	111,500

ATTACHMENT

TERMS OF REFERENCE

LEGISLATION PROJECT, FEDERATED STATES OF MICRONESIA

Overall objective

The overall objective of the Consultancy is the production of work which will result in the OEEM being able to better discharge its functions in relation to the management of the environment in FSM and in relation to its international environmental obligations under multilateral environmental agreements (MEAs) to which it is a party.

Tasks

The Consultant shall:

1. facilitate and participate in consultations with relevant stakeholders. A report shall be prepared to reflect the outcome of consultations, and the means by which the matters raised during such consultations have been reflected in the proposed legislative reforms;
2. prepare a review of environmental laws in FSM;
3. produce a Report:
 - a. clarifying the respective jurisdictional responsibilities between the National and State Governments in FSM with regard to environmental matters;
 - b. recommending steps for the establishment of a sound administrative and regulatory framework for environmental law in the Federated States of Micronesia (FSM);
 - c. recommending a plan for drafting such environmental laws as may be required by the Office of Environment & Emergency Management (OEEM);
 - d. identifying or providing for a process of identifying all key aspects and legal requirements of MEAs to which FSM is a party. The legislative reforms shall ensure that all obligations arising from the Conventions are fulfilled, and all legal processes are provided for.
4. produce such draft laws as the Consultant is able to draft within the time and funding limits of this consultancy, eg,
 - a. legislation to reflect current environmental administrative and regulatory functions of the FSM National Government;
 - b. legislation to implement obligations under international environmental treaties to which FSM is a party e.g.
 - i. Basel Convention
 - ii. Stockholm Convention
 - iii. Convention on Biological Diversity & Cartagena Protocol on Biosafety
 - c. ABS and regulation of bioprospecting (genetic resource governance).
5. comply with such other reasonable request connected with this consultancy put to him by OEEM.

6. Advise on the repealing or the amendment of redundant legislation particularly those adopted from Trust Territory period which no longer reflect current environmental administrative and regulatory functions of the FSM National Government (e.g. FSM Code Title 25).

Obligations

The Consultant shall act under the supervision of the Director of the OEEM and Simpson Abraham, Sustainable Development Planner OEEM, and shall liaise with the Office of the Attorney General regarding the consultancy and meet any requirements specified by that Office regarding the drafting of laws.

The Consultant if requested shall continue to assist OEEM and the Office of Attorney General after the completion of this Consultancy, if such assistance is needed to achieve the enactment of the drafted legislation.

Time

Total

32 days