



GOVERNMENT OF KIRIBATI

REPUBLIC OF KIRIBATI
INTERNATIONAL WATERS PROGRAM

A N A L Y S I S O F L E G I S L A T I O N

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TABLE OF ABBREVIATIONS

CBD	Convention on Biological Diversity
ECD	Environment and Conservation Division of the Ministry
EIA	Environment Impact Assessment
GEF	Global Environment Facility
IWP	International Waters Programme
SPREP	South Pacific Regional Environment Programme

PERSONS CONSULTED

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Maruia Kamatie	Fisheries Division	Fisheries Officer
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Liz Duggan	ECD	Pollution control adviser
Atanrerei	Bikenibeu West	LSA
Nenenteiti Teariki-Ruatu	ECD	Ag BCO
Marcus Hipkins	ECD	Legal Officer
Karibaiti Taoaba	MISA	Permanent Secretary
Alice Leney	Kaokimange	Project Coordinator
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SUMMARY OF OBSERVATIONS AND RECOMMENDATIONS

OBSERVATIONS ABOUT THE CURRENT STATUS OF KIRIBATI'S LAWS

Terrestrial derived waste management at community level.

There is no shortage of provisions relating to waste management issues in the current laws of Kiribati. While it may be useful to consider the opportunities for recognising the role of the community in waste management under the laws of Kiribati, there would appear to be only limited scope for effective legislative action in this regard. The role of Local Government Councils is clear and this is effectively provided for in the Local Government Act 1984. If the problem is one of planning, capacity or prioritisation, or any combination of these, then amendment to the laws of Kiribati is unlikely to provide an effective outcome.

The impact of terrestrial derived wastes on the water resources of Kiribati.

There is considerable reference to controlling the impact of wastes on Kiribati's water resources mentioned in its current laws. It is difficult to see where any further substantive legislative provision is needed. However it is noted that while a range of Acts make reference to regulations being made to address water pollution issues, and especially water pollution arising from the disposal of wastes, there appears to be very few regulations actually in force under most of these laws. These include the Public Utilities Ordinance 1977, the Kiribati Ports Authority Act 1990, the Harbours Ordinance 1958, the Public Health Ordinance 1926, the Mineral Development Licensing Ordinance 1977, the Quarantine Ordinance 1929 and the Petroleum Ordinance 1965.

Issues of water supply and water quality.

There is no comprehensive law in Kiribati dealing with issues of the ownership, management and protection of the water resource. Provision is made in relation to pollution of water in a range of laws and these laws involve a wide range of government agencies.

The Ministry of Health plays a responsibility in relation to water quality. The Public Works Department has assumed the role of setting water standards and monitoring water quality but there is no known legal basis for this. The Public Utilities Board has the exclusive function of supplying water or regulating other water suppliers under authorisations given by the Board. The Environment Division wants to play a role in this regard, and such a role should be identified and implemented in a consultative and collaborative manner.

The structure, role and capacity of government agencies involved with terrestrial derived solid waste management in Kiribati.

There are many laws vesting some responsibility in a range of agencies relating to waste management and disposal. These laws are adequate in most respects. It has been noted above that while many laws which constitute agencies such as the Public Highway Authority, the Ports Authority and the Public Utilities Board make provision for regulations to be made in the area of waste management and water conservation, there are in fact very few such regulations in force.

There is a clear need to coordinate the activities of all the relevant agencies and to ensure that their diverse responsibilities are effectively implemented in this context. There is a clear mandate for such a role to be played by the ECD in accordance with the provisions of the Environment Act. This would be further facilitated if the suggested amendments dealing with the establishment of environment committees under the authority of the Act, and other proposed amendments are made to the Environment Act. The planning and policy making processes that are recommended below would also contribute in a significant way.

This Analysis does not purport to be an institutional review of the agencies that have a role to play in relation to the management and disposal of wastes. Such a review may have certain advantages but the priority should be on formulating comprehensive waste management policies in a consultative manner.

RECOMMENDED ACTION

1. A planning exercise in relation to waste management issues is called for at "national, provincial and local level". This is consistent with section 6 of the Environment Act.
2. A comprehensive community participation policy should be formulated in this context as is provided for in section 7 of the Environment Act.
3. One outcome of such a process should be the formulation of a comprehensive waste management plan or policy identifying, inter alia, requirements that can be effectively applied in the context of the EIA and development approval processes under Part III of the Environment Act.
4. It could also formalise requirements applying to the use of wastes for land reclamations.
5. Performance targets relating to a range of waste management issues should be formulated during the policy and planning process, and these should be applied to all relevant public authorities under section 8 of the Environment Act. These can apply to Local Government Councils and

might relate to issues such as the designation of waste disposal areas, the use of approved types of waste receptacles, the separation and collection of organic and non-organic wastes, restrictions on burning plastics and other designated wastes, and the collection and disposal of household and commercial wastes. They could also be applied to bodies such as the Public Highway Authority, the Ports Authority and any body responsible for the management of recreational and conservation reserves. Adequate provision for the depositing of litter and wastes, and for its disposal, could be made in this manner.

6. When the planning and policy determination is undertaken in relation to the management of wastes at community level, particular attention should be given to formulating plans to deal with the issues relating to the effect of wastes on Kiribati's water resources.
7. There is ample scope under the current laws to apply and enforce any such policies and plans under the range of existing laws noted above.
8. A key focus of the waste management plan should be on the protection and conservation of the water resources from the effects of waste disposal. Issues relating to the ownership of the water resource, rights of access to it, the management and supply of water, water standards, testing/monitoring and the imposition water restrictions and drought management measures should be considered and addressed in the planning stages.
9. The formulation of comprehensive water resources legislation would then be extremely advantageous. This could formalise the current arrangements involving a wide range of agencies, and need not affect the current distribution of responsibilities relating to water testing and pollution control functions. It could formalise the setting, monitoring and reporting on water standards.

Its key features may comprise the following matters –

- The right of the State to control the water resources
- The rights of PUB and other State utilities to access water resources
- The regulation of other means of access to the water resources and the rights to use the resources
- Determination of matters involving competing claims to the water resource
- Imposing water restrictions and drought control measures
- Regulation of any activity likely to affect the water resources

- Publication of information concerning the state of the water resource, and particularly that which is made available for human consumption and use
 - Powers to order the cessation of any activities likely to affect the water resources
 - Offences in relation to water pollution and contamination and for other breaches of this law
11. There is no clear need to review and amend the many laws applying to the wide range of agencies currently involved in waste management and disposal in Kiribati.
12. There is however a great need for the activities of the many agencies to be effectively coordinated. The ECD has a mandate to do this under the Environment Act. This would be further enhanced by amending the Environment Act to make provision for the establishment and operation of environment committees for dedicated purposes. A waste management committee would facilitate the formulation of effective waste management policies and processes in a fully consultative manner.

Observations and options for other relevant issues

Observations and legislative options for the other relevant issues reviewed in Part 4 are noted in the body of that Part. These relate to the following issues –

- 4.1 Obligations under international treaties generally
- 4.2 Community involvement in coastal fisheries management
- 4.3 Marine Pollution
- 4.4 Transboundary movements of hazardous wastes
- 4.5 Dumping of wastes at sea
- 4.6 Climate change/Protection of the ozone layer
- 4.7 Environment Impact Assessments
- 4.8 Protection of wildlife
- 4.9 Protection of migratory species
- 4.10 Extraction of sand, corals etc
- 4.11 Regulation of aquaculture, fish processing etc.

1. BACKGROUND

1.1 The International Waters Programme (IWP)

In October 1995 the 8th SPREP meeting endorsed a proposal to prepare a Strategic Action Programme for International Waters (IWP). At the request of the South Pacific Forum the development of the proposal has been coordinated by SPREP. Throughout 1997 the IWP was formulated with funding assistance provided by the Global Environment Facility (GEF).

1.2 The Activities of the IWP

The IWP has sought to combine the following activity areas –

- Integrated conservation and management of coastal resources, including fresh water resources
- Integrated conservation and sustainable management of oceanic resources
- Prevention of pollution through the integrated management of land based or marine based wastes
- Monitoring and analysis of shore and near-shore environments to determine vulnerability to environmental degradation

These activities reflect the National Environment Management Strategies prepared for Pacific Island countries between 1990 and 1996 which describe strategies for achieving environmental objectives relating to –

- The integration of environmental consideration in economic development
- Improved environmental awareness and education
- The management and protection of natural resources
- Improved waste management and pollution control

1.3 Advancing the IWP in Kiribati

Activities in Kiribati under the IWP are focused on waste management issues and the effects that waste disposal has on water supply and coastal waters.

Pilot projects, particularly involving the Bikenibeu West Community, are currently underway and seek to identify and address the fundamental causes of terrestrial derived wastes at community level.

At a national level it is proposed to review the structure, functions and operations of the waste management authorities and agencies on Tarawa. This review will include an assessment of institutional capacities, synergies and inter-linkages with the objective of delivering an efficient and sustainable waste management

service. Revenue generation options to promote the financial sustainability of the services on Tarawa shall be a feature of the proposed review.

It is sought to advance the IWP in Kiribati and to facilitate the achievement of the above objectives by –

- (a) Undertaking a review of natural resource and environment related laws in Kiribati.

This has been completed and is the subject of a separate Report. The relevant features of the Review have been re-produced in this Analysis.

- (b) An analysis of Kiribati's legislation to determine gaps, overlaps and conflicts. This analysis involves –

- An analysis of the strengths and weaknesses of existing legislation and proposed laws (Bills)
- An assessment of the effectiveness of the legislation in supporting the government to responsibly manage the environment and ensure the sustainable use and conservation of natural resources
- An assessment of the efficacy of the legislation as a means of pursuing responsible environmental management
- The identification of barriers to the effective implementation and enforcement of existing legislation
- The identification of how particular gaps and areas of overlap and conflict can be addressed (including amendments to existing legislation or the enactment of new laws).

1.4 The 1993 Legislative Review

As noted in the Review of Legislation, a very useful review of a similar nature was undertaken for Kiribati in 1993. This was prepared by Mere Pulea (now Mrs Justice Pulea of Fiji) and David Farrier. This Review is a SPREP publication.

Significant reliance has been placed on this publication, although it has been necessary to up-date the review to cover the legislative reforms that have been effected over the 11 year period since it was completed.

The 1993 Review included a list of some 34 recommendations for legislative action. In Parts 3 and 4 the relevant recommendations are noted, and this may provide some guidance as to the priority that might be applied to the recommendations now made in this Analysis.

2. THIS ANALYSIS OF LEGISLATION

2.1 The areas of major focus of this Analysis

As noted above, the areas of principal concern to Kiribati in the context of the IWP have been identified to be –

- (a) Terrestrial derived waste management at community level.
- (b) The impact of terrestrial derived wastes on the water resources of Kiribati.
- (c) Issues of water supply and water quality.
- (d) The structure, role and capacity of government agencies involved with terrestrial derived solid waste management in Kiribati.

The current and proposed laws of Kiribati are therefore analysed in Part 3 of this Report under the above categories.

2.2 Other laws considered in the context of the IWP

Some other areas relevant to IWP are noted in Part 4 of this Report. These do not relate directly to the issues which have been identified as the areas of major concern to Kiribati in this context. However they are important areas where comment about the state of the laws of Kiribati is considered to be warranted. The observations are not given in detail. They are aimed only at providing some assistance to the relevant agencies in Kiribati to determine and prioritise some further areas of legislative reform. Some particular attention is given to those matters where international obligations arise.

The areas noted in Part 4 are–

- Obligations under international treaties generally
- Community involvement in coastal fisheries management
- Marine Pollution
- Transboundary movements of hazardous wastes
- Dumping of wastes at sea
- Climate change/Protection of the ozone layer
- Environment Impact Assessments
- Protection of wildlife
- Protection of migratory species
- Extraction of sand, corals etc
- Regulation of aquaculture, fish processing etc.

3. THE LEGISLATIVE AREAS OF PRINCIPAL CONCERN

As noted above the four areas of major focus for Kiribati which have been identified in the context of IWP are –

- Terrestrial derived waste management at community level.
- The impact of terrestrial derived wastes on the water resources of Kiribati.
- Issues of water supply and water quality.
- The structure, role and capacity of government agencies involved with terrestrial derived solid waste management in Kiribati.

The relevant laws and proposed laws in each of these areas are analysed below.

3.1 Terrestrial derived waste management at community level.

Legislative provisions in the current laws

- Under section 5 of The Laws of Kiribati Act 1989 the customary ownership of, and rights in, any sea or lagoon area, inland waters, foreshore, seabed and reef are recognised.
- An objective of the Environment Act 1999 is the prevention, control and monitoring of pollution – section 3.
- Under section 6 of the Environment Act the Minister is to assist in the development of legislation for systems of environmental planning at national, provincial and local level, and for the development of national, provincial and local environment plans. Other functions include promoting the participation of the community in environmental decision-making, ensuring the freedom of access to environment related information, conducting public awareness and information programs and promoting the study of the environment.
- Other functions of the Minister under section 7 of the Environment Act 1999 include the conduct and promotion of research, environmental education and environmental quality objectives, and the development of a comprehensive community participation policy concerning all aspects of the work of the Division.
- Under sections 19 and 21 of the Environment Act provision is made for objections to development approvals.
- The functions of Local Government Councils under section 45 of the Local Government Act 1984 include matters regulating the keeping of livestock, and to the erection, construction, demolition, conversion, alteration, repair, sanitation and ventilation of buildings. There are also functions relating to regulating offensive trades. Requirements may be applied to landowners and occupiers for land to be maintained, cleared and kept free of vegetation and rubbish.

- Offences in recreational reserve areas declared under the Recreational Reserves Act 1996 include the depositing, leaving or throwing of rubbish in any reserve, except in a receptacle provided for that purpose.
- The Public Health Regulations 1926 oblige householders to keep premises and land clean. Every occupied house must have a latrine and the latrines must be kept clean. Rubbish must be burnt if possible, or put in tins ready for daily collection – regulation 14.

Outcomes of the consultations

- There has been a good community response to the pilot project and the separation of organic and non-organic wastes
- Some key government agencies are not setting a good example by leaving conspicuous wastes outside of their premises and making no attempt to implement the objectives of the pilot project
- There are real concerns about the burning of wastes, and especially plastics which give off dioxins
- The Special Fund (Waste Material Recovery) Bill is to be considered by Parliament. Initially it will apply to aluminium cans but can have application to batteries and motor vehicles. It is drafted in a general way to permit such applications to be made later. (During the course of this review this Bill was enacted into law by the Parliament. This is a very encouraging sign indeed. The Government appears committed to dealing with waste management issues and has demonstrated an ability and willingness to legislate in a useful way in this context).
- The current animal control laws (principally Council by-laws) are not effectively enforced and in some cases not appropriately worded. Dog registration is no longer effectively enforced. Pigs are kept near water sources and houses and the practice of designating areas for the keeping of pigs is no longer observed in most areas due to the demand for land.
- Councils are under-resourced and would benefit from having designated environment officers allocated to assist them.
- Institutions rather than households are the biggest waste producers.
- Coordination of landfill activities is essential. Efforts are being made to identify persons needing landfill and to direct persons with appropriate wastes for dumping to the identified people. Old thatch is going to the Taiwanese gardens. There is a need to ensure that problematic wastes are separated before wastes are used for landfill purposes.
- There are some problems with current rubbish collection. Money is automatically deducted from some salaries (may be only those of public servants) to meet these charges but this does not guarantee the provision of the service. There is a need to explore other arrangements for the recovery of charges.
- Consideration might be given to contracting out rubbish collection with additional incentives derived from recycling. However the relatively small volumes clearly mitigate against such opportunities being realised.

- Metal recycling is being explored with two commercial operators. Initial costs associated with the retrieval of such wastes within Kiribati are a problem. This is an area that may be addressed in the future by the placing of an initial deposit on all vehicles to ensure that they have some value when they are later collected and disposed of.
- The importation of second hand cars and disposable nappies are of special concern.
- There is no law that formally recognises the existence of village or traditional authority. While such authority might still be exercised in outer islands, local councils are now the responsible authorities on Tarawa.

Recommendations made in the 1993 Review

No. 2 “The range of responsibilities which can be conferred on Local Councils is sufficiently broad, but consideration needs to be given to the question of whether Local Councils are being adequately supervised in carrying out their responsibilities”.

Observations about the current status of Kiribati’s laws

There is no shortage of provisions relating to waste management issues in the current laws of Kiribati. While it may be useful to consider the opportunities for recognising the role of the community in waste management under the laws of Kiribati, there would appear to be only limited scope for effective legislative action in this regard. The role of Local Government Councils is clear and this is effectively provided for in the Local Government Act 1984. If the problem is one of planning, capacity or prioritisation, or any combination of these, then amendment to the laws of Kiribati is unlikely to provide an effective outcome.

Recommended action

The following recommendations are made in this context –

1. A planning exercise in relation to waste management issues is called for at “national, provincial and local level”. This is consistent with section 6 of the Environment Act.
2. A comprehensive community participation policy should be formulated in this context as is provided for in section 7 of the Environment Act.
3. One outcome of such a process should be the formulation of a waste management plan which identifies requirements that can be effectively applied in the context of the EIA and development approval processes under Part III of the Environment Act.

4. It could also formalise requirements applying to the use of wastes for land reclamations.
5. Performance targets relating to a range of waste management issues should be formulated during the policy and planning process, and these should be applied to all relevant public authorities under section 8 of the Environment Act. These can apply to Local Government Councils and might relate to issues such as the designate of waste disposal areas, the use of types of waste receptacles, the separation and collection of organic and non-organic wastes, restrictions on burning plastics and other designated wastes, and the collection and disposal of household and commercial wastes. They could also be applied in relation to bodies such as the Public Highway Authority, the Ports Authority and any body responsible for the management of recreational and conservation reserves. Adequate provision for the depositing of litter and wastes and for its disposal could be made in this manner.

3.2 The impact of terrestrial derived wastes on the water resources of Kiribati.

Legislative provisions in the current laws

- An object of the Environment Act 1999 is the reduction of risks to human health and the prevention of environmental degradation from the discharge of pollutants and the treatment and disposal of wastes – section 3.
- Comprehensive pollution control provision is made under Part IV of the Environment Act 1999. This includes provisions relating to preventing pollution and noxious discharges and preventing discharges of wastes likely to cause pollution. Prescribed premises must be licensed to discharge wastes and duties in this regard apply to the occupiers of prescribed premises. (Prescribed premises are defined in Regulation 11 of the Environment Regulations 2001). Pollution abatement and stop notices may be issued in the event of breach. Powers are given under section 43 in relation to controlling the discharge of wastes and pollution.
- Regulation 5 of the Environment Regulation 2001 further clarifies “pollution” to include any contamination of land, water and air. Regulation 6 further defines “waste” to include household domestic wastes, hazardous wastes, clinical wastes, quarantine wastes, ballast water and waste oil.
- The functions of Local Government Councils under section 45 of the Local Government Act 1984 (and its Schedule) include carrying out sanitary services dealing with rubbish and excreta, prohibiting acts detrimental to the sanitary condition of the area, providing for public water supplies and preventing water pollution.

- Some Council by-laws make provision in relation to drainage and the protection of water supplies.
- Regulations made under section 35 of the Public Utilities Ordinance 1977 may relate to the sanitary control of water reserves and for preventing pollution to water. No such regulations have been sighted. Under section 8 the PUB may order owners to remove structures and fill in pits. Under section 30 it is an offence to do anything that may pollute water or to erect a structure or dig a pit on a water reserve. It is an offence under this section to foul a water supply.
- Regulations made under section 52 of the Kiribati Ports Authority Act 1990 may relate to preventing pollution to water from oil or rubbish or to prohibiting any undesirable activity within a port area. No such regulations have been sighted.
- It is an offence under section 44 of the Harbours Ordinance 1957 to permit wastes to enter a harbour. It is an offence under section 48 to discharge night soil, sewerage and other filth into a harbour. It is also an offence under regulation 9 of the Harbours Regulations 1958 for a master or owner of a vessel to discharge oil into a harbour, or allow it to enter a harbour.
- Provision is made in section 26 of the Shipping Act 1990 in relation to the discharge of substances into ports and port approaches in contravention of international conventions.
- Regulations may be made under section 3 of the Public Health Ordinance 1926 in relation to latrines, dustbins and drains, the removal of night soil, the abatement of nuisances injurious to health, protecting water storage devices from pollution and other related matters. These may also prevent pollution of any rain, stream, well or other water supply.
- Any well or water supply that is injurious to health may be closed under regulation 20 of the Public Health Regulations 1926.
- It is an offence under section 172 of the Penal Code to pollute watercourses.
- Regulations may be made under section 58 of the Mineral Development Licensing Ordinance 1977 in relation to protecting the water resources, preventing pollution and protecting sea resources. No such regulations have been sighted.
- Regulations may be made under section 82 of the Quarantine Ordinance 1929 to regulate the discharge of water, ballast and refuse from vessels. They may also regulate the sanitary condition of vessels in ports. No such regulations have been sighted, but provision may also be made in this regard in the proposed biosecurity law.
- Part III of the Petroleum Ordinance 1965 deals with the storage of petrol. Regulations concerning the escape of petrol and water containing petrol may be made under section 25. No such regulations have been sighted.

Outcomes of the consultations

- Community based coastal fisheries management shall be the subject of a number of projects soon. There is to be an FAO hosted workshop in Kiribati next year. It was requested by the Ministry responsible for local government that local council representatives be invited.
- There are certain relevant local council by-laws but they are in serious need of comprehensive review and some additional capacity to review and re-draft them is required.
- There is currently inadequate provision on the laws for the management of marine reserves.
- There is also a need for mangrove protection.
- Coordination of landfill activities is essential. Efforts are being made to identify persons needing landfill and to direct persons with appropriate wastes for dumping to them. Old thatch is going to the Taiwanese gardens. There is a need to ensure that problematic wastes are separated before wastes are used for landfill purposes.
- Inadequate arrangements for household sewage is a real concern.
- ECD is taking some action to monitor the sewerage outfalls. These are being extended and modified under the ADB funded SAPHE project.
- There is a need for the better maintenance of sewerage manhole and other infrastructure. Some overflows occur and noxious smells are noticed. This is a PUB responsibility which may call for the setting of performance standards.

Recommendations made in the 1993 Review

- No. 11 “New laws to regulate the importation and use of pesticides should be developed”.
- No. 14 “EIA should be required as an integral part of the decision-making process relating to application under the Foreshore and Land Reclamation Ordinance for approval to reclaim land, particularly through the dumping of rubbish”.
- No. 21 “Kiribati should develop comprehensive legislation dealing with waste minimisation and the disposal of waste, including hazardous waste”.
- No. 23 “Kiribati should develop comprehensive legislation dealing generally with marine pollution from land-based sources”.

Observations about the current state of Kiribati’s laws

There is considerable reference to controlling the impact of wastes on Kiribati’s water resources mentioned in its current laws. It is difficult to see where any further substantive legislative provision is needed. However it is noted that while a range of Acts make reference to regulations being made to address water pollution issues, and especially water pollution arising from the disposal of wastes, there appears to be very few regulations actually in force under most of these laws. These include the Public Utilities Ordinance 1977, the Kiribati Ports Authority Act 1990, the Harbours Ordinance 1958, the Public Health Ordinance

1926, the Mineral Development Licensing Ordinance 1977, the Quarantine Ordinance 1929 and the Petroleum Ordinance 1965.

Recommended action

The following recommendations are made in this context –

1. When the planning and policy determination is undertaken in relation to the management of wastes at community level, particular attention should be given to formulating plans to deal with the issues relating to the effect of wastes on Kiribati's water resources.
2. There is ample scope under the current laws to apply and enforce any such policies and plans under the range of existing laws noted above.

3.3 Issues of water supply and water quality.

Legislative provisions in the current laws

- Section 5 of the Laws of Kiribati Act 1989 recognises customary rights in or over water.
- Under the Public Utilities Ordinance 1977 the Minister may declare water supply areas – section 5. Under section 7 the PUB has exclusive right to supply water. Extensive powers over the water supply are given in section 8. This includes powers in relation to the conservation of water by diminishing, withholding, suspending or diverting the supply. Regulations may be made under section 35 to prevent misuse and waste of water, preventing water pollution and relating to the sanitary control of water.
- The functions of Local Government Councils stated in the Schedule to the Local Government Act 1984 includes responsibilities for providing public water supplies and for the construction and maintenance of watercourses.
- It is an offence under section 172 of the Penal Code to pollute watercourses.
- Regulations may be made under section 3 of the Public Health Ordinance 1926 to protect tanks, vats, cisterns and other water storage devices, and to regulate the use of any rain, stream, well or water source to prevent water pollution.
- Regulation 7 of the Public Health Regulation 1926 requires that guttering and downpipes are kept clean and “efficient”. Regulation 20 provides for the closure of any well or water supply that is injurious to health.
- Regulations may be made under section 35 of the Public Utilities Ordinance 1977 to prevent the pollution of water and to ensure the sanitary control of water reserves.
- Some Council by-laws make provision for buildings to have guttering and water storage – see By-law 21 of the Betio Town Council By-laws.

Outcomes of the consultations

- Policies and programs aimed at increasing the capacity to store rainwater are needed.
- In most areas the groundwater is already spoiled (possibly irretrievably).
- The current laws on water are fragmented. There is a need for more comprehensive water resources legislation.
- This should reflect the current functions and capacities of PWD to undertake the regulatory function. In recent times PWD has taken over certain regulatory matters from PUB. These include the setting of water standards and testing of water quality. There is however no current legal foundation for this.
- Difficulties have been encountered in accessing records of water testing and quality from PWD and the Health Department.
- There is a need to clearly define the role of the respective agencies. PUB to supply and operate. PWD to apply standards and testing. Health Department to have a role in this regard as well. ECD to monitor environmental conditions in water reserves and other relevant areas.

Recommendation made in the 1993 Review

No. 20 "Attention needs to be given to the problems associated with the illegal occupation of the water reserves on Tarawa. If neither the payment of compensation under the existing legislation nor outright purchase provide an acceptable political resolution of the problem, steps must be taken to enter into leasing arrangements".

Observations about the current state of Kiribati's laws

There is no comprehensive law in Kiribati dealing with issues of the ownership, management and protection of the water resource. Provision is made in relation to pollution of water in a range of laws and these laws involve a wide range of government agencies.

The Ministry of Health plays has some responsibility in relation to water quality in accordance with its Act. The Public Works Department has assumed the role of setting water standards and monitoring water quality but there is no known legal basis for this. The Public Utilities Board has the exclusive function of supplying water or regulating other water suppliers under authorisations given by the Board. The Environment Division wants to play a role in this regard but it is not easy to see how it can be easily accommodated.

Recommended action

1. Comprehensive waste management planning should be undertaken, and a key focus should be on the protection and conservation of the water

resources from the effects of waste disposal. Issues relating to the ownership of the water resource, rights of access to it, the management and supply of water, water standards, testing/monitoring and the imposition water restrictions and drought management measures should be considered and addressed in the planning.

2. The formulation of comprehensive water resources legislation would then be extremely advantageous. This could formalise the current arrangements noted above and need not affect the current distribution of responsibilities relating to water testing and pollution control responsibilities. It could formalise the setting, monitoring and reporting on water standards.

Its key features may comprise the following matters –

- The right of the State to control the water resources
- The rights of PUB and other State utilities to access water resources
- The regulation of other means of access to the water resources and the rights to use the resources
- Determination of matters involving competing claims to the water resource
- Imposing water restrictions and drought control measures
- Regulation of any activity likely to affect the water resources
- Powers to order the cessation of any activities likely to affect the water resources
- Offence in relation to water pollution and contamination and for other breaches of this law

3.4 The structure, role and capacity of government agencies involved with terrestrial derived solid waste management in Kiribati.

Legislative provisions in the current laws

The Kiribati Constitution recognises exemptions to the guaranteed protections relating to the deprivation of property, the right of privacy and the freedom of movement where the interests of public health or environmental protection require an exemption to apply.

The relevant provisions of the Environment Act 1999 are –

- The ECD is recognised in the definitions in section 2.
- Section 3 states the objectives relating to the prevention, control and monitoring of pollution.
- Under section 4 all other laws must be construed to give effect to this law.

- The Minister has primary responsibility for implementing the Act – section 5. The Minister’s functions are extensively listed in section 6 and 7. This includes the coordination of other Ministries and Divisions in the context of the environment.
- Under section 8 the Minister may set environment related performance targets to be met by public authorities.
- The Beretitenti may give directions to public authorities in relation to environment issues.
- Part III makes comprehensive provision in relation to development controls and the assessment of impacts on the environment.
- Part IV makes comprehensive provision in relation to pollution control.

Other relevant provisions are –

- Section 8 of the Marine Zones (Declaration) Act 1983 applies the sovereign jurisdiction of the Government of Kiribati to the inland waters and the territorial sea. It also extends certain rights to the EEZ.
- Many functions of local government councils under Part V of the Local Government Act 1984 relate to environment related matters.
- Local Government Councils have the power to make by-laws in accordance with sections 50-53. These include matters relating to depositing rubbish and urinating in public.
- Under section 45 of the Local Government Act responsibilities for sanitation may be assigned to Local Government Councils.
- If there is no relevant council in an area, these functions may be vested in a public officer – section 116.
- Town Council by-laws currently make provision in relation to sanitation and waste disposal.
- Under section 7 of the Public Utilities Ordinance 1977 the PUB has exclusive functions relating to disposal of sewage and the supply of sewage services.
- The Highway Authority is empowered to prohibit and control the dumping of rubbish and litter on highways under section 5 of the Public Highways Protection Act 1989.
- The Ports Authority may enforce the cleanliness of port facilities and waters and matters relating to pollution from water and oil in accordance with regulations made under section 52 of the Kiribati Ports Authority Act 1990.
- The Harbour Master has powers under the Harbours Ordinance 1957 in relation to the pollution of harbours by wastes.
- The Minister may determine the types of materials to be covered by the provisions of the Special Fund (Waste Material Recovery) Bill 2004 – section 4.
- Defect notices may be issued in relation to vehicle emitting fumes in accordance with section 18 of the Traffic Act 2002.

- The Chief of Customs is the Receiver of Wrecks under section 3 of the Wreck and Salvage Ordinance 1966. (But these responsibilities are related to salvage rather than the protection of the environment in the event of shipwreck).
- Powers to make regulations under the Public Health Ordinance 1926 relate to many waste management and disposal issues. The Public Health Regulations also make some relevant provision.
- Planning issues and procedures enforced under the Land Planning Ordinance 1972 may have implications in relation to wastes.
- Under section 10 of the Foreign Investment Act 1985 the Foreign Investment Commission must consider applications in the light of the effect on the local natural and social environment.
- Part III of the Petroleum Ordinance 1965 deals with all aspects of the storage of petroleum. Regulations may be made under section 25 in relation to the escape or discharge of petroleum, or water mixed with petroleum.

Outcomes of the consultations

- The lack of resources and capacities in the Councils is clear and generally understood.
- There is a need to comprehensively review all Council by-laws and to provide some capacity in this regard.

Recommendations made in the 1993 Review

- No. 2 “The range of responsibilities which can be conferred on Local Councils is sufficiently broad, but consideration needs to be given to the question of whether Local Councils are being adequately supervised in carrying out their responsibilities”.
- No. 8 “The planning functions under the Local Government Act 1984 should be evaluated to clarify their relationship with the Land Planning Ordinance, and particularly the responsibilities of the Central Land Planning Board”.
- No. 18 “There are serious problems with regard to allocation of responsibility in the area of water supply and sewerage, particularly in relation to the siting of wells, and provision and siting of toilets. There are a number of authorities with related functions but no adequate provision for co-ordination, and grey areas when it comes to regulatory responsibility. Councils appear to carry most of the responsibility, but there needs to be effective supervision of their activities by central government. Consideration should be given to the appointment of a Public Health Commissioner to be in overall charge of public health and sanitation activities. Government and Council officers would be required to carry out his instructions in relation to the implementation of public health and sanitary provisions”.

- No. 19 “A certificate of adequacy of sanitation should be required from the Department of Health before new houses on South Tarawa can be occupied”.
- No. 22 “The legal status of the existing waste tips needs to be clarified. Adequate environmental assessment should be mandatory prior to sites being nominated and land should be appropriately zoned under the provisions of the planning legislation”.

Observations about the current state of Kiribati’s laws

There are many laws vesting some responsibility in a range of agencies relating to waste management and disposal. These laws are adequate in most respects. It has been noted above that while many laws which constitute agencies such as the Public Highway Authority, the Ports Authority and the Public Utilities Board make provision for regulations to be made in the area of waste management and water conservation, there are in fact very few such regulations in force.

There is a clear need to coordinate the activities of the agencies and to ensure that their diverse responsibilities are implemented in this context. There is a clear mandate for such a role to be played by the ECD in accordance with the provisions of the Environment Act. This would be further facilitated if the suggested amendments dealing with the establishment of environment committees under the authority of the Act, and other proposed amendments are made to the Environment Act. The planing and policy making processes that have been recommended above would also contribute in a significant way.

This Analysis does not purport to be an institutional review of the agencies that have a role to play in relation to the management and disposal of wastes. Such a review may have certain advantages but the priority should be on formulating comprehensive waste management policies in a consultative manner.

Recommended action

1. There is no clear need to review and amend the many laws applying to the wide range of agencies.
2. There is however a great need for the activities of the many agencies to be effectively coordinated. The ECD has a mandate to do this under the Environment Act. This would be further enhanced by amending the Environment Act to make provision for the establishment and operation of environment committees for dedicated purposes. A waste management committee would facilitate the formulation of effective waste management policies and processes in a fully consultative manner.

4. OTHER RELEVANT LEGISLATIVE AREAS REVIEWED

4.1 Obligations under international treaties generally

Relevance to IWP

Protection of Kiribati's environment can be greatly facilitated by the making of appropriate laws and applying effective regulatory regimes in many areas covered by a wide range of international conventions and regional agreements.

Issues raised in consultations

- It was clear from the consultations that there is a great need to give effect to the international conventions in the domestic laws of Kiribati. The shortcomings of section 53 of the Environment Act 1999 are well understood and there is clear support for amendments to the Act to give greater scope for addressing these matters in regulations made under the Environment Act.

Current state of Kiribati's laws

Section 3(c)(iv) of the Environment Act 1999 states the following as an object of the Act -

- “(iv) to comply with and give effect to regional and international conventions and obligations relating to the environment”.

This is the only reference in Kiribati's laws to the implementation of international environment related obligations. It is confined to “international conventions” which may exclude programs and initiatives such as IWP.

While many worthy objects of the Environment Act are stated in section 3, there is little in the other provisions of the Act to implement the stated objects. This is a considerable defect in the current Act.. The operative Parts of the Act are limited to matters of development control and EIA (Part III), and to pollution control (Part IV). The regulation making power in section 53 is restricted to regulations “prescribing all matters that are required or permitted to be prescribed under this Act”. There is in fact nothing in the Act which requires or permits regulations to be made in support of programs aimed at implementing international obligations.

Legislative Reform Options

1. The reference in section 3(c)(iv) to “international conventions” should be expanded to refer to “international conventions, agreements, arrangements and programs”.

2. Consideration might be given to expanding the references to Kiribati's international obligations in the Environment Act 1999. These might relate to matters such as –
 - (a) liaising with relevant government departments and agencies and providing assistance to the Ministry of Foreign Affairs to identify international Conventions relating to the environment that are in Kiribati's interests to become a Party;
 - (b) consulting with other departments and agencies, and the broader community, in relation to the obligations that Kiribati will assume under any such Convention;
 - (c) ensuring Kiribati's effective representation at meetings of the Parties of a Convention and other relevant meetings;
 - (d) liaising with relevant regional and international bodies to ensure that Kiribati meets its obligations under a Convention;
 - (e) managing or participating in any project, or part of a project, aimed at implementing any aspect of a Convention;
 - (f) disseminating information in relation to the subject matter of any Convention, and creating public awareness about the provisions of any Convention;
 - (g) preparing any necessary Report, and reporting on a regular basis to the Minister and Cabinet in relation to the implementation of any Convention;
 - (h) sharing information and otherwise providing such cooperation as is required by a Convention;
 - (i) recommending that any law be amended or enacted in order to effectively implement any requirement of a Convention; and
 - (j) working in conjunction with relevant government departments and agencies to implement any obligation under a Convention.
3. Section 53 of the Environment Act 1999 should be repealed and replaced by a provision which permits regulations to be made in relation to any matter –
 - concerning the rights and obligations that Kiribati may have under an international convention, agreement, arrangement or program

- to assist in the implementation of any international convention, agreement, arrangement or program applying in Kiribati
- necessary or incidental to the protection and management of the environment in Kiribati

4.2 Community involvement in coastal fisheries management

Relevance to IWP

The empowerment of communities to become involved in the management of their marine resources is a key feature of the IWP.

Issues raised in consultations

- There are a number of projects and programs proposed for Kiribati and funded by several regional agencies dealing with coastal fisheries management and the involvement of the community
- A workshop in this regard is planned for Tarawa next year.
- A request has been made to ensure that Local Government Council representatives are invited to the workshop and to participate in follow-up activities.

Current state of Kiribati's laws

There is no law in Kiribati which recognises traditional authority or organisation at village level. The Local Government Act establishes a system of local government administered through Councils comprising elected and nominated members. A very wide range of responsibilities can be vested in local government councils but a lack of resources and institutional capacities have been noted and are well appreciated. It is not immediately clear that local councils would be appropriate and effective bodies to play a role in the management of coastal marine resources and areas.

Legislative Reform Options

As this will be an area of some considerable focus in 2005, and given the lack of any law recognising traditional authority at village level, no recommendations are made in this context at this time.

4.3 Marine Pollution

Relevance to IWP

Applying criminal sanctions to persons and vessels responsible for causing pollution from oil spills and discharge is a critical feature of a nation's environment protection regime. Many international conventions applying in the

fields of shipping and environment protection require adequate legislation in this regard. The capacity of government agencies to respond to pollution emergencies arising from oil spills is also an important obligation.

Proposed amendments to the Protocol to the SPREP Convention dealing with responses to marine pollution incidents would necessitate the inclusion of a number of matters in relevant domestic laws in Kiribati. The SPREP Protocol states the need for co-operation in combating pollution in cases of emergency and requires Parties to take all necessary measures to prevent, reduce and control marine pollution, or the threat of pollution.

Issues raised in consultations

- Nobody consulted expressed a firm desire to see the enactment of up to date and comprehensive marine pollution legislation.

Current state of Kiribati's laws

There is no comprehensive law in Kiribati applying to marine pollution and responses to pollution incidents. Some references are made to discharging or depositing wastes and rubbish into waters, ports and harbours but it is doubtful that this disparate range of laws is ever effectively enforced by any of the bodies responsible for exercising such controls. It is clear that no law effectively applies the international and regional obligations applying in this area.

Legislative Reform Options

A draft Regional Model Marine Pollution law was prepared in 2000 with the assistance of SPREP, SPC and IMO. This draft has been considered in some small island nations and it is generally felt that it is cumbersome and there are considerable difficulties to effectively applying the full range of its provisions. There is clear merit in these views.

Regulations dealing with marine pollution issues could also be considered in the context of the Marine Zones Act or the Environment Act.

Marine Pollution Regulations should deal with the following issues –

1. Marine pollution prevention (implementation of the MARPOL Convention)
2. Marine pollution response
3. Marine casualties (dealing with vessels in distress)
4. Liability and compensation for oil pollution damage

5. Dumping and incineration of wastes

Recommendation made in the 1993 Review

No. 24 “Kiribati currently has no comprehensive legislation regulating the dumping of wastes at sea, imposing liability for the discharge or escape of oil and other pollutants from ships or land into the marine environment or enabling it to take adequate preventive action. As a result, it is not in a position to fulfil any obligations which might arise under the MARPOL, London Dumping or SPREP Conventions. Currently Kiribati is only a party to the London Dumping Convention”.

4.4 Transboundary movements of hazardous wastes

Relevance to IWP

The *Basel Convention* regulates the movement of hazardous wastes and other wastes on a global basis. The Convention specifies the criteria for assessing hazardous wastes in its annexes. The Parties are obliged to prohibit the export of hazardous wastes or other wastes if the State of import does not consent to the specific import, or has prohibited the import of such wastes. The Convention prescribes measures to apply to the proposed import or export of wastes. Parties are required to implement their own national legislation regulating hazardous wastes and to inform the Basel Secretariat of such information. A competent authority and a focal point must be designated.

Under the *Waigani Convention* each Party must ban the importation of all hazardous wastes and radioactive wastes from outside the Convention area. They must also prohibit the dumping of hazardous wastes and radioactive wastes at sea. The Parties are to co-operate to ensure that no illegal import of hazardous wastes and radioactive wastes from a non-Party enters areas under the jurisdiction of a Party.

The scope of the *Waigani Convention* includes radioactive wastes and domestically prohibited goods. It prohibits the import of hazardous wastes into its Convention Area.

Issues raised in consultations

- This area of necessary legal regulation was not identified in consultations as being an area of priority or about which legislative reforms are currently under consideration.

Current state of Kiribati's laws

No laws in Kiribati have been sighted which effectively deal with the issue of transboundary movements of hazardous wastes into Kiribati or through Kiribati's marine zones.

Legislative Reform Options

This deficiency should be addressed by appropriate amendments to the marine zones legislation. As noted in **4.3** these changes could also deal with the issues of dumping and incinerating wastes at sea.

The issues to be covered in an amending Bill may include the following matters –

1. Rights of Innocent Passage

The right of innocent passage for vessels through Kiribati's territorial sea should be stated. This should be a right of passage at no cost.

2. Prohibited passage

Prohibited passage can be stated to be any passage of a foreign vessel through the territorial sea which is prejudicial to the peace, good order and security of Kiribati, and may specifically prescribe the following activities –

- (a) threats or use of force
- (b) unauthorised use of weapons
- (c) collecting information prejudicial to Kiribati's security
- (d) launching or landing any military device
- (e) loading or unloading any commodity, currency or persons contrary to Kiribati's laws
- (f) willful or serious marine pollution
- (g) unlicensed fishing activities
- (h) carrying out scientific or hydrographic research without approval
- (i) interfering with communications facilities
- (j) any passage in contravention of Kiribati's obligations and rights under international conventions relating to the movement, dumping and incineration of hazardous wastes

Powers may be given to suspend a right of innocent passage.

Obligations can be placed on the movements by submarines and underwater vehicles through the territorial sea.

3. Jurisdiction over foreign vessels

The application of Kiribati's criminal and civil jurisdiction over foreign vessels passing through the territorial sea should be clarified.

4. Declaration of the contiguous zone

Provision should be made for the declaration of the contiguous zone, and the jurisdiction Kiribati can exercise over it.

The movement of wastes into and through Kiribati could otherwise be dealt with by prescribing certain wastes to be prohibited substances under the Customs Act.

4.5 Dumping of wastes at sea

Relevance to IWP

Proposed amendments to the Protocol to the SPREP Convention dealing with the dumping of wastes at sea may necessitate the inclusion of the following matters in relevant domestic laws in Kiribati -

- Adoption of the Precautionary Principle
- Reverse listing approach – having a “White List” of relatively inert materials that may be considered for dumping, rather than a “Black List” of prohibited materials
- Standardisation of Annexes and their contents
- Adoption of the Polluter Pays Principle
- Standardisation of definitions
- Provision for prohibition of incineration of wastes at sea

Issues raised in consultations

- The issue of dumping of wastes at sea was not identified during consultations as a matter of priority or about which legislative reform is being considered.

Current state of Kiribati's laws

There are no laws in Kiribati which deal effectively with the issues of dumping and incinerating wastes at sea. The draft biosecurity law may prohibit the dumping of wastes and discharge of ballast waters by vessels.

Legislative Reform Options

Priority should be given to legislating in relation to the dumping and incineration of wastes at sea. The model Marine Pollution Prevention Bill makes provision in

this regard, and for this reason alone consideration should be given to adapting it to Kiribati's circumstances.

Recommendations made in the 1993 Review

No. 24 "Kiribati currently has no comprehensive legislation regulating the dumping of wastes at sea, imposing liability for the discharge or escape of oil and other pollutants from ships or land into the marine environment or enabling it to take adequate preventive action. As a result, it is not in a position to fulfil any obligations which might arise under the MARPOL, London Dumping or SPREP Conventions. Currently Kiribati is only a party to the London Dumping Convention".

4.6 Climate change/Protection of the ozone layer

Relevance to IWP

There is a clear obligation under the Montreal Protocol to enact legislation to impose a regulatory regime in relation to ozone depleting substances. The following are matters about which legislative provision is required to give effect to Kiribati's obligations in relation to ozone depleting substances -

1. Prohibitions on Importation
2. Prohibitions on the Importation of Certain Goods
3. Exemptions in relation to imports
4. Prohibitions on Exportation
5. Prohibitions on Manufacture
6. Prohibitions on Sales
7. Exemptions in relation to sales
8. General Principles to be applied in relation to permits
9. Quarantine and pre-shipment permits
10. Medical permits
11. Base year permits
12. General provisions in relation to permits
13. Goods for which no permit may apply
14. Environment Officers
15. Powers of Environment Officers
16. Seizure of substances and goods
17. Forfeiture of seized substances and goods
18. Call-up of substances and goods
19. Offences and penalties

Issues raised in consultations

- It was not clear that any action is being taken or proposed to be taken in this context.

Current state of Kiribati's laws

There is no law in Kiribati currently giving effect to these matters.

Legislative Reform Options

The deadlines for making appropriate legislative arrangements in this area require that these matters be given a degree of priority. If the amendments that have been proposed to the Environment Act are made in the near future, then appropriate ozone layer protection regulations could be made under that Act. This would significantly simplify things significantly.

4.7 Environment Impact Assessments

Relevance to IWP

The effective assessment of environmental impacts from development activities is a key feature of an environmental protection regime.

Issues raised in consultations

- There is a clear awareness of issues associated with applying a regime of EIA in Kiribati.
- Applications under Part III of the Environment Act are being processed and it appears that all parties accept the importance and benefits of such procedures.

Current state of Kiribati's laws

Part III of the Environment Act 1999 makes comprehensive provision in relation to development control and EIA. It would be appropriate to review these processes in the future to determine if any amendments to the law are called for.

Legislative Reform Options

At this time no recommendations for law reform applying to EIA are made. This is one area where substantial steps have been taken since the 1993 Review.

Recommendations made in the 1993 Review

- No. 5 "Consideration of environment impact must become as much a part of government decision-making processes as social and economic benefit".

- No.6 “Environment impact assessment guidelines should be developed by the (Ministry...) so that EIA becomes an integral part of the planning process”.

4.8 Protection of wildlife

Relevance to IWP

The protection of wildlife is a key area of the IWP.

Issues raised in consultations

- There are deficiencies in all current laws dealing with reserves and protected areas as no effective management regimes are applied.
- In recent times this has been exacerbated by the vesting of responsibility for wildlife protection in the agency responsible for Christmas Island. This is now a responsibility of the ECD.
- No action has been taken to rectify the problems identified in this context during the 1993 Review.
- Much discussion focused on the current steps being taken to secure World Heritage listing for islands in the Line and Phoenix Group. This would have clear implications in the context of wildlife protection.

Current state of Kiribati's laws

The Wildlife Conservation Ordinance is out of date and numerous deficiencies in its provisions have been identified previously. These have not been addressed.

There are numerous laws dealing with reserve areas which have been applied to wildlife conservation purposes. The deficiency in relation to all of them however arises from the lack of effective management arrangement for the reserves. No law make provision for management plans and there is no mention of the involvement of landowners, resource owners and local communities in management arrangements.

There is no law in Kiribati that would assist in securing the proposed world heritage listing or enable the effective management of listed areas.

Legislative Reform Options

It is suggested that the Wildlife Conservation Ordinance be comprehensively reviewed and replaced by a new law if necessary. The recommendations made in the 1993 Review should be considered and applied.

Provision should be made in the amendments to the Environment Act to address the current deficiencies in relation to the management of reserves areas. A draft amendment has been prepared as part of the NBSAP Add-on project.

Provision should also be made in the amendments to the Environment Act to make specific reference to the protection and conservation of Kiribati's cultural and natural heritage, and to the World Heritage Convention generally. A new draft Part IVA has been drafted in the NBSAP context also.

Recommendations made in the 1993 Review

- No. 25 "Apart from the confused position regarding turtles, Kiribati has a range of provisions which, if adequately implemented and enforced, would offer a considerable degree of protection to fauna on land from direct human interference".
- No. 26 "Attention needs to be given to developing an adequate definition of the wildlife to be covered by the Wildlife Conservation Ordinance and to ensuring that this is in line with the definitions under this fisheries legislation...The list of protected birds was compiled some time ago and it would be appropriate at this stage to review it in the light of what is now known about the conservation status of different species".
- No. 27 "In view of the evidence of the scarcity of all turtles, consideration should be given to whether all species should be protected to some degree both on land and in the sea. In light of the major law enforcement problems that exist, however the main compliance initiatives should be through customary controls (where they exist) and education".
- No. 28 "The issue of law enforcement to breaches of the Wildlife Conservation Ordinance needs careful attention. Thought needs to be given to developing alternative strategies to coercion through legislation".
- No. 29 "The present legislation offers no protection from interference with wildlife habitat by human development. An assessment needs to be made of the extent of threats to habitat and whether this requires the enactment of appropriate provisions dealing with the assessment of environmental impact and the long-term protection of wildlife habitat".

4.9 Protection of migratory species

Relevance to IWP

The protection of migratory fish species is an area that is becoming increasingly important in the region. Kiribati shall need to have the capacity to meet its obligations and to conserve its resources.

Issues raised in consultations

There was no discussion on these issues but it might be assumed that they are important matters given the significance of the fisheries resource to the life and commerce of Kiribati.

Current state of Kiribati's laws

This is an area which calls for a detailed technical review of the law. It might be generally observed that the current laws of Kiribati are not effective in this context but it should be left to experts in this field to finally determine the status of the laws. This is particularly so in relation to the need to give effect to international and regional obligations in relation to migratory fish species. It is no easy task to identify the treaties and conventions currently having application in Kiribati.

Legislative Reform Options

It seems likely that legislative reform is necessary in the context of conserving migratory fish species and for giving effect to whatever obligations may apply to Kiribati now or in the future. This is an area where very detailed review may be called for. Such a review has not been possible in the context of this analysis.

4.10 Extraction of sand, corals etc

Relevance to IWP

The extraction of sand and corals from coastal areas can have a clear adverse effect on the environment. Controls can be effectively exercised by an agency empowered to grant permits for such activities and to require the reinstatement of affected areas.

Issues raised in consultations

- The effect on the foreshore and the water resources of the removal of sand and corals was stressed at a number of consultations.
- There are some attempts to formalise the reclamation of lands but it appears to be the small scale activities of this nature that are most problematic.
- A key feature of the MP pilot project is to encourage a more effective and appropriate waste disposal system that would ensure that only appropriate wastes are used for land reclamation purposes.

Current state of Kiribati's laws

There are a number of current laws regulating the extraction of sands and other materials. A licence from the Chief Lands Officer must be obtained under section

50 of the Foreshore and Land Reclamation Ordinance 1969. It is an offence to remove such materials from public highways under section 5 the Public Highway Protection Act 1989. And by laws may be made in this regard by local councils under section 50 of the Local Government Act 1984.

Legislative Reform Options

There does not appear to be any need for legislative reform in this context. The issue may be one of effective enforcement and policy formulation.

Recommendations made in the 1993 Review

- No. 7 “The Foreshore and Land Reclamation Ordinance should include a requirement for environmental impact assessment and heritage protection”.
- No. 13 “EIA should be required as an integral part of the decision-making process relating to applications under the Foreshore and land Reclamation Ordinance for approval to remove sand, coral and rocks from designated foreshores. In light of the threat posed to Kiribati by erosion of its foreshores, consideration should be given to extending the area of foreshore which has been designated under these provisions.”

4.11 Regulation of aquaculture, fish processing etc.

Relevance to IWP

In most jurisdictions the commercial exploitation of the fisheries resource is the subject of detailed statutory regulation. This is aimed at conserving the resource and maximizing returns from its exploitation.

Issues raised in consultations

- This was an area which was identified during consultations as requiring some consideration.
- A loining processing establishment opened in Tarawa during this Review.
- The export of live fish was a matter that was specifically raised during consultations.

Current state of Kiribati's laws

Fish and marine food processing are prescribed developments under the Environment Act 1999 and EIA is required in relation to any such proposed activities.

Section 6 of the Fisheries Ordinance 1977 also makes adequate provision in relation to the licensing of fish processing establishments. Conditions may be applied under the licences to regulate these operations.

One area where a gap seems to exist relates to the setting of processing standards. These are required to access many of the world's markets for processed fish products. This is a specialist area and has not been considered in the context of this review.

No law dealing with the licensing of aquaculture have been sighted.

Legislative Reform Options

As noted above there may be some merit in giving consideration to regulations applying to the standards to be observed by fish processing establishments in Kiribati.

Consideration should be given to the regulation of aquaculture and to the taking and export of live fish.