

# Review of environment-related legislation in Niue

By Graham Powell

*IWP-Pacific Technical Report (International  
Waters Project) no. 51*



Global  
Environment  
Facility



United Nations  
Development  
Programme



Pacific Regional  
Environment  
Programme

## SPREP IRC Cataloguing-in-Publication data

Powell, Graham

Review of environment-related legislation in Niue /  
by Graham Powell. – Apia, Samoa : SPREP, 2007.

vi, 33 p. ; 29 cm. - (*IWP-Pacific Technical report, ISSN  
1818-5614 ; no.51*).

ISBN: 978-982-04-0374-1

1. Environmental policy – Niue. 2. Environmental law –  
Niue. 3. Conservation of natural resources – Niue. 4.  
Environmental protection – Law and legislation – Niue.  
I. International Waters Project (IWP). II. Secretariat of the  
Pacific Regional Environment Programme (SPREP). III.  
Title. IV. Series.

344.046099626

This report (originally written in 2004) was produced by SPREP's International Waters Project, which is implementing the Strategic Action Programme for the International Waters of the Pacific Small Island Developing States, with funding from the Global Environment Facility. This study was funded by the International Waters Project.

The views expressed in this report are not necessarily those of the publisher.

Cover design by SPREP's Publication Unit

Editing and layout: Mark Smaalders, IWP editorial consultant

SPREP

PO BOX 240,

Apia

Samoa

Email: [sprep@sprep.org](mailto:sprep@sprep.org)

T: +685 21 929

F: +685 20 231

Website: [www.sprep.org](http://www.sprep.org)

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## Abbreviations

EEZ	exclusive economic zone
EIA	environmental impact assessments
CBD	Convention on Biological Diversity
DAFF	Department of Agriculture, Forestry, and Fisheries
ED	Environment Department
GEF	Global Environment Facility
IWP	International Waters Programme
NBF	National Biosafety Framework Project
NCSO	National Council for Sustainable Development
(NZ)	Being a law enacted by the Parliament of New Zealand
SPREP	South Pacific Regional Environment Programme
UNCLOS	United Nations Convention on the Law of the Sea
UNEP	United Nations Environment Program
WCPT	Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean

# 1 Background

## 1.1 The International Waters Programme (IWP)

In 2002, implementation of the coastal component of the Strategic Action Programme for the International Waters of the Pacific Islands Region (IWP) commenced in Niue. Niue's component of the IWP involves the design and implementation of a pilot project that will address sustainable resource use and conservation issues related to coastal fisheries management.

To facilitate the IWP in Niue, the Government of Niue, through the Department of Agriculture, Fisheries and Forestry (DAFF), and the IWP Project Coordination Unit based at the SPREP in Apia, commissioned a review of natural resource and environment-related legislation in Niue. The focus of this review highlights areas where there may be over lapping jurisdiction, or potential for conflict between the respective legislations. The IWP is principally focused on activities associated with the conservation and preservation of freshwater, waste management and the sustainable use of coastal resources.

## 1.2 UNEP-GEF Project on the Development of a National Biosafety Framework (NBF) for Niue

In June 2002, Niue acceded to the Cartagena Protocol on Biosafety, a supplementary international agreement to the Convention on Biological Diversity. The objective of the Cartagena Protocol is "to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on trans-boundary movements".

To fulfill its obligations under the Cartagena Protocol, Niue joined the UNEP/GEF Capacity Building Project on the Development of NBFs in October 2002. The main objective of this project is the development of a National Biosafety Framework for Niue in accordance with the relevant provisions of the Cartagena Protocol. The main elements of this framework are -

- (a) A biosafety policy
- (b) The regulatory regime
- (c) A system to handle requests (administrative, risk assessment & management, decision making)
- (d) Follow up actions (monitoring, inspections and enforcement)
- (e) Public Awareness and Participation

The principal focus of this legislative review is to facilitate the drafting of legislation necessary to give effect to a regulatory regime.

## 1.3 A parallel review (IWP and NBF)

The IWP review of natural resource and environment-related legislation and the development of a regulatory regime for the NBF are closely linked. The national legislation related to the management of natural resources and the protection of the environment are similar to those that might be of relevance in the context of biosafety. Furthermore, both projects are implemented within the context of Niue's efforts towards achieving sustainable development and pursuing its national priorities. (These are articulated in Niue's cross-sectoral and sectoral policies and strategy documents such as the Integrated Strategic Plan [Niue Ke Monuina] and the Niue Biodiversity Strategy and Action Plan.)

To optimize resource use and for value-added purposes, this Report provides a legislative review for application to both the IWP and NBF activities.

## 1.4 Objectives

The stated objectives are:

- To review natural resource and environment-related legislation in order to recommend improvements in how the government manages the natural resources of Niue.
- To review national legislation that might be of relevance to biosafety, and to draft legislation as required under the regulatory regime component of the NBF for Niue.

## 2. Background references and consultations

### 2.1 References consulted

This review of legislation has drawn extensively on the following documents and reports –

- Survey of Sector Legislation and Regulations relevant to the Niue Biosafety Framework by Lofa Rex (May 2003)
- List of Environmental and Related Acts and Regulations as at 19 February 1992 prepared by Clark Peteru
- Niue Country Report to WIPO-Australia-Forum Secretariat Meeting of High Level Officials on Intellectual property Offices in Pacific Island Forum Countries prepared by Peleni Talagi, Crown Counsel.
- Niue National Biodiversity Strategy and Action Plan 2001
- Memorandum of Understanding between SPREP and the Government of Niue regarding the Strategic Action Programme for the International Waters of the Pacific Small Island Developing States - November 2001
- Report of the Niue IWP National Task Committee: Project Development Team and Local project Working Group prepared by the Niue IWP National Programme – July 2003
- Draft Memorandum of Agreement between the National Task Committee of the IWP, Niue and the Alofi North Village Council and the Makefu Village Council
- Fisheries Management Plan for the Village of Alofi South

### 2.2 Consultations and Outcomes

Persons consulted in the course of this review of legislation are listed in Appendix 1. The outcomes of the consultations are noted in the Phase 2 Report on the Analysis of the Legislation. These are identified as matters raised during consultations

## 3 Scope and methodology

### 3.1 Current and proposed legislation

For ease of reference, this review of Niue’s legislation includes both current laws, and those that are at an advanced stage of formulation and drafting, but which have not yet been enacted.

Each current law is referred to as an “Act”. Proposed laws are termed “Bills”. Laws dating back to before 1974 are termed as Ordinances. In quite a number of instances the relevant laws

are laws of New Zealand having current application in Niue.

## 3.2 Assessing the relevance of laws to this Review

It is common that legislative reviews applying to particular areas of the law require a subjective determination as to their relevance, and therefore as to their inclusion in the Review.

In this case however, the basic objectives of the IWP and the fundamental concepts applying to the NBF under the Cartagena Protocol are easy to identify. These then form the basis of determining the relevance of any particular law to this Review. The critical concepts are –

- Matters relating to constitutional authority and jurisdiction
- Administrative arrangements affecting the management of the environment
- Environment Protection and Management
- Protection of human health
- Natural Resources
- Control of Transboundary movements
- Recognition and protection of culture and traditional institutions and values
- Public awareness and participation (including the involvement of the private sector)
- Other regulatory regimes
- Regional and international cooperation and harmonisation of arrangements

The laws (and proposed laws) of Niue are therefore reviewed under the above headings.

## 4 Legislative review

### 4.1 Matters relating to constitutional authority and jurisdiction

#### **NIUE CONSTITUTION ACT 1974 (AND THE ARTICLES OF THE CONSTITUTION)**

Year passed: 1974  
Effective from: 29 August 1974

#### *Objective*

To give effect to the Constitution of Niue

#### *Relevance to this Review*

This is the primary source of government authority in Niue. (It does not make reference to environment related matters or to the recognition and protection of human rights.)

#### *Substance of relevant provisions*

- Article 33 Restrictions are imposed on the enactment of any law affecting Niuean land.
- Article 61 The Cabinet is responsible for establishing and maintaining institutions necessary to provide a reasonable standard of living and to secure the economic, social and cultural welfare of the people.

#### **NIUE ACT 1966 (NZ)**

Year passed: 1966  
Effective from: 1 January 1967  
Amended: 1968, 1971, 1974 (2 amendments), 1998



## *Objective*

To make comprehensive provision for the constitutional government of Niue.

## *Relevance to this Review*

This was the primary source of government authority during the period of administration of Niue by New Zealand, and remains of relevance today in a range of areas. Some of the matters relate to the powers of village councils and to a limited range of environment related matters.

## *Substance of relevant provisions*

Section 50 Village Councils may be established bylaw. This may include powers to make by-laws under section 51. The by-laws may be disallowed by the Assembly under section 52 and each by-law may only take effect if assented to by Cabinet.

Section 219 A person must not permit a horse, sheep, pig, goat or cattle to be at large or to trespass on land.

Section 222 It is an offence to pollute water.

Section 226 Makes provision for the prevention of cruelty to animals.

Part XVI Provision is made for the development of land which is declared by the Land Court to be subject to the provisions of this Act.

Part XXIX Niuean antiquities are protected under this Part.

Under the 1968 Amendment Act the following provisions apply:

Section 3 All land is either Crown land or Niuean land.

Section 4 All land is vested in the Crown, subject to rights vested by Niuean custom or in any other way.

Section 23 Every title to and interest in land is determined in accordance with Niuean custom, and any law making provision in this regard.

Section 24 Niuean land may not be alienated, except in accordance with this law or any other law. Parts V and VI make comprehensive provision for a Land Court and Land Appellate Court.

By reason of the Niue Amendment Act 1974 the following references were amended in every enactment:

Executive Committee	Cabinet of Ministers of Niue
Leader of Government	Premier of Niue
Resident Commissioner	Cabinet of Ministers of Niue
Niue Island Assembly	Niue Assembly
Ordinance	Act of the Niue Assembly
Niue Assembly Account	Niue Government Account
Chief Judge of the High Court	Chief Justice of the High Court
NZ State Services Commission	Niue Public Services Commission

## **TERRITORIAL SEAS AND EXCLUSIVE ECONOMIC ZONE ACT 1997**

Year passed: 1997  
Effective from: 7 April 1997  
Amended: 2002

Repealed the following: Territorial Sea and Exclusive Economic Zone Act 1978 (as amended), Cook Islands Commercial Fishing Regulations 1951, Cook Islands Pearl Shell Fisheries Regulations 1950 and Cook Islands Pearl Shell Export Duty Regulations 1950

Administered by: Ministry of Agriculture, Forestry and Fisheries

### ***Objective***

To make provision for the territorial sea and exclusive economic zones of Niue, and for the exploration and exploitation and the conservation and management of Niue's resources in these zones.

### ***Relevance to this Review***

This Act makes comprehensive provision for the regulation of Niue's fisheries resource in its territorial sea and EEZ (see 4.5). It deals with unauthorized fishing and determines prohibited fishing methods, including the use of driftnets. The powers of authorised officers and Observers are prescribed. (Other matters such as the movement of hazardous substances through Niue's jurisdiction however are not provided for.)

### ***Substance of relevant provisions***

- Section 2 The internal waters, the territorial sea and the EEZ are all declared to be Niue's "fishery waters".
- Section 4 The territorial sea of Niue is defined and declared.
- Section 5 The internal waters of Niue are defined.
- Section 7 The seabed and subsoil of submarine areas are vested in the Crown.
- Section 10 The EEZ of Niue is defined and declared.
- Section 60 Cabinet may make regulations on a broad range of issues, including matters for the implementation of UNCLOS, the UN Fish Stocks Agreement and the WCPT Convention. Regulations may apply to Niuean nationals and Niuean registered vessels fishing on the high seas or in the waters of other nations. They may also implement any decisions of international and regional fisheries management bodies.

The provisions of this law relating to the management of Niue's fishery resources in its fishery waters are noted in Part 4.5 (Natural Resources).

## **CONTINENTAL SHELF ACT 1964 (NZ)**

Year passed; 1964  
Effective from: 3rd November 1964  
Amended: Section 9 deleted.  
Repealed the following: No laws repealed  
Administered by: Premier's Department

### ***Objective***

To make provision for the exploration and exploitation of the continental shelf of New Zealand (*sic*).

### ***Relevance to this Review***

The right to control the continental shelf is an important aspect of a nation's sovereignty. It has

considerable environmental implications particularly in relation to the exploitation of resources. In this case however its effectiveness may be questioned due its foundation in the New Zealand jurisdiction.

### *Substance of relevant provisions*

Section 2	“Natural Resources” are defined to include living organisms and non-living resources of the seabed and subsoil.
Section 3	Rights of exploration and exploitation of the continental shelf are vested in the Crown.
Section 4	The provisions of the Petroleum Act 1937 apply to mining for petroleum in the continental shelf. Regulations may also make provision in this regard.
Section 5	Mining for minerals on the continental shelf is regulated.
Section 6	The Fisheries Act 1908 (as amended in 1963) regulates the oyster beds on the continental shelf and the exploitation of other shellfish and sponges.
Section 7	Applies the criminal and civil laws of New Zealand to the continental shelf.
Section 8	Regulations may be made in relation to a range of matters affecting and regulating the continental shelf.

## 4.2 Administrative arrangements affecting the management of the environment

### **ENVIRONMENT ACT 2003**

Year passed:	2003
Effective from:	July 2003
Amended:	Never
Repealed the following:	No laws repealed
Administered by:	Environment Department

### *Objectives*

- To allow for the development of environment policy and law
- To establish an Environment Department
- To provide enforcement powers for Environment Officers

### *Relevance to this Review*

This is the principal environment law in Niue. It is the legal foundation of the ED and makes provision for the administration of environment related matters, the enactment of a range of environment regulations and the enforcement of environment laws in Niue.

### *Substance of relevant provisions*

Section 4	The matters to be taken into account in the application of this law include: <ul style="list-style-type: none"><li>• Sustainable development</li><li>• Protection of indigenous flora and fauna</li><li>• Protection of coastal zones</li><li>• Protection of historic areas</li><li>• Preservation of culture and traditions</li><li>• Conservation and sustainable use of biological resources</li></ul>
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- Compliance with multilateral agreements

Section 5 An Environment Department is established.

Section 6 The functions of the ED include:

- Administration of this Act
- Formulation of environmental management objectives
- Formulation of policies and laws
- Design and implementation of programs with line agencies relating to environmental planning and management, Environment Impact Assessments, waste management and pollution control, nature conservation, protection of historic areas and other designated matters
- Promotion of environmental awareness and public information programs
- Review of legislation and proposals for reform
- Environmental monitoring
- Provision of Secretariat support to the NCSD
- Promotion of community involvement in environment decision making
- Fostering the application of traditions in environment management
- Facilitation of compliance with multilateral environment agreements

The Department's priorities are to be set by the Director.

Section 7 The staff of the ED includes the Director and other public servants.

Section 10 The powers of the Director are stated, and these include a power of delegation.

Section 11 The Minister may appoint Environment Officers and their powers are prescribed in sections 13 and 14.

Section 15 An Environment Council is established and is known as the National Council for Sustainable Development (NCSD).

Section 16 The powers of the NCSD are to –

- Advise the Minister on environmental, planning, development and resource management policies
- Advise the Minister on draft laws and draft rules
- Advise the Minister of the resolution of conflicts in the implementation of the NEMS

The appointment of members of the NCSD and the procedures of the Council are stated in Schedule 1. (This includes provision for the transaction of business without calling formal meetings of the NCSD).

Part 3 Comprehensive provision is made for environment enforcement matters. Offences are prescribed. Alternative penalties are provided for, including community service orders.

Section 29 The provisions of this Act apply notwithstanding any law to the contrary.

Section 30 Public authorities are not exempted from this Act.

Section 32 A general power to make Regulations is given to Cabinet. Regulations may be specifically made in relation to –

- Environment Impact Assessments
- Environmental and resource planning

- Waste management and pollution control measure
- Regulation of hazardous substances and wastes
- Identification of species and their habitats
- Control of alien and invasive species
- Preservation of historic areas
- Rehabilitation of polluted lands

#### **NIUE VILLAGE COUNCILS ORDINANCE 1967**

Year passed: 1967  
 Effective from: 28 February 1967  
 Amended:  
 Repealed the following: No laws repealed  
 Administered by: "The Community Development Officer"

#### ***Objectives***

This law provides for establishment of Village Councils.

#### ***Relevance to this Review***

Many aspects of the IWP and NBF require the involvement of the community in their formulation and implementation, and the recognition of traditions and culture and traditional authority.

#### ***Substance of relevant provisions***

- Section 3 The responsibility for the administration of the Ordinance is vested in the "Community Development Officer" (CDO).
- Section 4 Advisers to the Councils may be appointed by the CDO with the concurrence of the Resident Commissioner.
- Section 7 Annual Reports must be submitted to the Resident Commissioner.
- Section 8 Village Councils may be established by the Resident Commissioner acting on the advice of the Executive Council. Publication of a notice to this effect in the Gazette is required (this shall specify matters of appointment, boundaries and elections).
- Section 9 Councils are bodies corporate.
- Part IV Provisions is made for elections to Councils by qualified and enrolled electors.
- Section 27 The functions of the Councils are prescribed and these include the power and responsibility to:
- Conduct business enterprises
  - Take action to improve standards of housing and agriculture and other means to achieve economic or social betterment
  - Carry out works for the benefit of the Council area
  - Cooperate with Government to provide social services

A very wide range of general Council functions are prescribed in the Schedule. These relate to a wide range of matters concerning the provision of public services and the promotion of agricultural and fisheries enterprises. A role to protect the fisheries resource under the now repealed Fish Protection Ordinance 1965 is noted.

Section 26 Councils may undertake agency functions on behalf of the Government if

approved by the Resident Commissioner.

Section 29 Councils are empowered to make by-laws. Notice must be given under section 30 to the CDO, but failure to do so does not invalidate a by-law. Section 31 empowers the Resident Commissioner to assent to by-laws in accordance with the Niue Act. Procedures are prescribed in section 31(3) for giving notification of by-laws and bringing them into effect.

Section 33 Power of taxation is given to Councils. This is subject to the approval of the Resident Commissioner.

Section 61 A general power to make necessary Regulations is given to the Resident Commissioner.

#### **PUBLIC EMERGENCY ACT 1979**

Year passed: 1979  
Effective from: 31 January 1980  
Amended:  
Repealed the following: No laws repealed  
Administered by:

#### ***Objectives***

To make provision for the protection of the community in cases of emergency.

#### ***Relevance to this Review***

This Act is of marginal relevance but has been included in a previous review of environment related laws. Its relevance is based upon the responses that may be taken under this law to threats to the environment.

#### ***Substance of relevant provisions***

Section 2 The Cabinet may proclaim an emergency if the public safety or public order is imperilled, or if there is a threat on such a scale that it may interfere with the distribution of food, water, fuel, light, transportation or the essentials of life.

Section 3 Emergency regulations may be made, and the procedures and effect of them is comprehensively provided for.

Section 4 Senior police officers are empowered to take certain actions pending a proclamation of emergency.

#### **DEVELOPMENT FUND ACT 1983**

Year passed: 1983  
Effective from: 27 April 1983  
Amended:  
Repealed the following: No laws repealed  
Administered by: Development Finance Committee

#### ***Objectives***

To establish a development fund.

#### ***Relevance to this Review***

The purpose of the Fund established under this law is to facilitate economic development and private enterprise. The emphasis is on profit and viability. No mention is made of assessing impacts of such developments and there is no mention made of sustainability and the appropriate application of modern technology.

### *Substance of relevant provisions*

- Part I            Makes comprehensive provision for the establishment of the Development Fund.
- Section 14        Proposals shall be evaluated taking into account the economic worth of the industry, its usefulness to the economy, the extent of Niuean ownership and control and its likely profitability.

#### **TOURIST AUTHORITY ACT 1995**

- Year passed:            1995  
Effective from:        7 December 1995  
Amended:                1997  
Repealed the following: Repealed the Tourist Board Ordinance 1970  
Administered by:      Tourist Authority

### *Objectives*

To reconstitute the Tourist Board as the Tourist Authority.

### *Relevance to this Review*

This Act acknowledges the importance of a safe and managed environment in the context of tourism development. In fact specific reference is made to the need to undertake EIA for all proposed developments, and to the implementation of environment policies in this context.

### *Substance of relevant provisions*

- Section 3        A Tourist Authority is continued and is a body corporate. Comprehensive provision is made in Part I.
- Section 14        Functions of the Authority are exhaustively stated and include –
- To identify and promote aspects of Niuean culture of interest to tourists
  - In conjunction with other Departments and agencies, to regulate and control the use and development of scenic attractions and recreational facilities
  - To subject tourism projects to environment impact assessments and to have regard to the Niue environment management strategy and other Government policies
- Section 23        Cabinet is given a general Regulation making power.

## **4.3 Environment Protection and Management**

#### **MARINE POLLUTION PREVENTION BILL**

- Year drafted:            2000  
To be administered by:

### *Main objectives*

To implement the provisions of the MARPOL Convention and to make comprehensive provision for matters relating to marine pollution and responses to marine pollution incidents.

### *Relevance to this Review*

Controls over marine pollution and the capacity of a country to respond to marine pollution incidents are key aspects of its domestic laws and international obligations in the environment context.

### *Substance of relevant provisions*

A draft Model Regional Marine Pollution Prevention Bill was prepared in 2000 with assistance from SPREP, SPC and IMO. It is comprehensive and may be difficult to apply in Niue's context, but many of its features could be reflected in regulations made under the Territorial Seas and Exclusive Economic Zone Act 1997. These relate to –

Part II	Marine Pollution Prevention
Part III	Marine Pollution Response
Part IV	Marine Casualties
Part V	Liability and Compensation for Oil Pollution Damage
Part VI	Dumping and Incineration of Wastes

#### **[NIUE ISLAND GENERAL LAWS (AMENDMENT) ACT 2003]**

Section 21 The Cabinet has power to make Regulations for the implementation of the International Convention for the Safety of Life at Sea 1974 and the International Shipping and Port Security Code.

#### **PESTICIDES ACT 1991**

Year passed:	1991
Effective from:	1 October 1991
Amended:	
Repealed the following:	No laws repealed
Administered by:	DAFF

### *Objectives*

To regulate the importation and sale of pesticides.

### *Relevance to this Review*

The regulation of pesticides is an important feature of sound environmental management.

### *Substance of relevant provisions*

Section 3	Provides for the declaration of substances to be pesticides.
Section 4	A Pesticides Committee is established comprising representatives from relevant Departments and agencies.
Section 5	The functions and powers of the Committee are prescribed.
Section 6	Cabinet may exempt any pesticide from the provisions of this Act.
Section 7	The importation of pesticides requires a permit.
Section 8	Applications for permits must provide, inter alia, the following details – <ul style="list-style-type: none"><li>• brand name and active ingredients</li><li>• nature and formulation</li><li>• proposed labelling</li><li>• purpose</li><li>• arrangements for storage</li></ul>
Section 9	The sale and distribution of pesticides requires a permit. Section 10 prescribes similar information to be provided as that required by section 8.
Section 11	A register of permitted imports and sellers must be maintained.



Section 12 Customs may not release a pesticide unless a permit for it has been issued.

Section 16 Cabinet is given a general Regulation making power.

#### **WILDLIFE ORDINANCE 1972**

Year passed: 1972

Effective from: 9 March 1972

Amended:

Repealed the following: Certain regulations are repealed

Administered by:

#### ***Objectives***

To make provision for the protection of wild animals and wild birds.

#### ***Relevance to this Review***

This is the principal law in Niue which protects the wildlife of this country.

#### ***Substance of relevant provisions***

Section 3 Species of animals may be declared as absolutely or partly protected species.

Section 4 Makes provision for the protection of animals and birds, and their habitats.

Section 5 Powers are given to wildlife wardens (i.e. police constables).

Section 7 Prohibition orders may be made against convicted persons.

#### **ATOMIC ENERGY ACT 1945 (NZ)**

Year passed: 1945

Effective from: 7 December 1945

Amended: 1976

Repealed the following: No laws repealed

Administered by:

#### ***Objectives***

To control the production of atomic energy and the mining and treatment of uranium and other elements used for the production of atomic energy.

#### ***Relevance to this Review***

The presence of this law in Niue's operative statutes is a matter for consideration. The environmental implications of atomic energy are clear. The scope for applying this law in Niue is not so obvious.

#### ***Substance of relevant provisions***

Section 4A Rewards may be paid for the discovery of prescribed substances.

Section 4B Grants may be paid to persons prospecting for or producing prescribed substances.

Section 5 Controls may be placed on the mining of prescribed substances.

Section 6 Controls may be placed on the disposal of prescribed substances.

Section 7 Restrictions are placed on the importation of prescribed substances.

Section 8 Uranium is vested in the Crown (and no compensation may be paid for it under section 9).

Section 10	The Minister may mine for prescribed substances.
Section 12	No person may possess fissionable substances without consent.
Section 13	Universities and schools may undertake certain experimental works.
Section 14	Restrictions are placed on trading in fissionable substances.
Section 15	Powers to enter land and premises are granted.
Section 16	Conditions may be placed on any consent given under this Act.
Section 18	Cabinet is given a general regulation making power.

## 4.4 Protection of human health

### **NIUE PUBLIC HEALTH ORDINANCE 1965**

Year passed:	1965
Effective from:	29 January 1965
Amended:	
Repealed the following:	A range of Ordinances are repealed
Administered by:	Department of Health (Chief Medical Officer)

#### *Main objects*

To consolidate the laws relating to public health.

#### *Relevance to this Review*

Public health issues have important impacts on the environment.

#### *Substance of relevant provisions*

Part II	Vsts responsibility in the Chief Medical Officer and prescribes functions and powers.
Part VII	Makes provision for the sanitation of buildings and dwellings. Enforcement Orders, Closing Orders and Demolition Orders may be imposed.
Part VIII	Prescribes matters relating to water supplies.

### **MOSQUITO CONTROL ACT 1980**

Year passed:	1980
Effective from:	10 November 1980
Amended:	
Repealed the following:	Part VIII of the Public Health Ordinance
Administered by:	

#### *Objective*

To provide for the enforcement of mosquito control measures and the protection of human health from diseases transmitted by mosquitoes.

#### *Relevance to this Review*

The control of mosquitoes can have environmental implications.

#### *Substance of relevant provisions*

Section 3	A duty is imposed on all persons to keep land and premises clear of mosquitoes.
Section 4	Littering and dumping of anything that is likely to retain water is prohibited.

Section 5 Duties are imposed on health inspectors to deal with mosquitoes and larvae and areas where they may proliferate. Mosquito Control Orders may be given.

## 4.5 Natural Resources

### **LAND ORDINANCE 1969**

Year passed: 1969  
Effective from: 1 November 1969  
Amended:  
Repealed the following: No laws repealed  
Administered by:

#### *Objectives*

To provide for the control and tenure of land.

#### *Relevance to this Review*

The essential purpose of this law relates to the registration of land and of interests in land. However land is a critical natural resource and some land management provisions are included in this Act.

#### *Substance of relevant provisions*

- Section 22 The court must confirm the alienation of any Niuean land.
- Section 23 Niuean land may be alienated to the Crown.
- Section 44 The Court may set aside parts of Niuean land as reservations for the common use of villages, or for church or other groups, or for burial grounds, fishing grounds, village site, landing place, place of historic interest, water source, building site, recreational ground, bathing place or any other purpose.
- Section 46 The court may vest management of control of reserved lands in one or more persons, or a body corporate.
- Section 51 Prescribes procedures for the taking of lands for public purposes.

### **PLANTING OF LANDS ACT 1965**

Year passed: 1963  
Effective from: 16 January 1963  
Amended  
Repealed the following: Repealed the Planting of Lands Ordinance 1926  
Administered by:

#### *Objectives*

To promote the growing of fruit and vegetables for home consumption.

#### *Relevance to this Review*

This imposes quite unique obligations in relation to land management practices in Niue. Whether it has current application may be a matter for consideration.

#### *Substance of relevant provisions*

- Section 2 All males between 18 and 60 years must plant sufficient fruit and vegetables for himself and his family and keep his land reasonably clear of weeds and refuse.
- Section 3 Police officers may require a male person to show the work that has been done

in accordance with this Act.

Section 4 Offences for non-compliance are prescribed.

#### **WATER RESOURCES ACT 1996**

Year passed: 1996

Effective from: 20 August 1996

Amended: Never amended

Repealed the following: Part IX of the Niue Public Health Ordinance

Administered by: Director of Works as "Manager"

#### ***Main objects***

To make provision for the investigation, use, control, protection and management of water in Niue.

#### ***Relevance to this Review***

This is the principal law in Niue that makes provision in relation to the conservation and management of the country's water resources.

#### ***Substance of relevant provisions***

Section 2 "Water" includes groundwater, cave waters, seawater and rain water.

Section 4 The purpose of this Act include –

- Ensuring the optimum use of the water resource
- Coordination of activities which may influence water quality, distribution, use and management
- The application of appropriate standards and techniques relating to the administration of the water resource
- Controlling the disposal of waste products which may pollute the water resource
- Controlling and preventing pollution and disease
- Protecting natural and artificial sources of water
- Ensuring the investigation of development proposals to assess their impacts on the water resource
- Coordination of planning in relation to the water resource, including the approved plans and developments of public authorities.

Section 6 Cabinet may make dispensation on the recommendation of the Manager or the Health Officer.

Section 7 Ground water is vested in the Crown.

Section 8 The responsibilities of the Manager in relation to the purposes of the Act are comprehensively stated. Powers to enter and use lands and premises are prescribed in sections 9 and 10.

Section 11 The Manager may impose restrictions in the event of water shortages and is responsible for monitoring the water resource.

Section 12 Water Conservation Orders may be made. These can relate to the treatment of sewage and wastes, and the prevention of waste from entering a water source.

Section 14 The Manager may investigate groundwater resources.

Section 16 Restrictions are placed on the construction of bores. Licences for extraction from bores and for waste disposal are provided for in Part V.

- Part VI Provision is made in relation to water supplies.
- Section 27 Cabinet is given a general regulation making power. A large range of specific Regulations is also stated.

**TERRITORIAL SEAS AND EXCLUSIVE ECONOMIC ZONE ACT 1997 (FISHERIES PROVISIONS)**  
(for details see Part 4.1)

*Substance of relevant provisions*

- Section 12 Cabinet may declare a fishery to be a designated fishery to ensure effective conservation.
- Section 13 The Director may direct the preparation of management and development plans for a designated fishery. (Cabinet may exempt persons from such plans under section 15).
- Section 18 Unauthorised commercial fishing (i.e. without a licence or authorisation) is prohibited.
- Section 19 Driftnet fishing is prohibited. (And possession of driftnet fishing equipment is an offence under section 20).
- Part 7 Multilateral and bilateral access agreements are provided for.
- Part 8 Deals comprehensively with the licensing of fishing vessels.

**DOMESTIC FISHING ACT 1995 (AND REGULATIONS)**

Year passed: 1995

Effective from: 10 August 1995

Amended:

Repealed the following: Repealed the Sunday Fishing Prohibition Act 1980, the Niue Island Fish-Protection Ordinance 1965 (amended in 1991) and the Safety at Sea Act 1980

Administered by: DAFF

*Objectives*

To make provision for the regulation of fishing in Niue, for the protection of the fisheries of Niue and to promote safety at sea.

*Relevance to this Review*

This is a modern and useful law applying to the management of Niue's near shore fisheries resource.

*Substance of relevant provisions*

- Section 2 "Boat" means small craft and vessels and does not include canoes, foreign registered yachts, commercial cargo vessels over 5 tonne and barges.  
  
A broad definition of "fishing" has been applied, and includes fish processing, transshipment, taking crabs, diving for live seashells and corals and the use of poisons and substances to catch fish.
- Section 3 A variety of prohibited fishing practices are prescribed, including the use of explosives and firearms, the use of poisons and stupefying agents, use of nets with a mesh size of less than 75 mm and the use of Scuba apparatus (but this may be authorised by Cabinet for the research purposes)
- Section 4 DAFF officers may destroy akau Niukini.
- Section 7 The Cabinet may declare marine reserves or fonos with the concurrence of a village council or the Director of DAFF. Signs must be placed by village

- councils advising of the reserve of fonos.
- Section 8 Blanket prohibitions apply to declared reserves and fonos.
- Section 9 Taking baitfish (ulihega) from an area recognised by local village custom as a bait fishing area must be in accordance with village custom or by-laws.
- Section 10 Restrictions are placed on taking certain crustaceans and other nominated fish of a size smaller than that prescribed by the Regulations. (These are specified in Regulation 4 of the Domestic Fishing Regulations 1996)
- Section 11 Regulations may prescribe prohibited fish exports. (This is done in Regulation 3).
- Section 12 Regulations may prescribe catch quota or size limits of certain species. (This is done in Regulation 5)
- Part III Provision is made for the banning of fishing between 4 am and 9 pm on Sundays.
- Part IV Provision is made for the licensing of fishing boats. Boats must be in seaworthy condition and must carry the prescribed safety equipment (section 23). Exemptions may be granted by Cabinet under section 27. Regulations shall prescribe safety requirements applying to boats in excess of 1 tonne which are licensed to fish in the EEZ or which are licensed in Niue. (Regulation 8 prescribes safety equipment)
- Section 28 Cabinet is given a general Regulation making power. (These Regulations prescribe destructive fish species – reg. 6, protected fish species – reg. 7)

#### **FISHERIES BY-LAWS – ALOFI NORTH VILLAGE AND MAKEFU VILLAGE**

Date drafted: 2004

Proposed to be made under the Niue Village Councils Act 1967

#### ***Main objects***

To make provision for the proper protection of the fish resources and flora and fauna of the respective villages, and to provide for the administration of marine reserves in the village areas.

#### ***Relevance to this Review***

The by-laws aim to protect and manage the fisheries resources located in two village areas. They seek to establish marine reserves and are a clear example of effective community participation in the management and regulation of their environments.

#### ***Substance of relevant provisions***

- Section 2 States the purpose of the by-laws and seeks to declare the marine reserves identified in the Schedules.
- Section 3 Imposes a range of regulatory conditions in relation to the declared marine reserves. These relate to closure, monitoring and prohibited fishing methods.
- Section 4 Councils are given further powers to impose conditions relating to catch and size quotas and the appointment and responsibilities of rangers.
- Section 5 Breaching a condition is an offence and carries a fine of up to \$40. These are to be paid to the Council in accordance with section 58 of the Niue Village Councils Act 1967.

## **MINING ACT 1977**

Year passed: 1977  
Effective from: 5 August 1977  
Amended:  
Repealed the following: No laws repealed  
Administered by: Chief Mining Inspector

### *Objectives*

To make provision for the mining of minerals.

### *Relevance to this Review*

The impacts of mining on the environment are clear. This law does not appear to make an appropriate contribution to the protection of Niue's environment in this context.

### *Substance of relevant provisions*

- Section 2 "Minerals" does not include sand, coral, gravel, stone or earth.
- Section 6 Mining inspectors have the duty to inspect mines to determine adverse affects to persons, livestock or buildings (but not to the general environment). Directions can be given.
- Section 19 Cabinet may grant mining licences.
- Section 21 Licences may contain conditions (but no mention is made of those conditions relating to the protection of the environment).
- Section 35 Cabinet may make regulations concerning a range of safety and operational issues. No clear mention is made of the need to protect the environment.

## **4.6 Control of transboundary movements**

### **AGRICULTURE QUARANTINE ACT 1984 (AND REGULATIONS)**

Year passed: 1984  
Effective from: 12th February 1984  
Amended:  
Repealed the following: Animal Importation Ordinance 1974  
Administered by: DAFF

### *Objectives*

To make provision for the protection of plants and animals.

### *Relevance to this Review*

The imposition of a quarantine regime is an important aspect of a nation's environment protection regime.

### *Substance of relevant provisions*

- Section 2 "Organism" includes any genetically modified form of an organism.
- Section 5 Wide powers are given to quarantine officers.
- Part II Makes comprehensive provision for the control of imports.
- Part III Makes comprehensive provision in relation to disease control. This includes animals and plants being exported.
- Section 20 Cabinet may make regulations.

## **BIOSECURITY BILL**

Year drafted: 2004

To be administered by DAFF

### *Objectives*

To protect the health, environment and agriculture of Niue and to facilitate trade in its animal and plant products.

### *Relevance to this Review*

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

### *Substance of relevant provisions*

Section 2 There are definitions given to “environment”, “export”, “import”, “fish”, “living organism” and “organism” which should be harmonised with those given in related laws. There is no definition of “living modified organism”. “Regulated articles” include all living organisms, whether modified or not.

“Pest risk analysis” or “PRA” is defined but does not appear to be referred to in any substantive provision.

Section 3 The purposes of the law are stated to be –

- controlling the introduction and spread of new pests and diseases affecting plants and animals;
- controlling those pests and diseases affecting plants and animals that are already present in Niue;
- providing for the safe import and export of animals and animal products and plants and plant products;
- facilitating cooperation in the prevention of the international movement of pests and diseases affecting plants and animals.

There is no application of a precautionary principle.

Section 7 This law is in addition to any other regulatory law and does not derogate from the application of any such law.

Section 9 All regulated articles must be declared and submitted for biosecurity control when being brought into Niue.

Section 10 Articles may be designated as prohibited articles if they present and unacceptable biosecurity risk to Niue.

Section 11 Pests and diseases may be designated as prohibited.

Section 14 Articles may be exempted from biosecurity control if they pose no biosecurity risk.

Part 3 Makes comprehensive provision for import and export permits.

Section 19 Certain exemptions apply, including for goods in transit

Section 21 Provision is made for export permits, and conditions may be imposed.

Section 27 Prescribes the duties of importers and exporters to, inter alia, declare goods and make them available for inspection.

Section 28 Duties are imposed on masters and captains to permit inspections and to file



- documents.
- Section 29 Restrictions are placed on the disposal at sea of garbage and ballast.
- Part 5 Prescribes the powers of biosecurity officers.
- Section 44 Powers to order destruction or reassignment are given.
- Part 6 Makes comprehensive provision in relation to the internal control of pests.
- Section 53 The Minister, after receipt of appropriate scientific advice and with the authorisation of Cabinet, may in writing approve the release of beneficial organisms or biocontrol agents to control or eradicate particular pests or diseases in Niue.
- Part 7 Makes comprehensive provision for the declaration of biosecurity emergencies, including the making of emergency regulations.
- Part 8 Makes comprehensive provision for the establishment of a National Biosecurity Service.
- Section 58 The office of Director of Biosecurity is established as a position in the public service.
- Section 59 Provides for the appointment of biosecurity officers.
- Part 9 General provision is made for the administration of the Act, including the need to consult broadly in relation to its implementation and any regulations made under it.
- Section 66 Obliges a range of public officials, including environment officers to cooperate in the implementation of this Act.
- Part 11 Makes provision for matters aimed at facilitating international cooperation.
- Section 80 Regulation making powers are vested in the Minister.

#### **CUSTOMS ACT 1966**

Year passed: 1966

Effective from: 1 January 1967

Amended:

Repealed the following: A range of laws were repealed but these do not appear in the reprinted version.

Administered by: Comptroller of Customs

#### ***Objectives***

To consolidate laws relating to customs and excise.

#### ***Relevance to this Review***

The Customs Service provides critical border control capacity which can have application in the context of the protection of the environment.

#### ***Substance of relevant provisions***

- Section 19 Entries must be made in relation to all imports and all questions in relation to them must be answered. These can be verified under section 20.
- Section 48 Prohibited imports are prescribed in the First Schedule and other prohibited imports may be prescribed from time to time.
- Section 50 Goods may not be landed or dealt with without an entry being made and written permission given.

- Section 63 The export of goods is regulated.
- Section 70 Certain goods are or may be prohibited from export.
- Part VIII Extensive powers are given to officers of customs.
- Part XIII Permits the detention of any ship or aircraft if an offence is committed.
- Section 306 Permits Regulations to be made. Penalties are limited to 100 pounds.

**CARRIAGE BY AIR ACT 1967**

- Year passed: 1967
- Effective from: 24 November 1967
- Amended: 1974
- Repealed the following: Certain rules and regulations are repealed by section 45
- Administered by:

*Objectives*

To give effect to the Warsaw Convention and to make provision for domestic carriage by air.

*Relevance to this Review*

This law may be of limited relevance but Regulations could be made to restrict the movement of certain articles and substances by air.

*Substance of relevant provisions*

- Section 3 References to New Zealand are deemed, inter alia, to include Niue.
- Part I Invokes the international Conventions applying to international carriage by air.
- Section 16 A general regulation making power is prescribed.
- Part II Makes provision for the regulation of domestic carriage by air.
- Section 44 Regulations may be made in relation to the duties and obligations of passengers and consignors. Penalties are limited to \$200.

**4.7 Recognition and protection of culture and traditional institutions and values**

**NIUE CULTURAL COUNCIL ACT 1986**

- Year passed: 1986
- Effective from: 16 June 1986
- Amended:
- Repealed the following: No laws repealed
- Administered by: Niue Cultural Council

*Objectives*

To establish the Niue Cultural Council to promote all aspects of work associated with Niue’s natural history and material culture.

*Relevance to this Review*

This is Niue’s principal law relating to the protection of culture and traditions. These are matters that have increasing relevance in the context of sound environmental practice.

*Substance of relevant provisions*

- Section 3 Comprehensive provision is made for the establishment and operation of the

Niue Cultural Council.

Section 4 The functions of the Council are to –

- Promote all aspects of work connected with culture and technology including documentation, conservation and repatriation of artefacts
- Encourage the study of oral traditions, language and creative and performing arts in their traditional and contemporary forms
- Encourage the promotion of salvage archaeology and the conservation of sites, materials and monuments
- Regulate and control the use and development of historic sites

Section 9 The Cabinet is given a general Regulation making power.

#### **COPYRIGHT ACT 1962 (NZ)**

Year passed: 1962

Provisions of the New Zealand Act effective in Niue - 19 October 1974

Amended:

Repealed the following: No laws repealed

Administered by:

#### *Objectives*

To consolidate and amend the law relating to copyright.

#### *Relevance to this Review*

The capacity to protect a country's traditional knowledge and creations is an increasingly important aspect of a nation's legal regime. It is doubtful that this out-dated New Zealand law would provide an effective means to achieve this.

#### *Substance of relevant provisions*

- Part I Provides for copyright applying to original works.
- Part II Creates copyright applying to sound recordings, movies, television broadcasts etc.
- Part III Creates exemptions under the Act for fair dealing with works.
- Part IV Prescribes a range of remedies for infringement of copyright.
- Part V Created a Copyright Tribunal
- Part VI Deals with copyrights outside of New Zealand
- Part VII Prescribes matters concerning Crown copyright
- Part VIII Deals with assignment of copyrights and other miscellaneous matters.

#### **Other intellectual property laws**

Other laws relating to the recognition and protection of intellectual property rights in Niue include the Designs Act 1953 (NZ), the Merchandise Marks Act 1954 (NZ), the Patents Act 1953 (NZ) and the Trademarks Act 1953 (NZ). These are all out-dated laws of New Zealand origin. They apply the provisions of the New Zealand laws that were in force as at the 19<sup>th</sup> October 1974. The registration of intellectual property in New Zealand does operate to accord protection for that right in Niue. But it is questionable whether they meaningfully contribute to the protection of Niuean intellectual property and so they have not been reviewed here. It is acknowledged by the Government of Niue that an appropriate legislative framework for the protection of such rights is needed.

## 4.8 Public awareness and participation (including the involvement of the private sector)

Section 6 of the Environment Act gives the ED responsibility to undertake programs of public awareness and information. The NCSO established under this Act makes provision for the representation of the Chamber of Commerce, and of interest groups and the general community.

Regulations may prescribe procedures and requirements for EIA's but none have been made. No other relevant laws have been sighted.

## 4.9 Other regulatory regimes

### **BUSINESS LICENSE ACT 1997**

Year passed: 1997

Effective from: 1 April 1997

Amended: Never Amended

Repealed the following: Repealed the Business License Ordinance 1971, the Niue Hours of Business Ordinance 1963 and the The Regulations under the Cook Island Act 1915 to provide for the issue of Trading Licences

Administered by: Financial Secretary as "Licensor of Businesses"

#### *Main objects*

To make comprehensive provision for the licensing of businesses in Niue.

#### *Relevance to this Review*

It may be possible to regulate or prohibit certain industries that are prone to having unacceptable impacts on the environment through a regime of business licensing. It is not clear how far this law may facilitate this but some relevant provision is made.

#### *Substance of relevant provisions*

- Section 7 It is unlawful to operate a business without a licence, or to carry on any licensed business in breach of a term or condition imposed on a licensed business.
- Section 8 Applications must disclose the nature of the business and the premises from which it will operate. They must also disclose any other approvals given for the business.
- Section 12 A licence may be refused if the issue would cause harm or annoyance to the residents of any locality.
- Section 23 Notices may be given in relation to any matter at a business premise, and if there is failure to comply with a notice then the business must cease.
- Section 28 A general regulation making power is given to the Cabinet.

### **DEVELOPMENT INVESTMENT ACT 1992**

Year passed: 1992

Effective from: 1 October 1992

Amended:

Repealed the following: Repealed the Cook Islands Exchange Control Regulations 1948

Administered by:

#### *Main objects*

To introduce a development and investment incentive scheme and to regulate foreign

investment.

### *Relevance to this Review*

Restrictions on the activities of foreign enterprises may facilitate the protection of the environment from certain industries and industry practices. The extent to which this may be achieved under this law is not clear.

### *Substance of relevant provisions*

- Section 6 All foreign enterprises must be registered.
- Section 7 Provision is made for the registration of existing enterprises.
- Section 8 Comprehensive provision is made for registration procedures.
- Section 36 Cabinet is given a general Regulation making power.

#### **BUILDING CODE ACT 1992**

Year passed: 1992  
Effective from: 1 October 1992  
Amended:  
Repealed the following: Repeals the Niue Building Code Ordinance 1959  
Administered by:

### *Main objects*

To make provision for the enforcement of a Building Code and to regulate the construction of buildings.

### *Relevance to this Review*

The application of a proper building code and the enforcement of sound building practices have clear benefits for the environment.

### *Substance of relevant provisions*

- Section 3 Provision is made for the appointment of building and other inspectors.
- Section 4 A National Building Code can be adopted from time to time to give effect to section 5 requiring the application of standards and controls relating to the construction of buildings.
- Section 5 Standards and controls can be prescribed. The National Building Code 1990 is deemed to have application by virtue of this section.
- Section 6 Permits are required in relation to the construction of all buildings.
- Section 9 Provision is made for the inspection of buildings.
- Section 18 The High Court has jurisdiction in relation to dangerous, deserted, ruinous and dilapidated buildings.
- Section 19 Cabinet is given a general Regulation making power.

#### **NIUE DOGS ORDINANCE 1966**

Year passed: 1966  
Effective from: 1 July 1966  
Amended:  
Repealed the following: Repealed the Niue Dog Registration Ordinance 1916 (as amended in 1958)  
Administered by: Chief Officer of Police

### *Main objects*

To provide for the registration and control of dogs.

### *Relevance to this Review*

Controlling any nuisance that may be caused by stray dogs can be beneficial to the environment.

### *Substance of relevant provisions*

- Section 5      The registrar is required to maintain a register of dogs and receive registration fees.
- Section 7      Dogs are required to be registered.
- Section 8      Dog collars and registration labels are to be supplied by the registrar and must be worn by all dogs.
- Section 13     Changes of ownership must be registered.
- Section 16     There is a power to destroy dogs which are not wearing registration labels, or which are diseased.

### **PIG CONTROL ACT 1998**

Year passed:            1998  
Effective from:  
Amended:  
Repealed the following: No laws repealed  
Administered by:

### *Main objects*

To provide for the control of pigs

### *Relevance to this Review*

Appropriate regulations applying to the keeping and containment of pigs is important in the context of the environment.

### *Substance of relevant provisions*

- Section 3      All pigs must be tethered or kept in enclosures.
- Section 4      Pig enclosures must not constitute a nuisance.
- Section 5      Pigs must be given sufficient food and water.
- Section 6      Owners of land may capture and destroy wandering pigs. (Similar powers are given to police officers under section 9.
- Section 18     Cabinet may make Regulations.

### **WRECK AND SALVAGE ORDINANCE 1968**

Year passed:            1968  
Effective from:        4 November 1968  
Amended:  
Repealed the following: No laws repealed  
Administered by:      Comptroller of Customs

### *Main objects*

To provide for wrecks and salvage.

### *Relevance to this Review*

The purpose of this law is to prescribe matters relating to the preservation and salvage of wrecks and their cargoes, and to enforce rights of ownership to them. It does not aim to preserve wrecks of historical significance but certain provisions could be enforced in this manner

### *Substance of relevant provisions*

Section 14 Orders may be made for the removal of wrecked ships or aircraft.

Section 15 Offences are prescribed including offences relating to the removal of wrecks, or their cargo or equipment.

## 4.10 Regional and international cooperation and harmonisation of arrangements

No laws have been sighted in this context. The Office of External Affairs has clear responsibility in relation to overseeing the implementation of Niue's international obligations. Consideration might be given to enacting a law to clarify matters in relation to the signing, ratifying and implementation of international treaties and agreements.

# 5 Legislative obligations under international conventions

## 5.1 Relevant Conventions and Protocols

The following have been identified in the Terms of Reference as the relevant international Conventions and Protocols in this context:

- The Convention on Biological Diversity (and the Cartagena Protocol)
- Framework Convention on Climate Change
- Regional Seas Conventions
- Convention to Combat Desertification
- The Vienna Convention and Montreal Protocol on Ozone Depleting Substances
- Basel Convention and Waigani Convention to control the transboundary movements and disposal of hazardous wastes
- CITES (Convention on International Trade in Endangered Species)
- WTO and GATT
- PICTA and PACER (Pacific trade agreements)

In fact some Conventions such as CITES do not yet have formal application in Niue. The task is not to review these international documents in detail. Where there are clear obligations to give effect to their provisions in the domestic laws of Niue, then this is noted and some explanation of the nature and extent of the obligation is given. It is important to note the areas where it appears that the current laws are deficient in this regard. The nature of the required remedial action is noted.

### **The Convention on Biological Diversity**

The legislative obligations under this Convention are non-specific but the following are matters about which consideration should be given to the enactment of appropriate laws:

(a) the regulation and management of Niue's biological resources;

- (b) the regulation of any activity which may be detrimental to Niue's biological diversity;
- (c) the control and eradication of invasive species;
- (d) the recognition, protection and application of traditional knowledge, innovations and practices in relation to the management, protection and utilisation of Niue's biological diversity;
- (e) measures and facilities for in-situ and ex-situ conservation of Niue's biological diversity;
- (f) the declaration and management of protected areas, and the implementation of special measures to conserve Niue's biological diversity;
- (g) access to genetic resources within Niue, and the equitable sharing of benefits arising from the development and exploitation of such resources;
- (h) access to and transfer of technologies relevant to Niue's biological diversity;
- (i) plans, strategies and measures for the rehabilitation and restoration of degraded ecosystems;
- (j) systems for the monitoring of and reporting on issues and matters relevant to or affecting Niue's biological diversity; and
- (k) any other appropriate measure to promote the conservation and sustainable use of Niue's biological diversity.

### *Current state of Niue's laws*

It cannot be said that the current laws of Niue make comprehensive provision in relation to any of these matters. The Regulation making powers under the Environment Act 2003 provide scope for addressing a number of these matters. Marine reserves can be declared under section 7 of the Domestic Fishing Act 1995.

### *Options*

Some of these matters could be addressed by Regulations made under the two laws noted above. Such Regulations would complement those currently being drafted to implement the NBF under the Cartagena Protocol.

### **Cartagena Protocol**

This Protocol is unique in the detail of the legislative provision that it requires be made in domestic legislation. These matters include detailed arrangements in relation to the following matters:

- A designated competent authority and focal point in Niue
- Regulation, Management and Control of LMO's
- Risk assessments based upon sound scientific analysis to determine effects on the environment and on the biological diversity, and to human health
- Notifications of and controls over transboundary movements of LMO's
- Public awareness and participation (including the involvement of the private sector)
- Capacity building
- Preservation of cultural and traditional values
- Regional and international cooperation and harmonisation of arrangements



### *Current state of Niue's laws*

No provision is currently made in any law to give effect to the rights and obligations flowing from the Protocol. However, the matter is under consideration and a draft law shall be prepared as part of this project (see Report No. 4)

#### **Framework Convention on Climate Change**

This Convention is not based on the premise that domestic legislation in a country like Niue is a fundamental instrument for achieving its objectives. No legislation exists in Niue that is directly related to climate change issues and none is under consideration.

#### **Regional Seas Conventions**

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 Niue -

- 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

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 Niue. 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.

### *Current state of Niue's laws*

There are no laws in Niue which deal effectively with the issues of dumping and incinerating wastes at sea.

A draft Marine Pollution Prevention Bill which makes comprehensive provision for responses to marine pollution incidents is under consideration. This is a model law drafted for application throughout the region and questions must be asked as to the appropriateness of some of its technical and administrative provisions to a country like Niue where ports facilities and response capacities are limited.

### *Options*

The issue of dumping and incineration of wastes at sea might be best dealt by amendments to the Territorial Seas legislation. This could be done in conjunction with amendments needed to regulate the transboundary movements of hazardous wastes. Other dumping and littering issues could be addressed by Regulations.

The draft model Marine Pollution Prevention Bill should be thoroughly reviewed to ensure that its provisions can be effectively implemented in Niue. It can form the basis of a re-drafted law.

#### **Convention to Combat Desertification**

This Convention envisages that an enabling environment conducive to meeting its objectives shall be provided by strengthening existing legislation or enacting new laws. Nonetheless it is not clear as to how this may be given effect to in the context of a country like Niue where the concept of desertification is not easily applied.

### *Current state of Niue's laws*

The Water Resources Act 1996 is a relatively modern and apparently workable law and no amendments to it appear to be warranted in the context of this Convention.

#### **The Vienna Convention and Montreal Protocol on Ozone Depleting Substances**

There is a clear obligation under the 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 Niue'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

### *Current state of Niue's laws*

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

#### *Options*

The deadlines for making appropriate legislative arrangements in this context are fast approaching. These matters are deserving of a degree of priority.

#### **Basel Convention and Waigani Convention to control the transboundary movements and disposal of hazardous wastes**

The *Basel Convention* regulates the movement of hazardous wastes and other wastes on a global basis. The Convention sets down the criteria for assessing hazardous wastes in the respective annexes.

The annexes are divided into:

- categories of wastes to be controlled;
- categories of wastes requiring special consideration;
- list of hazardous characteristics;

- the manner of disposal operations is also specified;
- information to be provided on notification;
- information to be provided on the movement document;
- arbitration.

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.

### *Current state of Niue's laws*

There are no laws in Niue which effectively deal with the issue of transboundary movements of hazardous wastes through Niue's maritime waters.

### *Options*

This deficiency should be addressed by appropriate amendments to the Territorial Seas legislation. As noted above these changes could also deal with the issues of dumping and incinerating wastes at sea.

The movement of wastes into and through Niue could otherwise be dealt with by prescribing wastes to be prohibited substances under the proposed Biosecurity law and the Customs Act.

### **CITES (Convention on International Trade in Endangered Species)**

Appropriate legislation is a clear requirement of this Convention to give full effect to its objects. In fact Parties have an obligation to provide biennial reports on legislative and other measures taken. A regulatory system requiring the granting of permits for certain species and the keeping of records of trade is a key feature of the obligations under this Convention.

### *Current state of Niue's laws*

The Wildlife Ordinance 1972 makes some relevant provision in this regard, although no observation is made here about its efficacy. This Act is administered by the Police who sell the ammunition used to shoot wildlife.

### *Options*

The Wildlife Ordinance could form the basis for an effective law in this context if provisions relating to the recognition of prescribed species, the granting of permits and the keeping of records were added.

Alternatively the Wildlife Ordinance could be repealed and replaced by appropriate regulations.

### **World Trade Organization and General Agreement on Tariffs and Trade**

It is unlikely that some aspects of Niue's laws in relation to business licensing and foreign

investment, and also in relation to border control would find favour with WTO bureaucrats. The same may well be true about the state of the laws applying to intellectual property.

The purpose of this Report is not to review such compliance issues or to advocate matters associated with the concept of free trade.

It is suggested that none of the legislative amendments advocated in this Section can be construed as problematic in this context, but it is left to others to make the final analysis.

**PICTA and PACER (Pacific trade agreements)**

Similarly it is not the purpose of this Report to review issues associated with regional trade arrangements or proposals. None of the legislative amendments advocated in this Section should impact on such obligations. Indeed all such proposals are necessary to give effect to Niue's clear obligations to effectively protect the environment of the region and to increase its capacity to respond to threats to the safety of the environment.

## Appendix 1: Persons consulted

Hon. Toke Talagi	Acting Premier/Min. for Environment
Ernest Nemaia	Director – DAFF
Terry Chapman	Taoga Niue
Sisilia Talagi	Secretary to Government
Peleni Talagi	Crown Law
Sinahemana Hekau	Crown Law
Tagaloa Cooper	Environment Department
Judy Nemaia-Tanevesi	Biodiversity Unit
Brendan Pasisi	Dep. Director DAFF/Chief Fisheries Officer
Crossley Tatui	Head of External Affairs
Dr Harry Paka	Director of Health