

# **Towards a Protected Areas Management Policy**

**Prepared for Cook Islands National Environment Service  
and Ridge to Reef Project**

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<sup>1</sup> Listed alphabetically

<sup>2</sup> President House of Ariki

## Acronyms and abbreviations

CBD	Convention for Biological Diversity
CCA	Community Conserved Area
CCCI	Climate Change Cook Islands
CI	Cook Islands
CIMP	Cook Islands Marine Park
CIT	Cook Islands Tourism
CITC	Cook Islands Tourism Corporation
CITES	Convention on International Trade in Endangered Species
CMS	Convention on Migratory Species
CNAR	Capacity and Competency Needs Assessment
DCD	Development Coordination Division (of MFEM)
DSM	Deep Seabed Mining
EbA	Ecosystem Based Adaptation
EBSA	Ecologically or Biologically Significant Marine Area
EDO	Environmental Defenders Office, NSW
EEZ	Exclusive Economic Zone
FFA	Forum Fisheries Agency
GBRMP	Great Barrier Reef Marine Park
GCF	Green Climate Fund
GEF	Global Environment Facility
HoA	House of Ariki
IEA	Island Environment Authority
IMSP	Island/Inshore Marine Spatial Plan
IUCN	International Union for Conservation of Nature
IUCN/WCPA	IUCN/World Commission on Protected Areas
IWC	International Whaling Commission
JNAP	Joint National Action Plan (of UNFCCC)
KBA	Key Biodiversity Area
KO	Kōrero o te 'Ōrau
LMMA	Locally Managed Marine Area
MM	Marae Moana
MEE	Management Effectiveness Evaluation

MER	Monitoring, Evaluation and Reporting
MFEM	Ministry of Finance and Economic Management
MM	Marae Moana
MMCO	Marae Moana Coordination Office
MMR	Ministry of Marine Resources
MMA	Marine Managed Area
MOCD	Ministry of Cultural Development
MPA	Marine Protected Area
MRA	Marine Resources Act 2005
MSP	Marine Spatial Plan
NBSAP	National Biodiversity Strategy and Action Plan
NBSC	National Biodiversity Steering Committee
NEC	National Environment Council
NEP	National Environment Policy
NES	National Environment Service
NGO	Non-Government Organisation
NHT	Natural Heritage Trust
NM	Nautical Miles
NMMSP	National Maraе Moana Spatial plan
NSDP	National Sustainable Development Plan
OECM	Other Effective Area-Based Conservation Measures
OFP	Operational Focal Point (for GEF)
OMSP	Offshore Marine Spatial Plan
OPM	Office of the Prime Minister
PACC	Protected Area Coordinating Committee (proposed)
PACS	Protected Areas Classification System
PAM	Protected Area Management
PAMP	Protected Areas Management Policy
PAN	Palau Protected Areas Network
PANF	Palau Protected Area Network Fund
PIPA	Kiribati Phoenix Islands Protected Area
PIPAP	Pacific Islands Protected Areas Portal
POFP	Pacific Ocean Finance Programme

R2R	Ridge to Reef project
SBM	Sea Bed Minerals
SDG	Sustainable Development Goals
SIDS	Small Island Developing States
SPREP	Secretariat of the Pacific Regional Environment Programme
SRF	Sustainable Results Framework
TAG	Technical Advisory Group (for Marae Moana)
TIS	Te Ipukarea Society
UNDP	United Nations Development Program
UNEP	United Nations Environment Program
UNEP/WCMC	UNEP/World Conservation Monitoring Centre
UNFCCC	United Nations Framework Convention on Climate Change
WCC	World Conservation Congress (of IUCN)
WDPA	World Database on Protected Areas

## Glossary of terms<sup>3</sup>

**Marea Moana (MM):** Cook Islands Maori name for the Cook Islands marine park; meaning *‘Our nourishing source of life; respected, cared for and used wisely, today and for generations to come’*.

**Marine Protected Area (MPA):** A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values (Dudley 2008).

**Marine Spatial Plan<sup>4</sup>:** means a plan for a specified marine area that includes a map of the marine area and that is produced as a result of a public process of analysing and allocating the spatial and temporal distribution of human activities to achieve ecological, economic, and social objectives

**Other Effective Area-Based Conservation Measures (OECMs):** A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values (IUCN/WCPA 2019).

**PAMP-1:** The first stage of the development of the Protected Areas Management Policy, which is outlined in this discussion paper

**PAMP-2:** The second stage of PAMP which will, if approved, develop the detailed Protected Areas Management Policy

**Protected area:** A clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values (Dudley 2008).

**Ra’ui:** A restriction on certain activities in a certain area for a certain time and purpose as determined by a traditional leader or leaders of a village area.

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<sup>3</sup> These terms are from Twyford, K. (2020a) Towards a Protected Areas Classification System for the Cook Islands, unless otherwise noted.

<sup>4</sup> From Marae Moana Act 2017, Part 4: Interpretation

## **Executive summary**

### Section 1: Introduction

This discussion paper provides input to the development of the Protected Area Management Policy (PAMP) in the Cook Islands. It represents stage 1 of the PAMP, (PAMP-1), and aims to summarise views of Cook island agencies and persons, assess relevant literature, identify issues, suggest options and recommendations, and outline a process for moving forward.

This paper is based on a literature review and interviews designed to obtain views from relevant agencies in the Cook Islands on a range of issues relating to protected areas. The outcomes from these interviews are integrated throughout all sections of this discussion paper.

Stage 2 (PAMP-2), if approved, will build on stage1 and will develop a detailed Policy for Protected Areas in the Cook Islands, based on intensive consultation and discussion with relevant stakeholders.

### Section 2: Current situation regarding protected areas

This section outlines the current situation regarding terrestrial and marine protected areas in the Cook Islands, drawing from relevant recent publications and reports, including the Protected Areas Classification System for the Cook Islands (Twyford, K. 2020a). The unique circumstances of ra’ui and the Marae Moana are also described.

The Cook Islands has established a large number of areas for natural and cultural conservation and other related purposes. Traditional landowners and leaders play a major role in the establishment and management of protected areas, for both conservation and sustainable use. However, the absence of an agreed definition and categorization framework for protected areas makes it difficult to ascertain the actual situation regarding protected areas in the Cook Islands.

Protected areas in the Cook Islands face many challenges, including: (a) fragmented and unclear responsibility for protected areas between several agencies; (b) the need for review and reform of existing legislation for protected areas; (c) the need to improve the effectiveness of management of existing protected areas including through better addressing key issues, such as tourism; (d) the need for more effective and cohesive institutional structures for protected areas, on land and at sea; and (e) the need for a clear definition of protected areas and an effective and logical protected area classification system.

This section also outlines the views of Cook island agencies in relation to protected areas and highlights the differing views on this subject.

### Section 3: International Context

This section outlines relevant international experience with protected areas, with reference to the situation in Palau, Kiribati and Seychelles. Implications from this experience for protected areas in the Cook islands are described, including in relation to: legal and institutional frameworks; options for sustainable financing; tourism; and

the management of MPAs. This section recommends the development of PAMP should be informed by relevant international experience on protected areas, particularly from SIDS, while ensuring any application of this experience is tailored to the unique context of the Cook Islands.

Application of international Conventions in the Cook islands is outlined, with reference to the Convention on Biological Diversity (CBD) and the United Nations Framework Convention on Climate Change (UNFCCC). These, and other, international legal instruments provide an opportunity for protected areas in the Cook Islands and specific suggestions relevant to PAMP are outlined.

#### Section 4: Key Issues for PAMP

This section outlines key issues for PAs in the Cook Islands based on the outcomes of interviews with relevant CI agencies. Issues are assessed and recommendations made in relation to:

- definition of protected areas (Section 4.2);
- management of protected areas (Section 4.3);
- understanding and awareness of protected area (Section 4.4);
- involvement of traditional landowners (Section 4.5); and
- other matters relevant to protected areas, including sustainable financing; tourism; and climate change (Section 4.6).

#### Section 5: Protected Area Governance

This section assesses key aspects of protected area governance in the Cook Islands, specifically relating to:

- agencies involved in protected area management (Section 5.2);
- legislation relevant to protected areas (Section 5.3); and
- institutional arrangements for protected areas (Section 5.4).

#### Section 6: Analysis and recommendations for PAMP

This section outlines principles and recommendations regarding key aspects of PAMP, including:

- principles to guide PAMP development and implementation (Section 6.2);
- recommendations regarding the PAMP legal framework for protected areas in the Cook Islands (Section 6.3);
- recommendations regarding the roles of different agencies in protected areas in the Cook Islands (Section 6.4);
- recommendations for PAMP governance structures for protected areas in the Cook Islands (Section 6.5); and
- recommendations for PAMP structure and a suggested way forward (Section 6.6)

## Recommendations

Recommendations are listed throughout this discussion paper. For ease of reference all recommendations are listed below, with a reference to the section where the rationale for the recommendation is outlined.

**Recommendation 1:** (Section 3.2) The development of PAMP should be informed by relevant international experience on protected areas, particularly from SIDS, while ensuring any application of this experience is tailored to the unique context of the Cook Islands

**Recommendation 2:** (Section 3.3) International Conventions and Agreements provide an important opportunity for protected areas and should be more effectively used to support PAMP, including through: (a) application of relevant standards, tailored to CI conditions; (b) access to funding, including continuation of funding proposals through GEF, and through new funding proposals through GCF particularly in relation to nature based adaptation to climate change; and (c) access to technical expertise available through international agreements and through organisations such as SPREP.

**Recommendation 3:** (Section 4.2) The protected area classification system outlined in the PACS policy paper, including definition, classification system, and objectives, be adopted and included as a key element of the PAMP.

**Recommendation 4:** (Section 4.3) Effective management of protected areas should be an integral element of PAMP. Key aspects of effective management within PAMP should include: (a) clear objectives; (b) effective management planning and implementation; (c) adequate resources; (d) a supportive community; and (e) effective monitoring and evaluation, including MEE (Management Effectiveness Evaluation) and MER (Monitoring, Evaluation and Reporting).

**Recommendation 5:** (Section 4.3) The identification of new protected areas should be based on a clear process and this aspect should be included in PAMP. The process should be based on the principles of open consultation with relevant stakeholders and the application of the best available science

**Recommendation 6:** (Section 4.4) Targeted communication programmes should be developed to increase awareness and understanding of protected areas in the Cook Islands and raising awareness of protected areas should be included as an important element within the PAMP.

**Recommendation 7:** (Section 4.5) Protected areas in the Cook Islands must be developed with and through traditional landowners and leaders, building on traditional approaches to conservation, and involving the House of Ariki and the Koutu Nui wherever possible and relevant. These aspects should be included as an integral element within the PAMP.

**Recommendation 8:** (Section 4.6) Sustainable financing for protected areas should be addressed as a key element of PAMP, and recommendations in the Sustainable Financing Mechanisms report (Conservation International, 2020)

should be carefully considered and reviewed within the Cook Islands before possible adoption and implementation.

**Recommendation 9:** (Section 4.6) Noting the importance of tourism for the Cook Islands economy and the importance of protected areas for tourism, it is recommended that a Protected Areas and Tourism strategy be developed, as an integral element of PAMP, to ensure tourism benefits protected areas, including through sustainable financing, and vice versa.

**Recommendation 10:** (Section 4.6) (A) The role of the protected areas as a key tool for responding to climate change and natural disasters in the Cook Islands, should be emphasised in the PAMP; (B) Protected areas should have a higher emphasis in GCF funding proposals and additional opportunities for accessing GCF funding should be considered and followed up by NES, particularly in relation to nature based adaptation to climate change

**Recommendation 11:** (Section 6.2) The principles outlined in Section 6.2 be noted as an important input to guide the future development of the PAMP.

**Recommendation 12:** (Section 6.3) Improved clarity and strengthened application regarding protected areas legislation should be addressed through amendments of existing laws and the development of the PAMP. Separate legislation for protected areas in the Cook Islands should not proceed at this time, however this option should be kept open for future assessment. This future assessment should be undertaken through PAMP-2 and could explore, inter alia, whether the MM Act could be the only Act for establishment of MPAs and whether the Environment Act could be the only Act for the PA system as a whole, and for island PAs.

**Recommendation 13:** Section 41 of the Environment Act should be amended to, at a general level:

- provide for a strengthened framework for the establishment and management of all protected areas, on land and sea, in the Cook Islands
- establish a national PA classification system
- reflect the roles and mandates suggested in recommendation 17, viz:  
*“The role of the NES in protected areas should include: (a) The lead role on protected areas in the Cook Islands on land and at sea, including establishing PA definitions, policy setting, standards, management planning and reporting; and monitoring and evaluation; (b) Implementation of PA activities on land, for government managed PAs; (c) technical support and policy guidance for community managed protected areas, as requested and as appropriate; (d) policy guidance to MMR for management of MPAs in the marine environment.*
- recognize the PAMP as the primary document for protected areas in the Cook Islands
- outline and clarify the roles and responsibilities of other agencies involved in protected areas in the Cook Islands

At a more detailed level, the Act should be amended to cover:

- application of a clear and uniform PA definition across the Cook Islands, on land and at sea, based on PACS;
- a classification system for protected areas including categories, objectives and a designation approach, based on PACS;
- elaboration of a clear process for establishing PAs, involving full and effective consultation and involvement with local communities and landowners;
- ensuring effective management, including development of management plans;
- ensuring protected areas are linked within the broader landscape, including the land-sea interface;
- ensuring effective implementation of PAs.

These amendments should be developed and submitted for Government approval by December 2021.

**Recommendation 14:** (Section 6.3) The Marine Resources Bill be amended to: (a) include consistent terminology regarding the definition and categories of MPAs, as outlined in PACS; and (b) allow for the withdrawal of the section of the MR Bill regarding “Marine Reserves and Parks”. This will require continued high level discussion between NES, MMR and OPM.

**Recommendation 15:** The Marae Moana Act be amended to:

- include the new definition of a PA and MPA
- recognize the PAMP as the primary document for protected areas in the Cook Islands
- reflect the roles and mandates suggested in recommendation 16, as follows (a) coordination of MPA activities in the Marae Moana, including coordination and support for the implementation of policies and standards on protected areas developed by the NES; (b) support for education and awareness raising programmes.

It is proposed that such amendment should be initially discussed with MMCO and TAG and an appropriate timeframe for implementation be agreed upon.

**Recommendation 16:** That main agency roles regarding protected areas be clarified and include the following:

**The role of NES** in protected areas should include: (a) The lead role on protected areas in the Cook Islands on land and at sea, including establishing PA definitions, policy setting, standards, management planning and reporting; and monitoring and evaluation; (b) Implementation of PA activities on land, for government managed PAs; (c) technical support and policy guidance for community managed protected areas, as requested and as appropriate; (d) policy guidance to MMR for management of MPAs in the marine environment.

**The role of MMR in protected areas should include: (a) implementation of activities in MPAs, including monitoring and surveillance, working in line with the policy and standards for PAs, including MPAs, developed through NES, in cooperation with MMR; and (b) implementation of science related activities in the marine environment**

**The role of MMCO in protected areas should include: The role of the MMCO in protected areas should include: (a) coordination of MPA activities in the Marae Moana, including coordination and support for the implementation of policies and standards on protected areas developed by the NES; (b) support for education and awareness raising programmes.**

**The role of communities, traditional leaders and HoA: should include: (a) establishment and management of community managed PAs, wherever possible working cooperatively, and in accordance, with policy guidelines for PAs established through NES.**

**Recommendation 17: (Section 6.5) That a Protected Areas Coordinating Committee (PACC) be established under the under the National Biodiversity Steering Committee (NBSC), to oversee the development and implementation of PAMP and to encourage effective coordination and cooperation between relevant agencies involved in protected areas.**

**Recommendation 18: (Section 6.6) That the proposed structure of PAMP and the process for finalizing PAMP, as outlined in Section 6.6, be approved**

# 1. Introduction

## 1.1 Context

The Protected Area Management Policy (PAMP) is an integral element of the Cook Islands Ridge to Reef (R2R) project funded by the Global Environment Facility (GEF) in partnership with the Cook Islands Government and United Nations Development Programme (UNDP). The R2R project aims to enhance the capacity of the Cook Islands to effectively manage its protected areas and sustainably manage its productive landscapes at local scales while considering food security and livelihoods.

The objective of R2R is:

*“To build national and local capacities and actions to ensure effective conservation of biodiversity, food security and livelihoods and the enhancement of ecosystem functions within the Cook Islands Marine Park”.*

There are two project ‘components’ (outcomes):

*Outcome 1: Strengthening protected areas management*

*Outcome 2: Effective mainstreaming of biodiversity in key sectors to mitigate threats within production landscapes.*

The development of the PAMP falls within outcome 1.

## 1.2 Aims

The aim of the PAMP is to provide analysis of options and recommendations for reform of the protected areas management (PAM) system in the Cook Islands. The Terms of Reference for this project is outlined in Annex 1.

This discussion paper aims to:

- describe the current situation with protected areas in the Cook Islands;
- describe relevant international experience with PAM, with reference to selected case studies in Small Islands Developing States (SIDS), and identify implications for PAM in the Cook Islands;
- identify and describe key issues for PAM in the Cook Islands;
- analyse these issues, outlining options and recommendations for PAM in the Cook Islands; and
- outline key elements of a PAMP and a process for moving forward with the preparation of PAMP.

This paper is the outcome of stage 1 of the PAMP, which aims to summarise views of Cook Island agencies, assess relevant literature, identify issues and suggest options and a process for moving forward.

Stage 2 (PAMP-2), if approved, will build on stage1 and will develop a detailed Protected Areas Management Policy in the Cook Islands, based on intensive consultation and discussion with relevant stakeholders in the Cook Islands. This discussion paper (Stage 1) will thus form an important background and basis for Stage 2.

### 1.3 Approach: taken to this document

This document is based on in-depth interviews and a literature review.

Interviews aimed to obtain views from relevant agencies in the Cook Islands on a range of issues relating to protected areas, including on aspects relating to: governance; laws and policies; agencies; management; specific issues and opportunities, including tourism. The interview questions are outlined in Annex 2.

Interviews were undertaken with 27 persons from 13 agencies. A list of agencies and persons interviewed is outlined in Annex 3. The comments from interviewees are included and integrated within relevant sections of this paper.

A review was also undertaken of relevant literature, including publications relevant to protected areas in the Cook Islands, Pacific Islands Legal Information Institute (PACLI)<sup>5</sup>, Government web-sites, previous reviews of legislation in the Cook Islands and other material.

### 1.4 Structure: of this document

**Section 1 Introduction:** outlining the context for the paper, its aims, approach and structure.

**Section 2 Current situation:** providing an overview of the current situation with protected areas in the Cook Islands.

**Section 3 International context:** outlining relevant international experience with PAM, with reference to selected Small Islands Developing States (SIDS), and identify implications for PAM in the Cook Islands.

**Section 4 Key issues:** outlining key issues for protected areas in the Cook Islands, based on issues raised in the interviews and through the review of relevant literature.

**Section 5 Protected Area Governance:** outlining an in-depth analysis of key areas relating to protected areas governance: (a) agencies involved in PA management; (b) legislation relevant to PA management; and (c) institutional arrangements for PAs.

**Section 6 Analysis and recommendations for PAMP:** providing an analysis of issues, possible options and suggested recommendations for PAMP in the Cook Islands. Elements of the PAMP and a process for moving forward are suggested

References and annexes are provided at the end of the document for further information.

Throughout the paper, boxes are used to highlight policy issues and proposals of particular importance.

<sup>5</sup> <http://www.paclii.org/countries/ck.html> the Pacific Islands Legal Information Institute – Cook Islands

**Recommendations are made in bold, highlighted text.**

## 2. Current situation regarding protected areas

### 2.1 Introduction

The term “protected area” is used throughout this report. For the purposes of this paper it uses the globally accepted International Union for Conservation of Nature (IUCN) definition of protected areas, which is: “A *protected area is a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values*”<sup>6</sup>.

Protected areas have been established around the world and play a key role in conserving biodiversity and supporting the livelihoods of people, in particular through the protection and support of vital ecosystem services, such as clean water and air, as well as protecting communities from the impact of natural disasters and climate change.

The establishment of protected areas has progressed rapidly around the world, particularly in the last 30 years. The World Database on Protected Areas (WDPA)<sup>7</sup> is the most comprehensive global database on terrestrial and marine protected areas and is managed by the UNEP-WCMC, in consultation and collaboration with governments, non-governmental organisations (NGOs), academia and industry, including IUCN. As at November 2020, the WDPA notes there are 261,766 protected areas around the world, covering 245 countries and territories, representing around 15.4% of the world’s land area and 3.4% of the global ocean area.

Day et al. 2019, as quoted in “Towards a Protected Areas Classification System for the Cook Islands” (PACS) Twyford, K. (2020a), notes the IUCN definition of a protected area also applies in the marine environment and recommends that a Marine Protected Area (MPA) should seek to meet the following standards:

- Nature conservation is the primary priority;
- Defined goals and objectives which reflect these values;
- Suitable size, location and design that will enable conservation of values.
- Defined and agreed upon boundary;
- Management plan, or equivalent, which addresses the needs for conservation of the site’s major values and achievement of its social and economic goals and objectives; and
- Resources and capacity to implement (IUCN WCPA 2018; Day et al. 2019).

Day (2019) also notes that unsustainable extractive activities (particularly those on an industrial scale, such as Deep Seabed Mining (DSM)<sup>8</sup>) are not appropriate in MPAs and should be excluded. Industrial scale fishing is also generally considered

<sup>6</sup> <https://www.iucn.org/theme/protected-areas/about>

<sup>7</sup> <https://www.iucn.org/theme/protected-areas/our-work/world-database-protected-areas>

<sup>8</sup> [https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC\\_2012\\_RES\\_79\\_EN.pdf](https://portals.iucn.org/library/sites/library/files/resrecfiles/WCC_2012_RES_79_EN.pdf)

incompatible with MPA designation. Significantly, the 2020 IUCN World Conservation Congress (WCC)<sup>9</sup> has recently passed a resolution on industrial fishing in MPAs<sup>10</sup>, which calls on: *“the Director General and the Commissions to provide guidance to countries to ensure that ‘industrial fishing’ is not being allowed in MPAs and OECMs to the extent that it is not compatible with the conservation objectives and the management goals of these areas”*.

This IUCN 2020 resolution on industrial fishing (Motion 66) provides guidance on the issue of industrial fishing in relation to MPAs. It classifies all commercial trawlers, purse seine vessels, and large longlining as industrial vessels, as well as any large, profit-oriented vessels over 12 meters long and 6 meters wide. It exempts sustainable resource use by indigenous people, low-impact scientific research fishing, and sustainable commercial fishing that does not otherwise classify as industrial.

In 2016, IUCN called for 30% of each marine habitat to be set aside by 2030 in “highly protected MPAs” and other effective area-based conservation measures, aiming to cover at least 30% of the global ocean, with no extractive activities permitted. This figure has been accepted by most in the scientific community<sup>11</sup>. Widely accepted targets such as these underline the importance of clear and accurate reporting in relation to protected areas in general, and MPAs in particular.

## 2.2 Protected Areas in the Cook Islands

There have been a number of reports on, and reviews of, protected areas and protected area legislation in the Cook Islands. These include: (a) the Protected Areas Classification System (PACS)<sup>12</sup>, Twyford, K. (2020a); (b) the Capacity and Competency Needs Assessment Review (CNAR)<sup>13</sup>, Twyford, K. (2019); (c) Review of Environmental Law, EDO NSW (2018); and (d) Cook Islands Review of Environmental Law, Pulea, M (1992). This section draws from these reports and reviews, and includes key elements relevant to PAs in the Cook Islands.

The Cook Islands has made good progress in establishing protected areas as part of its national commitment under the Convention for Biological Diversity (SPREP 2018). The country has established a large number of areas that have been managed for natural and cultural conservation and other related purposes.

The “official” international recognition of protected areas in the Cook Islands, through the WDPA, as quoted in PACS, notes the Cook Islands has:

- 17 protected areas across 9 different categories: nature reserve; national park; marine park; reserve; hunting reserve; other area; marine sanctuary; ra’ui and Ra’ui<sup>14</sup>;

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<sup>9</sup> <https://www.iucn.org/about/world-conservation-congress> The WCC is the Governing Council of IUCN which discusses and agrees resolutions for members which, although non-binding, provide guidance on a range of environmental issues, including protected areas, for countries around the world.

<sup>10</sup> <https://www.iucncongress2020.org/motion/066>

<sup>11</sup> <https://www.woi.economist.com/the-need-to-protect-at-least-30-of-the-ocean-by-2030/>

<sup>12</sup> Hereafter referred to as PACS in this report

<sup>13</sup> Hereafter referred to as CNAR in this report

<sup>14</sup> The terms Ra’ui (capital R) and ra’ui are both used in the Cook Islands

- 5 protected area governance types: federal or national ministry or agency; collaborative governance; sub-national industry or agency; indigenous peoples; other, not reported; and
- Terrestrial protected areas covering an area of 67 km<sup>2</sup> or nearly 26% of the land area of the country (UNEP-WCMC 2020).

In the Protected Areas Classification System (PACS) policy paper Twyford (2020a) questions the accuracy of this data. PACS provides a comprehensive review of protected areas in the Cook Islands and notes the absence of an agreed definition and categorization framework for protected areas, which makes it difficult to ascertain the actual situation regarding protected areas in the Cook Islands. Updates were provided by NES to the WDPA in October 2020 to reflect confirmed Cook Islands protected areas, with a more in-depth review required to confirm whether other areas are considered protected or are, alternatively, managed areas. It is anticipated the adoption of the PACS definition of PAs and the process for classifying these areas will greatly improve the accuracy of relevant PA data included in the WDPA.

PACS notes many different types of areas have been established for biodiversity conservation and for the sustainable management of land and sea resources in the Cook Islands. Passfield & Rongo (2011) note that traditional leaders, island councils, communities and government have made a major contribution to the establishment and management of these areas. There are many different terms and designations used to describe protected areas in the Cook Islands, 37 in all<sup>15</sup>, and this creates significant confusion and misunderstandings among relevant stakeholders in the Cook Islands: government, island communities, tourism operators, NGOs, and other stakeholders (Twyford 2020a). It also creates confusion when describing protected areas to external stakeholders, outside the Cook Islands, such as, for example, those involved in the WDPA.

Many of the 37 designations noted above may not meet the formal IUCN definition of a protected area, however they have great importance in the Cook Islands for the protection of natural and cultural resources and play an important role in customary resource management and protection.

Such areas are noted as Other Effective Area-Based Conservation Measures (OECMs), which recognizes that many areas set aside and managed, including by local communities, have particular importance for conservation and other purposes. IUCN (2019)<sup>16</sup> defines OECM as:

*“A geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in situ conservation of biodiversity with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values”.*

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<sup>15</sup> Refer Table 1 PACS

<sup>16</sup> <https://www.iucn.org/news/protected-areas/201911/iucn-publishes-new-guidance-recognising-reporting-and-supporting-other-effective-area-based-conservation-measures>

This recognizes that significant conservation efforts occur outside of officially designated and recognized protected areas, under a range of governance and management regimes, and implemented by many actors including local communities, indigenous peoples and the private sector. OECMs are of particular relevance for the Cook Islands given the significant involvement of traditional leaders and local communities in establishing areas for conservation and sustainable use.

Protected areas in the Cook Islands face a number of challenges and these are well documented in the CNAR and PACS (Twyford 2019 and 2020a). These include:

- Fragmented and unclear responsibility for protected areas between a number of agencies;
- The need for review and reform of existing legislation for protected areas;
- The need to improve the effectiveness of management of existing protected areas;
- The need for more effective and cohesive governance forums for protected areas, on land and at sea, including better use of existing forums such as Marae Moana and its associated advisory groups;
- The importance of more effectively addressing key issues for protected areas, such as tourism, sustainable financing, and information management;
- The need for more effective partnerships for protected areas, including between government, traditional landowners, and the private sector; and
- The need for a clear definition of protected areas and the development of an effective and logical protected area classification system<sup>17</sup>.

These issues are further explored in this discussion paper, with particular reference to the views of key agencies in the Cook Islands, as expressed through interviews undertaken for this project.

Two particular areas are worth highlighting in relation to protected areas in the Cook Islands: ra'ui and the Marae Moana.

### 2.2.1 Ra'ui

The Cook Islands has a long established method of traditional management and conservation referred to as ra'ui. Twyford (2020a) notes that ra'ui:

*“are a traditional form of resource management that is of particular significance and widely used in the Cook Islands. The term is both a geographic locality and traditional custom that involves imposing restrictions on the access to and/or use of specific resources of a particular area (land, lake, stream, reef or lagoon); restrictions*

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<sup>17</sup> This issue is comprehensively addressed in the PACS.

are temporary and resource use is forbidden for a given period, as determined by traditional leaders of the area. Typically small in size (<100ha), ra'ui:

- are given short term protection to allow for a specific resource (eg. fish, shellfish, crabs, birds) to recover and/or reach maturity and to sustain harvesting (Saul & Tira 2004)
- typically have no legal basis
- are reliant on community management and traditional authority to ensure compliance.
- There are a range of different definitions of ra'ui”.

The use of ra'ui is well established and recognized within the Cook Islands and plays an important role in efforts to conserve and sustainably manage natural resources, on land and at sea. These areas fit well within the definition of an OECM as noted above.

### 2.2.2 Marae Moana

Marae Moana is a multiple-use marine park which extends over the entire Exclusive Economic Zone of the Cook Islands, an area of 1.9 million square kilometres<sup>18</sup>. Marae Moana is one of the world's largest multiple-use marine managed areas and was legally designated in 2017 through the Marae Moana Act 2017, which has the primary purpose of protecting and conserving the: *“ecological, biodiversity and heritage values of the Cook Islands marine environment.”* The Marae Moana Act provides a framework to ensure all agencies are operating consistently in respect of zoning, environmental protection, conservation and sustainable use in the Cook Islands. It is described and assessed in Section 5.3.4 of this report. Twyford (2020a) suggests Marae Moana provides an example of a ‘nested’ MPA, as shown in the figure below and notes that within the broader Marae Moana, there is already a system of smaller MPAs that exist around all islands (from the coastline to 50 nautical miles) where mining and large-scale commercial fishing are prohibited.

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<sup>18</sup> <https://www.maraemoana.gov.ck/about-marae-moana/what-is-marae-moana/>

Schedule 1  
Marine protected area established by this Act



Marae Moana is a MPA (IUCN Category VI)

Around each island (to 50 nm) is a MPA  
Zone within the bigger Marae Moana MPA  
(IUCN Category IV)

- No commercial fishing or mining

It is noted that this situation will now need to be re-considered in the light of the latest IUCN resolution on industrial fishing<sup>19</sup> in MPAs, as described above. If this decision is applied in the CI there would only be certain defined areas within MM which would be recognized as MPAs, including the areas declared around each island to 50 NM and areas designated under Section 24 of the Environment Act<sup>20</sup>. The entire MM would not be considered as a MPA. This requires further consultation within the Cook Islands.

Consultation with CI agencies for this report suggests confusion as to the purposes and objectives of MM, particularly in terms of differing management objectives for conservation on the one hand and uses such as fishing and Deep Sea Bed Mining on the other. It is anticipated that the application of Marine Spatial which is currently underway (Twyford 2020b) will clarify objectives and activities within MM.

A number of challenges facing MM are outlined in the CNAR (Twyford 2019), including:

- Limited capacity to manage MM particularly in areas such as surveillance and enforcement, planning, zoning, financing, compliance, enforcement and communications;
- The need to improve the understanding and awareness of Marae Moana so it has a more tangible and visible presence in the Cook Islands; and
- The need for more effective engagement of traditional leaders and specific sectors, such as tourism, in the planning and management of MM.

<sup>19</sup> IUCN Congress 2020, IUCN resolution 66.

<sup>20</sup> Section 24 of the Cook Islands Environment Act which allows for the establishment of protected areas in the CI

These issues are further explored in this report, with particular reference to the views of key agencies and persons in the Cook Islands.

### 2.3 Views of Cook Island agencies: on “what is a protected area”

Government agencies interviewed for this project were asked: “*what do you understand to be a protected area in the Cook Islands*” (Annex 2, Interview question 1). The results underlined different views held on this subject and also the challenges of having differing views as to what constitutes a protected area. Key issues highlighted in responses include:

- The situation is complicated in the Cook Islands (CI) by the lack of a clear definition of a protected area in relevant legal instruments. As a consequence, people in the CI are unclear and confuse conservation, protection and management. An adopted Cook Islands definition of a protected area would be useful, based on international standards but tailored to the situation in the country;
- The unique land tenure situation is fundamental to PAMP in the CI, in that the vast majority of land is under customary ownership and there is very little government land, making the establishment of government PAs challenging. This land tenure situation means that protected areas must be established and managed with and through traditional owners and leaders;
- Protected areas in the Cook Islands are important. They cover many different forms and approaches and have a range of values. Interviewees noted these values include: to protect important places and species; to protect certain areas from overuse or exploitation; protection of cultural values, noting that many natural areas in the Cook Islands also have important cultural values; and to provide an important attraction and resource base for ecotourism;
- The majority considered ra’ui to be protected areas and noted that it is an important form of conservation, which should be more widely respected and applied in any future development of protected areas in the Cook Islands. Interviewees noted that ra’ui and other traditional practices are more respected and effectively applied in the Northern Group than the Southern Group;
- The majority consider Marae Moana to be a protected area, although a number noted the challenges of balancing conservation and extractive uses within a PA; and
- There are a range of governance approaches and models for protected areas in the Cook Islands. These include those administered by: (a) government, such as the Suvarrow National Park; (b) traditional chiefs and local communities, such as ra’ui; (c) public-private protected areas, such as the Takitumu Conservation Area, which was noted as an example of positive conservation efforts. Examples of broader landscape approaches such as catchment protection under the Takuvaine Water Catchment Management

Plan Regulations, where landowners and government cooperatively decide what happens within water catchment areas, were also noted as useful examples for PAs and broader conservation efforts in the Cook Islands.

### 3. International context

#### 3.1 Introduction: can the Cook Islands learn from international experience on protected areas?

Protected areas have been established around the world<sup>21</sup>, , and the pace of establishment has accelerated in the last 20 years. Interviewees were asked: “*Are there opportunities for a world best-practice protected area system in the Cook Islands? What do you think could be the main elements of such a system?*”(Annex 2, Interview question 7). Responses included:

- It is difficult to apply terms like “*world best practice*” to protected areas in the Cook Islands, given the variability in economic and social conditions in countries around the world. As one interviewee noted: “*I am cynical about terminology like world best practice*”, given the different circumstances and resource levels between countries to address issues such as protected areas;
- However, all agreed that it is important for the Cook Islands to consider and be aware of international practice on protected areas and the implications for the CI. It is very important to be careful in the application of outside experience to the Cook Islands as there is no “*one size fits all*”, and outside experience must be applied in a way that is practical and achievable in the CI considering the local context. As one interviewee noted: “*international standards are very useful as a guide to strengthen systems, but what is important is that CI agencies and people drive and have ownership, rather than imposing ideas from outside on PAs*”;
- It is important that the Cook Islands looks at experience from comparable countries, particularly SIDS countries that often face similar issues and challenges. Many Pacific Islands Countries (PICs) have similar land tenure arrangements to the CI and the importance of community involvement in protected areas is equally regarded as essential;
- Reviewing international experience is particularly important in addressing issues such as the application of IUCN Protected Areas Management Categories, as well as other external frameworks and approaches, which must be applied in a way which will “work” in the Cook Islands context;
- The application of best practice also applies at different levels in the Cook Islands, for example the application of international experience on protected areas at the national level will vary at the island level. As one interviewee noted: “*each island is different, so any system must reflect what works. Pukapuka has an excellent system, this is the gold standard. Atiu has their own system. It’s a journey and a process to develop a system that works*”.

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<sup>21</sup> As noted in Section 2

## 3.2 Experience from other SIDS

Given the importance of assessing relevant international experience in terms of potential application in the Cook Islands, this project carried out a brief review of experiences with PAs in Palau, Kiribati and the Seychelles. Key elements from this review which relate to the Cook Islands include the following.

### 3.2.1 Experience from Palau

#### Key elements of the protected area system in Palau

##### *Legal Framework*

The Palau Protected Areas Network (PAN) Act 2003 establishes a framework for a network of marine and terrestrial protected areas across Palau to ensure biodiversity conservation and the sustainable use of natural resources, Kerkhoff and Pilbeam (2015). PAN provides for, inter alia: (a) a country-wide system of connected protected areas; (b) involvement of local communities and integration of traditional knowledge with protected area management; and (c) empowerment of local communities to designate and manage marine and terrestrial protected areas. PAN implements its functions and activities through close cooperation between State and National governments in Palau.

##### *Marine Protected Areas*

There are 47 Marine Protected Areas (MPAs) throughout Palau, ranging from nearshore mangroves and seagrass beds to offshore coral reefs, with more than 45% of the country's nearshore waters under some form of protection. The Palau National Marine Sanctuary<sup>22</sup> was established through the Palau National Marine Sanctuary Act (2015)<sup>23</sup>. This protects 80% of Palau's Exclusive Economic Zone (EEZ) from all forms of extractive activities, including all types of industrial fishing.

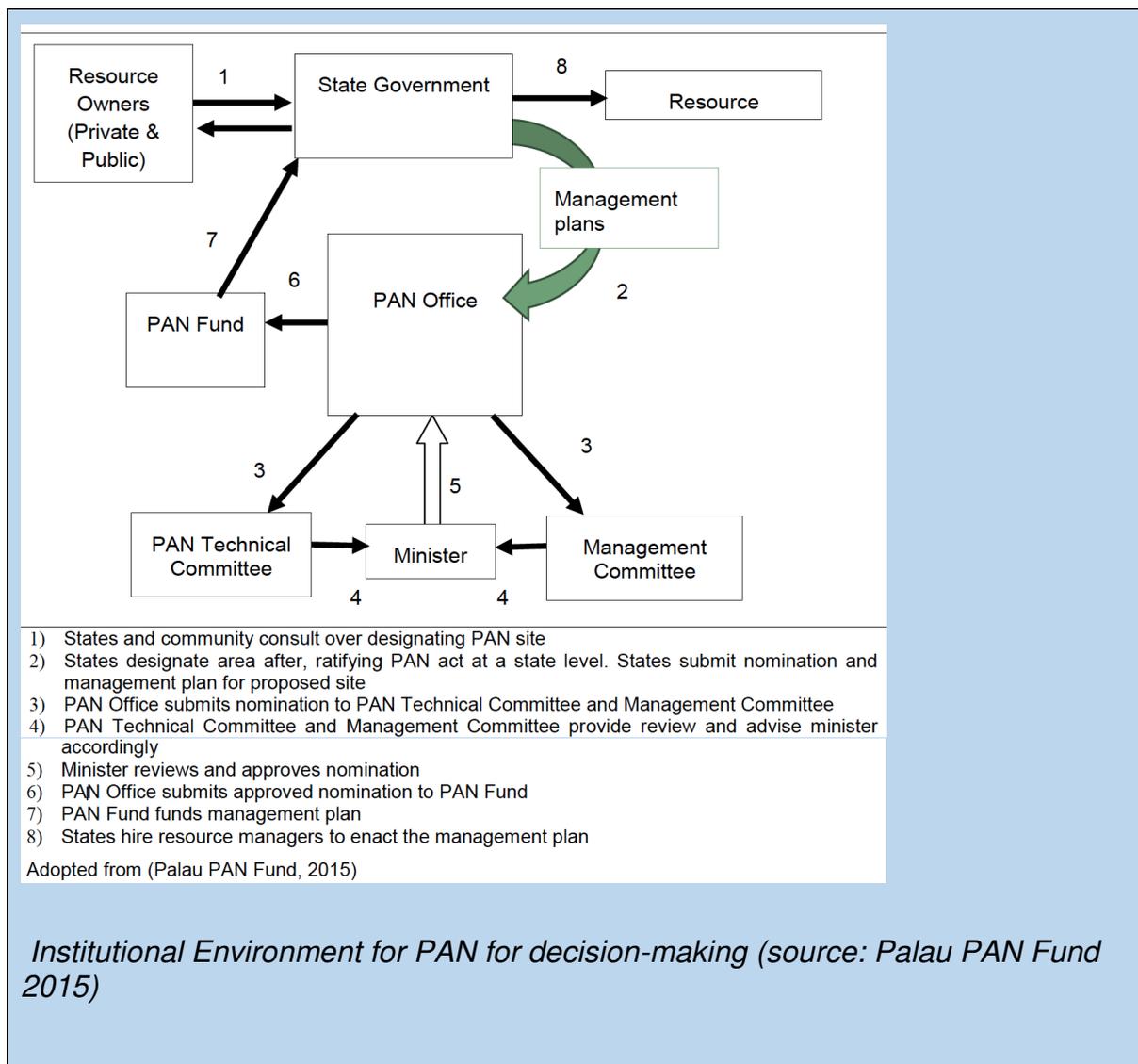
##### *Governance*

The institutional framework for PAN decision-making is shown in the table below. Multiple agencies are involved in decision making, including: (a) the PAN Office which plays the key coordination role, working closely with all key stakeholders; (b) the PAN Technical Committee, which provides technical advice regarding protected area establishment and management; (c) the PAN Management Committee, which consults with the Ministers of Natural Resources, Environment and Tourism (MNRET); (d) and resource owners (private and public), who play a significant role in PAN decision-making. Palau has a long history of community and traditional management of marine and terrestrial resources by local chiefs and this is recognized and strengthened by this governance structure.

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<sup>22</sup> <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/01/01/palau-national-marine-sanctuary-goes-into-effect>

<sup>23</sup> <https://www.informea.org/en/legislation/palau-national-marine-sanctuary-act-rppl-no-9-49-2015>



### Financing of Protected Areas

The PAN Act incorporates a Protected Area Network Fund<sup>24</sup> (PANF) funded from visitor and other contributions. The PANF is an independent non-for-profit financial trustee established to manage funds directed towards the protected sites of Palau. The PANF is mandated to: (a) seek external funding sources for Palau’s conservation and sustainable development efforts; (b) leverage sources of outside funding through mechanisms such as the Micronesia Conservation Trust<sup>25</sup>; (c) ensure that outside funding is used for the purposes established and required by donors. The PANF receives funding from: (a) the Palau Green Fund<sup>26</sup>; (b) the Micronesia Challenge Endowment Fund; (c) State contributions; and (d) grants from various donors.

<sup>24</sup> <https://www.palaupanfund.org/>

<sup>25</sup> <http://www.ourmicronesia.org/>

<sup>26</sup> <https://www.palaupanfund.org/>

The Palau Green Fund provides direct support for the Palau National Marine Sanctuary. It consists of US\$100 fee per visitor (charged upon entry into Palau) to provide the primary financing mechanism for the Sanctuary. This fee directly supports the operations of the PAN and comprised the majority of revenue in the PAN Budget in FY2018.

### Relevance for protected areas in the Cook Islands from the Palau experience

- The Protected Areas Network (PAN) Act 2003 provides a comprehensive and integrated framework for a network of marine and terrestrial protected areas across Palau to ensure biodiversity conservation and the sustainable use of natural resources.
- The PAN governance structure includes effective systems for high level governance, technical guidance, and the involvement of resource owners, providing useful examples that may have application in the Cook Islands.
- Palau emphasises close and effective cooperation between the tourism sector and the protected area/conservation agency, including through structures at the Ministerial level (Ministers of Natural Resources, Environment and Tourism) and at the level of key staff (CEOs) in relevant agencies. This model of close cooperation appears to strengthen both conservation efforts and the sustainable development of tourism. This is particularly relevant for the Cook Islands given the close linkage between tourism and protected areas in the CI.
- The Palau Green Fund has provided significant support for the Palau National Marine Sanctuary and this model may provide useful guidance for Marae Moana in the Cook Islands. The Protected Area Network Fund (PANF) is an independent non-for-profit financial trustee established to manage funds directed towards the protected sites of Palau. The PANF and the Fund provide sustainable financing for protected areas: building on the critical link between tourism and protected areas, and may be a useful model for consideration by the Government of the Cook Islands.

### **3.2.2 Experience from Kiribati**

#### Key elements of the protected area system in Kiribati

Kiribati is considered a leader in large scale marine conservation through the establishment of the Phoenix Island Protected Area (PIPA), (Government of Kiribati, 2017a and 2017b). PIPA covers 397,447 sq. km of marine and terrestrial habitats in the Southern Pacific Ocean, accounting for 12% of the Kiribati Exclusive Economic Zone (EEZ). It encompasses Kiribati's Phoenix Island Group, one of three island groups in Kiribati, and is one of the largest designated MPAs in the world. PIPA was inscribed on the UNESCO World Heritage List in 2010<sup>27</sup>.

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<sup>27</sup> <http://whc.unesco.org/en/list/1325>

## *Legal Framework*

Relevant legislation for PIPA includes: (a) PIPA Regulations 2008, which are the enabling legislation for PIPA under the Kiribati Environment Act (1999); and (b) PIPA Conservation Trust Act 2009 (PIPA Act) which covers the establishment and operation of PIPA. The PIPA Conservation Trust Act 2009 establishes the PIPA Conservation Trust as a body corporate and defines its functions and powers, including in relation to supporting the management of PIPA.

## *PIPA and fisheries*

PIPA was fully closed to commercial fishing on January 1, 2015, with the exception of a designated subsistence fishing zone for the Kanton community. Given the importance of fishing to the Kiribati economy, the Kiribati Government stipulated that the MPA should not have any negative impacts to the national economy: the issue of potential compensation was incorporated in the PIPA Conservation Contract agreed between the PIPA Trust and the Government of Kiribati.

## *Governance*

The PIPA Implementation Office operates under the PIPA Regulations and is located within the Ministry of Environment, Lands and Agriculture Development (MELAD).<sup>28</sup> Management is in accordance with the 2015-2020 PIPA Management Plan<sup>29</sup>, which outlines management objectives and strategies for PIPA. A PIPA Business Plan was developed in 2012 and a new Plan is currently under preparation. This will include: (a) projected costs and revenues; (b) future financing and managing requirements; (c) different financing scenarios in accordance with the Management Plan; and (d) strategies to generate funding.

NGO partnerships with the Kiribati Government are an important feature of PIPA. These have included the “founding partners” of PIPA, the New England Aquarium and Conservation International, as well as a number of other partners and donors<sup>30</sup>.

## *Financing of Protected Areas*

The PIPA Act provides flexibility to receive funding from a range of sources. The PIPA Conservation Trust (PIPA Trust), a non-governmental organization, is established under the PIPA Act: it is charged with oversight and policy direction for PIPA and ensuring long-term sustainable financing for its conservation. The PIPA Conservation Trust is governed by a Board of Directors, with two founding PIPA partners (Government of Kiribati and CI) having permanent seats. The PIPA Trust Fund is supported by the Government of Kiribati as the vehicle for the sustainable financing of PIPA specifically, and with potential to support MPAs in general.

## Key issues and recommendations for protected areas in the Cook Islands

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<sup>28</sup> <https://www.melad.gov.ki/>

<sup>29</sup> <http://macbio-pacific.info/wp-content/uploads/2018/04/PIPA-Management-Plan-2015-2020.pdf>

<sup>30</sup> Other key PIPA partners and donors include the Waitt Foundation <https://www.facebook.com/WaittFoundation/> and Oceans 5 <https://www.oceans5.org/>

- There are similarities between PIPA and Marae Moana. A number of lessons could be drawn from this experience to inform the development of protected areas, including Marae Moana, in the Cook Islands. These include: (a) the experience with the PIPA Trust Fund and the PIPA Implementation Office; and (b) the involvement of international NGOs, noting that Conservation International has been involved in the establishment of both PIPA and Marae Moana .

### 3.2.3 Experience from the Seychelles

#### Key elements of the protected area system in Seychelles

##### *Legal and Policy Framework*

Seychelles has a comprehensive Protected Areas Policy (2013)<sup>31</sup>, which provides a nation-wide framework for the establishment, coordination, guidance and management of PAs in Seychelles. The goal of the policy is: *“to achieve an effective and multi-use protected area system that is representative, comprehensive and balanced to maintain highest quality examples of ecosystems by engaging all stakeholders”*. The Policy lists 13 commitments for protected areas and for more effective biodiversity conservation in the Seychelles. The Ministry for Environment oversees the implementation of the Protected Areas Policy and works closely with other government agencies and NGOs. Protected areas is one of a number of responsibilities for the Ministry; there is not a stand-alone protected areas agency.

All protected areas in Seychelles are designated using the IUCN protected areas classification scheme and are considered under the following 5 categories:

- Strict Nature Reserve (IUCN Ia)
- National Park (IUCN II)
- Ecological Reserve (IUCN IV)
- Protected Landscape/seascape (IUCN V)
- Sustainable Use Area (IUCN VI)

The Seychelles is currently considering the development of new “stand-alone” legislation for protected areas as a logical extension to the Seychelles PA policy.

##### *Financing of Protected Areas*

Seychelles has pioneered the Blue Bonds approach to support the financing of its protected areas system. This represents a new approach for financing MPAs. As noted by the World Bank<sup>32</sup>: *“In 2018 the Seychelles launched the world’s first sovereign blue bond, a pioneering financial instrument designed to support sustainable marine and fisheries projects. The bond, which raised US\$15 million from international investors, demonstrates the potential for countries to harness capital markets for financing the sustainable use of marine resources”*.

<sup>31</sup> [https://seymsp.com/wp-content/uploads/2014/06/PA-Policy\\_OCT\\_2013.pdf](https://seymsp.com/wp-content/uploads/2014/06/PA-Policy_OCT_2013.pdf)

<sup>32</sup> <https://www.worldbank.org/en/news/press-release/2018/10/29/seychelles-launches-worlds-first-sovereign-blue-bond>

Application of Blue Bonds in the Pacific is under consideration in Fiji and will be further investigated through the Forum Fisheries Agency (FFA)/World Bank Pacific Ocean Finance Program (POFP).

### Key issues and recommendations for protected areas in the Cook Islands

- The experience of Seychelles has relevance to the PAMP, particularly in the development of the Seychelles Protected Areas Policy: this policy may provide a useful guide as the PAMP is further developed in the CI.
- Seychelles has successfully applied the IUCN PA Classification system to its protected areas as outlined in the Seychelles Protected Area Policy<sup>33</sup> and there may be lessons the Cook Islands could take from this experience as it moves towards a more integrated and comprehensive protected areas classification system.
- The Seychelles experience with Blue Bonds as a mechanism to fund its marine protected areas may offer some useful lessons for the Cook Islands.

#### 3.2.4 Implications for PAMP

The above short summaries highlight how SIDS countries, such as Palau, Kiribati and Seychelles, are addressing protected areas issues relevant to the development of PAMP in the Cook Islands. It is important that PAMP continue to be informed by activities such as these, while noting any application of relevant findings and recommendations must be tailored to the unique context of the Cook Islands

**Recommendation 1: The development of PAMP should be informed by relevant international experience on protected areas, particularly from SIDS, while ensuring any application of this experience is tailored to the unique context of the Cook Islands**

### 3.3 International Conventions and Agreements

There are a number of international and regional Conventions and Agreements that are relevant to, and can support, the establishment and management of protected areas in the Cook Islands. These include the Convention on Biological Diversity (CBD)<sup>34</sup>, the United Nations Framework Convention on Climate Change (UNFCCC)<sup>35</sup> and the SPREP Strategic Plan<sup>36</sup>. The CBD and UNFCCC have national level frameworks for implementation: National Biodiversity Strategy and Action Plans (NBSAPs) for the CBD and Joint National Action Plans (JNAPs) for the UNFCCC. These support protected areas and also provide important opportunities for funding of protected areas through related financial instruments. These Conventions and

<sup>33</sup> [https://seymsp.com/wp-content/uploads/2014/06/PA-Policy\\_OCT\\_2013.pdf](https://seymsp.com/wp-content/uploads/2014/06/PA-Policy_OCT_2013.pdf)

<sup>34</sup> <https://www.cbd.int/>

<sup>35</sup> <https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change>

<sup>36</sup> <https://www.sprep.org/publications/sprep-strategic-plan-2017-2026>

Agreements are often perceived as an “obligation”, such as in relation to reporting requirements, however they could be more considered as opportunities to better support planning, implementation and financial resources for protected areas in the Cook Islands.

### 3.3.1 Views of Cook Islands agencies: on “international Conventions and Agreements”

Cook Island agencies were asked: “*There are a number of international Conventions and Agreements, such as the CBD and the CMS, which relate to protected areas in the Cook Islands. Could these be used more effectively to assist protected areas in the Cook Islands?*” (Annex 2, interview question 8) Responses included:

- International Conventions and Agreements provide an important opportunity for PAMP, largely through the development and implementation of NBSAPs and JNAPs. Consultation with CI agencies through this project suggest these instruments could be more effectively applied in the Cook Islands;
- There are also Conventions such as CITES<sup>37</sup> (Convention on International Trade in Endangered Species), to which the Cook Islands is not a signatory but which provides important principles and guidance for the application of national level approaches in the CI. For example, CITES guidelines are important for the Ministry of Marine Resources (MMR) regarding issues such as trade and market access. The International Whaling Convention<sup>38</sup> (IWC) also provides guidance for issues such as whale watching and cetacean protection;
- International Conventions and Agreements have value for “benchmarking<sup>39</sup>” and can be used to standardize management approaches. For example, the CBD provides valuable guidance on issues such as invasive species. For MMR, there is particular application in addressing issues like the management of tuna and whales;
- Reporting requirements under Conventions can be onerous and have important resource requirements. These responsibilities, and associated, resource requirements need to be included in relevant policy documents, such as the PAMP; and
- International agreements provide important funding opportunities, particularly through the Global Environment Facility (GEF) for the CBD and the Green Climate Fund (GCF) for the UNFCCC.

### 3.3.2 Implications: of international Conventions and Agreements for PAMP

Key implications include:

- International Conventions and Agreements provide a number of opportunities for PAMP, particularly through assisting in priority determination, such as

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<sup>37</sup>Convention on International Trade in Endangered Species

<sup>38</sup> <https://iwc.int/home>

<sup>39</sup> The practice of comparing processes and performance metrics to these metrics elsewhere.

through NBSAPs and JNAPs, and through funding instruments such as GCF and GEF;

- There have been a number of benefits of international Conventions and Agreements for PAMP, including through the funding of the R2R project under GEF. However, these instruments could be used more effectively, for increased funding and access to technical advice and expertise to improve PAMP management/standards within the Cook Islands;
- A number of other Cook Islands agencies (in addition to NES) benefit from global conventions and agreements, including and in addition to the CBD and UNFCCC<sup>40</sup>. The need for effective coordination between funding from different conventions/agreements has been recognized. MFEM have set up a Development Coordination Division (DCD) to enhance coordination between agencies in the planning and implementation of donor funded projects;
- The NBSAP, established under CBD with financing opportunities from GEF, is an important tool for addressing biodiversity and protected area responsibilities in the Cook Islands. It is also important in securing funding from GEF and other donors. The latest NBSAP was approved in 2002 and includes a number of sections relevant to protected areas. However, these are quite dated and do not reflect contemporary issues and approaches. Updated NBSAP provisions relating to protected areas should be included within the PAMP;
- GEF has funded a number of projects in the Cook Islands, such as the UNDP/GEF Ridge to Reef Project. NES is the national GEF Operational Focal Point (OFP) and is in discussion with GEF regarding further opportunities. GEF also funds a GEF Small Grants Programme (SGP), run through the Cook Islands Red Cross. GEF is an important source of funding for biodiversity and protected areas and it is suggested by the author that all possible opportunities for accessing GEF funding should be considered and followed up. It is noted the recent NES restructure<sup>41</sup> created a dedicated Project Management Unit to enable more focus on donors, donor relations and oversight of projects: options for additional staff support should be considered to strengthen this important function;
- Protected areas are an important tool for responding to climate change and natural disasters in the Cook Islands. The establishment and effective management of protected areas is a critical element of Ecosystem-based Adaptation (EbA)<sup>42</sup>, which *“is a nature-based solution that harnesses biodiversity and ecosystem services to reduce vulnerability and build resilience to climate change”*. Proposals that more clearly link protected areas to climate change adaptation and mitigation should be developed and considered for submission to the Green Climate Fund (GCF); and

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<sup>40</sup> For example, OPM/CCCI benefit from GCF funding, MMR are in the process of developing GCF proposals through MFEM and receive EU funding, House of Ariki have just been pre-selected for a GEF inclusive communities initiative (ICI), MoA access funding from FAO and others, MOCD from EU, etc.. All of these are linked to various international conventions and agreements.

<sup>41</sup> This restructure occurred in February 2020,

<sup>42</sup> [https://www.iucn.org/resources/issues-briefs/ecosystem-based-adaptation#:~:text=Ecosystem%2Dbased%20Adaptation%20\(EbA\)%20is%20a%20nature%2Dbased,build%20resilience%20to%20climate%20change](https://www.iucn.org/resources/issues-briefs/ecosystem-based-adaptation#:~:text=Ecosystem%2Dbased%20Adaptation%20(EbA)%20is%20a%20nature%2Dbased,build%20resilience%20to%20climate%20change)

- The SPREP Strategic Plan, and the SPREP Framework for Nature Conservation and Protected Areas in the Pacific Islands Region, provide important frameworks to assist the Cook Islands in the development of protected area policies and programmes. NES should continue its close working relationship with SPREP to support the implementation of NES programmes on protected areas, as well as relevant programmes implemented through other agencies involved in protected areas in the Cook Islands.

**Recommendation 2: International Conventions and Agreements provide an important opportunity for protected areas and should be more effectively used to support PAMP, including through: (a) application of relevant standards, tailored to CI conditions; (b) access to funding, including continuation of funding proposals through GEF, and through new funding proposals through GCF particularly in relation to nature based adaptation to climate change; and (c) access to technical expertise available through international agreements and through organisations such as SPREP.**

## 4. Key Issues for PAMP

### 4.1 Views of Cook Island agencies on key protected area issues

Government agencies interviewed for this project were asked: “*what are the most important issues for protected areas in the Cook Islands, now and in the future*” (Annex 2, Interview question 2). The main issues arising are highlighted in the Text Box below.

#### **Key issues for protected areas in the Cook Islands –**

- Unclear and conflicting governance arrangements for protected areas, including having a number of agencies with overlapping mandates and approaches;
- Differing views as to what a protected area is in the Cook Islands and the need for clearer agreement on terms and approaches;
- Weak and ineffective management of existing protected areas and an absence of clear procedures for the establishment of new protected areas;
- Limited understanding and awareness of protected areas amongst the general population of the Cook Islands;
- The critical importance of community involvement. The establishment and management of protected areas should be undertaken with and through traditional landowners and leaders. The viability of protected areas in the Cook Islands, particularly on land, depends on the engagement and support

of the local community: developing effective mechanisms for community involvement and engagement is essential; and

- A number of other issues were highlighted, including: (a) the need for sustainable financing of protected areas; (b) the need for close and effective relationships between tourism and protected areas; and (c) climate change and protected areas

#### 4.2 Definition of protected areas: the need for clearer agreement on what a protected area is in the Cook Islands.

Key issues noted through interviewees and other sources include:

- There is no clear definition of a protected area in the Cook Islands and this has created confusion about what protected areas are and why they are necessary. This confusion exists within the general population and also within government agencies. As one interviewee noted: *“having a clear definition of a PA is important. People in the Cook Islands are unclear about the meaning of a protected area”*;
- Protected areas are mentioned in Cook Islands legislation, specifically: (a) Section 41 of the Environment Act 2003, and associated regulations; (b) the draft Marine Resources Bill 2017, which proposes the establishment of “marine reserves and parks”; and (c) the Marae Moana Act 2017 in relation to MPAs in Section 24. However there is no definition of protected areas in any of these legal instruments;
- The application of the IUCN definition of a protected area has merit, however on its own it does not accommodate the existing system of areas designated for conservation and other purposes in the Cook Islands. Many of these areas do not meet the IUCN definition of a protected area (e.g. ra’ui); and
- It is important to define what protected areas are, and what they are not, where they are and who is responsible for their management.

The issue of protected area definitions has been addressed through the Protected Area Classification System (PACS) policy paper (Twyford 2020a). The key recommendations regarding PACS are outlined in the text box below:

PACS proposes that there are two main types of areas managed for conservation in the Cook Islands.

The first are **protected areas** (which includes marine protected areas – MPAs). There are many formal definitions of protected areas, but the most broadly used is that of the IUCN:

*'A protected area is a clearly defined geographical space, recognised, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values'.*

Protected areas can be terrestrial (land, rivers, lakes, caves) and marine. The term embraces a wide range and spectrum of different management approaches ranging from strict protection (no access or 'no take') to multiple use where fishing, hunting and other food production may be permitted.

The second are **managed areas**. These would be places that do not meet the definition for a protected area yet play an important role in customary resource stewardship and management, and local biodiversity conservation. The term 'Managed Areas' can be applied to areas designated for any purpose, where positive biodiversity conservation outcomes occur regardless of the management objectives.

This paper gives particular emphasis to **ra'ui** (tabu, tapu or taboo area), a traditional form of resource management that is of great significance and widely used in the Cook Islands. Ra'ui and ra'ui mutukore are a central part of the Cook Islands system of biodiversity conservation and resource management. This PACS recognises the unique context of the Cook Islands especially its customary land tenure, traditional resource management approaches, and the widespread use of ra'ui.

### Classification system

This PACS presents a recommended classification system and typology for Protected Areas and Managed Areas. For each area type there is an objective, designation approach and current Cook Islands examples (if any). For protected areas, IUCN management category and governance type are identified.

There are three types of **terrestrial protected areas**, each with specific objectives:

- Ra'ui mutukore: Permanent protection and long-term conservation of one or more species, natural values, and/or habitats.
- Nature Reserve: Natural or near natural land area set aside to protect and conserve biodiversity and where applicable, heritage, cultural and spiritual values. Where consistent with the primary objective above, ensure that any use of the natural resources of the reserve is ecologically sustainable.
- National Park: Large natural or near natural areas set aside to protect large-scale ecological processes, along with the complement of species and ecosystems characteristic of the area. Provide a foundation for environmentally and culturally compatible spiritual, scientific, educational, recreational and visitor opportunities.

There are three types of **marine protected areas (MPAs)**, each with specific objectives:

- Ra’ui mutukore: Permanent protection and long-term conservation of one or more species, natural values and/or habitats.
- Marae Moana (Cook Islands Marine Park): Protect and conserve the ecological, biodiversity, and heritage values of the Cook Islands marine environment
- Marae Moana zones (objectives as per the Marae Moana Act)
  - General Use Zone
  - Marine Conservation Zone
  - National Marine Park Zone
  - Preservation Zone.

There are four types of **‘Managed Areas’**:

- Land-based ra’ui: Temporary protection of one or more species and/or habitat/s to allow for local population recovery and sustainable resource use.
- Marine Ra’ui: Temporary protection of one or more species and/or habitat/s to allow for local population recovery and sustainable resource use.
- Conservation Area: Protect and conserve one or more significant species, natural values, habitats, and/or ecosystems.
- Other areas: Variable objectives.

Source Twyford, K. (2020a) Towards a Protected Areas Classification System for the Cook Islands: Policy paper. Prepared for Cook Islands National Environment Service and Ridge to Reef (R2R) Project.

It is the opinion of this author that this proposed classification scheme for protected areas in the Cook Islands is relevant, credible and practical. It addresses all of the concerns identified by those interviewed for this project, namely: (a) the need for one streamlined PA definition and classification scheme; (b) it builds on the main global definition of a protected area (IUCN) but tailors it to the Cook Islands context, including through the use of local names; and (c) it addresses both the definition of a protected area and also how these protected areas can be classified in the Cook Island context. It is significant that this approach also identifies broad objectives for the different types of protected areas, thus providing a broad framework for management, which can subsequently be more clearly elaborated through management plans and the planning process in general. Adoption of the PACS would greatly improve the situation with protected area management in the Cook Islands and would make a major contribution to a more effective PAMP.

**Recommendation 3: The protected area classification system outlined in the PACS policy paper, including definition, classification system, and objectives, be adopted and included as a key element of the PAMP.**

### 4.3 Management of protected areas: the need for more effective management of protected areas in the Cook Islands and the need for clear procedures for establishing new protected areas.

Interviewees were asked: “*how effectively are protected areas managed in the Cook Islands at the moment. What are the main areas or issues that require improvement and how could these be addressed?*” (Annex 2, Interview question 15). Key responses included:

- The majority of interviewees noted that protected areas in the Cook Islands are not managed effectively;
- However, it was noted that effectiveness varied by location and by type of protected area. For example, the Suvarrow National Park is managed well by default as there are few visitors and minimal management threats. Some interviewees suggested that the Marae Moana 50 NM MPA and the Takitumu Conservation Area are examples of protected areas that are well managed;
- Interviewees noted that ra’ui are very important but are generally not managed effectively, except in the Northern Group where cultural traditions are stronger. Ra’ui effectiveness depends on where it is applied; they “work” better where there are strong customs that are respected, such as in the Northern Group. All respondents noted that the challenges of managing protected areas were much greater in the more populated islands of Rarotonga and Aitutaki;
- Management planning is an integral element of effective management, and a long term aim should be for all protected areas to have a management plan setting out area objectives and strategies to achieve effectiveness. Initiatives within the Marae Moana to implement Marine Spatial Planning were noted as very important although it was also noted that it is desirable to “*keep the process clear and simple*” and not necessarily aiming for the “*perfect product*”; and
- Any management planning process should not be over-complicated, should be clear and simple, starting from the base of what is known now (including existing scientific knowledge of terrestrial and marine resources, identify clear objectives, identify what actions are required and then who does what. Any management plan must be practical and implementation is key. As one interviewee noted: “*you can have the perfect plan but it’s useless if it can’t be implemented*”. *Implementation*;

Effective management of protected areas is a cornerstone of protected area systems around the world, this also applies to the Cook Islands: effective management should be an integral element of the PAMP. A clear message from interviewees is that protected areas in the Cook Islands should be better managed and key elements of this should include: (a) clear objectives; (b) an effective management planning process which identifies key actions and strategies; (c) effective implementation; (d) adequate resources; (e) a supportive community environment that values and appreciates protected areas; and (f) an effective compliance and enforcement regime.

**Recommendation 4: Effective management of protected areas should be an integral element of PAMP. Key aspects of effective management within PAMP should include: (a) clear objectives; (b) an effective management process; (c) effective implementation; (d) adequate resources; (e) a supportive community; and (f) effective monitoring and evaluation, including MEE (Management Effectiveness Evaluation) and MER (Monitoring, Evaluation and Reporting).**

Interviewees were asked: “Should there be more protected areas in the Cook Islands? Do you think existing PAs require better management? Where should focus/priority be placed?” (Annex 2, Interview question 3).

In the responses, the majority considered there are already enough protected areas in the Cook Islands. However, there was also agreement that there is a case for additional protected areas to target priority ecosystems on land and at sea, such as cloud forest and seamounts<sup>43</sup>. Identification of new protected areas should be targeted and based on the best available science, as well as consideration of the level of threat to ecosystems and their natural and cultural values. A majority view was that the process for the identification of new protected areas is unclear and that such a process should be developed and included within PAMP. This should be science based and involve open and effective consultation with landowners and other key stakeholders.

**Recommendation 5: The identification of new protected areas should be based on a clear process and this aspect should be included in PAMP. The process should be based on the principles of open consultation with relevant stakeholders and the application of the best available science.**

#### **4.4 Understanding and awareness:** the need to build greater understanding and awareness of protected areas amongst the Cook Island general community and Government agencies

All consulted for this project noted the low level of awareness of protected areas, in terms of what they are, why they are important, and where they are located. This lack of awareness was noted as occurring at the broad community level and also within and between government agencies. There were strong suggestions that there be better and more effective communication regarding protected areas and that building understanding, awareness and appreciation of protected areas should be a

<sup>43</sup> Seamounts are underwater mountains that rise hundreds or thousands of feet from the seafloor, they generally are very important for marine biodiversity. See <https://www.who.edu/know-your-ocean/ocean-topics/seafloor-below/seamounts/#:~:text=Seamounts%20are%20underwater%20mountains%20that,sometimes%20break%20he%20ocean%20surface>

key element of PAMP. It was also suggested that “protected areas products” from the R2R project should be, when finalised, supported by communication and awareness programmes. It would be useful to develop an online library/knowledge warehouse for R2R, and other, products. Options for developing such an on-line warehouse could include SPREP’s PIPAP<sup>44</sup>, if it is not possible to develop this function at the NES.

**Recommendation 6: Targeted communication programmes should be developed to increase awareness and understanding of protected areas in the Cook Islands and raising awareness of protected areas should be included as an important element within the PAMP.**

#### 4.5 Involvement of traditional landowners: the need for full and effective involvement of traditional landowners in all aspects of protected areas in the Cook Islands.

Interviewees were asked: “Are traditional landowners and leaders adequately involved with the establishment and management of protected areas in the Cook Islands. If not, how could this be improved?” (Annex 2, Interview question 16).

Responses included:

- Traditional landowners and leaders are involved in ra’ui and other forms of traditional conservation. The level of involvement varies in the Cook Islands with greater involvement in the Northern Group;
- The unique land tenure system in the Cook Islands, where the majority of land is owned by traditional landowners and there is little Government land, underlines the importance of working with and engaging landowners and communities on all aspects of protected areas;
- Traditional institutions and authorities are key custodians of traditional knowledge, which makes them critical partners in the development and management of protected areas, whether marine or terrestrial;
- The full and effective involvement of the House of Ariki and the Koutu Nui is an essential element of PAMP. The House of Ariki is comprised of hereditary chiefs, and secondary level chiefs forms the Koutu Nui, a subsidiary of the House of Ariki. The Koutu Nui (Council of traditional leaders) meets annually and in recent years has been principally responsible for the re-establishment of the ra’ui system of protected areas on Rarotonga and Aitutaki;
- The issue of representation was raised by one interviewee, who noted: “There is consultation but not necessarily all are involved in the establishment of PAs. Consultation takes place with leaders, but the whole community is not necessarily involved”; and

<sup>44</sup> The Pacific Islands Protected Areas Portal, hosted at SPREP

- Any changes in policy/acts regarding PAs, and other matters, will require clear and effective communication with traditional landowners and leaders.

Protected areas in the Cook Islands must be developed with and through landowners and leaders, building on traditional approaches to conservation, and local customs and traditions wherever possible. The effective involvement of the House of Ariki and the Koutu Nui is of the utmost importance. These aspects should be incorporated within PAMP.

**Recommendation 7: Protected areas in the Cook Islands must be developed with and through traditional landowners and leaders, building on traditional approaches to conservation, and involving the House of Ariki and the Koutu Nui wherever possible and relevant. These aspects should be included as an integral element within the PAMP.**

#### 4.6 Other matters relevant to PAMP: sustainable financing; tourism; and climate change

##### Financing for protected areas

Financing for protected areas in the Cook Islands is a key issue that should be addressed as a priority, given that most agencies do not have the resources to effectively manage PAs.

The absence of adequate and sustainable finance is a constraint to the development of an effective protected area system in the Cook Islands. This should draw on international experience, such as experiences from other SIDS outlined in Section 3.2, including: (a) the development of Protected Area Trust Funds, such as for the Phoenix Island Protected Area (PIPA) in Kiribati; (b) the development of specific funding instruments, such as the Green Fund and the Protected Area Network Fund in Palau; and (c) the application of innovative financial instruments, such as Blue Bonds in Seychelles.

An in-depth review of sustainable financing options for Marae Moana was undertaken by Conservation International for the Cook Islands Government, through the R2R project (Conservation International, 2020). Some of the options presented could also be applied to terrestrial PAs. In the opinion of this author, the adoption and implementation of the recommendations of this report will greatly enhance the ability of Cook Island agencies and landowners to increase revenue from a range of sources. However, as noted by Twyford<sup>45</sup> there are a number of significant policy issues in the Conservation International Sustainable Finance Report that have whole-of-govt and country wide implications, and may require Cabinet consideration. Significant consultation will thus be required before any possible adoption and implementation of this report.

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<sup>45</sup> Personal communication

**Recommendation 8: Sustainable financing for protected areas should be addressed as a key element of PAMP, and recommendations in the Sustainable Financing Mechanisms report (Conservation International, 2020) should be carefully considered and reviewed within the Cook Islands before possible adoption and implementation.**

### Tourism and protected areas

Interviewees were asked a number of questions relating to the relationship between tourism and protected areas and key issues associated with tourism (Annex 2, Interview questions 17, 18 and 19). Responses included:

- Protected areas are very important for tourism in the Cook Islands and play a key role in the “Clean and Green” image of the country;
- The Cook Islands Sustainable Tourism Development Policy Framework and Goals<sup>46</sup> provide a good framework for consideration of tourism and protected areas in the Cook Islands;
- Better information on protected areas (what they are, where they are located, and information on PA attractions) would support and enhance tourism in the Cook Islands;
- Tourism and NES have a shared interest in better environmental practice and the establishment and effective management of protected areas;
- The current Covid-19 pandemic provides an opportunity for a re-think about tourism, with many interviewees noting that the future of tourism should be more “green” and “high end”, including through an emphasis on protected areas. As one interviewee noted: *“After Covid, tourism has to diversify and also target more the environmentally conscious tourist. Need to target high end tourists who value nature. With this approach PAs will play a more important role, and terrestrial and marine PAs will need to be better protected”*;
- Developing opportunities for “volunteer tourism” based around supporting activities in and around PAs was noted as an opportunity, such as in relation to birdwatching in the Takitumu Conservation Area and programmes to control invasive species;
- Better partnerships are important for tourism and protected areas; between relevant government agencies (particularly NES and CITC<sup>47</sup>), between

<sup>46</sup> [https://policycookislands.files.wordpress.com/2017/05/2016\\_ci-sustainable-tourism-development-policy-framework-goals.pdf](https://policycookislands.files.wordpress.com/2017/05/2016_ci-sustainable-tourism-development-policy-framework-goals.pdf)

<sup>47</sup> Cook Islands Tourism Corporation

government and the private sector (particularly tourism operators) and with the community;

- Tourism in and around protected areas should focus on the promotion and protection of nature and natural values and any tourism should be implemented in a way that minimises negative environmental impact;
- The issue of equity was raised in relation to protected areas in that PAs should also be for people of the Cook Islands and not only for tourists. A number of interviewees noted the example of a ra'ui on Aitutaki where operators are taking tourists to areas where locals cannot access. This raises an important principle for the development of any future PA system in the CI;
- There are good working relations between NES and CITC on a range of issues, including protected areas, and both agencies recognize the importance of close and effective cooperation; and
- There are opportunities for the tourism sector to contribute to protected areas through a structured fee system. No fees are currently charged for entry to protected areas in the Cook Islands, except for the Takitumu Conservation Area, Takutea nature reserve<sup>48</sup> and Suwarrow National Park<sup>49</sup>. Consideration of a Green Fee, on the condition that a percentage of fees return to support protected areas, could be an option. The experience from Palau with a Green Fee, outlined in Section 3.2.1, has been successful and has indicated that tourists were “happy to pay” as long as they were certain that fees collected were supporting initiatives for conservation.

**Recommendation 9: Noting the importance of tourism for the Cook Islands economy and the importance of protected areas for tourism, it is recommended that a Protected Areas and Tourism strategy be developed, as an integral element of PAMP, to ensure tourism benefits protected areas, including through sustainable financing, and vice versa.**

### Protected Areas and Climate Change

Protected areas are an important tool for the adaptation and mitigation to climate change. For example, the establishment and effective management of protected areas are critical elements of Ecosystem-based Adaptation (EbA)<sup>50</sup>, which “*is a nature-based solution that harnesses biodiversity and ecosystem services to reduce vulnerability and build resilience to climate change*”. Protection of key ecosystems in

<sup>48</sup> Fees are paid to the Takutea Trust for visits, though this is likely to be selectively applied and is also difficult to be enforced (personal communication Hayley Weeks)

<sup>49</sup> It is understood that revenue from fees go directly to central government or customs, not back to NES for continued management of the park (personal communication Hayley Weeks)

<sup>50</sup> [https://www.iucn.org/resources/issues-briefs/ecosystem-based-adaptation#:~:text=Ecosystem%2Dbased%20Adaptation%20\(EbA\)%20is%20a%20nature%2Dbased,build%20resilience%20to%20climate%20change](https://www.iucn.org/resources/issues-briefs/ecosystem-based-adaptation#:~:text=Ecosystem%2Dbased%20Adaptation%20(EbA)%20is%20a%20nature%2Dbased,build%20resilience%20to%20climate%20change)

the Cook Islands, such as forests, coral reefs and wetlands, is an essential element of building climate resilience.

Protected areas in the Cook Islands must be flexible and adaptable, in terms of design and implementation, so they are able to effectively respond to climate change and natural disasters.

It is important that efforts to establish and effectively manage protected areas, as an integral element of climate change adaptation, are included within funding proposals submitted to the Green Climate Fund. PAs and PAMP should feature more strongly in GCF funding proposals and additional opportunities for accessing GCF funding should be considered and followed up by NES, particularly in relation to nature based adaptation to climate change.

**Recommendation 10: (A) The role of the protected areas as a key tool for responding to climate change and natural disasters in the Cook Islands, should be emphasised in the PAMP; (B) Protected areas should have a higher emphasis in GCF funding proposals and additional opportunities for accessing GCF funding should be considered and followed up by NES, particularly in relation to nature based adaptation to climate change.**

## 5. Protected Area Governance

### 5.1 Introduction

Graham et al (2003) provides a definition of governance in relation to protected areas as: *“the process of interactions among structures, processes and traditions that determines how power and responsibilities are exercised, how decisions are taken and how citizens or other stakeholders have their say...”* Borrini-Feyerabend et al (2013) further notes that governance is appropriate only when tailored to its specific context and effective in delivering lasting conservation results, livelihood benefits and the respect of rights.

In this section “governance” is taken to refer to the key mechanisms relevant to establishing and managing protected areas in the Cook Islands, and the following are addressed below:

- agencies involved in protected area management (Section 5.2);
- legislation relevant to protected areas (Section 5.3); and
- institutional arrangements for protected areas (Section 5.4)

### 5.2 Agencies involved in PAM

The CNAR (Twyford, 2019) notes there are a number of agencies involved in protected areas in the Cook Islands, including the: National Environment Service

(NES), Marae Moana Coordination Office (MMCO), Ministry of Marine Resources (MMR), the House of Ariki (HoA), Ministry of Cultural Development (MOCD), Island governments and customary landowners. The major agencies directly involved in protected areas are the NES, MMR and MMCO. There is no one agency with overall responsibility for PAs, all of the above have involvement to some degree. However, the roles and responsibilities of the different agencies in relation to PAM are unclear and inconsistent, particularly in relation to establishment and management of marine protected areas.

### Views of Cook Island agencies

There are a number of agencies involved in the designation and management of protected areas in the Cook Islands, which is recognized as an issue in terms of duplication of resources and creating confusion. Interviewees were asked: *“Do you think the current situation is the most effective for the Cook Islands or do you think changes are required? If so, what changes would you suggest? Should there be one agency with responsibility for protected areas in the Cook Islands or should the current situation continue?”* (Annex 2, interview question 10). Key points noted in responses included:

- There was a near unanimous response that the current situation is confusing, particularly with three agencies that are directly involved in the establishment and management of protected areas, with different definitions and approaches for protected areas. It was agreed that a more consistent and effective approach to protected areas is required in the Cook Islands;
- Interviewees noted that having one agency with responsibility for PAs may be desirable but that it would be challenging to implement in practice, at the present time, due to existing mandates and the perception that agencies are not willing to relinquish powers and roles across the terrestrial and marine environment. As one interviewee noted: *“in the Cook Islands, no one agency has the mandate and ability to manage all PAs”*.
- There were differences of opinion regarding having one agency with overall responsibility for PAs under one consolidated Act. Those in favour noted that having one agency would facilitate a more consistent and aligned approach to the establishment and management of PAs. This could allow for an integrated approach to all types of protected areas. Those not in favour of one consolidated agency noted there are enough bodies and agencies now for PA governance, and it is unnecessary to establish new structures. Further, there is differing capability to actually manage protected areas on land and at sea, and, accordingly, no one agency has the resources and ability to manage all PAs on land and at sea. Those not supporting a separate agency suggested there should instead be a rationalisation of existing structures, and that some could agencies be merged or restructured. As one interviewee noted: *“the Cook Islands is a small country, we need to slow down and prioritise”*.
- It was agreed that different agencies have different mandates, strengths and weaknesses and that the lack of available resources is an important constraint

to the implementation of PAs. Decisions about PAM roles and responsibilities should be based on mandate and resources available to “do the job”.

### Analysis and issues needing attention

There is strong support for having a clearer and more consistent approach to PAM. However, there are mixed views on having one agency responsible for protected areas in the Cook Islands, with some agencies in support and others not. It is noted that views expressed were largely based on the current situation (authors emphasis) regarding capability and capacity to establish and manage protected areas. However, it is important to consider future possibilities and not be constrained by the existing situation. As noted by Twyford<sup>51</sup>: *“capacity and capability are changeable - what an agency is now is not necessarily what it might be tomorrow. Functions can be added to an agency and resources added: either new money from government or other sources, and/or from another agency through shifting resources. If we just look at how agencies are structured and resourced now, well, we will never change”*. These are important factors that should be considered in the development of the PAMP.

There is also strong support for a clearer definition of roles and responsibilities of the different agencies involved in protected areas in the Cook islands. Different agencies have different mandates and strengths, and these should be considered in role definition. There was also a high level of support for better coordination and partnerships relating to protected area management.

Based on interviews and a consideration of mandates and capability to manage, it is suggested that, at a broad level:

- NES should play a key role in overall policy, strategy and standard setting for all protected areas in the Cook Islands, including MPAs, to ensure consistent and effective approaches, working closely with all other agencies, including MMR and MMCO. The development of this role should be outlined in the PAMP, which should be developed through an open and consultative process.
- Regarding implementation of PAM, NES is better placed to implement PAM issues in the terrestrial (including freshwater) environment where there is governance by government or where they have been requested by traditional leaders or landowners to support PA management. This also includes the beach and coastal areas, where NES should play a lead role, in collaboration with other agencies. In the lagoon areas it is noted that MMR has the capacity and mandate, and they should continue to implement conservation and management activities in this area. NES should support activities in the lagoon area through policy advice and oversight, as required.
- MMR should play a key role in implementation of MPA activities, including in lagoons, working in line with the policy and standards for PAs, including MPAs, developed by NES. MMR has greater capability to implement management activities in the marine area than NES, which has neither the

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<sup>51</sup> Personal communication

resources to adequately establish and manage MPAs nor legal access to all islands, under the Environment Act 2003, to implement activities.

- MMCO should play a key role in coordination of the Marae Moana; in relation to MPAs this would include coordination and support for the implementation of policies and standards developed through the agreed upon Committee/Board, led by NES.

## 5.3 Legislation relevant to PAM

### 5.3.1 General

The current policy and legal framework for protected areas is fragmented. Protected areas are specifically mentioned in two legal instruments in the Cook Islands: the Environment Act 2003 (Section 42) and the Marae Moana Act 2017. The protection/conservation of areas and species, including through ra'ui, is referenced in a number of other Acts. The fragmentation of policy and legal instruments is pronounced in the marine environment, in particular with overlapping responsibilities for protected areas between the Environment Act, the Marae Moana Act and the Marine Resources Act 2005.

#### Views of Cook Island agencies

Noting the fragmentation of responsibilities for PAs between different agencies, interviewees were asked: *“Should protected areas be given more priority in legal instruments in the Cook Islands? Should there be a separate Act for protected areas?”* (Annex 2, Interview question 5). Responses included:

- The main responses indicated that PAs are an important issue and need more attention and priority in legal instruments;
- There were differing views on whether there should be a separate Act for PAM, with the majority noting there are enough existing instruments to provide for the establishment and management of PAs and that these should be improved/streamlined to ensure more effective PAM, rather than through developing a new specific PAM Act. The challenges of developing new legislation – and the resources and level of commitment required - were also noted, given the need for consultation and agreement. The recent lapsing of the draft Marine Resources Bill was cited as an example in this regard; and
- All agreed that legislation and policy should enable a uniform and consistent approach to PAM and the roles of different agencies with PAM. These roles should reflect agency mandates, as set out in legislation and policies, and should also be based on which agencies are best placed to manage areas, including through having scientific and technical expertise as well as financial resources. There was a strong view that existing mechanisms should be used more effectively to improve coordination.

#### Analysis and issues needing attention

While some advocated for the development of a new and separate Protected Areas Act, the majority were not in favour. However, there is strong support for ensuring greater clarity regarding PAM and it is suggested this should be achieved through amendments of individual Acts, such as Section 41 of the Environment Act, as noted below.

### 5.3.2 Environment Act 2003

Extracts from the Environment Act (2003) and Environment Regulations relevant to Outer Islands under the Environment Act<sup>52</sup> (2008), which are relevant to PAMP are outlined in Annex 4.

The Environment Act 2003 (The Act) provides for all aspects of environmental management within the Cook Islands, and provides for specific environmental requirements and management procedures. The Act is administered within the National Environment Service (NES), which is a body corporate headed by a Director of Service, with the obligation to protect, conserve and manage the environment and wildlife, ensure the sustainable use of natural resources, prevent, control and correct the pollution of air, water, and land and carry out other functions as listed in the Act (Section 9).

The Act applies throughout the Cook Islands, including Rarotonga, Aitutaki and Atiu and the territorial seas and the CI Exclusive Economic Zone<sup>53</sup>. Application of the Environment Act to the Outer Islands is through Regulations developed for specific islands, following an: "Order in Council" after which Regulations may (or may not) be developed<sup>54</sup>.

Regulations, where developed, provide island authorities with the power to make decisions and adopt regulations concerning environmental protection and sustainable management on their islands, including in relation to protected areas. It is understood that Island Governments have to agree to be covered under the Environment Act and then an Order in Executive Council is the formal instrument that designates an island as being covered by the Environment Act.

The Environment Act does not mention biodiversity, however it does refer to wildlife (animals and plants). This is an older style approach and many life forms do not fall under this term. This is a deficiency which should be addressed through the review of the Environment Act which is currently underway. Elements of the current Act include:

- Designating animals and plants as protected species for the purpose of the Act;
- Providing for the protection, conservation and management of wildlife, protected species or both;
- Regulating or prohibiting trade and commerce in wildlife, protected species, or both; and

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<sup>52</sup> Covering Environment Regulations for Atiu, Takutea and Mitiaro.

<sup>53</sup> Refer Section 4 of the Environment Act.

<sup>54</sup> For example, Aitutaki is in the Act but has no Regulations; whereas Manihiki opted in (Order in place) but has no Regulations; Mitiaro opted in and has Regulations.

- Establishing protected areas and regulating or prohibiting activities within these protected areas.

The Act enables domestic implementation of obligations of the Cook Islands under international environmental law, including those relating to the Convention on Biological Diversity, and the United Nations Framework Convention on Climate Change. The Act does not mention CITES (the Convention on International Trade of Endangered Species) and it is noted that the Cook Islands is currently not a CITES signatory, although relevant CITES guidelines are applied informally in the Cook Islands.

Protected areas and protected species can be designated under Sections 41 and 55 of the Act respectively, while special provisions are made for the protection of the foreshore, Cook Islands waters, and the prevention of pollution to Cook Islands waters and inland waters.

Section 41 of the Act relates to protected areas, although the term protected area is not defined. The Act allows an Island Environment Authority to issue a notification<sup>55</sup> regarding the designation of an area having ecological, cultural, archaeological, historical or scenic importance as a protected area, however it has never been used for this purpose.

Section 55 of the Act states that *“the NES may, with the approval of the Island Environment Authority, from time to time by notice in the Gazette designate specified animals and plants on the island as protected species”* and provides that *“every person commits an offence who, within the island concerned, threatens or disturbs any animal or plant of the protected species or the habitat of any such animal or plant”*.

Although the Cook Islands is not a party to CITES, any species listed within the appendices of the Convention requires a permit to be issued by NES to allow the export of them from the Cook Islands to CITES member countries. However, this is only based on CITES listed species, and the Cook Islands has not created any official national list relating to endangered, endemic or migratory species of concern for enhanced conservation measures at this stage.

### Views of Cook Island Agencies

Cook Islands agencies were asked the following question: *“Should the Environment Act be amended to better address protected areas, including Marine Protected Areas? If so how?”* (Annex 2, Interview question 6). Key elements noted included:

- The Environment Act should reflect the current status and situation regarding protected areas in the Cook Islands. At present, the Environment Act does not adequately reflect this situation;

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<sup>55</sup> This notification can include, *inter alia*: (i) the description of the area and its values warranting its status as a protected area; (ii) preparation of a management plan; (iii) conditions in respect of native freehold land and native customary land; (iv) preparation of shared resource management agreement, addressing procedures, areas to be protected and implementation arrangements; and (v) restrictions on the use of such areas.

- The Environment Act should cover all PAs, on land and sea;
- The Environment Act should be amended to better address protected areas. This revision should aim to establish a framework, outlining how protected areas should be established and managed, with the overall aim being to strengthen PAM in the Cook Islands;
- At a general level, amendment of the Environment Act should aim to achieve a stronger governance framework for protected areas, including relevant implementation and operational aspects; and
- The revision of the Environment Act should identify and address different roles and overlaps between agencies land and at sea.

### Analysis and issues needing attention

- The Environment Act 2003 provides the basis for PAM, however protected areas are only mentioned in Section 41 of the Act and many interviewees noted this Section is outdated and does not reflect the current situation regarding protected areas in the Cook Islands.
- Further, interviewees suggested changes to Section 41 of the Act should include: (a) application of a clear and uniform PA definition across the Cook Islands, on land and at sea; (b) a classification system for protected areas including categories, objectives and a designation approach; (c) elaboration of a clear process for establishing PAs, involving full and effective consultation with local communities and landowners; (d) ensuring effective management, including development of management plans; (e) ensuring protected areas are linked within the broader landscape, including the land-sea interface; (f) ensuring effective and full involvement of landowners and local communities in PAM; and (g) ensuring effective implementation of PAs.
- The application of the Environment Act 2003 to marine areas highlights a lack of clarity in the roles and responsibilities for MPAs between different agencies<sup>56</sup>. Specifically, there is potential overlap between the Environment Act and the Marae Moana Act in relation to MPAs. As noted, Section 41 of the Environment Act provides for Island Environment Authorities (IEA) to propose protected areas and potentially to designate MPAs out to 12nm, although this has not been undertaken to date<sup>57</sup>. It is understood<sup>58</sup> that IEAs only have authority for the “island” and this is defined to include internal waters but not territorial seas. However, the Atiu and Takutea Regulations put in place the Takutea CCA to 12nm. The declaration of PAs by IEAs is an area that is confusing and needs clarification.

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<sup>56</sup> Draft Cook Islands National Environment Policy 2020 Compiled by: National Environment Service

<sup>57</sup> There are two sets of Environment Act Regulations (Atiu/Takutea and Mitiaro) and both identify and designate “protected areas”. However many do not meet the IUCN definition of PAs.

<sup>58</sup> Twyford Personal communication.

- Specifically, it is suggested the Environment Act should reflect the suggested roles in this report, specifically that NES, through the revised Environment Act, should play a key role in overall policy, strategy and standard setting for all protected areas in the Cook Islands, including MPAs, while providing for implementation of specifically defined MPA activities by other agencies such as MMR.

### 5.3.3 Marine Resources Act 2005

The principal objective of the Marine Resources Act 2005 (MRA 2005) is to provide for the sustainable use of the living and non-living marine resources for the benefit of the people of the Cook Islands (S3). The MRA 2005 defines Fishery waters as: *“the waters of the territorial sea of the Cook Islands and of the exclusive economic zone and other internal waters, including lagoons, as defined in the Territorial Sea and Exclusive Economic Zone Act 1977 and includes any other waters over which the Government of the Cook Islands has fisheries jurisdiction”*.

The primary focus is on the sustainable use and management of the marine resources, in particular fisheries species. It provides for the management of Cook Islands Marine Resources through Fishery Plans for Designated fisheries. Extracts from the draft Marine Resources Act 2005 relevant to PAMP are outlined in Annex 7.

There is also a draft Marine Resources Bill, intended to update the MRA 2005, though this has lapsed as it was not possible to reach agreement on all of the areas requiring update. However, it is still intended to revitalise this Bill and to bring it forward for consideration again in the near future<sup>59</sup>. Extracts from the draft Marine Resources Bill relevant to PAMP are also outlined in Annex 7.

The draft Bill in its current form is important for protected areas as it proposes a new Part 3 relating to “Marine Reserves and Parks”, covering: (i) Declaration of areas (S.24); (ii) Prohibited and permitted activities (S.25); and (iii) establishment of advisory committees and changes to the status of reserves or parks (S.26). Key elements relevant to PAMP include, inter alia:

S24 provides for the declaration of any area of the fishery waters to be a marine reserve or marine park, for one or more of the following purposes:

- a) to provide special protection to the flora and fauna of the area;
- b) to protect and preserve the natural breeding and nursery grounds and habitats of aquatic life;
- c) to allow for the replenishment or restoration of aquatic life in any area where that life has been depleted;
- d) to sustain livelihoods which rely on aquatic living resources;
- e) to promote scientific study and research in respect of the area;
- f) to preserve and enhance the biodiversity and natural beauty of the area.

S24 also provides for the declaration of zones within any declared marine reserve or marine park within which certain activities may be carried out or are prohibited.

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<sup>59</sup> Personal communication Director MMR

S25 outlines prohibited and permitted activities and fines up to \$500,000. Activities include, inter alia, fishing, taking or destroying any flora or fauna, and a range of other extractive activities. However, S25 also provides for permission to undertake these activities, with approval of the Minister, based on advice from any advisory committee that may be established. There are highly relevant and direct implications to PAMP if this draft Marine Resources Bill proceeds in its current form, likely increasing the fragmentation and confusion that already exists between agencies and stakeholders. Close collaboration between NES and MMR regarding provisions relating to PAs is essential to avoid continued overlap, confusion and perpetuating existing inefficiencies.

### Views of Cook Island Agencies

Key issues relevant to the Marine Resources Act, arising from the interviews and the literature review included:

- All interviewed noted that MMR has the key responsibility for fisheries management. Further, that they have the capability to support some elements of MPA planning and management, particularly in areas such as surveillance, marine scientific research and monitoring. MMR has a vessel monitoring system which can pick up the presence of illegal fishing and this should be a critically important aspect of MPA management in the Cook Islands. No other agency has this capability in the marine environment. They should continue to play a key role in this area;
- All interviewed noted that NES does not have the capacity for the effective management of MPAs at present. PAMP 2<sup>60</sup>, if approved, should assess all PA/MPA functions as well as the capacity of each agency and assess and recommend the optimal organisational structure that would ensure the most effective delivery of MPA outcomes;
- Both NES and MMR interviewees consider MPAs are within their roles and mandates. However the reality appears less clear<sup>61</sup>. As noted above, the draft Marine Resources Bill 2017 provides for the establishment and management of “Marine Reserves and Parks” however this is not currently in force and is thus not applicable at the moment. A number of interviewees noted that this creates confusion as to roles and responsibilities and this should be addressed. This is a potential area of conflict, other more specific areas were noted, including the respective roles of MMR and NES in the preparation of management plans for MPAs;
- Many noted increased cooperation should be encouraged between MMR and NES and there are some examples where this has occurred. MMR has supported remote surveillance of Suwarrow and there has been cooperation between MMR and NES relating to the impact of terrestrial activities on

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<sup>60</sup> PAMP-2 would directly follow up to this project (PAMP-1), if it is approved.

<sup>61</sup> As noted by Twyford (personal communication) Under the Environment Act S41, it is only an IEA that can designate a PA (and only then with various approvals, plus only Mitiaro and Atiu/Takutea have Regulations): they can thus designate protected areas for their internal waters. Under the MM Act, the Government can designate MPAs (S24-25).

marine areas, to better manage the land-sea interface. These are seen as positive examples of cooperation and should be expanded. Further joint work on marine surveys to identify areas of marine biodiversity importance, would be desirable;

- Some noted that MMR has a mandate for fisheries management and that this could constitute a conflict of interest with the establishment of MPAs for the conservation of marine biodiversity;
- Differing points of view were noted in relation to the impact of MPA establishment and management on fisheries productivity, specifically whether exclusion of fishing has long term benefits for fisheries productivity through protection of spawning grounds;
- MMR has played a role in supporting marine ra'ui, including collecting data and identifying potential new areas for ra'ui establishment; and
- Interviewees noted the public is confused about the roles of NES and MMR in relation to MPAs, and clearer and more open communication on this issue was recommended.

#### Analysis and issues needing attention

- The inclusion of “Marine Reserves and Parks” within the draft Marine Resources Bill creates another level of complexity in relation to the establishment and management of PAs in the Cook Islands. The CNAR (Twyford 2019) notes that: *“if Marine Reserves were declared, as proposed under the draft MR Bill, this would further fragment responsibilities, dilute already limited resources, and likely create even more confusion than currently exists”*. MMR and NES have been directed to consult and harmonise bills – this is a positive move and MMCO should also be actively engaged and involved.
- Given their resources and capacity MMR plays a key role in implementation of important MPA functions such as surveillance, monitoring and assessment. This critical role should continue and be recognized as a key element of PAMP.
- MMR could also play a number of other important roles in relation to MPAs, including providing scientific and technical advice and information relevant to the creation of MPAs, including recommendations on where PAs could be established and for what objectives.
- Opportunities for increased cooperation on MPAs between MMR and NES, and other agencies as relevant, should be explored, building on existing joint work such occurs in Suwarow.

- Roles of MMR in protected areas should be clarified, in consultation with other agencies, and communicated accordingly for enhanced understanding of roles and responsibilities.

#### 5.3.4 Marae Moana Act 2017

Extracts from the Marae Moana Act 2017 relevant to PAMP are outlined in Annex 7. Marae Moana, legally designated in 2017, is one of the world’s largest multiple-use marine managed areas and covers the Cook Islands’ entire exclusive economic zone of over 1.9 million square kilometres. The Marae Moana Act 2017<sup>62</sup> establishes the Cook Islands marine park with a primary purpose to “*protect and conserve the ecological, biodiversity, and heritage values of the Cook Islands marine environment.*”

The Marae Moana Act 2017 establishes the Marae Moana Coordination Office (MMCO) based in the Office of the Prime Minister (OPM), which acts as a Secretariat to Marae Moana Council and the Technical Advisory Group.

Other purposes of this Act include: (a) to provide an integrated decision-making and management framework to coordinate the work of relevant agencies so as to effectively balance marine conservation with ecologically sustainable use of the marine environment and resources; (b) to allow ecologically sustainable use of the marine environment; (c) to encourage the involvement of interested persons and groups in the protection and management of the Cook Islands’ marine environment; and (d) to assist in meeting the Cook Islands’ international responsibilities, in particular its responsibilities under the Convention Concerning the Protection of the World Cultural and Natural Heritage, the Convention on the Conservation of Biological Diversity, and the United Nations Convention on the Law of the Sea.

The Marae Moana Act provides a framework to ensure all agencies are operating consistently in respect of zoning, environmental protection, conservation and sustainable use. Nature conservation is the priority, all other uses must be consistent with that priority. Part 3 is particularly relevant relating to Marae Moana Policy and Spatial Planning and identifies two types of Marae Moana Spatial Plans: (a) the national marae moana spatial plan (NMMSP); and (b) the island marine spatial plans (IMSP).

- Section 22 provides for the development of the National Marae Moana Spatial Plan for MM and outline a process for review through the MM Technical Advisory Group.
- Section 23 provides for, and describes, zones within the Spatial Plan. It also outlines the broad objectives of the Spatial Plan and provides for addition zones, if required.
- Section 24 provides for the establishment of a Marine Protected Area of 50 nautical miles around all islands of the Cook Islands, and describes the limits

<sup>62</sup> <https://www.maraemoana.gov.ck/wp-content/uploads/2019/04/Marae-Moana-Act-2017.pdf>

and boundaries of this MPA. All seabed minerals activities and large-scale commercial fishing in this area are prohibited, but other ecologically sustainable uses are permitted.

- Section 25 provides for the establishment of additional MPAs and outlines the process, including boundary demarcation
- Section 26 provides for island marine spatial plans. These may be proposed and established only at the request and with the approval of the relevant Island Government (other than for Rarotonga and Suvarrow).S25 also provides for permission to undertake these activities, with approval of the Minister, based on advice from any advisory committee that may established. This section also provides for the establishment of additional MPAs.

### Views of Cook Island Agencies

Cook Islands agencies were asked the following question: “*How effective is the Marae Moana (MM) Act 2017. Are there areas that could be changed or improved? What areas are these?*” (Interview question 9). Responses included the following:

- The MM Act is in general regarded positively and is seen as an important mechanism for coordinating activities in the marine area of the Cook Islands;
- The MM Act has only recently come into force and there is a general feeling that a longer period should be allowed for implementation before any significant changes are made. Interviewees noted that determined people are needed within agencies to make it work;
- There are areas of duplication between the MM Act and other Acts, in particular, the possibility of MPAs being established within the MM Act as well as under NES and MMR is confusing and leads to ambiguity. Some noted the MM Act role in protecting habitat while allowing use is confusing, and suggested clearer definitions around use and protection.
- That MMR has the capacity to manage certain aspects of MPAs, such as surveillance and research<sup>63</sup>. Some interviewees suggested that, given this capacity, MMR should have the main responsibility for marine resource management, including for MPAs, in consultation with other agencies;
- Marine Spatial Planning is a critically important tool and the application of MSP should highlight gaps and weaknesses in the MM Act;
- Sustainable financing is essential and the SFM report (Conservation International 2020) should be considered and applied in MM;
- There are opportunities for sustainable uses that have minimal impact, such as tourism associated with game-fishing beyond the reef, and whale watching;
- MM was meant to be a collaborating mechanism to encourage all relevant agencies with a role in the marine environment, such as NES and MMR, to work together. MMCO was supposed to be the glue to bring them together. This has not yet been achieved:

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<sup>63</sup> It is noted that MPA management includes a range of aspects in addition to those listed. For example, see <https://www.iucn.org/commissions/world-commission-protected-areas/our-work/marine/marine-protected-areas-global-standards-success>

- Education and awareness need to be better resourced. MMCO and MM partners has done a lot of consultation but still people don't understand the objectives of MM; and
- Interviewees noted there are limited financial and human resources available to the MMCO and this is a constraint to the effective implementation of the Marae Moana Act. MMCO have been using R2R to support the initial stages of MSP and other activities, a number of interviewees asked: "*what happens when R2R and its funding ends?*"

### Analysis and issues needing attention

- The MM Act and MMCO are seen by most Cook Islands agencies as positive initiatives for enhanced coordination in the marine area of the Cook Islands.
- The ambiguity and overlap between the roles of NES, MMR and MMCO need to be addressed, through clear definition of roles and the development and agreement on a PAMP. The enabling legislation for these agencies create these overlaps and contribute to an ambiguous situation. This issue is explored further in Section 6.
- There is a clear feeling that this is a new Act and it should be given the opportunity of implementation before any significant changes, if any, are made.
- The role of MMCO should be strongly focussed on coordination, and not implementation. This important coordination role should be respected by all parties. MMCO should also play an important role in communication. The general lack of awareness of the marine area in the Cook Islands, and of Marae Moana in particular, is an issue that should be addressed by MMCO.
- Coordination should also include opportunities to increase partnerships and effective collaboration on programme implementation.
- Schedule 2 of the Marae Moana Act provides for amendments to other Acts to support the objectives of Marae Moana. These other Acts include the: Environment Act 2003; Island Government Act 2012-2013; and Marine Resources Act 2005, amongst others. The objective is to ensure complementarity between the Acts. However, it appears that these amendments, as required by the MM Act, have not been undertaken as at October 2020.
- Noting comments regarding limited resources, the MMCO should carefully review the recommendations of the Conservation International Sustainable Financing Report, in consultation with other agencies, and develop a strategy for moving forward.

- Considerable momentum has been developed on a range of initiatives with funding from R2R, such as MSP, and these will require resourcing after R2R ends.

#### 5.4 Institutional arrangements: for protected areas in the Cook Islands

There are a number of governance arrangements which relate to protected areas in the Cook Islands, including traditional and community leadership as well as high-level governance forums, such as the National Environment Council and Marae Moana Council, as well as associated committees, such as the Marae Moana Technical Advisory Group (TAG), and the National Biodiversity Steering Committee (NBSC).

##### Views of Cook Island agencies: existing governance structures - Boards and Committees

Interviewees were asked: “*Is the existing governance system for protected areas adequate or do you think changes are required? If yes, what do you think are the main areas for improvement?*” (Annex 2, Interview question 4). Interviewees noted there are many governance arrangements relevant to PAM, particularly several Boards and Committees. Interviewee comments included:

- The National Environment Council (NEC) works at the national level; a number of interviewees suggested this Council is of limited effectiveness and has only started meeting recently<sup>64</sup>. It was noted that the NEC was meant to be constituted with a member from each island but that not all islands are covered by the Environment Act 2003. Thus, this Council never “*got off the ground*”, as noted by one interviewee. The NEC structure has recently been amended to address the challenging nature of the original composition. It has recently met to address a specific issue of the under-sea cable. It is noted that the review of the Environment Act is considering aspects of the NEC<sup>65</sup> and this would appear relevant and timely. It is important that the review of the Act focus on NEC roles and functions<sup>66</sup> as the first priority and secondly on membership;
- A number of interviewees noted that the National Biodiversity Steering Committee under NES works well and brings government and NGOs together in an open and collaborative way;
- The Marae Moana (MM) Council has jurisdiction over ocean areas. A number of interviewees noted the MM Council meets infrequently and is “*under-utilized*”. The MM Council is the first of its kind for an area like the Cook Islands EEZ and it is still in the early stages. Unlike the National Environment Council, which currently requires representation from every island, the MM

<sup>64</sup> Since the Environment Act 2003 came into force, the NEC met for the first time in 2020.

<sup>65</sup> Personal communication NES

<sup>66</sup> NEC is mentioned in S2 of the Environment Act as an “*ad hoc council established from time to time ...*” Under S20, it has a limited role as the: “*permitting authority for any part of the CI other than Rarotonga or an Outer Island*”. These roles are quite limited: for NEC to have a broader role, the Act would require significant changes. (Personal communication: Keith Twyford)

Council has representatives from the Northern and the Southern Group rather than from every island, with a majority of representatives from Rarotonga. The MM Council has a functioning Technical Advisory Group (TAG), which has made recommendations that have been considered by the MM Council. It was noted that the MM Council could provide a model for the NEC, particularly in relation to its requirements for representation and its technical subsidiary bodies, such as TAG;

- The Seabed Minerals (SBM) Advisory Committee<sup>67</sup> provides feedback to the Seabed Minerals Authority<sup>68</sup> regarding seabed mining policy issues. The relationship between the SBM Advisory Committee and Marae Moana was raised by a number of interviewees and it was noted that the SBM Authority is a separate body with different functions, members and interests from MM;
- The Island Environment Authorities (IEA) are established under Section 11 of the Environment Act 2003 to undertake the work of NES in the Pa Enuā, as detailed in Section 12 of the Environment Act, including “*identify priority areas of environmental concerns and convey to NES such policies and programs as are approved by the Authority for implementation*”. The IEA can request management plans to be developed for the island, and can approve, decline or refer such plans as they see fit, along with the Island Government. Under Section 41 they can propose to designate an area as a PA, but must first ensure the required steps have been followed, such as development of a management plan and a shared resource management agreement with the relevant landowners or traditional leaders, as well as giving notification and opportunity for comments from the community. IEAs are only in place where the Environment Act (S4) applies (Rarotonga, Aitutaki, and Atiu), and where Outer Islands opt in;
- Individual Island Governments have jurisdiction over outer islands as per the Island Government Act 2012-13, and include traditional leader representation as per Section 17 of the Act. Governance arrangements vary between islands and between island groups. As an example, one interviewee noted: “*Pukapuka has strong traditional leaders, Manihiki has a different approach where community take (of fish) is based on recommendations by (the Ministry of) Marine Resources*”. Similarly to the above, Island Governments must also approve any management plans for PAs developed under the Environment Act 2003 (Section 38a);
- There are also other Bodies and Committees which are indirectly related to PAM such as the Disaster Risk Management Platform and Catchment Committees;

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<sup>67</sup> As outlined in <https://www.sbma.gov.ck/advisory-committee> the role of this Committee is to provide community perspectives to the Government on the development of the seabed minerals (SBM) sector. The Committee makes recommendations to the Seabed Minerals Authority on SBM policies, and provides a voice for the community.

<sup>68</sup> The project team tried unsuccessfully, and a number of times, to interview representatives from the SBMA for the PAMP project.

- Common issues related to governance structures were noted as: (i) the challenges of having too many committees and of “getting people to attend”; (ii) the need to avoid duplication between Boards/Committees with overlapping mandates; (iii) the need for “the right people” to be represented on Boards/Committees, who are actively involved, and representing and reporting back to their constituents; and (iv) the importance of Boards/Committees being adequately resourced (money and staff support); and
- The importance of ensuring effective and meaningful involvement of landowners, local committees and traditional leaders on Boards and Committees was consistently noted. One interview commented: *“landowners have a suspicious view of Government agencies in relation to protected areas as there is a perception that governments aim to take over land when it comes to protected areas. Government agencies are often seen as lacking a connection with land owners and resource owners”*.

### Views of Cook Island agencies: mechanisms for coordination, cooperation and conflict resolution

The overlapping and at times competing roles and mandates between different agencies regarding PAM underline the importance of effective mechanisms for coordination and, where required, conflict resolution. Interviewees were asked: *“Is the cooperation between agencies involved in protected areas adequate at present? If not, how could this be improved?”* (Annex 2, Interview question 11) and *“How should any uncertainty and/or conflicts between the roles of various agencies (e.g. NES, MMR and MM (MMCO, MM TAG, MM Council) in relation to marine protected areas be addressed?”* (Annex 2, Interview question 14). Key points noted in responses included:

- Effective cooperation usually reflects having shared interests and objectives as well as the personalities of individuals involved. In the Cook Islands, as in other countries, better cooperation often comes down to people and relationships between them. Personalities in agencies are key to deciding whether agencies work together, or not. They need support and help to work together. A neutral person from outside the Cook Islands may be useful for assisting facilitation. Anything that improves these relationships should be encouraged;
- Cooperation and coordination is not an end in itself: the aim of cooperation for PAM should be better delivery of conservation and related outcomes;
- At a general level, cooperation has increased(?) over the last 20 years, yet enhanced cooperation is required. However, the challenge of establishing committees as a response to the need for increased cooperation was noted as an issue. One respondent noted: *“It is easy to set up a committee when there is a new issue (or) problem. However these don’t work in (the) Cook Islands, people are busy with many commitments; there are often problems with basic issues such as having a quorum. There is cooperation and good*

*intent but one gets caught up in other priority work. The response of adding another committee doesn't really work";*

- Other factors contributing to increased cooperation include clear role definition, open and clear communication between key agencies and stakeholders, and *"support from the top"*, including from Ministers and Senior Government officials for cooperation. Better communication, explanation and understanding of mandates is needed: better explanation and understanding of roles on PAs is a big gap at the moment. One interviewee noted: *"Agencies need to sit down and talk. There is a need for understanding and respect of each-others mandate";*
- Conflict resolution mechanisms may be required where there are competing roles and responsibilities, and an inability to address these issues. Areas where there are existing and/or potential conflicts include: (a) in the marine area in relation to differing roles and responsibilities with regards to establishing MPAs; and (b) in the marine area in relation to specific issues such as the preparation of management plans; and (c) in relation to enforcement of PA or environmental regulations, both on land and at sea;
- An important element in increasing cooperation and reducing conflict is to aim for win-win outcomes. As one interviewee noted: *"we should try to ensure all are heading in the same direction, so that there is not just one winner, but that all are winners; for example, by developing joint funding proposals which provide money to be shared by all";*
- Increased cooperation can also be encouraged through incentives such as through increased budget allocations for joint initiatives, through budget appropriations. The fact that agencies are competing for the same budget can be a disincentive to working together. This requires policy decisions and a recognition by key players, such as the Ministry of Finance and Economic Management (MFEM), of the need for, and importance of, cooperation to enhance delivery for PAM. One interviewee noted: *"There could be an opportunity through the Ministry of Finance and the budget appropriation process. The Government wants to enhance collaboration through giving more support for joint budget submissions between agencies, based on a business plan template. They want to start setting out business plans which include collaboration with other agencies as a key element. This idea has been around since 2016 but MFEM haven't enforced it";* and
- Marae Moana was originally developed as a mechanism for supporting agencies to work together, however as one interviewee noted: *"achieving cooperation has been challenging and there is room for improvement".*

### Analysis and issues needing attention

It is clear that current governance arrangements for PAs are overlapping and confusing. A clear and effective structure is needed and its development of this should be a clear element of PAMP2. However, it is important that this issue is addressed in the right order: roles and functions of any institutional structure for

protected areas need to be defined first and then the appropriate structure can be should be developed accordingly.

There is also a clear message from interviewees that there is little appetite for new Boards, Committees or subsidiary bodies. The issue is whether PAMP should argue for a new and separate structure or linking PAM governance to an existing structure, such as the National Environment Council and/or a subsidiary body such as the National Biodiversity Steering Committee, or alternatively, the MMC/TAG.

PAMP-2 should address this issue and in particular, through a detailed assessment of options for PA institutional structures based on the issues raised in this discussion paper.

Important elements of any new structures, developed through PAMP-2 should include:

- link to a clear role, functions and activities as outlined in PAMP;
- involvement of key persons and agencies, including relevant government agencies, local communities and landowners;
- a clear focus on improved delivery of PAMP outcomes; and
- a clear focus on important and relevant issues where cooperation can be enhanced or conflict reduced.

## 6. The Way Forward: analysis and recommendations

### 6.1 Introduction

Previous sections have reviewed key protected area issues and governance, based on the views of Cook Islands agencies and the review of relevant literature. This section outlines principles and recommendations regarding key aspects of PAMP, including:

- **Principles to guide PAMP development and implementation (S6.2)**
- **Recommendations regarding the PAMP legal framework for protected areas in the Cook Islands (S6.3)**
- **Recommendations regarding the roles of different agencies in protected areas in the Cook Islands (S6.4)**
- **Recommendations for PAMP governance structures for protected areas in the Cook Islands (S6.5)**
- **Recommendations for the further development of PAMP and a suggested way forward (S6.6)**

### 6.2 Principles to guide PAMP development and implementation

Based on the interviews and experience from within the Cook Islands and elsewhere, it is suggested that the following principles should apply to the development and implementation of PAMP:

- Protected areas should be established and managed based on an agreed definition and clear objectives at the national, island and site level;
- The establishment and management of protected areas should draw on international experience but should be tailored to the unique circumstances of the Cook Islands;
- A general aim should be to reduce rather than increase, PAM complexity. Processes relating to the establishment and management of protected areas and PAMP should be clear, simple and easily understood;
- The roles of key agencies and actors regarding protected areas should be clearly defined, based on agency mandates, delineation of roles and functions, and involving effective consultation;
- Decisions relating to protected areas should include open and effective consultation with landowners and traditional leaders;
- Actions relating to the establishment and management of protected areas should be based on the best available science and traditional knowledge;
- Actions relating to protected areas should be tailored to the unique Cook Islands context: actions proposed should be practical, realistic and achievable;
- Actions relating to protected areas should build on existing systems, processes and structures and avoid “re-inventing the wheel”;
- There must be effective and on-going communication on protected areas at all levels, including between government agencies themselves and between government agencies and the public;
- There should not be a “land PA” agency and a “sea PA” agency in the Cook Islands. Core functions of protected areas, such as legislation, design, policy, planning, SoE/Outlook Reporting and MEE should be in the one agency. However, some implementation functions might be carried out by others.

**Recommendation 11: The principles outlined in Section 6.2 be noted as an important input to guide the future development of the PAMP.**

### 6.3 Recommendations regarding legal frameworks: for protected areas in the Cook Islands

Section 5.3 outlines the legal situation relating to protected areas in the Cook Islands and notes there are a number of overlapping and unclear responsibilities, spread between several Acts and agencies. The fragmentation of policy and legal instruments is pronounced in the marine environment, in particular with overlapping responsibilities for protected areas between the Environment Act, the Marae Moana Act and the Marine Resources Act. There are various views as to whether there should be a separate Act for protected areas. The advantages and disadvantages of establishing a separate Act for protected areas are as follows:

#### Advantages and disadvantages of a separate legal instrument for protected areas in the Cook Islands

Advantages of a separate PA Act	Disadvantages of a separate PA Act
Would recognize and elevate the importance of protected areas in the Cook islands	Lack of support from the majority of persons interviewed
Would potentially provide for a more cohesive and effective approach to protected areas	Interviewees noted there are enough existing legal instruments at the moment to provide for the establishment and management of PAs
	Would take time and resources to develop. The challenges of developing new legislation were also noted, given the need for consultation and agreement. The recent lapsing of the draft Marine Resources Bill was cited as an example in this regard.
	A separate Act would require the setting up of new structures and mechanisms, and probably greater cost. Interviewees noted there is little appetite for such changes
	Protected areas have a logical fit within the Environment Act, given agency objectives and mandates. Having an Act separate from the Environment Act could possibly encourage duplication/overlap

Interviewees noted that PAs are an important issue and need more attention and priority in legal instruments. However, interviews and the analysis above indicate what is required is greater clarity and elaboration of existing legislation relating to protected areas rather than the development of new legislation, at this stage. The options of developing separate legislation in the future should be kept open and re-assessed in 2025.

It is thus recommended that a separate Act for protected areas is not pursued at this time, but that the need for increased priority and clarity regarding protected areas

legislation should be addressed through amendment of existing laws, namely the Environment Act 2003 as the primary legislation on PAs, with possible subsequent amendments to the Marine Resources Act 2005 and Marae Moana Act 2017, as well as the development of the PAMP to guide these amendments.

**Recommendation 12: Improved clarity and strengthened application regarding protected areas legislation should be addressed through amendments of existing laws and the development of the PAMP. Separate legislation for protected areas in the Cook Islands should not proceed at this time, however this option should be kept open for future assessment. This future assessment should be undertaken through PAMP-2 and could explore, inter alia, whether the MM Act could be the only Act for establishment of MPAs and whether the Environment Act could be the only Act for the PA system as a whole, and for island PAs.**

## Amendment of S41 of the Environment Act 2003

It is recommended that the Environment Act 2003 be amended and that it becomes the primary policy instrument for protected areas in the Cook Islands.

Recommendations for amendment to Section 41 of the Environment Act are outlined below.

### **Recommendation 13: Section 41 of the Environment Act should be amended to, at a general level:**

- provide for a strengthened framework for the establishment and management of all protected areas, on land and sea, in the Cook Islands
- establish a national PA classification system
- reflect the roles and mandates suggested in recommendation 17, viz: *“The role of the NES in protected areas should include: (a) The lead role on protected areas in the Cook Islands on land and at sea, including establishing PA definitions, policy setting, standards, management planning and reporting; and monitoring and evaluation; (b) Implementation of PA activities on land, for government managed PAs; (c) technical support and policy guidance for community managed protected areas, as requested and as appropriate; (d) policy guidance to MMR for management of MPAs in the marine environment.*
- recognize the PAMP as the primary document for protected areas in the Cook Islands
- outline and clarify the roles and responsibilities of other agencies involved in protected areas in the Cook Islands

### **At a more detailed level, the Act should be amended to cover:**

- application of a clear and uniform PA definition across the Cook Islands, on land and at sea, based on PACS;
- a classification system for protected areas including categories, objectives and a designation approach, based on PACS;
- elaboration of a clear process for establishing PAs, involving full and effective consultation and involvement with local communities and landowners;
- ensuring effective management, including development of management plans;
- ensuring protected areas are linked within the broader landscape, including the land-sea interface;
- ensuring effective implementation of PAs.

**These amendments should be developed and submitted for Government approval by December 2021.**

## Amendment of other Acts

### Marine Resources Act 2005

The inclusion of “Marine Reserves and Parks” within the draft Marine Resources Bill 2020 (proposed to replace the 2005 MR Act) creates another level of complexity in relation to the establishment and management of PAs in the Cook Islands. MMR and NES have been directed to consult and harmonise bills and it is suggested that this process should aim to increase clarity in relation to MPAs. This author considers that such clarity would be enhanced if, at a minimum, the MR Bill could include consistent terminology regarding the definition and categories of protected areas and MPAs, and also if the section of the MR Bill regarding “Marine Reserves and Parks” could be withdrawn. This would require continued high level discussion between NES, MMR and OPM.

**Recommendation 14: The Marine Resources Bill be amended to: (a) include consistent terminology regarding the definition and categories of MPAs, as outlined in PACS; and (b) allow for the withdrawal of the section of the MR Bill regarding “Marine Reserves and Parks”. This will require continued high level discussion between NES, MMR and OPM.**

### Marae Moana Act 2017

The ambiguity and overlap between the roles of NES, MMR and MMCO need to be addressed, through clear definition of roles and the development and agreement on a PAMP. This author considers that such clarity would be enhanced if, at a minimum, the MM Act could include consistent terminology regarding the definition and categories of protected areas and MPAs, as well as clarifying the role of MMCO in MPAs

**Recommendation 15: The Marae Moana Act be amended to:**

- include the new definition of a PA and MPA
- recognize the PAMP as the primary document for protected areas in the Cook Islands
- reflect the roles and mandates suggested in recommendation 16, as follows (a) coordination of MPA activities in the Marae Moana, including coordination and support for the implementation of policies and standards on protected areas developed by the NES; (b) support for education and awareness raising programmes.

**It is proposed that such amendment should be initially discussed with MMCO and TAG and an appropriate timeframe for implementation be agreed upon.**

## 6.4 Recommendations regarding agencies involved in protected areas in the Cook Islands

Section 5.2 noted the number of agencies involved in the establishment and management of protected areas in the Cook Islands. Roles and mandates overlap between MMR, NES and MMCO, particularly in relation to the establishment and management of MPAs. This has created a confusing situation in the Cook Islands and the majority of interviewees came out in favour of greater clarity in relation to roles and responsibilities for protected areas, on land and at sea.

Protected areas are primarily established for conservation, which aligns with the mandate of the NES, while the mandate of MMR is fisheries sustainability and economic development. NES has the capacity to manage terrestrial protected areas while it lacks this capacity in the marine environment. MMR has the capacity to manage some MPA activities including monitoring, enforcement and surveillance. MMCO lacks the capacity and mandate to manage MPAs but has a clear and important role to play in ensuring coordination.

**Recommendation 16: That main agency roles regarding protected areas be clarified and include the following:**

**The role of NES in protected areas should include: (a) The lead role on protected areas in the Cook Islands on land and at sea, including establishing PA definitions, policy setting, standards, management planning and reporting; and monitoring and evaluation; (b) Implementation of PA activities on land, for government managed PAs; (c) technical support and policy guidance for community managed protected areas, as requested and as appropriate; (d) policy guidance to MMR for management of MPAs in the marine environment.**

**The role of MMR in protected areas should include: (a) implementation of activities in MPAs, including monitoring and surveillance, working in line with the policy and standards for PAs, including MPAs, developed through NES, in cooperation with MMR; and (b) implementation of science related activities in the marine environment**

**The role of MMCO in protected areas should include: The role of the MMCO in protected areas should include: (a) coordination of MPA activities in the Marae Moana, including coordination and support for the implementation of policies and standards on protected areas developed by the NES; (b) support for education and awareness raising programmes.**

**The role of communities, traditional leaders and HoA: should include: (a) establishment and management of community managed PAs, wherever possible working cooperatively, and in accordance, with policy guidelines for PAs established through NES.**

## 6.5 Recommendations for institutional structures: for protected areas in the Cook Islands

Section 5.4 outlined existing institutional arrangements for protected areas in the Cook Islands and noted these arrangements are overlapping and confusing. Although there was a clear message from interviewees that an effective structure for governance and coordination regarding protected areas would be useful, there was also a clear indication that there is little appetite for the establishment of new Boards, Committees or subsidiary bodies. The issue is whether PAMP should argue for a new and separate structure, or link PAM governance to an existing structure, such as the National Environment Council and/or a subsidiary body such as the National Biodiversity Steering Committee. Important elements of any PA structures should include:

- the need to improve integration of PA functions and to bring together existing disparate governance mechanisms, such as the two train tracks of NEC/NBS and MMC/TAG.
- avoiding the establishment of new structures and committees, given the clear views expressed from CI agencies and persons regarding the need to use existing structures;
- effectively support improved delivery of PAMP outcomes;
- enabling effective coordination and communication between relevant agencies and stakeholders;
- involving key persons and agencies, including relevant government agencies, local communities and landowners; and
- focusing on important and relevant issues where cooperation can be enhanced or conflict reduced

There is a range of possible options for PAMP Governance structures, including:

- Having a separate, stand-alone body, such as a Cook Islands Council for Protected Areas (Option A);
- Establish a separate structure for protected areas under the existing National Environment Council, NES (Option B);
- Establish a separate structure for protected areas under the National Biodiversity Steering Committee, NBSC (Options C); and
- Add protected areas as another element of the work of the National Biodiversity Steering Committee, NBSC (Option D).

The advantages and disadvantages of each of these options is set out in the table below

### Advantages and disadvantages of options for PAMP Governance Structures

Option	Advantages	Disadvantages
A: Separate,	Would highlight and underline the importance	The majority of interviewees noted they do not want separate and additional structures

stand-alone body	of PAs in the Cook Islands	established in the Cook islands, given the number of existing structures
B: Structure under NE Council	Would highlight and underline the importance of PAs in the Cook Islands	A number of interviewees noted the NE Council was not effective, thus a structure for PAs under the NE Council may be of limited effectiveness.  Creates a new and separate structure, which most interviewees noted was not desirable
C: Structure under NBSC	Would highlight and underline the importance of PAs in the Cook Islands  A number of interviewees noted the NBSC was effective and working well  Biodiversity and Protected Areas are clearly linked thus the NBSC is a “logical fit”.	Creates a new and separate structure, which most interviewees noted was not desirable
D: Add PAs as an element of NBSC	A number of interviewees noted the NBSC was effective and working well  Biodiversity and Protected Areas are clearly linked thus the NBSC is a “logical fit”.	Importance of PAs in the Cook Islands may be lost and/or subsumed under other matters. A risk of this is that the significant PA governance issues, as outlined in this report, are not addressed.

Based on views expressed on the need to avoid creating new structures and mechanisms, and the inextricable links between biodiversity and PA, it is recommended that option C be implemented: that a Protected Areas Coordinating Committee (PACC) be established under the National Biodiversity Steering Committee (NBSC), which as noted above, is seen as “*already working well and bringing government and NGOs together in an open and collaborative way*”. The role of the PACC should be to oversee the development and implementation of PAMP and to encourage effective coordination and cooperation between relevant agencies involved in protected areas, including NES, MMR, MMCO, CI Tourism and the NHT, which are all existing members of NBSC. Option D, above, is also under the NBSC however the risk is that the importance of PAs may be diminished by just adding PAs as “another item of business” and the significant governance issues, as outlined in this report are not addressed.

**Recommendation 17:** That a Protected Areas Coordinating Committee (PACC) be established under the under the National Biodiversity Steering Committee (NBSC), to oversee the development and implementation of PAMP and to encourage effective coordination and cooperation between relevant agencies involved in protected areas.

## 6.6 Recommendations for the further development of PAMP and a suggested way forward

All interviewed noted support for the development of a Protected Areas Management Policy, and it is suggested this should aim to ensure:

- the more effective establishment and management of protected areas in the Cook Islands;
- better coordination between relevant agencies;
- greater clarity regarding roles and responsibilities for protected areas in the Cook Islands.

Interviewees noted that preparation of PAMP should be based on a consultative process and that it will take time to develop a suitable document acceptable to all parties. This would be undertaken through PAMP-2

The following initial structure is proposed for the PAMP:

### **Proposed structure for PAMP**

#### Objectives of PAMP

To develop an effective system of terrestrial and marine protected areas, which protect natural and associated cultural values in the Cook Islands, through a range of government and customary governance mechanisms

#### Definitions: Protected Areas and Managed Areas

Based on the definition included in the PACS, (outlined in S4.3 of this report), once consulted and agreed upon, and including:

- protected areas
- managed areas.

#### Inclusion of PACS

Based on the typologies included in the PACS, (outlined in S4.3 of this report), once consulted and agreed upon, and including:

- three types of terrestrial protected areas

- three types of marine protected areas (MPAs)
- four types of 'Managed Areas'

PAMP will outline broad objectives for each of the above types

#### Legislation and policy

Outlining recommended options and approaches for PA legislation

#### Governing mechanism for PAMP

Outlining the roles and functions of the Protected Areas Coordinating Council, once consulted and agreed upon,

#### Roles of key agencies involved in PAMP in the Cook Islands

#### Process for establishment of protected areas

Outlining the process for identification and establishment of protected areas, including:

- full and open consultation, particularly with landowners and traditional leaders;
- identification of priorities for new protected areas, based on the best available science and traditional knowledge; and
- demarcation and registering of boundaries.

#### Management planning

Outlining the process for developing management plans, and management statements, for protected areas, which would include:

- protected area objectives;
- identification of special sites
- management strategies and prescriptions; and
- resourcing (human and financial) strategies

#### Communication and awareness

Outlining objectives and strategies for increasing awareness of protected areas in the Cook Islands

#### Sustainable Financing

Outlining objectives and strategies for sustainable financing for protected areas in the Cook Islands, building on recommendations of the Conservation International 2020 report

#### Strategy for addressing key issues

Outlining objectives and strategies for addressing key issues, including:

- tourism;

- climate change; and
- relevant international conventions and agreements, including reporting on, and accessing resources

#### Process for monitoring and evaluation

- SoE and Outlook Reporting
- Management effectiveness evaluations

The following process is suggested to finalise the PAMP:

- Discussion of this document and consideration whether to continue with the next phase of development of PAMP (PAMP-2)
- Consultation and agreement of the PAMP structure, based on the draft above;
- Consultation and agreement of the PACS paper
- Preparation of detailed content for PAMP, based on the material in this document and extensive consultation with key stakeholders.

**Recommendation 18: That the proposed structure of PAMP and the process for finalizing PAMP, as outlined in Section 6.6, be approved.**

## 7 Conclusions

This discussion paper has identified key issues and recommendations relating to a Protected Areas Management Policy (PAMP) for the Cook Islands. It is based on extensive consultation with agencies in the Cook Islands. The discussion paper reflects stage 1 of the PAMP and reflects the views of relevant agencies consulted in the preparation of this discussion paper. Stage 2 (PAMP-2), if approved, will develop a detailed Policy for Protected Areas in the Cook Islands, based on this discussion paper and intensive consultation with relevant stakeholders in the Cook Islands.

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## Annex 1. Terms of Reference for the PAMP Adviser

### 1. Introduction

#### 1.1 Project description

The Cook Islands Ridge to Reef (R2R) project is funded by the UNDP Global Environment Facility (GEF) in partnership with the Cook Islands Government. The project aims to enhance the capacity of the Cook Islands to effectively manage its protected areas and sustainably manage its productive landscapes at local scales while considering food security and livelihoods. This includes the operationalisation of the Cook Island Marine Park (CIMP) (covering approximately 1.1 million km<sup>2</sup> of Cook Islands southern Exclusive Economic Zone - EEZ<sup>69</sup>) and the establishment and strengthening of various forms of protected and locally managed areas within the CIMP, including protected natural areas, community conservation areas, and ra'ui sites<sup>70</sup>.

In so doing, the project will support the Cook Islands in maintaining traditional resource management and conservation systems and approaches, including a leading role for traditional and local leaders and the local communities that they represent in the declaration and management of protected areas, while also integrating these traditional systems into a formal legal and institutional system of protected areas.

The project will support the Government in tailoring policy, regulatory and institutional frameworks to suit the specific characteristics of the Cook Islands and of the new CIMP, recognising that protection and sustainable use will need to be zoned and planned carefully, and that tenure over most land areas is vested in local communities through a traditional tenure system.

The project has been designed to engineer a paradigm shift in the management of marine and terrestrial protected areas - from a site centric approach to a holistic 'ridge to reef' management approach, whereby tourism and agriculture activities in production landscapes adjacent to marine and terrestrial protected areas will be managed to reduce threats to biodiversity.

The project started in July 2015 (upon signature of the project document) and was originally intended to be completed and close in July 2019. However approval was provided in early 2019 for a no-cost project extension to 6 January 2021.

The Cook Islands National Environment Service (NES) is the lead executing agency for R2R, responsible for project management, coordination and collaboration with implementation partners.

The project has seven output areas as follows:

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<sup>69</sup> Since the R2R project was initially designed and commenced (in July 2015), the CIMP (renamed as Marae Moana) has been extended to cover the entire EEZ.

<sup>70</sup> Raui : traditional form of protected area as used in Cook Islands

- Output 1.1: Strengthened legal / regulatory and policy frameworks for protected areas
- Output 1.2: Expanded and strengthened management systems for protected areas
- Output 1.3: Strengthened institutional coordination and capacities at the national and local levels for the participatory management of protected areas
- Output 1.4: Financial sustainability framework developed for system of protected areas
- Output 2.1: Ridge to Reef approaches integrated into land use and development planning
- Output 2.2: Biodiversity conservation mainstreamed into agriculture sector
- Output 2.3: Biodiversity conservation mainstreamed into tourism sector.

The Government of Cook Islands is recruiting a Protected Areas Management Policy Adviser under outputs 1.1, 1.2 and 1.3 of the Cook Islands Ridge to Reef Project.

## 1.2 Project design

The R2R project design includes a Strategic Results Framework (SRF) which forms the basis to project planning, and monitoring, evaluation and reporting (MER). The SRF defines the R2R objective as:

*To build national and local capacities and actions to ensure effective conservation of biodiversity, food security and livelihoods and the enhancement of ecosystem functions within the Cook Islands Marine Park.*

There are two project ‘components’ (outcomes):

- Outcome 1: Strengthening protected areas management
- Outcome 2: Effective mainstreaming of biodiversity in key sectors to mitigate threats within production landscapes.

This consultancy falls within outcome 1.

The SRF has 34 key performance indicators (KPIs) with targets; these targets will be the basis upon which the performance of the project will be assessed during the R2R terminal evaluation (TE) (anticipated to be commissioned by UNDP in October 2020).

SRF indicators and targets directly related to this consultancy are:

SRF #	Description of Indicator	End of project target level
6	Updated and consolidated legal framework for management of the Cook Islands Marine Park (CIMP) and all other protected areas in the country.	Review of legislative framework for protected areas and development of a Protected and Managed Areas Policy, national protected areas classification system developed through policy.

7	Consolidated management authority for protected areas in the Cook Islands.	Legislative review and policy identifies appropriate mechanisms for coordination and management of protected areas by end of project.
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Reform of the protected areas management (PAM) system forms a key part of the R2R Project. The adviser is expected to provide professional strategic and technical advice in support of the above outputs.

## 2. Background

### 2.1 Legislative design

A recent capacity needs assessment report (CNAR) and strengthening plan undertaken through R2R (Twyford 2019a, 2019b) identified significant issues that require consideration in any improvements and reforms to the Cook Islands PAM system. These issues include:

- The existing framework for protected areas and biodiversity conservation is complex, fragmented and dispersed amongst multiple pieces of legislation and organisations: NES, Marae Moana Coordination Office (MMCO), Ministry of Marine Resources (MMR), House of Ariki, Ministry of Culture, island governments and customary landowners all have responsibilities in different ways for protected areas.
- Overall organisational roles are in places unclear, duplicated or not defined at all.
- The Cook Islands has designated Marae Moana, one of the world’s largest multiple-use marine managed areas, and passed the Marae Moana Act 2017. The Act and associated mechanisms give prospects for a strong coordination and integration framework. However responsibilities for management are diffuse and dispersed amongst three key organisations: NES, MMCO, MMR.
- There is no national protected areas legislation and protected area management responsibilities are fragmented rather than being consolidated.
- A national protected area classification system is urgently required.
- The current legislation exists as standalone instruments. There is no legislation or planning system that operates across the land-sea ecosystem, that integrates and connects Marae Moana with the islands, and that ensures land use activities do not have detrimental impacts upon adjoining marine areas.
- The situation has potential to be improved – or regress. For instance the draft Marine Resources Bill has provisions for MMR to set up marine reserves. If this proceeded it would further fragment responsibilities, dilute already limited resources, and likely create even more confusion than currently exists. MMR

and NES have been directed to consult and harmonise bills – this is a positive move.

- However there does not appear to be any government policy basis for legislative design – policy that would set direction, shape design and identify a lead organisation. In this absence there is a real risk that individual agencies will continue to develop disparate legislative provisions that are disintegrated, only serve individual agency needs and interests, and perpetuate if not exacerbate conflict and confusion.
- Other important legislative issues include:
  - Lack of recognition of the need for an integrated, national protected area system across land and sea.
  - Associated with this, no organisation has been identified to be responsible for and to lead this function.
  - Imprecise role definition between organisations. Absence of a functional responsibility ‘map’ that articulates and designates responsibilities for different PAM functions between agencies is a significant capacity gap. Such PAM functions include: legislative design, system and organisational performance oversight, policy, strategy, service delivery, regulation and compliance, information management, and so forth.

Overall the absence of a coherent legislative design and functional responsibility map for protected areas is a major capacity need and gap for the country. The need for legislative reform is pressing and it is critical that design plans are developed as matter of urgency and that plans are well constructed. Significant risks exist if the status quo remains, and risks are just as significant if reforms are half-hearted and not well suited to needs.

## 2.2 Governance

The CNAR (Twyford 2019a) also identified significant issues with PAM governance.

The Cook Islands has an impressive and comprehensive system of high-level governance forums in place to oversee and coordinate government activity across the environment and protected area sector. At peak level there is the Marae Moana Council, National Environment Council and Marine Resources Council (as per draft Bill). Below this peak grouping there are a myriad of committees (statutory and non-statutory) such as Marae Moana Technical Advice Group (TAG), National Biodiversity Steering Committee (NBSC<sup>71</sup>) and Seabed Minerals Advisory Committee.

However the system has grown and developed in the absence of a clear plan and in absence of a coherent legislative framework. One could argue that when considering

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<sup>71</sup> Also functions as project board/steering committee for R2R project

governance, *less is best*, and particularly so in a country like the Cook Islands with a small population and limited human resource capacity.

Much the same issues exist for governance forums as for legislative design: there are functional overlaps and gaps, lack of integration and an integrating mechanism, and lack of any overall strategic design. Although the Marae Moana Policy and Act are designed to integrate, this integration needs strengthening through amendment of the various resource use and management acts (seabed minerals, marine resources, environment). Added are issues of common membership across forums and the seniority and capabilities of forum members. For instance poor attendance levels at the NBSC and lack of seniority of some members was identified by Twyford (2019a) as a barrier to effective decision-making on this governance forum.

Current approaches to establish Environment, Seabed Minerals and Marine Resources Bills should at minimum establish the required legislative framework along the lines of the Marae Moana Policy (ie. be driven by the principles of integration, coordination and simplicity). In fact the existing Marae Moana institutional arrangements (Council, TAG) already provide a very sound basis for an integrated governance system.

To summarise, the key capacity needs in this area are:

- Thorough review of existing governance forums with a view towards introduction of greater efficacy and integration.
- If and when legislative reform is addressed, opportunity exists to redesign the 'architecture' for governance and to introduce much needed improvements in efficacy, decision making, and organisational role definition. This is a major capacity need.

### **2.3 Review of Environment Act 2003**

The NES is currently undertaking an Environment Policy and Legislation Review Project 2019-2020. Substantial work has been undertaken to assess the Environment Act, identify key policy issues, and develop possible solutions; a draft Policy is expected in mid to late-2020 that will be used to inform legislative amendments.

The review has concentrated on the Act's objectives, structure and definitions, governance, geographical coverage and application, and on specific environmental protection themes: pollution, environmental impact assessment, waste management, and biodiversity conservation.

It is recognised by NES and other government stakeholders that the breadth and complexity of issues associated with terrestrial and marine PAM is beyond the scope of the current Environment Policy and Legislation Review Project. There needs to be a separate yet closely linked PAM Policy Project that feeds into and informs the Environment Policy Project.

### 3. Key activities

The aims of this consultancy are to:

- Play a lead role in the development of the Cook Islands Protected Areas Management Policy (PAMP).
- Provide the R2R Project and government agencies with strategic and technical advice about protected areas policy and management on an as requested basis.

This consultancy will be contracted and implemented in two stages:

- Stage 1 is the subject of this ToR and procurement process. Activities will be undertaken remotely from the adviser's home base.
- Stage 2 will be the subject of either a contract extension or a separate procurement process. Activities will be a mix of in-country and home based.

The full scope of activities are described below so that consultants are aware of how stage 1 relates to the broader policy project.

#### 3.1 Stage 1

**Stage 1** of the PAM Policy will have the following in scope:

- Review, assessment and analysis of the key PAM Acts<sup>72</sup>:
  - Marae Moana Act 2017
  - Environment Act 2003
  - Documents developed as part of the 2019-20 Environment Policy and Act Review project
  - Marine Resources Act 2005 and draft Marine Resources Bill
- Review, assessment and analysis of other acts and regulations that have an important bearing upon PAM. These include:
  - Island Government Act 2012-13
  - House of Ariki Act
  - Environment (Atiu and Takutea) Regulations 2008
  - Environment (Mitiaro) Regulations 2008
  - Environment (Aitutaki and Manuae) Regulations – currently being redrafted
  - Cultural and Historic Places Act 1994-95
  - Others as identified by adviser and R2R.
- Identification and assessment of other key documents that have implications for PAM including:
  - Government policies (eg. National Sustainable Development Plan 2016-20<sup>73</sup>, National Biodiversity Strategy and Action Plan (NBSAP) 2016-2020)

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<sup>72</sup> Copies of Cook Islands legislation are available through the online Pacific Islands Legal Information Institute (PACLI) <http://www.pacii.org/countries/ck.html>

<sup>73</sup> <https://www.adb.org/sites/default/files/linked-documents/cobp-coo-2017-2019-ld-01.pdf>

- Regional and international agreements (eg. Convention on Biodiversity Conservation (CBD), United Nations Framework Convention on Climate Change (UNFCCC))
  - Previous Cook Islands legislative and policy reviews (eg. Mataki (2014), Rose (2014), CommSec (2017), Laurie (2018), Twyford (2019a, 2019b))
  - Similar processes from other developing countries (eg. PNG, Philippines, Palau, etc).
- Based on findings from the above activities, develop a draft and final discussion paper that includes the following:
    - Identify issues, conflicts, gaps and overall observations.
    - SWOT analysis for PAM.
    - SWOT analysis for governance and organisational arrangements.
    - Priority areas required to reform protected areas legislation and institutional and governance arrangements.
    - Implementation arrangements for islands and the territorial seas (coastline to 12 nm) including options for integrated land-sea management, management planning, and zoning. Particular emphasis is required on interactions between the Environment, Island Government and Marae Moana Acts.
    - Strategic assessment and recommendations on a conceptual model for PAM policy and legislation.
    - Potential organisational arrangements including agency roles and responsibilities that might flow on from conceptual model.
    - Potential opportunities, initiatives and targets that government may wish to consider for inclusion in the National Sustainable Development Plan (NSDP) 2021-25 and to adopt as government policy positions. This might include international obligations under the CBD, UNFCCC and other treaties, as they relate to PAM.
    - Other matters as identified by the adviser and project team.
    - The draft paper will be reviewed by the project team and select other stakeholders; feedback to be considered in development of the final discussion paper.
  - Support development of an integrated classification system for land and marine protected areas – a *Protected Areas Classification System (PACS)*. Eventually, this will be incorporated into changes to legislation. This is expected to be a major piece of policy work in its own right and will recognise and mitigate the considerable confusion that currently exists around protected areas terminology and concepts. The output will be a classification system that suits the Cooks Islands and accommodates the country’s unique land tenure system. The PACS is already under development – the PAMP Adviser will be required to provide professional inputs and advice to this process and output.

### 3.2 Stage 2

The project may potentially continue into late 2020 and 2021 depending on progress and follow-on funding, and any changes to travel restrictions arising from the Covid-19 pandemic.

**Stage 2** of the PAM Policy may have the following in scope:

- Using the final discussion paper (from Stage 1) as the basis, undertake a comprehensive process of face-to-face consultation, dialogue and engagement with government and other stakeholders.
- Identify process for development of a comprehensive, adequate and representative network of protected areas (land and sea) across the country.
- Final PACS.
- Draft of PAM Policy for consultation with stakeholders.
- Final draft of PAM Policy for consideration by government.
- Outcomes and decisions of government regarding PAM Policy to be incorporated into legislative review deliberations: late 2020, early 2021.

### 3.3 Project management

A detailed project plan has not yet been developed<sup>74</sup> however the PAMP process will have the following features:

- Intention is to separate out PAM policy issues and consider these separately from the review of the current Environment Act 2003.
- Formal project management arrangements would be put into place:
  - Small project team to be established, led by R2R Chief Technical Adviser (already in place), the PAM Policy Adviser (the subject of this ToR), Deputy Director NES and R2R Project Manager. The project team would report to Director NES.
  - Periodic reporting to the Marae Moana Council, Marae Moana Technical Advisory Group and National Biodiversity Steering Committee.
  - Potential formation of a Project Working Group comprising representatives of key agencies (subject to government agreement on suitability of this forum and efficacy of remote communications).

## 4. Approach

The adviser is expected to:

- Review existing documentation and sources of information, and others that may be identified through his/her own research.

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<sup>74</sup> A project plan is an output from this consultancy; refer to Section 6.

- Consult with R2R, NES, OPM, MMCO, MMR, Cook Islands Tourism Corporation (CITC) and other agencies and stakeholders with interests in PAM.
- Collect qualitative information through mixed methods – document review and analysis; online research; online interviews, meetings and interactions with protected area managers, tourism industry, and other stakeholders.
- Maintain close and regular contact (email, Skype, etc) with the Chief Technical Adviser (CTA) and R2R Project Manager throughout the consultancy.
- Organise and lead discussion at periodic online meetings of the project team.

Present information and status reports to the project team and other governance forums as needed (eg. Marae Moana Technical Advisory Group, National Biodiversity Steering Committee)

## **Annex 2. Interview questions for the PAMP Project**

### **Interview Questions**

#### **General**

- (1) What do you understand to be a protected area (in the Cook Islands)?
- (2) At a general level, what are the most important issues for protected areas in the Cook Islands, now and in the future?
- (3) Should there be more protected areas in the Cook Islands? Do you think existing PAs require better management? Where should focus/priority be placed?

#### **Protected Areas Governance**

- (4) There are a comprehensive range of governance arrangements for protected areas in the Cook Islands, including traditional and community leadership as well as high-level governance forums, such as the National Environment Council and Marae Moana Council. Is the existing governance system for protected areas adequate or do you think changes are required? If yes, what do you think are the main areas for improvement?

#### **Protected Areas Laws and Policies**

- (5) Protected areas are specifically mentioned in two legal instruments in the Cook Islands: the Environment Act 2003 (Section 42) and the Marae Moana Act 2017. Should protected areas be given more priority in Legal Instruments in the Cook Islands? Should there be a separate Act for protected areas? Do you have any other comments on this issue?
- (6) Should the Environment Act be amended to better address protected areas, including Marine Protected Areas? If so how?
- (7) Are there opportunities for a world best-practice protected area system in the Cook Islands? What do you think could be the main elements of such a system.
- (8) There are a number of international Conventions and Agreements, such as the CBD and the CMS, which relate to protected areas in the Cook Islands. Could these be used more effectively to assist protected areas in the Cook Islands?
- (9) How effective is the Marae Moana Act 2017. Are there areas that could be changed and/or improved? Which areas are these?

#### **Protected Area Agencies**

- (10) There are a number of agencies involved in the current designation and management of protected areas in the Cook Islands. Do you think the current situation is the most effective for the Cook Islands or do you think changes are

required? If so, what changes would you suggest? Should there be one agency with responsibility for protected areas in the Cook Islands or should the current situation continue?

(11) Is the cooperation between agencies involved in protected areas adequate at present? If not, how could this be improved?

(12) What should be the main responsibility and roles of the NES in relation to protected areas, including marine protected areas in the Cook Islands?

(13) What should be the main responsibility and roles of the MMR in relation to marine protected areas in the Cook Islands?

(14) How should any uncertainty and/or conflicts between the roles of various agencies (e.g. NES, MMR and MM (MMCO, MM TAG, MM Council) in relation to marine protected areas be addressed?

### **Protected Area Management**

(15) At a general level, how effectively are protected areas managed in the Cook Islands at the moment. What are the main areas or issues that require improvement and how could these be addressed?

(16) Are traditional landowners and leaders adequately involved with the establishment and management of protected areas in the Cook Islands. If not, how could this be improved?

### **Protected areas and tourism**

(17) How important are protected areas for tourism in the Cook Islands? Do you think there are opportunities for PAs to support the post-COVID recovery of the Cook Islands economy? How should tourism in and around protected areas be addressed/managed in the Cook Islands?

(18) How could partnerships be improved between the tourism industry (CIT, industry groups, operators) and protected areas in the Cook Islands? Do you have any specific suggestions for initiatives or joint programmes?

(19) What are the barriers to, and opportunities for, the tourism industry promoting and marketing protected areas, especially Marae Moana?

### **Other**

(20) Do you have any other comments or questions?

## Annex 3 List of agencies and persons interviewed for the PAMP policy paper

Agency	Persons interviewed for PAMP project
National Environment Service	Louisa Karika Elizabeth Munro Mura Herman Tekura Moeka'a Hayley Weeks
Ministry of Marine Resources	Pamela Maru
Marae Moana Coordination Office	Maria Tuoro Kevin Iro
House of Ariki	Puna Rakanui Kaumaiti nui (President)
Natural Heritage Trust	Joseph Brider
Cook Islands Tourism	Halatoa Fua Sieni Tiraa
Ministry of Finance and Economic Development	Mani Mate Ana Tiraa Tessa Vaetoru
Korero o te Orau	Teina Rongo Teariki Rongo
Te Ipukarea Society	Kelvin Passfield
Climate Change Cook Islands	Wayne King
Ministry of Culture	Anthony Turua Justina Nicholas
Office of the Prime Minister	Valentino Wichman Mia Teaurima
Koutu Nui	Noeline Browne Marjorie Crummer Imogen Ingram

## **Annex 4. Extracts from Environment Act 2003 and Regulations regarding protected areas**

### **Environment Act 2003**

#### **41. Protected Areas**

(1) Where an Island Environment Authority proposes to designate an area within its island having ecological, cultural, archaeological, historical or scenic importance as a protected area for the purpose of environment and natural resource conservation and management (including protection, conservation and management of animals and plants and their habitats), the Island Environment Authority may cause to be issued in respect of that area a notification to that effect in accordance with the procedure set out in this section.

(2) Every notification issued pursuant to this section shall specify -

(a) the description of the area to which the notification relates including, in the case of native freehold land, the legal description of the land concerned, or in the case of native customary land, a survey description; and

(b) the particulars of the ecological, cultural, archaeological, historical or scenic importance and the resources, animals, plants, and their habitats; and

(c) the name of the management plan that relates to the area concerned (or, in the case of an amendment to a management plan, the number and date of the amendment); and

(d) where the management plan (or, as the case may be, the amendment) may be viewed during normal office hours.

(3) An Island Environment Authority shall not issue a notification -

(a) in respect of native freehold land, unless and until there has been concluded pursuant to the Land (Facilitation of Dealings) Act 1970 between the Director and the owners of the land and any other person having an interest in the land to which the notification relates, a shared resource management agreement as provided for in subsection (4);

(b) in respect of native customary land, unless and until there has been concluded between the Director and the members of the Aronga Mana of the district in which the land is situated (and the Ariki of the island, where there is only one Ariki for the that island) and any other person having an interest in the land to which the notification relates, a shared resource management agreement as provided for in subsection (4);

(c) in respect of any other land., unless and until there has been concluded between the Director and the owners of the land and any other person having an interest in the land to which the notification relates, a shared resource management agreement as provided for in subsection (4).

(4) Every shared resource management agreement shall -

(a) identify the resource, animals, plants and habitats to be protected, conserved, or managed; and

(b) include the management plan to be notified under subsection (2); and

(c) describe the manner in which the management plan shall be implemented so as to achieve the objectives of the plan; and

(d) provide a procedure for agreeing to an amendment to or substitution of the management plan following notification of that plan under subsection (2).

(5) No notification may be made-

(a) In respect of any area, unless the Aronga Mana of the relevant district (and the Ariki of the island, where there is only one Ariki for that island) concur with the notification;

(b) Of any amendment to or substitution of a management plan, unless that amendment or substitution has been approved in terms of section 38(1)(a) and agreed to in accordance with the procedure referred to in subsection (4) (d.).

(6) A notifications shall come into force and take effect from the date of its publication in the Gazette.

(7) Without limiting the powers conferred by sections 27 and 28, an Environment Officer may at all reasonable times enter and inspect any premises within a protected area to-

(a) implement the provisions of the management plan notified in relation to the area; and

(b) determine whether the provisions of that management plan are being complied with; and

(c) monitor the attainment of the objectives of that management plan.

## **55. Protection of Species**

(1) The service may, with the approval of the Island Environment Authority for an island, from time to time by notice in the Gazette designate specified animals and plants on the island as protected species.

(2) Every person commits an offence who, within the island concerned, threatens or disturbs any animal or plant of the protected species or the habitat of any such animal or plant

## **37. Management Plans**

(1) The Service shall from time to time, at the request of the Island Environment Authority for an island, prepare a draft management plan for any area within the island, for all or any of the following purposes:

(a) protection, conservation, and management of wild life including protected species and the habitat of such wildlife and species;

(b) protection, conservation and management of inland waters;

(c) protection, conservation and management of uninhabited islands;

(d) conservation and management of forests;

(e) prevention of soil erosion;

- (f) prevention and control of pollution and waste;
- (g) protection, conservation and management of wetlands;
- (h) conservation and management of historical , archaeological and cultural sites;
- (i) setting out restrictions to which the land and waters in the area shall be subject to in the interests of achieving the objectives of the plan;
- (j) any other purpose relating to the environment which in the opinion of the Island Environment Authority will benefit from a Management Plan.

(2) The draft management plan shall be prepared in consultation with the landowners and occupiers affected by the plan and the plan shall include a management committee comprising representatives of these landowners and occupiers.

(3) When the Service has proposed a draft management plan, the Director shall by public notice-

- (a) state that a draft management plan has been prepared and specify the areas affected by the plan;
- (b) specify the place where the draft management plan is displayed and may be inspected by interested persons;
- (c) invite interested persons including the Aronga Mana of the district that may be affected (and the Ariki of the island where there is only one Ariki for the island) to make representation in connection with the draft management plan by a specified date, not being less than 1 month after the publication of the notice; and
- (d) specify an address to which such representations may be forwarded.

(4) Any person may not later than the date specified in the notice, make representations to the Service in connection with the draft management plan and the Service shall give due consideration to any representations so made, and may alter, amend or vary the draft management plan.

(5) In the preparation of the management plan, regard shall be had to the following objects:

- (a) the protection of special features, including objects and sites of biological, geological, and geographical interest;
- (b) the protection of the water catchment values of those areas within the plan;
- (c) the protection, conservation and management of soil resources;
- (d) environmentally sound traditional resource management practices and standards.

(6) The Director shall submit to the Island Environment Authority for the island the draft management plan together with such representations as have been made under subsection (4).

(7) The Island Environment Authority may

- (a) approve or decline to approve the draft management plan as submitted; or

(b) refer it to the Service, together with its suggestions for further consideration and for any amendment to the draft management plan.

(8) If the Island Environment Authority refers the draft management plan to the Service under subsection (7)(b), the Service shall consider the Island Environment Authority's suggestions and may alter, amend, or vary the plan before re-submitting the plan to the Island Environment Authority for approval.

(9) As soon as practicable after a management plan has been approved by the Island Environment Authority, it is to be laid

(a) In the case of a management plan for an area within an Outer Island, before the Island State Government for the island concerned; and

(b) In the case of a management plan for an area within Rarotonga, before each Konitara Vaka that is responsible for the local government of the area concerned.

(10) The Island State Government (or Konitara Vaka., as the case may be) may -

(a) approve or decline to approve the management plan as submitted; or

(b) refer it to the Service, together with its suggestions for further consideration, and for any necessary amendment to the management plan.

(11) Where the Island State Government (or Konitara Vaka, as the case may be) has referred the management plan to the Service under subsection (10) (b), the Service shall consider the suggestions of the Island State Government (or Konitara Vaka, as the case may be) and may alter, amend, or vary the plan before re-submitting the plan to the Island State Government (or Konitara Vaka, as the case may be) for approval.

## **Environment (Atiu and Takutea) Regulations 2008**

### **15. Designation of Protected Areas –**

(1) The areas listed in Schedule 3 are hereby declared protected areas.

(2) No person shall, within a protected area designated under subclause (1), without the permission of the Island Environment Authority, remove, destroy or harm any plant, fish, bird or animal.

(3) No person shall litter or deposit any waste, chemicals, soaps, shampoos, detergents in a protected area designated under subclause (1).

(4) No person shall set a fire in a protected area designated under subclause (1).

(5) No person may introduce any plant, fish, bird or animal into a protected areas designated under subclause (1) without written permission from the Landowners, Island Environment Authority and the Island Council.

(6) No person shall undertake any construction or building within a protected area designated under subclause (1) without written permission from the Landowners, Island Environment Authority and the Island Council.

(7) No person shall undertake any commercial tour operation within a protected area designated under subclause (1) without written permission from the Landowners and the Island Council

(8) The Island Environment Authority may, following consultation, with the Landowners concerned, declare other protected areas on the island.

#### 16. Management Plan –

(1) The Island Environmental Authority may from time to time, in consultation with the Island Council and landowners, prepare a draft management plan for any protected area designated pursuant to Regulation 15 (1) and (8), for the protection, conservation, management, and control of -

- (a) wildlife including species in the opinion of the Island Environment Authority are at risk and the habitat of such species;
- (b) water resources or any watershed area;
- (c) Atiu waters; and
- (d) any other matter relating to the environment which in the opinion of the Island Council will benefit from a management plan.

(2) A draft management plan prepared pursuant to the provisions of subclause (1) must -

- (a) take into account the environmental policies of the Island Council and Government;
- (b) receive the approval of any landowners affected prior to adoption by the Island Council.

### **Environment (Mitiaro) Regulations 2008**

#### 14. Designation of Protected Areas –

(1) The areas listed in Schedule 3 are hereby declared protected areas.

(2) No person shall, within a protected area designated under subclause (1), without the permission of the Island Environment Authority, remove, destroy or harm any plant, fish, bird or animal.

(3) No person shall litter or deposit any waste in a protected area designated under subclause (1).

(4) No person shall set a fire in a protected area designated under subclause (1)

(5) No person may introduce any plant, fish, bird or animal into a protected areas designated under subclause (1) without written permission from the Ui Ariki and the Island Council.

(6) No person shall undertake any construction or building within a protected area designated under subclause (1) without written permission from the Ui Ariki and the Island Council.

(7) No person shall undertake any commercial tour operation within a protected area designated under subclause (1) without written permission from the Ui Ariki and the Island Council.

(8) No person shall possess or use any soaps, shampoo, conditioner or detergent in any Caves that has been declared a protected area, with the exception of Vai Marere.

(9) The Island Environment Authority may, following consultation, with the Landowners concerned and the Island Council, declare other protected areas on the island.

15. Management Plan –

(1) The Island Environmental Authority may from time to time and shall when directed by the Island Council, prepare a draft management plan for any protected area designated pursuant to Regulation 14 ,for the protection, conservation, management, and control of -

(a) wildlife including species in the opinion of the Island Council are at risk and the habitat of such species;

(b) Water resources or any watershed area;

(c) Mitiaro waters; and

(d) any other matter relating to the environment which in the opinion of the Island Council will benefit from a management plan.

(2) A draft management plan prepared pursuant to the provisions of subclause (1) must take into account the environmental policies of the Island Council and Government.

(3) A draft management plan prepared by the Island Environment Authority must seek and obtain the approval of the Aronga Mana and any Landowners affected prior to approval by the Ui Ariki and the Island Council.

## **Annex 5. Extract from Marine Resources Act 2005 and draft Marine Resources Bill regarding Marine Reserves and Parks**

### **Draft Marine Resources Bill:**

#### **Part 3 Marine Reserves and Parks**

##### **24 Declaration of areas**

(1) The Queen's Representative may, by Order in Executive Council, declare any area of the fishery waters to be a marine reserve or marine park, if the Minister is satisfied that special management measures are necessary for 1 or more of the following purposes—

- (a) to provide special protection to the flora and fauna of the area:
- (b) to protect and preserve the natural breeding and nursery grounds and habitats of aquatic life:
- (c) to allow for the replenishment or restoration of aquatic life in any area where that life has been depleted:
- (d) to sustain livelihoods which rely on aquatic living resources:
- (e) to promote scientific study and research in respect of the area:
- (f) to preserve and enhance the biodiversity and natural beauty of the area.

(2) The Queen's Representative may, by Order in Executive Council, declare zones within any declared marine reserve or marine park within which certain activities specified in that Order in Council may be carried or are prohibited.

##### **25 Prohibited and permitted activities**

(1) Every person commits an offence and is liable on conviction to a fine not exceeding \$500,000 who, in any marine reserve or marine park, and without permission under subsection (2),—

- (a) fishes, attempts to fish, or conducts any related activities; or
- (b) takes or destroys any flora or fauna; or
- (c) does any of the following—
  - (i) dredges:
  - (ii) extracts coral, sand, or gravel:
  - (iii) discharges or deposits waste or any other polluting matter:
  - (iv) in any way disturbs, alters, or destroys the natural environment; or
- (d) constructs or erects any buildings or other structures on or over any land or waters within the reserve or park; or
- (e) does any other thing or takes an action which is in contravention of this Act or any other law relating to marine reserves or marine parks.

(2) The Minister, or any person authorized by him or her in writing, may give written permission to do any of the things otherwise prohibited under this section if the Minister or other person entitled to give permission is satisfied that giving the permission does not undermine the effective implementation of a fishery plan for the reserve or park concerned.

(3) Where an activity that could have a detrimental impact on a marine reserve or marine park is planned within the reserve or park by any Ministry or entity under any other Act or law, the Ministry or entity under whose management that activity is planned must obtain the written consent of the Minister before commencing that activity in that marine reserve or marine park.

(4) The Minister must not decide whether to give consent under subsection (3), until the Minister has consulted with, and considered any recommendations made by, any advisory committee established in respect of that reserve or park.

## **Annex 6. Extract from Marae Moana Act 2017 regarding protected areas**

**Part 2** refers to the establishment and definition of Marae Moana as well as governance arrangements

Section 8 defines what the Marae Moana comprises

Section 9-13 comprises the composition and working arrangements for the Marae Moana Council, including the duties and functions of the Council

Sections 14-17 set out the Technical Advisory Group, including the duties and Functions.

Section 18 sets out the Marae Moana Coordination Office and coordinator, with the coordinator responsible to the Chief of Staff of the Office of the Prime Minister.

**Part 3** refers to Marae Moana Policy and Spatial Planning

Sections 20 and 21 refer to marae moana spatial planning and notes the objective of spatial planning is to delineate zones within the marae moana and specifying the reasons or uses for which each zone may or may not be used or entered. Two types of marae moana spatial plans are outlined: (a) the national marae moana spatial plan; and (b) the island marine spatial plans.

Section 22 describes national marae moana spatial plans and the process by which they are prepared.

Section 23 provides for six zones for the national marae moana spatial plan

- (a) a general use zone
- (b) a restricted commercial fishing zone
- (c) a seabed minerals activity buffer zone
- (d) an island protection zone
- (e) an ocean habitat preservation zone
- (f) a national marine park zone

Section 24 provides for the establishment of a Marine Protected Area of 50 nautical miles established around all islands of the Cook Islands, and describes the limits and boundaries of this MPA. The purpose of the marine protected area established by subsection (1) is to protect the pelagic, benthic, coral reef, coastal, and lagoon habitats of the marae moana and, accordingly, all seabed minerals activities and large-scale commercial fishing in the area are prohibited, but other ecologically sustainable uses are permitted.

Section 25 provides for the establishment of additional MPAs and outlines the process, including boundary demarcation

Section 26 provides for island marine spatial plans. These may be proposed and established only on the request and with the approval of the affected Island Government (other than for Rarotonga or Suvarrow).

**Part 4** refers to scheduled marine-based activities

Section 27 Notes the Technical Advisory Group must prepare a schedule of marine-based activities for which management measures must be developed and implemented by agencies in order to reduce, minimize, or eliminate threats or potential threats to achievement of the Act.

**Part 5** refers to compliance with management measures

Section 28 outlines requirements for agencies to be notified of scheduled marine-based activities

Section 29 outlines the process for the development, implementation, and notification of management measures

Section 31 describes the procedure that applies if management measures are not developed or implemented

**Part 6** addresses requirements and processes for reporting

Section 32 outlines procedures for preparation of Marae Moana agency reports by relevant agencies, and outlines information required.

Section 33 outlines the process for, and the contents of, Marae Moana annual reports

Section 34 outlines the process for, and the contents of, Marae Moana outlook report to be prepared every 6 years.

**Part 7** outlines general and miscellaneous provisions

**Schedule 1** to the Act outlines marine protected areas established by this Act.

**Schedule 2** provides for amendments to other Acts to support the objectives of the Marae Moana Act. These other Acts include the: Environment Act 2003; Island Government Act 2012-2013; and Marine Resources Act 2005, amongst others. The objective is to ensure complementarity between the Acts.