



Review of Marine Turtles Legislation in Fiji

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PREFACE

The SPREP regional Marine Turtle Action Plan 2008-2012 places high priority to legislation as shown by the selection of the area "Policy and Legislation" as one of the nine themes of the Action Plan. The priority actions identified under this theme by member countries and territories as well as partners are:

- Action 5.1: Review and identify gaps and conflicts in current policies and legislation (in member countries and territories) that support / limit the RMTCP, including conventions, treaties, MOUs, agreements etc. [Priority: High].
- Action 5.2: Encourage the need to address gaps and conflicts found in the review of policies and legislation as described in action 5.1 where required. [Priority: High].
- Action 5.3: Encourage and support compliance mechanisms that are more effective at the community level, drawing upon and supporting existing laws and controls and conflict resolution systems, and using local community members. [Priority: High].
- Action: 5.4: Amend relevant policies and legislation regarding turtle size limits to better reflect the impact of removing mature females from populations and, where possible, to ensure that preference is given to using smaller-sized animals. [Priority: High].
- Action: 5.5: Incorporate relevant traditional knowledge, customary marine tenure and practices into policy, legislation management plans where appropriate. [Priority: Medium]
- Action 5.6: Ensure adequate protection is provided for nesting beaches and other known critical habitats for turtles through policy and legislation. [Priority: High].

This review then documents existing legislation and policies as well as the country's participation in international/regional agreements and conventions relevant to marine turtles. It attempts to identify gaps and then make recommendations for relevant legislation to improve and/or clarify existing ones and improve protection/management of marine turtles.

To help with the identification of legislation gaps, a team at SPREP constructed a matrix of legislation from existing legislation in the region dealing with turtles as well as creating new ones based on available information.

The involvement of national experts from relevant agencies is a vital component of this work.

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1. INTRODUCTION

Marine Turtle Species present in Fiji: Five species of marine turtles have been recorded to be found in Fiji waters. The most common species are: Green turtles [*Chelonia mydas*] and Hawksbill turtles [*Eretmochelys imbricata*] due to their nesting grounds being located at various sites throughout Fiji. The other species include: Loggerhead turtles [*Caretta caretta*], Leatherback turtle [*Dermochelys coriacea*], and the Olive Ridley turtle [*Lepidochelys olivacea*], with unconfirmed sporadic nesting incidences but mainly sightings.

Marine turtle nesting: Turtle nesting occurs at several isolated beaches through-out Fiji. The recorded nesting sites for the Green turtles are on the small islands of the Northern and Southern Lau Group, the Mamanuca Group, the islands off Vanua Levu like Yadua and Namena Lala Islands, also Kadavu and Rotuma. The annual Greenback turtles nesting population on these islands were estimated in 2003 to be 50-75 nests. The recorded nesting sites for the Hawksbill turtles are on the small islands off Northern Viti Levu like Nananu-i-Ra, islands off Vanua Levu like Yadua, Namena Lala and Laucala Islands, the islands of the Lomaviti Group and Mamanuca Group, and the Yasawa Islands. The annual Hawksbill turtles nesting population on these islands were estimated in 2003 to be 150-200 nests. For Loggerhead turtles, there have been unconfirmed nesting incidences but with mainly sightings on Aiwa Island (Lau), Taveuni, and islands off Vanua Levu like Yadua Taba. Sporadic nesting has been confirmed for the Leatherback turtles on the beaches of Savusavu, Qoma, Yasawas, Southern Vanua Levu, and Northern Lau. The annual Leatherback turtle nesting population has been estimated in 2003 to be 20-30 nests. In terms of marine turtle feeding areas, results from flipper and satellite tagging conducted in the region indicate Fiji as an important marine turtle foraging area for turtles nesting in other Pacific nations especially those to the east of Fiji.

Importance of marine turtles locally: The turtle or *vonu* or *ika bula* is an important part of Fiji's chiefly traditional ceremonies or functions such as chiefly installations and chiefly weddings. Turtles are a form of wealth in the category *i yau*, which includes property items such as the *tabua* (sperm whale tooth), the *masi* (cloth made from the bark of the Mulberry tree), and the *ibe* (mats woven from reeds). This indicates that the status of the turtles, as both a sacred item and special meat reserved for only a few people in a community. The art of fishing for turtles is confined to a select group known as the *gonedau* (traditional fishermen, headed by the *Tunidau*) who are obligated to supply their chiefs with turtles (amongst other marine species) during traditional ceremonies. Today, these traditions are disappearing, and turtle meat are being sought, whenever possible, for non-traditional celebrations also. This has declined turtle population. It is currently a major challenge for the relevant authorities, led by the Fisheries Department, to raise awareness and impose conservative measures for the protection of the turtles.

Review of current Fisheries Act for the new In-Shore Fisheries Management Decree: This review of Fiji's national marine turtle legislation is timely as the review of the Fisheries Act has begun by the Forum Fisheries Agency. The consultations on the draft are scheduled for July/August, 2010, with the aim to enact it in the November/December, 2010.

2. CURRENT MANAGEMENT/PROTECTION OF MARINE TURTLES IN FIJI

2.1 EXISTING LEGISLATIONS

(i) Fisheries Act 1985

An Act to make provision for the regulation of fishing.

Section 2 - Interpretation

- "fish" means any aquatic animal whether piscine or not, and includes shellfish, sponges, holothurians (beche-de-mer), sea-urchins, crustaceans and turtles and their eggs.

Section 3

- The Minister may appoint honorary fish wardens whose duties shall be the prevention and detection of offences under this Act and the enforcement of the provisions thereof.

Section 5

- A licensing officer may in his discretion grant licenses to take fish in Fiji fisheries waters.
- Every license granted under the Act shall terminate on the 31st December next after the day of issue. It shall be personal to the holder, shall not be transferable and shall be subject to such conditions as the licensing officer shall think fit to endorse thereon in accordance with the Act or any regulations made thereunder.
- No person shall take fish in Fiji fisheries waters by way of trade or business or as an employee of a person carrying on the trade or business of a fisherman unless such person is authorised by a license to take fish.

Section 7

- Any licensing officer, police officer, customs officer, honorary fish warden and any other officer empowered in that behalf by the Minister, may, for the purpose of enforcing the provisions of the Act, require any person engaged in fishing to exhibit his license, apparatus and catch.

Section 8

- A license to take fish may be cancelled by the court upon the conviction of the holder of any contravention of the terms of his license or for any breach of the provisions of the Act or of the regulations made thereunder.

Section 9

- The Minister may make regulations:
 - prescribing areas and seasons within which the taking of fish is prohibited or restricted, either entirely or with reference to a named species;
 - prescribing limits to the size and weight of fish of named species which may be taken;
 - regulating any other matter relating to the conservation, protection and maintenance of a stock of fish which may be deemed requisite.

(ii) Subsidiary Legislation (to Fisheries Act), Section 9: Fisheries Regulations 1992

Regulation 9

- No person shall harpoon any turtle unless the harpoon is armed with at least one barb of which the point projects not less than 9.5mm (3/8 inch) from the surface of the shaft, measured at right angles to the long axis of the shaft.

Part IV, Regulations 12-16

- Imposes limitation measurements of nets.

Regulation 20

This regulation has been amended through Regulation 20A of the Fisheries (Protection of Turtles) (Amendments) Regulations 2010 (refer to (iii) below).

Regulation 26

- No person shall export from Fiji turtle flesh; turtle shell unless worked into jewellery or otherwise processed into a form approved by the Permanent Secretary (for Fisheries).

(iii) Fisheries (Protection of Turtles) (Amendment) Regulations 2010

[Amendment to Regulation 20A made under Section 9(g) of the Fisheries Act].

1. (1) These Regulations may be cited as the Fisheries (Protection of Turtles) (Amendments) Regulations 2010.
(2) The Fisheries (Protection of Turtles) Regulations shall be referred to as the "Principal Regulations".
2. The Principal Regulation is amended in Regulation 20A –
 - i. sub regulation (1) by deleting paragraphs (a)-(c) and substituting -
 - (a) "in any way molest, take or kill turtles of any species; or
 - (b) sell, offer, or expose for sale or export any turtle shell, flesh or derivatives; or
 - (c) dig up, use, take or destroy turtle eggs of any turtle species; or
 - (d) use turtle, turtle derivatives, eggs or turtle shells for any purpose including education, research or tourism; or
 - (e) negatively impact turtle habitats."
 - ii. sub regulation (3) by deleting "31st December 2008" and substituting "31st December 2018".

And so the regulation reads as:

Moratorium on molesting, taking or killing of turtles

Regulation 20A – (1) Notwithstanding regulation 20, no person shall –

- (a) in any way molest, take or kill turtles of any species; or
- (b) sell, offer, or expose for sale or export any turtle shell, flesh or derivatives; or
- (c) dig up, use, take or destroy turtle eggs of any turtle species; or
- (d) use turtle, turtle derivatives, eggs or turtle shells for any purpose including education, research or tourism;
- (e) negatively impact turtle habitats.

- (2) The Minister may, upon a written request by any person, exempt that person by writing under his hand, from subregulation (1).
- (3) This regulation expires on 31st December 2018."

(iv) Endangered and Protected Species Act 2002

Section 3 (The Appendices mentioned make reference to the CITES Appendices I, II, III which mention turtles under Reptiles)

- in Appendix I, which lists all species threatened with extinction which are or may be affected by trade;
- in Appendix II, which lists all species that are not actually threatened with extinction but may become threatened with extinction if trade in those species is not regulated;
- in Appendix III, which lists all species identified by state parties that require regulation in their jurisdiction to prevent and restrict their exploitation which require the co-operations of other state parties to control trade in those species;

Section 9

- No person must export any specimen mentioned in section 3 except with an export permit.

Section 10

- No person must import any specimen mentioned in section 3 except with an import permit.

Section 17

- Any animal species listed in Appendix I that have been bred in captivity for commercial purposes, is deemed to be animal species listed in Appendix II.
- Any animal species listed in Appendix I or II (of CITES listing) that have been bred in captivity may not be traded unless the specimens originate from a breeding operation registered under this Act, and have been individually and permanently marked in a prescribed manner so as to render it difficult for any unauthorised person to alter, modify or erase the mark.
- The Minister may prescribe the conditions for registration of breeding operations.

Section 22

- No person must undertake any captive breeding of any special species or any artificial propagation of plant species...unless the person is registered with the (CITES) Management Authority.
- The Management Authority may register or refuse to register a person to undertake any captive breeding of animal species or any artificial propagation of plant species...
- The Management Authority may vary, suspend or revoke the registration of a person under this section.
- A person registered under this section must keep records of their stocks and of any other related transactions.
- The Management Authority may inspect the premises and records of persons registered under this Act.
- A person who contravenes subsection (1) commits an offence and is liable:
 - in the case of an individual person – to a fine of \$20,000 or to imprisonment for 4 years;
 - in the case of a company or association or body of persons, corporate or unincorporated – to a fine of \$100,000.

(v) Environment Management (EIA Process) Regulations 2007

[made under the Environment Management Act 2005]. There is no particular reference to turtles. These features are very general which can also take into consideration ecologically sensitive areas like turtle nesting areas. This is a gap that needs to be addressed, and is being recommended.

Regulation 14

- A site inspection must take into account factors affecting the relationship between the proposed development and the features of the site, including, but not limited to –
 - natural features such as topography, vegetation and watercourses;
 - adjacent uses, including –
 - people oriented activities;
 - other uses of the resources such as a river; etc

Regulation 23

- Persons carrying out an EIA study on a proposal are expected to conduct fieldwork to obtain accurate measurements of environmental values for use in making impact predictions and recommending appropriate environmental protection measures in respect of the proposal.
- A person carrying out an EIA study on a proposal must –
 - Inspect the site of the proposed development activity or undertaking, taking into account the factors set out in regulation 14 in relation to site inspections.

Regulation 25

- An EIA report on a proposal must, to the extent appropriate, include –
 - a description of the environmental setting of the site of the proposal, including a statement of environmental resources and conditions in the area before the implementation of the activity or undertaking, and a projection or estimation of changed environmental circumstances that may occur as a result of the activity or undertaking;
 - a description of the possible environmental and resource management impacts of the activity or undertaking, including any pollution or waste that may be generated, and impacts occurring during construction, operation, decommissioning, and abandonment phases of the of the activity or undertaking;
 - a statement of the various alternatives that have been considered for the activity or undertaking that are reasonably foreseeable and technically and economically appropriate, including the option of taking no action, and an outline of the reasons for choosing the proposed action;
 - a statement of the mitigation action proposed in respect of any adverse impacts identified.

2.2 OTHER MARINE TURTLE PROTECTION/MANAGEMENT MECHANISMS

(i) Local customary/traditional practices that protect/manage turtles

There is a traditional custom to conserve marine fisheries for the plentiful supply of fish for significant festive occasions. A high chief would demarcate a particular area of a river or stream or a marine fisheries area for no fish taking, including turtles, for a period of time before the occasion. This *tabu* would be observed by all members of the clan of the chief.

(ii) Regional arrangements

There is currently no specific regional MoU or agreement that deals specifically with the protection and conservation of marine turtles in the Pacific Islands region. However, Fiji is a member of SPREP that has a regional marine turtle action plan 2008-2012. Fiji is also a member of FFA that has an action plan for turtle by-catch mitigation.

(iii) International conventions/agreements

International species-specific conventions and agreements that involve protection or management of marine turtles to which Fiji is a party are:

- The Convention on the Conservation of Migratory Species of Wild Animals (also known as CMS or Bonn Convention), and
- The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

3. GAPS/CONFLICTS IN LEGISLATION

Fiji does not have a comprehensive legislation or a legislation with consolidated provisions for all aspects of the protection and management of marine turtles in its maritime zone. While existing legislations seem to adequately cover the protection and management of marine fisheries, in general, there are vast areas for improvement required for the specific references to the marine turtle. Furthermore, the imposition of policies for the various management strategies for turtle protection and conservation has been the alternative national mechanism whilst legislations are silent on those policy areas. The matrix of protection for turtles (Table 1) is in fact encompassing of all fisheries as stated in the legislations mentioned. The definition of fish in the Fisheries Act includes turtle and its eggs together with other aquatic animals. This generalises most provisions in the Fisheries Act when it refers to "fish" unless

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