

Report on Meetings Undertaken for the FSM Environmental Legislation Project, March 2009.

Andrew Yatilman, Director, FSM Office of Environment and Emergency Management.

The primary roles of the FSM Office of Environment and Emergency Management (OEEM) are to coordinate and implement FSM's responsibilities and actions in relation to the Multilateral Environment Agreements (MEAs) to which FSM is a party; to coordinate policy and government action on environmental protection, water quality and other related activities in the FSM in close consultation with State EPAs and other appropriate authorities.

Even though OEEM is responsible for the implementation of Title 25 of the FSM Code, which sets out a comprehensive environment impact assessment process applicable to all development activities in all of FSM States, these functions are not undertaken. OEEM does not currently have the financial or technical capacity to perform a regular environmental impact assessment function, and these are instead undertaken by the Chuuk, Pohnpei and Yap EPAs, and the Kosrae Island Resource Management Authority (KIRMA). Mr Yatilman stated that is appropriate for the State EPAs and KIRMA to perform these functions without a duplicate process being undertaken at the National level, EXCEPT that OEEM should maintain legal authority to assess the environmental impact of activities that may be undertaken in FSM's exclusive economic zone (EEZ). The assessment of environmental impacts in the National Capital District in Palikir should also be monitored. *Refer to the Legislative Review regarding suggested amendments to Title 25 of the FSM Code.*

OEEM is also responsible for coordinating FSM's Sustainable Development Council (SDC). The SDC is an inter-agency body of the FSM National Government, chaired by the Vice President, whose role is coordinate policies and programs of the FSM National Government regarding environmental protection and other sustainable development-related matters. OEEM has sought to call meetings of the SDC but for various reasons this has not occurred for some years. The last meeting of the SDC was in 2005. The State Governments were in the past represented on the SDC but for budgetary reasons are no longer represented on it. The State Governments are informed of SDC discussions and decisions by receiving its meeting documents.

With regard to its responsibilities to implement MEAs, OEEM is most active in relation to the Vienna Convention and the Montreal Protocol on Ozone Depleting Substances, the Basel Convention and the Waigani Treaty on the Control of Transboundary Movements of Hazardous Wastes, and the Stockholm Convention on Persistent Organic Pollutants. As yet there are no laws implementing FSM obligations under these MEAs. The passage of these laws is a priority for FSM. *Refer to the Legislative Review regarding suggested amendments to Title 25 of the FSM Code to implement these conventions.*

OEEM shares responsibility with the Department of Resources and Development (DR&D) for the implementation of the Convention on Biological Diversity; OEEM is responsible for issues related to access and sharing of benefits arising from the use of

genetic resources and associated traditional knowledge (ABS); and DR&D is responsible for the remainder of CBD-related concerns.

Cindy Ehmes FSM Office of Environment and Emergency Management.

Ms Ehmes is responsible for both ABS under the CBD, and for issues relating to ozone depleting substances under the Vienna Convention and Montreal Protocol.

With regard to ABS, the only requirements in FSM law controlling the access of foreigners to FSM genetic material, including traditional knowledge, are those in regulations pursuant to Title 26. These regulations require researchers to apply for and receive a “Researcher Permit” prior to undertaking research. The permits are issued with conditions, but give the FSM very little control over any products or outcomes of the research.

There have been some researchers in FSM undertaking botanical research and Ms Ehmes stated that they had made agreements with certain landowners regarding their research. Copies of these agreements are not held by the National Government, which had no role in their negotiation.

The FSM Government agency overseeing the consideration and issuance of research permits is the Office of National Archives, Culture and Historic Preservation, whose Director is Dr Rufino Mauricio.

Ms Ehmes stated that a legal regime dealing comprehensively with ABS under the CBD is an urgent need in FSM. *Refer to recommendation for CBD implementation in the Legislative Review.*

With regard to Ozone Depleting Substances, FSM ratified the Vienna Convention in 1994 and the Montreal Protocol in 1995. FSM commenced reporting under these conventions in 2002 but there is no licensing system in place yet as such a system would require passage of appropriate legislation. It is expected that around 20 import licences will be considered under a future law. There has been some work on FSM ODS legislation since 2002 but none has yet been considered by the Congress. Most recently, in 2008 OEEM worked with officers from the Department of Justice to prepare a Bill for consideration by the FSM Congress: the “Import Ban Act”.

At the time of writing the specific provisions of the Import Ban Act were being considered by OEEM, who were generally satisfied with it but who had some concerns regarding (1) requirements placed on the import of motor vehicles (FSM has no capacity to test each imported vehicle and so these requirements were considered inappropriate) and (2) terms used to refer to FSM agencies needed to be revised from those used in the Tongan legislation upon which the law was modelled. *Refer to recommendation on Montreal Protocol implementation in the Legislative Review.*

The consultant discussed with Ms Ehmes the combining of the ODS law with those to be drafted under this project on matters of Basel, Waigani and Stockholm Convention implementation. This was considered a good plan since it would require Congress considering a single law, instead of two or more.

OEEM has been working with the FSM Customs Office in preparation for the implementation of ODS legislation and some training has been provided to FSM Customs officers.

Mr Simpson Abraham, Sustainable Development Planner, FSM Office of Environment and Emergency Management

Mr Abraham was the main host for the consultant and accompanied him to all meetings. The consultant held informal discussions with Mr Abraham on each day of the in-country visit and all aspects of the project were discussed with Mr Abraham. Mr Abraham's views are reflected in many aspects of the attached legislative review and gaps assessment.

Mr Joe Konno, Climate Change Officer, OEEM

Mr Konno is responsible for FSM participation and implementation of the UN Framework Convention on Climate Change. The consultant met with Mr Konno to discuss various issues related to FSM participation in the UNFCCC and other OEEM programs. Most centrally for current purposes, while Mr Konno is aware of some legal reform that other countries undertake in relation to climate change (e.g. emission trading systems or building codes), he informed the consultant that FSM was focused on adaptation measures and was not planning any legal reform in relation to climate change at this time.

Hon. Joe N. Suka, Floor Leader, FSM Congress

The consultant had a courtesy meeting with Mr Suka to provide him with information on the project and to seek his advice and guidance. Mr Suka welcomed the consultant and indicated his support for the project. Mr Suka noted his concerns regarding oil leaks from the sunken ships in Chuuk Lagoon.

Mr Maketo Robert, Secretary, FSM Department of Justice

The consultant had a courtesy meeting with Mr Robert to provide him with information on the project, to seek his advice and guidance, and to request him to identify a member of his staff to be a contact-point in the DoJ for the project. Mr Robert welcomed the consultant, indicated his support for the project and in following days identified Ms Johnson-Asher as the DoJ contact for the project.

Ms Lori Johnson-Asher, Assistant Attorney-General, FSM Department of Justice

The consultant held two meetings with Ms Johnson-Asher, who is the attorney that deals with most of the environment-related legislative development for the FSM

Department of Justice. While the development of environment legislation is among Ms Johnson-Asher's responsibilities, she is also responsible for various other tasks, such as litigation. Often environment-related matters cannot be the first priority.

Ms Johnson-Asher has a strong personal interest in environmental matters and considerable experience in this field; prior to joining the FSM Department of Justice she worked for the Pohnpei EPA. She is a board member of the Micronesia Conservation Trust.

The FSM Department of Justice has had a high rate of staff turnover in recent years which has meant that different attorney's have been dealing with environmental amendments or bills. Ms Johnson-Asher is in the process of sorting out the legacy of the many unsorted files left by her predecessors, some of which include environmental legislative matters. Ms Johnson-Asher was aware of pending amendments to fisheries regulations and of the ozone bill, but had not yet dealt in detail with these matters herself.

Ms Johnson-Asher was pleased to learn of the environmental law technical assistance project. She assisted the consultant with his enquiries regarding pending environment-related legislation and is willing to work collaboratively with the consultant during the course of the project.

Also discussed with Ms Johnson-Asher were the advantages and prospects of FSM developing in-country environmental law expertise. Ms Johnson-Asher is currently undertaking a Master of Laws at University of Hawaii, and has an interest in pursuing doctoral studies in environmental law. The consultant passed on to Ms Johnson-Asher some information on doctoral study opportunities in Australia, and promised to follow-up on other such opportunities with his networks in Australian universities.

Mr Alik Jackson, Staff Attorney, Congress of FSM

The consultant had a courtesy meeting with Mr Jackson to provide him with information on the project. Mr Jackson welcomed the consultant and discussed the project work programme. Mr Jackson noted that during his time with the Congress that little or no environment-related legislation had been dealt with. Mr Jackson noted the importance of providing explanatory material with any draft legislation to assist the senators. Mr Jackson indicated his support for the project activities.

Mr. Bernard Thoulag, Executive Director, National Oceanic Resource Management Agency (NORMA)

Title 24 of the FSM Code (the Marine Resources Act) is the law regulating marine resources in FSM's EEZ. FSM's fisheries resources are its most substantial natural resource and accordingly this law of great importance to the country. Title 24 was completely revised and greatly expanded in 2002.

NORMA currently has the following regulations in place:

- Administrative Penalty Regulations

- Domestic Fishing and Local Fishing Vessel Licensing Regulations
- Interim Research and Training Vessel Licensing Regulations
- Reefers and Fuel Tankers Licensing Regulations
- Vessel Monitoring System Regulations

While the 2002 law and its regulations represent a substantial improvement on the previous regime, there are various amendments required both to the Code, and to the associated regulations, dealing with conservation and management measures required under the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*. NORMA does not have any in-house legal capacity and is working with the Department of Justice in preparing these amendments.

Mr Thoulag informed the consultant that key aspects of the new provisions will deal with:

- Closure of FADs (Fish Aggregating Devices)
- Requirements for full retention, i.e. no disposal of by-catch
- Closure of high-seas pockets

Following the meeting NORMA provided copies of various documents, including a substantial report (30pp) which assessed the compliance of FSM Title 24 with the conservation and management principles and measures contained in the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean*. This report has been very useful in preparing the fisheries aspects of the legislative review. *Refer to the Legislative Review regarding amendments to the regulations under Title 24 of the FSM Code to implement the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.*

Mr John Uwas, Assistant Secretary, Division of Customs and Tax Administration, FSM Department of Finance and Administration

The consultant met with Mr Uwas, specifically to discuss the proposed legislation to implement the Basel, Waigani and Stockholm Convention. Mr Uwas is responsible for customs operations in FSM.

Mr Uwas expressed his support for the proposed legislation. He emphasized that, particularly given the hazardous nature of the materials in question, customs staff would need to be trained in identifying and handling the wastes and chemicals, and in appropriate packaging and safety procedures. It is also possible that protective equipment would be needed for staff tasked with inspecting such things.

Dr Rufino Mauricio, Director, FSM National Office of National Archives, Culture and Historic Preservation

Dr Mauricio's office is responsible for considering and issuing research permits and it was thus considered important to meet with him in relation to the proposal for a legal

regime for the protection of traditional biological knowledge. Under regulations pursuant to Title 26 of the FSM Code, the Office of National Archives, Culture and Historic Preservation, receives applications from persons seeking to conduct research in FSM, and issues upon its discretion issues permits for such research. This process was originally designed for archeological and other humanities research. The permits are subject to conditions, but the process is not sufficient to either protect traditional biological knowledge or to ensure adequate access and benefit sharing in relation to the products of biodiversity-related research activities. Researchers also need to obtain entry permits from the immigration office. The consultant was provided with copies of the forms for research and entry permits.

Dr Mauricio stated that a legal regime for the protection of traditional biological knowledge was an important priority and was urgently needed. He emphasized that traditional knowledge varies greatly from state to state and often it is difficult to identify the owners or custodians of the knowledge. He stated the FSM copyright laws need revisiting, but that a TK regime would need to be separate from copyright law. *Refer to the Legislative Review regarding implementation of the CBD.*

The consultant provided the regional model TK law, and associated documents, to Dr Mauricio.

Mr Moses Pretrick, Manager, Environmental Health and Preparedness Unit, Division of health services, FSM Department of Health and Social Affairs

Prior to the creation of OEEM Mr Pretrick's office, and specifically Mr Pretrick, was responsible for the FSM's involvement in the Basel, Waigani and Stockholm Conventions, as well as the (notional) implementation of Title 25. Mr Pretrick confirmed that Title 25 had in his experience always been inoperative because it duplicates matters dealt with under State laws by the State EPAs. *Refer to the Legislative Review regarding suggested amendments to Title 25 of the FSM Code.*

Mr Pretrick coordinated the development of the National Implementation Plan for Persistent Organic Pollutants. Implementing legislation for the Stockholm and the Basel/Waigani Conventions has been discussed with officers of the Department of Justice, but had not been progressed. *Refer to the Legislative Review regarding suggested amendments to Title 25 of the FSM Code* to implement these conventions.

Mr Pretrick also stated that he had attended meetings on behalf of FSM in relation to the Rotterdam Convention, but that no decision had been made during his time upon whether FSM should ratify it.

Marion Henry, CBD Officer, FSM Department of Resources and Development.

Priority is intellectual property rights in biodiversity (ABS). *Refer to recommendation for CBD implementation in the Legislative Review.* MH made no comments on the other legislative proposals from the NBSAP. MH was concerned that the recent approach to biodiversity protection e.g. conservation covenant over Yela, has focused people's attention on getting cash for conservation; expectations are raised, as is the

potential for conflict among resource owners. This causes more land disputes and other conflicts. For the Micronesia Challenge, the idea of “effective management” is not about “no-take zones”, but rather indicates “sustainable use”.

Pohnpei State EPA Director [name of director] and Donna Scheuring, Consultant

The Pohnpei EPA was established under Pohnpei State Law No 3L-26-92, as amended by Pohnpei State Law No 3L-45-93 (relating to regulations of the Environmental Protection Agency pertaining to mining and dredging and the removal of mined and dredged materials).

Pohnpei EPA provided the consultant with copies of all of their regulations:

Air Pollution Control Standards and Regulations 30/3/95
Barber Shop and Beauty Parlor Regulations 3/30/95
Carnival, Fair and Food Sale Regulations 3/30/95
Drinking Water Regulations 3/30/95
Earthmoving Regulations 4/2/2008
Environmental Impact Assessment Regulations 3/30/95
Food Store Regulations 02/09/98
Hearing Regulations 3/30/95
Mosquito and Fly Control Regulations 3/30/95
Pesticide Regulations 3/30/95
Regulations on Public Access to EPA Records May 15, 1996 May 15, 1996
Public Buildings and Places of Public Assembly Environmental Standards Regulations 3/30/95
Restaurant and Food Selling Places Regulations 3/30/95
Rodent Control Regulations 3/30/95
Sakau Bar Regulations
Ship Environmental Health Inspection Regulations 3/30/95
Solid Waste Regulations 3/30/95
Swimming Pools Regulations 3/30/95
Toilet Facilities and Sewage Disposal Regulations
Marine and Fresh Water Quality Standard Regulations 3/30/95

EPA also administers Pohnpei State Law No 6L-66-06 on litter and waste.

Administering all of the above keeps the Pohnpei EPA staff fully occupied.

Current and future legal issues being dealt with by the Pohnpei EPA include:

- raising their Emergency Response fund from its current level to US\$100,000;
- amendments to the law that would enable them to issue on-the-spot citations rather than having to pursue legal actions against all offenders;
- amendments to the law that would enable them to charge cost recovery fees for certain services, such as water quality testing.

Mr Donald David, Chief, Marine Development, Department of Land and Natural Resources, Pohnpei State Government.

The Marine Development Division (MDD) deals with management and conservation issues and not with the enforcement of laws or regulations.

MDD, in response to evidence from surveys showing that the Pohnpei near-shore fishery is over-fished, is currently working with the Pohnpei Attorney-General's Office in developing regulations relating to restrictions on night spear fishing, net mesh sizes, and on size limits on the taking of certain high-value target species.

Pohnpei has a comparatively high capacity for fisheries law enforcement – 8 personnel. In this regard a significant change currently being considered by the Pohnpei State Government is an administrative restructuring that would shift the marine enforcement officers, currently located in a division within the Department of Land and Natural Resources, to the Office of Public Safety (Police Dept). This would enable them to issue on-the-spot citations. A significant limiting factor until now in the enforcement of Pohnpei's near-shore fisheries laws has been the requirement for all offences to be dealt with the courts.

MDD are working cooperatively with the Conservation Society of Pohnpei to support Pohnpei's network of Local Marine Protected Areas. In early 2009 the Pohnpei State Legislature passed an amendment to the 1999 Marine Sanctuaries Law to expand Kehpara Marine Sanctuary, the purpose of which is to protect grouper spawning sites, to include the sites where all 3 species spawn.

In terms of legal reform, Mr David suggested that the 1999 Marine Sanctuaries Law would benefit from amendment that recognised the successful practice of the local Marine Protected Areas, specifically the centrality of the participatory development of Community Based Management Plans for each of the Protected Areas.

Mr Saimon Lipai, Chief, Pohnpei State Forestry, Department of Land and Natural Resources

Mr Lipai's office is responsible for implementing Pohnpei's 1987 Watershed and Mangrove protection law. The central concern in implementing that law is the marking of the watershed boundary line. After many years of disputes and opposition from traditional leaders, marking of the watershed line commenced in 2001. The line has been marked in 2 of the five wehi (municipalities), and now line-marking has commenced in Nett. Kitti, the largest municipality and the areas with the most farmers reliant upon illegal upland sakau (kava) farming is still resisting marking of the line.

There is joint monitoring undertaken involving both CSP and the State Government. The most recent monitoring showed some new planting in Madolenihmw. There is a program supporting sakau farmers to 'grow low' i.e. not in the watershed.

The 1987 law calls for regulations to be promulgated. No regulations have been made, largely due to the problems of marking the watershed line.

A new development in relation to the Watershed Law is the negotiation of a Memorandum of Understanding between the Nett Municipal Government, the State Government and the Conservation Society of Pohnpei. The MOU makes commitments with regard to watershed protection and sets out the responsibilities of the parties.

Mr Lipai suggested that the 1987 law should be amended to recognise the central role of local communities in watershed protection.

Mr Bill Raynor, Conservation Programs Director, Asia Pacific & North Asia Region, The Nature Conservancy

Prior to his current position Mr Raynor managed TNC's activities in Micronesia, and he has a long involvement in conservation in FSM.

BR noted that the NBSAP omitted any proposal for a national-level protected area law because it was decided that these functions were best undertaken by statement governments working with NGOs and communities.

The most important priority for FSM national government in terms of environment legislation was the development of a regime for the protection of traditional biological knowledge and access and benefit sharing for genetic resources.

He suggested that even though it wasn't perfect, that the Pohnpei 1999 sanctuaries law was working. He suggested 'getting the protected areas right before passing any law'. Pohnpei, Kosrae and Yap are all working on community-based protected areas – laws will follow sooner or later.

The national government could play a role in raising funds for protected areas – as required under the Micronesia Challenge. The Palau law imposing visitors fees is a model.

Another concern for BR in terms of national environmental law is the enforcement of fisheries controls in the EEZ. He believes that the patrol boats could do more to prevent illegal fishing.

The biosecurity situation is OK – there are still invasive species getting into the country, but at least controls are in place.

BR would like to see the FSN national government to pass laws to implement all of the treaties it has ratified. He also suggested some form of performance-based financial allocations i.e. if state governments

Mr Patterson Shed, Director, Conservation Society of Pohnpei

The Conservation Society of Pohnpei, within both its marine and terrestrial programs, cooperates closely with the offices of the Pohnpei State Government in relation to the

implementation of the 1987 Watershed and Mangrove Protection Law and the 1999 Marine Sanctuaries Law.

In relation to the watershed, CSP staff members have undertaken extensive consultation with affected local communities and traditional leaders regarding the importance of watershed protection and the marking of the watershed boundary. CSP staff also assist in monitoring watershed areas where the boundary has been marked.

In relation to marine protection, CSP staff assist local communities who are interested establishing marine protected areas to undertake local-level planning process and to negotiate with the Pohnpei State Government to declare those areas as marine sanctuaries under the 1999 law. The first local MPA (Lenger) was established in 2001. There are now 11 local MPAs. Mr Shed stated that the 1999 law would be much improved by an amendment recognising the central role of the community-based management planning process.

CSP has been central in engaging the municipal and traditional leaders in Nett Municipality in the process of developing the Memorandum of Understanding with the State Government and CSP. Mr Shed provided the consultant with a copy of the MOU.

Mr Shed stated that the Pohnpei Resource Management Committee had in the past been an effective coordinating body with regard to environmental regulation in Pohnpei. The PRMC isn't currently active which is an inhibiting factor in relation to the effectiveness of environmental law in Pohnpei.

Mr Shed also strongly supported the proposal for the marine enforcement officers to be transferred to the Office of Public Safety. In the past the need for all offenders of the MPA boundaries to be apprehended and brought before the state court has been problematic; on-the-spot citations would be much more effective and efficient.

Willy Kostka, Executive Director, Micronesia Conservation Society.

WK discussed the programs of the Conservation Society of Pohnpei and the Pohnpei Division of Marine Conservation in working on new programs in the Kitti and Pakin MPAs .

MCT has assisted with sustainable finance plans for FSM biodiversity protection under the Micronesia Challenge.

They are interested in investigating legislation allowing the collection of visitors fees for protected areas, similar to Palau.

In Pohnpei, a key legal reform would be the implementation of a Joint Enforcement MOU between the State Government and the Municipal Governments for environmental and resource management regulations/laws. The sticking point in the past has been about costs – the Municipal Governments want to keep the fines, but the State Government won't allow it. Each municipality has about 5 police officers.

Pohnpei State Government has passed an amendment for the expansion of Black Coral MPA –spawning aggregation boundaries expanded.

Donald David is working on a size limits law for fishing in Pohnpei – being drafted.

Ms Cathy Smithson, AusAID Representative, Australian Embassy in Pohnpei

The consultant met with Ms Smithson to discuss the project and to inquire regarding possible support of AusAID for future environmental law technical assistance in FSM. Ms Smithson identified the following opportunities in that regard:

- Small grants program (marginally suitable due to limits on the amount of each grant);
- Scholarships for FSM citizens (while it is important to develop in-country expertise, AusAID scholarships for FSM citizens are currently limited to USP which does not at this time have substantial environmental law capacity);
- Pacific Governance Support Program (this is a program wherein an Australian Government Department which has links with a Pacific government or governments applies to AusAID for funding to provide technical assistance to the Pacific government or governments. This is more likely to be appropriate in relation to capacity-building for specific implementation activities, such as training of Customs officers, rather than for legislative development);
- Pacific Technical Assistance Mechanism (under this program an executive-level Australian professional is employed to work in-country with a Pacific island government to achieve specific objectives.) PACTAM could be an appropriate avenue to provide environmental law technical assistance of the kind identified in the gaps assessment of this project. This would depend upon the ability of AusAID to locate and employ an appropriate environmental law specialist willing to work in FSM for an extended period. Ms Smithson emphasised that PACTAM is considered by AusAID to be an expensive program and it is by no means certain that a request for such support by FSM would be supported. If the PACTAM option was pursued the FSM government would need to be willing to supply a local salary (which AusAID would supplement), a housing allowance and would need to prioritise the project.i.e. FSM is unlikely to be allocated more than 2 PACTAM deployees at any one time.