



NIUE

REVIEW OF NATURAL RESOURCE AND ENVIRONMENT RELATED LEGISLATION



Prepared by
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INTRODUCTORY NOTE

The following review, prepared jointly by the Secretariat of the Pacific Regional Environmental Programme (SPREP) and the Environmental Defenders Office Ltd (EDO NSW), updates and builds on the reviews conducted in the early 2000s under the International Waters Project.

The review offers a brief overview of environmental legislation in force in each Pacific Island country identified and is current as of January 2018.

A number of sources were referenced for this update, including:

- Prior reviews prepared by SPREP;
- Pacific Islands Legal Information Institute – Paclii;
- ECOLEX - an information service on environmental law, operated jointly by FAO, IUCN and UNEP; and
- Government websites.

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This review is for information purposes only. It is not intended to be a complete source of information on the matters it deals with. Individuals and organisations should consult a local lawyer for legal advice on specific environmental matters.

If you have any feedback in relation to this review, please forward your comments to: registry@sprep.org.

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CONSTITUTIONAL AND ADMINISTRATIVE STRUCTURE

1.1. Legal System

Sources of law on Niue, in order of priority, are the Constitution, Parliamentary Acts, regulations, by-laws and the Common Law of England. Niuean law has evolved first under British law (between 1890 and 1901), then, until 1966, under New Zealand law when Niue was administered under the *Cook Islands Act 1915*.

In 1966, the *Niue Act* was promulgated. This provided limited authority for the Niue Island Assembly to make laws not reserved for the New Zealand Government. Section 672 (now repealed) of The *Niue Act 1966* (NZ) provided that the law of England, as it existed on 14th February 1840, was in force in Niue except in so far as it is inconsistent with the *Niue Act* or inapplicable to the circumstances of Niue. Laws in Niue came into effect during this time through the passing of Acts on behalf of Niue by the New Zealand Parliament or the passing of Ordinances by the Island Council (1916-1959) or the Niue Assembly (1959-1974).

In 1974, through the passing of the *Niue Constitution Act*, Niue became self-governing in free association with New Zealand. Under the Act, New Zealand maintained responsibility for Niue's foreign affairs and defence as well as for the provision of economic and administrative assistance. No Act of New Zealand has become law on Niue since 1974 without the consent of the Niue Assembly. No subordinate legislation made after 1974 has become law in Niue unless it was made under an Act extended to Niue and was consented to by the Niue Assembly. Regulations exist under all statutes.

Niue Act 1966

The objective of the act is to make comprehensive provision for the constitutional government of Niue.

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

The substance of relevant provisions includes the following:

- Section 50 Village Councils may be established by law. This may include powers to make by-laws under section 51. The by-laws may be disallowed by the Assembly under section 52 and each by-law may only take effect if assented to by the Cabinet.
- Section 219 A person must not permit a horse, sheep, pig, goat or cattle to be at large or to trespass on land.
- Section 222 It is an offence to pollute water.
- Section 226 Makes provision for the prevention of cruelty to animals.
- Part XVI Provision is made for the development of land which is declared by the Land Court to be subject to the provisions of this Act.
- Part XXIX Niuean antiquities are protected under this Part.

Under the 1968 Amendment Act the following provisions apply:

- Section 3 All land is either Crown land or Niuean land.
- Section 4 All land is vested in the Crown, subject to rights vested by Niuean custom or in any other way.
- Section 23 Every title to and interest in land is determined in accordance with Niuean custom, and any law-making provision in this regard.
- Section 24 Niuean land may not be alienated, except in accordance with this law or any

other law. Parts V and VI make comprehensive provision for a Land Court and Land Appellate Court.

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

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

Constitution Act 1974 (as amended in 1992)

This is the primary source of government authority in Niue. It is important to note that it does not make reference to environment-related matters or to the recognition and protection of human rights. The Constitution of Niue provides for an executive, a legislature and a judiciary.

Executive Authority is vested in the Queen in right of New Zealand. A Cabinet, consisting of the Premier and three members of the Niue Assembly is empowered to exercise executive authority on behalf of the Queen. A Public Servant assists the Cabinet. Additional support is available through statutory bodies, established by legislation.

The Legislature consists of the Speaker and 20 members. It is charged with making law and for ensuring peace, order and good governance on Niue. Elections are held every three years. The Legislative Assembly is the supreme law-making body with the authority to veto Executive government policy.

The Judiciary consists of the High Court of Niue and the Land Court. The High Court, overseen by a single Chief Justice, supporting judges and commissioners, is the court of general criminal and civil jurisdiction and, apart from land, has all power required to administer law on Niue.

The substance of relevant provisions includes the following:

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

1.2. Customary law

Unwritten traditional law still commands some influence in the regulation of local affairs. Although the Constitution does not ascribe the same degree of prevalence to customary practice as is the case in some Pacific Island countries, the *Niue Act 1966* (NZ) prescribes that judicial notice is to be taken of 'Niuean custom so far as it has the force of law'.

1.3. Local government

The only recognised form of local government is the Village Councils. There are 13 Village Councils in Niue: Makefu, Tuapa, Namukulu, Toi, Hikutavake, Mutalau, Lakepa, Liku, Hakupu, Vaiea, Avatele, Tamakautoga and Alofi.

Village Councils Act 2016

The *Village Councils Act 2016* repeals the previous *Village Councils Act 1967*. It provides for the establishment of Village Councils as bodies with the power to acquire, hold, dispose of, mortgage or pledge property, to enter into contracts, to borrow money, to invest funds, to institute and defend actions, suits and other legal proceedings, and to do all other things necessary for the purposes of its functions and duties.

The substance of relevant provisions is as follows:

- Section 4 Provides for the establishment and constitution of Village Councils, which must consist of three members at a minimum, and five at a maximum.

Part 3 sets out the functions and powers of Village Councils.

- Section 18 The functions of Village Councils are prescribed and these include the power and responsibilities over:
- Provision, construction, maintenance and regulation of infrastructure, including bush roads, access to the sea and fishing grounds;
 - Maintenance of public parks, gardens, recreation areas, reserves or land vested in the Council;
 - Provision of services relating to health, sanitation, prevention and suppression of infectious and other diseases, abatement of nuisances, disposal of the dead, including prevention of pollution of water sources.
 - Prevention and abatement of nuisances, including fire and noise pollution;
 - Establishment and regulation of markets and commercial enterprises; and
 - Maintaining peace and security of village residents.
- Section 20 Village Councils have the function of establishing and maintaining plans for the council area, including responses to natural disasters and the sustainable use of coastal, reef, and sea foods.
- Section 21 Village Councils have wide powers, including powers to:
- Engage in business;
 - Take action to improve standards of housing and agriculture;
 - Carry out works for the benefit of the Council area;
 - Borrow money, acquire land or buildings by lease;
 - Develop or improve land;
 - Provide assistance with any matter affecting village residents; and
 - Anything it considers necessary for the performance of its functions or duties under this Act.
- Section 23 Village Councils may make by-laws for the performance of its functions.
- Section 31 Village Councils must meet with the residents of the village at least once every six weeks.

Section 51 A general power to make necessary Regulations for the purposes of this Act is given to the Cabinet.

ENVIRONMENTAL PLANNING AND ASSESSMENT

2.1. National Environmental law

Environment Act 2015

This is the principal piece of environment legislation in Niue. The Act contains extensive provisions relating to environmental protection, including a requirement for development consents, and allows the prescription of protected areas, plants, and animals.

The Act came into force in 2015 with the objective to provide for the preservation and protection of the environment of Niue, and for that purpose –

- a) Authorise the making of environmental standards to regulate activities that affect the environment of Niue; and
- b) Ensure that all government departments and public authorities consider environmental matters when making decisions that have or may have an effect on the environment of Niue.

It repeals the previous *Environment Act 2003* but specifies that it does not apply to any activities completed or lawfully begun under the previous Act, or any activity authorised under the previous Act. It also provides that the *Biosafety (Genetically Modified Organisms) Regulations 2006* and the *Ozone Layer Protection Regulations 2007* are continued as if made under this Act, and that the provisions of this Act and any environmental regulations made under it override other enactments or subordinate legislation to extent that they are inconsistent.

The repealed *Environment Act 2003* was the legal foundation for the Environment Department, which has a continued existence pursuant to section 37 of the 2015 Act. Functions of the Department include:

- a) Administration of the Act and environmental regulations;
- b) Assisting the Government to formulate environmental and resource management objectives, policies and legislation;
- c) Designing and implementing programmes for environmental planning and resource management, environmental impact assessments, waste management, pollution control, nature conservation, protection of cultural and historic areas, dealing with climate change and natural disasters, and control and use of living modified organisms;
- d) Promoting environmental awareness and education;
- e) Reviewing environmental legislation; and
- f) Monitoring and enforcing environmental laws and policies.

2.2. Land tenure

The Constitution

Land administration is accommodated within the Niuean Constitution, which establishes the Land Court and provides for scrutiny (by way of a Commission of Inquiry), of bills before the Niue Assembly affecting Niuean land or the Land Court.

Niue Amendment Act (No. 2) 1968

The *Niue Amendment Act (No. 2) 1968* (NZ), together with the *Land Ordinance 1969* (legislated as the *Land Act 1969*) contain the principal features of Niue's land law.

The Act provides that all land in Niue is apportioned as either Crown or Niuean Land (section 3). It provides the following definitions under section 2:

- 'Crown land' means land in Niue vested in the Government, being land that is free from Niuean custom;
- 'Niuean land' means land in Niue held by Niueans according to the customs and usages in Niue.

It also defines 'Leveki Mangafaoa' as being 'a trustee or guardian of a family having any right, title, estate, or interest in Niuean land'.

Section 21 provides that all land held by Niueans under Niuean custom at the commencement of the *Amendment Act* is vested in the Crown, subject to Niuean custom:

All land in Niue which at 1 November 1969 is held by Niueans under Niuean custom is hereby vested in the Crown as the trustee of owners of it, and shall be held by the Crown subject to Niuean custom, and all such land is hereby declared to be Niuean land accordingly, but shall remain subject to any right which may have been lawfully acquired in respect of it before 1 November 1969 otherwise than under Niuean custom.

Section 24 provides that no person is capable of alienating Niuean land or any interest in it, except for the government for public purposes under Part 2, or as provided for under any other enactment (see *Land Act 1969* below). In relation to Niuean land, alienation is defined as "the making or grant of any transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, encumbrance, trust, or other disposition".

The *Amendment Act* also sets out a number of matters relating to the general jurisdiction, orders, and contempt of Land Court. Notably, section 47 outlines the areas in which the Land Court has exclusive jurisdiction, including:

- Determining the relative interests in Niuean land;
- Determining any claim for damages for trespass or other injury to Niuean land;
- To create easements in gross over Niuean land; and
- To authorise the survey of any land.

Land Act 1969

The purpose of the *Land Act 1969* is to "provide for the control and tenure of land, the survey of land, the registration of title to land and other like purposes". The *Land Act* provides for the registration of land, the investigation of title, the alienation of Niuean Land, and surveys of land.

Relevant provisions include:

Section 10	The court shall determine every title and interest in Niuean land according to the customs and usages of the Niuean people.
Section 12	The Court shall determine the ownership of any land by ascertaining and declaring the Mangafaoa of that land.
Section 15	The Leveki Mangafaoa of any land has the power to control the occupation and use of the land under Niuean custom, and has power to alienate the land. In doing so, the Leveki Mangafaoa must consult with members of the Mangafaoa.
Section 17	No Niuean land or interest of the Mangafaoa in it may be alienated except in accordance and subject to this section. Subsection 4 lists a number of provisions which are not affected by this section.
Section 22	The court must confirm the alienation of any Niuean land.

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

Most land in Niue is held and transferred along family or clan lines or the 'Mangafaoa', defined in the *Land Act* as the family who are recognised by Niuean custom as being entitled to any share or interest in the land. The membership of the Mangafaoa is constantly adjusting according to complex social rules.

2.3. Environmental Impact Assessment

Environment Act 2015

The *Environment Act* contains extensive provisions relating to development consents for environmental protection in Part 2. Notable provisions include the following:

- Section 8 Development consents are required for any activity that will or may have a significant environmental impact or contravene an environmental standard. It requires that an environmental impact assessment (EIA) be carried out in accordance with the environmental regulations, without which a development consent will not be granted.
- Section 12 Activities are exempt from the development consent requirement if it is expressly authorised under another enactment, or is of a kind expressly authorised by this Act, the environmental regulations, or another enactment.
- Section 13 Empowers the Cabinet to make environmental standards.
- Sections 14-21
Activities which contravene an environmental standard affecting land use, freshwater supplies, marine areas, animals, plants, air quality or atmosphere, noise control, or involving the disposal of waste or other matter, must not be carried out unless the activity is either expressly authorised by this Act or the environmental regulations, or has development consent.
- Sections 37-38
The Environment Department established under the *Environment Act 2003* continues to design and implement programmes for environmental impact assessments
- Section 53 The Cabinet may make regulations for the purposes of the Act, including prescribing the process by which development consent is granted and prescribing the requirements of an EIA.

Environment (Development Consent and Environmental Impact Assessment) Regulations 2017

Pursuant to sections 11 and 46 of the *Environment Act 2015*, the *Environment Regulations 2017* regulates applications for development consent, EIAs and decisions on applications, activities for which development consent is always required, activities exempt from requirement for development consent, and offences. It has three schedules, including a schedule of information to be provided in an application for development consent (Schedule 1).

The Regulations include the following:

- Reg. 4 Applications for development consent must be made to the Department and include the information specified in Schedule 1.
- Reg. 5 The Director must advertise all new applications for development consent seeking any objections to the proposed development.
- Reg. 6 The Department must carry out an initial EIA.
- Reg. 8 Matters that the Director must take into account when making a decision over an initial EIA for an application for development consent include:
- Effect on the water lens;
 - Relevant environmental standards;
 - Objectives of government policy;
 - Effect on those in the neighbourhood/wider community;
 - Physical effect on the locality, including landscape and visual effects;
 - Effect on ecosystems, including on any plants or animals and disturbances of habitats;
 - Effect on natural and physical sources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations;
 - Any discharge of contaminants, including ‘unreasonable’ emission of noise and options for the treatment and disposal of contaminants;
 - Risk to the neighbourhood/wider community/environment due to natural hazards/the use of hazardous substances/hazardous installations;
 - Any objections received; and
 - Any effect or risk to Niue’s national security.
- Reg. 12 The decision-maker may impose conditions on granting consent which they consider on reasonable grounds to be necessary to protect the environment.
- Reg. 13 Activities in Schedule 2 must not be started or continued without development consent.
- Reg. 14 Activities in Schedule 3 do not require development consent.
- Reg. 15 It is an offence to knowingly provide false or misleading material for the purposes of being granted a development consent.

Niue Public Health Act 1965

The *Niue Public Health Act 1965* provides for the policing of sanitation-related issues by the Department of Health. This Act includes requirements for the proper siting, construction and maintenance of latrines and septic tanks for the protection and control of water supply for domestic purposes, and controls over the use of poisons.

Building Code Act 1992

The primary objective of the *Building Code Act 1992* is to provide for the enforcement of a Building Code and to regulate the construction of buildings. Most notably, the *Building Code Act 1992* allows for the Cabinet to make regulations (‘The National Building Code’) which will apply to the construction of every building (section 4), and requires that a building permit must be issued prior to the commencement of any building construction

(section 6). It further provides that this permit may be suspended (section 11) or cancelled (section 12) by the Building Inspector. Provision is made for the appointment of building and other inspectors under section 3.

2.4. Land planning

Village Councils Act 2016

As mentioned above, the *Village Councils Act* provides that a function of Village Councils is the establishment and maintenance of plans for schemes or development schemes for the Council area (section 20).

Coastal Management Policy 2008

The *Coastal Management Policy 2008* provides for a framework to guide the management and development of Niue's coast in order to guarantee a safe, productive and sustainable coastal environment for Niue.

2.5. Tourism

Niue Tourist Authority Act 1995 (as amended in 2003)

This Act establishes the Tourist Authority and defines its functions and powers. The primary objective of the Tourist Authority is to encourage and promote the development of tourism in Niue. This should be done in a manner which is appropriate to the interests of developing Niue as a tourist destination, having regard to the community at large and the objectives of government as set out in the Niue Strategic Plan as promulgated from time to time.

The Act also states that tourism projects shall be subject to EIAs and that the Tourism Authority shall have regard to the Niue Environment Management Strategy and other Government policies concerning the environment in assessing such projects.

Niue Tourism Strategic Plan 2005 - 2015 shows how the protection of the environment is related to the tourism policy within the country:

Niue's pristine land and ocean environments are the sole basis for the tourism industry's medium and long term potential. They are the biggest competitive advantage Niue has and must never be compromised. This will require ongoing, active management by Government on behalf of the people of Niue to preserve and enhance these environments.

BIODIVERSITY CONSERVATION

There is not an integrated legislation in Niue that comprehensively manages all the issues related to conservation and protection of species and resources. The country has an obsolete legislation which has been integrated with amendments or new acts in order to fill the main gaps. There is no main authority responsible for dealing with this problem.

In 1996, Niue acceded to the *Convention on Biological Diversity* and joined the South Pacific Biodiversity Conservation Programme. Niue has since established protected areas including the Huvalu Forest Conservation Area, the Anono Marine Reserve, and a community-managed marine protected area in Alofi North (NBSAP 2015).

As noted in the National Biodiversity Strategy and Action Plan 2015 (NBSAP), the small size of the country and its current population provide the opportunity to implement sustainable conservation practices. However, it also means that alien species can rapidly become pests which may overcome the relatively small number of native species. The vision of Niue's NBSAP is to be "an environmentally friendly nation in which conservation and the sustainable management of biological resources support all the living community".

Environment Act 2015

As discussed earlier, the *Environment Act* provides for the administration of environment-related matters, the enactment of a range of environment regulations and the enforcement of environment laws in Niue. In the application of this Act, section 6 requires compliance with multilateral environment agreements to be taken into account in the protection of indigenous flora and fauna. Sections 14 - 19 also provide that activities which contravene an environmental standard affecting animals or plants must not be carried out unless the activity is either expressly authorised by this Act or the environmental regulations, or has development consent.

Other relevant provisions include:

Section 23 Empowers the Cabinet to prescribe an area of land to be a protected area for a number of purposes including protection, conservation, and sustainable use of natural resources.

Section 25 Empowers the Cabinet to prescribe a protected plant species.

The *Environment Act 2015* is also the legal foundation of the Environment Department, originally established under the 2003 Act. The functions of the Department include nature conservation and the facilitation of compliance and implementation of multilateral environment agreements.

In 2017, the *Environment (Development Consent & Environmental Impact Assessment) Regulations* were introduced. However, apart from this, there is a general lack of regulations to support the implementation of the National Biodiversity Strategy and Action Plan priority actions such as the conservation of biodiversity, protection of traditional knowledge, controlling invasive species and environmental impact assessment.

Custom

Traditional conservation practices may also be applied to conserve Niue's diversity. While custom is not a direct source of law, section 296 of the *Niue Act 1966* (NZ) provides that in all proceedings, judicial notice is to be taken of "Niuean custom so far as it has the force of law".

A customary sanction used to protect land is the temporary control practice known as 'fono'. *Niue Fish Protection Ordinance 1965* does not define the term, but provides that it may be declared by public notice over fish (section 6) with the effect that no person shall enter the area, or take or kill anything including fish from the area (section 7). A similar customary device to protect land is 'tapu'. This longer term taboo, which involves sacred beliefs, prohibits entry into the area over which a tapu is in force. An individual owner, a descent group, or a village may declare a tapu over areas of bush or reef, and can be used as an effective means to preserve biodiversity.

3.1. Endangered Species

According to the NBSAP 2015, there are two species threatened with extinction in Niue: the hega (also known as the blue-crowned lory) and the olive small-scaled skink.

Territorial Sea and Exclusive Economic Zone (Whale Sanctuary Regulations 2003)

The Whale Sanctuary is established in order to give formal recognition to the high level of protection already afforded to cetaceans in marine waters of Niue in accordance with international law. The Whale Sanctuary comprises the waters of the exclusive economic zone, the territorial sea and the internal waters as defined in the *Territorial Sea and Exclusive Economic Zone Act 1996*. Protection measures are provided in section 4 of the Regulations which specifies offences in relation to cetaceans, cetacean parts, and cetacean products to permit enforcement of the Regulations. Section 5 provides for the issuing of permits by Cabinet for the purposes of non-lethal research intended for the conservation of cetaceans.

Wildlife Act 1972

The *Wildlife Act 1972* is the principal law in Niue for the protection of its wildlife. The Act empowers the Cabinet to declare any species of animal to be either ‘absolutely protected’ or ‘partly protected’.

The Act sets out the following definitions:

- ‘Animal’ means any mammal or bird which is a wild species, excluding domesticated species although it may be existing in a wild state;
- ‘Absolutely protected animal’ means any animal of a species which is under section 3 declared to be an absolutely protected species;
- ‘Protected animal’ means absolutely protected animal, or a partly protected animal during its protection period.

Section 4 of the Act prohibits the following actions or any attempts to do the following actions without the permission of Cabinet:

- i) Kill, injure or trap any protected animal;
- ii) Destroy, damage or take the egg of any protected animal;
- iii) Disturb the nesting place of any protected animal; or
- iv) Disturb the lair or roosting place of any protected animal.

The Act also gives enforcement powers to wildlife wardens.

Wildlife Protected Species Notice 1991

The *Wildlife Protected Species Notice 1991* gives notice that the Cabinet has declared the species listed in the Schedule of the *Wildlife Act 1972* to be partly protected species throughout Niue outside of the period 1 December – 31 December annually.

The Land Ordinance 1969

This includes a provision to allow the court, on application of any *Leveki Mangafaoa* and with the consent and the majority of the members, to set aside any Niuean land for a reserve, fishing ground, village site, land place, place of historical interest, water supply, church site, building site, recreation ground, bathing place or any other specified purpose (section 44).

3.2. Biosafety**Biosecurity Act 2016**

The objective of the Act is to state the law relating to the importing, exporting, and internal control of animals, plants, and other things for the purposes of preventing and managing biosecurity risks to Niue. The Act provides powers to Cabinet and the Biosecurity Authority and officers in relation to biosecurity risks, and outlines offences and penalties.

Part 2 provides for Cabinet powers of prohibition and regulation. Relevant provisions are as follows:

- Sections 5-7 Cabinet may make regulations prohibiting importation of a pest, disease, or Living Modified Organism (LMO), or prohibiting any other item if they consider its presence to pose an unacceptable biosecurity risk.
- Section 9 Cabinet may make regulations prohibiting exportation of an item if prohibited generally under international law.
- Section 10 Cabinet may regulate pests, diseases and LMOs already present in Niue.

Part 3 sets out biosecurity controls relating to arrivals, departures and transits. Relevant provisions are as follows:

- Section 11 Incoming people to Niue must complete a declaration form, and their baggage may be searched or detained by a biosecurity officer.
- Section 13 Provides for the quarantine of vessels and aircraft.
- Section 16 Incoming items other than baggage must be accompanied by an import clearance application, or evidence of compliance if it is a restricted item.
- Section 17 Items being exported may be inspected by a biosecurity officer.

Part 4 outlines internal biosecurity controls. Relevant provisions are as follows:

- Section 22 Biosecurity Authority may conduct pest and disease surveys.
- Section 23 Provides powers to biosecurity officers to search private vehicles, homes, and land when they reasonably believe that there is a prohibited pest, disease or item, or when they reasonably believe there to be an item or LMO lawfully present which poses a biosecurity risk.
- Section 24 The Biosecurity Authority may require the detention, testing and treatment of animals, plants, animal products and plant products.
- Section 30 The Chief Biosecurity Officer may destroy a wild or feral animal if they believe on reasonable grounds that it is infected with a prohibited pest or disease.
- Section 31 Cabinet may declare a pest or disease to be notifiable, which requires that a person must notify the Authority when they know or suspect it to be present in Niue.
- Section 33 Cabinet may declare a biosecurity emergency by public notice where a pest or disease which poses a serious biosecurity threat has occurred or is likely to occur.

Biosafety (Genetically Modified Organisms) Regulations 2006

These Regulations are one of the two regulations adopted under the *Environment Act 2003*. The objectives of the Regulations are to protect Niue's people, environment and culture from the adverse effects of genetically modified organisms (GMOs), facilitate Niue's economic development by providing for beneficial use of GMOs and modern biotechnology after appropriate scientific assessment and analysis, and provide for public awareness and participation in matters relating to GMOs and modern biotechnology.

The Regulations provide for the implementation of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity adopted at Montreal in January 2000, and provides rules relative to the handling (importation, exportation, development, contained use and testing) of GMOs.

Notable specifications include that the handling of GMOs shall be controlled by the Environment Council. Rules also concern unintentional releases and transboundary movements. In terms of administrative framework, section 19 provides that the Council is to perform the functions of the Competent National Authority under the Cartagena Protocol, and section 20 provides that the Environment Department shall be the National Focal Point for all purposes associated with the Cartagena Protocol. Notably, the Regulations provide in section 4 that all persons exercising functions, powers and duties under these Regulations shall recognise and provide for the precautionary approach.

Agriculture Quarantine Act 1984

The Agriculture Quarantine Act 1984 and subsidiary regulations prohibit the importation of plants, plant material, animal products, organisms and biological products into Niue to protect Niue's environment from invasive species. The Act contains provisions relating to the appointment and powers of Quarantine Officers and provisions on importation and disease control.

Subsidiary regulations currently in force include:

- *Agricultural Quarantine (Prevention of Animal Disease) Regulations 1991/4*: Includes regulations regarding the importation of animals, animal products, biological products, organisms, and farm equipment.
- *Agricultural Quarantine Phytosanitary Certificates (Fees) Regulations 1993/1*
- *Animal Quarantine (Disease Control) Regulations 1991/2*: Provides powers to authorised officers to make directions with regard to animals which are diseased, including powers of eradication over endemic diseases or pests.
- *Animal Quarantine (Fees) Regulations 1991/3*
- *Plant Quarantine Regulations 1985*: Outlines general requirements relating to the import of plant material and other regulated material, including that they may only enter Niue through specified ports.

3.3. Conservation and Protection of Natural Resources

Fisheries

Territorial Seas and Exclusive Economic Zone Act 1996 (Fisheries Management and Development Provisions)

The purposes of this Act are to:

- make provisions with respect to the territorial sea of Niue;
- to establish an exclusive economic zone for Niue adjacent to the territorial sea;
- in the exercise of the sovereign rights of Niue, to make provision for the exploration and exploitation, and conservation and management, of the resources of the zone; and
- related matters.

Notable provisions in the Act include the following:

- | | |
|--------------|--|
| Section 2 | 'Protected fish species' are species of fish recognized by the Niuean Government as those that are to be protected within Niue's territorial sea and exclusive economic zone (EEZ). It includes: <ul style="list-style-type: none"> • Cetacean species: Right Whale, Grey Whale, Rorquals, Sperm Whale, Beaked Whale, Belugas Whale, Narwhal, Dolphins and Porpoises; • Marine species of the Chelonia order, including all Turtles; • Myliobatdidae; and • Lamniformes. |
| Sections 4-6 | Delineates the territorial sea and its baseline, internal waters, and the Exclusive Economic Zone. |
| Section 11 | The Act applies to every person, every fishing craft and every vessel, fishing within fishery waters. |
| Section 12 | Empowers the Cabinet to declare a fishery to be a designated fishery where they think it is in the national interest to ensure the effective conservation of efficient use of that fishery. |

- Section 13 The Fisheries Officer may be directed to implement a management and development plan for a designated fishery, including the identification of new protected fish species.
- Section 18 Unauthorised fishing is prohibited.
- Section 19 Outlined prohibited fishing methods, including driftnets, explosives, poison or other noxious substances.
- Section 28 Allows for the issuing of licences permitting a fishing craft to fish or conduct scientific research in fishery waters.
- Section 60 The Cabinet may make regulations which are necessary or expedient to give effect to the Act.

The 2006 Amendment Act amended section 60 (Regulations) of the Principal Act in order to specify that the Cabinet may also make several further regulations, including, most significantly, a regulatory power to give effect to the following international conventions upon their ratification: The *United Nations Convention on the Law of the Sea 1982*, the *United Nations Fish Stocks Agreement*, and the *Western and Central Pacific Ocean Convention*.

Domestic Fishing Act 1995

The objective of this Act is to make provision for the regulation of fishing, the protection of fisheries, and the promotion of safety at sea. It includes prohibitions on fishing means, seizure and forfeiture powers, powers to declare marine reserves, and restrictions/prohibitions on the taking of certain species. It is amended by the *Environment Act 2015* which adds further definitions, inserts section 24A regarding infringement offences, and amends section 28 regarding the scope of regulations.

Notable provisions include:

- Section 2 “Boat” means any sea craft whatsoever, but does not include canoes, barges, commercial cargo vessels with a gross tonnage over five tonnes, or yachts not registered in Niue.
- Section 3 No person shall use illegal fishing means including dynamite, gelignite, or other explosive, firearms, the New Guinea creeper (‘Akau Niukini’) or other poison/stupefying agent, nets of certain mesh sizes, or underwater breathing apparatuses.
- Section 4 Every police officer and officer of Department of Agriculture, Forestry or Fisheries must destroy Akau Niukini which they find possessed or grown by a person.
- Section 7 Provides a legal basis for the customary practice of ‘fono’, by providing that Cabinet may declare marine reserves and ‘fonos’ for fishing. The effect is that no person may enter for the purpose of fishing or take any inorganic substance, living material, or matter from the area.
- Section 11 Cabinet may prohibit exports of any species, fish, or their parts by regulation.
- Section 12 The Director may apply to Cabinet to prescribe a catch size or quota on any species.
- Section 13 Fishing is prohibited on Sunday between 4AM to 9PM within the Territorial Zone.
- Section 16 Provides for appointment of a Fisheries Officer.

Domestic Fishing Regulations 1996

Pursuant to the *Domestic Fishing Act 1995*, the Minister of Cabinet has made several important regulations, including a ban on exporting from Niue (inter alia) all species of turtle, sea snake, whale, porpoise and dolphin.

It also regulates fish size and quota limits, and bans the interfering with, taking or killing of several fish species.

Forestry

The only legislation relating to forestry on Niue is in the form of a proposed draft Forest Bill. This Forest Bill has been reviewed, and is currently awaiting tabling in the House of Assembly. The main purpose of the proposed Law is to provide a legal framework to manage Niue's forests on a sustainable basis.

Once approved, the new Forest Act will give legal effect to Forest Management Plans, maximum annual allowable cut, timber licenses and timber processing licenses, and enforcement measures.

Minerals

Mining Act 1977

The objective of the *Mining Act 1977* is to make provision for the mining of minerals. Although the impact of mining on the environment is clear, the Act does not make mention of matters relating to environmental protection.

Relevant provisions include:

- Section 2 "Minerals" does not include clay, sand, coral, gravel, stone or earth.
- Section 3 All minerals within Niue's territorial limits are the property of the Crown.
- Section 6 Mining inspectors have the duty to inspect mines to determine adverse effects to persons, livestock or buildings (but not to the general environment). Directions can be given to remove, prevent or alleviate the hazard or danger.
- Section 12 Cabinet has authority to investigate and acquire Niuean land by way of lease or purchase for mining and related necessary purposes.
- Section 13 All Crown land is open for mining in accordance with this Act.
- Section 19 Cabinet may grant mining licences.
- Section 21 Licences may contain conditions (although no conditions relate to environmental protection).
- Section 35 Cabinet may make regulations concerning a range of safety and operational issues.

Continental Shelf Act 1964

The objective of the Act is to make provision for the exploration and exploitation of the continental shelf of New Zealand. This Act has its foundation in the New Zealand jurisdiction, and has been adopted by Niue without significant amendment.

The right to control the continental shelf is an important aspect of a nation's sovereignty. It has considerable environmental implications particularly in relation to the increasing interest in the exploitation of sea bed resources.

Relevant provisions include the following:

- Section 2 “Natural Resources” include living organisms and non-living resources of the seabed and subsoil.
- Section 3 Rights of exploration and exploitation of the continental shelf are vested in the Crown.
- Section 5 Mining for minerals on the continental shelf is regulated.
- Section 7 Applies the criminal and civil laws of New Zealand to the continental shelf.
- Section 8 Regulations may be made in relation to a range of matters affecting and regulating the continental shelf.

Water

Water Act 2012

The objective of this Act is to provide an administrative and regulatory framework for the sustainable, efficient and coordinated development, extraction, protection, management and use of the water resources of Niue for the benefit of both present and future generations.

It is important to note that Niue has no natural water flows on its territory. The only water supply within the country comes from rainfall which needs to be adequately collected, stored and managed. In this context, it became clear that the sound management of water was crucial to protect its quality by preventing pollution, as the environment and ecosystems depending on it, and in order to guarantee the optimal allocation of the resource between different uses.

Section 4 sets out principles of water management, directing public authorities to take reasonable steps to promote principles including the following:

- The social and economic benefits to the community of water use;
- Sustainable extraction of water;
- Minimisation of pollution to water;
- Protection of habitats, animals and plants that benefit from water;
- Protection of geographical and other features of major cultural heritage or spiritual significance that are dependent on water;
- Principles of adaptive management;
- The ‘impactor pays’ principle; and
- Compliance with multilateral environmental agreements.

Other notable provisions include the following:

- Section 5 Groundwater and rights in relation to groundwater are vested in the Crown.
- Section 6 The Public Works Director shall be responsible the construction, management, regulation and protection of water supply.
- Section 7 The Environment Director shall be responsible for water quality and its protection.
- Section 8 The Health Director shall be responsible for the monitoring of water quality of public water supply systems. Moreover, Division 1 of Part 4 concerns the right to extract groundwater.

Sections 18-26

Provides for the granting, duration, renewal and cancelling of water extraction licences. No extraction or use of water by a person holding a license under Part 4 of the Mining

Act 1977 is lawful, unless authorised by the Minister for water supply and with Cabinet's approval.

Section 27 The Public Works Director may extract and collect water from any bore and may store, supply and sell that water.

Section 34 The Public Works Director may impose temporary water restrictions if necessary to do so in the public interest (i.e. in times of water shortages).

Section 38 Prohibits matter being disposed of underground which may pollute groundwater subject to owning a water pollution control licence.

Sections 52-60

Sets out offences and penalties, and specifies that offences include constructing, altering, repairing or maintaining a bore or public water supply works, unless authorised to do so by the Public Works Director.

Sections 61-65

Allows for the preparation and implementation of integrated water resource management plans, which shall (inter alia) specify that protection be given to a designated water area, whether by way of management measures, habitat protection, exploitation limits or licencing requirements. This shall be done for the purpose of ensuring the conservation and sustainability of the water area.

The *Water Regulations 2017* contain regulations relating to information required for an application to construct, alter or maintain a bore, extraction licences and the applications for them, water pollution control licences and applications for them.

Environment Act 2015

Under section 57, this Act amends provisions 30(2) and 42 of the *Water Act 2012*. It also adds further definitions to section 2 of the Act, and repeals and replaces section 54 regarding infringement offences.

Section 16 also provides that a person must not do anything in relation to a freshwater supply in a manner which contravenes an environmental standard, unless the activity is expressly authorised by the Act/Regulations or has development consent.

Village Councils Act 2006

The *Village Council Act 2006* provides that a function of Village Councils is the provision of services relating to health, sanitation, prevention and suppression of infection diseases, including the prevention of pollution of water sources (section 18).

WASTE MANAGEMENT AND POLLUTION

Environment Act 2015

As under the previous *Environment Act 2003*, the Environment Department is the responsible authority to carry out functions regarding environment protection, including the establishment of environmental standards.

Relevant provisions relating to waste management and pollution include:

Section 15 A person must not dispose of waste or other matter in a manner which contravenes an environmental standard, unless the method of disposal is expressly authorised by the Act or Environmental Regulations or has development consent.

Section 20 A person must not carry out activities affecting air quality or atmosphere in a manner that contravenes an environmental standard, unless expressly authorised by the Act or Environmental Regulations or has development consent.

- Section 49 Environment officers are given powers to seize and remove certain waste, including vehicles, vessels, trailers, satellite fishes, gas cylinders, whiteware or e-ware.
- Section 38 A function of the Environmental Department is the design and implementation of programs relating to waste management and pollution control.
- Section 53 General powers are given to Cabinet to make regulations.

Village Councils Act 2006

The *Village Councils Act 2006* provides some weak powers for waste management and pollution control to the Villages Councils. A function of Village Councils is the provision of services relating to health, sanitation, prevention and suppression of infection diseases, which includes services for the purposes of establishing and maintaining village cleanliness, and the prevention of pollution of water sources and land resources (section 18).

Ozone Layer Protection Regulations 2007

The objective of the Regulations is to implement Niue's obligations under the *Vienna Convention* and the *Montreal Protocol* by providing controls on the import or use of ozone-depleting substances and establishing a system for the application and granting of permits. The Department of Environment is responsible to administer this Act.

Pesticides Act 1991

This provides for the assessment and issuing of permits for the importation and sale of a pesticide and the promotion of efficient, prudent and safe use of pesticides by the public.

It constitutes a Pesticides Committee under section 4, with functions and powers including the assessment and evaluation of every application made under the Act for importation or sale of a pesticide, the promoting of efficient, prudent and safe use of pesticides by the public generally, and advising the Cabinet and Minister on pesticide-related matters.

4.1. Marine Water Pollution

Marine Pollution Act 1974 (NZ)

The *Marine Pollution Act 1974* is the only piece of legislation to directly address pollution within the Niuean territory. Although it is a New Zealand legislation, it has been extended to Niue by way of subsidiary enactment. The *Marine Pollution Act 1974* now appears as subsidiary legislation made under the *Niue Act 1966*, although it has subsidiary legislation of its own.

The purpose of the Act is to improve provisions for preventing and dealing with pollution of the sea, and to enable certain International Conventions, which includes measures to prevention pollution and deal with spills. The Act makes it an offence for ships, land based installations, or other place, thing, pipeline, or apparatus, to discharge oil or other pollutants into waters covered by this Act. Discharges as a result of exploration or exploitation of the seabed are also prohibited. It allows for the implementation of inspection powers under the *International Convention for the Prevention of Pollution of the Sea by Oil*, as amended.

Part II prohibits the dumping and storage of radioactive wastes by ships and aircraft and requires permits for the dumping or incineration of other wastes into New Zealand waters, the EEZ, waters above the continental shelf and into the seabed or subsoil below such waters. Sections 24 and 25 set out criteria governing the dumping and incineration of waste and other matter into the sea.

Civil liability is imposed for the recovery of costs to remove oil, pollutants, wastes or other matters in contravention to this Act as well as for pollution damage.

Section 64 specifies that this Act, except provisions expressly applying to New Zealand ships only, applies to all ships, whether registered or not, and of whatever nationality.

OTHER

5.1. Disaster Risk Management

Public Emergency Act 1979

In order to manage public emergencies this Act provides powers to the Cabinet. Specific powers have been conferred to the Cabinet also with the *Public Emergency Regulations 2004*. The Cabinet may, among other powers, secure and regulate the supply and distribution of food and water.

5.2. National Heritage

Tāoga Niue Act 2012

This is Niue's principal law relating to the protection of culture and traditions. These are matters that have increasing relevance in the context of sound environmental practice. It repeals the *Niue Cultural Council Act 1986* and disbands the Niue Cultural Council.

The purpose of this Act is to enhance and protect Tāoga Niue through the establishment of a Department as the central coordinator of all matters relating to Tāoga Niue, and the establishment of the Tāoga Niue Council to act as an expert advisory council to the Department of Tāoga Niue.

Tāoga Niue is defined in section 3 to mean antiquities, objects of national cultural significance to Niue, objects of national historical significance to Niue, traditional knowledge, expressions of culture, customs, traditions, and history of Niue, Vagahau Niue and traditional food.

Section 6 establishes the Department of Tāoga Niue, whose functions include:

- administering the Act and advancing its purposes;
- advising the Government on matters relating to Tāoga Niue;
- formulating objectives relating to the protection and public awareness of Tāoga Niue;
- facilitating the formulation of policies and law relating to Tāoga Niue;
- developing a cultural bridge between Niue and Niueans abroad;
- establishing and maintaining a register of protected objects;
- controlling the export of antiquities and protected objects; and
- working with communities and groups to define the various elements of intangible cultural heritage of Niue.

Provisions in this Act include export controls on antiquities and protected objects, the protection of traditional knowledge and expressions of culture, provisions regarding traditional cultural rights, moral rights, and obtaining of prior and informed consent from traditional owners.

MULTILATERAL ENVIRONMENTAL AGREEMENTS

INTERNATIONAL ENVIRONMENTAL INSTRUMENT	STATUS
BIODIVERSITY	
Convention on Biological Diversity (CBD)	A
<ul style="list-style-type: none"> • Cartagena Protocol on Biosafety • Protocol on Access and Benefit-Sharing 	A
Convention on International Trade in Endangered Species (CITES)	
Convention on Migratory Species (CMS)	
Convention on Wetlands (RAMSAR)	
World Heritage Convention (WHC)	Ac
WASTE AND POLLUTION	
Hazardous waste and pollution	
Basel Convention	
Rotterdam Convention	
Stockholm Convention	R
Atmospheric Pollution	
Vienna Convention	A
<ul style="list-style-type: none"> • Montreal Protocol 	A
Ship-based pollution	
UNCLOS (Part XII : Protection and Preservation of the Marine Environment)	R
London Convention - Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter	
<ul style="list-style-type: none"> • London Protocol 	
CLIMATE CHANGE	
UNFCCC	A
<ul style="list-style-type: none"> • Kyoto Protocol • Paris Agreement 	R R
LAND DEGRADATION	
UNCCD	A
REGIONAL AGREEMENTS	
Waigani Convention	R
Noumea Convention	
<ul style="list-style-type: none"> • Dumping Protocol • Emergencies Protocol 	

Ratification (R), Acceptance (Ac), Accession (A), Signed (S)