

Options for strengthening the regulatory framework for the implementation of the Fiji Forest Harvesting Code of Practice and the harvesting and trade of sandalwood

Report F4

SPC/APFNet Project Capacity Building Towards Effective Implementation of Sustainable Forest Management Practices in Fiji, Tonga and Niue

Prepared by Graham Wilkinson, Chief Technical Adviser

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Abbreviations and acronyms

| | |
|--------|---|
| APFNet | Asia-Pacific Network for Sustainable Forest Management and Rehabilitation |
| DoF | Department of Forests (Forest Bill 2016) |
| DLT | Diameter Limit Table |
| FD | Forestry Department (Forest Decree 1992) |
| EIA | Environmental Impact Assessment |
| FFHCP | Fiji Forest Harvesting Code of Practice |
| FFPS | Fiji Forest Policy Statement |
| FHCL | Fiji Hardwood Corporation Limited |
| FMP | Forest Management Plan |
| FPL | Fiji Pine Limited |
| FPO | Forest Practices Officer |
| ha | hectares |
| iTLTB | iTaukei Land Trust Board |
| km | kilometre |
| m | metre |
| NFI | National forest inventory |
| NGO | Non-government organisation |
| SFM | Sustainable forest management |
| SPC | Pacific Community |

Reference to Sandalwood in this report refers predominantly to *Santalum yasi*, which is native to Fiji, and to *S. album* (Indian sandalwood), which is not native to Fiji but is commonly planted throughout Fiji.

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Preamble

This report has been prepared under the SPC/APFNet Project *Capacity Building Towards Effective Implementation of Sustainable Forest Management Practices in Fiji, Tonga and Niue*. The report presents the findings of a review of the regulatory framework for the implementation of the Fiji Forest Harvesting Code of Practice (FFHCP) and the harvesting and trade of sandalwood in Fiji. It considers the regulatory context, including current and proposed legalisation, institutional arrangements and the capacity of government and the private sector to manage the forest and tree resources in a sustainable manner. The report presents 21 actions to strengthen the regulatory framework for the consideration of the Ministry of Forests. The report does not provide detailed strategies for the implementation of any of the recommended actions; such strategies will need to be developed if and when any actions are approved in-principle by the Ministry.

Summary

Good progress has been made in several key areas of the regulatory framework, including the revision and re-issue of the FFHCP, the drafting of a new Forest Bill, a move towards accredited Forest Practices Officers (FPOs) within the Forestry Department (FD) and a continued commitment to training. However, compliance monitoring by the FD shows that further improvement is required in the standard of implementation of the FFHCP.

The current regulatory framework lacks some of the key elements required for effective implementation of the FFHCP. Some, but not all, of these deficiencies are addressed in the draft Forest Bill 2016. Specific areas for further improvement include: legislative provision for the FD to devolve certain regulatory obligations and powers to industry; opportunities for the forestry planning process to meet the requirements of other legislation; development of procedures for assessing and managing natural and cultural values, such as biodiversity, under the FFHCP; improved procedures for the monitoring of standards; improved enforcement options; and greater transparency in the reporting of standards being achieved in the implementation of the FFHCP.

This report analyses three options for the future regulation of the implementation of the FFHCP: predominantly governmental control; predominantly self-regulation by industry; and a model of 'enhanced co-regulation'. It concludes that Fiji should continue to work towards a model of 'enhanced co-regulation', which seeks to build the capacity for self-management and self-regulation within the private sector whilst allowing the government to focus its limited resources on core functions in the areas of training, education, monitoring, enforcement and reporting. The two key components of this model are- the appointment of FPOs within the industry with the powers and responsibilities to certify harvest plans, monitor and enforce the FFHCP and provide compliance reports to the FD; and an independent monitoring unit that verifies and reports on the standards of implementation that are being achieved.

The review has identified 21 actions that could be taken to strengthen the regulatory framework for the implementation of the FFHCP.

The review has also found that the regulatory framework for the growing, harvesting and trade of sandalwood could be strengthened by introducing a chain of custody system to discourage theft and black market trade. The APFNet project has developed a practical and effective system in Tonga, which provides an appropriate model that could be readily adapted for the sandalwood trade in Fiji.

Part A - Potential actions to strengthen the regulatory framework

1. Implementation of the Forest Harvesting Code of Practice

The potential actions and rationale for strengthening the regulatory framework in Fiji for the implementation of the FFHCP are detailed in Table 1. Actions specifically related to the regulation of the harvesting and trade of sandalwood are detailed in section 2 below.

Table 1. Potential actions for strengthening the regulatory framework for the FFHCP

| Action | Rationale |
|---|--|
| Legal and policy framework | |
| <p>1. Adopt an improved co-regulatory model of forest regulation, which seeks to encourage higher levels of responsible self-management by the industry backed up by a strengthened system of independent monitoring and enforcement across all forest operations (including the mahogany plantations). Key features to include-</p> <p>a. The appointment of Forest Practices Officers (FPOs) within the industry, based on a system of formal training and accreditation of skills, regular monitoring of performance and periodic update/refresher courses.</p> <p>b. Providing FPOs with the powers and responsibilities to certify harvesting plans, monitor compliance, enforce the FFHCP and provide reports to the FD.</p> <p>c. Monitoring of standards by an independent body that has the power of direct reporting to the Minister for Forests.</p> | <p>A co-regulatory approach will, over time, promote an industry that has greater expertise, capacity and accountability to comply with regulatory requirements. It will reduce the cost of governmental regulation and allow the FD to move away from 'hands-on' control and focus its limited resources on higher level support, monitoring and enforcement of sustainable practices.</p> <p>The benefits to industry include-</p> <ul style="list-style-type: none"> - Reduced governmental controls and bureaucracy, allowing more efficient management systems and reduced business costs. - improved capacity of the forestry sector to further develop and self-manage their businesses without continued reliance on government support. - improved public support ('social licence') for forestry activities. - improved capacity to meet the requirements of forest certification systems and markets that require evidence of sound management systems and legality. <p>Independent monitoring and enforcement by the FD will provide an important check on the standards that are being achieved and address any cases of poor compliance.</p> |
| <p>2. Adopt and enforce a Diameter Limit Table in consultation with industry.</p> | <p>The FD has instructed its officers that the current DLT will apply to all new licenses as from 1 June 2017. However, industry has raised concerns about the impact on the economics of harvesting and further consultation should be undertaken.</p> |

| Action | Rationale |
|---|--|
| 3. Develop agreements with the agency responsible for the administration of the Environment Management Act 2005, and with other relevant regulators, to avoid duplication and foster a streamlined approach to the approval of forestry operations. | The issue of timber licenses and approval of harvest plans under the forestry legislation should be done in a manner that meets the requirements of other legislation. This can be done by guidelines agreed between the relevant regulators, for example by issuing a supplement to the FFHCP to cover specific planning requirements and management prescriptions. Where possible, FPOs should be trained and accredited to carry out the required assessments. |
| 4. Consider the concept of a 'duty of care' to define the contribution that landholders are expected to make towards the conservation of natural values and the means by which values can be protected beyond the duty of care. | The right of land owners to manage their land is protected in the Constitution. The legal framework does not identify the extent to which the government may constrain these rights in order to protect 'common-pool resources' (or 'public goods') such as soils, waterways and biodiversity. A key principle of sustainable forest management (SFM) is that such resources should not be degraded, but should be managed and maintained for future generations. It is commonly accepted that land owners have a duty of care to avoid damage or degradation of soils and water, but their duty to conserve values such as biodiversity is less clear. Ideally, a 'duty of care' would be agreed by government and land owner representatives to prescribe the contribution that will be made towards the conservation of natural values, and the means by which certain values may be protected beyond the duty of care for the public good, for example by voluntary measures or the payment of compensation. |
| 5. Develop a strategy to promote increased planting and sustainable harvesting and trade of sandalwood, including fostering the development of sandalwood cooperatives within local communities; and regulations to discourage illegal harvest and provide a more secure investment environment through a legal chain-of-custody framework. | <p>Sandalwood has the potential to significantly improve the economic livelihood of land owners without displacing current land use or requiring high financial risk investment. However, this potential is unlikely to be achieved without an effective regulatory framework to discourage theft and illegal trade.</p> <p>Actions to develop an appropriate regulatory framework for sandalwood are summarised in section 2 below.</p> |

| Action | Rationale |
|--|--|
| 6. Establish an independent body to hear and determine appeals by applicants/licensees in relation to the suspension or revocation of a licence by the Conservator. | At present, any appeal goes to the Conservator, who is the original decision-maker. Appellants may also seek to have their case considered by the Minister. An independent appeal body would allow natural justice to be given to the appellant and remove the matter from the realm of political interference. |
| 7. Consider amending the governance model for the Forestry Board by replacing the current model, which is based on representation of governmental departments and stakeholder groups, with a model based on independent experts. A separate stakeholder council could be constituted as an advisory body to the board. | Under representative models of governance board, members have a potential and perceived conflict of interest, as they are seen to be representing the interests of their employer or stakeholder group rather than the interests of the organisation for which the board is legally responsible. Board members should be appointed on the basis of their relevant expertise and ability to fulfil their fiducial responsibilities in an independent manner. |
| 8. Consider legislative change to ensure that mahogany plantation land is subject to an accredited code of practice, including monitoring and enforcement by an independent body (as proposed in action 1 above). | The FFHCP is an important tool for protecting environmental and human values within forests that are being used for wood production. The code should be applied in a consistent manner across all wood production forests. |
| 9. Provide that the FD will make an annual report on the operation of the regulatory framework (including research, review and improvement; and monitoring and enforcement) to parliament through the Minister and for such reports to be publicly available on the department's website. | The FD produces an annual report on key statistics ¹ , which focusses on economic indicators, forest areas, wood production, processing and exports. It currently lacks any information on aspects such as environmental performance and safety, which are key indicators of sustainable forest management. The report is not available in a web-based format. |
| Planning | |
| 10. Develop separate codes of practice for plantations, woodlots, biomass and sandalwood. | The FFHCP was designed for native forest operations and it does not readily cover the diversity of timber harvesting in other forest types. |
| 11. Develop management guidelines for the conservation of biodiversity within wood production zones, in a form suitable for implementation through forest management plans and harvesting plans. | There are no guidelines or procedures for assessing biodiversity under the FFHCP. Across the world, increasing priority is being given to the management of biodiversity within wood production zones, through the application of management prescriptions such as buffers around rare species/sensitive sites and the retention of trees for habitat, nesting sites etc. |

¹ (Department of Forestry, 2015)

| Action | Rationale |
|---|---|
| 12. Establish a working group of forest planners and operational staff from the FD and industry to develop improved guidelines for maintaining wood supply during wet weather, whilst minimising adverse impacts on the environment and infrastructure and taking account of factors such as scheduling of logging areas, road access and standards, suitability of harvesting and haulage machines, and stockpiling in the forest and at processing sites. | The maintenance of wood supply to industry during periods of wet weather is a recurring challenge for forest managers. There is a range of management measures that can be taken to address the issue, and these measures should be formally incorporated into a supplementary guideline under the FFHCP. |
| Implementation | |
| 13. Review and improve the availability of training courses for forestry personnel at all levels, including supervisor, planner and operators, and including core training, specialist courses, and follow-up refresher courses. | Access to good quality training is an essential and continuing requirement for effective implementation of the FFHCP. Creative and adaptive models of training delivery are needed to service the needs of government, industry and land owners across Fiji, including remote areas. |
| 14. Continue to increase the awareness of the FFHCP and SFM, especially for smaller islands. | FD officers have reported that awareness levels are lower in more remote regions, prompting the need for increased efforts to promote the benefits of SFM and the FFHCP across all regions. |
| Monitoring | |
| 15. As part of action 1 above, make it a legal requirement for forest companies (Timber Licensees) to submit periodic monitoring reports on all their operations, with such reports to be certified by an accredited FPO. | Under a co-regulatory model, a licensee would be responsible for internal monitoring of compliance across all of its licenses and harvest plans. These internal reports should be provided to the FD. This means that 100% of all operations are monitored by an FPO. Further checks are provided by the monitoring of a sample of operations by an independent monitoring unit (action 1 above). |
| 16. Review and improve the documentation of the monitoring procedures used by the Monitoring, Control and Surveillance Unit, including the development of objective judgment criteria for use by the monitoring officers. | Up to date and transparent monitoring procedures are important to demonstrate the rigour, fairness and credibility of the system used to assess and report on compliance standards under the FFHCP. |
| 17. Include prescribed fines (compounding) as an enforcement option in the legislation. | It is widely held by forest regulators that prosecution is a last resort and that enforcement agencies need to have a range of more effective enforcement options available to them. |

| Action | Rationale |
|---|---|
| 18. Develop enforcement protocols and conduct appropriate training for all enforcement officers | Formal, objective processes are needed to ensure that enforcement decisions are made in a manner that is evidence-based, fair, impartial and consistent. Enforcement work requires specialist skills and competencies. |
| Review and Improvement | |
| 19. Conduct research that supports the development and ongoing refinement of practical guidelines for forestry officers on the DLT and the assessment and management of non-wood values, especially biodiversity, in logging zones (see also action 11 above). | Ongoing research is essential to ensure that the FFHCP is based on good science and is updated as new information becomes available. Sound scientific data are critical in determining management prescriptions such as the DLT, which can have significant economic impacts on land owners and the industry. |
| Reporting | |
| 20. Ensure that the outcomes of monitoring and enforcement activities are transparently reported within the management hierarchy and that senior management proactively reviews and endorses the actions taken to address the problems and improve future outcomes. | Monitoring is a tool that allows managers to identify and fix problems. It is important that formal processes are established within organisations to ensure that managers respond to the outcomes of monitoring and enforcement activities at all levels, including senior management and the board. |
| 21. Ensure that the monitoring protocols, enforcement protocols and annual reports are publicly available. | The methodology and outcomes from the monitoring and enforcement activities need to be transparently available to the public. A lack of transparency often leads to the perception that there is something to hide. |

Consultations were conducted in Fiji from 10 to 13 July 2017 to discuss the above potential actions and to seek feedback from the Forestry Department (FD) and stakeholders². A consultation meeting was held with senior forestry officials and three workshops were held, in Labasa, Nausori and Lautoka, involving a total of 53 participants from a diverse range of stakeholder interests.

The potential actions to strengthen the regulatory framework were strongly supported by the FD and stakeholders. All of the 21 actions were unanimously endorsed, with the exception of action 2 (implementation of the diameter limit table), for which the timber industry requested further consultation on the commercial impacts.

² (Wilkinson, 2017b)

2. Regulation of the harvesting and trade of sandalwood

The regulatory framework for the growing, harvesting and trade of sandalwood could be strengthened by developing and adopting regulations that –

- Respect the private rights of landowners and sandalwood growers to grow and harvest their sandalwood when they choose
- Enhance the capacity of land owners to grow sandalwood by providing them with more training, education and information on its potential economic value
- Encourage and support the formation of sandalwood grower associations to foster a cooperative approach to sharing information, propagating seedlings, managing sandalwood crops and planning the harvest and sale of sandalwood
- Provide a secure regulatory framework for land owners to register the ownership of their sandalwood plantings and to grow their trees without fear of theft and illegal trade.

The Sandalwood Regulations recently developed under the APFNet project and adopted in Tonga in 2016 provide a suitable model for Fiji. The main elements of the Tongan regulations are detailed in section 8.2 of this report, as summarised below-

1. Registration of ownership of sandalwood trees
2. Registration of sandalwood traders
3. A chain of custody system to verify legal ownership at all stages of the supply chain, as follows-
 - a. At the time of an agreement between the grower and trader to harvest sandalwood, the trader must attach a tree tag to each sandalwood tree that has been agreed for harvest.
 - b. Once each tree is felled the trader must attach a billet tag to each billet, including any harvested section of root, stump, stem or branch of the sandalwood tree.
 - c. The sequentially-numbered tree tags and billet tags must be obtained from the FD.
 - d. Before the sandalwood is removed from the harvest area, the trader must accurately record the details of the harvested sandalwood and tag numbers into a Sandalwood Harvest Docket
 - e. The Sandalwood Harvest Docket must be signed by the grower and the trader and a copy must be provided to the Forestry Division within 14 days.
 - f. The Sandalwood Harvest Dockets must accompany any application for an export license.
4. A person who processes sandalwood into another product must maintain a record of the date, tag numbers and the type and quantity of products that were produced from the sandalwood.
5. Substantial penalties, including fines up to TOP10,000 and 3 years imprisonment, apply for offences of the regulations, including theft of sandalwood, 'checking' for heartwood by a person who is not the owner of the tree, failure to comply with tagging requirements, breach of sandalwood export license, offences against an enforcement officer, forgery, false or misleading statements , and destruction of evidence.

Part B – Review of the regulatory framework

3. Methodology

The methodology used for the review of the regulatory framework in Fiji involved the following processes-

1. A desk-top analysis of the components of the regulatory framework, including the status of the components under the Forest Decree 1992 and the proposed changes to the framework contained in the draft Forest Bill 2016. The analysis was based on seven key components of a regulatory framework as detailed in section 5 below.
2. Findings from consultations, workshops and field inspections conducted by the project team during 2015³ and 2017⁴ to review the regulatory framework for the implementation of the Forest Harvesting Code of Practice (FFHCP) and the harvesting of sandalwood, as summarised in section 6 below.
3. An assessment of regulatory options as detailed in section 8 below.

4. Issues relevant to the implementation of a regulatory framework in Fiji

The following issues are considered relevant to the development and implementation of a regulatory framework for the management of forests and trees in Fiji-

(1) Regional trends in forest management and regulation

- Public forestry assets are being corporatized/privatised.
- International markets are increasingly demanding evidence of sustainability and legality. Market-based instruments such as forest certification schemes have a role to play in meeting these market demands but the cost of these instruments can be prohibitively high for small holdings.
- Increasing attention is being given to the non-timber values of forests, especially biodiversity, carbon, cultural/aesthetic values, ecotourism.
- Increasing priority is being given to ensuring that forest workers are trained and supported to work in a safe manner with reasonable working conditions.
- Governmental funds for forestry are declining in real terms.

(2) Local issues in Fiji

- Most of the land is owned by its indigenous people under traditional communal land-owning units and their rights to manage the land are guaranteed under the Constitution and national legislation.

³ (Wilkinson, 2015b), (Wilkinson, 2015a)

⁴ (Wilkinson, 2017a), (Wilkinson, 2017b)

- Government has limited (and probably diminishing) capacity to allocate and maintain adequate resources for forestry. Increasing reliance must be placed on building the capacity of landholders and industry to self-manage.
- Most forestry officers live and work in rural communities where their work/life activities may present them with a conflict of interest and risk of ‘regulatory capture’⁵.
- Forestry officers by their nature are often averse to assuming the role of ‘policeman’. It is therefore important to ensure that they are given appropriate training and that reasonable boundaries are laid down, beyond which investigation and enforcement actions are handed to the police.
- The plantation sector is largely controlled by two corporations, Fiji Pine Ltd (FPL) and Fiji Hardwood Corporation Ltd (FHCL). FPL operates under the control of the Forest Decree but FHCL is not bound by the Decree and it operates under its own legislation.
- The sandalwood industry in many countries is associated with high levels of illegal logging and criminal activity. Safeguards will be necessary in Fiji to regulate and discourage such activities.

5. Analysis of the components of the regulatory framework

Table 2 provides an analysis of the components of the regulatory framework, including the status under the Forest Decree 1992 and the status under the proposed changes contained in the draft Forest Bill 2016. The assessment is based on seven key components of a regulatory framework (listed below) following the methodology developed by the author for previous studies⁶.

The key factors to emerge from the assessment are summarised below.

1. Legal and policy framework
 - The Forest Bill requires the forest sector to be administered in accordance with the Fiji Forest Policy Statement 2007 (FFPS), which provides an explicit set of policy objectives, including the objective of sustainable management.
 - The Decree and the Bill have a focus on governmental control of industry through the issue of licences.
 - There is considerable overlap and potential duplication between the functions of various ministries and departments, particularly in relation to the operation of the *Environmental Management Act 2005*, which requires environmental audits and environmental impact statements for prescribed development proposals, including some commercial logging operations.
 - Both the Decree and the Bill recognise the rights of iTaukei land owners and the need for their involvement in forest management.

⁵ Regulatory capture occurs when officers or agencies begin to act in the interests of the persons or bodies that they are intended to regulate rather than in the broader public interest. It commonly occurs where an officer is in a close living or working environment with his/her constituents and personal relationships make it difficult to impose sanctions. In the worst cases it involves the corruption of the officer for personal gain. In Fiji, as elsewhere in the Pacific, social customs, such as kava drinking, can make it difficult for forestry officers to maintain a strictly independent relationship with stakeholders such as landowners and industry personnel.

⁶ (Wilkinson, 1999), (Wilkinson, 2015b)

- Both the Decree and the Bill establish a Forestry Board to advise the Minister on matters relating to forest policy. Under the Bill, the governance model for the board is based on representation of government departments and stakeholder groups. That is, it is not an independent board. The forest industry holds one of the 10 board positions.
- The Decree and the Bill provide for the appointment of Forest Officers but such appointment is restricted to officers in the public service.
- Neither the Decree nor the Bill contain provisions relating to the wider involvement of stakeholders, including the forest industry and the public, in the development and updating of forest policies and tools such as codes of practice.
- The framework applies to all land and tenures except mahogany plantation land (as defined in the *Mahogany Industry Development Decree 2010*), which is exempt from the Decree and the Bill.
- The legal framework for sandalwood is unlikely to be adequate to deal with the serious issues of theft and black-market activity.

2. Planning

- Neither the Decree nor the Bill provide for the development of forest management plans.
- The Bill recognises the *Fiji Forest Harvesting Code of Practice* (FFHCP). The FFHCP can be legally enforced through conditions placed on timber licenses.
- Harvesting plans are prepared but the quality of the plans is variable and some are substandard.
- There are no procedures for assessing natural and cultural values under the FFHCP.

3. Implementation

- There are some deficiencies/gaps with respect to the relative roles and responsibilities expected of FD, industry and contractors in certain areas, such as training, operational planning, field supervision and monitoring.
- Large companies such as FPL and FHCL have internal self-management systems in place. FPL has gained FSC forest certification for its forest management. FHCL was previously pursuing FSC certification but is no longer doing so.
- Smaller companies and contractors lack formal self-management systems.
- The forest sector has access to relevant training courses. However, staff turn-over presents ongoing challenges for maintaining competency within organisations.

4. Monitoring

- The Bill lists 'monitoring' as one of the duties of the Department of Forests, but it contains no specific provisions as to how this should be done.
- The FD Monitoring and Surveillance Unit uses a standard checklist to conduct monitoring of operations. The Unit prepares internal reports which are provided to senior managers but there is no transparent process for tracking actions that are taken.

5. Enforcement

- The Bill provides for prosecutions and revocation of licences but it lacks the provisions in the Decree relating to the compounding of offences. This constitutes a significant reduction in enforcement options.

- Both the Decree and the Bill require the Conservator to allow the licensee to be heard before suspending or revoking a license, but there is no independent appeal body.
 - There are no written enforcement procedures or protocols in place.
 - Investigation and enforcement skills should be considered a core requirement for all forestry officers. Some training was done in 2016 and further training is required.
6. Review and improvement
- The requirement for review and improvement is absent from the current legislation. The draft Bill requires the FD to undertake research, periodic review and improvement.
7. Reporting
- Neither the Decree nor the Bill specifically require the FD to make an annual report to the Minister on its activities.
 - The reports from the Monitoring and Surveillance Unit are not made publicly available.

Overall, it can be concluded that the current and proposed regulatory frameworks lack some of the key components required for sustainable forest management. Actions to improve the regulatory framework are presented in Part A of this report.

Table 2. Status of the components of the regulatory framework for the implementation of the FFHCP

| Component | Status ⁷ | Current situation | Status under proposed legislation ⁸ |
|---|---------------------|--|--|
| 1. Legal and policy framework | | | |
| Does the framework make provision for the following- | | | |
| 1.1. Clear objectives, e.g. sustainable forest management | partly | <p>a) The current Forests Decree 1992 does not deal with the objectives of forest management other than by stating that “Forest reserves shall be managed as permanent forest in order to provide on a permanent basis the optimum combination of benefits of protection and production of which they are capable” (s 7(1)) and “Nature reserves shall be managed for the exclusive purpose of permanent preservation of their environment, including flora, fauna, soil and water” (s 7(2)).</p> <p>b) The Forest Bill 2016 has the objective “to ensure the protection, sustainable management and use of Fiji’s forests and to provide social, economic and environmental benefits to Fijians for the current and future generations”.</p> <p>c) The Bill requires the forest sector to be administered in accordance with the Forest Policy.</p> <p>d) The Fiji Forest Policy Statement 2007 (FFPS) provides an explicit set of policy objectives, including the objective of sustainable management.</p> <p>e) The legal and policy framework does not appear to adequately deal with the problems of theft and illegal trading of high value species such as sandalwood.</p> | Improve |

⁷ Current status is assessed as ‘yes’, ‘no’ or ‘partly’ in existence

⁸ “proposed legislation” refers to the Forest Bill 2016. The status is assessed as likely to ‘Improve’, ‘No change’ or other as detailed.

| Component | Status ⁷ | Current situation | Status under proposed legislation ⁸ |
|--|---------------------|---|--|
| 1.2. Applicability to different tenures | yes | The framework applies to all land and tenures except mahogany plantation land (under the <i>Mahogany Industry Development Decree 2010</i>), which is exempt from the Decree and the Bill. | No change |
| 1.3. Appropriate blend of co-regulatory strategies | no | The Decree and the Bill have a focus on governmental control of industry through the issue of licences. | No change |
| 1.4. An integrated or streamlined approach with respect to other acts and planning systems | no | There is considerable overlap and potential duplication between the functions of various ministries and department, particularly in relation to the operation of the Environmental Management Act 2005, which requires environmental audits and environmental impact statements for prescribed development proposals, including some commercial logging operations. | No change |
| 1.5. Forest policy | yes | See 1.1 above | Improve |
| 1.6. Forest management plans | no | Neither the Decree nor the Bill provide for the development of forest management plans. | No change |
| 1.7. Code of practice | partly | <p>a) The Decree does not specifically mention a code of practice. However, s 13 allows conditions to be applied to licences, including conditions 'in accordance with good logging practices'.</p> <p>b) The Bill recognises the <i>Fiji Forest Harvesting Code of Practice</i>. The Bill provides that the Conservator may impose terms and conditions on licenses (s 18) and that licenses may be revoked for non-compliance with conditions, including the code (s 19).</p> | Improve |

| Component | Status ⁷ | Current situation | Status under proposed legislation ⁸ |
|---|---------------------|--|---|
| 1.8. Operational plans | partly | <p>a) Under the Decree, the issue of a timber licence is subject to approval of a logging plan prepared by the applicant and compliance with the plan is a condition of the licence (s 14).</p> <p>b) The Bill makes no specific reference to operational plans, although such a requirement could conceivably be imposed by the Conservator as a condition of a Special Harvesting Licence (Cl 18).</p> | The Bill is less specific with respect to operational plans |
| 1.9. Monitoring of compliance | partly | <p>a) The Decree does not specifically provide for the monitoring of operations.</p> <p>b) The Bill lists 'monitoring' as one of the duties of the Department of Forests, but it contains no specific provisions as to how this should be done.</p> | Improve (slightly) |
| 1.10. Enforcement, including rights of appeal and alternatives to prosecution | partly | <p>a) The Decree provides for prosecutions and alternatives to prosecution, including revocation of licences and compounding of offences (payment of a determined amount).</p> <p>b) The Bill provides for prosecutions and revocation of licences but does not explicitly provide for the compounding of offences.</p> <p>c) Both the Decree and the Bill require the Conservator to allow the licensee to be heard before suspending or revoking a license, but there is no independent appeal body.</p> | Significant reduction in enforcement options. |
| 1.11. Review and improvement | partly | <p>a) The Decree contains no provisions relating to review and improvement.</p> <p>b) Under the Bill, matters such as research, periodic review and improvement are listed as duties of the Department of Forests, as well as a specific requirement to update the National Forest Resource Assessment every 10 years (s 16).</p> | Improve |

| Component | Status ⁷ | Current situation | Status under proposed legislation ⁸ |
|--|---------------------|--|--|
| 1.12. Involvement of stakeholders | partly | <p>a) Both the Decree and the Bill recognise the rights of iTaukei land owners and the need for their involvement in forest management.</p> <p>b) Both the Decree and the Bill and establish a Forestry Board to advise the Minister on matters relating to forest policy. Under the Bill, the governance model for the board is based on representation of governmental departments and stakeholder groups. That is, it is not an independent board. The forest industry holds one of the 10 board positions.</p> <p>c) The Decree and the Bill provide for the appointment of Forest Officers but it is not clear whether such appointment is restricted to governmental officers or could be extended to include suitably qualified persons employed in non-governmental roles.</p> <p>d) Neither the Decree nor the Bill contains provisions relating to the formal involvement of stakeholders, including the forest industry and the public, in the development and updating of forest policies and tools such as codes of practice.</p> | Improve |
| 1.13. Public reporting | no | Neither the Decree nor the Bill specifically require the FD to make an annual report to the Minister on its activities. | No change |
| 2. Planning | | | |
| 2.1. Are comprehensive standards and guidelines available in a code of practice? | yes | The <i>Fiji Forest Harvesting Code of Practice</i> was first released in 1990 and a revised edition was released in 2013. | No change |
| 2.2. Is the code supported by technical manuals (e.g. silviculture manual)? | no | A Diameter Limit Table (DLT) is contained in the iTaukei Land (Forest) Regulations. No other guidelines or manuals are currently available. | No change |

| Component | Status ⁷ | Current situation | Status under proposed legislation ⁸ |
|---|---------------------|---|--|
| 2.3. Are natural and cultural values, including biodiversity, soils and cultural sites, adequately assessed before any operations commence? | no | There are no procedures for assessing natural and cultural values under the FFHCP. The conservation of forest biodiversity is based on the development of a (voluntary) network of forest conservation areas under the FFPS supplemented by the measures in the FFHCP for the maintenance of ecological processes through the avoidance of environmental harm, such as buffering of streams and the retention of forest structure and species composition through the DLT and reforestation after harvesting. | No change |
| 2.4. Are operational plans prepared for all forestry operations? | yes | Harvesting plans are prepared but the quality of the plans is variable and some are substandard according to the Monitoring and Surveillance Unit ⁹ | No change |
| 3. Implementation | | | |
| 3.1. Are the institutional roles clearly defined? | partly | The role of the FD is defined in legislation but in practice there are some deficiencies/gaps with respect to the relative roles and responsibilities expected of FD, industry and contractors in certain areas, such as training, operational planning, field supervision and monitoring. | No change |
| 3.2. Does the FD have well-trained and adequately resourced staff? | partly | Fiji has access to relevant training courses. Staff turn-over presents challenges for maintaining competency across the organisation. | No change |
| 3.3. Do the forest industry and contractors have self-management systems in place? | partly | Large companies such as Fiji Pine Ltd (FPL) and Fiji Hardwood Corporation Ltd (FHCL) have internal systems in place. FPL has FSC forest certification for its forest management. FHCL was previously pursuing FSC but is no longer doing so. Smaller companies and contractors lack formal self-management systems. | No change |

⁹ (Wilkinson, 2017a)

| Component | Status ⁷ | Current situation | Status under proposed legislation ⁸ |
|--|---------------------|---|--|
| 3.4. Are information and training programs available for landholders and forest workers? | partly | Various projects to encourage SFM and avoid forest degradation are conducted with land owners by NGOs. Training courses are available through the training institutions. | No change |
| 4. Monitoring | | | |
| 4.1. Are formal monitoring systems in place to evaluate compliance and standards being achieved? | yes | The FD Monitoring and Surveillance Unit uses a standard checklist to conduct monitoring of operations. | No change |
| 4.2. Are reports prepared on the standards being achieved? | yes | The FD Monitoring and Surveillance Unit prepares internal reports. | No change |
| 4.3. Do senior managers read the monitoring reports and take appropriate action? | partly | Reports are provided to senior managers but there is no transparent process for tracking actions that are taken. | No change |
| 4.4. Are the reports made available to the public? | no | The reports are not collated or used for annual reporting by the FD. | No change |
| 5. Enforcement | | | |
| 5.1. Are formal enforcement protocols in place? | no | There are no written procedures or protocols in place. | No change |
| 5.2. Are forestry officers trained and equipped to take enforcement action? | partly | A small number of forestry officers attended a training course <i>Environmental Compliance and Enforcement</i> in 2016. Investigation and enforcement skills should be considered a core requirement for all forestry officers. Further training is therefore required. | No change |

| Component | Status ⁷ | Current situation | Status under proposed legislation ⁸ |
|---|---------------------|--|--|
| 5.3. Are the outcomes of investigations made available to the public? | no | a) There is no reporting other than through the reporting of court cases by the media. b) Public reporting should be included as a requirement of the proposed investigation and enforcement protocols (see 5.1 above). | No change |
| 6. Review and improvement | | | |
| 6.1. Is research (including monitoring the efficacy of management prescriptions) being undertaken to improve guidelines and practices? | partly | Limited research is undertaken through externally funded projects. | No change |
| 6.2. Are stakeholders involved in ongoing reviews and changes to the components of the regulatory framework? | partly | See component 1.12 above | Improve |
| 7. Reporting | | | |
| 7.1. Does the FD publish an annual report on the operation of the regulatory framework, particularly in relation to components 3.2, 3.4, 4.4, 5.3, 6.1 and 6.2 above) | no | There is no annual reporting on the regulatory framework. | No change |

6. Findings from consultations and field inspections

The following findings were collated from consultations, workshops and field inspections conducted by the project team during 2015¹⁰ and 2017¹¹ to review the regulatory framework for the implementation of the FFHCP and the harvesting of sandalwood.

1. Good progress has been made with the revision and re-issue of the FFHCP, training and with a move towards certified forest practices officers within government and industry.
2. There is no Permanent Forest Estate (PFE) policy in Fiji. The system of customary land ownership means that the government is not able to determine an annual allowable cut based on sustained yield from the native forests.
3. The SFM project at Drawa and Nakavu Blocks has shown that low impact logging can be done successfully in Fiji. However, further education and information are needed to promote the benefits of SFM to landowners and the industry.
4. Monitoring by the Forestry Department shows that compliance levels have varied from an average of 59% in 2014 to 73% in 2016. The key findings from recent monitoring are-
 - poor implementation of the FFHCP by operators, particularly with respect to skid tracks, skidding operations and the protection of buffers
 - loss of skills, including monitoring skills, due to staff turn-over
 - the standard of approved harvesting plans is variable and some are sub-standard
 - inadequate communication between operators, planners and harvesting supervisors
 - the market-driven approach of industry puts pressure on operators to the detriment of good compliance with the FFHCP.
5. Field inspections by the project team found that compliance with the FFHCP was good for many factors but that improvement is needed in areas such as the width of road clearing; stream crossings; skid tracks in steep areas; and directional felling.
6. The consultations indicated strong support for the review and improvement of the regulatory framework for forestry, including an effective system of regulation for sandalwood.
7. The following priorities for improvement of the regulatory framework were identified-
 - 7.1. Legal and policy framework
 - The Forest Policy needs to be recognised in legislation and its implementation needs to be monitored
 - The Diameter Limit Table (DLT) needs to be adopted after further consultation with industry
 - Regulatory responsibilities related to the preparation and approval of harvesting plans should continue to be devolved to the industry, particularly through the concept of industry-employed Forest Practices Officers
 - The capacity of government to constrain activities by landowners needs to be clarified in law to address the harvesting of timber and clearing of forest that is carried out by landowners without approval under the forestry legislation.
 - Regulations for sandalwood are required.

¹⁰ (Wilkinson, 2015b), (Wilkinson, 2015a)

¹¹ (Wilkinson, 2017a), (Wilkinson, 2017b)

- The duplication of logging plans and separate Environmental Impact Assessment (EIA) needs to be addressed. A streamlined system is required that will satisfy the legal requirements of both the forestry and the environmental legislation.

7.2. Planning

- Develop separate codes of practice for plantations, woodlots and sandalwood
- Develop management guidelines for the conservation of biodiversity within wood production zones
- Develop improved provisions to maintain wood supply during wet weather

7.3. Implementation

- Continue to increase the awareness of the FFHCP and SFM, especially for smaller islands
- Clarify and improve the roles/responsibilities and competencies of field supervisors
- Review and improve the training and accreditation of operators, including follow-up refresher courses

7.4. Monitoring

- Improve the training and accreditation of staff in conducting monitoring activities
- Develop objective judgment criteria for use by the monitoring officers
- Forest companies need to take more responsibility for internal monitoring of their operations and not rely upon the infrequent monitoring visits by the FD.

7.5. Enforcement

- The causes of non-compliances need to be identified and documented
- Legal enforcement needs to be improved
- The legislation needs to provide a range of enforcement options
- Enforcement protocols and training are urgently required.

7.6. Review and improvement

- There is a need for more research and supporting manuals, especially in relation to the DLT.
- Develop practical guidelines for forestry officers on the assessment and management of non-wood values, especially biodiversity, in logging zones.

7.7. Reporting

- Monitoring and enforcement outcomes need to be transparently reported and publicly available.

7. Issues related to the harvesting and trade of sandalwood

Throughout history, the high demand for sandalwood has resulted in over-exploitation, illegal cutting and black market trade. Various forms of regulation have been applied within the sandalwood producing nations of the Asia-Pacific, but very few have been successful in achieving a sustainable sandalwood industry.

Sandalwood in the past was a high value commodity for the landowners and economy of Fiji. In recent years the harvesting of sandalwood has been sporadic; data from 2006-2009 indicate an annual harvest of about 100 tonnes. There were four registered exporters in 2010 and an unknown number of buyers¹².

The government introduced a regeneration levy in the 1980s¹³. The regeneration funds are jointly administered by the iTaukei Lands Trust Board and the Ministry of Forests and all regeneration work has to be certified before the levy is paid back to the forest owners. However, the rate of re-planting is insufficient to generate a significant resource of sandalwood for the future. Uncontrolled harvesting and theft are major challenges for the growth of the sandalwood sector in Fiji ¹⁴.

The current procedures for the regulation of sandalwood harvesting in Fiji are as follows¹⁵-

1. Application to harvest by the owner.
2. On Native Land a support letter is required from 60% of the mataqali and confirmed by the Provincial Office.
3. Confirmation letter required from Turaga ni Koro.
4. Buyers Agreement with the applicant.
5. FD Beat Officer undertakes pre-harvest inspection and confirms location of sandalwood
6. FD issues Harvesting Right License.

Issues and challenges for a sustainable sandalwood sector in Fiji are as follows¹⁶

- Conflict over sandalwood ownership
- Illegal removal of sandalwood
- Checking for maturity (lack of non-destructive techniques/equipment)
- Land owners are not aware of true market price/value of their sandalwood
- Illegal buyers
- Lack of regulations
- Transferable nature of the license
- Over-harvesting (due to demand from buyers).

Experience indicates that high value commodities, such as sandalwood, attract international criminals, who develop local crime networks, leading to the criminalisation of local people¹⁷.

¹² (Rinamalo, 2017)

¹³ (Jiko, 1993)

¹⁴ (Dayal, 2010)

¹⁵ (Rinamalo, 2017)

¹⁶ (Dayal, 2010), (Rinamalo, 2017)

¹⁷ (Dyson, 2017)

8. Analysis of options for a more effective regulatory framework

8.1 Implementation of the Forest Harvesting Code of Practice

8.1.1 Regulatory models

Regulation is a function of –

1. The degree of control exercised by government, varying from full governmental control at one extreme to fully unregulated by government at the other.
2. The degree of self-regulation practiced by the players within the industry under individual, group or market-driven approaches (such as forest certification schemes).
3. The degree to which reliance is placed on various combinations of mandatory and non-mandatory approaches.¹⁸

In practice, most regulatory frameworks for forestry are a mixture of governmental and self-regulatory procedures. An analysis of three options for an improved regulatory framework in Fiji is presented in Table 3. The analysis of the three options can be summarised as follows-

Predominantly governmental management and control – This option is not likely to be a sustainable option for the management of the native forests due to the limited, and probably decreasing, capacity within government. For the plantations, it is contrary to the previous moves towards a self-regulatory model through the corporatization of the forest plantations in Fiji.

Predominantly self-regulation - Not likely to be a sustainable option for the management of the native forests in the short to medium term due to the lack of capacity within the private and community sectors. A solely self-regulatory model, as for the current situation with the mahogany plantations under FHCL, is likely to continue to raise issues of transparency and accountability in relation to environmental, social and economic sustainability.

Enhanced co-regulation - This is a sustainable option because it provides for the building of self-management capacity, allowing the government to move away from ‘hands-on’ control and focus its limited resources on higher level support, monitoring and enforcement of sustainable practices.

The recommended model for the regulatory approach in Fiji is one of ‘enhanced co-regulation’. This recommendation builds upon a previous review by Wilkinson in 2007¹⁹. The key recommendations of the 2007 review, and progress made since 2007, are summarised below.

- (1) *The appointment of suitable persons within the forest industry as Forest Practices Officers and the authorisation of those officers to certify Harvesting Plans and issue notices to ensure compliance with the Code.*

¹⁸ Most jurisdictions comprise a mixture of mandatory controls, voluntary controls or no controls. Mandatory controls are exercised through legislative requirements, and may include a ‘duty of care’, which is an obligation placed upon a landholder to conserve natural values. A duty of care may require the total protection of a value, such as a stream reserve or endangered species, or it may require a contribution to the protection of a value up to a defined threshold, beyond which the protection of the value must be achieved by voluntary or other means, such as through the payment of compensation to the landholder. See (Wilkinson, 2015) for a discussion of the application of a duty of care to forest management.

¹⁹ (Wilkinson, 2007a). A copy of the paper is provided in **Error! Reference source not found.** of this report.

Current status - the concept of Forest Practices Officers (FPOs) has been adopted by the FD for government officers although formal training and accreditation systems have not yet been developed. The FD supports the extension of the FPO concept to encompass foresters employed within the private sector but the mechanisms for achieving this are not yet in place.

- (2) *The establishment of a Forestry Committee (the Code Advisory Committee) to foster cooperation and involvement of key stakeholders in the ongoing development and implementation of the Code.*

Current status – A Code Implementation Steering Committee has been established. The role of the committee is as follows-

- a. Provide guidance on activities implemented by the (FD's) Harvesting Monitoring, Control and Surveillance Team
- b. Audit the rate of compliance as collected at beat, divisional and national level
- c. Submit national monitoring reports to the Forestry Board for endorsement.

The Conservator or Deputy Conservator serves as the Chairperson, the Project Coordinator Monitoring, Compliance and Surveillance Unit serves as the secretary and the membership of the committee comprises representatives from the following bodies-

- Fiji Pine Group Ltd
- Fiji Hardwood Corporation Ltd
- Sawmillers' Association of Fiji
- Fiji Mahogany Trust
- iTaukei Land Trust Board
- Fiji Pine Trust
- National Trust
- Nature Fiji Mareqeti Viti
- Department of Environment
- Attorney General Office
- Forestry Department

- (3) *Focussing the role of the Forestry Department on training, accreditation and independent audit and devolving responsibility for routine planning and supervision to Forest Practices Officers within the forest industry.*

Current status – Fiji has moved part way to a system of co-regulation through the corporatisation of the plantation sector. However, the new Forest Bill retains a focus on governmental control of the forest industry through the issue of licences etc.

- (4) *Improving the powers to enforce the Code.*

Current status – The Decree does not specifically mention a code of practice. However, s 13 allows conditions to be applied to licences, including conditions 'in accordance with good logging practices'. The Bill specifically recognises the *Fiji Forest Harvesting Code of Practice*. The Bill provides that the Conservator may impose terms and conditions on licenses (s 18) and that licenses may be revoked for non-compliance with conditions, including the code (s 19). However, the Bill potentially reduces the powers to enforce the Code by removing the compounding provisions of the Decree.

8.1.2 Settings and drivers for enhanced co-regulation

Enhanced co-regulation requires the following settings and drivers-

1. Government is willing to provide adequate funding to implement the actions required to foster increased capacity for self-management within the private and community sectors.
2. Government officers, particularly forestry officers, support the required actions and receive adequate training and resources to implement them.
3. Industry and community groups are motivated to achieve higher levels of self-regulation.

The motivation for industry and community groups to strive for high levels of self-regulation is a function of reward and punishment, commonly referred to as the 'carrot and stick'. The potential rewards include-

- Reduced governmental controls and bureaucracy, allowing more efficient management systems and reduced business costs.
- improved capacity of the forestry sector to further develop and self-manage their businesses without continued reliance on government support.
- improved public support ('social licence') for forestry activities.
- improved access to markets that require evidence of sound management systems and legality.

Rewards by themselves, however, may not be sufficient to motivate all players. Individuals or groups who fail to comply with rules and regulations bring the system of co-regulation and the reputation and standing of the forestry sector into disrepute. Such players may seek to profit by avoiding the normal costs of regulatory compliance and unfairly competing with those who are seeking to comply. Accordingly, all regulatory systems require statutory enforcement actions that will provide a sufficient deterrent to those who fail to achieve acceptable compliance standards. These actions include the requirement for corrective actions to be taken, suspension of licences, fines and prosecution.

A well-designed co-regulatory system will have the right combination of 'carrot and stick'. Experience in Tasmania, Australia, has found that 85% of non-compliances are best addressed through increased efforts in the areas of training, education and improved management systems whilst 15% require the imposition of penalties (Wilkinson, 2007).

Table 3. Analysis of options for a regulatory framework in Fiji

| Option | Main features | Risks | Actions to manage risks | Likelihood of success |
|---|--|---|---|--|
| Predominantly governmental management and control | Increased funding for the Forestry Department (FD) | Funds are not available and may decrease over time due to other priorities within government | Continue to seek supplementary funding through external projects | Low; this is not a sustainable option in the long term |
| | Continuing reliance of industry and landholders on governmental support | Continuing governmental support may stifle entrepreneurship, competition and investment by the private sector. | Create incentives to encourage private developments and investments | Low if the government creates an uneven playing field |
| | | The capacity of government may still not be sufficient to cater for the multitude of small holdings held under communal ownership | Continue to seek supplementary funding through external projects | Low; this is not a sustainable option in the long term |
| | Increased governmental control of commercial activities | Over-regulation may constrain business efficiency and discourage investment | Regulatory impacts need to be carefully evaluated and excessive regulation avoided | Low to moderate depending upon the efficiency of regulatory impact evaluations within government |
| Predominantly self-regulation | Decreased funding for the FD | The size of the FD may shrink below a critical mass and it may be absorbed into a larger department, further diluting the forestry skills and capacity within government | Institutional arrangements will need to be re-structured to recognise and retain forestry expertise within government | Low to moderate depending upon the institutional arrangements |
| | Greater reliance on self-management and regulation by the industry and landholders | Industry and landholders do not have the capacity to achieve reasonable standards, resulting in a decline in the environmental, social and economic value of the forests and trees. | Provide government support for building capacity within the private sector | Low in the absence of adequate governmental or external funding over a reasonable transition period. |
| | | | Use enforcement measures to ensure legal requirements by industry and landholders are met | Low in the absence of government support for upgrading their skills and capacity |

| Option | Main features | Risks | Actions to manage risks | Likelihood of success |
|------------------------|--|--|--|--|
| Enhanced co-regulation | Government funding for the FD to be maintained at current levels for the medium term | Funds are not available and may decrease over time due to other priorities within government | Demonstrate to government that long term budget savings will accrue through the transition to higher levels of self-regulation | Reasonable, particularly if the new regulatory environment encourages higher levels of investment and business activity by the private sector, e.g. in the growing of sandalwood |
| | | | Continue to seek supplementary funding through external projects | Moderate to reasonable |
| | Role of the FD to be focussed on capacity building of the private and community sectors, through information, education, training and accreditation. | FD may not have the skills and capacity to provide the necessary programs | Seek external support and partnerships with other governmental agencies | Reasonable |
| | Increasingly, greater reliance will be placed on self-management and regulation by the industry and landholders, including community-based groups. | Poor uptake due to a lack of incentives for the private and community sectors | Ensure that education and information programs highlight the potential benefits from sustainable forest management | Reasonable to good |
| | | | Promote the availability of government training programs/support for business development projects | Reasonable |
| | | | Use enforcement measures to ensure legal requirements by industry and landholders are met | Reasonable to good |

8.2 Regulation of Sandalwood harvesting and trade

Various forms of regulation for sandalwood have been used throughout the Asia-Pacific region. These can be broadly described as follows-

1. Government ownership of sandalwood, through the declaration of sandalwood as a 'royal' or protected species
2. Government controls on harvesting, through measures such as –
 - a. The imposition of moratoria on the cutting of sandalwood
 - b. The setting of diameter limits
 - c. Fixed seasons for harvesting
 - d. Restrictions on the number of licences issued for harvesting
 - e. The setting of royalties and fees.

International experience demonstrates that such governmental regulation is rarely successful in curbing theft and encouraging land owners to plant sandalwood (see the review of international experience in Box 1).

The key factors to be addressed in a regulatory framework for sandalwood are-

1. Establishing the legal ownership of the sandalwood trees
2. Preventing theft and damage of the trees
3. A chain of custody system that provides verification that the sandalwood is legally sourced and traded at all stages of the supply chain.

The key principles that should be applied to a sandalwood regulation are as follows-

- Respect for the private rights of landowners and sandalwood growers to grow and harvest their sandalwood when they choose
- Simple, low cost and practical to implement without undue governmental bureaucracy, fees and restrictions
- Rigorous and credible in terms of providing adequate documentation to verify the ownership and legality of the sandalwood
- Recognised and used by all parties involved in the chain of custody, including land owners/growers, harvesters, traders, processors, exporters and all governmental agencies within Fiji and by importers and government agencies within importing countries.

The key roles for government should be to-

- Enhance the capacity of land owners to grow sandalwood by providing them with more training, education and information on its potential economic value
- Encourage and support the formation of sandalwood grower associations to foster a cooperative approach to sharing information, propagating seedlings, managing sandalwood crops and planning the harvest and sale of sandalwood
- Provide a secure regulatory framework for land owners to register the ownership of their sandalwood plantings and to grow their trees without fear of theft and illegal trade.

Box 1 – Experience with governmental regulation of sandalwood in the Asia-Pacific region

Throughout history, the high demand for sandalwood has resulted in over-exploitation, illegal cutting and black market trade. In India, the Sultan of Mysore declared sandalwood to be a royal tree in 1792²⁰ and the ownership of all sandalwood trees remained vested in the state until at least 2002²¹. Similarly in Timor, all sandalwood trees were traditionally owned by the King (Radja). Subsequent colonial and national governments continued to maintain ownership of all trees irrespective of where they grew, until 1999²². In both countries the governments have continued to assert controls over the cutting of sandalwood. However, the regulation of sandalwood cultivation and harvesting has not been successful.

In India, 'draconian' regulations and fear of theft have discouraged landowners from cultivating sandalwood²³. It is reported that landowners with sandalwood on their land live in fear of harassment by forestry officials on the one hand and illegal loggers on the other²⁴. Inept enforcement of the regulations has been exacerbated by alleged collusion of forestry officials with the black market criminals. In 1997 it was estimated that 75% of the sandalwood leaving the Indian state of Karnataka was smuggled²⁵.

The perverse impacts of regulation are also evident in the Indonesian province of East Nusa Tenggara, where it is considered that the regulations have 'severely hindered' rather than assisted the sustainable production of sandalwood²⁶. Local people are reported to have no interest in cultivating sandalwood because of the tough regulatory requirements and low net financial return. Some landowners are even reported to have been imprisoned as a result of harvesting their own sandalwood without informing the government²⁷. As a result, the natural regeneration of sandalwood continues to be depleted by burning and grazing activities.

Moratoria on the harvesting of sandalwood have not always been successful in the absence of effective controls on illegal harvesting. A five year ban from 1997 to 2003 on the harvesting of sandalwood in East Nusa Tenggara is reported to have accelerated the over-exploitation of sandalwood due to an increase in illegal logging²⁸. Similarly, some governments have imposed diameter cutting limits in order to reduce the premature harvesting of young trees. However, such rules are difficult to monitor and enforce and they need to be accompanied by education programs and guidelines on how growers and cutters can maximise their returns by allowing trees to reach more commercial sizes.²⁹

²⁰ (Anon., 1997)

²¹ (Rao, 2002)

²² (Rohadi, et al., 2000)

²³ (Anon., 2008)

²⁴ (Rao, 2002)

²⁵ (Anon., 1997)

²⁶ (Rohadi, et al., 2000)

²⁷ (Ora, 2010)

²⁸ (Ora, 2010)

²⁹ (Department of Forests, 2000)

Sandalwood Regulations developed under the APFNet project were adopted in Tonga in 2016. These regulations provide a suitable model for Fiji. The main elements of the Tongan regulations are detailed below and summarised in Figure 1.

Main elements of the Tonga Sandalwood Regulations 2016

1. Requirements for persons growing sandalwood

- A person who intends to, or is planting sandalwood trees for the purposes of trade must sign a Declaration of Sandalwood Ownership. The Declaration must state-
 - Name of landholder and grower
 - Location and identification of the property on which the sandalwood is grown or planted
 - If the grower is not the landholder, the nature and duration of the timber right.
- All sandalwood growers must comply with the requirements relating to the harvesting and trade of sandalwood as summarised below.

2. Requirements for persons trading or exporting sandalwood

- A person who intends to plant, process, trade or export sandalwood for the purposes of trade must obtain a valid business license and valid tax identification number (TIN) and in the case of a foreigner, a Foreign Investment Registration Certificate.
- A person who intends to export sandalwood must also obtain a Sandalwood Export License and a Tax Clearance Certificate.

3. Requirements for persons harvesting sandalwood

- At the time of an agreement between the grower and trader to harvest sandalwood, the trader must attach a tree tag to each sandalwood tree that has been agreed for harvest.
- Once each tree is felled the trader must attach a billet tag to each billet, including any harvested section of root, stump, stem or branch of the sandalwood tree.
- The tree tags and billet tags must be obtained from the Forestry Division of the Ministry of Agriculture, Food, Forests and Fisheries.
- Before the sandalwood is removed from the harvest area, the trader must accurately record the following details into a Sandalwood Harvest Docket-
 - Name of the grower and TIN
 - Name of the trader and TIN
 - Name of the landholder or holder of the timber rights
 - Identification of the property
 - Date of harvesting
 - Number of trees harvested
 - Number, type, length and weight of each billet
 - Tree and billet tag numbers.
- The Sandalwood Harvest Docket must be signed by the grower and the trader and a copy must be provided to the Forestry Division within 14 days.
- The grower and trader must maintain a record of each Sandalwood Harvest Docket for at least five years.

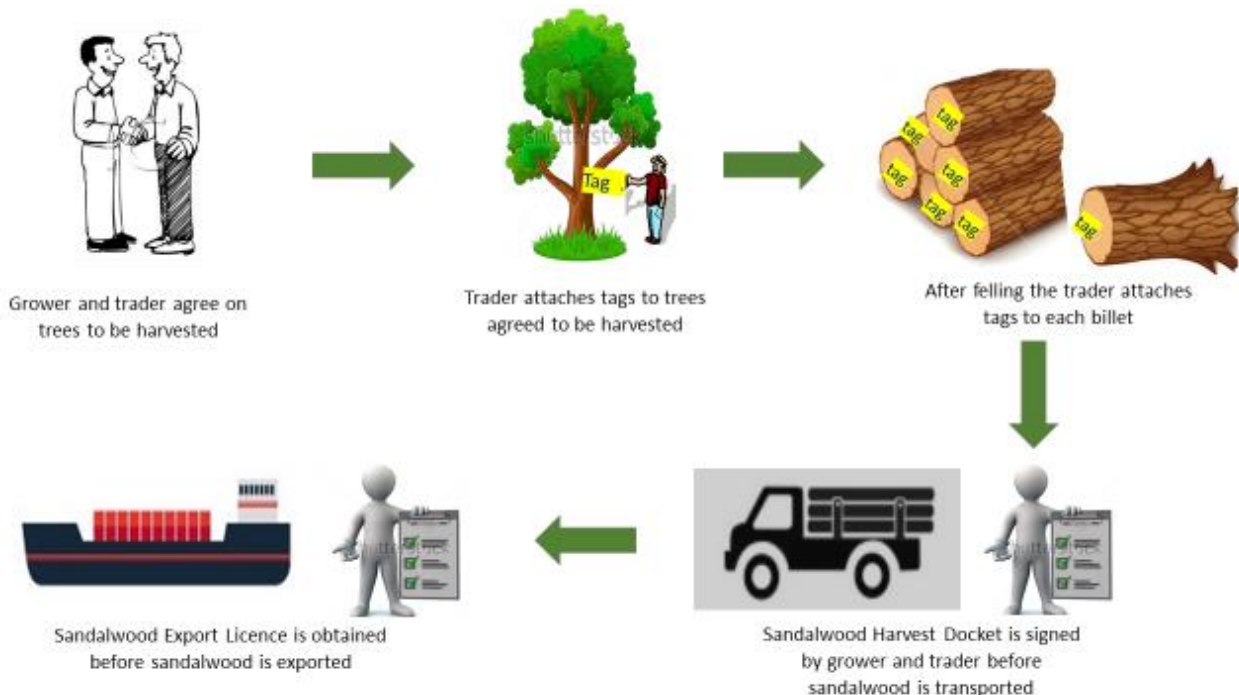
4. Requirements for persons processing sandalwood

- A person who processes sandalwood by cutting, chipping or otherwise converting the tree into another product must maintain a record of the following-
 - Date on which the sandalwood was acquired
 - Billet tag numbers
 - Type and quantity of products that were produced from the sandalwood.

5. Penalties

- Substantial penalties, including fines up to TOP10,000 and 3 years imprisonment, apply for offences of the regulations, including-
 - Theft of sandalwood
 - 'Checking' of a sandalwood tree by a person who is not the owner of the tree
 - Failure to comply with tagging requirements
 - Breach of sandalwood export license
 - Offences against an enforcement officer
 - Forgery, false or misleading statements or destruction of evidence.

Figure 1 – Regulation of sandalwood harvest and trade in Tonga



Part C - Background on Fiji's forests and forest management

9. Forest resources

9.1 Forests

- Of Fiji's landmass of 1.8 million hectares, approximately 54% has some form of forest cover, comprising about 915,000 ha of native forest and 69,000 ha of forest plantations³⁰, predominantly pine (mainly *Pinus caribaea*) and mahogany (*Swietenia macrophylla*).
- Despite the high forest cover, the extent of deforestation due to population growth and agricultural expansion remains a serious concern.
- Fiji's forested area was classified as Multiple-Use Forests, Protection Forests (on slopes >30 degrees and other erosion-prone sites) and Preserved Forests (nature reserves, etc.) in the 1992 National Forest Inventory (NFI).
- There is no policy for the maintenance of a permanent forest estate (PFE) in Fiji.

9.2 Environment and nature conservation

- The Fiji Islands are rich in biodiversity. Natural forests host unique communities of plants and animals, many of which are endemic. This biodiversity is threatened by over-exploitation of resources, and the fragmentation of ecosystems and habitat destruction as a result of human activities and the impact of invasive species.
- Coastal resources are affected by the negative impacts of upstream activities such as poor agricultural and logging practices, and land clearing for settlements, infrastructure and other economic activities.
- The National Biodiversity Strategy and Action Plan (NBSAP) emphasizes the conservation and sustainable management of Fiji's natural forests as the single most important means to conserving the vast majority of Fiji's endemic fauna and flora. However, at present, there is no effective protection of forests from biodiversity loss.
- The current administrative framework for environmental management in Fiji is poorly developed with ill-defined responsibilities, a lack of capacity and severe funding constraints.³¹
- One of the major issues facing the designation and maintenance of protected areas in Fiji is the cost involved in compensating resource owners for loss of income that would have been derived from forestry, mining or other industries based on use of the resource owners' assets. Current approaches are based on voluntary models.
- The FFHCP contains provisions to minimise the impact of logging on environmental values such as soils and streams but there is a lack of management guidelines for the conservation of values such as biodiversity within wood production forests.

³⁰ N. Vakacegu, FD, pers. comm. July 2017

³¹ (Fiji Department of Forestry, 2007)

9.3 Forest products

- The annual rate of cut of the native forest was around 200,000 m³ for the period 1970–1989, reducing to 100,000 m³ for the period 1999 - 2005³², and 39,000 m³ in 2016³³.
- Plantations in 2016 supplied a total of about 352,000 m³ of pine and about 64,000 m³ of mahogany³⁴.
- Wood is currently processed into sawn timber, veneer and plywood, blockboard, core board, mouldings, poles and posts – of which a large portion is placed on the Australian and New Zealand market – and pine chips, which are exported solely to Japan.
- In 2015, there were 28 static sawmills (including 5 unlicensed or non-operational mills) and 40 portable sawmills (including 18 unlicensed or non-operational mills)³⁵.
- The industry is dominated by two, largely government-owned enterprises, Fiji Hardwood Corporation Ltd (FHCL) and Fiji Pine Ltd (FPL) and its subsidiaries, including Tropik Wood Industries Ltd, Tropik Wood Products Ltd, Fiji Forest Industries Ltd, and a new power generation enterprise, Eltech P/L.
- Non-timber forest products are of great importance to rural communities. Many plants are used as foods, medicines, construction and roofing materials, dyes, artisanal products, and in ceremonials and rituals. Bush meat, especially pigs, is a valuable food item. Mud crabs, lobster and shellfish are harvested from mangrove forests.
- Sandalwood (*Santalum yasi*) was once plentiful in Fiji but it has been over-exploited for many decades and the current resource is very depleted.

10. Land and forest tenure

- In Fiji, land belongs to the *tokatoka*, *mataqali* or *yavusa*, the communal land-owning units recognised by law (Table 4).
- Fijian landowners may lease land to specified users through the iTaukei Land Trust Board (iTLTB), which is also responsible for the collection of rentals and other payments as well as distribution of funds to landowner groups. Production forest under lease is effectively secure only until it is logged. Once logged, the land reverts to the land owners and may be re-logged under one-year licence or converted to other uses.
- The vast majority of the forests are owned by Fiji's indigenous people and their rights are guaranteed under the Constitution and national legislation (iTaukei Lands Act) and international instruments such as the Declaration on the Rights of Indigenous Peoples (UNDRIP), the Convention for the Safeguarding of the Intangible Cultural Heritage (UNCSICH).

³² (Fiji Department of Forestry, 2007)

³³ N. Vakacegu, FD, pers. comm. July 2017

³⁴ N. Vakacegu, FD, pers. comm. July 2017

³⁵ (Department of Forestry, 2015)

Table 4. The land tenure system in Fiji and how it relates to the Fijian hierarchy³⁶

| | | |
|---------------|----------------------|---|
| Matanitu | Confederation, State | A traditional Fijian confederation of Vanua |
| Vanua | Federation | A traditional Fijian political unit, usually consisting of a few villages under a single chief, usually with a distinctive language and culture |
| Yavusa | Tribe | The largest kinship group consisting of people descended from a single vu – an ancestor god |
| Mataqali | Clan | Fijian kin group, officially a subdivision of a yavusa and designated as the landowning unit |
| Tokatoka | Extended family | Subdivision of a mataqali, the basic land working unit, often comprising a group of several brothers living in the same village in separate households |
| Tikina | | Subdivision of a province – a Fiji Government administrative unit |
| iTaukei Land | | Land above high-water mark, not being freehold nor owned by the State in accordance with the provisions of the Crown Lands Act. It comprises approximately 83% of the total landmass in Fiji. The iTaukei Land Trust Board acts on behalf of landowner in all matters pertaining to its lease or alienation |
| Reserve Land | | iTaukei land set aside and proclaimed as such under the provisions of the Native Land Trust Act. Reserve Land cannot be leased. De-reservation can occur provided there is 'good cause' and with the consent of the landowner |
| Freehold Land | | Land owned privately and exclusively by the title holder who may dispose of it in any manner he or she wishes |
| State Land | | State Land comprises Schedule A, Schedule B, State Freehold, State Foreshore and State Land without Title. Schedule A and Schedule B land are held by the State in trust for indigenous landowners |

11. Forest governance and management

11.1 Governance

The Fiji Forest Policy identifies the following issues-

- The Forest Decree 1992 does not refer to all aspects of sustainable forest management, and parts of it are inconsistent with subsequent developments in policy and administration of the forest sector.

³⁶ (Fiji Department of Forestry, 2007)

- Budgetary allocations to the FD and its staffing are insufficient to ensure that the Department can fully fulfil its responsibilities for planning, monitoring and regulation of forest management.
- There is a need to re-focus FD's activities to concentrate on its core responsibilities, and to devolve functions that could be effectively implemented by others, including the resource owners.
- Bureaucratic processes in the FD, iTLTB, and other Government departments need to be more simplified, coordinated and decentralised to create a favourable environment for investment in the forest sector³⁷.
- Inadequate research hampers the development of adequate approaches to improved management of the forest resource. Originally, the main focus of research was on silviculture management and utilization of wood. Later, research focused on the sustainable management of forests. There is a need to continue the research programme systematically in order to fine-tune the silvicultural system and to better understand the dynamics of the ecological processes in natural forests, to develop minimum impact logging techniques and silvicultural measures for the rehabilitation and improvement of forest stands. The ongoing review and evaluation of the DLT is a key priority (see section 11.2).

11.2 Forest management

- There are no forest management plans and the harvesting plans that have to be submitted by licensees are rarely based on sound resource inventories³⁸. In addition, the existing licensing system with a preference by landowners for short-term timber licences discourages longer-term planning for forestry operations and investment in sustainable forest management and industry development.
- There is little awareness of resource owners on the benefits of long-term arrangements for SFM.
- The Fiji Forest Harvesting Code of Practice (FFHCP) describes minimum standards for harvesting operations, including soil and water conservation and post-harvesting measures. However, over-cutting and unsound logging practices result in forest degradation and considerable damage to soils, waterways and remaining forests³⁹. There are continuing challenges with respect to the monitoring and enforcement of the Code due to inadequate training and availability of resources.
- The harvesting and silvicultural management of native forests is based on a diameter limit table (DLT), which is prescribed in the regulations⁴⁰ but it has not been enforced in recent years. A recent instruction issued by the Conservator of Forests to FD staff requires the DLT to be implemented for all new and renewed timber licenses as from 1 June 2017. The forest

³⁷ (Fiji Department of Forestry, 2007)

³⁸ (Fiji Department of Forestry, 2007)

³⁹ (Monitoring, Control and Surveillance Unit, 2014)

⁴⁰ iTaukei Land (Forest) Regulations under s 33 iTaukei Lands Trust Act [Cap 134]

industry has voiced its concern about the impact of the DLT on the economics of harvesting⁴¹.

- Protection from wildfires is a problem, particularly for plantations that adjoin grasslands.
- There is a need for comprehensive skills training for the forestry industry to improve knowledge of forest utilization, the FFHCOP and environmental protection practices, log conversion, timber preservation, quality assurance and marketing processes. The FD places high priority on the provision of this training, and has invested a considerable amount in training facilities. Better training is needed to develop and maintain a highly skilled work force and sufficient professional staff for the sector, especially in the field of forest extension, silviculture, forest management, harvesting and utilization.
- Specific attention needs to be given to training of resource owners in implementing and monitoring forest operations. The challenge is to establish an operational efficiency and financially sound base to conduct the appropriate training, and to find best options to share the tasks between the Timber Industry Training Centre at Nasinu (TITC), the Forestry Training Centre at Colo-i-Suva (FTC) and specialised training providers outside the FD.⁴²

12. Legislation and policy

12.1 Legislation

Legislation relevant to forestry in Fiji is summarised in Annex 1. The current principal forest law is the Forest Decree 1992. This decree is scheduled to be replaced by the Forest Bill 2016, which was in the committee stage of parliament in March 2017. The main regulatory provisions of the decree and bill are summarised in Annex 2. Key differences between the two are detailed in Table 2.

In addition to the primary legislation, there are several related regulations, as shown in Annex 1.

The regulations under the iTaukei Lands Trust Act cover the taking of forest produce from iTaukei land, including the requirement for licences and the payment of royalties. Regulation 12 contains a schedule (diameter limit table, see section 11.2 above) that prohibits the felling of certain trees having a girth less than the minimum prescribed in the regulations.

There is no legislation that specifically covers the harvesting and trading of sandalwood⁴³, which is a high value species that is often associated with illegal harvesting and trade.

12.2 Policies

The principal policy instruments relevant to forestry are summarised in Annex 1.

The key documents are described briefly below.

12.2.1 Fiji Forest Policy Statement 2007

The objectives of the Fiji Forest Policy Statement 2007⁴⁴ (FFPS) are to seek:

⁴¹ (Wilkinson, 2017a), (Wilkinson, 2017b)

⁴² (Fiji Department of Forestry, 2007)

⁴³ The current situation for sandalwood harvest is summarised in section 7

- ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility.
- sustainable supply of forest products and services by maintaining a sufficiently large permanent forest area under efficient and effective management.
- increased engagement by landowners and communities in sustainable forest management and an equitable distribution of benefits from forest products and processes including ensured protection of intellectual property rights.
- increased employment in the forestry sector, sufficient supply of domestic markets and increased foreign exchange earnings through sustainable forest-based industry development and trade.
- enhanced national capacity to manage and develop the forest sector in a collaborative approach with involvement of all stakeholders.

12.2.2 Code of Practice

The Fiji Forest Harvesting Code of Practice (FFHCP) (Second edition 2013)⁴⁵ prescribes “desirable practices aimed at protecting the forest environment, its assets and its users, while allowing the execution of economically viable operations within acceptable safety standards”. Under the draft Forest Bill the FFHCP can be legally enforced through conditions placed on timber licenses.

The FFHCOP covers the following aspects of forest practices-

1. Scope
2. Legal Compliance
3. Pre-operational Inspection
4. Pre-harvest inventory
5. Silviculture prescriptions
6. Harvesting plan
7. Training and accreditation
8. Weather restrictions
9. Buffers
10. Road access
11. Felling
12. Skidding
13. Landings
14. Rehabilitation of harvest area
15. Forest Hygiene
16. Harvesting machine standards
17. Harvesting supervision
18. Monitoring and evaluation

⁴⁴ (Fiji Department of Forestry, 2007)

⁴⁵ (Republic of Fiji, 2013)

12.2.3 Rural Land Use Policy for Fiji 2002

The Rural Land Use Policy for Fiji 2002⁴⁶ states that Fiji's sustainable development will be based upon the sustainable utilisation of resources and preserving a healthy environment, using the following broad strategies-

- Protecting the integrity of ecological systems and biodiversity
- Reducing the rates and areas of land degradation
- Protecting natural resources
- Reducing damage to fragile ecosystems
- Maintaining and extending indigenous forest and plantation forest coverage
- Promoting sustainable farming systems
- Improving rural environmental conditions
- Encouraging the formation of Land Husbandry Groups
- Preventing and controlling pollution, and
- Implementing international environmental accords to which Fiji is a signatory.

Specific objectives relevant to forestry are as follows–

- Natural resource management, planning, environmental and rural land use legislation is reviewed and consolidated under a single and enforceable legal and institutional framework.
- Land degradation is reduced, environmental damage minimised and productivity from the land is improved and sustained through proper use and management.
- Biodiversity and conservation issues are crucial considerations in the management of the indigenous forest resources.
- Diversified farming systems are widely practised.
- National Code of Logging Practice, including silviculture prescriptions, is universally adopted and adequate monitoring/enforcement mechanisms are in place and effective.
- Forest resources are being used sustainably and in the interests of stakeholders and the nation.
- Incidence of 'wild' forest fires in pine plantations and indigenous forests is significantly reduced as a result of effective education and public awareness campaigns.

12.2.4 REDD-Plus Policy

The REDD-Plus Policy 2011⁴⁷ aims to maximise benefits arising from carbon and climate-related financial instruments in order to assist Fiji in retaining and enhancing the carbon in its forested landscapes and achieve its core forest sector goals as defined in the Fiji Forest Policy, including-

- a transition to sustainable forest management
- reducing the loss of forest from the expansion of agricultural lands and other land use change

⁴⁶ (Leslie & Ratukalou, 2002)

⁴⁷ (Secretariat of the Pacific Community, 2011)

- protecting indigenous forest areas of high cultural, biological diversity and ecosystem services value
- increasing timber production from the plantation sector through afforestation/reforestation of non-forest lands (excluding wetlands/peatlands and indigenous palms)
- increasing agroforestry activities on non-forest lands (excluding wetlands/peatlands and indigenous palms)
- assist Fiji in achieving its strategic goals in land-based development and environmental management.

12.2.5 National Climate Change Policy 2012

The National Climate Change Policy 2012⁴⁸ recognises that increased sequestration of carbon and reduced emissions can be achieved through-

- sustainable management of forests (a huge carbon reservoir)
- promotion of reforestation, afforestation and enrichment planting, as only growing forests are continually sequestering carbon dioxide from the atmosphere
- sustainable management of mangrove areas and swamp land, which store huge amounts of carbon.

⁴⁸ (Government of the Republic of Fiji, 2012)

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Annex 1 - Legislation and policies relevant to forest and tree resources

Legislation

| Act or regulation | Main provisions relevant to forestry |
|--|--|
| iTaukei Lands Act [Cap 133] | Provides for the continued occupation and use of iTaukei lands by indigenous Fijians. Such lands may be cultivated, allotted and dealt with by iTaukei according to their customs |
| iTaukei Lands Trust Act [Cap 134] | This act establishes the iTaukei Land Trust Board and vests the control of all iTaukei land in the board for it to administer iTaukei land for the benefit of the iTaukei land owners. |
| iTaukei Land (Forest) Regulations under s 33 iTaukei Lands Trust Act [Cap 134] | These regulations cover the taking of forest produce from iTaukei land, including the requirement for licences and the payment of royalties. Regulation 12 contains a schedule that prohibits the felling of certain trees having a girth less than the minimum prescribed in Schedule 1 of the regulations. |
| Forest Decree 1992 | The Forest Decree (1992) is the main law regulating forest use in Fiji. It repeals the Forest Act (Cap. 150). The forestry decree classifies Fiji's forests into two types: forest reserves and nature reserves (s. 7). There is no provision for sustainable forest management or participation of local landowners in the management of forest resources. Part v of the decree recognises the rights of customary landowners and provides that subsistence forest use that is recognised by customary law is permitted and should not be restricted by the decree. The forestry regulations provided under section 35 in the now repealed forest act still remain in force until amended by a new Forest Decree. |
| Fiji Pine Decree 1990 (Decree No. 29) | This decree makes provision for the incorporation of the Fiji Pine Limited and the establishment of the Fiji Pine Trust and the forestry industry assistance fund. Assets, liabilities and obligations of the Fiji Pine Commission are transferred to the company. The fund shall also lend assistance to private landowners for the development of forest schemes. |
| Mahogany Industry Development Decree 2010 (No. 16 of 2010) | This decree establishes the Mahogany Industry Council and provides for the continuation of the Fiji Mahogany Trust, which was established as a body corporate under section 5 of the Fiji Mahogany Act 2003 for the benefit of landowners and the Fiji hardwood corporation limited, transformed into a privatised company for the purposes of developing the mahogany industry in Fiji, including the harvesting and processing of mahogany forests. This decree provides that the Forest Decree does not apply to mahogany plantation land. |
| Mahogany Industry Development (Amendment) Decree 2014 (No. 3 of 2014) | This decree amends the Mahogany Industry Development Decree 2010 by giving a new definition of "mahogany plantation land" and by allowing that any mahogany that is growing on land that is not mahogany plantation land may be harvested or sold by the owner of that land, provided that the owner complies with the Fiji mahogany brand protocols and standards under the Mahogany Industry (Licensing and Branding) Decree 2011 for any export of any timber. |

| Act or regulation | Main provisions relevant to forestry |
|--|--|
| Environment Management Act 2005 | For the protection of the natural resources and for the control and management of developments, waste management and pollution control and for the establishment of a national environment council and for related matters. The act requires environmental audits and environmental impact statements for prescribed development proposals, including commercial logging operations. |
| Environment Management (EIA Process) Regulations 2007 | These regulations require every proponent of a development proposal to apply to the approving authority for a decision on the proposal under part 4 of the Environment Management Act 2005 before undertaking any work in respect of it that will alter the nature of any land as defined in the act and to apply for screening of the proposal in accordance with these regulations and section 27 of the act. The regulations also make provision with respect to environmental impact assessment procedures. |
| Endangered and Protected Species Act 2002 (No. 29 Of 2002) | An act to regulate and control the international trade, domestic trade, possession and transportation of species protected under the convention on international trade in endangered species of wild fauna and flora (cites) and for related matters. It does not deal with the management of habitat or the impact of forestry operations on the species. |
| Birds and Game Protection Act (Cap 170 Rev 1985) | Provides for the protection of prescribed birds and game. Deals mainly with the regulation of hunting but s 3 is relevant to forestry (offence to wilfully kill, wound or take any protected bird, or its nest or egg). |
| Coconut Industry Development Authority Act 1998 | Provides for the encouragement, development and regulation of the coconut industry, to establish the coconut industry development authority, to provide for the establishment of a coconut industry development fund and for related matters |
| Coconut Industry Development Decree 2010 | Transfers the functions, assets and liabilities of the coconut industry development authority (act 1998) to the ministry responsible for agriculture. |
| Land Conservation and Improvement Act [Cap 141 Rev 1985] | Provision for the conservation and improvement of the land and water resources of Fiji. Provides for the issue of 'conservation orders' to prohibit vegetation clearance, cultivation or burning of vegetation. |
| Land and Water Resources Management Bill 2016 | Updates the above act and provides that the minister may, with the recommendation of the board, after consultation with the minister responsible for lands, minister responsible for iTaukei affairs and minister responsible for works and transport, designate an area as a land and water conservation area. |
| Regulations Under s 35 of the Forest Act [Cap 150] | A number of regulations made under s 35 of the Forest Act (which was revoked by the Forest Decree 1992) remain force, although most have or are being replaced by more recent legislation. The old regulations include – Forest (Sawmills) Regulations 1977 and the Treatment Plant Regulations 1990 (deal mainly with licencing requirements), Forest Guards Regulations 1975 (deal mainly with appointments and conditions of service etc.), Forest (Timber Marks) Regulations (deal with the registration of timber marks) and Forest (Fire Prevention) Regulations 1972 (deal mainly with requirements to obtain a licence before lighting fires). |
| Rivers and Streams Act [Cap 136 Rev 1985] | Defines the public rights in the rivers and streams of Fiji but does not deal with the management or protection of riparian values. |

Policy instruments relevant to forests and tree resources

| Instrument | Main relevance to forests and trees |
|--|--|
| Fiji Forest Harvesting Code of Practice 2013 | Prescribes that harvesting shall be conducted in a manner that aims to protect the forest environment, its assets and users, while allowing economically viable operations within acceptable safety standards. |
| Fiji Forest Policy Statement 2007 | Sets out the policy goals and objectives for the achievement of sustainable forest management in Fiji. |
| Rural Land Use Policy for Fiji 2002 | Provides rural land use policies for Fiji, including objectives for strengthening the policy framework for sustainable development, establishing natural resources and environment monitoring and management systems, raising awareness of sustainable development issues throughout the nation and building capacities for implementing sustainable development practices. |
| Fiji REDD-Plus Policy 2011 | The Fiji REDD-Plus Policy has the overall objective of enhancing the national forest-based carbon balance by supporting and strengthening initiatives that address the drivers of forest-based carbon emission sand, and encouraging the drivers of forest-based carbon sinks. The policy seeks to establish a national MRV (measuring, reporting and verification) system and implement a REDD carbon financing mechanism. |
| National Climate Change Policy 2012 | The policy seeks to (1) increase Fiji's capacity to cope with the impacts of climate change by strengthening institutional and legal frameworks, providing sound scientific information, and implementing effective awareness and education initiatives. (2) maximise access to and secure globally available financing for climate change mitigation and adaptation efforts. (3) strengthen Fiji's support towards neighbouring Pacific Island countries that are highly vulnerable to the impacts of climate change. (4) strengthen engagement in international climate change policy processes and fulfil obligations on climate change mitigation and adaptation. |
| National Biodiversity Strategic Action Plan 2007 | This plan sets out Fiji's commitment under the Convention of Biological Diversity (CBD) and the principal instruments for implementing the Convention at the national level, ensuring that conservation and sustainable use of biological resources are integrated into national decision-making. The goal of NBSAP is 'to conserve and sustainably use Fiji's terrestrial, freshwater and marine biodiversity and to maintain the ecological process and systems which are the foundations of national and local development'. It recognises that the establishment of a comprehensive and representative system of reserves and conservation areas at the national and local levels is critical to successful biodiversity conservation. |

Annex 2 - Main provisions of the Forest Decree 1992 and the Forest Bill 2016

Forest Decree 1992

Administration (Part II)

- Appointment of Conservator of Forests (s 3)
- Establishment of Forestry Board to advise the Minister on matters relating to forest policy (s 4)

Forest Reserves and Nature Reserves (Part III)

- Minister may declare certain land as a forest reserve or nature reserve (Part III)

Utilization of Forest Resources (Part IV)

- Licence required to fell timber etc. (s 8)
- Consent of iTaukei Land Trust Board required for licence over iTaukei land (s 10)
- Conditions applied to licences, including conditions 'in accordance with good logging practices' (s 13)
- Issue of timber licence subject to approval by the licencing officer of a logging plan prepared by the applicant and compliance with the plan is a condition of the licence (s 14)
- Conservator may suspend in whole or in part operations under a licence where a violation of the conditions of the licence has occurred, or is likely to occur. Conservator may require remedial measures to be taken and if not satisfied that the measures have been taken the Conservator may, after allowing the licensee an opportunity to be heard, revoke or suspend the licence (s 19)

Customary Rights (Part V)

- The cutting and removal of forest produce for customary use is not prohibited or restricted, except where the Minister prohibits by notice the felling or removal of specified timber (s 21)

Fires (Part VII)

- Fires may not be lit in a forest reserve or nature reserve unless authorised by a license (s 23).

Offences and penalties (Part VIII)

- Offences include causing damage, fraud/misrepresentation, unauthorised felling, violation of licence conditions (s 28).
- Penalties include fines up to \$10,000 and/or imprisonment up to 12 months (s 29)
- The Conservator (and any other forestry officer empowered by the Conservator) may compound an offence, where the person who has committed the offence consents and pays a determined amount, being not more than one half of the fine prescribed for the offence (s 33).

Powers of officers (Part IX)

- Any officer or police officer may enter land (s 34), arrest any person suspected of an offence if the person refuses to give a true name and address (s 35) and seize and detain forest produce and livestock (s 36).

Regulations (Part X)

- The Minister may make regulations, including for the appointment of licencing officers, the issue of licences, royalties and fees, the transport of forest produce, registration and licencing of sawmills.

Forest Bill 2016

The Forest Bill 2016 was drafted following a review, which found that the Forest Decree does not sufficiently cover all aspects of sustainable forest management, and parts of it are inconsistent with recent developments in policy and administration of the forest sector. The Bill seeks to :

- provide for the management, development and sustainable use of Fiji's forest resources and enable the full implementation of the Fiji Forest Policy of 2007;
- further harmonise the current Policy with the legal regime of forestry and more recent relevant land use policies and environmental legislation such as the *Environment Management Act 2005*; and
- resolve the deficiencies within the Decree relating to forest management, licensing and harvesting.

Objective (Part 1)

- The objective of the Bill is to ensure the protection, sustainable management and use of Fiji's forests and to provide social, economic and environmental benefits to Fijians for the current and future generations.

Administration (Part 2)

- Appointment and duties of the Conservator of Forests (CI 4)
- Duties of the Department of Forests (CI 5), which include planning, monitoring and controlling the sustainable management and conservation of all forest resources in all types of forests for the provision of wood and non-wood products and services (see Annex 3 for an extract of the full duties of the DoF).
- Establishment of the Forestry Board, to advise the Permanent Secretary and Minister on forest policy matters (CI 6-9).

National Forest Policy and Forest Classification (Part 3)

- Requires the forest sector to be administered in accordance with the Forest Policy (CI 12), the DoF to classify forests (CI 13) and undertake a National Forest Resource Assessment every 10 years (CI 16) and provides the Minister with powers to declare nature reserves and forest reserves (CI 14).

Licensing (Part 4)

Prohibited activities

- The extraction of wood and non-wood forest products, hunting of wildlife, construction of roads/paths/buildings, extraction of minerals etc. are prohibited unless authorised by a license (CI 17).

Special Harvesting Licence

- Provides that a person who wishes to fell or extract timber must apply to the Conservator for a Special Harvesting Licence. The Conservator may apply terms and conditions to a Special Harvesting Licence (CI 18).
- Conservator may revoke a Special Harvesting Licence if the holder has failed to perform up to the standards prescribed by this Act, particularly the *Fiji Forest Harvesting Code of Practice* and the *iTaukei Land Forest Regulations* (CI 19).

Forest Management Licence

- Conservator shall issue Forest Management Licences for creating long term tenures for persons, organisations or companies which can demonstrate a commitment to sustainable forest management. Such licence may contain terms and conditions as the Conservator deems appropriate. A person may not maintain a forest plantation without a Forest Management Licence (CI 21).

Import and Export Licence

- Conservator is given powers to issue Import and Export Licences for the purposes of monitoring the movements of all forest products (CI 22).

Wood Processing Mills Licence

- Wood processing mills must obtain a licence from the Conservator. The applicant must provide evidence of satisfactory supply of wood. Conservator may impose conditions and may revoke the licence for non-compliance with conditions, and the Fiji Harvesting Code of Practice (CI 23).

Log scaling

- Logs must be measured and weighed according to regulations on log scaling. Scalers must be certified (CI 24).

Power of the Conservator to suspend or revoke licences

- Conservator may suspend wholly or partly any work under a licence where a breach of the conditions of the license has occurred or is likely to occur. The written notice of suspension must specify the reasons and require the licensee to take measures to remedy or prevent the breach and allow a reasonable period of time for the licensee to do this. The Conservator may revoke or suspend the license if requirements are not met by the licensee, provided that before any revocation or suspension, the Conservator allows the licensee an opportunity to be heard. Licensee may appeal to the Minister (CI 26).

Enforcement of a licence

- Provides that a licensee is liable for any damage caused by lack of compliance. Makes it an offence for matters relating to misrepresentation, counterfeiting of documents etc.

Stipulates that a licence holder who fells trees beyond a licenced area may be charged with theft under the *Crimes Decree 2009*.

Fees, royalties and customary rights (Part 5)

- CI 30 Provides that nothing in this Act shall prohibit or restrict on—
 - iTaukei reserve the exercise of any rights established by iTaukei custom to hunt, fish, or collect fruits, vegetables, wood and other plants and animals; or
 - alienated iTaukei land, with the consent of the lessee of such land, the cutting or removal in accordance with iTaukei custom of forest products
- other than where the Minister has by notice prohibited the felling or removal of specified timber, and that iTaukei landowners must not cut or fell plantation trees on licenced plantation land.

Forest Protection (Part 6)

Endorsement of forest management policies and certification

- Stipulates that the certification of timber according to national or international standards of forest management, chain of custody, and fair trade to remain voluntary (CI 32).

Forest carbon trading

- The transfer of forest carbon property rights, under the Clean Development Mechanism, REDD or REDD+, will require an application the Conservator and compliance with the Fiji REDD+ Policy (CI 33).

Endangered and protected forest species

- Provides for the establishment of a Committee under the Board that must update and review the list of forest species in the Endangered and Protected Species Act 2002 or any other related laws every 5 years (CI 34).

Forest fires

- The lighting of fires in forest plantations including areas prepared for forest plantations is an offence unless authorised a licence (CI 36 and 38).

Forest officers (Part 7)

- The Permanent Secretary has the power to appoint Forest Officers (CI 39). Forest Officers, persons appointed by the Conservator and police officers have powers for activities covered by this Act to inspect land and processing sites, to ask for a person's license or other authorisation, and to stop and inspect vehicles. It is an offence for a person to refuse, obstruct or behave in a fraudulent manner (CI 40). Power of arrest is limited to police officers (CI 41). Forest officers and police have certain powers to seize forest produce (CI 42).

Offences and penalties (Part 8)

- The penalties (upon conviction) are a fine not less than \$10,000 or to a term of imprisonment not less than 2 years, or to both (CI 45). Additional penalties may be imposed and compensation payable if any forest product, forest ecosystem, or watershed has been damaged or injured or taken (CI 47).

Miscellaneous (Part 9)

Regulations

- Provides powers to the Minister to make regulations for matters, including the appointment of licensing officers; issue of licences; prescribe standards for forest management including the Fiji Forest Harvesting Code of Practice; royalties and fees; and the route by which forest may be exported from or moved within Fiji (CI 50).

General provisions on prior consent

- Provides that a licence under this Act must only be issued with the prior consent of certain bodies (such as the iTaukei Land Trust Board (TLTB), the Director of Lands, the lessee of land, and the owner of land) for various categories of land (CI 51).

Mahogany Industry Development Decree 2010

- Provides that this law does not apply to any land that is mahogany plantation land or to forest products stemming from those plantations for the purposes of the *Mahogany Industry Development Decree 2010* (CI 53).

Offences and enforcement measures

- *Forest classification* - Clause 13 (2) provides that any person, who damages, alters, shifts, removes or interferes in any way with any beacon, boundary mark or fence, notice or notice erected by the Department for the purposes of Subsection (1) commits an offence.
- *Prohibited activities* - Clause 17(1) prohibits a range of activities, mostly dealing with extraction of wood and non-wood forest products, hunt wildlife, construct roads/paths/buildings, extract minerals etc unless authorised by a license. Clause 17(4) provides for penalties (upon conviction) for contravention of this section.
- *Special Harvesting Licence* - Clause 18(4) provides that no one is allowed to conduct timber felling and extracting in areas under subsection 18 (1) except with a Special Harvesting Licence (and associated conditions, which include compliance with the FFHCP). Clause (6) provides for penalties (upon conviction) for contravention of this section.
- *Forest Management Licence* - Clause 21 (1) sets out that the Conservator shall issue Forest Management Licences for creating long term tenures for persons, organisations or companies which can demonstrate a commitment to sustainable forest management. Clause 21(5) prohibits anyone from maintaining a forest plantation without a Forest Management Licence. Clause 21(6) provides for penalties (upon conviction) for contravention of this section, including non-compliance with licence conditions (which require compliance with the FFHCP).
- *Import and Export Licence* - Clause 22(1) gives the Conservator powers to issue Import and Export Licences for the purposes of monitoring the movements of all forest products. Clause 22(5) provides for penalties (upon conviction) for contravention of this section.
- *Wood Processing Mills Licence* - Clause 23(1) provides for licencing for the operation of any wood processing mills such as sawmills, chip mills, ply mills, veneer mills and any other type of mill that falls under this category. Clause 23(4) states that the Conservator may, revoke a licence if the holder of the licence has failed to meet the terms and conditions of the licence or perform up to the standards prescribed by this Act, particularly the FFHCP. Clause 23(6) provides for penalties (upon conviction) for contravention of this section.

- *Log scaling* - Clause 24(1) provides that logs extracted from iTaukei and planted forests including minor forest produce such as pine chips, sandalwood, firewood and any logs intended for a commercial purpose, must be measured and weighed according to regulations on log scaling. Clause 24(3) stipulates that it is an offence to (a) fraudulently reports on log measurements during scaling; or (b) tamper with treated or specially engineered logs or timber where the intended standard is compromised and quality misrepresented.
- *Transfer of licences or rights conveyed by licences* - Clause 25 (1) provides for no transfer of licenses without the prior written approval of the: (a) landowner; (b) iTaukei Land Trust Board; or (c) Land Use Unit; and (d) Conservator. Clause 25(4) provides that anyone who contravenes this section commits an offence and shall be held liable to a fine.
- *Forest fires* - Clause 36(1) prohibits lighting of fires in forest plantations including areas prepared for forest plantations unless authorised a licence. Clause 38(1) makes it an offence to light a fire in contravention of S36(1). Clause 38(2) makes a person from whose area a fire escapes from to be liable for any damage cause by that fire unless they prove that neither they nor anyone under their employment lit the fire and that they took all possible measures to prevent such damage. Clause 38(5) makes it an offence for anyone to unreasonably refuse to assist in extinguishing a fire in accordance with subsection (3); or lights a fire or attempts to light a fire without being licensed to do so.
- *Powers of inspection* - Clause 40 (4) makes it an offence for anyone who: refuses to produce for inspection by any forest officer a licence or other document required under this law; obstructs a forest officer from carrying out their inspection duties; forges or fraudulently uses on any forest product, any registered hammer mark or any mark used by any forest officer to indicate that such forest product may be removed or is the property of the State or of some other person; or without proper authorisation wears any identification, uniform or part of a uniform or any badge or other mark issued by the Department of Forests.
- *Power of the Conservator to suspend or revoke licences* - Clause 26(1) allows the Conservator to suspend wholly or partly any work under a license where a breach of the conditions of the license has occurred or is likely to occur. Clause 26(3) allows the Conservator to revoke or suspend the license if requirements in subsection (2) are not met by the licensee.
- *Enforcement of a licence* - Clause 27(1) provides that a licensee is liable for any damage caused by lack of compliance with any terms or conditions of a licence issued under this Act. Clause 27(3) makes it an offence: if any person makes misrepresentation or provides non-factual information when applying for a license; unlawfully tampers with any stamp, mark, sign, license or other documents issued under this Act; counterfeits or issues any licence or document purporting to be a licence or document issued under the provisions of this Act. Clause 27 (4) stipulates that a license holder who fells or extracts any trees beyond a licensed area commits an offence may be charged with theft under S294 of the *Crimes Decree 2009*.
- *Power of arrest* - Clause 41(1) provides powers of arrest to any police officer who is notified by a forest officer and without warrant of anyone who is reasonably suspect to have committed an offence under this law.
- *Power of seizure* - Clause 42(1) provides that a forest officer or police office with the Minister's approval and without a warrant seize and hand-over to the Conservator any: forest products, soil, minerals and other materials which may be the subject of an offence

under this law, including objectives or livestock; forest products encountered on such inspections which do not comply in quality with prescribed standards; or livestock found trespassing or found without any person in charge of them in any forest reserve or nature reserve. Clause 42(2) provides that any biosecurity officer or forest officer may confiscate, in any site, plants and trees deemed harmful to forests.

- *Evidence* - Clause 47(4) provides for additional penalties against an offender under this Act if any forest product, forest ecosystem, or watershed has been damaged or injured or taken. Also order such a person to pay necessary compensation to the owner of the forest product, ecosystem etc. at an amount not exceeding their commercial value.
- *Forfeiture of property used in commission of forest offence* - Clause 48 requires that for any person convicted of an offence under this law, the Court may order any properties including forest products etc. in relation to that offence be forfeited to the State.

Annex 3 - Role of the Department of Forests under the Forest Bill 2016

Clause 5 outlines the duties of the Department of Forests, which are to:

- plan, monitor and control the:
 - sustainable management and conservation of all forest resources in all types of forests for the provision of wood and non-wood products and services; and
 - conservation of protected areas in collaboration with Department of Environment, Ministry of Lands and the iTaukei Land Trust Board;
 - carry out the national forest resources assessment, collect other important information about forest resources, and make these data publicly available;
- ensure that all forest-related regulations and guidelines reflect sustainable forest management practices and that they are developed in a multi stakeholder approach;
- approve utilisation agreements, forest management and harvesting plans in all forest types, both natural and planted and monitor their proper implementation;
- identify and promote reforestation and afforestation on suitable sites and rehabilitation of degraded forest areas;
- promote and provide technical advice to and for community forestry programs and agro-forestry schemes;
- develop and implement research, protection, and conservation programs for forest resources and wildlife, in collaboration with other agencies;
- promote value-added processing of forest products;
- take appropriate measures to investigate, prevent, and suppress forest destruction, forest degradation, forest fires and forest clearings;
- promote public education programs and train forest owners on sustainable forest management;
- promote international cooperation to strengthen the capacity to protect and develop forest resources; and
- advise Government on forest-related matters under international agreements and conventions, in close collaboration with the Department of Environment.

Annex 4 - Report from 2007 on co-regulatory framework for Fiji

A proposal to adopt a co-regulatory framework for the implementation of the Forest Harvesting Code of Practice in Fiji

Paper prepared by Graham Wilkinson

2007⁴⁹

Summary

Fiji should consider formally adopting a co-regulatory approach to the implementation of the Forest Harvesting Code of Practice. Such an approach would foster greater cooperation amongst key stakeholders, make the forest industry more responsible and accountable and allow the Forestry Department to focus its limited resources more on training, accreditation and independent audit. The key elements of the proposed co-regulatory framework include:

- (5) The appointment of suitable persons within the forest industry as Forest Practices Officers and the authorisation of those officers to certify Harvesting Plans and issue notices to ensure compliance with the Code.
- (6) The establishment of a Forestry Committee (the Code Advisory Committee) to foster cooperation and involvement of key stakeholders in the ongoing development and implementation of the Code.
- (7) Focussing the role of the Forestry Department on training, accreditation and independent audit and devolving responsibility for routine planning and supervision to Forest Practices Officers within the forest industry.
- (8) Improving the powers to enforce the Code.

This paper outlines some of the legislative and administrative changes that may be involved in the development of a co-regulatory framework.

1. Background

Fiji was one of the first countries in the Asia-Pacific Region to develop and implement a Forest Harvesting Code of Practice. The introduction of the Code in 1990 was supported by extensive training programs aimed at improving skills and knowledge within both the Forestry Department and the forest industry. However, recent reviews into the implementation of the Code have found that progress in many areas has stalled and the general standard of implementation has declined. Senior Forestry Department officers have attributed the decline to a number of causes, including-

1. Lack of a continued training and capacity building program for staff and industry;
2. Weaknesses in monitoring & evaluation;

⁴⁹ From (Wilkinson, 2007a). This paper is attached to provide an historical context on the rationale for the transition towards a co-regulatory framework that commenced in Fiji in 2007. The progress with the actions in this paper are discussed in section 8 of this report.

3. The Code had not been updated to cater for new and emerging issues;
4. The Code does not adequately deal with the differences between natural forests and plantations.

Current action is addressing the issues relating to the content of the Code and good progress has recently been made under the Monitoring and Evaluation Project. Major challenges remain with respect to the capacity of the Forestry Department to improve the standard of Harvesting Plans, supervision and enforcement of the Code. To some extent there is unnecessary duplication of resources whereby Harvesting Plans that are prepared by industry are then checked by forestry officers within the Forestry Department. In other areas, the industry relies upon an under-resourced Forestry Department to plan and manage its harvesting operations.

These problems are not unique to Fiji. Throughout the world, attitudes towards governmental regulation are changing, with moves towards a greater devolution of roles and responsibilities to industry. These moves arise for both philosophical and economic reasons. Philosophically, many people believe that industry should be more responsible and accountable for its social, environmental and economic impacts. The role of government is not to hold the hand of industry, but to ensure that acceptable standards are being achieved, through monitoring and enforcement programs. Economically, budgetary pressures have forced governments to review their regulatory frameworks and to make reductions in non-essential services, particularly where responsibilities and costs can be devolved to industry.

There is an understandable level of mistrust about 'self-regulation' by industry. For this reason, most systems adopt a 'co-regulatory' model wherein industry is given responsibility for routine planning and management issues and government provides the 'checks and balances' through independent monitoring and enforcement to ensure that appropriate standards are achieved. Although co-operation and partnership are the keystones of co-regulation, governments also need to ensure that adequate penalties are imposed on those who abuse the system.

Fiji has a significant number of forest supervisors in the private sector who were previously trained and/or employed by the Forestry Department. They work for forest companies that collectively harvest about 90% of Fiji's total annual production. They therefore represent a valuable resource that could be better utilised to foster higher standards of self-management by industry. This would allow the Forestry Department to focus its limited resources more on training, accreditation and independent audit.

A move towards a more co-regulatory framework is consistent with the Fiji Forest Policy Statement (2007), which includes objectives and strategies for-

- *Commercialising the Forestry Department to promote a leaner, more focussed, efficient and effective forestry service that supports social and economic development across the forestry sector within a rural land use framework (Section 3).*
- *Enhanced national capacity to manage and develop the forest sector in a collaborative approach with involvement of all stakeholders (Section 5.5).*

The proposed model of co-regulation draws upon the experience of the forest practices system of Tasmania, Australia. This system has successfully operated since 1985 and the Tasmanian Government has progressively expanded the operation of the system from an initial focus on forest harvesting to the broader management of all forest and non-forest vegetation, including the regulation of activities in threatened grasslands, wetlands and coastal vegetation types. The author of this paper is the head of the Forest Practices Authority, which is the statutory body

entrusted with the implementation of the *Forest Practices Act* and the Forest Practices Code across all tenures within Tasmania.

2. Details of proposal

It is proposed that Fiji should formally adopt a co-regulatory approach to the implementation of the Code through the following mechanisms-

1. The appointment and authorisation of Forest Practices Officers to certify Harvesting Plans

- a. Forest Practices Officers would be people within the forest industry (and the Forestry Department) that are given the authority to certify (approve) Harvesting Plans and any variations to a certified Harvesting Plan. Once certified, a Harvesting Plan would be lodged with the Forestry Department as part of the Licence Procedures, but it would not require further approval by the Forestry Department. However, the Plan may be selected for audit at any time as part of the Department's monitoring and evaluation program. Forest Practices Officers would be appointed by the Conservator having demonstrated that they satisfy the following criteria-
 - i. Qualifications in forestry and at least five years of experience in the planning and supervision of harvesting operations
 - ii. Successful completion of a training program on the implementation of the Code conducted by the Forestry Department
 - iii. Demonstrated diligence and commitment to achieving high standards of forest management and willingness to abide by a Code of Ethics.
- b. The duties and responsibilities of Forest Practices Officers would to-
 - i. Prepare Harvesting Plans and ensure that such plans fully comply with the requirements of the Code
 - ii. Supervise harvesting operations to ensure that high standards of implementation are achieved and that any problems are addressed and corrected in a timely manner
 - iii. Monitor operations and provide reports on compliance to the Forestry Department in accordance with the Code.
- c. The powers that should be afforded to Forest Practices Officers are-
 - i. The authority to certify (approve) Harvesting Plans and any variations to a certified plan.
 - ii. The power to issue notices to require a person who is undertaking a harvesting activity to cease, modify or carry out any action in order to ensure compliance with the requirements of a Harvesting Plan and the Code.
 - iii. Immunity from legal action when discharging their duties in good faith.
- d. Many of the forest supervisors employed within the industry have been trained by the Forestry Department. The appointment of Forest Practices Officers will require an ongoing commitment to the training of new officers and to the regular updating of skills once a network of Forest Practices Officers is established. Annual or biennial workshops provide several benefits- they are a useful way to encourage the

exchange of information and experience in the implementation of the Code; they provide ongoing training in new developments (e.g. new supporting documents); and they foster a sense of professionalism and team spirit amongst officers, many of whom may otherwise operate in relative isolation from their peers.

2. The appointment of a Code Advisory Committee

- a. Co-regulation involves partnership and cooperation between government and stakeholders. It is therefore important to establish a mechanism that fosters the engagement of key stakeholders in the development and implementation of the regulatory framework. A key element of this engagement will be the creation of a Code Advisory Committee, comprising senior representatives of the Forestry Department, landowner bodies (ITLTB), forest companies and contractor/workers organisations.
- b. The committee should have formal status as a Forestry Committee within the meaning of s.5 of the Forest Decree 1992. The role of the committee would include the following:
 - i. To conduct ongoing reviews into the provisions of the Code and supporting documents to ensure that they remain up to date and effective;
 - ii. To review the results from monitoring programs and identify areas where improvements can be made to the implementation of the Code
 - iii. To assess the adequacy of training and education programs and to suggest ways to improve their effectiveness and efficiency
 - iv. To review the operation of the co-regulatory framework and to develop ongoing strategies to improve the uptake and implementation of the Code.
- c. The committee should meet on a regular basis (bi-monthly) and minutes of each meeting, including recommended actions, should be submitted to the Forestry Board through the Conservator for advice and attention.

3. Focussing the role of the Forestry Department on training, accreditation and independent audit

- a. Under a co-regulatory model, the Forestry Department should progressively devolve responsibility for the routine planning and supervision of forestry operations to Forest Practices Officers within industry. This would allow the department to focus its limited resources on other core services that support a co-regulatory framework, including ongoing involvement in training and the development of planning tools (some of which should involve cost-sharing with industry) as well as independent monitoring and enforcement (which should be securely funded by government and not compromised by any financial or logistical dependency upon industry). A strong, independent and transparent audit and enforcement role for the Forestry Department is essential if the community is to have confidence in the operation of a co-regulatory framework.
- b. A transition strategy will be needed whilst Forest Practices Officers are being trained and appointed. Once Forest Practices Officers are in place the Forestry Department should charge a commercial fee for services provided to companies that do not employ or engage Forest Practices Officers. The fee charged by the Forestry

Department should not subsidise the cost of the services to industry as this would disadvantage and discourage companies who employ Forest Practices Officers. A true commercial fee will create a competitive environment that should encourage efficiencies and provide employment opportunities for private enterprise.

4. Improving the powers to enforce the Code

An effective enforcement regime is a critical part of any regulatory system. For co-regulation to work, it needs active day to day enforcement by officers on the ground at two levels. First, there should be an emphasis on detecting and fixing problems before they become serious. This is generally done through the issue of corrective action notices. Second, there need to be sufficient deterrents (penalties) for major or persistent offenders.

a. Corrective action notices

Regular supervision of operations is essential so that problems can be detected in a timely manner. Equally as important is providing the supervisors (Forest Practices Officers) with the power to deal with any problems on the spot before they cause serious environmental harm. Accordingly, Forest Practices Officers should be empowered to issue notices on any person who in the opinion of the Officer is failing to comply with the conditions of a Harvesting Plan attached to a licence. Such notices would direct the person to cease, modify or carry out any action in order to ensure compliance with the requirements of a Harvesting Plan and the Code. Examples would include directions to: cease haulage on a road where damage is occurring to the road; construct cross-drains on skid tracks where the operator has failed to do so; remove temporary crossings from streams; and re-build bridges that fail to comply with the Code. Corrective actions have many benefits. They provide an effective means of enforcement without resorting to expensive legal action; they fix the problem before it escalates; and they act as both a deterrent and an educational tool to reinforce that doing the job properly in the first place will generally be more cost-effective than having to take machines back to the forest to carry out repairs and rehabilitation works.

b. Penalties

Currently, the Code is enforceable through the licence conditions. A violation of the licence may attract a maximum penalty of \$10,000 if prosecuted through court action under the Forest Decree, or \$5,000 if dealt with by the Forestry Department under the compounding provisions of the Decree. Such penalties are not a deterrent for deliberately illegal acts, such as harvesting without a licence or cutting beyond the area covered by a licence. Similarly, the penalties do not encourage investment in good practice. Some companies could easily make a commercial decision to save many times more than the cost of a potential fine by building poor quality roads and stream-crossings etc with sub-standard machines and poorly trained workers. For these reasons, the maximum fine should be increased to at least \$100,000.

c. The compounding provisions of the Forest Decree should be reviewed to-

- i. Remove any potential for Forest Officers to suffer any actual or perceived conflict of interest by having to make determinations about penalties.*

These decisions should be made at a senior level (Conservator) at arm's length from the operation.

- ii. Consider changing the terminology from 'compounding' to one that better denotes the imposition of a penalty as an alternative to prosecution. The payment of any fine under this section would not be mandatory, but non-payment would result in the matter proceeding to prosecution. This provides a safe-guard in that the Conservator must be satisfied that the evidence relating to any violation would have a reasonable prospect of securing a conviction if the matter is not resolved through the payment of the fine and the matter proceeds to court. Matters settled by payment of a penalty should be regarded as closed, with no further liability for court action.
- iii. Provide the Conservator with the power to impose a prescribed fine up to the maximum set under the Decree (that is, not limited to half of the maximum as in the current Decree). The Decree should allow the determination of a prescribed fine to include any cost of making good and any amount that serves as a deterrent to cover the cost of environmental harm.

3. Legislative/administrative implications

A number of legal and administrative changes may be necessary to give effect to the proposed co-regulatory framework. A provisional list is provided as Attachment 1. The list includes other supplementary and consequential changes arising from the revision of the Code. Note that specific legal advice will be required in relation to any of the proposed amendments.

4. Recommended actions

1. Fiji adopts a co-regulatory framework for implementing its Code of Harvesting Practice through-
 - a. The appointment of suitable persons within the forest industry as Forest Practices Officers and the authorisation of those officers to certify Harvesting Plans and issue notices to ensure compliance with the Code.
 - b. The establishment of a Forestry Committee (the Code Advisory Committee) to foster cooperation and involvement of key stakeholders in the ongoing development and implementation of the Code.
 - c. Focussing the role of the Forestry Department on training, accreditation and independent audit and devolving responsibility for routine planning and supervision to Forest Practices Officers within the forest industry.
 - d. Improving the powers to enforce the Code.
2. The Forestry Department seeks legal advice on any legislative and administrative changes that may be necessary to give effect to these actions.

Attachment 1 – Provisional list of proposed legal and administrative changes

a. Forest Decree 1992

s.2 – (definition of “logging plan” and elsewhere in the Decree) – amend to “Harvesting Plan” to be consistent with the terminology used in the revised Code

s.2 (Interpretation) – include a definition of “Forest Practices Officer”

s.8 and s.38 (requirement for all harvesting to be authorized by a licence) – consider providing exemptions from the need for a licence to cover small scale operations (e.g. salvage of residues for firewood by local landowners) under prescribed conditions that avoid the likelihood of any adverse environmental impact or loss of timber royalties.

s.13(1)(e) (licence to specify conditions in accordance with good logging practice) – make it a standard condition of a licence that the harvesting must be in accordance with the Fiji National Code of Harvesting Practice

s.14 (approval of Logging plan by licensing officer) – amend s.14(1) to provide that the issue of a licence is subject to the receipt of a Harvesting Plan that has been certified by an authorised Forest Practices Officer as being in compliance with the requirements of the Code

s.28(1)(l) (Offence to violate terms or condition of licence) – consider whether this section needs to explicitly state that a violation of a Harvesting Plan is an offence under the Decree

s.29(1) (Penalties) – The current maximum fine of \$10,000 does not represent a sufficient deterrent, particularly for persons who persistently harvest outside of, or beyond license boundaries. The maximum fine should be increased to at least \$100,000 per offence as detailed in this report.

s.33 (Compounding) – restrict the compounding powers to the Conservator and re-draft this section as an “alternative to prosecution” as outlined in this report.

s.34 (Powers of inspection) – extend the right to inspect operations to Forest Practices Officers and extend the power more generally to include areas where an officer has cause to believe that harvesting activities are being or have been conducted (the current provision is restricted to land subject to a licence where activities are being conducted, thus preventing the inspection of areas where no licence may exist or a licence has expired).

s.37 (Non-liability of officers) – provide legal protection for Forest Practices Officers who are exercising their powers to enforce compliance with the Code in a diligent manner.

s.38(2)(a) (appointment of officers) – provide that the Regulations may provide for the appointment of Forest Practices Officers.

New provision: Issue of compliance notices

Provide Forest Practices Officers with the power to issue notices on a person who in the opinion of the Officer is failing to comply with the conditions of a Harvesting Plan attached to a licence.

- a. Provide that such notices shall direct the person to cease, modify or carry out any action in order to ensure compliance with the requirements of a Harvesting Plan and the Code.
- b. Provide that a person who is aggrieved by the receipt of a notice may lodge an appeal to the Conservator.
- c. Provide that a failure to comply with a notice constitutes a violation of the licence and therefore an offence.

b. Forest Regulations

s.2 (Interpretation) – insert definition of Forest Practices Officer.

s.3(1) (period and conditions of licences) – ensure consistency with the Forest Decree by
-

1. making the approval of a licence subject to the receipt of a Harvesting Plan that has been duly certified by a Forest Practices Officer as being in accordance with the requirements of the Fiji Forest Harvesting Code of Practice; and
2. making a standard condition of the licence that all persons must comply with the certified Harvesting Plan and the Code.

c. Licensing Procedures

Step 4 of Procedures (Logging Plan) –

1. Change “Logging Plan” to “Harvesting Plan” to make the terminology consistent with the Code.
2. Amend Step 4 to make the Forest Practices Officer responsible for obtaining maps and for preparing and certifying the Harvesting Plan in accordance with the requirements of the Code. The Forest Practices Officer then lodges the certified Harvesting Plan with the Licensing Officer.

Step 5 (Forestry Right Licence) – clarify that the applicant (licensee) is ultimately responsible for ensuring compliance with the licence conditions and must exercise due diligence when engaging contractors or other persons to operate under the licence.

Step 6 (Monitoring) –

1. Emphasise that the licensee is responsible for engaging a Forest Practices Officer to undertake the monitoring and the lodgement of the monitoring report in accordance with the revised Code. (note: this could entail the licensee employing or contracting a Forest Practices Officer or alternatively engaging an officer employed by the Forestry Department on a fee for service basis).
2. Provide that the Forestry Department will randomly select a sample of Harvesting Plans for independent audit.

Step 8 (Rehabilitate) – make this a responsibility of the Forest Practices Officer.

Step 9 (Coupe closure) – make it a responsibility of the Forest Practices Officer to notify the Forestry Department of the coupe closure and to lodge a compliance report in accordance with the revised Code.