

Options for strengthening the regulatory framework for the sustainable management of the forest and tree resources of Tonga

Report T2

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

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Abbreviations and acronyms

APFNet	Asia-Pacific Network for Sustainable Forest Management and Rehabilitation
EIA	Environmental Impact Assessment
‘Eua code	Code of Harvesting Practice for the ‘Eua Forestry Plantations 2009
FAO	Food and Agriculture Organisation of the United Nations
FD	Forestry Division of the Ministry of Agriculture, Food, Forests and Fisheries
FPO	Forest Practices Officer
FMP	Forest Management Plan
ha	hectares
km	kilometre
m	metre
MAFFF	Ministry of Agriculture, Food, Forests and Fisheries
MoA	Memorandum of Agreement
NFI	National Forest Inventory
NGO	Non-government organization
SFM	Sustainable forest management
SPC	Pacific Community
TFP	Tonga Forest Products
THP	Timber harvesting plan

Species named in this report

Sandalwood (ahi) – *Santalum yasi*

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1. Summary

This report reviews the regulatory framework for the management of Tonga's forest and tree resources. 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.

Tonga has a unique resource of forests and trees. This resource is predominantly managed within small private holdings. The harvesting and processing sector is small and plantation-based. Tonga's forests and trees provide multiple benefits but the resource faces continuing loss and degradation in the absence of an appropriate management and regulatory framework.

Overall, the current regulatory framework lacks most of the key components required for the sustainable management of forest and tree resources. However, the draft Forests Bill and Sandalwood Regulations, if and when enacted, will substantially improve the framework.

This report analyses three options for the future regulation of Tonga's forest and tree resources: (1) predominantly governmental control; (2) predominantly self-regulation; and (3) a model of 'enhanced co-regulation'. It is unlikely that government or the private sector alone will have the resources and capacity to implement an effective system of forest management and regulation. The models of predominantly governmental regulation and predominantly self-regulation are, therefore, not considered to be appropriate or viable for Tonga for the foreseeable future. Instead, it is concluded that Tonga should actively pursue an 'enhanced co-regulatory model'.

The enhanced co-regulatory model 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. Under this model Tonga Forest Products (TFP) and other timber licensees would be given the power and responsibility to plan, approve (certify), monitor and report on their timber harvesting operations. This would be done through the training and accreditation of persons employed by the industry as forest practices officers (FPOs). The Forestry Division would retain responsibility for periodic monitoring and for the enforcement of the legislation and codes of practice.

Exemptions from the requirement for licences would remain in place for small scale harvesting by landholders. However, all landholders would be required to comply with the regulations for the protection of reserves and for the harvesting and trade of sandalwood. The key role for the Forestry Division will be to provide training and education for landholders and community groups so as to enhance their capacity to sustainably manage and develop their forest and tree resources.

An enhanced co-regulatory framework will require an appropriate balance of 'carrot and stick'. The government will have a dual role: to provide support for higher levels of self-management by industry and landholders, backed up with fair and effective enforcement.

The report discusses the settings and drivers necessary to implement an enhanced regulatory framework in Tonga and concludes with a list of potential actions that could be taken.

2. Current regulatory framework

2.1 Regulatory context

The legal and policy framework for the regulation of forestry in Tonga is detailed in Report T1 of the current project (Wilkinson, 2016) and some sections of that report are reproduced here for the sake of completeness.

The management of the forest and tree resources in Tonga is very different to that which is normally encountered in other countries for the following reasons-

- The area of 'forest' is very small but the area of tree cover is very high¹. Most tree cover occurs as an integral component of agroforestry systems of land use within allotments.
- The timber resources are very small and are managed mostly under individual private holdings (allotments) of 3.3 and 5 hectares in area.
- The environmental risk of forestry and tree felling operations is generally low due to the small scale of operations, predominantly gentle topography, relatively low risk of erosion and an absence of streams.

Despite these differences, Tonga faces similar challenges for sustainable forest management (SFM) to those of other countries in the region, namely-

- Limited and declining capacity within government to support forest management and regulate forestry activities.
- Transition to a cash economy and declining involvement of younger generations in traditional farming and rural communities.
- Social and economic pressures on remaining forests and trees resulting in the loss and degradation of these resources in the absence of an appropriate management and regulatory framework. The threats to the sustainable management of Tonga's forest and tree resources are detailed in Report T1 of this project.

Whilst trees are ubiquitous in the landscape the involvement of most Tongan landholders in tree planting and felling is relatively infrequent and small scale and predominantly for their own use for products such as firewood, fence posts and buildings. In general, these operations do not warrant measures such as individual forest management plans or detailed operational plans. However, social and economic changes associated with increasing urbanisation and transition towards a cash economy may affect the future management of forests and trees. Accordingly, current and future landholders need access to good information about the sustainable management of the forests and tree resources. In addition government and society need to ensure that the economic, social and environment benefits are equitably shared in a manner that recognises both the private rights of landholders and the public goods and services that forests and trees provide to the broader community.

The small scale and low value of the forest products sector in Tonga means that it is unlikely to support major organised criminal activities. However, the trade in sandalwood is a notable exception. Illegal poaching and trading of sandalwood are key constraints on the future growth and

¹ Overall, more than 85% of Tonga is covered in trees. Most of this area is not classified as 'forest' according to the FAO definition of forest because the land is used predominantly for agriculture. See Report T1 (Wilkinson, 2016)

development of a potentially significant resource. The full social and economic benefits of a major sandalwood industry will not be realised in the absence of an effective regulatory framework.

2.2 Legislation

Legislation relevant to forestry and tree management in Tonga is summarised in Annex 1.

The principal legislation for forestry is the *Forests Act 1961*. The act provides the Minister with broad powers to make regulations for the control of forestry activities and the granting of licences. Very few such regulations have been made other than the Land (Timber) Regulations 1967 (revised 1988) under which the Minister may issue a permit to cut or remove timber from Crown land. There are no requirements for licences etc. for landholders who wish to harvest and sell trees from their own land.

Other legislative provisions are related to the need for persons operating businesses or exporting goods to obtain the relevant licences and permits from government, as follows-

- Persons conducting a business must obtain a business licence under the *Business Licences Act 2002* (as amended 2012).
- Persons seeking to export goods must obtain an export permit under the *Customs and Excise Management Act 2007*.

Annex 3 provides a description of the above licencing system as applied to the trade in sandalwood. The Forest Act is now outdated and it has been subject to a process of revision since 2009. The latest revision has been incorporated into a draft Forests Bill 2015, which was prepared following consultations with government ministries and agencies, non-government organisations (NGOs), district and town officers and interested members of the public. The main provisions of the bill are as follows-

- (i) clarify the functions of the Ministry and the Forestry Division, in relation to the management of forest and tree resources in Tonga;
- (ii) provide overriding principles for the exercise of functions of the Ministry;
- (iii) incorporate environmental issues and values;
- (iv) incorporate empowering provisions to give effect to the National Forestry Policy and the draft Sandalwood Regulations of the Ministry;
- (v) update licensing requirements under the act; and
- (vi) update enforcement provisions under the act.

2.3 Policies

The principal policy instruments relevant to forestry are summarised in Annex 1. These are primarily strategic documents other than the two codes of practice, which are regulatory in nature. The codes are not legally enforceable at present due to the lack of powers to apply and enforce them under current legislation.

2.4 Land tenure

The land tenure system in Tonga is based on the Constitution of 1875 and the *Land Act* of 1882 (and subsequent revisions). These instruments provide that all land is the property of the Crown and that it may not be sold but it may be allocated or leased. Two principal forms of allocation exist: hereditary estates held by nobles; and allotments granted to Tongan males. Other land includes the

royal estates and government land. Section 7 of the Land Act provides that every male Tongan upon reaching the age of 16 years is entitled to receive *a grant of land not exceeding 3.3387 hectares as a tax allotment and an area not exceeding 1618.7 square metres in a town as a town allotment* (s 7). Tax (bush) allotments may be extended to five hectares in certain circumstances (s 46). Once the plot is registered, the leasehold becomes perpetual, inheritable by the eldest son. Men who do not inherit an allotment may seek to acquire a vacant allotment. However, because of the growth of the population, the proportion of eligible males who can acquire garden allotments in their own names has been continuously reduced. The scarcity of unallocated land and the insecurity of existing allotments has prompted calls for land tenure reform (Kennedy, 2012).

Landholders have rights to cultivate their land as they see fit. An allotment may be forfeited under section 68 of the Land Act for failure to plant coconut trees (see Report T1) or if the land is not cultivated for a period of three years. However, these provisions are not enforced and a significant number of allotments have been abandoned by Tongans living abroad.

2.5 Institutional arrangements and capacity

The legislation and policy instruments relevant to forests and trees in Tonga are administered by a range of government ministries. The primary legislation for forestry is administered by the Ministry of Agriculture and Food, Forests and Fisheries (MAFFF). The Forestry Division of MAFFF has responsibility for tree seedling nurseries, extension work and monitoring of forestry operations on 'Eua. The work of the division is under the Head of Forestry, who is assisted by forest officers in Tongatapu, 'Eua, Vava'u and Ha'apai. The forestry officers have a mixture of tertiary and technical qualifications in forestry or agriculture. There are no formal training courses in forestry in Tonga; most officers have received assistance to gain technical or professional qualifications in forestry from overseas institutions, mainly in New Zealand, Fiji and Papua New Guinea. The division has a high degree of expertise in nursery management and tree species selection and silviculture. There is little capacity and less expertise in the fields of timber harvesting, monitoring and enforcement.

The forest plantations on 'Eua and the sawmills on Tongatapu, 'Eua, Vava'u and Ha'apai were managed by the Forestry Division up until 2003, when they were transferred to a Government Public Enterprise, Tonga Timber Limited, now Tonga Forest Products Limited (TFP). The Forestry Division has no direct role in the operations of TFP although under the *Code of Harvesting Practice for the 'Eua Forestry Plantations 2009* it retains responsibility for the approval of timber harvesting plans, the approval of chemical use and for reviewing and publishing the outcomes from monitoring reports that are required to be submitted by TFP.

The placement of the divisions of agriculture and forestry within MAFFF was intended to foster close cooperation and collaboration on cross-sectoral topics such as coconut planting and agroforestry. In practice the degree of collaboration has been variable and this has led to inconsistent advice from the ministry to landholders on tree management. Various projects have identified the need for agricultural extension officers to better understand and promote the benefits of trees (Wilkinson, 2015). Similarly there is a need for forestry officers to better quantify the costs and benefits of trees, including the nett effect on agricultural crops that are grown under agroforestry regimes.

The responsibility for the administration of the Land Act falls within the Ministry of Lands, Survey and Natural Resources (MLSNR). The ministry includes the Department of Environment and Climate Change (DECC), which is responsible for environmental management, including national parks and

reserves, environmental impact assessments, monitoring and reporting on the state of the environment, including biodiversity.

The above agencies have limited budgets to undertake their activities. The Forestry Division does not have the internal capacity to undertake many core functions, such as inventory, monitoring and reporting, enforcement, research and development. World-wide trends show a decline in public funding for forest management as governments address the priorities of health, education, infrastructure and law and order. Tonga is not immune from this trend. Much of the work done by the Forestry Division is dependent on technical and financial support from international donors, which is subject to the vagaries and competitive nature of international aid. One of the upsides of this is that forestry officers have had good opportunities for study and training at overseas institutions as well as continuing education through attendance at regional and international workshops. The downside is that officers are often absent from their workplace. The frequency and duration of projects, many of which are of peripheral relevance to forestry priorities in Tonga, can seriously disrupt the core business of small organisations with limited staff and cause 'workshop fatigue' in key staff.

2.6 Analysis of the legal and policy framework

Annex 2 provides an assessment of the current status of the regulatory framework, including the proposed changes to legislation contained in the draft Forests Bill 2015 and draft Sandalwood Regulations 2014.

The assessment is based on seven key components of a regulatory framework (listed below) following the methodology developed by the author for previous studies (Wilkinson, 1999).

The status of the regulatory framework is summarised as follows-

1. Legal and policy framework
 - The current Forests Act is out of date and lacks most of the components for the sustainable management and regulation of the forest and tree resources.
 - A National Forest Policy and codes of practice are in place but are not legally enforceable under current legislation but will be under the draft Forests Bill (subject to clarification).
 - The current legal framework lacks provision for consultation and engagement with stakeholders and the public. This is better addressed under the draft Forests Bill.
2. Planning
 - The requirement for a national forest management plan is absent from the current legislation but is present in the draft Forests Bill.
 - Harvesting plans are not currently legally required or enforceable but will be under the draft Forests Bill (subject to clarification).
3. Implementation
 - There is the potential for duplication and inconsistency between government agencies. This should be better addressed under the draft Forests Bill through provision for memoranda of agreements (MoAs) between agencies.
 - The Forestry Division, industry, landholders and community groups have limited capacity to deliver the core functions of a regulatory framework.
4. Monitoring
 - There is currently no legal requirement for monitoring but provision has been included in the draft Forests Bill. Operating procedures and training will be required.

5. Enforcement
 - Enforcement provisions are currently very limited and the Forestry Division has little enforcement expertise or capacity.
 - The enforcement provisions are substantially improved under the draft Forests Bill and Sandalwood Regulations. Operating procedures and training will be required.
6. Review and improvement
 - The requirement for periodic review is absent from the current legislation but is present in the draft Forests Bill.
7. Reporting
 - The requirement for reporting is absent from the current legislation but is partially covered in the draft Forests Bill.

Overall, the current regulatory framework lacks most of the key components required for the sustainable management of forest and tree resources. The draft Forests Bill and Sandalwood Regulations, if and when enacted, will substantially improve the framework.

3. Issues relevant to the design of a regulatory framework for Tonga

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

1. Tonga has a substantial tree cover, most of which is privately managed under small land holdings.
2. The forest and tree resources are highly valued for their multiple environmental, social and economic benefits (see Report T1); timber values are currently low but the potential value of the sandalwood resource is substantial.
3. 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 (see Report T1).
4. Forestry officers have good expertise in tree management but limited expertise in monitoring and enforcement.
5. Tonga does not have the economy of scale or capacity to provide ongoing in-house training for forestry officers in monitoring and law enforcement.
6. Other than the headquarters in Tongatapu forestry officers live in small rural communities where their work/life activities may present them with a conflict of interest and risk of 'regulatory capture'².
7. 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.

² 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.

8. The forest industry is small and limited to one major body (TFP). In recent years TFP has taken action to improve its capacity to self-manage its operations but further work is required.
9. Other than TFP, the private sector currently lacks the capacity to achieve high levels of self-management and self-regulation.
10. The sandalwood industry in many countries is associated with high levels of illegal logging and criminal activity. Safeguards will be necessary in Tonga to regulate and discourage such activities.
11. 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 market demand but the cost of these instruments can be prohibitively high for small holdings.

4. Analysis of options for a regulatory framework

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.

In practice, most regulatory frameworks for forestry are based on co-regulatory systems, which comprise a mixture of self-regulatory procedures that are backed up with governmental controls. Co-regulation works best where the forestry sector has adequate skills and resources, together with the motivation to achieve high standards. Responsible self-regulation by the forestry sector allows the government to focus its limited resources on high level oversight of compliance. In Tonga, however, whilst the forestry sector has the capacity to achieve a high level of self-regulation within the 'Eua plantations, there is currently negligible capacity for self-regulation elsewhere. Thus, any move towards self-regulation within the non-plantation sector will require a transition period of systematic capacity building.

An analysis of three options for a regulatory framework for the management of forests and trees in Tonga is presented in Table 1. The analysis of the three options can be summarised as follows-

1. *Predominantly governmental management and control* – Not likely to be a sustainable option due to uncertainty of funding.
2. *Predominantly self-regulation* - Not likely to be a sustainable option in the short to medium term due to the lack of capacity within the private and community sectors.
3. *Enhanced co-regulation with a targeted transition to higher levels of self-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 three options above are points along a gradient of governmental control. Option 3 represents a midpoint, which if successfully implemented may allow future gradational progress towards higher levels of self-regulation (Option 2), as demonstrated in Figure 1. Figure 2 shows the relationship between the industry, community and Forestry Division under an enhanced co-regulation model.

5. 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 imprisonment.

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).

6. Potential actions for implementing an enhanced co-regulatory model

The potential actions for implementing an enhanced co-regulatory model for Tonga are presented in Table 2. In summary, the development and implementation of an enhanced co-regulatory model would have the following features-

1. Legal clarification of the definition of 'forests' and the enforcement of codes of practice.
2. Responsibilities and powers relating to timber harvesting are delegated to industry through a system of accredited Forest Practices Officers (FPOs).
3. Development of formal protocols for monitoring and enforcement to ensure objectivity and consistency.
4. Targeted training in monitoring and enforcement for forest officers and FPOs.
5. Development of information and education programs to foster improved management of forests and trees by the industry and community.
6. Transparent reporting of the standards of compliance being achieved.

7. Conclusions

Tonga has a unique resource of forests and trees. In common with other countries within the region, Tonga faces the continuing loss and degradation of its forests and trees in the absence of an appropriate regulatory framework. Also in common with other countries Tonga faces significant regulatory challenges because of limited capacity to support sustainable forest management (SFM) within government and the private sector.

It is unlikely that government or the private sector alone will have the resources and capacity to implement an effective system of forest management and regulation. Regulatory models of predominantly governmental regulation and predominantly self-regulation are therefore not considered to be appropriate or viable for Tonga for the foreseeable future. Instead, it is concluded that Tonga should actively pursue an enhanced co-regulatory model as part of a strategy to build the capacity for self-management and self-regulation within the private sector whilst allowing the government to maintain core functions in the areas of training, education, monitoring, enforcement and reporting.

Table 1. Analysis of options for a regulatory framework

Option	Main features	Risks	Actions to manage risks	Likelihood of success
Predominantly governmental management and control	Increased funding for the Forestry Division (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	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 will shrink below a critical mass and it will 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 governmental support for upgrading their skills and capacity

Option	Main features	Risks	Actions to manage risks	Likelihood of success
Enhanced co-regulation with a targeted transition to higher levels of self-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 information programs highlight the potential benefits from sustainable forest and tree 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

Figure 1 - The role of the Forestry Division under three regulatory models

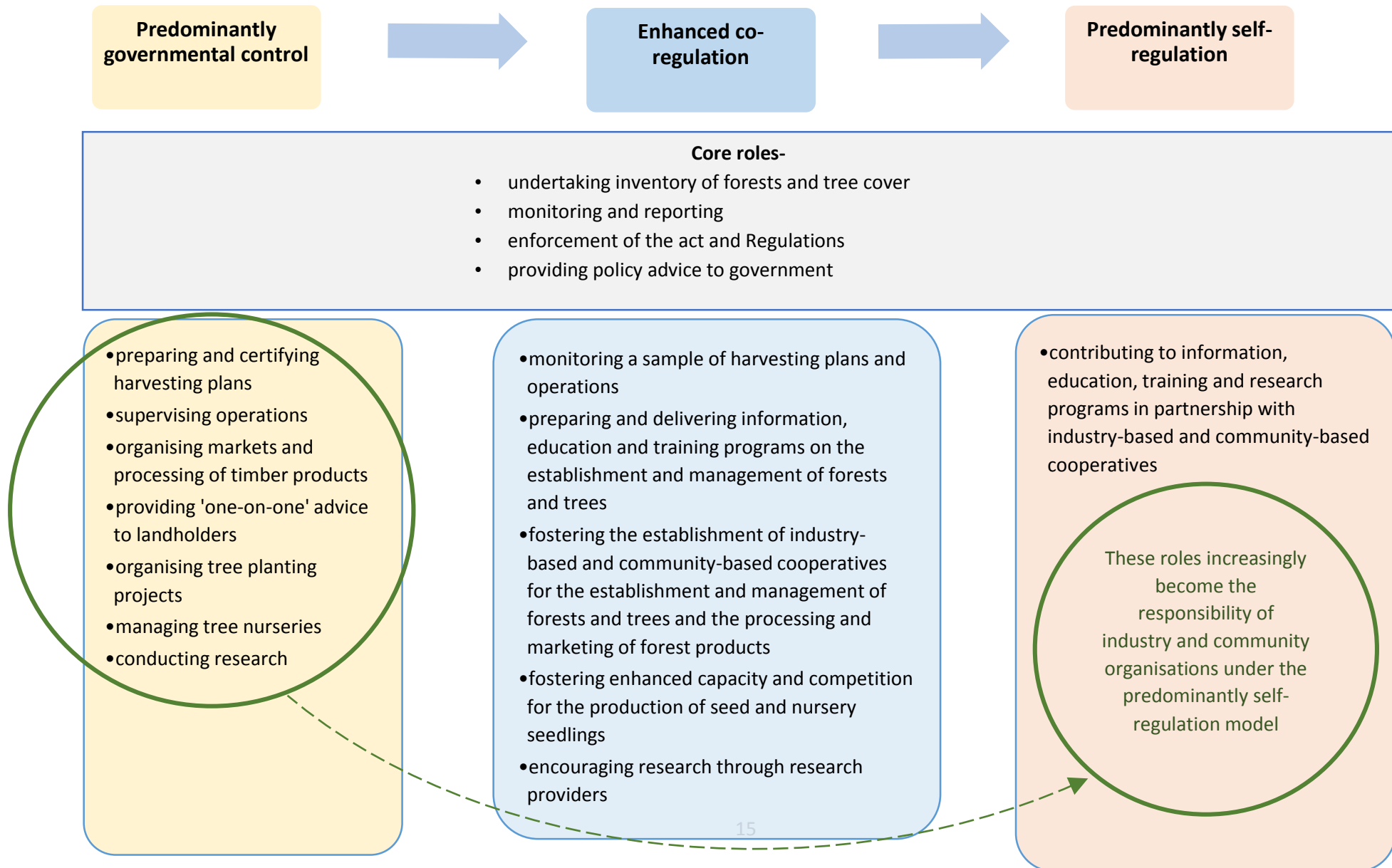


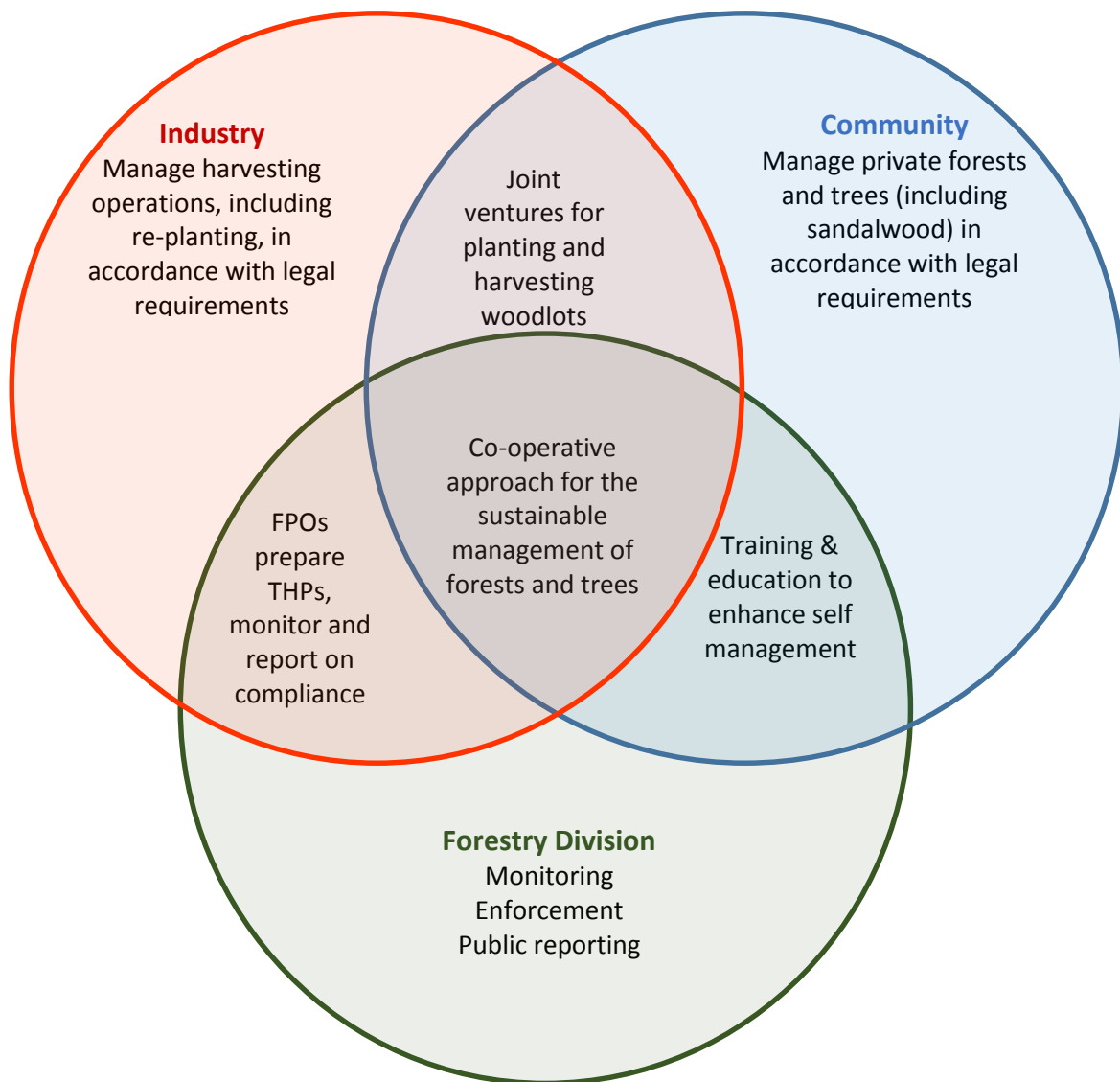
Table 2 – Potential actions for implementing an enhanced co-regulatory model

Actions	Methods
1. Ensure that the Forests Act, NFP and national forest inventory (NFI) recognise the tree resources of Tonga as part of a broader definition of 'forests' in Tonga	1) Amend the definition of 'forest' in the draft Forests Bill to include both the FAO definition of forest (see report T1 (Wilkinson, 2016)) and a broader category of land containing trees. 2) Design and conduct the NFI to better define and quantify the various categories of forest and tree cover in Tonga. 3) FD to ensure that staff are trained and equipped to monitor changes in the NFI using techniques that are 'fit for purpose' and within the resource capabilities of the FD. 4) Revise the NFP to better recognise the nature of Tonga's forest and tree resources.
2. Improve the integration of the Forests Act with other acts and planning systems	5) Develop MoAs with other departments, particularly in relation to the administration of the Forests Act, Environmental Management Act 2010 and the Parks and Reserves Act 1977 (see item 1.4 in Annex 2). 6) Empower the inter-institutional advisory committee to coordinate activities arising from the forest policy (see item 1.4 in Annex 2). 7) Develop and conduct training courses for FD and other government officers on the objectives and implementation of the forestry regulatory framework.
3. Clarify that the 'Eua code of practice is legally enforceable	8) The code contains guidelines for the conduct of forestry operations and these guidelines are translated into legally enforceable 'provisions' through the prescriptions inserted into timber harvesting plans (THPs). The enforcement mechanism for the code should therefore be as follows- a) Ensure that the Forests Act recognises the need for timber harvesting to be covered by a certified THP and for it to be an offence under the act to harvest timber without a THP or in contravention of a THP. b) Ensure that the Forests Act prescribes that a THP must contain specifications in accordance with the code. c) Prescribe thresholds below which a THP is not required.

Actions	Methods
4. Develop manuals on topics such as biodiversity and silviculture to support the application of the codes of practice	9) Seek external funding for the development of relevant manuals.
5. Appoint Forest Practices Officers (FPOs) to prepare, certify and monitoring of timber harvesting plans for plantations	10) Forests Act to provide for the appointment of suitably trained foresters employed within the industry as 'Forest Practices Officers' (FPOs). 11) Forests Act to provide for the delegation of powers to FPOs for the certification of timber harvesting plans, monitoring of operations and reporting on compliance under the code. 12) FD to train and accredit suitable persons as FPOs.
6. Develop a training framework for FD, FPOs and contractors	13) A Training Strategy is required to clarify the type of training that can be resourced within existing institutions within Tonga and specialist training that may require access to overseas institutions. (Note: This matter will be addressed as part of a training needs analysis to be completed under the current project).
7. Develop monitoring and reporting protocols for the Forest Management Plan, Codes of Practice, act and regulations	14) Develop Monitoring Protocols to guide monitoring and reporting of compliance and standards in a consistent and objective manner 15) FD officers and FPOs (see action 5 above) to be trained in monitoring and reporting 16) A senior forestry officer to be trained and appointed as Compliance Manager, with responsibility to coordinate the monitoring and reporting program (see also action 8 below).
8. Develop enforcement protocols	17) Enforcement Protocols to be developed to guide the conduct of investigations, roles and responsibilities of forestry officers and police officers, decision-making, application of enforcement options and reporting of outcomes. 18) FD officers and FPOs to be trained in investigations and enforcement, including the collection of evidence, conflict of interest, natural justice and the preparation of reports. 19) FD to organise training for police officers on the enforcement provisions of the Forest Act and regulations 20) Investigations and enforcement to be coordinated by the FD Compliance Manager (see action 7 above) with such officer to be based in the FD head office in Tongatapu so as to provide a degree of independence to investigations undertaken in regional areas and avoid the potential for conflict of interest and regulatory capture (see section 3 above).

Actions	Methods
9. Develop and deliver information, education and training programs on the establishment and management of forests and trees and regulatory rules	<p>21) FD to work in partnership with other divisions and agencies and external donors to build internal capacity for-</p> <ul style="list-style-type: none"> a) Producing information and disseminating the information through appropriate media, including a web-based format. b) Developing education programs for target audiences, including schools, community and businesses. c) Enhancing the in-house training skills of forestry officers so that they can run training programs on the establishment and management of forests and trees, including seed collection and nursery techniques, silviculture and tree management.
10. Foster the establishment of industry-based and community-based cooperatives for the establishment and management of forests and trees	<p>22) FD to build upon the success of the community-based sandalwood committee in 'Eua to promote the establishment of similar cooperatives throughout Tonga, through existing networks such as village councils and special purpose cooperatives such as coast care groups, nurseries, portable sawmills and sandalwood planting programs</p> <p>23) FD to assist the cooperatives by providing technical advice on forests and trees (see action 9 above) and seeking support through government, industry and donors for advice and training on business development.</p> <p>24) FD to actively support the Forestry Advisory Committee proposed under the draft Forests Bill as a vehicle for promoting opportunities for enhanced self-regulatory capacity.</p>
11. Foster the establishment of industry-based and community-based cooperatives for the processing and marketing of forest products	<p>25) FD to provide information on the potential costs/benefits of growing high quality timbers and sandalwood.</p> <p>26) FD to use the NFI to provide resource data on the nature and quantity of forest products and encourage the development of business ventures for processing and marketing through entrepreneurs and industry-based and community-based cooperatives (see action 10 above).</p>
12. Improve public access to reports	<p>27) Ensure that the Forests Act specifies-</p> <ul style="list-style-type: none"> - that the Annual Report of the FD must include the results of monitoring and enforcement; and - the reports are to be made readily available to the public, e.g. through government websites.

Figure 2 – The relationship between industry, the community and the Forestry Division under an enhanced co-regulatory framework



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

1. Legislation

Act or regulation	Main provisions relevant to forestry
<i>Biosafety Act 2009</i>	Regulates the development, use and movement of living modified organisms and the application of modern biotechnology
<i>Birds and Fish Preservation Act 1915 (revised 1988)</i>	Provides for protected species of birds and fish; prohibits damaging activities, including the clearing of mangroves, in declared protected areas.
<i>Business Licences Act 2002 (amended 2012)</i>	Requires a person carrying on any business activity for the purpose of generating revenue in trade, commerce or industry to hold a business licence.
<i>Customs and Excise Management Act 2007</i>	Provides controls on the import and export of products
<i>Environmental Impact Assessment Act 2003</i>	Requires environmental impact assessments (EIAs) for development projects, including- the removal of trees (including mangroves) or natural vegetation > 0.5 ha; and the operation of a sawmill cutting > 2,000 m ³ of timber.
<i>Environmental Impact Assessment Regulations 2010</i>	Sets out the procedures and fees for EIAs.
<i>Environmental Management Act 2010</i>	Establishes the Ministry of Environment and Climate Change to ensure the protection and proper management of the environment and the promotion of sustainable development; provides powers to stop any activity that is causing environmental harm.
<i>Forests Act 1961 (rev 1988)</i>	Provides for the setting aside of land as forest areas or reserved areas and for the control and regulation of such areas and issuing of licences to take forest produce.
<i>Forest Produce Regulations 1979 (Cap 126A)</i>	Requires any person who wishes to export any forest produce to apply for approval of the Director of Agriculture, Forests and Fisheries or duly authorised officer.
<i>Land Act 1927 (rev 1988)</i>	Sets out the ownership of land and the manner in which land may be allocated and leased and related matters.
<i>Land (Timber) Regulations 1967 (rev 1988)</i>	Requires any person who wishes to cut or remove timber from any Crown land to obtain a permit and pay royalties to the Minister.
<i>Land (Removal of Sand) Regulations 1936 (rev 1988)</i>	Prohibits the taking or removal of sand from the foreshore or from Crown land or any other holding without a permit signed by the Minister.
<i>Noxious Weeds Act 1906 (rev 1988)</i>	Provides that any owner or occupier who fails to use every means to eradicate a noxious weed from his holding shall be guilty of an offence and liable to a fine.

Act or regulation	Main provisions relevant to forestry
<i>Parks and Reserves Act 1977 (rev 1988)</i>	Provides for the establishment of a Parks and Reserves Authority and for the establishment, preservation and administration of parks and reserves; prescribes offences, including removing or causing damage to any feature within a park or reserve.
<i>Pesticides Act 2002</i>	Regulates the registration, manufacture, import, sale, storage, distribution, use and disposal of pesticides.
<i>Plant Quarantine Act 1981 (rev 1988)</i>	Provides that plant material may not be imported into Tonga unless a permit has been issued by the Minister under such conditions and regulations as the Minister may prescribe
<i>Public Enterprises Act 2002</i>	Sets out the objectives, rules and procedures relating to public enterprises (including Tonga Forest Products)
<i>Renewable Energy Act 2008</i>	Regulates the use of renewable energy, which includes biofuels, biomass and plant resources.
<i>Roads Act 1920 (rev 1988)</i>	Requires every land occupier adjoining a public road to cut down or lop away trees or shrubs so as to prevent the same from overhanging the public road.
<i>Tonga Tourism Authority Act 2012</i>	Provides that environmental impacts from tourism developments are to be minimised, and due regulatory processes are to be applied to ensure the protection and conservation of biodiversity, water resources and terrestrial and marine environments.
<i>Tonga Water Board Act 2000</i>	Provides the Board with powers to enter land and carry out works, including diverting watercourses and removing trees that may interfere with infrastructure.
<i>Sandalwood Regulations 2015 (not yet proclaimed)</i> ¹	Sets out a regulatory regime for the harvesting and trade of sandalwood, including requirements for the tagging and recording of all harvested sandalwood.

¹ see Annex 3 - Current regulatory requirements for Sandalwood

2. Policy instruments relevant to forests and tree resources

Instrument	Main relevance to forests and trees
Code of Harvesting Practice for the 'Eua Forestry Plantations 2009	Prescribes the required forest practices for the harvesting and reforestation of the 'Eua plantations
Code of Practice for the Sustainable Management of the Forests and Tree Resources of Tonga 2010	Sets out the desired management practices for forests and trees in Tonga
Joint National Action Plan on Climate Change Adaptation and Disaster Risk Management 2010-2015	Includes increased protection of coastal trees and increased tree planting as actions to combat climate change
National Biodiversity Strategy and Action Plan 2006	Contains strategies to improve the conservation of biodiversity in forests and other ecosystems
National Forest Policy for Tonga 2009	Sets out the policy objectives for the sustainable manner of the forests and trees of Tonga

Annex 2 - Status of the components of the forestry regulatory framework in Tonga

Component	Current status ³	Current situation	Status under proposed legislation ⁴
1. Legal and policy framework			
Does the framework make provision for the following-			
1.1. Clear objectives, e.g. sustainable forest management	partly	a) The current Forests Act 1961 does not deal with the objectives of forest management. b) The National Forest Policy 2009 (NFP) provides an explicit set of policy objectives, including the objective of sustainable management. However, the NFP is not presently recognised in legislation. c) The draft Forests Bill 2015 contains explicit reference to the implementation of a NFP.	improve
1.2. Applicability to different tenures	yes	The framework applies to all tenures.	no change
1.3. Appropriate blend of co-regulatory strategies	no	a) The current act conforms to the traditional approach of governmental control through the issue of licences. b) The draft bill adopts a more co-regulatory approach by identifying the responsibilities of land holders/managers to prepare management plans for plantations (s 48) and explicit requirements for licensees to comply with the code of practice (s 56). c) The draft Sandalwood Regulations 2015 adopt an appropriate degree of co-regulation by placing more responsibility on sandalwood growers and traders for the recording and tagging of harvested sandalwood.	improve There is still a primary reliance on government process and resources under the Forests Bill but less so under the Sandalwood Regulations.

³ Current status is assessed as 'yes'/'no' or 'partly' in existence

⁴ "proposed legislation" refers to the draft Forests Bill 2015 and the draft Sandalwood Regulations 2015. The status is assessed as likely to 'improve' or 'no change'

Component	Current status ³	Current situation	Status under proposed legislation ⁴
1.4. An integrated or streamlined approach with respect to other acts and planning systems	no	<ul style="list-style-type: none"> a) There is considerable overlap and potential duplication between the functions of various ministries and department, particularly in relation to the administration of the Forests Act, Environmental Management Act 2010 and the Parks and Reserves Act 1977. b) The NFP provides for the formation of an inter-institutional advisory committee to coordinate activities arising from the forest policy (policy statement 90). c) The draft Forests Bill 2015 makes explicit provision for interagency cooperation through formal memoranda of agreements (MoAs) (s 74). 	improve The degree of integration will depend upon the level of agreement that can be negotiated under the MoAs.
1.5. Forest policy	partly	See 1.1 above	improve
1.6. Forest management plans	partly	<ul style="list-style-type: none"> a) The current Forests Act 1961 provides that the Minister may make regulations for various matters, including the management of forest reserves (s 4(a)). However, no such regulations for forest management have been made. b) The NFP provides that a new Forests Act is to empower the Forestry Division (FD) to draw up forest management plans (policy statement 89). c) The draft Forests Bill 2015 contains explicit provision for the formulation of a National Forest and Conservation Management Plan (s 24) and for specific Management Plans for each Forest Reserve and Conservation Forest Reserve (s 30) and plantations (s 48). 	improve

Component	Current status ³	Current situation	Status under proposed legislation ⁴
1.7. Code of practice	partly	<p>a) The NFP provides for the development and enforcement of a code of practice for plantations and natural forests (policy statements 50 and 51). However, the NFP is not presently recognised in legislation.</p> <p>b) Codes of practice have been developed and issued- a code for the 'Eua plantations in 2009 and a national code in 2010.</p> <p>c) The draft Forests Bill 2015 contains explicit reference to the development of a code of practice (s 100). The bill requires the FD to enforce the code (s 17(a)) and s 56 requires licensees to comply with the code. However, non-compliance with the code is not explicitly listed as an offence under the bill, although it may constitute a breach of licence conditions, which is an offence under s 81. In addition, timber harvesting licences are not required for operations of less than 1,000 m³.</p>	<p>improve</p> <p>The code may not be enforceable for operations that are not covered by a licence under s 52 or where compliance with the code is not included as an explicit condition of a licence under s 56.</p>
1.8. Operational plans	no	<p>a) The current act, NFP and draft bill do not specifically mention the need for operational plans.</p> <p>b) The code of practice for the 'Eua plantations requires the preparation of timber harvesting plans for all harvesting operations and for such plans to be submitted to the FD for approval.</p>	<p>improve</p> <p>subject to clarification that the code of practice is legally enforceable (see 1.7 above)</p>
1.9. Monitoring	no	<p>a) The current act and NFP do not specifically mention the need for the monitoring of operations.</p> <p>b) The code of practice for the 'Eua plantations requires a monitoring and evaluation program to be in place and an annual report on the results to be prepared by the FD.</p> <p>c) The draft bill requires the FD to undertake monitoring of outcomes under the NFP (s 99(2)(a)), code of practice (s 100(6)(a)) and the National Forestry and Conservation Management Plan (s 24(3)(k) and 25).</p> <p>d) The draft Sandalwood Regulations provide for monitoring of the regulations by the FD.</p>	<p>improve</p> <p>subject to clarification that the code of practice is legally enforceable (see 1.7 above)</p>

Component	Current status ³	Current situation	Status under proposed legislation ⁴
1.10. Enforcement, including rights of appeal and alternatives to prosecution	partly	<ul style="list-style-type: none"> a) The current act provides forest officers and police officers with powers to interrogate persons and seize forest produce. It lists offences, penalties and powers of the court to impose additional penalties, cancel licences, order the forfeiture and restitution of forest produce and order the removal of buildings erected in contravention of the act. b) The NFP provides for a new Forests Act to empower the FD to ensure forest law enforcement (policy statement 89). c) The draft bill contains comprehensive enforcement provisions, including the designation and powers of enforcement officers (s 71 and 72), prescribed fines issued by the Chief Executive Officer (CEO) of the Ministry (s 76), offences and penalties (Part XVI) and appeal rights with respect to decisions made by the CEO of the Ministry under Part X (licences etc.). d) The draft Sandalwood Regulations provide a comprehensive framework for the enforcement of controls on the harvesting and trade of sandalwood, including appeal rights. 	improve
1.11. Review and improvement	partly	<ul style="list-style-type: none"> a) The NFP identified the FD as the primary body for facilitating research and development for sustainable forest management (policy statement 82) and provides for the periodic review of the national forest policy (policy statement 95). b) The draft bill requires regular review of the NFP (s 99(2)(b)) and the code of practice (s 100(6)(b)). c) The draft bill requires the FD to undertake or commission research studies directed at technically strengthening the capability of the forest and conservation division to achieve sustainable development and management of forest resources (s 17(h)). 	improve

Component	Current status ³	Current situation	Status under proposed legislation ⁴
1.12. Involvement of stakeholders	partly	<p>a) The NFP deals with community awareness, education and participation. The mechanisms are the provision of information, training and demonstration (policy statements 77 to 82) and support for tree planting activities and community-based forestry (policy statements 83-85 and 89).</p> <p>b) The draft bill provides for the creation of a Forestry Advisory Committee with membership representative of a cross section of public opinion on rural community considerations and forestry issues. The proposed role of the committee is to provide advice on matters relating to the conservation, management, sustainable utilization and development of trees and forests (s 18), including the NFP (s 99(2)) and the code of practice (s 100(6)). The bill provides comprehensive opportunities for the involvement of stakeholders including an explicit requirement for the Ministry to collaborate with the community for measures implemented under the act and regulations (s 66). This includes public consultations on the preparation and review of the National Forestry and Conservation Management Plan (s 24) and participatory and community-based management when drawing up management plans for forest reserves and conservation forest reserves (s 30). Part XII of the bill deals with community education and awareness.</p>	improve

Component	Current status ³	Current situation	Status under proposed legislation ⁴
1.13. Public reporting	no	<ul style="list-style-type: none"> a) The current act and NFP do not require any public reporting on forest management, although some limited data are available on matters such as forest product exports and imports. b) The draft bill provides for the Annual Report of the Ministry to be provided to Cabinet. The report is to cover the activities of the Forestry and Conservation Division and the National Forestry Tribunal. c) The draft Sandalwood Regulations require the FD to make an annual report to the Minister on the operation of the regulations. 	<p>improve</p> <p>The draft bill does not specify-</p> <ul style="list-style-type: none"> (1) the matters that are to be reported, such as the results of monitoring (see items 1.9, 1.10 and 1.11 above) (2) whether the reports are readily available to the public, e.g. through government websites.
2. Planning			
2.1. Are comprehensive standards and guidelines available in a code of practice?	yes	Codes of practice have been developed and issued- a code for the 'Eua plantations in 2009 and a national code in 2010.	no change
2.2. Is the code supported by technical manuals (e.g. silviculture manual)?	no	No other manuals are currently available	no change

Component	Current status ³	Current situation	Status under proposed legislation ⁴
2.3. Are natural and cultural values, including biodiversity, soils and cultural sites, adequately assessed before any operations commence?	partly	<p>a) The code of practice for the 'Eua plantation requires a forest management plan to identify the values of the forest, including soils, biodiversity and cultural values.</p> <p>b) The draft bill requires the national forest inventory to include non-wood values, including biodiversity, environmental and scenic values (s 23). Natural and cultural values are part of the National Forestry and Conservation Management Plan (s 24) and management plans for forest reserves and conservation forest reserves (s 30).</p>	improve Additional information, planning tools, technical expertise and support will be required to improve the capacity of the FD to assess natural and cultural values.
2.4. Are operational plans prepared for all forestry operations?	no	The code of practice for the 'Eua plantation requires the preparation and approval of timber harvesting plans for each operation (see 1.8 above). In practice plans are not being submitted for approval to the FD.	improve, subject to clarification that the code of practice is legally enforceable (see 1.7 above).

Component	Current status ³	Current situation	Status under proposed legislation ⁴
3. Implementation			
3.1. Are the institutional roles clearly defined?	partly	<ul style="list-style-type: none"> a) The advice on trees given to landholders by extension officers from the Agricultural Division of MAFFF is not always consistent with advice given by Forestry Officers b) The responsibility for tree management in reserves, including coastal reserves, needs to be clarified c) The FD should be recognised by other departments as the primary body for technical advice on tree nurseries and tree planting and rehabilitation projects d) Formal clarification is required with respect to the relationship between the FD and Tonga Forest Products regarding the monitoring and enforcement of the code of practice for the 'Eua plantations. 	<p>improve</p> <ul style="list-style-type: none"> (a) Requires a communication and training strategy within MAFFF (b) and (c) may be addressed through MoA (item 1.4 above) (d) requires clarification that the code of practice is legally enforceable (see 1.7 above)
3.2. Does the FD have well-trained and adequately resourced staff?	partly	Forestry officers are well trained for general duties but are not adequately trained and resourced for important core activities such as inventory, monitoring and enforcement.	<p>improve</p> <p>Ongoing training programs will be required.</p>
3.3. Do the forest industry and contractors have self-management systems in place?	partly	<ul style="list-style-type: none"> a) The staffing and resources of Tonga Forest Products have been subject to considerable change and turn-over since its creation in 2003. At present TFP is not meeting the self-management aspects of the code of practice, such as the preparation of harvesting plans (see 1.8 above). b) There is little self-management currently evident with respect to the harvesting of timber products such as sandalwood. 	<p>improve</p> <ul style="list-style-type: none"> a) Subject to clarification that the code of practice is legally enforceable (see 1.7 above). b) Subject to the introduction of the new Sandalwood Regulations.

Component	Current status ³	Current situation	Status under proposed legislation ⁴
3.4. Are information and training programs available for landholders and forest workers?	partly	There is little in-house capacity for ongoing information and training program and most are reliant on externally-funded projects.	partly Ongoing education and training will be required, in particular for the Sandalwood Regulations.
4. Monitoring			
4.1. Are formal monitoring systems in place to evaluate compliance and standards being achieved?	partly	A monitoring checklist for operations under the code of practice for 'Eua was developed in 2009. No other formal monitoring systems are in place.	improve a) Subject to clarification that the code of practice is legally enforceable (see 1.7 above). b) Monitoring protocols and training will be required.
4.2. Are reports prepared on the standards being achieved?	partly	Limited reports have been produced on the monitoring of operations under the code of practice for 'Eua.	as for 4.1 above
4.3. Do senior managers read the monitoring reports and take appropriate action?	partly	A small number of reports have been forwarded to the Head of Forestry and discussed with the senior manager of TFP.	as for 4.1 above
4.4. Are the reports made available to the public?	no	The reports are not collated or used for annual reporting by the FD.	as for 4.1 above

Component	Current status ³	Current situation	Status under proposed legislation ⁴
5. Enforcement			
5.1. Are formal enforcement protocols in place?	no	a) There are no written procedures or protocols in place. b) The draft Forestry Bill and Sandalwood Regulations provide for the development of formal investigation and enforcement protocols (see 1.10 above).	improve Training will be required.
5.2. Are forestry officers trained and equipped to take enforcement action?	no	a) Forestry Officers do not currently have the training or resources to carry out enforcement activities. b) The Sandalwood Regulations provide that Forestry Officers must be given training in monitoring and compliance.	improve Training will be required.
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 1.10 above).	improve
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

Component	Current status ³	Current situation	Status under proposed legislation ⁴
6.2. Are stakeholders involved in ongoing reviews and changes to the components of the regulatory framework?	yes	a) Consultative processes are highly developed in Tonga. Although not currently a legal requirement, the FD has developed excellent networks with stakeholders and it has used consultation workshops very effectively for all projects and policy developments. b) Formal consultative mechanisms are specified under the draft Forests Bill and Sandalwood Regulations (see 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)	partly	The current annual report does not fully cover the regulatory framework.	improve (see 1.13 above).

Annex 3 - Current regulatory requirements for Sandalwood

[The following section is taken from the report *The development of a regulatory system for the sustainable harvesting of sandalwood (ahi) in Tonga* (Wilkinson, 2013)]

The regulation of sandalwood harvesting in Tonga is restricted to requirements for permits placed on traders and exporters. There are no regulatory requirements for harvesters or growers. The current system operates as follows-

- Landowners may harvest their sandalwood at any time without any regulatory requirements. Most sandalwood is cut as soon as it reaches a minimum commercial size and when the landowner needs money. Many landowners do not have the luxury of forgoing income until their trees reach larger, more valuable sizes. Landowners generally harvest their own trees and transport the billets to a trader's home or business (see below).
- In addition to landowners, sandalwood is also cut by harvesters who take trees from land often without the knowledge or authority of the landowner. Harvesters sell their wood directly to a trader.
- Traders are local or foreign business persons, generally from countries such as China and Fiji. Traders must have a business licence. Local businesses tend to operate as passive buyers, by providing a known market for local growers and harvesters. These businesses either directly export the sandalwood or re-sell it to foreign exporters. Foreign traders operate by visiting regional areas periodically and actively seeking supplies by word-of-mouth communication with local people. They operate opportunistically without any apparent regard for securing long term sustainable supply. Local traders are naturally concerned about the ease with which non-local traders can come in and over-exploit the sandalwood resource.
- Traders may keep personal records of sandalwood purchases but there are no regulatory requirements for recording the source of the sandalwood or verifying that the wood was harvested with the consent of the landowner.
- Persons exporting sandalwood must have an export licence and provide the weight of the consignment to Tonga Customs. Exporters may also require a phyto-sanitary certificate from Quarantine.

Theft of sandalwood trees is a chronic problem, which is largely unreported because evidence to convict the thief is generally lacking. Enforcement action is rare: less than 10 cases have been investigated by the police on 'Eua over the last three years and very few have proceeded to court.

Specific details regarding the licensing requirements for traders and exporters are provided below.

Sandalwood traders

- A person wishing to trade in sandalwood is a business person within the meaning of the *Business Licences Act 2002* as amended by the *Business Licences (Amendment) Act 2012*. A business person must obtain a business licence from the Department of Labour and Commerce.
- Licences can only be issued to Tongan citizens over the age of 18 years or to foreign investors who hold a valid Foreign Investment Registered Certificate (s.5 of the act).

- A business person who applies for a business licence must (under s.7)-
 - Submit the prescribed form in the regulations
 - Pay the fee prescribed in the regulations.
 - For a foreign investor, provide a valid Foreign Investment Registration Certificate.
- The licence may be subject to “any conditions endorsed on the licence that are consistent with this act” (s.9)
- Licences were formerly issued for a calendar year but are now issued in perpetuity following the amendments to the act in 2012. Licensees must submit a notice of continued business activity each year. Licences are cancelled if the notice is not lodged within three months of its due date (s.10).
- The licence can be cancelled if the information provided is false, if the licensee is convicted of an offence under the act or if a condition imposed under s.9 is breached or a necessary permit from another government agency is cancelled (s.11).
- The holder of a cancelled licence may appeal to the minister (s.12)
- The Registrar of Business Licences or any police officer who has reasonable cause to believe a business person is engaged in a business activity that requires an approval or permit from another governmental agency or permitting authority may demand from the person carrying on the business activity the production of such other approvals or permits (s.17).
- Any person who fails to produce a licence or a permit from another governmental agency for inspection within 2 working days is liable upon conviction to a fine not exceeding \$TOP500 and in default of payment to imprisonment for a period not exceeding 3 months (s.19(2)).
- Any person who carries out a business activity without a business licence is liable upon conviction to a fine for a first offence of up to \$TOP50 per day that the offence continues or \$TOP500 (whichever is greater) and for a second or subsequent offence, a fine not exceeding \$TOP100 per day or \$TOP1,000 (whichever is greater) and to imprisonment for a period not exceeding 6 months (s.19(1)).
- The Business Licences Regulations 2012 contain the prescribed forms for a business licence and the schedule of applicable fees (Schedule 2). The application fee for a business licence is \$TOP100 if submitted via paper or \$TOP50 if submitted on-line. The fee for the annual notice of continuation of business activity is \$TOP50 if submitted via paper or \$TOP25 if submitted on-line.
- Schedule 3 of the regulations contains the prescribed application form, which prescribes the separate governmental approvals that are required for certain business activities. Trading in sandalwood falls under the category of ‘businesses involving agricultural products/plants’, which requires a letter of approval from the Ministry of Agriculture, Fisheries and Forestry.
- Schedule 4 of the Regulations contains the layout of the business licence (Form 2). The Licence records the licence number, the name of the business, the date of registration, the address of the principal place of business and the business activity for which the licence is issued. The form contains no standard provision for the insertion of any conditions imposed pursuant to s.9 of the act.

Can regulatory conditions for the control of sandalwood harvesting be imposed under a business licence? The answer to this question is not clear. Section 9 of the act allows conditions to be

endorsed on a licence that are “consistent with [the] act”. Schedule 3 of the regulations provides that a “letter of approval” is required from the Ministry of Agriculture, Fisheries and Forestry. However, the Ministry currently does not impose any conditions on letters of approval; in fact the applications for letters of approval are not currently referred to the Forestry Division for assessment.

The business licence shows the address of the principal place of business, but in the case of sandalwood there are no requirements to record the location of land from which they have sourced their products. Licensees keep their own records of the date, the name of the supplier (harvester), the number of billets and total weight of each purchase. These records may be used for tax purposes but they are not provided to exporters or customs officials. In addition, there is no record of the land from which the sandalwood was sourced and no check is made as to whether the landowner has given consent to the harvesting.

Sandalwood Exporters

Section 35 of the *Customs and Excise Management Act 2007* provides that persons exporting goods must provide the customs officer at the port or place of loading with the following—

- a completed prescribed export goods entry;
- the prescribed fee;
- where required, relevant commercial documentation relating to the export; and
- export duty, as imposed by Customs laws.

For sandalwood exports customs officers check to see that a valid business licence is in place. They also require an order from the overseas importer that gives the value of the consignment. It appears to be common practice for the importer to significantly undervalue the consignment in order to avoid excise duties. Customs officers advise that every container is inspected for excise reasons, although they acknowledge that small consignments of sandalwood may be difficult to detect if hidden within other goods.

Quarantine inspections are carried out where the exporter requires a phyto-sanitary certificate to meet the quarantine laws of the importing country. In such cases, Quarantine officers must inspect every consignment of sandalwood as it is being loaded.

Goods exported by air, by both passenger and freight transport, are only screened by x-ray for security reasons (e.g. weapons) and it is possible that small consignments of sandalwood products could be exported without the knowledge of Customs and Quarantine officials. However, such smuggling would only be successful if it was destined for countries that do not require a phyto-sanitary certificate or ports that have lax quarantine import controls.

General comments on current regulation

The current system is largely based on generic requirements for business licences and export permits, involving the Department of Labour and Commerce, Tonga Customs and Quarantine. These agencies have very broad jurisdictions and they are not directly responsible for regulating the supply of commodities such as sandalwood.

The Ministry of Agriculture, Fisheries and Forestry has little involvement in the control of sandalwood harvesting. The Forestry Division holds a great deal of expertise in the silviculture and management of sandalwood and it produces high quality sandalwood seedlings in its nurseries.

However, under the current legal and policy framework it has little jurisdiction over the control of sandalwood harvesting.

There are no requirements for documenting the source of the sandalwood and verifying that the landowner has given consent.

The greatest threats to the sandalwood resource are the harvesting of immature stems and the theft of trees, which denude the resource and discourages landowners from planting sandalwood in their tax allotments.

Proposed regulation

The Sandalwood Regulations 2015 were prepared following extensive consultations with stakeholders. The Regulations are not yet in effect. The main elements of the Regulations are as follows –

- a sandalwood grower or trader must register with the Forestry Division;
- a documentation and tagging system is established to ensure that the owner of the sandalwood approves the harvesting of specific stems and that such stems are tagged and identified in order to provide verification of a sandalwood source and to discourage theft;
- a sandalwood exporter must apply to the CEO of the Ministry for a license to export sandalwood and certain fees apply;
- a Sandalwood Appeals Tribunal is established to review decisions of the Chief Executive Officer relating to the issuance of a Sandalwood Export License;
- a system for determining prescribed fines is established; and
- offences and penalties for the violation of the regulations are established.

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