

# SAVING SEA TURTLES IN FIJI

## A GUIDE FOR LAW ENFORCEMENT

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# INTRODUCTION

Turtles play an important role in Pacific culture as well as that of the indigenous Fijians or iTaukei. In certain parts of Fiji, turtles are considered totem animals or spirits. Turtles, traditional mats and whale's teeth have cultural significance and are used in some parts of Fiji in traditional ceremonies such as Chiefly weddings and Chiefly installations. Legends of these sea creatures remain in the oral traditions to the present day.

Aside from turtles' traditional and cultural significance, trade in marine turtle products also had significant value within the Fijian economy. Turtle products were sold commercially from the 1800's to the 1990's. However, rising concern over the decline in marine turtles led to a number of significant changes in the Fisheries regulations as well as the management of the species over the years.<sup>1</sup>

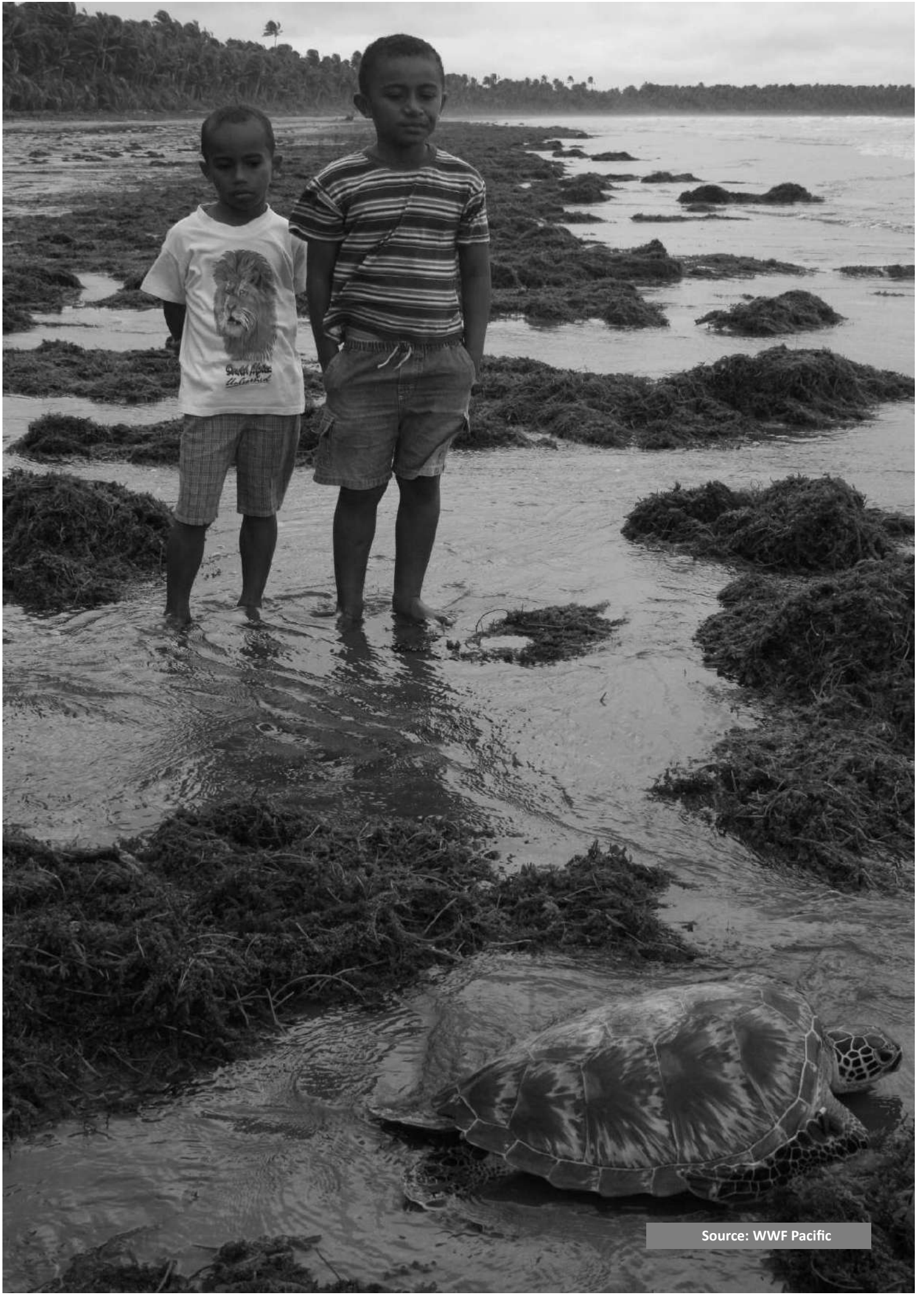
In 1995 the Department of Fisheries issued a one-year ban on the harvest of marine turtles. This was followed by a three-year ban from May 1997 to December 2000. In 2004 an amendment to the Fisheries Act provided for a Moratorium<sup>2</sup> from February 2004 until 31st of December 2008 restricting the killing, taking, molesting or harvesting of turtles, eggs, and all sales of turtle flesh and derivatives. The Moratorium was extended in 2010 to 31<sup>st</sup> December 2018.

Although all species of turtles are protected by the Moratorium, 5 turtle species found in Fiji waters - namely the Green, Leatherback, Loggerhead, Hawksbill and the Olive Ridley turtles - are listed as "species threatened with extinction" (Appendix 1) under the Convention on the International Trade of Endangered and Protected Species (1973) (CITES)<sup>3</sup>. Under its obligations to CITES, the Fiji Government enacted the Endangered and Protected Species Act (EPS) in 2002, providing additional protection to these turtle species.

Despite the protection of turtles under CITES and the laws of Fiji, turtles, turtle eggs and their derivatives continue to be harvested, sold and consumed illegally. One of the commonly observed reasons for this is the lack of enforcement of the Turtle Moratorium, Fisheries Act and the EPS<sup>4</sup>.

In response to the gap in enforcement, the Fiji Environmental Law Association (FELA), after consultation with partners World Wide Fund for Nature (WWF), the Department of Fisheries, the Office of the Director of Public Prosecutions (ODPP) and the Department of Environment developed this turtle enforcement guide in the hope that it will improve enforcement and help ensure the continued survival of all turtle species in Fiji waters. The handbook provides details of relevant laws protecting turtles, offences, penalties, and guidance on investigative procedures and information on turtle species that will assist authorised enforcement officers and enforcement agencies to strengthen turtle protection in Fiji.

1 (Mackay, 2009)  
2 Legally authorised temporary prohibition of an activity.  
3 [http://wwf.panda.org/who\\_we\\_are/wwf\\_offices/fiji\\_islands/about\\_fiji/fime/](http://wwf.panda.org/who_we_are/wwf_offices/fiji_islands/about_fiji/fime/)  
4 Interview with Laitia Tamata, WWF, Suva Fiji.



Source: WWF Pacific

# ENFORCEMENT GUIDE

As turtles are migratory and are not confined to one area, some species are protected by both international and domestic Fijian laws.

## INTERNATIONAL LAWS PROTECTING TURTLES

### *Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)*

Some of the turtle species found in Fiji are protected at an international level by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES). CITES was developed to ensure that the trade in wild animals and plants does not threaten the survival of the species in the wild.

CITES provides protection to certain animal and plant species by subjecting their trade to certain controls through the use of a licensing system. Species are listed according to their risk of extinction.<sup>5</sup> Five turtle species found in Fiji waters - the Green, Leatherback, Loggerhead, Hawksbill and the Olive Ridley turtles are listed as “species threatened with extinction” under CITES<sup>6</sup> and therefore listed in Appendix 1.<sup>6</sup> All specimens listed in Appendix 1 of CITES are subject to very strict trade controls where trade is only permitted in exceptional circumstances.<sup>7</sup>

A country that becomes a party to CITES voluntarily agrees to the terms of the treaty and must implement domestic laws to ensure that CITES is implemented at a national level.

After Fiji became a Party to CITES, it passed the Endangered and Protected Species Act (EPS) in 2002. This law regulates and controls the trade and possession of the species of animals listed in CITES as well as certain local indigenous species of plants and animals.<sup>8</sup>

5 CITES has 3 Appendices that lists species according to their status Appendix I includes species threatened with extinction. Trade in specimens of these species is permitted only in exceptional circumstances. Appendix II includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid exploitation that may threaten their survival and Appendix III contains species that are protected in at least one country.

6 CITES, Appendix 1.

7 According to CITES, an import permit issued by the Management Authority of the State of import is required and may be issued only if the specimen is not to be used for primarily commercial purposes and if the import will be for purposes that are not detrimental to the survival of the species. In the case of a live animal, Scientific Authority must be satisfied that the proposed recipient is suitably equipped to house and care for it.

An export permit or re-export certificate issued by the Management Authority of the State of export or re-export is also required and may be issued only if the specimen was legally obtained; the trade will not be detrimental to the survival of the species; and an import permit has already been issued.

A re-export certificate may be issued only if the specimen was imported in accordance with the provisions of the Convention and, in the case of a live animal if an import permit has been issued. In the case of a live animal it must be prepared and shipped to minimize any risk of injury, damage to health or cruel treatment.

# DOMESTIC LAWS PROTECTING TURTLES

At a national level, there are two key laws that seek to protect turtles.

- *Endangered & Protected Species Act 2002 (EPS).*
- *Fisheries Act 1942 and Fisheries (Protection of Turtles) (Amendment) Regulations 2004 and 2010.*



# ENDANGERED AND PROTECTED SPECIES ACT 2002

## HOW DOES THE EPS PROTECT TURTLES?

The EPS protects all species listed in the CITES Appendices, which includes the 5 turtles species that are found in Fiji waters. All turtles found in Fiji are listed in Appendix 1 of CITES as species threatened with extinction and therefore are subject to strict regulatory controls. No one, including companies, is permitted to capture and breed, export, import, re-export, introduce from the sea, sell, trade, capture and display for sale any of the protected turtle species unless they:

1. are registered; and/or
2. obtain a permit from the Fiji CITES Management Authority.

## HOW IS EPS ADMINISTERED?

The EPS establishes the Fiji CITES Management Authority (Management Authority), the Fiji CITES Scientific Council (Council) and the Director of Environment as the Secretariat.

## THE FIJI CITES MANAGEMENT AUTHORITY<sup>9</sup>

The Management Authority is responsible for advising Government on its responsibilities under CITES and advising the Minister on any action to implement or enforce the Government's obligations under CITES.<sup>10</sup> The Management Authority approves registration, permits and exemptions under the EPS on the advice of the Council.

## THE FIJI CITES SCIENTIFIC COUNCIL

The Council is responsible for advising the Management Authority on any matters related to CITES, including the granting of permits, monitoring of permits, advising on the disposal of confiscated or forfeited specimens, conducting research on species endangerment, and reviewing awareness or education materials on CITES.<sup>11</sup>

<sup>9</sup> Although cited as the Fiji Islands CITES Scientific Council and Management Authority, Fiji's official country name was changed from the Fiji Islands to the Republic of Fiji in June 2011 and reflected in the Constitution of Fiji 2013.

<sup>10</sup> The Management Authority consists of the PS for Environment as Chairperson, the Director of Environment, The Director of the National Trust of Fiji, 3 public officers from the Ministry of Agriculture, Fisheries and Forests and iTaukei Affairs Board, 2 representatives of conservation NGOs and 2 representatives nominated by a body that represents those involved in trade, sale, possession, exportation or importation of species listed under EPS.

<sup>11</sup> As an Appendix I listed species trade of turtles will only be permitted in exceptional circumstances. Trade of Appendix II listed species may be permitted provided that the Scientific Authority of the exporting state advises that the export will not be detrimental to the survival of the species and the Management Authority of the state of export is satisfied that the specimen was obtained legally. The Council is responsible for conducting non-detrimental findings (NDF) for Appendix II listed species to determine the sustainability of the trade of each specimen. The NDF is used to determine quotas for each species that is being traded however this does not apply to Fiji's Turtles. The Council consists of the Conservator of Forest as the Chairperson, Director of Fisheries, Director of Environment, Director of Research of the Agricultural Division, Director of Animal Health and production, an academic nominated by the Minister for Education, and a representative of conservation NGO.

## THE DIRECTOR OF ENVIRONMENT

The Director of Environment is the Secretariat to the Management Authority. The Director of Environment is responsible for assisting the Management Authority and the Council to convene meetings, designating public officers as authorised officers, carrying out awareness and training on CITES, collecting and maintaining records of international trade in specimens relating to CITES and other functions as assigned by the Chairperson of the Management Authority.

The Department of Environment as Secretariat to the Management Authority processes any applications for registration, permits or exemptions under EPS.

## EPS TURTLE RELATED OFFENCES

Breaching the provisions of the EPS is a criminal offence. The Table below contains offences under the EPS that are relevant to turtle protection. The table includes the elements of the offence or key avenues for inquiry which should inform investigators of the type of evidence required to prove each case. Potential penalties are also included.

**TABLE 1: RELEVANT OFFENCES UNDER EPS**

OFFENCE	KEY AVENUES FOR INQUIRY	TIPS FOR INVESTIGATION
<p>Export, Import, Transport or Re-Export<sup>12</sup> of a listed turtle or introduction from the sea<sup>13</sup> without a permit issued by the Management Authority.<sup>14</sup></p> <p>First Offence: \$20,000/ 4 years imprisonment.</p> <p>Second or Subsequent Offence: \$100,000/5 years imprisonment.</p>	<p>(i) Identification of suspect and species.</p> <p>(ii) Intention to export or import or transport or re-export a listed turtle.</p> <p>(iii) Suspect does not have a permit issued by the Management Authority.</p>	<p>(i) Investigators must ensure proper identification of the suspect which can be an individual, a group of individuals, incorporated or unincorporated companies or associations.</p> <p>(ii) The Identification of the turtle species is also vital and expert evidence may be required to ascertain the turtle species. Photographic evidence is recommended. If in doubt officers should contact a fisheries officer for assistance.</p> <p>(iii) Intent relates to the condition of the persons mind when carrying out an act. Thus direct intent can be difficult to prove unless a person admits to committing the offence, however the law also</p>

<sup>12</sup> To re-export is to export a specimen that was previously imported.

<sup>13</sup> Introduction from the sea is the transportation into a State, of specimens of any species which were taken in the marine environment not under the jurisdiction of any State e.g. High Seas. If a CITES Appendix 1 listed Turtle is caught in the High Seas for example, the State of Introduction (determined by the port state or where the specimen is landed), must make a (i) non-detriment finding; (ii) be satisfied that the specimen will not be used primarily for commercial purposes; and (iii) be satisfied that the proposed recipient of a living specimen is suitably equipped to house and care for the specimen.

<sup>14</sup> Endangered and Protected Species Act, s.9, s. 10, s. 11 & s. 12.

		<p>recognises circumstantial evidence as proof of intent, for example, the act of transporting, harvesting or hiding a specimen in one's luggage or on the person is circumstantial evidence that can be used to prove a person's state of mind at the time of the offence.</p> <p>(iv) Turtles captured in the High Seas that are listed in CITES Appendix I are considered introductions from the sea and cannot be introduced into Fiji without the necessary permits.</p>
<p>Trade of a listed turtle without registering with the Management Authority.<sup>15</sup></p> <p>Individual : \$20,000/ 4 years imprisonment.</p> <p>Company /Association/Body of Persons: \$100,000.</p>	<p>(i) A person or company or Association or Body of Persons (whether incorporated or unincorporated).</p> <p>(ii) Trades domestically or internationally.</p> <p>(iii) The person is not registered with the Management Authority.</p>	<p>(i) Identification of the suspect is important and determines which criminal penalties will apply upon conviction.</p> <p>(ii) Turtle identification must be ascertained.</p> <p>(iii) Domestic trade means a sale, purchase, manufacture or any other commercial activity within the Fiji Islands relating to any specimen.</p> <p>(iv) International trade means any export, re-export, or import of species regulated under this Act or any other written law and includes any introduction from the sea.</p> <p>(v) Evidence of trade or intention to trade will be similar to that in the column above.</p> <p>(vi) The Department of Environment as the Secretariat for the Management Authority issues</p>

		permits and exemptions under EPS. Investigations should clarify registration with the Department of Environment and obtain a statement to verify the absence of a permit or exemption.
<p>Captive breeding of a listed turtle without registering with the Management Authority.<sup>16</sup></p> <p>Individual: \$ 20,000/ 4 years imprisonment.</p> <p>Company /Association/Body of Persons: \$100,000.</p>	<p>(i) A person or company or Association or Body of Persons (whether incorporated or unincorporated).</p> <p>(ii) Breeds a listed turtle species in a controlled environment.</p> <p>(iii) Is not registered with the Management Authority.</p>	<p>Captive breeding of turtles is the capturing of turtles which are bred and raised in a facility or closed area. Captive breeding without registration with the Management Authority is a criminal offence.</p>
<p>In possession or control and, offer or exposes for sale, or displays to the public a listed turtle without being registered.<sup>17</sup></p> <p>Fine: \$5,000/2 years imprisonment.</p>	<p>(i) Any person</p> <p>(ii) in possession or control of a listed turtle,</p> <p>(iii) offers or exposes the listed turtle for sale; or</p> <p>(iv) displays the listed turtle to the public and;</p> <p>(v) is not registered with the Management Authority.</p>	<p>Sufficient evidence must be obtained to prove an intention to sell, offer for sale or display to the public a listed turtle without being registered with the Management Authority. Merely being in possession and control of a turtle is insufficient to constitute an offence under this section of the EPS, but is a direct breach of the Turtle Moratorium/ Fisheries Regulations. In such a situation, the offender can be charged under the provisions of the Turtle Moratorium.</p>

## EXEMPTIONS UNDER THE EPS

In some cases, it is allowable to be in possession of a protected turtle. The Table below identifies the circumstances in which the usual restrictions do not apply. In all cases, it will be necessary to have an Exemption Approval from the Management Authority in order to avoid committing an offence under the EPS.

**TABLE 2: EXEMPTIONS UNDER THE EPS**

EXEMPTIONS	LEGAL REQUIREMENTS AND COMPLIANCE
Dead specimens, parts and derivatives of species listed in Appendix I or II. <sup>18</sup>	<p>Must have an Exemption Approval from the Management Authority.<sup>19</sup></p> <p>Specimen, parts or derivatives must be personal or household effects that are introduced or imported into Fiji or exported or re-exported into Fiji in compliance with the EPS Regulations, CITES and Resolutions of the Conference of Parties (COP).</p>
Non-commercial loans, donations or exchanges of specimens between scientists and scientific institutions. <sup>20</sup>	<p>Must have an Exemption Approval from the Management Authority.</p> <p>Institutions must be registered with the Management Authority.</p>
<p>Specimens used for the purposes of:</p> <p>(i) education</p> <p>(ii) exhibition (including travelling exhibition);</p> <p>(iii) breeding that has been approved by the Management Authority<sup>21</sup></p>	<p>Must have an Exemption Approval from the Management Authority.</p>

## ENFORCEMENT OF THE EPS

The EPS can be enforced by ‘authorised officers’ who are public officers appointed by the Secretariat.<sup>22</sup> This includes Environment Officers in the Department of Environment.

Police Officers and Customs Officers are also authorised to enforce the provisions of the EPS. Fish wardens are not authorised officers under the EPS but are authorised officers under the Fisheries Act which also has provisions for turtle protection.

If an authorised officer is satisfied that there is reasonable evidence of an offence being committed or about to be committed under the EPS, the officer can:

- Detain the suspect.<sup>23</sup> If the suspect is detained other than by a police officer the suspect must be handed to a police officer as soon as possible.<sup>24</sup>

18 Endangered and Protected Species Act, s.20(1)  
 19 Endangered and Protected Species Act, s.20(2)  
 20 Endangered and Protected Species Act, s.20(b)  
 21 Endangered and Protected Species Act, s.20(c)  
 22 Endangered and Protected Species Act, s.25(1)  
 23 Endangered and Protected Species Act, s.25(1)  
 24 Endangered and Protected Species Act, s.25(2)  
 25 Endangered and Protected Species Act, s.25(1)

- Seize any item related to the offence.<sup>25</sup>
- Within a reasonable time, enter any premises or vehicle and detain and seize any specimen which the officer reasonable suspects is kept in contravention of the EPS or CITES.<sup>26</sup>
- Seize anything which the officer reasonably suspects is evidence of the offence.<sup>27</sup>
- Examine any specimen which the officer reasonably suspects to be transported, acquired or traded in contravention of the EPS or the CITES.<sup>28</sup>
- Examine any records held relating to the specimen.<sup>29</sup>

An authorised officer must:

- Apply to a magistrate for a search warrant if the premises to be searched is residential.
- List in writing anything seized and provide a copy to the person the items were seized from.

## REPORTING BREACHES OF THE EPS

A person can report a breach of the EPS provisions to:

- The Department of Environment
- The Police
- Customs Officer
- Any other authorised officer appointed under the provisions of the EPS

## REWARD

The CITES Management Authority can reward any person who has provided information that leads to a conviction.

26 Endangered and Protected Species Act, s.26(1)(a)  
 27 Endangered and Protected Species Act, s.26(b)  
 28 Endangered and Protected Species Act, s.26(c)  
 29 Endangered and Protected Species Act, s.26(d)



Source: WWF Pacific

# THE FISHERIES ACT AND REGULATIONS

The Fisheries Act (1942) regulates fishing activities through a permit and licensing scheme.

The Fisheries Act requires anyone who wishes to fish in Fiji waters for the purpose of trade or business to obtain a fishing license.<sup>30</sup> Despite the recognition of the customary fishing rights of indigenous Fijians (iTaukei) within their respective registered customary fishing grounds (qoliqoli), permits must be obtained to fish for trade or business purposes in a qoliqoli area.<sup>31</sup>

## HOW DOES THE FISHERIES ACT PROTECT TURTLES?

Turtles and turtle eggs fall within the definition of “fish” in the Fisheries Act and are therefore regulated and managed under the provisions of the Fisheries Act and accompanying regulations.<sup>32</sup>

All species of turtles are given special protection under the Fisheries (Protection of Turtles) (Amendment) Regulations 2004 which was extended in 2010 (Turtle Moratorium). A fishing licence or a permit issued by the Department of Fisheries does not permit a person to harvest, kill or sell turtles or turtle derivatives.

## FISHERIES (PROTECTION OF TURTLES) (AMENDMENT) REGULATIONS 2010: TURTLE MORATORIUM

The Turtle Moratorium has been in place since 1997. It protects any species of turtle in Fiji by restricting the molesting, bothering, abuse, taking, killing, sale or use of any turtle, turtle meat, eggs or its derivatives unless a written exemption is given by the Minister of Fisheries. The Turtle Moratorium was amended in 2010, extending the protection of Turtles to the 31<sup>st</sup> of December, 2018.

## HOW IS THE FISHERIES ACT ADMINISTERED?

The Fisheries Act is administered by the Department of Fisheries under the authority of the Ministry of Fisheries and Forests. The Department of Fisheries is responsible for implementing the provisions of the Fisheries Act which includes, creating necessary awareness of the Fisheries Act, training of enforcement officers, issuance of licences and permits, monitoring and enforcement.

## TURTLE MORATORIUM OFFENCES

There are a number of criminal offences created by the Turtle Moratorium. An offender that undertakes any of the acts listed in the Table below commits a criminal offence and may be charged and tried in the Magistrates Court. Each act constitutes a separate criminal charge. For example if a person kills a turtle and then sells the meat, the person can be charged with two separate counts of (i) killing a turtle and (ii) selling the turtle meat. If the offender also digs up turtle eggs (whether the eggs are from the turtle killed or not) the offender can face an additional count of digging up turtle eggs.

Enforcement officers investigating breaches should be aware of the different types of offences created and the evidence required to prove each element of the offence. If an offender is charged and convicted for more than one count, the Magistrate will determine each count separately and the penalty must reflect the severity of the charge given that there is more than one count.

*TABLE 3: TURTLE MORATORIUM OFFENCES*

OFFENCE	KEY AVENUES FOR INQUIRY	TIPS FOR INVESTIGATION
<p>Molest, take or kill turtles.<sup>33</sup></p> <p>Maximum fine of up to \$500</p> <p>and/or</p> <p>3 months imprisonment per criminal charge.</p>	<ul style="list-style-type: none"> <li>• Do you have sufficient evidence to identify the suspect? A suspect can be caught red-handed, identified through a witness, or through a confession.</li> <li>• The suspect does not have a written exemption from the Minister.<sup>34</sup></li> <li>• Can you show the link between the suspect and the act</li> </ul>	<ul style="list-style-type: none"> <li>• Exemptions are only given for the harvesting of green turtles and no other turtle species.</li> <li>• Evidence can be in the form of witness accounts, photographs of the turtle, type of turtle species, fishing gear, evidence of a recent fishing or boating trip, confessions.</li> </ul>

	<p>of molesting (annoying disturbing) or taking or killing a turtle. In most cases being in possession of the turtle that is alive or has been killed without a written exemption will suffice.</p> <ul style="list-style-type: none"> <li>• Investigators need not prove all 3 acts unless there is evidence to show the offender committed all 3 acts.</li> </ul>	<ul style="list-style-type: none"> <li>• Proving only one of the acts - molesting, taking or killing a turtle - will suffice.</li> </ul>
<p>Sell, offer, or expose for sale or export any turtle shell, flesh or turtle parts used for products.<sup>35</sup></p> <p>Maximum fine of up to \$500</p> <p>and/or</p> <p>3 months imprisonment per criminal charge.</p>	<ul style="list-style-type: none"> <li>• Identification of the suspect.</li> <li>• Suspect does not have a written exemption from the Minister.</li> <li>• Proof of sale, export or offer or exposure for sale.</li> <li>• Proof of turtle or turtle derivatives.</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence to show proof of sale, offer or exposure for sale or export can be made through proof of purchase or proof of transaction.</li> </ul> <p>For example: receipts, eye witness accounts, advertisements for sale e.g. in restaurant menus, photograph of sale, physical evidence of turtle and turtle derivatives displayed for sale, and evidence from buyer, confession from a suspect.</p> <ul style="list-style-type: none"> <li>• Proving the turtle or turtle derivative involved can be difficult especially in cases where the turtle meat has been consumed or turtle derivatives sold. A suspect's confession or actual witness accounts can be sufficient to convict a suspect and if obtained can be assessed for credibility.</li> </ul>
<p>Dig up, use, take or destroy turtle eggs of any turtle species.<sup>36</sup></p> <p>Maximum fine of up to \$500</p> <p>and/or</p> <p>3 months imprisonment per criminal charge.</p>	<ul style="list-style-type: none"> <li>• Identification of suspect.</li> <li>• Suspect does not have a written exemption from the Minister.</li> <li>• Suspect digs up, uses takes or destroys turtle eggs of any species.</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence must show the link between the offender and the act of digging, using, taking or destroying turtle eggs. For example: being in possession of turtle eggs, remnants of turtle eggs like shells, eye witness accounts, photographs, or confession from suspect.</li> </ul>

34 Fisheries Regulations, s.20 A (2) amended by the Fisheries (Protection of Turtles)(Amendment)Regulations 2004

35 Fisheries ( Protection of Turtles)(Amendment) Regulations 2010, s.2(b)

36 Fisheries ( Protection of Turtles)(Amendment) Regulations 2010, s.2(c)

<p>Use turtles, turtle derivatives, or turtle eggs for any purpose, including education, research or tourism.<sup>37</sup></p> <p>Maximum fine of up to \$500 and/or</p> <p>3 months imprisonment per criminal charge.</p>	<ul style="list-style-type: none"> <li>• Identification of suspect.</li> <li>• Does not have a written exemption from the Minister.</li> <li>• Suspect uses turtles, turtle derivatives or turtle eggs for any purpose including education research or tourism.</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence to prove the use of turtles, turtle derivatives or eggs for education, research or tourism can be obtained from witness accounts, actual displays, photographs or confessions.</li> </ul>
<p>Negatively impact turtle habitats.<sup>38</sup></p> <p>Maximum fine of up to \$500 and/or</p> <p>3 months imprisonment per criminal charge.</p>	<ul style="list-style-type: none"> <li>• Identification of suspect.</li> <li>• Suspect does not have a written exemption from the Minister.</li> <li>• Suspect negatively impacts turtle habitats.</li> </ul>	<ul style="list-style-type: none"> <li>• Evidence must prove link between the offender and the act of negatively impacting a turtle habitat such as digging up or disturbing turtle nesting grounds. For example: witness accounts, photographs, confessions and expert evidence to show the negative impact on turtle habitat.</li> </ul>

## TURTLE MORATORIUM EXEMPTIONS

A person does not commit an offence if issued with a permit by the Minister of Fisheries and has complied with any conditions set out in the permit.

The Department of Fisheries will only consider applications to harvest turtles for traditional purposes. Traditional purposes means for burial or installation of a high or paramount chief.

Applications for exemptions are to be lodged at the nearest divisional Fisheries Office. A successful applicant will only be allowed to harvest 2 GREEN TURTLES.

Permits will only be issued from the months of June – August as turtles cannot be harvested during the nesting period (between November and February).

# ENFORCEMENT OF THE TURTLE MORATORIUM

The following officers are authorised to enforce the provisions of the Fisheries Act and Regulations, including the Turtle Moratorium.<sup>39</sup>

- (Fisheries) Licensing Officers
- Police Officers
- Customs Officers
- Honorary Fish Wardens
- Any officers empowered by the Minister of Fisheries.

Authorised officers have the power to:

- Demand to see a license, permit, exemption of fishing gear and catch.<sup>40</sup>
- Board any vessel reasonably believed to be engaged in fishing.<sup>41</sup>
- Search and examine any fishing apparatus.<sup>42</sup>
- Detain anyone suspected of committing an offence.<sup>43</sup>
- Take the suspect, the boat, the fishing gear and catch (without summons, warrant or other process) to the nearest police station.<sup>44</sup>

Authorised Officers CANNOT:<sup>45</sup>

- Abuse their powers.
- Assault or intimidate their suspects.
- Take the catch for personal use.
- Sell the catch and keep the proceeds.
- Detain a vessel, apparatus or fishing gear for personal use.

## ENFORCEMENT PROCESS

In Fiji, turtle offences are detected either by the enforcement agencies, authorised officers or a member of the public who has reported a suspected breach.

If a breach is suspected, the relevant enforcement agency or authorised officers will conduct investigations. After the investigation has been carried out, the following may occur:

- The suspect and all evidence are taken to the nearest police station.
- No action is taken if the claim is unsubstantiated or there is insufficient evidence to prove the breach.
- Informal action may be taken e.g. verbal or written warning issued and offender asked to comply.

39 Fisheries Act, s.7

40 Fisheries Act, s.7(1)(a)

41 Fisheries Act, s.7(1)(b)

42 Fisheries Act, s.7(1)(a)

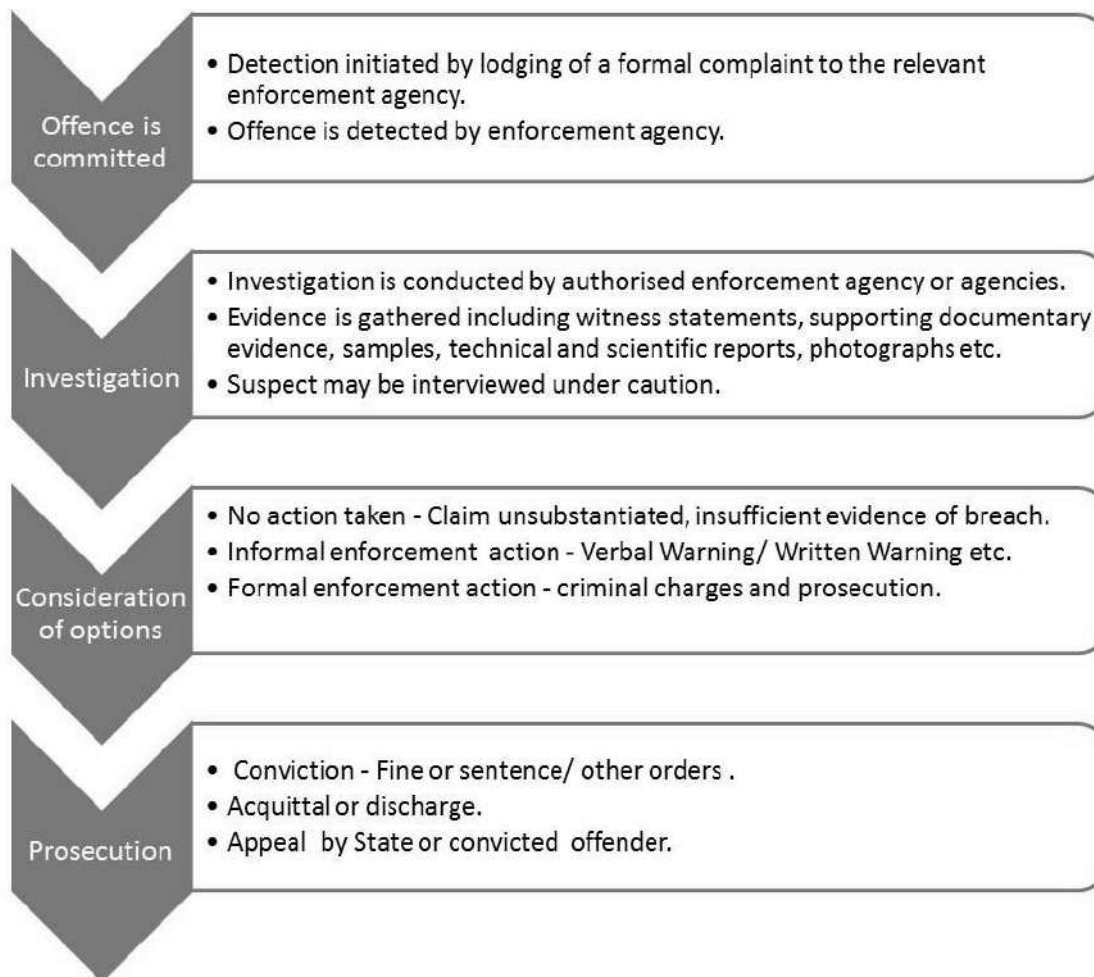
43 Fisheries Act, s.7(1)(c)

44 Fisheries Act, s.7(1)(c)

45 Unauthorized or abuse of power may result in criminal charges under the Crimes Decree 2010.

- Formal action may be taken e.g. criminal charges where the suspect will appear before a court of law to answer to these charges.
- If convicted, an offender will be sentenced and may be fined and/or imprisoned. Other orders may also be made e.g. the offender may be ordered to rehabilitate and restore a damaged area.

The following chart illustrates the criminal process from the commission of the offence through to the final outcome of the case.



# THE RIGHTS OF ARRESTED AND DETAINED PERSONS

Authorised Investigators or Enforcement Officers must familiarise themselves with the provisions of section 13 and 14 of the Constitution of Fiji and ensure that those rights are accorded to suspects in their care.

## THE RIGHT TO REMAIN SILENT

The right to remain silent is a Constitutional right protected in section 13(1) of the Constitution of Fiji.

An authorised officer who is trying to discover who may have committed an offence is entitled to question anyone he thinks has useful information. However, in the course of investigation, if the officer has evidence that would afford reasonable grounds for suspecting that a person has committed an offence, the officer will have to administer a caution before questioning the suspect further or the information may not be admissible in a court of law.<sup>46</sup>

The person who is arrested or detained must be informed promptly in a language that he or she understands:

- (i) of the reason for arrest or detention and the nature of any charges that may be brought against the person;
- (ii) of the right to remain silent;
- (iii) of the consequences of not remaining silent;
- (iv) to communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, and if he or she does not have sufficient means to engage a legal practitioner and in the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission; and
- (v) to communicate with, and be visited by his or her spouse or next-of-kin; and a religious counsellor or social worker.

## How to Administer a Caution

*"You are being arrested on suspicion of having committed an offence. The offence is (state the offence or breach of the relevant provisions e.g. killing a turtle without an exemption from the Minister.) You have the right to remain silent, if you choose to say anything this will be recorded and may be used against you in a court of law. You have a right to a lawyer of your own choice, if you cannot afford a lawyer, you may apply to Legal Aid for a lawyer. Do you understand this right?"*

# INVESTIGATION TIPS FOR AUTHORISED OFFICERS

1. Remember to carry your identification card with you when conducting your duties.
2. Carry a note book to record information.
3. Carry a camera (if you have one).
4. Record important information, such as:
  - the date the offence took place
  - the name and details of the person/suspect
  - the location of the incident
  - registration name and number of the vessel
  - names and contact details of the witnesses
  - the offence being committed
  - details about the turtle that will help in its identification i.e. species, size, whether it was tagged or not. If it was tagged note the serial number
  - what you did to the turtle when you apprehended the suspect i.e. did you release it?
5. If you are unable to identify the turtle, call a Fisheries Officer to assist you with identification of the turtle species.
6. Take photographs of all evidence seized. Note down the type of camera the photo was taken from and who took the photographs and date.
7. Did the suspect have a permit? If the suspect had a permit, note down the conditions written on the permit. Ensure the permit is relevant to the activity that is being conducted. Remember that even with a permit to harvest turtles, the only species of turtle allowed to be caught in Fiji waters are Green Turtles. So even if the fisherman shows you the permit, if the turtle is not a Green Turtle then an offence has been committed.
8. If the suspect shows you a permit issued by the Management Authority of Fiji under the EPS, obtain the permit, read the conditions of the permit and contact the Department of Environment if you need further assistance. A conflict of laws exists in this instance and you will need to advise the Department of Environment as the Turtle Moratorium strictly prohibits harvesting etc. of turtles without a permit from the Minister of Fisheries.
9. Ensure to caution the suspects so that whatever confession they make can be used in Court.
10. Make sure that the police take down your witness statement.

11. Remember to advise the police of other witnesses that you are aware of.

You may be asked to testify in a court of law. This is when the notes in your notebook will be important. You can use your notes to ensure you give accurate testimony in Court.

## **TIPS FOR POLICE**

1. If the officer that has handed over the evidence and information to you has not taken down important information regarding the turtle such as the species, size and location where it was caught, make sure to note it down and take photographs.
2. Call a Fisheries Officer to assist you to identify the turtle and to advise on the preservation of the turtle.
3. If the turtle has been tagged, ensure to note the information on the tag.
4. Ensure that you have taken a detailed statement from the fish wardens and or other authorised officers.
5. Check the list of offences to see what type of breaches have been committed. Remember that certain breaches of the Turtle Moratorium will also breach the provisions of the Endangered and Protected Species Act. For example, the sale of turtles or turtle meat is an offence under the Turtle Moratorium and also an offence under the Endangered and Protected Species Act. If you come across a situation like this, please contact the Department of Environment.
6. Ensure to take detailed statements from other witnesses.
7. Ensure to ask whether the fishermen have permits to harvest turtles. If they have the permits, ensure to note the type of permit and any conditions of the permit and check it against the turtle species. If the turtle is not a Green Turtle, the permit will not apply.
8. Ensure to ask if there were additional witnesses.

The Police can act further by:

- Questioning the suspect
- Formally arresting and charging the suspect
- Obtaining necessary evidence required for the case, including witness statements
- Detaining the boat and fishing gear until determination of the trial and/or sell the catch
- If the turtle seized was caught through explosives, it must be confiscated and destroyed

## PENALTIES

Where a suspect is found guilty and convicted, Courts can impose a range of penalties, including:

- Fines
- Term of imprisonment
- Making orders such as cancellation of fishing licenses.

