



# Plastic Pollution in Oceans

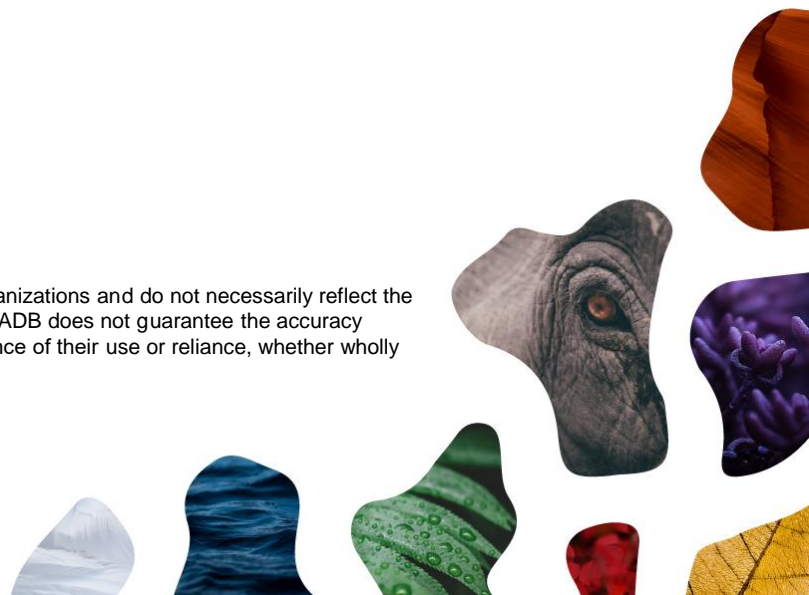
## Regional Focus and Judicial Strategies

ASIA-PACIFIC JUDICIAL CONFERENCE ON CLIMATE CHANGE ADJUDICATION: TRENDS AND IMPACTS

October 2019 – Nadi, Fiji

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# Agenda

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- Marine Plastic Pollution
- What is Plastics?
- Uses of Plastics
- Single-use Plastics
- Impacts of Marine Plastic Pollution
- How is Plastic Pollution affecting the Pacific Islands?
- What are we doing about it?
- Strategies



# Marine Plastic Pollution

- What is Plastic Pollution?
- It's plastic where it shouldn't be. It's in the sea and on the beach and it's causing harm.
- We're using more plastic than ever, it's durable, cheap to produce and we're consuming it at staggering rates.
- Current estimates show that at last 8 million pieces of plastic are entering the oceans every single day.



SOURCE: Blue Ocean Network

# Marine Plastic Pollution

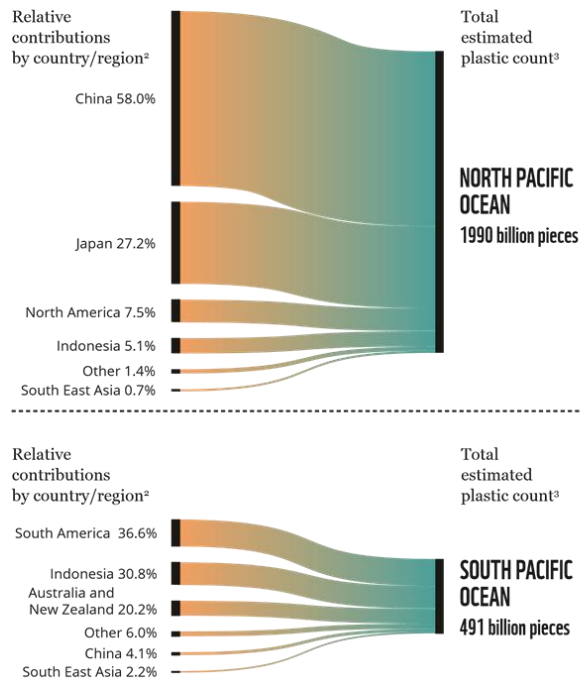
- In 1950, the world's population of 2.5 billion produced 1.5 million tons of plastic; in 2016, a global population of more than 7 billion people produced over 320 million tons of plastic. This is set to double by 2034.
- Every day approximately 8 million pieces of plastic pollution find their way into our oceans.
- There may now be around 5.25 trillion macro and microplastic pieces floating in the open ocean. Weighing up to 269,000 tonnes.
- Plastics consistently make up 60 to 90% of all marine debris studied.
- The Great Pacific Garbage Patch is the largest accumulation zone for ocean plastics on Earth, with studies suggesting an estimated trillion pieces of plastic (weighing nearly 90,000 tonnes) making up this patch.



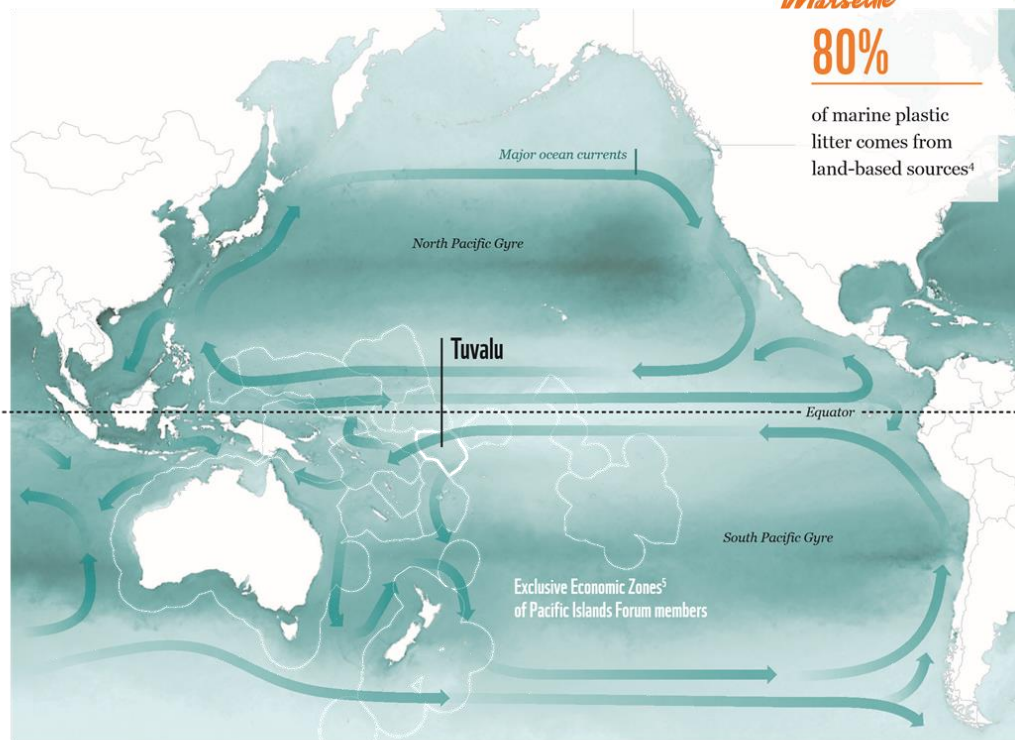
SOURCE: Surfers Against Sewage



## Land-based sources of floating marine debris in the Pacific Oceans



## Concentration of floating plastics in the Pacific Ocean



SOURCE: WWF



# What is Plastics?



‘Plastic is a term commonly used to describe a wide range of synthetic or semi-synthetic materials that are used in huge growing range of applications. Everywhere you look, you will find plastics. We use plastic products to help make our lives cleaner, easier, safer and more enjoyable. We find plastics in the clothes we wear, the houses we live in, and the cars we travel in. The toys we play with, the televisions we watch, the computers we use and the DVDs we watch all contain plastics.’ *PlasticsEurope* - <https://www.plasticseurope.org/en/about-plastics/what-are-plastics>.

It is a term that is derived from the Greek word “plastikos” which means fit for moulding. Plastics innovation has existed for over 100 years!!!



# Uses of Plastics?

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- Plastics can pretty much be used for anything because of the versatility of its material.
- They are increasingly being used for the following applications:

- Packaging
- Building and Construction
- Mobility and Transport
- Electronics
- Agriculture
- Healthcare
- Sport and Leisure
- Energy



# Single-Use Plastics



These **single-use plastic products** are everywhere. For many of us, they've become integral to our daily lives.



## **Polyethylene terephthalate (PET)**

Water bottles, dispensing containers, biscuit trays



## **High-density polyethylene (HDPE)**

Shampoo bottles, milk bottles, freezer bags, ice cream containers



## **Low-density polyethylene (LDPE)**

Bags, trays, containers, food packaging film



## **Polypropylene (PP)**

Potato chip bags, microwave dishes, ice cream tubs, bottle caps



## **Polystyrene (PS)**

Cutlery, plates, cups



# Impacts of Marine Plastic Pollution



- The impacts of plastic pollution are manifold, and affect not only the environment, but also human health, animal health, the economy, and food safety.
- It is recognized that fish in the Pacific are consuming 30% more plastic than the global average, and, in a recent study on different fish in Samoa, New Zealand, Tahiti and Rapanui, it was revealed that 90% of the sampled fish had plastic in them.



# HOW IS PLASTIC POLLUTION AFFECTING THE PACIFIC?



- Island biodiversity is affected by plastic (ingestion and entanglement) affecting food systems, fisheries and tourism (major aspects of SID economies)
- Plastic waste drifting from other islands can bring invasive species
- Unique and fragile marine/island ecosystems
- Geographic spread and isolation between countries makes it difficult to manage plastic waste and pollution
- Limited options to dispose of waste, especially single use plastic
- Economic constraints, including limits to recycling waste management infrastructure, limited incentives to recycle, limited access to international recycling markets.



SOURCE: National Geographic:

“We made plastic. We depend on it. Now, we are drowning in it’.





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## What are we doing about it?

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# United Nations Convention on the Law of the Sea (LOSC)



- Part 12 - specifically addresses marine pollution with the aim of securing the cooperation of all States to protect and preserve the marine environment.
- LOSC records the international obligations that all States have agreed to meet pursuant to customary international law. Article 192 of the LOSC provides that in all areas of the ocean:  

States have the obligation to protect and preserve the marine environment.
- Article 194(2) creates a general obligation on all States not to cause harm by pollution to ocean areas beyond their control, namely the high seas areas, and obliges States to implement their international commitments via detailed national laws that take account of the agreed international standards.
- Amongst other things, LOSC also requires (Art 207) all States to "adopt laws and regulations to prevent, reduce and control pollution of the marine environment from land-based sources, including rivers, estuaries, pipelines and outfall structures, taking into account internationally agreed rules, standards and recommended practices and procedures."





## Regional Frameworks addressing Plastic Pollution



a. *Noumea Convention 1990* – protects, manages and develops marine and coastal environments in the South Pacific, including the prevention, reduction and control of pollution and ensuring sound environmental management and development of natural resources using best practices. Twelve PICs are party to this Convention and have ratified it.

- *The Pacific Dumping Protocol* requires States to adopt domestic legislation to implement the London Convention and Protocol. Note: London Convention initially agreed upon to prevent the dumping of hazardous wastes into the ocean – further amended by contracting parties to also include the banning of dumping certain wastes in the ocean and promoting pollution prevention and sound waste management. Eleven PICs have ratified this protocol, with Australia remaining the only one out of the Noumea Convention parties to not have ratified it.

- *Emergencies Protocol* aims to enhance cooperation among the Parties to protect the South Pacific region from threats and effects of pollution incidents [SPREP – Regulating Plastics]. Twelve PICs have ratified this Protocol.



## Regional Frameworks addressing Plastic Pollution



- *Cleaner Pacific 2025 Pacific Regional Waste and Pollution Management Strategy* – sets out the policy context and key actions to minimise marine litter across the PICs and territories with the aim to:
  - Prevent generation of wastes and pollution;
  - Recover resources from waste
  - Improve management of residual wastes, chemicals and pollutants;
  - Improve monitoring of the receiving environment.
- Pacific Marine Litter Action Plan (2018 – 2025): sets out the policy context and key actions to minimise marine litter across the Pacific Island Countries and Territories. The scope of the Action Plan is intentionally focused on the Pacific island Countries and Territories. It does not include mechanisms to drive change beyond the region's capacity. The transboundary nature of marine litter brings to the fore that "waste is everyone's problem and everyone's responsibility".
- 50<sup>th</sup> Pacific Islands Forum Leaders Declaration 2019 - 'We are taking action to protect our fisheries resources, and to conserve and restore our marine ecosystems and biodiversity. We are working to protect our ocean from harmful plastics through our Pacific Regional Action Plan on Marine Litter 2018-2025 and call on Pacific Rim countries to join and commit to action on addressing marine pollution and marine debris.' The first action listed is to support the development of a global treaty to address marine litter and microplastics





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## What countries in the Pacific are doing about it?

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Country	Year	Legislation
Samoa	2005	Statistically, Samoa generates 17 tonnes of plastic waste per day, of which 6 tonnes end up in the oceans. In 2005, Samoa attempted to ban plastic bags by allowing degradable plastics. Studies showed that 70% was all plastic while only 30% - 40% was degradable plastic.
	2017	Samoa’s Prime Minister pledged to accelerate the ban of plastic bags and Styrofoam. Also, the Recycling Waste Management Association in Samoa was formed earlier that year in order to promote the idea of recycling and thus potentially reduce plastic pollution or debris ending up in the oceans. The Association is also formulating a plan on supporting the Cleaner Pacific 2025 strategy which it aims to put forward to government.
	2018	Plastic infiltrates natural food and water supply in Samoa, prompting efforts to find sustainable solutions on plastic pollutions and its impact on the environment. Samoa also implemented the Waste (Plastic Ban) Management Regulations 2018 (which came into effect on January 2019) to prohibit the import, manufacture, export and sale of plastic bags, packing bags and straws. The Regulation imposes a maximum fine of SAT \$10,000 upon offenders. In 2020, polystyrene for food products will be banned.
	2019	Samoa held the first “Green Pacific Games” in that it extended its campaign to exclude single-use plastics in the event.



Country	Year	Legislation
Tonga	2005	Waste Management Act implemented to establish the Waste Authority Ltd to provide a legal framework for waste management.
	2013	Waste Management (Plastic Levy) Regulations imposed a 10% levy for various plastic packaging items such as plastic takeaway containers and plastic bags, which in turn goes towards funding costs associated with these types of waste
Australia		Numerous state legislation on state-wide plastic ban. There is also an Australian Packaging Covenant (which comprises a number of voluntary signatory organisations) which establishes a framework for the effective life cycle management of consumer packaging.
Vanuatu	2019	<b><u>2019:</u></b> Contributing to less than 0.1% of global marine plastic debris, Vanuatu has one of the world's toughest plastic bans. It implemented a ban on all single-use plastic bags, and is one of the first countries in the world working on phasing out disposable nappies. The ban extends to polysterene take-away food containers and plastic straws, with the aim to go completely plastic free eventually
Marshall Islands	2017	Banned the importation, manufacturing and use of single use plastic bags, Styrofoam cups and packaging in March 2017 (Source: SPREP)

Country	Year	Legislation
Fiji	2005	Environment Management Act; section 45 states that any person who, without lawful authority or reasonable excuse, causes or contributes to the discharge of a waste or pollutant, is liable to a maximum fine of \$250,000 or a maximum term of imprisonment of three years.
	2008	Litter Act: to prohibit and regulate the deposit of litter in the environment of the Fiji Islands.
	2013	Article 40 of the Fiji Constitution 2013 states that every person has a right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.
	2015 - 2019	Environment and Climate Adaptation Levy Act 2015 (and its subsequent amendments) imposes a levy of 20c per plastic bag on the person to whom the plastic bag is provided. In 2019 the levy was increased to 50c.
	2019	Offence of manufacturing, selling, supplying or distributing plastic bags introduced through the Environment Management (Budget Amendment) Act 2019, and further solidified through the Climate Change Bill.

Country	Year	Legislation
Fiji	2019	<p>Draft Climate Change Bill - 92. —</p> <p>(1) Any business within the meaning of the Business Licencing Act 1976 that provides, sells or otherwise makes available single-use plastic bags after 1 January 2020 commits an offence and is liable upon conviction to a fine not exceeding \$750,000.</p> <p>(2) Any business within the meaning of the Business Licencing Act 1976 that uses, provides, sells or otherwise makes available styrofoam after 1 January 2021 commits an offence and is liable upon conviction to a fine not exceeding \$750,000.</p> <p>(3) Any business within the meaning of the Business Licencing Act 1976 that uses, provides, sells or otherwise makes available single-use plastic containers, straws, cups and utensils after 1 January 2021 commits an offence and is liable upon conviction to a fine not exceeding \$750,000.</p>



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## Strategies

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# Role of the Courts in Protecting the Environment



- Judges play a pivotal role in improving environmental protection.
- Decisions made by judges create legal precedents thereby building a form of common law for the environment (Preston, 2006). The outcomes from such litigation can further act as a deterrent for others.
- The courts have a broad range of powers to deal with environmental matters including injunctions, declarations, fines or imprisonment or remediation orders.
- The courts can restrain projects that have not adequately been planned and assessed by insisting they not go forward until they can demonstrate they have considered and adequately resolved all matters affecting the environment (Preston, 2006).
- The courts have a role in fashioning and upholding the structures of accountability and rationality that govern the exercise of public power (Preston, 2006).
- It is a fundamental principle of administrative law that the courts must not get involved in determining the merits of a decision. The courts do however have the power to review the process by which the decision was made through a judicial review.



# Judicial Strategies

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- Designating Environmental Courts and Implementing Rules and Procedures to cater specifically to environmental litigation is a viable strategy that the Judiciary can consider in adopting for adjudicating impending environmental litigation.
- Example: Philippines:
  - Designated 117 Environmental Courts in 2008
  - The Chief Justice approved the Rules of Procedure for Environmental Cases on 13 April 2010.
  - It outlines the detailed procedures of the rules that empower the courts to issue environmental protection orders as an immediate action to protect the environment and the environmental rights of citizens.
  - Rule 1 identified all environmental and other related laws, rules and regulations that the Rules of Procedure would be applicable to.



## Judicial Strategies (cont'd)

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- Special Civil Actions:
- Rule 7 - Writ of Kalikisan: *'a remedy available to a natural or juridical person, entity authorised by law, people's organisation, non-governmental organisation, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission or a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.'*



## Judicial Strategies (cont'd)

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- Special Civil Actions:
- Rule 8 – Writ of Continuing Mandamus: it is a remedy when a government agency or officer unlawfully neglects a duty imposed upon him by law in connection with the enforcement or violation of environmental laws, rules and regulations, or rights, or unlawfully excludes another from the use or enjoyment of such right. This writ allows the court to require the government agency or officer to perform an act or series of acts until the judgment is fully satisfied and to submit periodic reports on its progress. The court may evaluate and monitor compliance with its judgment, by itself or through a commissioner or appropriate government agency.
- Variations of this Writ have been utilized in other jurisdictions like Australia, India, Pakistan, and the United States of America





## Judicial Strategies (cont'd)

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- Rule 20 – Precautionary Principle: *‘When there is a lack of full scientific certainty in establishing causal link between human activity and environmental effect, the court shall apply the precautionary principle in resolving the case before it. The Constitutions right of the people to a balanced and healthful ecology shall be given the benefit of the doubt.’*
- *In applying the precautionary principle, the following factors, among others, may be considered: (1) threats to human life or health; (2) inequity to present and future generations; or (3) prejudice to the environment without legal consideration of the environmental rights of those affected.*



## Judicial Strategies (cont'd)

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- Evidence in environmental cases may include expert evidence, photographic evidence, scientific reports and chemical analysis of air, land and water discharges.
- Rules of Evidence: the Judiciary can also include in the Rules of Procedure the types of evidence that will be admissible in court.
- Philippines: Rule 21 Documentary Evidence includes 1. 'photographic, video and similar evidence of events, acts, transactions of wildlife, wildlife by-products or derivatives, forest products or mineral resources subject of a case shall be admissible when authenticated by the person who took the same, by some other person present when said evidence was taken, or by any other person competent to testify on the accuracy thereof; 2. entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.'



## Judicial Strategies (cont'd)

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- Strengthening the Capacity of the Judiciary –
  - improving existing Rules of Procedure to cater for environmental cases;
  - to prepare the Judiciary in adjudicating environmental matters; non-compliance on restrictions or bans of single-use plastics under relevant legislations;
  - understanding environmental law and the many principles that have been developed to protect the environment and how they can be applied in adjudicating environmental cases;
  - Having specialised members of the Judiciary who specialise in Environmental cases including laws relating to marine plastic pollution.





# Vinaka - Thank you

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