

Comparative Analysis of Fiji's Legal Framework and Environment Safeguards in the ADB Safeguard Policy Statement

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
Environmental Safeguards Objectives: To ensure the environmental soundness and sustainability of projects and to support the integration of environmental considerations into the project decision-making process			
Key Element (1) Ensure the environmental soundness and sustainability of projects	Constitution 2013 Preamble. ...Declare our commitment to justice, national sovereignty and security, social and economic wellbeing, and safeguarding our environment... Article 1. The Republic of Fiji is a sovereign democratic State founded on the values of... (h) a prudent, efficient and sustainable relationship with nature. Article 40(1) Every person has the 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. (2) To the extent that it is necessary, a law or an administrative action taken under a law may limit, or may authorise the limitation of, the rights set out in this section. Article 7(5). In considering the application of this Chapter [Chapter 2 – Bill of Rights, Articles 6-45] to any particular law, a court must interpret this Chapter contextually, having regard to the content and consequences of the law, including its impact upon individuals or groups of individuals. Environment Management Act 2005 (EMA 2005) Section 27(5) If a development proposal is subject to the EIA	Full Equivalence.	None required

¹ All text in Column B is direct citation from the official versions of the policy documents and legal instruments except where otherwise indicated by annotation. Citations to non-legally-binding guidelines are in footnotes to recommendations in Column D. In this analysis, the words “shall” and “must” are interpreted to mean that an action is mandatory; the word “may” is interpreted to mean that an action is discretionary.

² “Full Equivalence” denotes that the national legal instruments are in complete harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element thereof. “Partial Equivalence” denotes that the national legal instruments are in partial harmony with the corresponding ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element; and “No Equivalence” denotes that no legal requirement can be found that corresponds to the particular ADB Safeguard Objective, Scope and Trigger, Policy Principle or Key Element. It is intended that the referenced text of the national legal instruments be sufficiently clear to demonstrate the findings of Full Equivalence or No Equivalence without further explanation, except in those instances where an explanation would appear necessary and is given. A finding of Partial Equivalence normally requires the explanation provided.

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	process, the approving authority must not approve the proposal or exercise any power, duty, function or responsibility that will permit the activity or undertaking to be carried out unless the EIA report has been approved.		
Key Element (2) Support the integration of environmental considerations into the project decision-making process	<p>EMA 2005 Section 27(1) An approving authority must-</p> <ul style="list-style-type: none"> (a) examine every development proposal received by it; and (b) determine whether the activity or undertaking in the development proposal is likely to cause significant environmental or resource management impact. <p>Section 28(1) The environmental impact assessment process for a development proposal must be undertaken as follows-</p> <ul style="list-style-type: none"> (a) screening in accordance with this Part; (b) scoping in accordance with this Part; (c) preparation of an assessment EIA report under this Part; (d) reviewing the report under this Part; (e) decision on the report under this Part; and (f) in accordance with any other prescribed procedures. 	Full Equivalence.	None required
Scope and Triggers: Environmental safeguards are triggered if a project is likely to have potential environmental risks and impacts.			
	<p>EMA 2005 Section 27(2) In examining a development proposal, the approving authority must take into account-</p> <ul style="list-style-type: none"> (a) the nature and scope of the activity or undertaking in the proposed development; (b) the significance of any environmental or resource management impact; (c) whether there exist any technically or economically feasible measures that would prevent or mitigate any adverse environmental or resource management impact; or (d) any public concern relating to the activity or undertaking. <p>(3) Any determination under subsection (1) must be submitted as soon as practicable to the EIA Administrator...</p> <p>(6) A Ministry, department, statutory authority or local authority that makes its own proposal for development activity or undertaking must refer the proposal to the EIA Administrator for processing under this Part.</p>	Full Equivalence.	None required

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	<p>Environmental Management (EIA Process) Regulations 2007 (EIA Process Regulations 2007) Regulation 3(1) Every proponent of a development proposal must apply to the approving authority for a decision on the proposal under Part 4 of the Act before undertaking any work in respect of it that will alter the nature of any land as defined in the Act. The EMA 2005 (Section 2) defines "land" [to] include[s] messuages, tenements or hereditaments, corporeal and incorporeal, buildings and other fixtures, paths, passageways, watercourses, easements, plantations, gardens, mines, minerals and quarries, the foreshore and seabed or anything resting on the seabed;...</p>		
<p>Policy Principle 1: Use a screening process for each proposed project, as early as possible, to determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.</p>			
<p>Key element (1) Screen as early as possible</p>	<p>EMA 2005 Section 27(1) An approving authority must- (a) examine every development proposal received by it; and (b) determine whether the activity or undertaking in the development proposal is likely to cause significant environmental or resource management impact... (3) Any determination under subsection (1) must be submitted as soon as practicable to the EIA Administrator... (4) If the approving authority determines that the activity or undertaking will cause a significant environmental or resource management impact, the development proposal must be subject to the EIA process and the approving authority must- (a) for a proposal set out in Part 1 of Schedule 2, send it to the Department for processing by the EIA Administrator; (b) for a proposal set out in Part 2 of Schedule 2, process the proposal; or (c) for a proposal set out in Part 3 of Schedule 2, send it to the EIA Administrator to determine whether an EIA is required....</p> <p><u>Schedule 2</u> Part 1, [Development Proposals that Are to Be] Approved by the EIA Administrator Part 2, [Development Proposals that Are to Be] Approved by</p>	<p>Full Equivalence.</p>	<p>None required</p>

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	<p>Approving Authority Part 3, Development Proposals that May Not Require the EIA Process or an EIA Report</p> <p>EIA Process Regulations 2007 Regulation 4(1) Every proponent of a development proposal must apply for screening of the proposal in accordance with these Regulations and section 27 of the Act.</p> <p>Regulation 6(1) Upon receipt of an application in due form for screening of a proposal, the approving authority must determine whether the proposal is subject to the EIA process, that is to say, whether it is likely to cause significant environmental or resource management impact, taking into account the matters set out in section 27(2) of the Act.</p>		
<p>Key element (2) Determine the appropriate extent and type of environmental assessment so that appropriate studies are undertaken commensurate with the significance of potential impacts and risks.</p>	<p>EMA 2005 Section 2. ..."scoping" means scoping of a development proposal under Part 4 to determine the scope of the EIA report in order to ensure that the report addresses all relevant issues and concerns arising out of the proposal;</p> <p>Section 28(2) Scoping of a development proposal must be done within 30 days from the date the proposal is received by the EIA Administrator or the approving authority. (3) Any terms of reference for the EIA study may, in accordance with the prescribed procedures, be prepared by the EIA Administrator, approving authority or a consultant.</p> <p>Section 29(1) An EIA report must be prepared in accordance with the terms of reference produced under section 28(3). (2) The contents of an EIA report must include matters required by the terms of reference, mitigation measures and any other prescribed matter.</p> <p>EIA Process Regulations 2007 Regulation 11(2) Upon receipt of an EIA processing application on a proposal in due form, the processing authority must – (a) perform a scoping exercise in relation to the proposal; (b) finalise the TORs on the proposal;</p>	<p>Full Equivalence.</p>	<p>None required</p>

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	<p>(c) require the proponent to have an EIA study performed and an EIA report written on the proposal;...</p> <p>Regulation 12(1) The purpose of scoping of a proposal is to establish the scope of the EIA study on the proposal and to decide the terms of reference (“TORs”) for it.</p> <p>(2) Scoping may include -</p> <p>(a) inspection of the site of the proposed development or activity in accordance with regulation 13;</p> <p>(b) keeping records of a site inspection, as provided by regulation 15;</p> <p>(c) taking of samples of soil or water or other materials in or on the site of the proposed development in accordance with regulation 16;</p> <p>(d) consultation, as provided in regulation 17;</p> <p>(e) public participation, as provided in regulation 18.</p> <p>Regulation 19(1) On completion of a scoping exercise in respect of a proposal, the processing authority must in accordance with section 28(3) of the Act prepare terms of reference for the EIA study on the proposal...</p> <p>(4) If the proposal is for a major development, the processing authority may invite participation of other line ministries, the private sector, non-governmental organizations, public authorities and other interested persons to assist in the preparation of the TORs.</p> <p>Regulation 21(1) There is no prescribed form for TORs for an EIA study on a proposal but they must –</p> <p>(a) set the parameters for the EIA study on the proposal;</p> <p>(b) indicate the environmental and resource issues that the EIA report on the proposal should deal with.</p> <p>(c) consider whether an environment management plan should be a condition of approval of the proposal;</p> <p>(d) consider whether an environmental bond should be taken from the proponent, and if so the nature and amount of the bond.</p> <p>(2) If the processing authority or the EIA consultant considers that an environmental management plan should be a requirement for EIA approval of a proposal, this must be stated in the TORs in relation to the proposal.</p>		

Policy Principle 2: Conduct an environmental assessment for each proposed project to identify potential direct, indirect, cumulative, and induced impacts and risks to physical, biological,

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socioeconomic (including impacts on livelihood through environmental media, health and safety, vulnerable groups, and gender issues), and physical cultural resources in the context of the project's area of influence. Assess potential trans-boundary and global impacts, including climate change. Use strategic environmental assessment where appropriate.			
<p>Key element (1): Identify indirect as well as direct impacts</p>	<p>EIA Process Regulations 2007 <u>Schedule 1, EIA Screening Application</u> Part C – Environmental impact of the proposed activity or undertaking C2. Pollution incidents Pollution incidents that might be generated by the proposal (A 'pollution incident' is the introduction, either directly or indirectly, of a waste or pollutant into the environment, which results in harm to living resources and marine life, hazards to human health, hindrance to marine activities including fishing and other legitimate uses of the sea, impairment of quality for use of water, air or soil, reduction of amenities or the creation of a nuisance)</p>	<p>Partial Equivalence.</p> <p>The EIA Process Regulations 2007 require identifying indirect pollution impacts in the screening phase, but there is no corresponding requirement to include consideration of indirect impacts in the EIA. The only reference to indirect impacts in the EIA Process Regulations 2007 is in the definition in parentheses in Schedule 1, which only covers the context of pollution incidents. There are many other possible indirect impacts.</p>	<p>Amend Regulation 22(2) to stipulate that an EIA study must consider both direct and indirect impacts.</p> <ul style="list-style-type: none"> ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of indirect impacts as well as direct impacts. ▪ Revise the non-binding EIA Guidelines 2008³ to indicate that direct and indirect impacts must be fully assessed and explain what must be included in such an assessment, in general and in the specific context of Fiji. Amend the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the

³ The non-binding EIA Guidelines 2008 include a discretionary checklist for the review process, which is also discretionary. The checklist includes a question on whether an EIA report assesses indirect impacts.

EIA Guidelines 2008

Step 3: The EIA Study

5. Impacts on the Environment

In considering the possible environmental impacts of the proposal; the following aspects should be fully assessed....

ii) Direct and Indirect impacts...

Step 4: Review of the EIA Report

A review committee appointed by the Processing Authority may review the EIA report using the criteria given in below.

Checklist for the EIA Review Process

2. Coverage of the EIA, the assessment approach

...g) Is there appropriate form of quantitative and qualitative information provided for resources that may be affected either directly or indirectly by project activities?...

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			Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.
Key element (2) Identify cumulative impacts	EMA 2005 Section 2... "significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed development's effect on the environment, and includes, but is not limited to-... (f) the potential for cumulative environmental impacts;... EIA Process Regulations 2007 Regulation 24(2) If in light of an EIA study it appears that any aspects of a proposal, either individually or cumulatively, may cause a significant impact on the environment, these must be dealt with in the EIA report.	Full Equivalence.	None required
Key element (3) Identify induced impacts ⁴	No corresponding legal provision.	No Equivalence.	<ul style="list-style-type: none"> ▪ Amend Regulation 22(2) to stipulate that an EIA study must consider induced impacts. ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of induced impacts. ▪ Revise the non-binding EIA Guidelines 2008 to indicate that induced impacts must be fully assessed and explain what must be included in such

⁴ ADB defines induced impacts as adverse and/or beneficial impacts on areas and communities from unintended but predictable developments caused by a project, which may occur later or at a different location.

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			an assessment, in general and in the specific context of Fiji. Amend the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.
Key element (4) Identify physical impacts	<p>EMA 2005 Section 2... "significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed development's effect on the environment, and includes, but is not limited to-</p> <p>(b) the degree to which the unique characteristics of the geographic area are affected;...</p> <p>Section 3(3) A person required to perform any function under this Act relating to the use and utilization of natural and physical resources must recognize and have regard to the following matters of national importance:...</p>	<p>Partial Equivalence.</p> <p>The EMA 2005 defines the trigger for EIA to include potential physical impacts, but there is no specific legal requirement that an EIA must consider such impacts.</p> <p>The EIA Process Regulations 2007 require documenting physical features, but do not require identifying physical impacts.</p>	<ul style="list-style-type: none"> ▪ Amend Regulation 22(2) to stipulate that an EIA study must consider physical impacts. ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of physical impacts. ▪ Revise the non-binding EIA Guidelines 2008⁵ to indicate that physical impacts must be fully assessed and explain

⁵ The non-binding EIA Guidelines 2008 mention physical impacts only in describing what an EIA may do. The Guidelines have several references to documenting physical features, but do not specifically refer to identifying physical impacts.

EIA Guidelines 2008

What is Environment Impact Assessment (EIA)?

First, EIA is a study of the effects of a proposed action on the environment. In this context, "environment" is taken to include all aspects of the natural and human environment. Therefore, depending on the effects of scale of the proposed action, an EIA may include studies of the weather, flora and fauna, soil erosion, human health, urban migration, or employment, that is to say, of all physical, biological, social, economic and other impacts.

Recommended format for an EIA report

4. Description of Existing Environment

a) Give general descriptions of the baseline characteristics and condition, in quantitative and where not possible in qualitative terms, of the physical...environment prior to the implementation of the project. This should include a definition of the spatial boundaries where environmental impacts are predicted to occur.

b) This should also include; -

...• The inter-relationship between the physical and biological components of the environment....

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	<p>(b) the protection of outstanding natural landscapes and natural features;...</p> <p>EIA Process Regulations 2007 Regulation 14. A site inspection must take into account factors affecting the relationship between the proposed development and the features of the site, including, but not limited to - (a) natural features such as topography, vegetation and watercourses; (b) physical features such as the position of buildings and infrastructure on and around the site, access and services availability;...</p> <p>Schedule 1. EIA Screening Application Guidance notes: ...3. Clear site mapping of the location, structures and physical features of the proposed undertaking must be provided on appropriately scaled diagrams and attached to this form...</p> <p>B5. Description of the proposed development ...(ii) Physical Features Major physical features of the site e.g. large buildings, other large structures, roads, pipelines, transmission lines, marine transport facilities, etc....</p>		<p>what must be included in such an assessment, in general and in the specific context of Fiji. Amend the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.</p>
<p>Key element (5) Identify biological impacts</p>	<p>EMA 2005 Section 2... "significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment.. and includes, but is not limited to-... (i) the potential threat to the existence of protected and endangered species or their critical habitat; (j) the degree to which fish and wildlife resources of ecological, commercial, subsistence, and recreational importance are jeopardized;...</p> <p>Section 3(3) A person required to perform any function under this</p>	<p>Partial Equivalence.</p> <p>The EMA 2005 defines the trigger for EIA to include potential impacts on protected and endangered species or their critical habitat and on fish and wildlife species that are important ecologically, commercially, for subsistence, and for recreation, but there is no specific legal requirement that an EIA must consider such impacts.</p> <p>The EIA Process Regulations 2007 do not mention biological impacts.</p> <p>The Biosecurity Promulgation 2008 regulates the sanitary and</p>	<ul style="list-style-type: none"> ▪ Amend Regulation 22(2) to stipulate that an EIA study must consider biological impacts. ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of biological impacts. ▪ Revise the non-binding EIA Guidelines 2008⁶ to indicate

⁶ The non-binding EIA Guidelines 2008 mention biological impacts only in describing what an EIA may do.
EIA Guidelines 2008

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	<p>Act relating to the use and utilization of natural and physical resources must recognize and have regard to the following matters of national importance:</p> <p>(a) the preservation of the coastal environment, margins of wetlands, lakes and rivers;...</p> <p>(c) the protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna;...</p> <p>Biosecurity Promulgation 2008 Section 2(1)... "biosecurity risk" means the likelihood of the introduction, establishment or spread of a pest or disease which would adversely affect animals, plants, human beings, the environment or economic activities, and the likely extent of such harm; "biosecurity risk assessment" in relation to a regulated article means evaluation of the biosecurity risk posed by the article;...</p> <p>Section 7(1) This Promulgation is in addition to and does not derogate from any other Law. In particular, but without limiting this rule -...</p> <p>(c) the requirements relating to imports and exports in Parts 5 and 6 do not displace any other statutory requirements relating to imports and exports, trade in endangered species, biosafety, biodiversity or environmental Laws generally.</p> <p>Section 34(1) The Authority may specify in respect of incoming regulated articles -</p> <p>(a) whether a sanitary or phytosanitary certificate from the biosecurity authority in the country of origin is required for an</p>	<p>phytosanitary requirements for imports into and exports from Fiji. The Promulgation provides for biodiversity risk assessments for imports of regulated articles, but not in the context of EIA.</p> <p>The Offshore Fisheries Management Decree 2012 requires government officials to assess the impacts of "fishing, other human activities and environmental factors" on particular species and ecosystems, but not in the context of EIA.</p>	<p>that biological impacts must be fully assessed and explain what must be included in such an assessment, in general and in the specific context of Fiji. Amend the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.</p>

What is Environment Impact Assessment (EIA)?

...In this context, "environment" is taken to include all aspects of the natural and human environment. Therefore, depending on the effects of scale of the proposed action, an EIA may include studies of...flora and fauna...that is to say, of all...biological...impacts.

Recommended format for an EIA report

4. Description of Existing Environment

a) Give general descriptions of the baseline characteristics and condition, in quantitative and where not possible in qualitative terms, of the...biological...environment prior to the implementation of the project. This should include a definition of the spatial boundaries where environmental impacts are predicted to occur.

b) This should also include; -

- ...• The inter-relationship between the physical and biological components of the environment....

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	<p>article and if so the matters that must be certified; (b) whether a biosecurity import permit must be obtained for the article and if so the conditions to be attached to the permit; (c) what biosecurity measures, if any, must be applied to the article on arrival in the Fiji Islands before biosecurity import clearance can be granted.... (3) In determining specifications under subsection (1), the Authority -(a) must make a biosecurity risk assessment;...</p> <p>Offshore Fisheries Management Decree 2012 Section 2(1)...“sustainable use” means conserving, using, enhancing, and developing marine resources to enable people to provide for their,,,[sic] wellbeing while—</p> <ul style="list-style-type: none"> • maintaining the potential of marine resources to meet the reasonably foreseeable needs of future generations; and • avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment; or • conserving, using, enhancing and developing fisheries resources to provide for social, economic and cultural wellbeing of the people of Fiji. <p>Section 6 The Minister, Permanent Secretary or Director, as appropriate, when performing functions or exercising powers under this Decree, shall—...</p> <p>(e) assess the impacts of fishing, other human activities and environmental factors on target stocks, nontarget species and species belonging to the same ecosystem or dependent upon or associated with target stocks;...</p> <p>(g) protect biodiversity in the marine environment, especially habitats of particular significance for fisheries resources;...</p>		
<p>Key element (6) Identify socioeconomic impacts (including on livelihood through environmental health and</p>	<p>EMA 2005 Section 2...“significant environmental or resource management impact”, in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed development’s effect on the environment, and includes, but is not limited to-</p> <p>(a) the degree to which public health and safety are affected;...</p>	<p>Partial Equivalence.</p> <p>The EMA 2005 defines the trigger for EIA to include potential impacts on public health and safety, but there is no specific legal requirement that an EIA must consider such impacts. Public participation is supposed to allow community leaders and others to raise all possible issues and concerns, but public participation in scoping is discretionary, not mandatory.</p>	<ul style="list-style-type: none"> ▪ Amend Regulation 22(2) to stipulate that an EIA study must consider socio-economic impacts. ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of socio-economic impacts.

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<p>safety, vulnerable groups, and gender issues)</p>	<p>Section 3(3) A person required to perform any function under this Act relating to the use and utilization of natural and physical resources must recognize and have regard to the following matters of national importance:...</p> <p>(e) the protection of human life and health.</p> <p>EIA Process Regulations 2007 Regulation 18(1) The processing authority may if it considers appropriate involve the public in the scoping exercise to gather information that is likely to benefit the planning of the development proposal. In particular, public participation should be sought in order to -...</p> <p>(c) allay fears in the community or improve the social acceptability of the project;...</p> <p>(2) Public participation in scoping involves discussions with the proponent, the approving authority (if not the processing authority), scientific institutions, local community leaders and others to include all the possible issues and concerns raised by these various groups.</p>	<p>The EIA Process Regulations 2007 do not mention socio-economic impacts or gender.</p>	<ul style="list-style-type: none"> ▪ Revise the non-binding EIA Guidelines 2008⁷ to indicate that socio-economic impacts must be fully assessed, and explain what is included in such an assessment – environmental health and safety, vulnerable groups, gender, and any other issues specific to Fiji.. Amend the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.
<p>Key element (7) Identify impacts on physical cultural</p>	<p>EMA 2005 Section 2... "significant environmental or resource management impact", in relation to a development proposal... includes, but is not limited to-...</p>	<p>Partial Equivalence. The EMA 2005 defines the trigger for EIA to include potential impacts on cultural resources, but there is no specific legal requirement that an</p>	<ul style="list-style-type: none"> ▪ Amend Regulation 22(2) to stipulate that an EIA study must consider impacts on physical cultural resources.

⁷ The non-binding EIA Guidelines 2008 recommend describing socio-economic issues, but not identifying socio-economic impacts. The checklist for EIA review does include a recommended question on whether social impacts are predicted in an EIA report. The Guidelines make no reference to gender.

EIA Guidelines 2008

Recommended format for an EIA report

4. Description of Existing Environment

a) Give general descriptions of the baseline characteristics and condition, in quantitative and where not possible in qualitative terms, of the ...human environment prior to the implementation of the project. This should include a definition of the spatial boundaries where environmental impacts are predicted to occur.

Checklist for the EIA Review Process

3. Impact Prediction, mitigation and monitoring

...e) Are social impact [*sic*] predicted?

Appendix 3 Typical Terms of Reference (TOR)

1.0 Description of Existing Environment

1.3 Socio-cultural Environment

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resources	<p>(h) the degree to which a cultural, traditional,...or historic resource may be threatened;...</p> <p>Section 3(3) A person required to perform any function under this Act relating to the use and utilization of natural and physical resources must recognize and have regard to the following matters of national importance:...</p> <p>(d) the relationship of indigenous Fijians with their ancestral lands, waters, sites, sacred areas and other treasures;...</p>	<p>EIA must consider such impacts.</p> <p>The EIA Process Regulations 2007 do not mention physical cultural resources.</p>	<ul style="list-style-type: none"> ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of impacts on physical cultural resources. ▪ Revise the non-binding EIA Guidelines 2008⁸ to indicate that impacts on physical cultural resources must be fully assessed and explain what must be included in such an assessment, in general and in the specific context of Fiji. Amend the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.

⁸ The non-binding EIA Guidelines 2008 recommend describing impacts on physical cultural resources and include two related issues in the simplified Scoping Checklist in Appendix 2. But the Guidelines do not explicitly state that an EIA must identify impacts on physical cultural resources.

EIA Guidelines 2008

Recommended format for an EIA report

4. Description of Existing Environment

... Any environmentally sensitive areas of ...cultural significance....should be fully described.

Appendix 2 Scoping Checklist

Sites of Cultural Heritage

Damage to the site of cultural heritage by excavation works

Structural vibration of the historical buildings or structures

Appendix 3 Typical Terms of Reference (TOR)

1.0 Description of Existing Environment

1.3 Socio-cultural Environment

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			<ul style="list-style-type: none"> ▪ In amending the EIA Process Regulations 2007 and revising the non-binding EIA Guidelines 2008, ensure that all amendments are harmonized and consistent with the Preservation of Objects of Archaeological and Paleontological Interest Act 1940 and any regulations under it.
<p>Key element (8) Identify impacts in the context of the project's area of influence</p>	<p>EIA Process Regulations 2007 Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –... (d) a description of the environmental setting of the site of the proposal, including a statement of environmental resources and conditions in the area before the implementation of the activity or undertaking, and a projection or estimation of changed environmental circumstances that may occur as a result of the activity or undertaking; (e) a description of the possible environmental and resource management impacts of the activity or undertaking, including any pollution or waste that may be generated, and impacts occurring during construction, operation, decommissioning, and abandonment phases of the activity or undertaking;...</p>	<p>Partial Equivalence. The EIA Process Regulations 2007 do not specifically state that an EIA must identify impacts in a proposed project's area of influence.</p>	<ul style="list-style-type: none"> ▪ Amend Regulation 22(2) to stipulate that an EIA study must consider impacts in a project's area of influence and specify how determine what the area of influence is. ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of impacts in a project's area of influence. ▪ Revise the non-binding EIA Guidelines 2008⁹ to indicate that impacts in a project's area

⁹ The non-binding EIA Guidelines 2008 indicate that, for the purposes of an EIA study, the area of social influence of a project is an area of 1km around the border of the proposed development site. The checklist for the EIA review process includes a recommended question on whether an EIA report's predictions provide sufficient information about the spatial extent of impacts generally.

EIA Guidelines 2008

Checklist for the EIA Review Process

3. Impact Prediction, mitigation and monitoring

...c) Do the predictions provide enough information about the nature, severity, likelihood and spatial extent of the impacts?...

Appendix 3 Typical Terms of Reference (TOR)

3.0 SOCIAL STUDY

The study area will encompass an area of 1km around the border of the development sites. The impact of the proposed project on human beings and their activities shall be assessed.

Particular attention shall be paid to impacts arising from land ownership issues.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			of influence must be fully assessed, and provide further guidance on how to determine what a project's area of influence is. Revise the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.
Key element (9) Assess potential trans-boundary impacts	EMA 2005 <u>Schedule 2, Part 1</u> 1. The following development proposals are to be approved by the EIA Administrator-... (v) a proposal that could result in any trans-boundary movement of wastes that could have an impact on human health, the environment or natural resources in any neighbouring country;...	Full Equivalence. Neither the EMA 2005 nor the EIA Process Regulations 2007 specify that potential transboundary impacts must be assessed in any EIA, but it is not clear that this is strictly necessary in the context of Fiji, given its physical isolation from neighboring countries. The legal requirement to consider transboundary impacts is limited to the EMA 2005 requirement that projects with potential impacts from transboundary movement of wastes undergo an EIA that requires the highest level of approval, which may be all that is necessary for Fiji to regulate in the context of trans-boundary impacts.	None required
Key element (10) Assess potential global impacts, including climate change	No corresponding legal provision.	Irrelevant in the context of Fiji.	None required
Key element (11) Use strategic environmental	No corresponding legal provision.	No Equivalence. Neither the EMA 2005 nor the EIA Process Regulations 2007 require the use of strategic environmental assessment.	Amend the EMA 2005 to introduce strategic environmental assessment where appropriate. ¹⁰

¹⁰ The non-binding EIA Guidelines 2008 define 'project' to include strategic environmental assessment.
EIA Guidelines 2008
Glossary of Terms

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
assessment where appropriate			
Policy Principle 3. Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts and document the rationale for selecting the particular alternative proposed. Also consider the no project alternative.			
Key element (1) Examine alternatives to the project's location, design, technology, and components and their potential environmental and social impacts	EIA Process Regulations 2007 Regulation 22(2) An EIA study –... (a) must consider all phases of project planning, implementation and operation, including decommissioning; (b) should include consideration of alternatives to the proposed actions.... Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –... (f) a statement of the various alternatives that have been considered for the activity or undertaking that are reasonably foreseeable and technically and economically appropriate, including the option of taking no action, and an outline of the reasons for choosing the proposed action;...	Partial Equivalence. The EIA Process Regulations 2007 are ambiguous. In Regulation 22, considering alternatives would appear to be discretionary, not mandatory. However, Regulation 25 stipulates that the EIA report “must” include a statement of alternatives, but only “to the extent appropriate”. The ADB Safeguard Policy Statement does not accommodate exemptions to this requirement, nor suggest any circumstances under which alternatives assessment would be “inappropriate”.	Amend Regulation 22(2)(b) by deleting “should” and inserting “must” and delete the term “to the extent appropriate”. ¹¹
Key element (2) Document the rationale for selecting the	EIA Process Regulations 2007 Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –... (f) a statement of the various alternatives that have been	Partial Equivalence. See Policy Principle 3, Key element 1, above.	See Policy Principle 3, Key element 1, above.

Project: A development activity or proposal which has or is likely to have an impact on the environment. This encompasses policies, plans and programmes or strategic environmental assessment as well as technology and other categories of activities.

¹¹ The non-binding EIA Guidelines 2008 provide a recommended format for an EIA report which includes a statement of the preferred alternative.

EIA Guidelines 2008

What is Environment Impact Assessment (EIA)?

... Second, EIA seeks to compare the various alternatives, which are available, for any project or programme that require an EIA. Each alternative will have economic costs and benefits, as well as environmental impacts, both adverse and beneficial. EIA seeks to compare all feasible alternatives, and determine which represents an optimum mix of environmental and economic costs and benefits....

Recommended format for an EIA report

8. Summary and Conclusion

... b) State the findings and recommendation(s), which the project proponent wishes to raise to the authority's consideration....

- Preferred alternative to implement the proposed development (including siting, design, timing)
- Recommended mitigation associated with the proposed action (preferred alternative)

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
particular alternative proposed	considered for the activity or undertaking that are reasonably foreseeable and technically and economically appropriate, including the option of taking no action, and an outline of the reasons for choosing the proposed action;...		
Key element (3) Also consider the no project alternative	<p>EIA Process Regulations 2007</p> <p>Regulation 22(2) An EIA study –...</p> <p>(a) must consider all phases of project planning, implementation and operation, including decommissioning;</p> <p>(b) should include consideration of alternatives to the proposed actions.</p> <p>Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –...</p> <p>(f) a statement of the various alternatives that have been considered for the activity or undertaking that are reasonably foreseeable and technically and economically appropriate, including the option of taking no action, and an outline of the reasons for choosing the proposed action;...</p>	Full Equivalence.	None required.
Policy Principle 4: Avoid, and where avoidance is not possible, minimize, mitigate, and/or offset adverse impacts and enhance positive impacts by means of environmental planning and management. Prepare an environmental management plan (EMP) that includes the proposed mitigation measures, environmental monitoring and reporting requirements, related institutional or organizational arrangements, capacity development and training measures, implementation schedule, cost estimates, and performance indicators. Key considerations for EMP preparation include mitigation of potential adverse impacts to the level of no significant harm to third parties, and the polluter pays principle.			
Key element (1) Avoid adverse impacts where possible	<p>EMA 2005</p> <p>Section 27(2) In examining a development proposal, the approving authority must take into account-...</p> <p>(c) whether there exist any technically or economically feasible measures that would prevent or mitigate any adverse environmental or resource management impact;...</p> <p><u>Schedule 2</u></p> <p>Part 3 - Development Proposals that May Not Require The EIA Process or an EIA Report</p> <p>...3. A person or agency undertaking emergency action under this Part must make all reasonable efforts to consult with the Department and to incorporate in the emergency action measures that will reduce, mitigate or avoid adverse environmental effect.</p>	Full Equivalence.	None required
Key element (2)	EMA 2005	Full Equivalence.	None required

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<p>Where avoidance is not possible, minimize and/or, mitigate adverse impacts to the level of no significant harm to third parties</p>	<p>Section 2 ... "significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed development's effect on the environment, and includes, but is not limited to-</p> <ul style="list-style-type: none"> (a) the degree to which public health and safety are affected; (b) the degree to which the unique characteristics of the geographic area are affected; (c) the degree to which effects on the environment are likely to involve controversy; (d) the degree to which unique or unknown risks are taken; (e) the degree to which a precedent for future action is created; (f) the potential for cumulative environmental impacts; (g) the degree to which the natural functioning of the ecosystem is likely to be inhibited; (h) the degree to which a cultural, traditional, natural, scientific or historic resource may be threatened; (i) the potential threat to the existence of protected and endangered species or their critical habitat; (j) the degree to which fish and wildlife resources of ecological, commercial, subsistence, and recreational importance are jeopardised; or (k) the extent to which one aspect of use of a resource may conflict or contrary with another aspect of use of that resource;... <p>EIA Process Regulations 2007</p> <p>Regulation 6(1) Upon receipt of an application in due form for screening of a proposal, the approving authority must determine whether the proposal is subject to the EIA process, that is to say, whether it is likely to cause significant environmental or resource management impact, taking into account the matters set out in section 27(2) of the Act.</p> <p>(3) A determination under subregulation (1) must be in writing and must – ...</p> <ul style="list-style-type: none"> (f) determine whether the proposal will have – ... (i) no significant impacts; (ii) impacts that will be mitigated to the point of insignificance by the conditions normally attached to an approval;... 	<p>The EMA 2005 defines "significant environmental or resource management impact" to include impacts that could create significant harm to third parties.</p> <p>EIA Regulation 6 stipulates that determination of no significant harm to third parties must be made at the time of screening.</p>	

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>Regulation 22(1) The purpose of an EIA study on a proposal is – (a) to identify and assess the potential environmental and resource management impacts of the proposal; (b) to recommend appropriate methods to eliminate or mitigate those impacts; (c) to enable the proponent to modify the proposal by mitigating potentially significant impacts before an EIA report is produced;...</p> <p>Regulation 24(1) The EIA report on a proposal is based on the EIA study. It should – ... (c) identify the potential impact of the proposal on the surrounding environment and suggest possible mitigation measures;...</p> <p>Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –... (g) a statement of the mitigation action proposed in respect of any adverse impacts identified under paragraph (e);...</p>		
Key element (3) Offset adverse impacts	No corresponding legal provision.	No Equivalence.	Amend the EIA Process Regulations 2007 to integrate the content of the non-binding EIA Guidelines 2008 ¹² on offsetting adverse impacts.
Key element (4): Enhance positive impacts	<p>EMA 2005 Section 15(3) Without prejudice to subsection (1), an environmental management unit in an approving authority is responsible for-... (c) reviewing or assisting in reviewing a completed EIA report on the proposal and making comments and recommendations on any management plan, enhancement plan or protection plan in the report;...</p>	<p>Partial Equivalence.</p> <p>The EMA 2005 has one provision concerning an enhancement plan.</p> <p>The EIA Process Regulations 2007 have no provision concerning an enhancement plan.</p>	<ul style="list-style-type: none"> ▪ Amend Regulation 22(2) to stipulate that an EIA study must identify potential positive impacts of a project. ▪ Amend Regulation 25(1) to stipulate that an EIA report must include an assessment of potential positive impacts of a

¹² Only the non-binding EIA Guidelines 2008 refer to “offsetting” adverse impacts.
 EIA Guidelines 2008
 Appendix 3 Typical Terms of Reference (TOR)
 4.0 Mitigation and Abatement Measures

The study shall examine and recommend suitable mitigating and abatement measures for the adverse impacts identified... This should include a description of the measures envisaged to prevent, minimize and where possible offset any significant adverse effects on the environment of the project.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			<p>project and make recommendations on how to enhance them.</p> <ul style="list-style-type: none"> ▪ Amend Regulation 26(1) to replace the current text with: 'An environmental management plan must -... (a) describe in respect of the proposal the environmental protection measures, including a management and conservation approach for any physical cultural materials that may be discovered during project implementation, that will be put in place by the proponent if approval is given for the proposal;... (d) provide for enhancing any potential positive impacts of a project; (e) include an air pollution management plan; (e) provide for periodic reporting; (f) specify particular institutional or organizational arrangements that will be required to implement it; (f) provide for capacity development and training measures that will be required to support its implementation; (g) include an implementation schedule; (h) include cost estimates; and (i) include performance indicators; and

DRAFT

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			<p>(j) indicate how the polluter pays principle will be applied in implementing it.’</p> <ul style="list-style-type: none"> ▪ Revise the non-binding EIA Guidelines 2008¹³ to indicate that potential positive impacts of a project must be fully assessed. Amend the steps in the EIA process, the recommended format for an EIA report, the checklist for the EIA review process, and other relevant sections of the Guidelines to reflect this and to be consistent with the amendments to the EIA Regulations.
<p>Key element (5) Prepare an environmental management plan (EMP) that</p>	<p>EMA 2005 Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA.</p>	<p>Partial Equivalence. Under the EMA 2005 and the EIA Process Regulations 2007, an EMP is discretionary, not mandatory. Under the EIA Process Regulations 2007, an EIA consultant may exercise that discretion.</p>	<p>See Policy Principle 4, Key element 5, above.</p> <ul style="list-style-type: none"> ▪ Amend Regulation 21(1)(c) to replace the current text with:

¹³ The non-binding EIA Guidelines 2008 recommend that potential beneficial impacts should be assessed as part of an EIA study. There is a reference to reviewing an “enhancement plan” as a responsibility of the Administrator at the Department of Environment, but the Guidelines do not have any other reference to an enhancement plan.

EIA Guidelines 2008

Step 3: The EIA Study

5. Impacts on the Environment

In considering the possible environmental impacts of the proposal; the following aspects should be fully assessed.

i) Adverse and/or beneficial impacts;...

Checklist for the EIA Review Process

3. Impact Prediction, mitigation and monitoring

...d) Are beneficial impacts identified as well as adverse impacts? To what extent are both the beneficial and adverse environmental effects clearly explained?...

Roles and Responsibilities of Key Participants in the EIA Process

Administrator at the Department of Environment

Role/ responsibility

... (d) Review or assist in reviewing a completed EIA report and make recommendations and comments on any management plan, enhancement plan or protection plan provided for in the EIA;...

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
includes the proposed mitigation measures	<p>EIA Process Regulations 2007</p> <p>Regulation 21(1) There is no prescribed form for TORs for an EIA study on a proposal but they must –...</p> <p>(c) consider whether an environment management plan should be a condition of approval of the proposal;...</p> <p>(2) If the processing authority or the EIA consultant considers that an environmental management plan should be a requirement for EIA approval of a proposal, this must be stated in the TORs in relation to the proposal.</p> <p>Regulation 22(2) An EIA study – ...</p> <p>(c) should consider whether an environment management plan should be a condition of approval of the proposal;...</p> <p>Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –...</p> <p>(k) an environment management plan if one is required by the TORs;...</p>		<p>'require an environmental management plan as a condition of approval of the proposal;'</p> <ul style="list-style-type: none"> ▪ Delete Regulation 21(2). ▪ Amend Regulation 22(2)(c) to replace the current text with: 'must include an environmental management plan;' ▪ Amend Regulation 25(1)(k) to replace the current text with: 'an environmental management plan;' ▪ Amend Regulation 31(2) to replace the current text with: The review report must state the decision of the processing authority on the EIA report under section 31(1) of the Act and set out – <ul style="list-style-type: none"> (a) if conditions are attached to an approval – the conditions, including the environmental management plan required under regulation 26 and any environmental bond recommended in the report;' ▪ Revise item 6(b) of the recommended format for an EIA report in the non-binding EIA Guidelines 2008 to add the word 'environmental', as follows: b) An Environmental Management Plan (EMP) to

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			ensure... ▪ Revise the first paragraph of Step 7 in the non-binding EIA Guidelines 2008 ¹⁴ as follows:

¹⁴ The non-binding EIA Guidelines 2008 appear to indicate that an EMP may be prepared outside the EIA process and that an EMP may be mandatory, but the EMA 2005 and the EIA Regulations 2007 do not support that interpretation.

There are two flow diagrams in the non-binding EIA Guidelines 2008, neither of which indicates an EMP.

The Glossary of Terms and Frequently Asked Questions in the non-binding EIA Guidelines 2008 refer to a Construction Environment Management Plan (CEMP) and an Operational Environment Management Plan (OEMP) as parts of an EMP, but there is no other reference to these two types of plans in the Guidelines.

EIA Guidelines 2008

Recommended format for an EIA report

6. Mitigation:

...b) A Management Plan to ensure that the development operates with the least possible environmental impacts.

Step 7: Compliance

Compliance refers to the implementation of the Environmental Management Plan (EMP). The EIA report may contain an EMP provided for in the EIA or it may be drawn up as a separate document where detailed design and construction needs have been finalized.

The EMP outlines the environmental protection and other measures that should be undertaken by the project to ensure compliance with environmental conditions of Administrator or Approving Authority, environmental laws and regulations and to reduce or eliminate adverse impacts during construction and or operation....

Environment Management Plans (EMP) are necessary to ensure that the proposed procedures, actions and measures identified in as part of alleviating environmental impacts of a project are not just a statement of goodwill by the company/ developer but will be effectively implemented.

The EMP should identify feasible and cost effective measures that may reduce potentially significant adverse environmental impacts to acceptable levels. It should also involve operational procedures needed to avoid environmental risks during everyday maintenance operations, as well as emergency and contingency plans in case of accidents, where applicable.

Each EMP must clearly state the company's commitment and policy on the environment. There must also be a clear statement committing the company to integrate environmental management and specifically the EMP into its operation.

The preparation of EMP involves the following:

4. Detailed description of the appropriate mitigation and compensatory measures together with designs, equipments description and operation procedures (as appropriate) to respond to these impacts or to avoid or reduce risks.

5. Determination of requirements for ensuring that responses to predicted impacts are made effectively... ..

Glossary of Terms

Environmental Management Plan: An Action Plan or Management

Strategy for the implementation of mitigation measures identified in an Environment Impact Assessment. Usually comes in two parts-Construction Environment Management Plan (CEMP) and Operational Environment Management Plan (OEMP).

Frequently asked Questions

10) When do I need to submit a Construction Environment Management Plan (CEMP)?

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			<p>Compliance refers to the implementation of the Environmental Management Plan (EMP). The EMP is required as part of an EIA report.</p> <ul style="list-style-type: none"> ▪ Revise Step 7 to add an explanation of a Construction Environment Management Plan (CEMP) and an Operational Environment Management Plan (OEMP) and guidance on when in the EIA process each type of plan must be prepared and how to do that.
<p>Key element (6) Prepare an environmental management plan (EMP) that includes the proposed monitoring requirements</p>	<p>EMA 2005 Section 15(3) Without prejudice to subsection (1), an environmental management unit in an approving authority is responsible for-... (d) monitoring and, if necessary, enforcing any environmental or resource management conditions of an approved EIA report;...</p> <p>Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA.</p> <p>EIA Process Regulations 2007 Regulation 25(1) An EIA report on a proposal must, to the extent appropriate, include –... (k) an environment management plan if one is required by the</p>	<p>Partial Equivalence.</p> <p>See Policy Principle 4, Key elements 4 and 5, above.</p> <p>Under the EIA Process Regulations 2007, an EIA Screening Application must contain a relatively detailed description of how project construction and operation will be monitored.</p> <p>Monitoring of approved environmental and natural resource conditions of the EIA report is required under the EMA 2005.</p> <p>Under the EIA Process Regulations 2007, if an environmental management plan for a proposal is required as part of an EIA report by the TOR, it must include an environmental monitoring and surveillance program of action.</p>	<p>See Policy Principle 4, Key elements 4 and 5, above.</p> <ul style="list-style-type: none"> ▪ Amend the chapeau of Regulation 31(3) to replace the current text with: 'Without limiting subregulation (2)(a), conditions of an approval may –'... ▪ Delete Regulation 31(3)(c). ▪ Delete Regulation 31(3)(d). ▪ Delete Regulation 31(3)(h).

After an EIA application [*sic*. “Application” is likely to be incorrect; “report” would be appropriate in the context. Under the EIA Regulation 11, an EIA processing application is the trigger for scoping.] is approved, the proponent is required to submit a CEMP that must be approved by the Department of Environment before any construction (including earthworks) can commence.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	TORs;... Regulation 26(1) If an environmental management plan for a proposal is required as part of an EIA report by the TOR, it must - ...		<ul style="list-style-type: none"> ▪ Revise the chapeau of section 7 of the recommended format for an EIA report in the non-binding EIA Guidelines 2008¹⁵ to replace the current

¹⁵ The non-binding EIA Guidelines 2008 indicate that a monitoring program is part of an EMP, if a monitoring plan is required as a condition of approval. The non-binding EIA Guidelines also require as part of the Checklist that the monitoring programme be incorporated into the “Development Programme” for the project.

EIA Guidelines 2008
Recommended format for an EIA report

7. Monitoring

A monitoring plan should be submitted clearly stating: -
The parameters to be monitored

- ii) Frequency of monitoring
- iii) Who will do the monitoring?
- iv) Who will the monitoring report be submitted to?

8. Summary and Conclusion

... Monitoring necessary for adaptive management and compliance

Checklist for the EIA Review Process

2. Coverage of the EIA, the assessment approach

... h) Is there evidence of careful selection of indicator variables, both for impact prediction and monitoring purpose

3. Impact Prediction, mitigation and monitoring and short-term impacts?

...i) Is the monitoring Programme incorporated into the development Programme?

Step 5: EIA Report Approval and Environmental Bonds

...Commonly, monitoring and impact management plans are required to deal with negative impacts....

Step 7: Compliance

The preparation of EMP involves the following:

... 6. Development of a programme to monitor the impacts arising out of the project operational activities and the effectiveness of the proposed mitigation measures.

Step 8: Monitoring

In many cases an environmental monitoring plan which may be a component of the EMP will be a requirement of project approval.

An Environment Management and Monitoring Committee should be established as a condition of approval which will consist of representatives from:

- The Ministry of Environment
- Dept of Town and Country Planning
- The relevant Local Authority
- Other applicable line ministries e.g. Dept of Lands and Mineral Resources
- The EIA consultant
- The contractors responsible for carrying out construction work

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>(b) include an environmental monitoring and surveillance program of action;</p> <p>(c) provide for an environmental monitoring committee to be appointed by the proponent to verify that the environmental protection plan is being fulfilled and adverse impacts of the proposal documented.</p> <p>Regulation 31(1) Unless the EIA processing application is discontinued under regulation 35, the processing authority must within 35 days of the submission of an EIA report on a proposal produce a written report on the review....</p> <p>(3) Without limiting subregulation (1)(a), conditions of an approval may –...</p> <p>(c) require the monitoring of any environmental impacts and reporting of them to the Director;...</p> <p><u>Schedule 1, EIA Screening Application</u> C5. Environmental monitoring (i) Description of environmental monitoring proposed during construction and operation of the undertaking (ii) Estimated period of monitoring (iii) Parameters to be monitored such as water quality, effluent quality etc, with estimated time frames</p>		<p>text with: 'A monitoring plan must be part of the EMP and must clearly state: -'...</p> <ul style="list-style-type: none"> ▪ Revise section 3, item (i) of the Checklist for the EIA Review Process in the non-binding EIA Guidelines 2008 and replace the current text with: '...i) Is the monitoring programme incorporated into the EMP?' ▪ Revise the last sentence of the 2nd paragraph of Step 5 in the non-binding EIA Guidelines 2008 and replace the current text with: 'Commonly, monitoring is integrated into the EMP, which is required to deal with all potential impacts, both negative and positive.' ▪ Revise the 1st sentence of Step 8 of the non-binding EIA Guidelines 2008 and replace the current text with: 'An environmental monitoring plan must be a component of the EMP, which is a requirement for project approval.'
Key element (7) Prepare an	EIA Process Regulations 2007 Regulation 31(3) Without limiting subregulation (1)(a), conditions	Partial Equivalence.	See Policy Principle 4, Key elements 5 and 6, above. ¹⁶

¹⁶ The non-binding EIA Guidelines 2008 include reporting requirements as part of the monitoring step of the EIA process, if a monitoring plan is required as a condition of approval.
EIA Guidelines 2008
Recommended format for an EIA report
7. Monitoring

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
environmental management plan (EMP) that includes the proposed reporting requirements	of an approval may –... (c) require the monitoring of any environmental impacts and reporting of them to the Director;...	See Policy Principle 4, Key elements 5 and 6, above. Under the EIA Process Regulations 2007, an EMP is discretionary. The content of an EMP, if one is required, does not include reporting. Reporting is a discretionary condition of approval of an EIA report.	
Key element (8) Prepare an environmental management plan (EMP) that includes related institutional or organizational arrangements	EIA Process Regulations 2007 Regulation 31(1) Unless the EIA processing application is discontinued under regulation 35, the processing authority must within 35 days of the submission of an EIA report on a proposal produce a written report on the review... (3) Without limiting subregulation (1)(a), conditions of an approval may –... (h) specify particular individuals or organizations who may carry out activities under the approval.	Partial Equivalence. The EIA Process Regulations 2007 do not require an EMP; specifying institutional or organizational arrangements as conditions for approving an EIA report is at the discretion of the processing authority.	Amend the EIA Process Regulations 2007 to require that an EMP specify the related institutional or organizational arrangements proposed for EMP implementation. ¹⁷
Key element (9) Prepare an environmental management plan (EMP) that includes related	No corresponding legal provision.	No Equivalence.	See Policy Principle 4, Key elements 5 and 6, above.

A monitoring plan should be submitted clearly stating: -

...iv) Who will the monitoring report be submitted to?

Step 8: Monitoring

In many cases an environmental monitoring plan which may be a component of the EMP will be a requirement of project approval.

The environmental monitoring plan will outline the objectives of monitoring, the specific information to be collected, a data collection program and program management. Program management includes assigning institutional responsibility, reporting requirements; enforcement capability and ensuring that adequate resources are provided.

¹⁷ The non-binding EIA Guidelines 2008 include institutional responsibility as part of the monitoring step of the EIA process, if a monitoring plan is required as a condition of approval.

EIA Guidelines 2008

Introduction

In the promotion of environmentally sound and sustainable development, it is indispensable to establish the necessary legal and institutional arrangements such that environmental factors are considered at the early stages of project planning. Environmental assessment is an important technique for ensuring that the likely impacts on the environment of proposed developments are fully understood and taken into account before such developments is allowed to proceed.

Step 8: Monitoring

..... Program management includes assigning institutional responsibility, reporting requirements; enforcement capability and ensuring that adequate resources are provided.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
capacity development and training measures			
Key element (10) Prepare an environmental management plan (EMP) that includes an implementation schedule	No corresponding legal provision.	No Equivalence.	See Policy Principle 4, Key elements 5 and 6, above. ¹⁸
Key element (11) Prepare an environmental management plan (EMP) that includes cost estimates	No corresponding legal provision.	No Equivalence. The EMA 2005 establishes an Environmental Trust Fund in part to fund expenses incurred in environmental monitoring and auditing, but does not provide that the Fund would support preparation of EMPs.	See Policy Principle 4, Key elements 5 and 6, above. ¹⁹
Key element (12)	No corresponding legal provision.	No Equivalence.	See Policy Principle 4, Key elements 5 and 6, above.

¹⁸ Only the non-binding EIA Guidelines 2008 refer to an implementation schedule.

EIA Guidelines 2008

Recommended format for an EIA report

8. Summary and Conclusion

· Preferred alternative to implement the proposed development (including,,[sic] timing)

Step 7: Compliance

The preparation of EMP involves the following:

5. Determination of requirements for ensuring that responses to predicted impacts are made effectively and an implementation schedule (timing) for mitigation measures that must be carried out as part of the project.

¹⁹ The non-binding EIA Guidelines 2008 recommend a budget for mitigation measures, but not cost estimates for a complete EMP.

EIA Guidelines 2008

Step 7: Compliance

The preparation of EMP involves the following:

...8. Identification of necessary funds (including budget) to implement mitigation measures.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
Prepare an environmental management plan (EMP) that includes performance indicators			
Key element (13) Consider the polluter pays principle in environmental management planning	<p>EMA 2005 Section 31....(2) If an EIA report is approved under subsection (1), the approval may be subject to the requirement of an environmental cash bond to be deposited into the Fund as a security to cover the probable cost of preventing or mitigating any environmental damage to the area and its surroundings.</p> <p>Section 47.-(1) The court, when convicting a person for an offence under this Act and having regard to the nature of the offence and the circumstances surrounding its commission, may, in addition to any penalty imposed, make an order-...</p> <p>(c) ordering the restoration of the area on which any activity or undertaking on a development proposal is taking place, to as near to its original condition with the cost to be borne by the proponent;...</p>	Full Equivalence.	See Policy Principle 4, Key elements 5 and 6, above.
<p>Policy Principle 5: Carry out meaningful consultation with affected people and facilitate their informed participation. Ensure women’s participation in consultation. Involve stakeholders, including affected people and concerned nongovernment organizations, early in the project preparation process and ensure that their views and concerns are made known to and understood by decision makers and taken into account. Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment. Establish a grievance redress mechanism to receive and facilitate resolution of the affected people’s concerns and grievances regarding the project’s environmental performance.</p>			

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<p>Key element (1) Carry out meaningful consultation with affected people and facilitate their informed participation.</p>	<p>EMA 2005 Section 34(1) When the preparation of an EIA assessment is completed, a public hearing must be conducted by the proponent within the vicinity of the area of the proposed development. (2) Where the Government is the proponent, the Ministry responsible for the development must establish a committee to be responsible for undertaking consultations with all interested parties.</p> <p>EIA Process Regulations 2007 Regulation 4(1) Every proponent of a development proposal must apply for screening of the proposal in accordance with these Regulations and section 27 of the Act.... (3) The application must include –... (g) a statement as to what public consultations have been held on the proposal, if any; (h) an indication of public response to the proposal, as evidenced by such consultations or otherwise.</p> <p>Regulation 18(1) The processing authority may if it considers appropriate involve the public in the scoping exercise to gather information that is likely to benefit the planning of the development proposal. In particular, public participation should be sought in order to - (a) clarify the nature of impacts or provide a better estimate of the magnitude of impacts; (b) provide project planners with a better understanding of community aspirations and needs; (c) allay fears in the community or improve the social acceptability of the project; (d) provide additional environmental information to project planners. (2) Public participation in scoping involves discussions with the proponent, the approving authority (if not the processing authority), scientific institutions, local community leaders and others to include all the possible issues and concerns raised by these various groups. (3) The processing authority may in writing require the proponent to convene one or more scoping meetings, at times and locations</p>	<p>Full Equivalence.</p> <p>Section 34(1) of the EMA 2005 stipulates that a public hearing is mandatory after an EIA is completed. Regulation 23(4)(a) specifies that one or more public consultations must be carried out <i>during the EIA process</i>, in accordance with Section 34 of the Act (italics added).</p> <p>Section 34(2) of the EMA 2005 and Regulation 23(4)(b) of the EIA Process Regulations 2007 both stipulate that when a Ministry is a project proponent, it must establish a committee to undertake consultations on a proposal.</p> <p>Under Regulation 18, public consultation at the scoping stage is discretionary unless the proponent's own consultant prepared the ToR for the EIA, in which case at least one meeting is mandatory. Under Regulation 30(1), public consultation is mandatory during the process of reviewing an EIA report.</p>	<p>Because there are inconsistencies between the EMA 2005 and the EIA Process Regulations 2007, it is recommended to amend EMA 2005 Section 34 as follows: ▪ Add a new clause 34(1) 'During the EIA study on a proposal, the proponent must conduct one or more public consultations within the area of influence of the proposed development.' ▪ Current Section 34(1) becomes Section 34(2). ▪ Current Section 34(2) becomes Section 34(3).</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>determined by the processing authority and convenient for those likely to wish to take part.</p> <p>(4) Notice of a scoping meeting must be given by the proponent at least 7 days before the meeting –</p> <p>(a) on every radio or television station that broadcasts in the area of the site, in the indigenous and commonly used languages of the area;</p> <p>(b) in every newspaper that circulates in the area of the site, in the indigenous language of the area.</p> <p>Regulation 20(1) In the case of a major development proposal, if the TORs are prepared by the proponent's own EIA consultant, the proponent must convene at least one meeting at which draft TORs are presented for discussion and participants can propose additions to or deletions from them.</p> <p>(2) Whether or not –</p> <p>(a) a meeting is convened under subregulation (1);</p> <p>(b) the draft TORs are prepared by the proponent;</p> <p>(c) the proposal is for a major development, the processing authority may if it considers it necessary require the proponent to convene one or more meetings to discuss the draft TORs on the proposal.</p> <p>(3) Regulation 18(3) to (6) apply to TOR meetings as they apply to scoping meetings.</p> <p>Regulation 23(4) Pursuant to and in accordance with section 34 of the Act –</p> <p>(a) the proponent must conduct one or more public consultations during the EIA study on a proposal;</p> <p>(b) a Ministry that is a proponent must establish a committee to undertake consultations on the proposal.</p> <p>Regulation 28(2) The processing authority may, and in respect of a major development proposal must, give notice of the publication of a report -</p> <p>(a) on every radio or television station that broadcasts in the area of the site of the proposed development; and</p> <p>(b) in every newspaper that circulates in the area of the site.</p>		

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>(3) If notice is given under subregulation (2) it must set out – (a) the locality and the nature of the development; (b) where copies of the EIA report can be obtained; (c) how the community can participate in identifying the issues of concern by commenting on the report; and (d) the time limit for the submission of comments in writing, being 28 days from the submission of the report. (4) Publication under subregulation (1)(c) and (2) must be within 4 days of the submission of the report, in order to allow the public time to inspect and review it within the 21 days provided by section 30(3) of the Act.</p> <p>Regulation 30(1) The processing authority must require the proponent to conduct public consultations on the review of an EIA report by way of one or more review meetings, at times and places determined by the processing authority and convenient for those likely to wish to take part. (2) At least one of the review meetings must be held in the vicinity of the area of the proposed development, in compliance with section 34(1) of the Act. (3) If a review meeting is held, notice of it must be given by the proponent in the manner set out in regulation 18(4) in relation to scoping meetings and must inform the public of – (a) the locality and the nature of the development; (b) where copies of the EIA report can be obtained; (c) the location and time of the review meeting; and (d) the time limit for the submission of comments in writing, being 28 days from the submission of the report. (4) The proponent's costs of convening a review meeting, including but not limited to the hire of a venue and publicity, are to be met by the proponent. (5) Every review meeting must be held within 21 days of the submission of the EIA report.</p>		
Key element (2) Ensure women's participation in consultation	No corresponding legal provision.	No Equivalence.	See Policy Principle 5, Key element 3, below.
Key element (3) Involve	EMA 2005 Section 27(8) If the EIA Administrator has reason to believe that	Partial Equivalence.	▪ Amend EMA 2005 Section 27(8) to delete "may" and

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<p>stakeholders, including affected people and concerned nongovernment organizations</p>	<p>there is a public concern relating to the development proposal, the EIA Administrator may require the approving authority to submit the EIA report for consideration to take into account the public concern.</p> <p>EIA Process Regulations 2007 Regulation 28(5) For major development proposals the processing authority may invite comments on an EIA report by other line ministries, the private sector, non-governmental organizations, public authorities and other interested persons.</p> <p>Regulation 29(1) Once an EIA report on a proposal has been published, the processing authority must arrange for a review of the report to be conducted, as required by section 30 of the Act.... (4) A review committee – (a) is appointed by the Director as a committee of the processing authority; (b) consists of not more than 10 people drawn from the relevant industry, NGO's, Government, local communities and academic institutions;...</p>	<p>See Policy Principle 5, Key element 1, above.</p>	<p>insert "must".</p> <ul style="list-style-type: none"> ▪ Amend Regulation 28(5) as follows: 'For major development proposals the processing authority must invite comments on an EIA report by other line ministries, the private sector, non-governmental organizations, public authorities, and other interested persons and must facilitate the participation of women and vulnerable groups in the commenting process. <p>Amend Regulation 29(4)(b) as follows: 'consists of not more than 10 people drawn from the relevant industry, NGO's, Government, women and others from local communities, and academic institutions;...'</p> <p>In the non-binding EIA Guidelines 2008²⁰, revise section 2.c) of the checklist for the EIA review process as follows: 'Are there evidences of early and meaningful involvement of affected people, including</p>

²⁰ EIA Guidelines 2008 (non-binding)
Checklist for the EIA Review Process

2. Coverage of the EIA, the assessment approach

...c) Are there evidences of early and meaningful involvement of affected people, groups and communities?

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
			women and vulnerable groups, NGOs, and communities?
Key element (4) Involve stakeholders early in the project preparation process	EMA 2005 Section 34(1) When the preparation of an EIA assessment is completed, a public hearing must be conducted by the proponent within the vicinity of the area of the proposed development. EIA Process Regulations 2007 Regulation 18(1) The processing authority may if it considers appropriate involve the public in the scoping exercise to gather information that is likely to benefit the planning of the development proposal. <u>Schedule 1, EIA Screening Application</u> B7. Public consultations (i) State what public consultations have been held on the proposal, if any; (ii) State what public response there has been to the proposal, as evidenced by consultations or otherwise.	Partial Equivalence. See Policy Principle 5, Key element 3, above. The EMA 2005 and the EIA Process Regulations 2007 are inconsistent with respect to how early stakeholders must be involved in the project preparation process. The EMA 2005 provides for mandatory public hearings only after an EIA is complete, whereas Regulation 18 provides for public participation at the scoping phase, but only at the discretion of the processing authority. Schedule 1 to the EIA Process Regulations 2007 asks for information on any consultations that may have been done prior to the screening phase, but neither the EMA 2005 nor the Regulations requires such consultations.	<ul style="list-style-type: none"> ▪ Amend Regulation 18(1) to delete “may” and insert “must”. ▪ Revise the text under the heading “Public Participation in scoping” in Step 2 in the non-binding EIA Guidelines 2008²¹ to delete “should” and insert “must”. ▪ In the non-binding EIA Guidelines 2008, revise FAQ#4 to be consistent with the amended regulation and the revision to Step 2.
Key element (5) Ensure that stakeholder	EIA Process Regulations 2007 Regulation 25(1) An EIA report on a proposal must, to the extent	Partial Equivalence. An EIA report must contain a summary of the results of any public	Amend Regulation 31(4) to delete “should” and insert “must”. ²²

²¹ The non-binding EIA Guidelines 2008 indicate that public participation during the scoping and review phases is discretionary.

EIA Guidelines 2008

Step 2: Scoping

Public Participation in scoping

The scoping exercises where ever applicable should involve public participation to gather information that is likely to benefit the planning of the project.

Checklist for the EIA Review Process

2. Coverage of the EIA, the assessment approach

...c) Are there evidences of early and meaningful involvement of affected people, groups and communities?

Frequently asked Questions

4) When does the public get involved in the EIA process?

During the reviewing of the EIA report, members of the public may inspect and view an EIA report within 21 days after it is submitted to the processing authority. The public may also be involved at the scoping stage and provide comments on the ToR.

²² EIA Guidelines 2008 (non-binding)

Step 4: Review of the EIA Report

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
views and concerns are made known to and understood by decision makers and taken into account.	appropriate, include –... (i) a summary of the results of public consultations held on the proposal; (j) recommendations on the selected alternatives, mitigation measures, monitoring, other studies, analysis, and any additional consultation that may be required;... Regulation 31(4) A review report should in addition set out –... (c) the standpoints of different interested parties;...	consultations. It may be assumed, but it is not explicit in the Regulations, that decision-makers are expected to take the results of public consultations into account.	
Key element (6) Continue consultations with stakeholders throughout project implementation as necessary to address issues related to environmental assessment	No corresponding legal provision.	No Equivalence.	Amend Part 4 of the EMA 2005 to provide for follow-up measures in addition to compliance monitoring and require, among other things, implementation of the EMP, including monitoring and reporting, continuing consultations with stakeholders, and a grievance redress mechanism. Amend the EIA Process Regulations 2007 and revise the non-binding EIA Guidelines 2008 to implement the amended provisions of the EMA 2005.
Key element (7) Establish a grievance redress	No corresponding legal provision.	No Equivalence. The EMA 2005 and EIA Process Regulations 2007 provide for appeals related to the EIA process, but do not provide for dealing with	See Policy Principle 5, Key element 6, above. ²³

2. The Review Process

Recommendations arising out of the review are transmitted to the processing authority for consideration in making a decision on the project.

²³ The non-binding EIA Guidelines 2008 include a diagram titled “Fiji’s EIA Process”, which indicates that the word “grievance” applies to a disagreement with a decision on EIA, leading to an appeal. That is the only reference in the Guidelines to any kind of grievance redress mechanism.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<p>mechanism to receive and facilitate resolution of the affected people's concerns and grievances regarding the project's environmental performance.</p>		<p>grievances concerning an operation's environmental performance after a project has been approved.</p> <p>The EMA 2005 provides that any person who disagrees with a decision concerning EIA may appeal to the Environmental Tribunal, but this provision would appear to be limited to the EIA approval process and not extend to environmental performance during project implementation.</p> <p>The Regulations – 7(6) Screening decision, 8(7) Classification of proposals, 33(4) Disposal of an environmental bond, 34(10) Compliance inspection, 35(5) Variation or cancellation of EIA approval, and 40(7) Loss of registration as a consultant – provide only for administrative appeals to the CEO of the Ministry. Such appeals are available only to project proponents and to individuals and institutions that have been de-registered as approved EIA consultants; they are not available to affected persons.</p>	
<p>Policy Principle 6: Disclose a draft environmental assessment (including the EMP) in a timely manner, before project appraisal, in an accessible place and in a form and language(s) understandable to affected people and other stakeholders. Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders.</p>			
<p>Key element (1) Disclose a draft environmental assessment including the EMP</p>	<p>Constitution 2013 Article 25 (1) Every person has the right of access to— (a) information held by any public office;... (3) To the extent that it is necessary, a law may limit, or may authorise the limitation of, the rights set out in subsection (1), and may regulate the procedure under which information held by a public office may be made available.</p> <p>Article 150. A written law shall make provision for the exercise by a member of the public of the right to access official information and documents held by the Government and its agencies.</p> <p>EMA 2005</p>	<p>Partial Equivalence.</p> <p>See Policy Principle 4, Key elements 5 and 6.</p> <p>Under the EMA 2005 and EIA Process Regulations 2007, an EMP is discretionary and an EMP may not be part of a draft EIA report.</p> <p>The EMA 2005 and the EIA Process Regulations 2007 are inconsistent on disclosure of a draft EIA report. Under EMA Section 30(2), disclosure of a draft EIA is discretionary.</p> <p>Under Regulation 30(1), at least one public consultation to review an EIA report is required. Regulation 30(3) begins "If a review meeting is</p>	<ul style="list-style-type: none"> ▪ Amend EMA 2005 Section 30(2) to delete "may" and insert "must". ▪ Amend Regulation 30(3) to replace the words "If a review meeting is held" with the words "When a review meeting is scheduled".²⁴

²⁴ EIA Guidelines 2008 (non-binding)

Appendix 4 Recommended Format of Public Advertisement

... "The completed EIA report will be available for review by the public from ... dd/mm/yyyy... to ... dd/mm/yyyy... (add date)". (Note: It shall be for a period of 21 working days) during normal office hours at the following locations:...

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>Article 30(2) When an EIA report is reviewed, the proponent may be required to invite public comments on the report at the proponents cost, in the manner prescribed by regulations.</p> <p>(3) A member of the public may inspect and view an EIA report within 21 days after it is submitted to the EIA Administrator or the approving authority.</p> <p>EIA Process Regulations 2007</p> <p>Regulation 28(1) Once an EIA report has been submitted under regulation 27 –</p> <p>... (b) the Director must enter the report in the register; and</p> <p>(c) the processing authority must make the complete report available at appropriate locations for inspection by the public and for purchase at cost.</p> <p>Regulation 30(1) The processing authority must require the proponent to conduct public consultations on the review of an EIA report by way of one or more review meetings, at times and places determined by the processing authority and convenient for those likely to wish to take part.</p> <p>(2) At least one of the review meetings must be held in the vicinity of the area of the proposed development, in compliance with section 34(1) of the Act.</p> <p>(3) If a review meeting is held, notice of it must be given by the proponent in the manner set out in regulation 18(4) in relation to scoping meetings and must inform the public of –</p> <p>(a) the locality and the nature of the development;</p> <p>(b) where copies of the EIA report can be obtained;</p> <p>(c) the location and time of the review meeting; and</p> <p>(d) the time limit for the submission of comments in writing, being 28 days from the submission of the report.</p> <p>(4) The proponent's costs of convening a review meeting, including but not limited to the hire of a venue and publicity, are to be met by the proponent.</p> <p>(5) Every review meeting must be held within 21 days of the submission of the EIA report.</p>	<p>held...”, which could indicate that a review meeting is discretionary under the Regulations as well as under the EMA. However, the other provisions of Regulation 30 seem to indicate that public review of an EIA report is mandatory.</p>	

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<p>Key element (2) Disclose a draft environmental assessment in a timely manner prior to appraisal.</p>	<p>EMA 2005 Article 30(2) When an EIA report is reviewed, the proponent may be required to invite public comments on the report at the proponents cost, in the manner prescribed by regulations. (3) A member of the public may inspect and view an EIA report within 21 days after it is submitted to the EIA Administrator or the approving authority.</p> <p>EIA Process Regulations 2007 Regulation 30(1) The processing authority must require the proponent to conduct public consultations on the review of an EIA report by way of one or more review meetings, at times... determined by the processing authority and convenient for those likely to wish to take part.... (5) Every review meeting must be held within 21 days of the submission of the EIA report.</p>	<p>Full Equivalence. See Policy Principle 6, Key Element 1, above.</p>	<p>See Policy Principle 6, Key Element 1, above.²⁵</p>
<p>Key element (3) Disclose a draft environmental assessment in an accessible place</p>	<p>EIA Process Regulations 2007 Regulation 30(3) If a review meeting is held, notice of it must be given by the proponent in the manner set out in regulation 18(4) in relation to scoping meetings and must inform the public of ... (b) where copies of the EIA report can be obtained;...</p>	<p>Partial Equivalence. See Policy Principle 6, Key Element 1, above.</p>	<p>See Policy Principle 6, Key Element 1, above.²⁶</p>

²⁵ EIA Guidelines 2008 (non-binding)

Appendix 4 Recommended Format of Public Advertisement

- Must be advertised for two consecutive weeks at least a week prior to public review period commencing.

²⁶ EIA Guidelines 2008 (non-binding)

Appendix 4 Recommended Format of Public Advertisement

...“The completed EIA report will be available for review by the public from ... dd/mm/yyyy... to ...dd/mm/yyyy... (add date)”. (Note: It shall be for a period of 21 working days) during normal office hours at the following locations:...

1. The Department of Environment (Add Full Address).
2. Office of the proponent (Add full address)
3. Library (Full address)
4. Local authority or equivalent (as relevant- Add Full Address)
5. Provincial Office (as relevant- Add Full Address)
6. Any web site

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
Key element (4) Disclose a draft environmental assessment in a form and language(s) understandable to affected people and other stakeholders	No corresponding legal provision.	No Equivalence.	<ul style="list-style-type: none"> ▪ Amend the chapeau of Regulation 24(1) to delete “should” and insert “must”. ▪ Amend Regulation 24(3) to add a new clause (c): ‘contain a concise summary of the EIA in non-technical language with the findings including major potential impacts and recommendations.’²⁷
Key element (5) Disclose the final environmental assessment, and its updates if any, to affected people and other stakeholders	<p>EMA 2005 Section 17 (1) The Department must establish and maintain an Environmental Register for the purposes of this Act into which prescribed matters must be recorded. (2) A person is entitled to have access to any record or document in the Environmental Register.</p> <p>EIA Process Regulations 2007 Regulation 41 (1) The environmental register maintained under section 17 of the Act must include information about –</p> <ul style="list-style-type: none"> (a) every site inspection report produced under regulation 15; (b) the result of every screening of proposals under Part 2; (c) every EIA report produced under Part 4; (d) every review of an EIA report under Part 4; (e) every EIA approval granted under the Act; (f) every compliance report produced under regulation 34; (g) any variation of EIA approval granted under regulation 35; (h) any amendment of the identity of a corporate body accepted under regulation 36; (i) every consultant registered under these Regulations; (j) every environmental bond taken under these Regulations. 	Full Equivalence.	None required

²⁷ Only the non-binding EIA Guidelines 2008 specify that the language of the summary of an EIA must be non-technical.

EIA Guidelines 2008

Appendix 3 Typical Terms of Reference (TOR)

I Executive Summary

Provide a concise summary of the EIA in non-technical language with the findings including major potential impacts and recommendations.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>(2) The register or a copy of it must be –</p> <p>(a) kept at the offices of the Director; and</p> <p>(e) made available for inspection and copying by the public during normal office hours on payment of the prescribed fee;</p> <p>(f) made available for inspection and copying by approving authorities without payment of a fee. [The numbering of the sub-clauses of Regulation 41(2) is “(a), (e), (f)” in the original.]</p> <p>(2) The approving authority for a proposal must keep a copy of relevant entries in the register relating to all proposals that have been submitted to it. [The numbering of the clauses of Regulation 41 repeats clause (2) and omits (3) in the original.]</p> <p>(4) The register may be kept in an electronic form, but copies of extracts from it must be made available on paper if requested, on payment of the prescribed fee.</p>		
Policy Principle 7: Implement the EMP and monitor its effectiveness. Document monitoring results, including the development and implementation of corrective actions, and disclose monitoring reports.			
Key element (1) Implement the EMP	EMA 2005 Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA.	Partial Equivalence. See Policy Principle 1, Key Element 2 – an EMP is discretionary. See Policy Principle 5, Key element 6.	See Policy Principle 5, Key element 6. ²⁸
Key element (2) Monitor effectiveness of EMP	<p>EMA 2005</p> <p>Section 20(6) It is a condition of every approval or permit issued under this Act that the holder must permit inspectors to carry out inspections required or authorised by this Act of any facility or place, other than residential premises, to which the approval or permit relates.</p> <p>Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring</p>	Partial Equivalence. See Policy Principle 1, Key Element 2 – an EMP is discretionary. The EMA 2005 and EIA Process Regulations 2007 provide for monitoring compliance with an approved EIA, whether or not it includes an EMP. See Policy Principle 4, Key elements 5 and 6.	See Policy Principle 5, Key element 6. See Policy Principle 5, Key element 6.

²⁸ EIA Guidelines 2008 (non-binding)
Step 7: Compliance

The decision to proceed with a project is based in part on the expectation that the EMP will be executed effectively. Consequently, the Administrator and/or approving authority expects the plan to be specific in its description of the individual mitigation and monitoring measures which must be integrated into the project's overall planning, design, budget and implementation.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>programme, protection plan or mitigation measure that is required as a condition of any approved EIA.</p> <p>(2) The EIA Administrator or an approving authority, may conduct any inspection to determine compliance with subsection (1).</p> <p>EIA Process Regulations 2007</p> <p>34(1) After approval for a proposal has been granted, the EIA Administrator or an approving authority may cause a site or activity to be inspected –</p> <p>(a) for the purposes of section 32(2) of the Act; or</p> <p>(b) to ascertain whether there has been any change in the environmental condition of the site or the environmental impact of the activity on the surrounding area.</p>	See Policy Principle 5, Key element 6.	
<p>Key element (3)</p> <p>Document monitoring results, including the development and implementation of corrective actions</p>	<p>EMA 2005</p> <p>Section 43(1) A person who carries out any development activity or undertaking which is subject to the EIA process without an approved EIA report, commits an offence and is liable upon conviction to a fine not exceeding \$750,000 or to a term of imprisonment not exceeding 10 years or both.</p> <p>(2) If a person is found to be undertaking a development activity under subsection (1), the Director may apply to the court for an order to stop work.</p> <p>(3) A person who contravenes-</p> <p>(a) any requirement under Part 4; or</p> <p>(b) a condition for the approval of a development proposal or an approved EIA report, commits an offence and is liable upon conviction to a fine not exceeding \$250,000 or to a term of imprisonment not exceeding 3 years or both.</p> <p>Section 44(1) A person who-</p> <p>(g) contravenes a term or condition of an approval or permit issued under this Act; or</p> <p>(h) fails to comply with any notice, order, permit, requirement or condition imposed under this Act, commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.</p> <p>EIA Process Regulations 2007</p>	<p>Partial Equivalence.</p> <p>See Policy Principle 4, Key elements 5 and 6.</p> <p>See Policy Principle 5, Key element 6.</p>	<p>See Policy Principle 4, Key elements 5 and 6.</p> <p>See Policy Principle 5, Key element 6.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>Regulation 34(5) Following a compliance inspection of a proposal site or activity, an inspector must send to the EIA Administrator a compliance report indicating whether the site or activity complies with the conditions of the approval.</p> <p>(6) When a compliance report is complete –</p> <p>(a) section 19(2)(b) of the Act applies to it;</p> <p>(b) it must be entered in the register kept under section 17 of the Act, and a copy sent to the proponent.</p> <p>(7) If the inspector considers that there is non-compliance, the inspector may recommend that approval of the proposal should be –</p> <p>(a) cancelled for non-compliance with a term of the approval; or</p> <p>(b) suspended until specified matters of non-compliance are corrected.</p> <p>(8) A decision to cancel or suspend approval of a proposal –</p> <p>(a) is made by the Director in the light of a recommendation under subregulation (4) or (6);</p> <p>(b) must only be made after giving the proponent an opportunity to be heard, orally or in writing;</p> <p>(c) must be made reasonably, having regard to the nature of the proposal and the seriousness of the non-compliance;</p> <p>(d) must be communicated in writing to the proponent as soon as practicable after being made.</p> <p>Regulation 41(1) The environmental register maintained under section 17 of the Act must include information about –...</p> <p>(f) every compliance report produced under regulation 34;...</p>		
<p>Key element (4) Disclose monitoring reports</p>	<p>EIA Process Regulations 2007</p> <p>Regulation 41(1) The environmental register maintained under section 17 of the Act must include information about –...</p> <p>(f) every compliance report produced under regulation 34;...</p>	<p>Partial Equivalence.</p> <p>The environmental register requirement refers only to “information about...every compliance report” but does not explicitly require disclosure of the compliance report itself.</p>	<p>See Policy Principle 5, Key element 6.</p> <p>Amend Regulation 41(1) to require disclosing every monitoring report produced under amended Part 4 of the EMA 2005.</p>
<p>Policy Principle 8: Do not implement project activities in areas of critical habitats, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function, (ii) there is no reduction in the population of any recognized endangered or critically endangered species, and (iii) any lesser impacts are mitigated. If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area. In an area of natural habitats, there must be no significant conversion or degradation, unless (i) alternatives are not available, (ii) the overall benefits from the project substantially outweigh the environmental costs, and (iii) any conversion or degradation is appropriately mitigated.</p>			

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
Use a precautionary approach to the use, development, and management of renewable natural resources.			
<p>Key element (1) Do not implement project activities in areas of critical habitats²⁹, unless (i) there are no measurable adverse impacts on the critical habitat that could impair its ability to function</p>	<p>Marine Spaces Act, 1978 Section 9B. Where no other provision is for the time being made in any other written law for any such purpose, the Minister responsible for Foreign Affairs may make regulations, in accordance with the rules of international law, for all or any of the following purposes:...</p> <p>(d) prescribing measures for the protection and preservation of the marine environment of the exclusive economic zone;...</p> <p>Offshore Fisheries Management Decree 2012 Section 6 The Minister, Permanent Secretary or Director, as appropriate, when performing functions or exercising powers under this Decree, shall—...</p> <p>(g) protect biodiversity in the marine environment, especially habitats of particular significance for fisheries resources;</p> <p>Fisheries (Protection of Turtles) (Amendment) Regulations 2010 Regulation 20.A.-(1)...no person shall – ... (e) negatively impact turtle habitats.</p> <p>Forest Decree 1992 Section 6(1) The Minister may, upon recommendation of the Forestry Board, declare any of the following classes of land already reserved for another public purpose to be a forest reserve or a nature reserve:</p> <p>(a) unalienated State land; (b) land leases to the State; (c) unalienated native land, with the prior consent of the owner of the land and of the Native Land Trust Board.</p> <p>Section 7(2) Nature reserves shall be managed for the exclusive</p>	<p>Partial Equivalence.</p> <p>The legal framework does not explicitly distinguish between critical and non-critical habitat, although it could be implied that nature and forest reserves would fall under that definition. In particular, the Forest Act subjects activities in such habitats to licensing provisions but does not specify any adverse impact or ecological function criteria determine whether such activities should be permitted.</p> <p>The EMA 2005 provides only that critical habitat must be taken into account in an EIA. The EIA Process Regulations 2007 do not mention habitat – critical habitat or any other kind of habitat – at all.</p> <p>The Offshore Fisheries Management Decree 2012 provides for protecting marine biodiversity generally, and habitats of particular significance for fisheries resources in particular.</p> <p>The Fisheries (Protection of Turtles) (Amendment) Regulations 2010 prohibits any act that would negatively impact turtle habitats generally, but does not mention critical habitat specifically.</p> <p>The Forest Decree 1992 does not provide for protecting habitat, but does provide for creating nature reserves to protect their environment, “including flora, fauna, soil and water”, which may be interpreted to constitute habitat.</p> <p>With no national law or regulation that provides for protecting species except in international trade, it is no surprise that there is no legal protection for critical habitats.</p> <p>EMA 2005 Schedule 2, Part 1, Section 1(l) provides that the EIA</p>	<p>Carry out a comprehensive review of the Marine Spaces Act, Forest Decree, Fisheries Act and Regulations, Offshore Fisheries Management Decree and any other national law and/or regulation that directly or indirectly governs species to distinguish between critical and non-critical habitat and set parameters for activities that should be restricted or prohibited in critical habitat.</p> <p>At a minimum:</p> <ul style="list-style-type: none"> ▪ Amend the EMA 2005, the EIA Process Regulations 2007, the Marine Spaces Act 1978, the Offshore Fisheries Management Decree 2012, the Fisheries (Protection of Turtles) (Amendment) Regulations 2010, and the Forest Decree 1992 to: ▪ define ‘critical habitat’; ▪ provide for conserving critical habitats outside of legally protected areas; and ▪ prohibit activities in any area of critical habitat unless there are no measurable adverse impacts on the critical habitat

²⁹ ADB’s Safeguard Policy Statement defines ‘critical habitat’ as “[a] subset of both natural and modified habitat that deserves particular attention. Critical habitat includes areas with high biodiversity value, including habitat required for the survival of critically endangered or endangered species; areas having special significance for endemic or restricted-range species; sites that are critical for the survival of migratory species; areas supporting globally significant concentrations or numbers of individuals of congregatory species; areas with unique assemblages of species or that are associated with key evolutionary processes or provide key ecosystem services; and areas having biodiversity of significant social, economic, or cultural importance to local communities.”

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>purpose of permanent preservation of their environment, including flora, fauna, soil and water.</p> <p>(3) Any buildings, fences or enclosures erected in or maintained on a forest reserve or in a nature reserve without permission of the Conservator shall be deemed to be the property of the State and may be disposed of in such manner as the Conservator thinks fit.</p> <p>Section 8(1) Unless authorised under this Decree by a license or otherwise, no person shall:</p> <p>(a) in a forest or a nature reserve:</p> <p>(i) fell or extract timber;</p> <p>(ii) take other forest produce;</p> <p>(iii) take peat, rock, sand, shells and soil other than minerals as defined in the Mining Act;</p> <p>(iv) clear land;</p> <p>(v) cut, burn, uproot, damage or destroy vegetation;</p> <p>(vi) erect any buildings or livestock enclosures;</p> <p>(vii) allow any domestic animal to enter therein;</p> <p>(viii) plant any crops or trees;</p> <p>(ix) construct or obstruct any roads paths or waterways;</p> <p>(x) set any trap, snare or net or use or to be in possession of any gun, poison or explosive substance;</p> <p>(xi) hunt or fish;...</p>	<p>Administrator must approve any proposal that could jeopardize the continued existence of any protected, rare, threatened or endangered species or its critical habitat or nesting grounds, but Fiji has no legally defined protected, rare, or threatened species.</p>	<p>that could impair its ability to function.³⁰</p> <ul style="list-style-type: none"> ▪ Amend the EMA 2005 and the EIA Process Regulations 2007 to stipulate that areas of critical habitats must be included in the factors to be taken into account in the EIA process.

³⁰ The non-binding EIA Guidelines 2008 recommend describing important habitats and taking sensitive habitats into account in the EIA report, but do not define 'important habitat' or 'sensitive habitat' and do not mention critical habitat at all.

EIA Guidelines 2008

Recommended format for an EIA report

4. Description of Existing Environment

Any environmentally sensitive areas of scientific, socio-economic or cultural significance, including any endangered species or important habitat types should be fully described.

Appendix 2 Scoping Checklist

Damage or removal of important habitats (e.g. woodland, wetland, etc.)

Appendix 3 Typical Terms of Reference (TOR)

1.2 Biological Environment

- Locate sensitive habitats and significant natural sites

2.4 Ecological impacts

Loss of, damage to and alteration of any terrestrial, aquatic and marine habitats and species as relevant as a direct result of the development itself or as a result of tourism related activities such as snorkeling, diving, fishing etc. Where a significant amount of terrestrial vegetation and/or mangroves will be impacted there needs to be discussions on possible nature swaps and/ or formulation of mangrove management plan to reduce or nullify the impacts.

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	<p>EMA 2005 Section 2..."significant environmental or resource management impact", in relation to a development proposal, means an impact on the environment, either in the context of the setting of the proposed development or in the context of the intensity of the proposed development's effect on the environment, and includes, but is not limited to-...</p> <p>(i) the potential threat to the existence of protected and endangered species or their critical habitat;...</p> <p>Section 3 A person required to perform any function under this Act relating to the use and utilization of natural and physical resources must recognize and have regard to the following matters of national importance:...</p> <p>(c) the protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna;...</p> <p><u>Schedule 2, Part 1</u> Section 1. The following development proposals are to be approved by the EIA Administrator-...</p> <p>(l) a proposal that could jeopardize the continued existence of any protected, rare, threatened or endangered species or its critical habitat or nesting grounds;...</p>		
<p>Key element (2) Do not implement project activities in areas of critical habitats, unless... (ii) there is no reduction in the population of any recognized endangered or critically endangered</p>	<p>No corresponding legal provision.</p>	<p>No Equivalence. See Policy Principle 8, Key element 1, above.</p>	<p>See Policy Principle 8, Key element 1.</p> <p>In addition: Amend the EMA 2005, the EIA Process Regulations 2007, the Marine Spaces Act 1978, the Offshore Fisheries Management Decree 2012, the Fisheries (Protection of Turtles) (Amendment) Regulations 2010, and the Forest Decree 1992 to prohibit</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
species			activities in areas of critical habitats unless there is no reduction in the population of any recognized endangered or critically endangered species.
Key element (3) Do not implement project activities in areas of critical habitats, unless... (iii) any lesser impacts are mitigated.	No corresponding legal provision.	No Equivalence. See Policy Principle 8, Key element 1, above.	See Policy Principle 8, Key element 1. In addition: Amend the EMA 2005, the EIA Process Regulations 2007, the Marine Spaces Act 1978, the Offshore Fisheries Management Decree 2012, the Fisheries (Protection of Turtles) (Amendment) Regulations 2010, and the Forest Decree 1992 to prohibit activities in areas of critical habitats unless any lesser impacts are mitigated.
Key element (4) If a project is located within a legally protected area, implement additional programs to promote and enhance the conservation aims of the protected area.	No corresponding legal provision.	No Equivalence. The EMA 2005 provides only that a proposal that could harm or destroy protected areas must be approved by the EIA Administrator – the highest level of approval. The Fisheries Act recognizes customary rights to protect fishing areas and resources, but does not explicitly enable or require Fijians with registered customary rights to promote and enhance conservation. The EIA Process Regulations 2007 do not mention protected areas. Fiji is a Party to the Convention Concerning the Protection of the World Cultural and Natural Heritage.	Amend the EMA 2005 to require any project located within a legally protected area to implement additional programs to promote and enhance the conservation aims of the protected area. Amend the EIA Process Regulations 2007 to include protected areas as factors that an approving authority must take into account in the EIA process.
Key element (5) In an area of natural habitats, there must be no	No corresponding legal provision.	No Equivalence. See Policy Principle 3, Key element 1. See Policy Principle 8, Key element 1.	Amend the EMA 2005, the EIA Process Regulations 2007, the Marine Spaces Act 1978, the Offshore Fisheries

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
significant conversion or degradation, unless (i) alternatives are not available		<p>The EMA 2005 does not mention alternatives.</p> <p>The EIA Process Regulations 2007 are inconsistent and do not address alternatives specifically in the case of natural habitats.</p>	<p>Management Decree 2012, the Fisheries (Protection of Turtles) (Amendment) Regulations 2010, and the Forest Decree 1992 EIA Process Regulations 2007 to:</p> <ul style="list-style-type: none"> ▪ define 'natural habitat'; ▪ provide for conserving natural habitats outside protected areas; and, in particular, ▪ stipulate that, if an activity is implemented within a an area of natural habitats, the decision to approve it must impose the condition there must be no significant conversion or degradation unless alternatives are not available. <p>▪ Amend the EMA 2005 and the EIA Process Regulations 2007 to include areas of natural habitats as factors that an approving authority must take into account in the EIA process.</p>
<p>Key element (6) In an area of natural habitats, there must be no significant conversion or degradation, unless...(ii) the overall benefits from the project substantially outweigh the</p>	No corresponding legal provision.	<p>No Equivalence.</p> <p>Neither the EMA 2005 nor the EIA Process Regulations 2007 provides guidance on how to weigh costs and benefits of a proposed project to make a decision on an EIA.</p> <p>See Policy Principle 8, Key element 5.</p>	<p>See Policy Principle 8, Key element 5.</p> <p>In addition: Amend the EMA 2005, the EIA Process Regulations 2007, the Marine Spaces Act 1978, the Offshore Fisheries Management Decree 2012, the Fisheries (Protection of Turtles) (Amendment) Regulations 2010, and the</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions¹	(C) Extent of Equivalence²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
environmental costs			Forest Decree 1992 to provide for conserving natural habitats outside protected areas and, in particular, stipulate that, if any activity is implemented within an area of natural habitats, the decision to approve the activity must impose the condition there must be no significant conversion or degradation unless the overall benefits from the activity substantially outweigh the environmental costs.
Key element (7) If a project is located within a legally protected area, there must be no significant conversion or degradation, unless...(iii) any conversion or degradation is appropriately mitigated.	EMA 2005 Section 27(2) In examining a development proposal, the approving authority must take into account-... (c) whether there exist any technically or economically feasible measures that would prevent or mitigate any adverse environmental or resource management impact;... Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA.	Partial Equivalence. See Policy Principle 8, Key element 4. EMA 2005 Sections 27(2) and 32(1) provide for mitigation, but not explicitly in the context of projects within protected areas.	See Policy Principle 8, Key element 4. In addition: Amend the EMA 2005, the EIA Process Regulations 2007, the Marine Spaces Act 1978, the Offshore Fisheries Management Decree 2012, the Fisheries (Protection of Turtles) (Amendment) Regulations 2010, and the Forest Decree 1992 to stipulate that, if a project is located within a legally protected area, there must be no significant conversion or degradation, unless any conversion or degradation is appropriately mitigated.
Key element (8) Use a precautionary approach to the use,	EMA 2005 Section 21(2) If the Director has reason to believe that an immediate threat or risk to the environment is occurring or may occur in any activity or undertaking of a Ministry, department, statutory authority, local authority or facility, the Director may issue	Partial Equivalence. See Policy Principle 2, Key element 5. Requirement to apply the precautionary principle is limited to the	Amend the Marine Spaces Act, Forest Decree, Fisheries Act and Regulations, and any other national law and/or regulation that directly or

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<p>development, and management of renewable natural resources.</p>	<p>a prohibition notice, in the prescribed form, to stop operation of the activity or undertaking.</p> <p>Biosecurity Promulgation 2008 Section 2(1)... "precautionary principle" means the principle that it is not unreasonable to refuse permission for an activity that has great potential negative impact, even if there is not sufficient scientific data to support a refusal, as incorporated in Article 5.7 of the SPS Agreement;...</p> <p>Section 17(1) The Minister may by order prohibit the importation of -</p> <p>(a) particular regulated articles from all countries; or (b) particular regulated articles from one or more particular countries of origin,...</p> <p>(3) In making a decision under this section, the Minister - a) must have regard to the international obligations of the Fiji Islands in respect of biosecurity; b) may apply the precautionary principle.</p> <p>Section 34(3) In determining specifications under subsection (1), the Authority - ...(d) may apply the precautionary principle.</p> <p>Offshore Fisheries Management Decree 2012 Section 6 The Minister, Permanent Secretary or Director, as appropriate, when performing functions or exercising powers under this Decree, shall—...</p>	<p>Offshore Fisheries Management Decree 2012 which explicitly requires government officials to apply the precautionary approach in the context of fisheries management.</p> <p>The Biosecurity Promulgation 2008 defines the precautionary principle, but provides that applying it is discretionary.</p> <p>The Forest Decree 1992 does not mention the precautionary approach.</p>	<p>indirectly governs renewable natural resources to require use of a precautionary approach.³¹</p>

³¹ In the non-binding EIA Guidelines 2008, a precautionary approach is implicit in the recommended questions that the summary and conclusion of an EIA report should answer. EIA Guidelines 2008

Recommended format for an EIA report

8. Summary and Conclusion

...b) State the findings and recommendation(s), which the project proponent wishes to raise to the authority's consideration.

- What is known and with what certainty
- [Wha]t is not yet known and why?
- What could be known with more time and money?
- What should be known in order to proceed?
- Prudent course of action in the face of uncertainty.

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	(d) apply the precautionary approach in accordance with this Decree;...		
Policy Principle 9: Apply pollution prevention and control technologies and practices consistent with international good practices as reflected in internationally recognized standards such as the World Bank Group's Environmental, Health and Safety Guidelines. Adopt cleaner production processes and good energy efficiency practices. Avoid pollution, or, when avoidance is not possible, minimize or control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions, waste generation, and release of hazardous materials from their production, transportation, handling and storage. Avoid the use of hazardous materials subject to international bans or phaseouts. Purchase, use, and manage pesticides based on integrated pest management approaches and reduce reliance on synthetic chemical pesticides.			
Key element (1) Apply pollution prevention and control technologies and practices consistent with international good practices	No corresponding legal provision.	No Equivalence. Section 8(1) of the EMA 2005 stipulates only that "[t]he functions of the [National Environment] Council are-... (f) to ensure that commitments made at regional and international fora on environment and development are implemented;...	Amend Section 61(1) of the EMA 2005 to add new clause (j): (j) to prescribe the use of pollution prevention and control technologies and practices that are consistent with regional and international commitments on environment and development; Current clause (j) becomes clause (l).
Key element (2) Adopt cleaner production processes	No corresponding legal provision.	No Equivalence.	Amend Section 61(1) of the EMA 2005 to add new clause (k): (k) to reduce all forms of pollution at the source, including by adopting cleaner production processes;...
Key element (3) Adopt good energy efficiency practices.	Electricity Act 1966 , amended as of 1983 Section 33(3) It shall be the duty of the owners of a selected station- (a) to operate the station so as to generate such quantity of energy, at such rates of output, and at such times, as the Authority may direct, and to conduct such operations with due regard to economy and efficiency;...	Partial Equivalence. The Electricity Act 1966 requires the owners of electricity generating stations to operate efficiently, but there does not appear to be any national law or regulation that establishes a general requirement to adopt good energy efficiency practices.	Amend the Electricity Act to introduce provisions on energy efficiency consistent with international best practice that are feasible to implement in Fiji.
Key element (4) Avoid pollution, or, when avoidance is not possible, minimize or	EMA 2005 Section 2..."pollutant" means dredged spoil, solid or liquid waste, industrial, municipal or agricultural waste, incinerator residue, sewage, sewage sludge, garbage, chemical waste, hazardous waste, biological material, radioactive materials, wrecked or discarded equipment, oil or any oil residue and exhaust gases or	Partial Equivalence. The EMA 2005 defines 'pollutant' to include exhaust gases. Under the EIA Process Regulations 2007, an EIA report must describe any pollution the proposed activity may generate and propose mitigation action for any adverse impacts.	See Policy Principle 4, Key elements 4 and 6. Harmonize the provisions of the EIA Process Regulations 2007 on EMPs with the

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
<p>control the intensity or load of pollutant emissions and discharges, including direct and indirect greenhouse gases emissions</p>	<p>other similar matter;...</p> <p>Section 32(1) A proponent must prepare and implement any environmental or resource management plan, monitoring programme, protection plan or mitigation measure that is required as a condition of any approved EIA.</p> <p>EIA Process Regulations 2007 Regulation 25. (1) An EIA report on a proposal must, to the extent appropriate, include –...</p> <p>(f) a statement of the various alternatives that have been considered for the activity or undertaking that are reasonably foreseeable and technically and economically appropriate, including the option of taking no action, and an outline of the reasons for choosing the proposed action;</p> <p>(g) a statement of the mitigation action proposed in respect of any adverse impacts identified under paragraph (e);...</p> <p>Regulation 31(3)... (d) specify maximum quantities of emissions of substances;...</p> <p>Environment Management (Waste Disposal and Recycling) Regulations 2007 (WDR Regulations 2007) Section 2(1)... “emission” means an emission of gas, smoke, steam or dust from premises to the environment;...</p> <p>Section 14(1) Subject to this regulation, every commercial or industrial facility that emits exhaust gases, smoke, steam or dust from any of its premises, must hold an air pollution permit in respect of the emission.</p> <p>Section 20(1) The [Waste and Pollution Control] WPC Administrator may attach as a condition of an air pollution permit a requirement for the facility to submit to the WPC Administrator an air pollution plan for approval. (2) An air pollution management plan is a plan to minimise and mitigate the impact on the environment of emissions from the premises of the facility. (3) An air pollution management plan must show that all emissions</p>	<p>Neither the EMA 2005, nor the EIA Process Regulations 2007, nor the WDR Regulations 2007 specifically mention greenhouse gases, nor do they mention indirect emissions.</p> <p>The EMA 2005, Section 32(1), generally requires a proponent to prepare and implement any management, monitoring, protection or mitigation plan required as a condition of an approved EIA. The EIA Process Regulations 2007 do not include an air pollution plan, required under the WDR Regulations 2007, as a condition for approving an EIA, but do stipulate that a condition for approving an EIA may be to specify maximum quantities of emissions.</p>	<p>provisions of the WDR Regulations 2007 on air pollution management plans.</p>

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	from the premises will, within 3 years from the issue of the permit, or such other period as the WPC Administrator decides, comply with the national air quality standards, or any other standards that are agreed by the WPC Administrator in writing in respect of the facility.		
<p>Key element (5) Avoid pollution, or, when avoidance is not possible, minimize or control waste generation</p>	<p>EIA Process Regulations 2007 <u>Schedule 1, EIA Screening Application</u> C3. Construction phase (if applicable) ...(iv) Potential sources of pollution during the construction phase, including airborne emissions, liquid effluents and solid waste materials C4. Operation of the undertaking or activity on completion of construction ...(iii) Potential sources of pollution from the undertaking or activity, including airborne emissions, liquid effluents and solid waste materials</p> <p>WDR Regulations 2007 Regulation 3(4) The requirement for a permit under these Regulations is in addition to any other requirement for a permit under the Act or any other written law.</p> <p>Regulation 4(1) Subject to this regulation, every commercial or industrial facility that disposes of solid waste or pollutant from any of its premises must hold a solid waste permit in respect of the disposal.</p> <p>Regulation 5(1) Subject to this regulation, every commercial or industrial facility that discharges liquid waste or pollutant from any of its premises must hold a liquid waste permit in respect of the discharge.</p> <p>Regulation 6(1) Before issuing a liquid waste permit to any facility, the WPC Administrator must, at the expense of the facility— (a) inspect the facility, the surrounding area and the receiving waters; (b) assess the capacity of the receiving waters to accept a discharge without detrimental effect on the local ecosystem. (2) The WPC Administrator may delegate the inspection and</p>	<p>Partial Equivalence.</p> <p>See Policy Principle 9, Key Element 4, above.</p> <p>Regulation 6(1) of the WDR Regulations 2007 requires an assessment of the capacity of the receiving waters to accept a discharge, before issuing a liquid waste permit, and provides that such an assessment may be delegated to a local authority. The EIA Process Regulations 2007 refer explicitly to liquid effluents only in the context of the screening application.</p> <p>Regulations 42 and 45 specify the relationship between EIA under the EIA Process Regulations 2007 and waste management plans under the WDR Regulations 2007. Regulation 45(1)-(2) requires a waste management plan as a condition for issuing a permit to any significant disposer or discharger. Regulation 45(4) stipulates that, if an EMP is required as part of an EIA, the EMP should form the basis for the waste management plan.</p> <p>The relationship between EIA and waste management plans under the WDR Regulations 2007 is explicit.</p> <p>It appears that the assessment required under Regulation 6(1) of the WDR Regulations 2007 may be in addition to EIA, but the relationship between EIA under the EIA Process Regulations 2007 and the assessment for a liquid waste permit is not clear.</p>	<p>Clarify the relationship between the EIA Process Regulations 2007 and the WDR Regulations 2007 with respect to assessments for liquid waste permits and amend one or both regulations as necessary.</p>

(A) ADB Safeguard Policy Statement	(B) Corresponding Legal Provisions ¹	(C) Extent of Equivalence ²	(D) Recommended Gap-filling Measures to Attain Full Equivalence
	<p>assessment function under subregulation (1) to the local authority for the area in which the premises are located and may (but is not obliged to) base the decision whether to issue a permit on the written advice of that authority.</p> <p>Regulation 10(2) The Director may, by order in the Gazette, declare any type of facility to be a significant solid waste disposer or significant liquid waste discharger by virtue of the potential impact on the environment of that type of facility.</p> <p>Regulation 12(2) The WPC Administrator may in writing direct a livestock facility that does not come within subregulation (1) to obtain a livestock waste permit if the Administrator considers that the impact of the facility on receiving waters requires control by means of a permit.</p> <p>Regulation 42(2) The following conditions are deemed to be attached to every permit issued in respect of a facility under these Regulations –...</p> <p>(f) the requirements of any waste management plan that is a condition of approval under the Environment Management (EIA Process) Regulations or of the permit will be complied with;...</p> <p>Regulation 45(1) A waste management plan (“WMP”) –</p> <p>(a) is a plan to minimise and mitigate the impact on the environment of the disposal or discharge of waste and pollutants from, or other regulated activity by, a facility;</p> <p>(b) must set out a timetable for the facility to comply with the standards and requirements set out in it.</p> <p>(2) A WMP –</p> <p>(a) is a requirement for the issue of a solid or liquid waste permit to any facility that is classified as a significant disposer or discharger;</p> <p>(c) may be made a requirement for the issue of any permit, other than an air pollution permit, as to which regulation [20] applies.</p> <p>(3) If a WMP is a requirement for the issue of a permit –</p> <p>(a) the facility must within 21 days of the issue of the permit submit the plan to the WPC Administrator for approval;</p> <p>(b) the permit does not take effect until the WMP has been approved in writing by the WPC Administrator;</p>		

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	<p>(c) compliance with the WMP is a condition of the permit. (4) If an environmental management plan for a facility has been approved as part of an EIA report in respect of the facility under the Environment Management (EIA Process) Regulations 2007, that plan, with any necessary modifications, should form the basis of the WMP for the facility.</p> <p><u>Explanatory Note</u> Separate Regulations have also been made relating to the environmental impact assessment (EIA) procedure under Part 4 of the Act.</p>		
<p>Key element (6) Avoid pollution, or, when avoidance is not possible, minimize or control release of hazardous materials from their production, transportation, handling, and storage</p>	<p>EMA 2005 Section 2... "pollutant" means dredged spoil, solid or liquid waste, industrial, municipal or agricultural waste, incinerator residue, sewage, sewage sludge, garbage, chemical waste, hazardous waste, biological material, radioactive materials, wrecked or discarded equipment, oil or any oil residue and exhaust gases or other similar matter;... "hazardous substance" means a substance which, due to its nature, condition and quantity is toxic and capable of posing an immediate or long term risk to human health or the environment; "hazardous waste" means toxic, inflammable, corrosive, reactive, infective or explosive waste, and includes waste which is potentially hazardous to human health or the environment;... "waste" includes litter, garbage, refuse, excavated and dredged spoil, and other discarded materials including any derelict motor vehicles or parts, waste materials from residential, commercial or industrial facility and from community activities (excluding religious offerings), solid or dissolved material in domestic sewage or other substances in water sources, such as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved materials in irrigation return flows or other common water pollutants;...</p> <p>Section 35(1) A facility must not- (a) discharge any waste or pollutant into the environment; (b) handle, store, process, or control any hazardous substance; (c) produce or generate any waste, pollutant or hazardous substance; or (d) engage in any activity that may have an adverse impact on</p>	<p>Partial Equivalence.</p> <p>The definition of "pollutant" in the EMA 2005 includes hazardous waste but does not include hazardous substances that are not included in the waste stream.</p>	<p>In Section 2 of the EMA 2005, amend the definition of "pollutant" to include "hazardous substances".</p>

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	<p>human health or the environment, unless the facility is issued with a permit under this Part.</p> <p>(2) Notwithstanding section 5, if a provision of any written law is inconsistent with the provision of this Part, the provision of this Part prevails.</p>		
<p>Key element (7) Avoid the use of hazardous materials subject to international bans or phaseouts</p>	<p>Ozone Depleting Substances Act 1998 Part III-Phasing out of Controlled Substances Limitations and prohibitions Section 14(1) No person shall import, export, store, dispose of, or manufacture any controlled substance in bulk listed in Part I of the Schedule with effect from 1st January 2000. (2) No person shall import, export, store, dispose of, or manufacture any controlled substance in bulk listed in Part II of the Schedule with effect from 1st January 2031. (3) No person shall import, export, sell or install halons or halon fire extinguishers with effect from 1st July, 1998. (4) No person shall refill halon fire extinguishers in non-essential applications with effect from 1st July, 1998. (5) Notwithstanding subsection (4), no person shall refill halon fire extinguishers in any circumstances with effect from 1st January, 1999. (6) No person shall, with effect from 1st July, 1998- (a) import or export any motor-vehicle that incorporates automotive air-conditioners which contain any controlled substance listed in Part I of the Schedule; or (b) import, export or sell any automotive air-conditioner which contains any controlled substance listed in Part I of the Schedule. (7) No person shall export or export any air-conditioner, air conditioner unit, refrigerator or refrigeration unit, including any compressor, that contains or uses any controlled substance listed in Part I of the Schedule with effect from 1st July 1998. (8) A person who contravenes a provision of this section commits an offence and is liable on conviction to the penalties provided in Part V.</p> <p>Section 17(1) This section shall come into force no later than 12 months after the commencement of this Act, on a date to be</p>	<p>Partial Equivalence.</p> <p>Full equivalence with respect to ozone depleting substances. No equivalence with respect to persistent organic pollutants.</p> <p>Fiji became a Party to the Stockholm Convention on Persistent Organic Pollutants (POPs) in 2001. Fiji has prepared a National Implementation Plan for the Stockholm Convention which will be reviewed in 2015. However, according to the Convention website, Fiji has not yet submitted a national report.³²</p>	<p>Adopt legal instruments to implement Fiji's obligations under the Stockholm Convention on Persistent Organic Pollutants.</p>

³² See <http://chm.pops.int/Countries/Reporting/NationalReports/tabid/3668/Default.aspx>

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	<p>appointed under section 2(2). (2) A person shall not undertake the recycling, recharging, or capturing of any controlled substance unless licensed. (3) A person who wishes to be licensed under this Act may apply to the Director in the prescribed form. (4) The Director shall, with the approval of the Minister, establish procedures and requirements for the licensing and training of persons required to be licensed under this Act. (5) The Minister may, by regulation prescribe the procedure, form and fees for applying for a licence required by subsection (2), for the form, duration and renewal of a licence, and the conditions to be attached to any licence, including the undergoing of training in the handling of controlled substances. (6) A person who contravenes a provision of this section, or any condition of a licence issued under it, commits an offence and is liable on conviction to the penalties provided in Part V.</p> <p><u>Schedule - List of Controlled Substances</u></p>		
<p>Key element (8) Purchase, use, and manage pesticides based on integrated pest management approaches</p>	<p>Pesticides Act 1971</p> <p>3 (1) The Registrar shall keep a Register of Pesticides... in which shall be entered the trade name of all registered pesticides, their chemical names and percentages of active ingredients or acid equivalents as appropriate, the name and place of business of the manufacturer and the name and place of business of the importer.</p> <p>4. No pesticide may be used, offered for sale or sold in Fiji unless such pesticide has been registered with the Registrar.</p> <p>5. -- (1) Upon application being made for registration of a Registrar pesticide, the Registrar may in his discretion- (a) register the pesticide With or without conditions; or (b) refuse registration of the pesticide and shall, if requested by the manufacturer, state the reasons for refusal.</p> <p>9. Every pesticide shall be sold in its original container Repacking except with the prior written permission of the Registrar, and in accordance with any written instructions given by the Registrar [sic].</p>	<p>Partial Equivalence.</p> <p>The Pesticides Act 1971 regulates the registration, sale, and use of pesticides. It does not require the use of integrated pest management approaches.</p>	<p>Amend the Pesticides Act 1971 and any other law and/or regulations that govern pest management to require integrated pest management.</p>

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	<p>10. Any person who contravenes any of the provisions of Offences sections 4, 5 or 9 of this Act or of the regulations made there-under shall be guilty of an offence....</p> <p>11. The Minister may make regulations for the purpose of Regulations carrying out the provisions of this Act and in particular, without prejudice to the generality of the foregoing, for-</p> <p>(a) prescribing forms to be used;</p> <p>(b) prohibiting or controlling the use of any pesticide;</p> <p>(c) prescribing any other matter which may be desirable or expedient for the better regulation and control of the sale of pesticides.</p>		
<p>Key element (9) Reduce reliance on synthetic chemical pesticides</p>	<p>No corresponding legal provision.</p>	<p>No Equivalence.</p>	<p>Amend the Pesticides Act 1971 and any other law and/or regulations that govern the use of synthetic chemical fertilizers to require reducing their use.</p>
<p>Policy Principle 10: Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease. Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.</p>			
<p>Key element (1) Provide workers with safe and healthy working conditions and prevent accidents, injuries, and disease</p>	<p>Factories Act 1971</p> <p>Section 2(1) In this Act, unless the context otherwise requires- "factory" means any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes...</p> <p>(8) Any premises belonging to or in the occupation of the Government or of any local authority, shall not be deemed not to be a factory, and building operations or works or engineering construction undertaken by or on behalf of the Government or any local authority, shall not be excluded from the operation of this Act by reason only that the work carried on thereat is not carried on by way of trade for purposes of gain.</p> <p>Section 3. Notwithstanding anything to the contrary in section 2-</p> <p>(a) no premises in or adjacent to and belonging to any mine or quarry being premises in which the only process carried on is the getting, dressing or preparation for sale of minerals, clay, sand, slate or stone shall be deemed to be a factory...</p>	<p>Partial Equivalence.</p> <p>The Factories Act excludes government premises and mines.</p>	<p>Amend the Factories Act 1971 to explicitly cover workers in quarries, mines, and all government premises which carry out activities that the Act categorizes as constituting a 'factory'.</p>

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	<p>Part III-General Requirements Section 10. Training and supervision Section 11. Structure of buildings Section 12. Cleanliness Section 13. Overcrowding Section 14. Ventilation Section 15. Lighting Section 16. Sanitary conveniences Section 17. Washing facilities Section 18. Drinking water Section 19. Clothing Section 20. Sitting facilities Section 21. First-aid Section 22. Meals in certain dangerous trades Section 23. Removal of dust or fumes Section 24. Safe means of access and safe places of employment Section 25. Floors, stairs and passages Section 26. Dangerous substances Section 27. Wall openings Section 28. Storage Section 29. Means of escape in case of fire Section 30. Instructions as to use of means of escape in case of fire Section 31. Safety provisions in case of fire Section 32. Prevention of fire</p> <p>Radiation Health Decree 2009 Section 25.-(1) A radiation safety and protection plan, for a radiation practice, is a plan for the practice for which a possession licensee is allowed to possess a radiation source under the licence. (2) The plan must state the following— (a) particulars of and an assessment of all the radiation hazards specific to the practice and source the licensee knows, or ought reasonably to know, exist or might arise; (b) the radiation safety and protection measures to deal with the hazards; (c) any other measures necessary to deal with the hazards; (d) how the licensee proposes to monitor and review the</p>		

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	<p>implementation and effectiveness of the measures;</p> <p>(e) the functions of the radiation safety officer to be appointed for the practice;</p> <p>(f) particulars of a training programme for persons carrying out the practice;</p> <p>(g) other particulars which may be prescribed by regulations.</p> <p>(3) If a person, other than a person being irradiated as part of a diagnostic or therapeutic procedure, may receive from the carrying out of the practice a radiation dose higher than the radiation dose limit prescribed under a regulation, the plan must provide for—</p> <p>(a) the supply of a personal monitoring device to the person; and</p> <p>(b) the assessment of the device.</p> <p>(4) The plan must be written in a way likely to be understood easily by persons who carry out the practice with the source...</p> <p>(6) In this section, radiation safety and protection measures are measures, prescribed under [a] regulations, for preventing or minimising health risks to any person arising from exposure to radiation from the carrying out of a radiation practice....</p> <p>Section 32.-(2) The licensee must ensure that whenever the practice is being carried out a person has been appointed as, and is carrying out the functions of, a radiation safety officer for the practice.</p> <p>Section 34.-(2) The licensee's approved radiation safety and protection plan for the practice must state at least the following functions for a radiation safety officer appointed by the licensee for the practice—</p> <p>(a) to identify ways, consistent with the plan, of minimising the radiation doses received by persons from the source;</p> <p>(b) to provide, or arrange for the provision of, training about radiation hazards and safe working practices to—</p> <p>(i) persons carrying out the practice;</p> <p>(ii) the licensee's employees and other persons working for the licensee who may be exposed to radiation emitted from the source; and</p> <p>(iii) other persons prescribed by regulations;</p> <p>(c) to provide, or arrange for the provision of, training for the persons mentioned in paragraph (b) about precautions that need</p>		

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	<p>to be taken to ensure radiation doses received by the persons and other persons from the source, are—</p> <ul style="list-style-type: none"> (i) for ionising radiation, below the radiation dose limit prescribed under a regulation and as low as reasonably achievable; or (ii) for non-ionising radiation, below the radiation dose limit prescribed by regulations and minimised as far as is practicable; <p>(d) to identify whether the plan is being complied with;</p> <p>(e) to regularly review the plan to ensure its continued effectiveness;</p> <p>(f) to identify whether the relevant radiation safety standard for the source, or premises at which the practice is being carried out, is being complied with.</p> <p>(3) If a radiation safety officer appointed for the practice is not also the possession licensee for the practice, the plan must also state the following functions for the officer—</p> <ul style="list-style-type: none"> (a) to advise the licensee of the ways, identified under paragraph (a) of subsection (2), of minimising the radiation doses received by persons from the source; (b) to report to the licensee— <ul style="list-style-type: none"> (i) any contravention of the plan or the relevant radiation safety standard identified under paragraph (d) or (f) of subsection (2); and (ii) what action needs to be taken to ensure compliance with the plan or standard; (c) to advise the licensee of the results of a review under paragraph (e) of subsection (2) and make recommendations to the licensee about changes to the plan. <p>Section 35.-(1) This section applies to the following persons—</p> <ul style="list-style-type: none"> (a) a possession licensee who— <ul style="list-style-type: none"> (i) in accordance with the licence, possesses a radiation source for a radiation practice; and (ii) provides to another person (“the monitored person”) a personal monitoring device, as required by the licensee’s approved radiation safety and protection plan for the practice; (b) a possession licensee who, under the licensee’s approved radiation safety and protection plan for a radiation practice under the licence, is a person (also the monitored person) required to be provided with a personal monitoring device; (c) a use licensee (also the monitored person) who, as a condition 		

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	<p>of the licence, is required—</p> <ul style="list-style-type: none"> (i) to wear a personal monitoring device when using a radiation source to carry out a radiation practice under the licence; and (ii) to have the device assessed from time to time. <p>(2) The licensee must, as soon as practicable after receiving the result of an assessment of the device under the plan or condition, give the Board written notice of the result...</p> <p>(4) The licensee must keep an up-to-date record for the monitored person (“personal monitoring record”), containing the following information—</p> <ul style="list-style-type: none"> (a) the results of all the assessments; (b) other information prescribed by regulations... <p>(6) For the purposes of subsection (4), the personal monitoring record must be kept until the later of the following days—</p> <ul style="list-style-type: none"> (a) the day that is 30 years after the day when the last assessment was conducted; (b) the day when the monitored person attains, or would have attained, the age of 75 years.... <p>Section 36.-(2) The licensee must, as soon as practicable after receiving the result of an assessment of the device under the plan, take reasonable steps to make the person aware of the result.</p> <p>(3) The licensee must allow the person to inspect, at any reasonable time, the personal monitoring record kept by the licensee for the person.</p> <p>(4) Subsection (5) applies if the person stops being a person to whom the licensee is required to provide a personal monitoring device under the plan.</p> <p>(5) If asked in writing by the person during the period for which a personal monitoring record is required to be kept by the licensee for the person, the licensee must as soon as practicable give the person a copy of the record.</p> <p>Section 39.-(2) A person, in carrying out the practice with the source, must not cause another person to receive a radiation dose higher than the radiation dose limit prescribed by regulations.</p> <p>Section 40.-(2) The licensee must take reasonable steps to ensure any person’s health and safety are not adversely affected by</p>		

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	<p>exposure to radiation because of the carrying out of the practice with the source....</p> <p>(4) The licensee must also take reasonable steps to ensure another person does not use the source unless the person is allowed to do so under a use licence or otherwise under this Decree.</p> <p>Section 41.-(2) A person carrying out the practice with the source must take reasonable steps to ensure any person's health and safety are not adversely affected by exposure to radiation because of the way the person carries out the practice.</p>		
<p>Key element (2) Establish preventive and emergency preparedness and response measures to avoid, and where avoidance is not possible, to minimize, adverse impacts and risks to the health and safety of local communities.</p>	<p>EMA 2005 Section 39(1) The WPC [Waste and Pollution Control] Administrator may-</p> <p>(a) in the case of an emergency situation, issue to a facility an order to stop work or operation for up to 72 hours; or</p> <p>(b) if a breach determined under this Part warrants an order for stop work or operation, apply to the court for an order to stop work or operation.</p> <p>(2) For the purposes of subsection (1)(a), the WPC Administrator must as soon as practicable obtain a court order to extend the period of the order.</p> <p>(3) If an order to stop work or operation is issued-</p> <p>(a) the permit (including conditions) is deemed to be suspended; and</p> <p>(b) the facility must be issued with a remedial notice.</p> <p>(4) A facility may apply to the court to remove the order to stop work or operation, and the court may only grant the application if it is satisfied that-</p> <p>(a) the emergency or breach has ceased;</p> <p>(b) the facility has remedied the emergency or breach; or</p> <p>(c) the WPC Administrator is satisfied that the emergency or breach has been adequately controlled.</p> <p>(5) If the court removes the order to stop work under subsection (4), the WPC Administrator may, upon application, re-instate the permit deemed to have been suspended under subsection (3)(a).</p> <p>(6) In this section, "emergency situation" means any uncontrolled,</p>	<p>Full Equivalence.</p>	<p>None required</p>

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	<p>unplanned or accidental release of waste or pollutant into the environment or any reasonable likelihood of release of waste or pollutant that may affect the environment, human life or health or the environment on which human health depends, and includes-</p> <ul style="list-style-type: none"> (a) soil contamination and devaluation of land; (b) accidental spills of hazardous substances; (c) contamination of nearby watercourse; (d) contamination of aquifer (underground water) or drinking water when there are artesian wells in the affected area; (e) introduction of toxic substances; (f) any other incidents (including a failure, accidents, sabotage) that may cause environmental damage. <p>Section 40(1) Notwithstanding section 39, if the Minister considers that an emergency has arisen in an area in relation to a pollution incident, the Minister may, with the approval of the Cabinet, declare an environmental emergency in that area, by order in the Gazette.</p> <p>(2) As soon as an emergency is declared under subsection (1), the Minister must establish an inter-agency emergency committee to co-ordinate the remedial emergency action under the direction and control of the Chief Executive Officer.</p> <p>(3) The Minister may make regulations (the "Environment Emergency Regulations") which-</p> <ul style="list-style-type: none"> (a) specify the conditions which apply to an emergency area declared under this section; (b) prescribe the signage to designate the area; (c) prescribe the method of securing the area; (d) prescribe the conditions for entry into the area and the activities which may and may not be conducted in the area; (e) regulate the use of the area for a specified period after the lifting of emergency situation; and (f) any other matter necessary for the purposes of such emergency. <p>(4) Environment Emergency Regulations may confer on the Chief Executive Officer or other public officer or persons authorised by the Chief Executive Officer powers additional to those conferred by this Act, and in particular may-</p>		

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	<p>(a) empower the Chief Executive Officer to requisition the use of any conveyance or equipment which the WPC Administrator considers would be of assistance in preventing the pollution incident;</p> <p>(b) empower the Chief Executive Officer or any officer to enter upon any land at any time in order to ascertain the cause of the pollution incident;</p> <p>(c) prohibit or restrict the use of any facility to the extent specified;</p> <p>(d) prohibit or restrict, subject to conditions, the movement of persons or conveyances.</p> <p>(5) Environmental Emergency Regulations must specify an expiry period.</p> <p><u>Schedule 2, Part 3</u></p> <p>1. Subject to section 27(4)(c), the following development proposals do not require the EIA process or an EIA report-...</p> <p>(d) subject to paragraph 2 and 3, a proposal for emergency action.</p> <p>2. For the purposes of this Part, an emergency action referred to paragraph 1(d) is action that must be performed immediately, without time for normal planning, design or review, in order to protect against catastrophic loss of property or life, or serious harm to the environment.</p> <p>3. A person or agency undertaking emergency action under this Part must make all reasonable efforts to consult with the Department and to incorporate in the emergency action measures that will reduce, mitigate or avoid adverse environmental effect.</p>		
<p>Policy Principle 11: Conserve physical cultural resources and avoid destroying or damaging them by using field-based surveys that employ qualified and experienced experts during environmental assessment. Provide for the use of “chance find” procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation.</p>			
<p>Key element (1) Conserve physical cultural resources and avoid destroying or damaging them</p>	<p>Preservation of Objects of Archaeological and Palaeontological Interest Act 1940</p> <p>Section 2...“object of archaeological or palaeontological interest” means any structure, erection, memorial, tumulus, cairn, place of interment, pit-dwelling, trench, fortification, irrigation work, mound, excavation, cave, rock, rockdrawing, painting, sculpture, inscription, monolith, or any remains thereof, fossil remains of man or animals or plants or any bed or beds containing, such fossil remains thereof, or any object (or any remains thereof) which is or are of archaeological, anthropological, ethnological, prehistoric, or</p>	<p>Full Equivalence.</p>	<p>None required</p>

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	<p>historic interest, and includes-</p> <p>(a) the site on which such object of archaeological or palaeontological interest was discovered or exists;</p> <p>(b) such portion of land adjoining the said site as may be required for fencing or covering in or otherwise preserving such object of archaeological or palaeontological interest; and</p> <p>(c) the means of access to and convenient inspection of such object of archaeological or palaeontological interest;...</p> <p>Section 3(1) Unless authorised by a permit issued by the Board, no person shall by means of excavation or surface operations search for any object of archaeological or palaeontological interest....</p> <p>Section 4. A permit given under section 3 may specify, in regard to the acts which it authorises, such limitations and conditions as the Board may consider necessary in order to protect any object of archaeological or palaeontological interest from injury, removal or dispersion, or may authorise excavation for and its removal to a place within Fiji subject to such limitations and conditions as to the Board shall seem fit.</p>		
<p>Key element (2) Use field-based surveys that employ qualified and experienced experts during environmental assessment.</p>	<p>Preservation of Objects of Archaeological and Palaeontological Interest Act 1940</p> <p>Section 3(2) The Board shall, before issuing a permit under this section, satisfy itself that the applicant is competent both by training or experience to carry out an exploration or excavation in accordance with the most recent scientific methods, and may, in its discretion, require to be satisfied that the applicant has the support, financial and otherwise, of an archaeological or scientific society or institution of repute.</p> <p>Section 18 Notwithstanding anything contained in this Act, where the Board is of the opinion that the excavation or removal of any monument is desirable in the interests of archaeology, science, history or art, it may grant a permit to any person to excavate and/or remove to a place within Fiji any such monument, or any part thereof, on such terms and subject to such conditions as it may think fit....</p>	<p>Full Equivalence.</p> <p>The Preservation of Objects of Archaeological and Palaeontological Interest Act 1940 provides for issuing a permit in the event that an object of archaeological or palaeontological interest is discovered in the course of an activity that is not a licensed archaeological or palaeontological excavation. Section 3(2) of the Act provides that permits will be issued only to applicants who are competent both by training or experience to carry out an exploration or excavation in accordance with the most recent scientific methods.</p> <p>The EIA Process Regulations 2007 require consultants to be registered. An EIA consultant tasked with assessing impacts on physical cultural resources would presumably have to have provided evidence of relevant qualifications and experience.</p>	None required

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	EIA Process Regulations 2007 Regulation 39(1) For the purpose of Part 4 of the Act, accreditation of consultants will be done by way of registration.		
Key element (3) Provide for the use of “chance find” procedures that include a pre-approved management and conservation approach for materials that may be discovered during project implementation	Preservation of Objects of Archaeological and Palaeontological Interest Act 1940 Section 5(2) Where any person discovers any object of archaeological or palaeontological interest, otherwise than in the course of operations permitted by a permit issued under section 3, he shall, without undue delay, give notice thereof, indicating the precise site and the circumstances of the discovery, to the Board, and shall, if so instructed by the Board, deliver such object to the Board.	Partial Equivalence. Section 5(2) of the Preservation of Objects of Archaeological and Palaeontological Interest Act 1940 provides for ‘chance finds’, but does not require a pre-approved management and conservation approach for such finds.	Amend the EIA Process Regulations 2007 to require that a mandatory EMP must provide for the use of “chance find” procedures for physical cultural resources, which include a pre-approved management and conservation approach for materials that may be discovered during project implementation.