

PNAO GOVERNANCE FRAMEWORK 2021



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1. Introduction

This document provides an overview of the Parties to the Nauru Agreement (PNA) governance framework. It outlines the legal framework and the associated rules, relationships, and processes relevant to governance of the activities of the PNA, and the operations of the PNA Office.

Good organisational governance encompasses accountability, transparency, integrity, stewardship and leadership. Good governance requires harmonisation of both the external and internal environments related to the organisation and includes legislation, governing body directives, strategic policy, a clear vision statement, an operational planning and reporting framework, organisational policies and procedures, independent oversight, and stakeholder engagement.

Foundations of good governance are provided by, inter alia:

- Up to date and relevant constitutional, legal, and government frameworks.
- Effective governing bodies.
- Documented policies, authorisations, and delegations.
- Effective leadership and decision-making.
- Quality planning and reporting.
- Systems and procedures for accountability, transparency, integrity, stewardship, and efficiency.
- Effective risk management.
- Documented and implemented values and codes of conduct.
- Active oversight processes and watchdog bodies.



2. PNA Overview

The Nauru Agreement is the primary governance document for the PNA and the PNAO. It is a legal instrument established under international law between eight Pacific Island Countries.

The Parties to the Nauru Agreement (PNA) are:

- Federated States of Micronesia
- Kiribati
- Marshall Islands
- Nauru
- Palau
- Papua New Guinea
- Solomon Islands
- Tuvalu

Tokelau is a dependent territory of New Zealand and is a special observer at PNA meetings, fully participating in meeting proceedings.

The Nauru Agreement:

- Provides a broad legal framework to govern a coordinated approach to fishing for the Parties' common fish stocks.
- Establishes the Parties to the Nauru Agreement Office (PNA Office) as the administrative agency for the Nauru Agreement, based at Majuro.

Subsidiary arrangements, agreements, and declarations are developed under the Nauru Agreement that introduce and support the implementation of specific fishery management schemes. They document the Parties' aspirations for both conservation and economic benefits from their fisheries resources.

The PNA governance framework includes:

- Oversight systems and processes.
- Structures through which organisational objectives are identified and delivered.
- The mechanisms for performance and compliance monitoring.
- The rules for decision-making and delegated responsibilities.

The success or otherwise of the PNA governance framework and the prevention of abuse of power is dependent upon support, guidance, and direction from the Parties, active implementation, and the fostering of a strong and supportive organisational culture within the PNA Office.

The PNA and the PNAO operate under external legal and policy influence. Of particular significance these include:

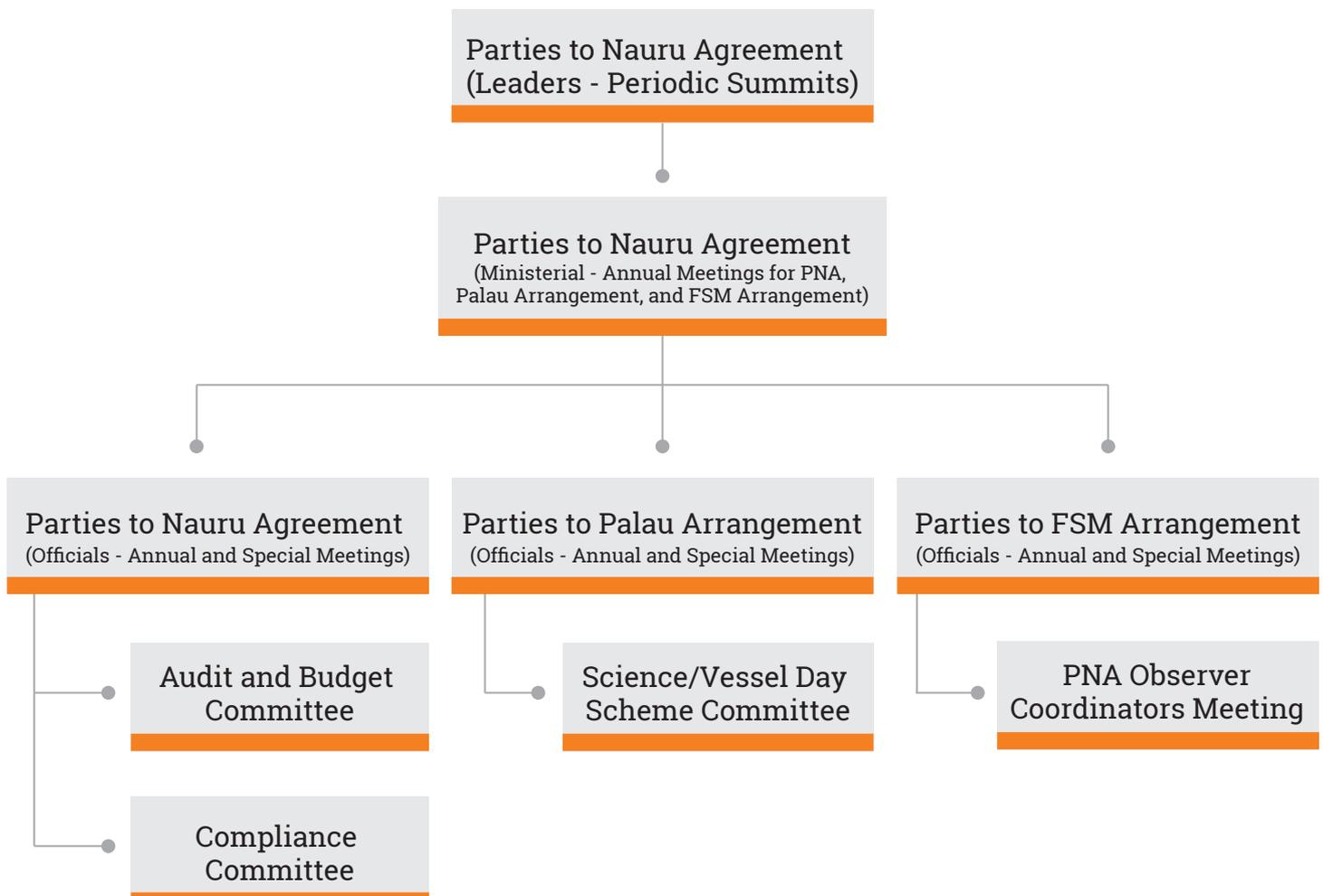
- National laws, policies, and directions.
- The 1982 Law of the Sea Convention that defines rights and responsibilities with respect to the use of the oceans, and provides guidelines for businesses, the environment, and the management of marine natural resources.
- The 1995 United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.
- The 1979 Forum Fisheries Agency Convention that requires members to promote intra-regional co-ordination and co-operation with respect to:
 - o harmonisation of policies with respect to fisheries management
 - o co-operation in respect of relations with distant water fishing countries
 - o co-operation in surveillance and enforcement
 - o co-operation in respect of onshore fish processing
 - o co-operation in marketing
 - o co-operation in respect of access to the 200-mile zones of other Parties.
- Numerous other relevant international instruments in customary public international law, globally accepted standards that govern behaviour, and legal codes (examples include those relating to criminality, port state measures, customs, quarantine, labour, marine pollution, and maritime safety).

3. PNA Office

The PNA Office is established under the Nauru Agreement and is subject to the direction and control of the Parties. In summary, the PNA Office has the functions to support the Parties to develop and coordinate commercial programmes and activities, coordinate implementation of the Nauru Agreement, to develop fisheries conservation and management initiatives, formulate initiatives to maximise economic benefits, and administer PNA management initiatives.

The Director (CEO) of the PNA Office is appointed by the Parties and is responsible for management and control of the office and its resources and reports to the Parties.

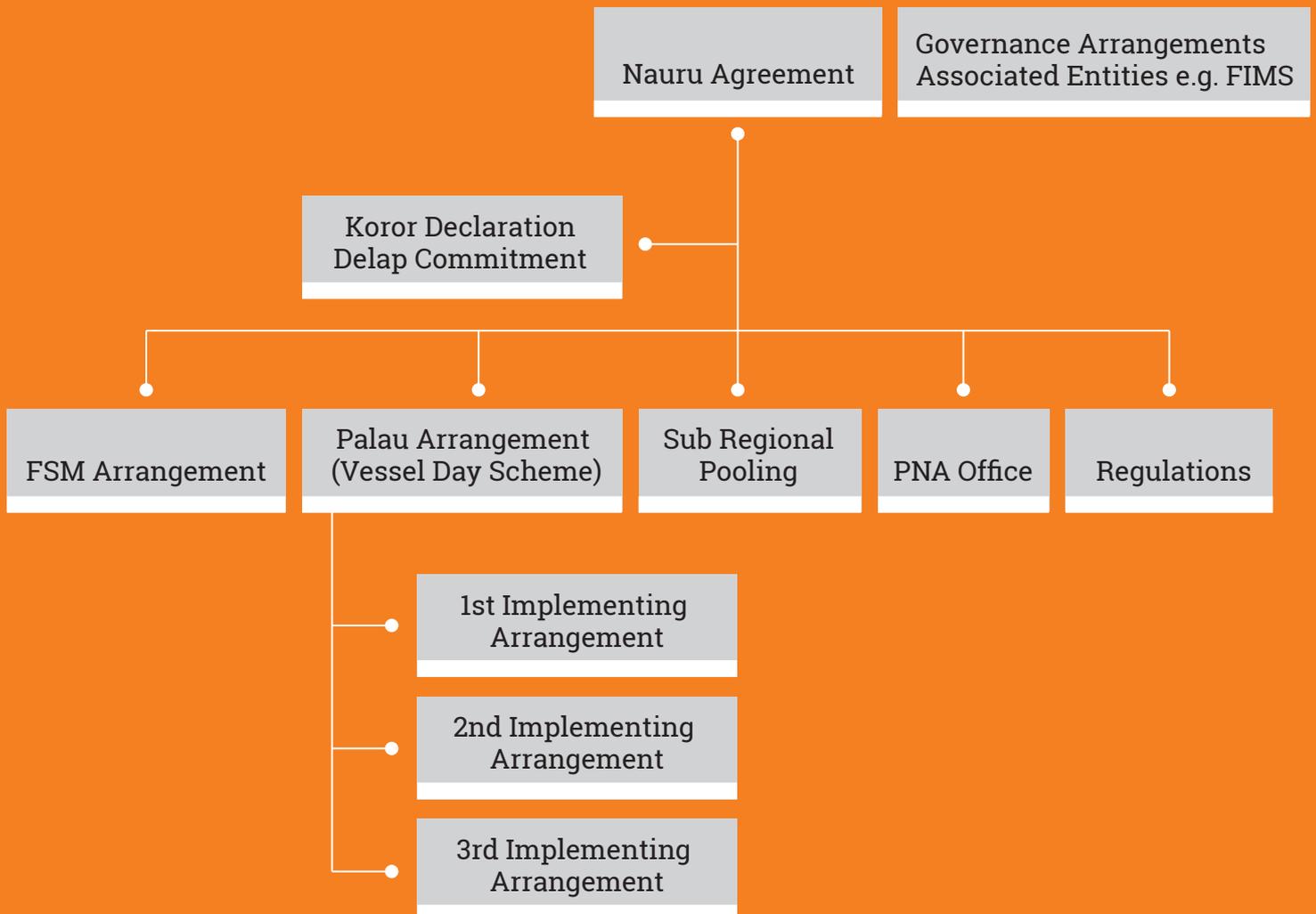
Governance Decision Making and Support Advisory Bodies





4. The PNA Governance Framework

Key Governance Instruments and Entities



Instruments

a. Nauru Agreement (1982)

The NAURU AGREEMENT CONCERNING COOPERATION IN THE MANAGEMENT OF FISHERIES OF COMMON STOCKS is an international legal instrument between eight Pacific Island Countries.

The Parties to the Nauru Agreement (PNA) are: Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu.

The Nauru Agreement states that the Parties: *“shall seek without any derogation of their respective sovereign rights, to co-ordinate and harmonise the management of fisheries with regard to common stocks within the Fisheries Zones, for the benefit of their peoples”*.

The key governance arrangement for the Nauru Agreement is the annual meeting. An annual meeting of the Parties shall be convened each year in order to promote the implementation of this Agreement and to deal with other matters as may be determined by the Parties.

As a rule, the annual meeting is held in two parts. Officials meet to deal with administrative matters, and Ministers meet subsequently to consider and approve strategic matters. The Parties generally meet on numerous other occasions during the year at both Officials level and Ministerial level, as necessary to ensure effective governance.

The Nauru Agreement was amended in 2010 to create the PNA Office.

b. The Palau Arrangement (1992)

The PALAU ARRANGEMENT FOR THE MANAGEMENT OF THE WESTERN PACIFIC FISHERY is a subsidiary arrangement to the Nauru Agreement. The Palau Arrangement provides a framework for decision making about the fisheries of the Western Pacific Fishery that are under the jurisdiction of the Parties.

The Palau Arrangement comprises the Vessel Day Schemes (VDS) to manage i) purse seine and ii) longline fishing effort, within the exclusive economic zones of the Parties. The Parties to the Palau Arrangement are the eight Parties to the Nauru Agreement, plus Tokelau (the “8+1”). Tokelau is a participant in the Palau Arrangement under an Arrangement in which it has also agreed to implement all current and future conservation and management measures agreed by the PNA.

The key governance arrangement for the administration of the Palau Arrangement is the convening of management meetings at least once each year.

The functions of the management meeting are:

- (a) to consider all available information including scientific data relating to catch and operations of fishing vessels within the Area and economic and socio-economic information relating to the impact of the fishery on Parties;
- (b) to consider management measures, which may include, but are not limited to -
 - i) the regulation of fishing effort by fishing vessels which have good standing on the Vessel Register;
 - ii) the implementation and operation of Management Schemes, and the review and amendment of those Management Schemes as appropriate;
 - iii) the establishment of closed areas and closed seasons; and
 - iv) any other management measure deemed necessary from time to time.
- (c) the establishment and implementation of a system of observation and inspection consistent with regionally agreed initiatives;
- (d) the more effective implementation of the First, Second, Third and other Implementing Arrangements entered into pursuant to the Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest, 1982 as amended;
- (e) the development of surveillance and enforcement procedures consistent with regionally agreed initiatives;
- (f) the referral of matters for consideration by Special Working Groups as may be considered necessary from time to time;
- (g) the adoption of a budget for the management of tuna resources; and
- (h) the determination of the level of contributions by Parties.

c. The FSM Arrangement (1994)

THE FEDERATED STATES OF MICRONESIA ARRANGEMENT FOR REGIONAL FISHERIES ACCESS establishes a licensing regime under which fishing vessels of the Parties may gain access to the waters within the Arrangement Area on terms and conditions no less favourable than those granted by the Parties to foreign fishing vessels under bilateral and multilateral access arrangements.

The key governance arrangement for the administration of the FSMA is the Annual Meeting of the Parties convened immediately preceding or following the annual meeting of the Parties to the Nauru Agreement. The purposes of the Annual Meeting shall be:

- (a) to review the operations of all vessels entered on the Register of Eligible Fishing Vessels and assess the extent to which each vessel, or fishing enterprise, as appropriate, has satisfied the eligibility criteria and fulfilled the objectives of this Arrangement;
- (b) to review the eligibility criteria;
- (c) to adopt amendments to this Arrangement;
- (d) to review the level of fees for regional access licences;
- (e) to discuss cooperative enforcement measures;
- (f) to consider the effectiveness of the observer programme established pursuant to Article 17 and to adopt procedures for the implementation of the programme;
- (g) to consider and approve an administrative costs budget, which shall consist only of the direct costs of performing functions and providing services in accordance with this Arrangement;
- (h) to consider requests to accede to this Arrangement by member States of the Forum Fisheries Agency pursuant to Article 22(2); and
- (i) to perform any other functions to satisfy any requirement of this Arrangement or as are necessary to attain the objectives of this Arrangement.

FSMA Amendment

An amendment to the FSMA has been approved by the Parties to provide for the participation of Tokelau.

d. Sub-regional pooling

Parties have established agreements (some in the form of Memoranda of Understanding) to permit further sub-regional pooling schemes for vessel days.

e. First Implementing Arrangement (11A) (before 1990)

An arrangement implementing the Nauru Agreement setting forth minimum terms and conditions of access to the fisheries zones of the Parties.

The 11A binds the Parties to participate in the Regional Register of Fishing Vessels, and establishes common formats for foreign fishing agreements, and minimum terms and conditions for licensing of foreign fishing vessels. These include licensing procedures, access for authorised personnel to vessels, catch reporting, zone entry and exit reporting, and identification requirements for vessels.

f. Second Implementing Arrangement (21A) (1990)

A second arrangement implementing the Nauru Agreement setting forth additional terms and conditions of access to the fisheries zones of the Parties.

The 21A builds on the 11A and prohibits transshipment at sea, and requires high seas catch monitoring, the placement of observers, and electronic vessel position monitoring.

g. Third Implementing Arrangement (31A) (2008) (as amended)

A third arrangement implementing the Nauru Agreement setting forth additional terms and conditions of access to the fisheries zones of the Parties.

The 31A builds on the 11A and the 21A and includes implementation of catch retention requirements, an annual FAD closure, a prohibition on whale shark sets, a closure of certain high seas areas, 100 percent observer coverage, a minimum mesh size, and a prohibition on high seas bunkering.



Directives

h. Bikenibeu Declaration (2009)

Securing Greater Value from their Common Fisheries Wealth.

The Bikenibeu Declaration¹ was agreed by the Heads of States of Parties (or their delegated representatives) in October 2009 as an agreement made under the Nauru Agreement. The agreement is a commitment to:

- Establish the PNA Office in Majuro with the functions to:
 - o Develop strategic fisheries conservation and management initiatives for the Parties.
 - o Develop initiatives to maximise the sustained direct and indirect economic benefits to the Parties.

i. Koror Declaration (Feb 2010)

Committing Parties to the Nauru Agreement to joint efforts to increase the economic value and derive greater benefits from the tuna resource.

The Koror Declaration was agreed by the Heads of States of Parties (or their delegated representatives) in February 2010 as an agreement made under the Nauru Agreement. The agreement is a commitment to:

- Effective conservation whilst maximising economic returns.
- Confirms the vessel day scheme.
- Close certain high seas areas.
- Initiate management practices for optimal utilisation of the tuna fishery.
- Proceed with full MSC certification.

¹ The Bikenibeu Declaration references the “Kiribati Paper”. This paper was noted as the basis for elaborating on the structure, functions and priorities of the PNA Office but was not approved by the Parties and hence is not an agreed part of the governance structure.

Organisational

j. Delap Commitment (2018)

Securing our Common Wealth of Oceans.

The Delap Commitment was agreed by the Heads of States of Parties (or their representatives) in March 2018 as an agreement made under the Nauru Agreement.

The agreement is a commitment to a range of actions, including to:

- Renew the vision of safeguarding rights, exercising control, supporting sustainability, and maximising returns.
- Reaffirm PNA core business of collaborating on strategy and policy to coordinate and harmonise the management of fisheries for the common benefit of their peoples.
- To use resources to create self-reliance.
- To continue effort to increase Parties share of the value of the fishery through vertical integration.
- To implement a prohibition on purse seine bunkering on the high seas.
- To pursue legal recognition of UNCLOS defined coastal baselines irrespective of sea level rise.
- To explore measures to reduce marine pollution and the carbon footprint of the fishery sector.
- To provide a draft strategic plan for the PNA.
- To develop additional CMMs for the High Seas.
- To reduce by catch including the improvement of FAD fishing.
- To strengthen good governance and management of the PNA Office.

k. The PNA Office (April 2010)

The Parties to Nauru Agreement Office (PNA Office) was established under an amendment to the Nauru Agreement in April 2010.

Subject to the direction and approval of the Parties the functions of the PNA Office are to support the Parties to:

- develop and coordinate commercial programmes and activities for which a Party may enter as it so decides;
- coordinate implementation of the provision of this Agreement and other agreements concerning the Parties;
- develop strategic fisheries conservation and management initiatives for the Parties;
- formulate initiatives to maximise the sustained direct and indirect economic benefits to the Parties;
- administer PNA management initiatives; and
- undertake such other functions as the Parties may decide.

l. Headquarters Agreement (October 2010)

The HEADQUARTERS AGREEMENT BETWEEN THE PARTIES TO THE NAURU AGREEMENT OFFICE (PNA OFFICE) AND THE REPUBLIC OF THE MARSHALL ISLANDS (RMI) was signed on 15 October 2010.

The agreement makes commitments to, and places obligations on, RMI and the PNA Office with respect to the legal status of the PNA Office, privileges and immunities, taxation, communications, acquisition of land, provision of services, and diplomatic status for the Director and other staff, as is accorded to the Government of a foreign State under the Vienna Convention.

Planning

m. Planning Framework

The PNA has a three-tier planning framework.

(i) The PNA Strategic Plan 2019-2025

The main focus of the Strategic Plan is:

1. Maintaining Strengths and addressing weaknesses: PNA interests are well served by the “PNA Instruments” and programs already in place (most obviously the purse seine VDS). PNA will continue to focus and invest strongly in strengthening those instruments and enhancing the way that Parties cooperate in managing them.
2. Commercialisation: The commercial emphasis of PNA has shifted from “direct commercial engagement” to one of creating an enabling environment that allows individual or groups of Parties to seize new opportunities throughout the fisheries value chain. This may or may not involve the formation of business ventures between some or all Parties. Where there are PNA business ventures they will be subject to stand-alone management (own Governance Board, management, finances etc), as is now the case for Pacifical.
3. Representation and Advocacy: PNA share numerous values, positions and aspirations as well as facing similar risks and opportunities. PNA will continue to cooperate so as to present joint views and proposals (internally and at fora such as FFA meetings and WCPFC) that promote their interests, and mitigate risks.

(ii) The PNA Office Business Plan

The purpose of the PNA Office Business Plan (BP) is to provide clarity and transparency to the Parties about the work the PNA Office undertakes and the associated costs, and to direct and guide the work of the PNA Office. The BP recognises the Parties’ desire for the PNA Office to be run in a business-like fashion.

The Parties’ expectations of the PNA Office in this respect are that:

- i) Services are delivered within the approved budget.
- ii) The PNA Office is governed with the same systems, rigour, discipline, and accountability that applies to a business.
- iii) The PNA Office operates in an efficient and effective way, in line with an appropriate governance framework.
- iv) Budget funding is regarded as an investment, with the aim of optimising services, and future benefits to the Parties.

(iii) PNA Office Staff Individual Work Plans

The individual work plan is a framework for agreement with the staff member and manager that outlines what the manager expects from the staff member and what the staff member can expect from the manager and organisation. Performance appraisal is undertaken twice each year to assess to what extent the plan has been achieved.

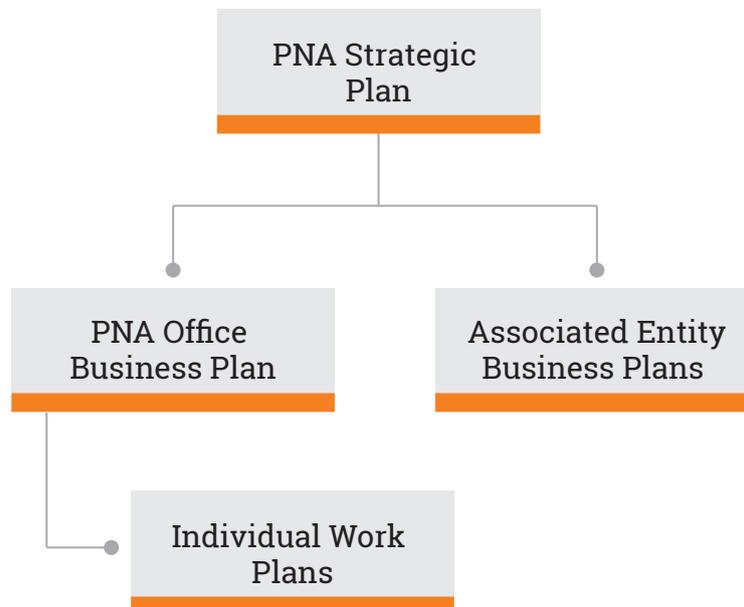
Individual work plans are built around four parts:

- i) Job description key result areas.
- ii) Business plan actions.
- iii) Personal attributes.
- iv) Staff development.

In December or January, a discussion is held to review performance in the previous year, and to plan for the next year. In June or July each year, a mid-year discussion takes place that is primarily about assessing progress and updating the workplan in light of changes in the operating environment.



PNA Planning Framework



Commercial

n. Commercial operations

There are further governance and planning documents related to commercial operations for Pacifical, FIMS, and the POA.

These entities do not make policy decisions on behalf of the PNA.

i) Pacifical

Pacifical c.v.² is a company that provides validation and traceability for fish caught under the PNA Marine Stewardship Council sustainability certification program from fishery waters certified under the PNA MSC scheme.

Pacifical is a joint venture partnership between the PNA Association and a private Dutch company, Sustunable b.v.³ (the operating partner).

The Pacifical structure limits the commercial liability of the PNAA (as long as the PNAA has no involvement in management of the company).

The PNA Association meets annually. It comprises a representative of each Party and appoints two Directors to the Board of Pacifical.

The Pacifical Board meets at least annually to review progress and performance.

The future of Pacifical arrangements are currently under review.

ii) FIMS database

FIMS is a fisheries database originally built by Australian company Quick Access Computing.

FIMS Inc is a limited liability company comprising equal shareholdings of each Party to the Nauru Agreement and Tokelau. The company was established to buy, own and administer the FIMS database intellectual property. The FIMS Inc Board was established in 2019 and comprises a Director from each shareholder.

Governance of FIMS Inc is beyond the direct scope of control for the PNA.

iii) PNA Observer Agency

The PNA Observer Agency (POA) is the entity that manages the PNA observer program. The POA is administered by the PNAO under contract to MRAG Asia Pacific.

Implementation

o. PNA Office Staff and Financial Regulations

The PNA Office has both staff and financial regulations. These regulations were based on those of the Forum Fisheries Agency.

The staff regulations govern the full range of human resource management issues, including remuneration, leave, superannuation, recruitment, termination, hours of work, and allowances.

The financial regulations govern the scope of the PNA Office's financial operations and include the requirement for approval of budgets by the PNA, and for independent audit of the PNA Office accounts.

The Parties have directed⁴ the development of a single PNA Office Regulation under the PNAO Business Plan.

p. Structures

The decision-making and supporting entities are.

Governing instruments – decision making structures.

- The Parties to the Nauru Agreement.
- The Parties to the Palau Arrangement parties.
- The Parties to the FSM Arrangement.

Other supporting entities and roles.

- The Audit and Budget Committee (ABC) - provides advice to the PNA and support to the PNA Office.
- The PNA Compliance Committee - monitors compliance with PNA instruments and agreements and provides advice to the PNA.
- The PNA Office - implements the Nauru Agreement, the Palau Arrangement, and the FSM Arrangement.

Each decision-making structure can meet at the level of Leader, Minister, or Officials. Whilst the instruments do not specify the kinds of decisions each level makes it has become the practice that Leaders and Ministers focus on higher level strategic issues, whilst officials focus on the more administrative matters. As a matter of policy, the decisions and directions of each decision making level are not overturned at a lower level.

² C.V. "A Dutch Limited Partnership" with at least two partners. Partners are either General Partners (the operating body of a CV company) or Limited Partners (usually funders). Only a General Partner can hold assets. Limited Partners cannot be involved in management or they lose their limited liability protection.

³ B.V. "Besloten Vennootschap" a Dutch limited liability company that allows foreign ownership.

⁴ SPNA69 Port Moresby.

The PNA Office is responsible for maintaining the records and decisions of each meeting.

q. Annual meetings

A formal annual meeting is held for each of the key instruments: the Nauru Agreement, the Palau Arrangement, and the FSM Arrangement. The Chair for each instrument is appointed on an annual basis, at the annual meeting. The usual procedure is for the Chair to rotate between the Parties.

i) Rules of procedure

Formal rules of procedure are in place for all meetings.

ii) Observer participation

Observer participation is generally encouraged. The Chair may however direct certain parts of any meeting to be closed to participation only by the Parties.

r. Risk management

The PNA Office has a risk management framework in place.

s. External oversight

There are no external oversight bodies for the PNA or its operations.

t. Independent audit

The PNA Office accounts are the subject of external independent audit each year.

u. Operational oversight

The work of the PNA Office is subject to oversight by the Parties, supported by the ABC.

v. Policy manual

The CEO of the PNA Office approves policies with respect to the conduct of staff and operations of the office.

w. Data sharing

The PNA Office has data sharing MOUs in place with the Parties, the Pacific Community (SPC), and the Western and Central Pacific Fisheries Commission (WCPFC).

x. Donor engagement

Engagement with donors is governed by PNA policy.



Annexure 1: Definitions

Abuse of Power: The deliberate commission of an unlawful, improper, or unethical act, done in an official capacity, which affects the performance of official duties.

Good Governance: Societally acceptable standards of governance mandated through description and codification, or widely accepted practice.

Governance: The exercise of power. The concept that when you govern, you exercise power. A critical theme of governance.

Governance Framework: The laws, agreements, treaties, regulations, policies, procedures, relationships, structures, and the like that guide the way in which power is exercised and controlled and by which those involved are held to account.

PNA Governance: The Parties operating within the mandate of their respective governments, and the Nauru Agreement and related instruments, whether at meetings of officials, ministers, or leaders.

PNA Office Governance: The Chief Executive Officer (CEO) and staff operating within the delegation and discretion provided under the Nauru Agreement and related instruments, where directed by the PNA exercising legitimate authority, and in accordance with applicable law, policy, and standards.



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