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MANAGEMENT REGIMES

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New Caledonia is an autonomous local authority within the Republic of France, with its own territorial government, congress and provincial assemblies. The political “Noumea Accord” of 1998 initiated a staged transfer of most of administrative powers from France to New Caledonia.

Importantly, the 3 provinces (South Province, North Province and Loyalty Islands Province) have jurisdiction over all matters that are not expressly vested in the State or territory. As environment is not mentioned within the French State or New Caledonia’s power, most of environmental regulations are adopted by the provincial assemblies.

Nevertheless, some important powers regarding the law of the sea are vested in New Caledonia, directly or indirectly related to protection and conservation of marine species, areas or habitats, including public lands, customary land ownership; public health, zoosanitary and phytosanitary safety, exploitation and management of natural resources in the exclusive economic zone (including deep sea mining), traffic and road transport and ports.

The French State has primary jurisdiction for international affairs and as such most of international conventions ratified by France are applicable in New Caledonia (i.e. Montego Bay Convention on the law of the sea of 1982). The autonomous territory can also sign and ratify regional conventions. Importantly, in July 2008, the World Heritage Commission listed 'The lagoons of New Caledonia: reef diversity and associated ecosystems' as a serial listing of 6 marine clusters containing 15743 km² of coral reefs.

In 2014, the government of New Caledonia created the ‘Natural Park of the Coral Sea’ with the ambition of protecting the ecological integrity of the marine environment. The main objectives of the Natural Park of the Coral Sea are the protection of ecosystems and the maintaining of the existing links between them, preservation of rare and migratory endangered species and identification and enhancement of the Natural Parks cultural heritage. In 2017, a management plan of the Natural Park of the Coral Sea was presented to the government, in order to achieve these objectives.

The division of powers between the different levels of governance has resulted in a great complexity regarding the responsibilities of each level of government in relation to environmental matters. Moreover, another important feature is the strong customary tenure and management practices of the Kanak people on marine areas, even if the ownership of these are vested within the provinces.

Regarding protection and conservation measures and legal protective instruments related to marine species, areas and habitats, most of the regulations and the management are however the responsibility of provincial authorities.

Each province adopted its own Code of environment, respectively in 2008 (North province¹), 2009 (South province²) and 2016 (Loyalty Islands Province³).

The structure of the three codes is very similar, but there are significant differences in their substantive provisions. In each Code, there are regulations dealing with the preservation of natural heritage, including protected areas, ecosystems and species. There are also provisions about natural resource management, including fisheries, and, in the case of South Province, exploitation of biological, genetic and biochemical resources⁴.

1. Protected Areas

The protected area provisions of North and South provinces code were substantially updated when the codes were adopted. In both provinces, protected areas have been consolidated into several categories, aligned with the internationally recognised IUCN protected area categories⁵. Each type of protected areas has clearly defined objectives and management rules. These protected area types and existing protected areas have been reclassified into four categories in the South Province⁶ and seven categories in the North province⁷. The protected areas regulation which will soon be enacted in the Loyalty Islands province, on the contrary, is not based on IUCN categories but is seeking to formalise customary practices within marine areas traditionally managed by kanak population.

2. Ecosystem Protection

The South Province code provides protection for some ‘ecosystems of heritage interest’. Among these, mangroves, seagrass beds and coral reefs are listed ecosystems. Regarding such ecosystems, the regulation requires provincial authorisation in any case an operation is likely to have a significant impact on them. Such an authorisation is only issued if an impact study demonstrates that the operation will not significantly undermine the conservation status of the ecosystem. However, in the absence of an alternative, authorisation may be granted on ‘public interest’ grounds, subject to mitigation or compensation conditions. As the notion of ‘public interest’ is not defined, many authorisations are granted on this ground.

Neither the North Province, nor the Loyalty Islands province codes provide for such protection of ecosystems.

¹ Délibération n°306-2008/APN relative au Code de l’environnement de la Province Nord, JONC, 29 décembre 2008, p. 8578 et s..

² Délibération n°25-2009/APS du 20 mars 2009 relative au Code de l’environnement, JONC, 9 avril 2009, p. 2590 et s..

³ Délibération 2016-13/API 2016 portant adoption du Code de l’environnement de la province des îles Loyauté, JONC, 23 juin 2016, p. 5936 et s.

⁴ The latter regulation is about to be adopted both in North and Loyalty Islands Province by the end of 2017.

⁵ Dudley, N. (Editor) (2008). Guidelines for Applying Protected Area Management Categories. Gland, Switzerland: International Union for Conservation of Nature (IUCN).

⁶ Strict nature reserve (IUCN Category Ia), provincial park (IUCN Category II), nature reserve (IUCN Category IV) and sustainable resource management area (IUCN Category VI).

⁷ Strict nature reserve (IUCN Category Ia), wilderness reserve (IUCN Category 1b), provincial park (IUCN Category II), natural or cultural heritage site (IUCN Category III), nature reserves (IUCN Category IV), natural or cultural landscape (IUCN Category V), sustainable resource management area (IUCN Category VI).

3. *Species Protection*

There are, in North and South provinces, existing regulations protecting endemic, rare and threatened species are in force, in order to respond the severe threats to New Caledonia's biodiversity. Listed protected species include whales, dolphins, dugongs, marine turtles, birds, fishes, freshwater crustaceans, molluscs.

It is prohibited to hunt, capture, destroy, remove, disturb, transport, use, trade or possess a protected animal species, or to destroy or remove its eggs or nest. It is also prohibited to destroy, modify, alter or degrade the habitat of a protected species. Provincial authorisation may be issued for collecting, possessing or trading a protected species for conservation or educational purposes, including breeding, research or presentation to the public.

The Loyalty Islands province has not yet enacted such a regulation, but some regulations protect a few species, such as coconut crabs.

The provincial codes do not deal with international trade in endangered species, as implementation of the *Convention on International Trade in Endangered Species* (CITES) as there is a legal debate whether this matter falls within the jurisdiction of the territory or the provinces. As a result, the Convention has not yet been implemented, even if the French State administration is taking great care about the respect of the stipulations of the Convention as it is its responsibility that can be engaged.

4. *Invasive Species*

Invasive species can have an important impact on the New Caledonian environment. Each code provides for a list of invasive plant and animal species. The codes prohibit wilful, negligent or reckless introduction of listed invasive species into the wild. It is also prohibited to cultivate, transport, use, sell or purchase any invasive plant. The provincial administration may authorise the production, use or possession of listed invasive species for agricultural, fisheries or forestry purposes (crayfish for example) or, in the Loyalty Islands province, for customary practices.

5. *Fishing*⁸

The fisheries regulations in North and South provinces have been substantially modified during the codification process. In each province, the code emphasises the 'long-term preservation' and 'responsible and rational exploitation' of fisheries resources. Professional and artisanal fishers are required to apply for a fishing licence, and recreational fishing is regulated. Fishing methods and gear are controlled, size limits apply and conservation measures are defined for certain marine species (e.g. groupers, lobsters, mud crabs, clams, trocas, oysters, *bêche-de-mer*). Further management measures may be established (e.g. total allowable catch, individual quotas, seasonal closures, area closures,

⁸ Clark P, David C., New provincial environmental legislation in New Caledonia : continuity and reform in environmental governance in a French pacific territory », *Asia Pacific Journal of Environmental Law*, n° 13, 2011, pp. 135-145

gear restrictions). North Province specifically recognises customary marine resource management practices and undertakes to work with customary resource owners to more fully integrate these practices in future regulations. The Loyalty Islands province is planning to enact a new regulation with the same concerns about customary practices.