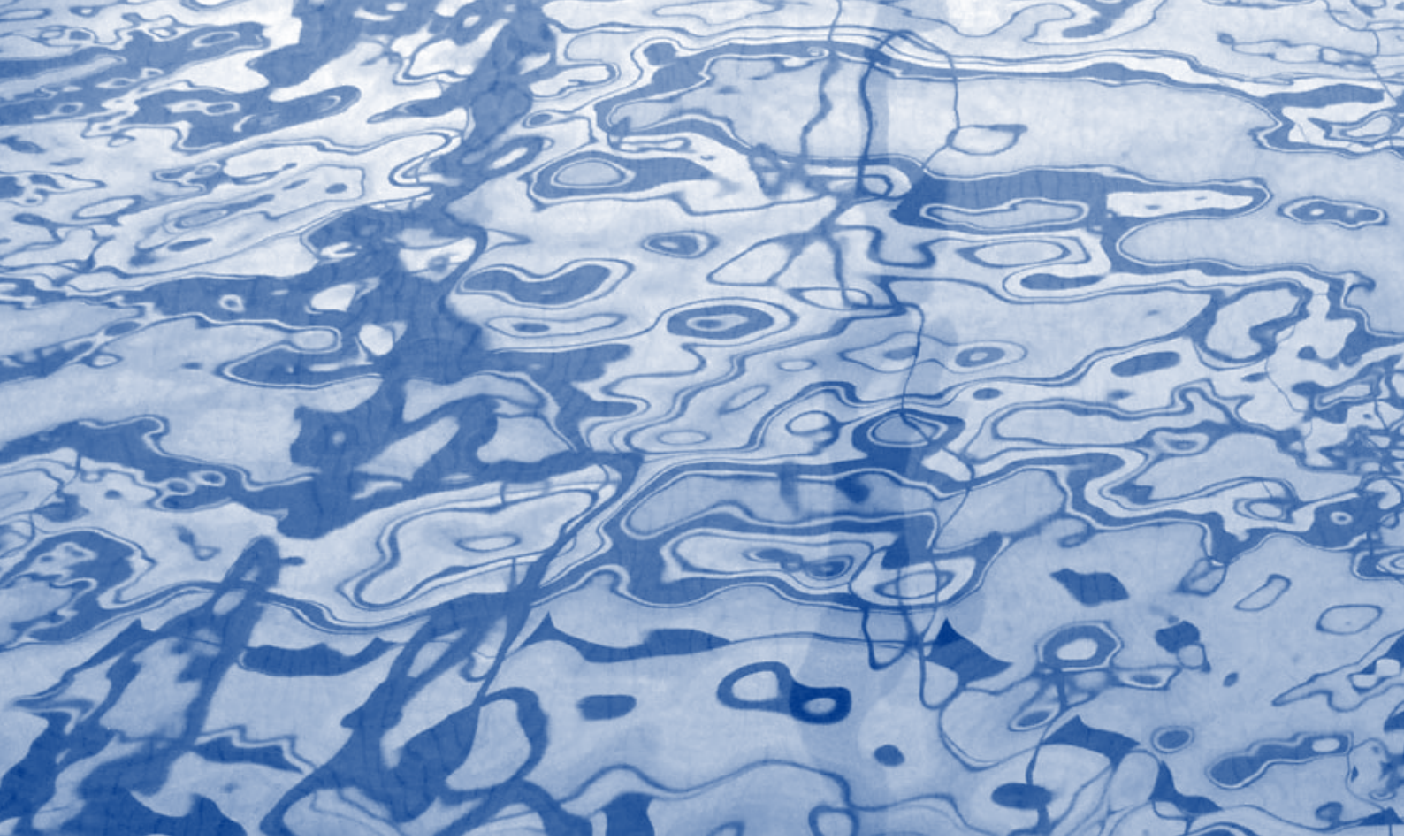
Tuna fisheries in the Western and Central Pacific Ocean Aqorau

Moving towards rights based fisheries management regime for the tuna fisheries in the western and Central Pacific Ocean



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Abstract

In September 2000, participants of the Multilateral High Level Conference (MHLC) process adopted the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention). The implications of the WCPF Convention for the management of the region's vast tuna resources are enormous. The WCPF Convention establishes a commission which will be responsible for establishing catch limits and effort controls for the fishery. For the Pacific island states, such limits will transform the way in which they have conducted the business of managing the region's tuna resources which has largely been through bilateral access agreements for access to their Exclusive Economic Zones (EEZs). Such agreements have not imposed any catch limits in the past. The WCPF Convention, however, will require the Pacific island states to impose some form of catch limits. The introduction of limits to the fishery will present Pacific island states with the opportunity to explore creative and innovative ways to enhance the fisheries management regimes under which they have individually and collectively managed the region's tuna fisheries. One approach which they may wish to consider is the introduction of a rights based fisheries management regime. This paper explores the legal issues surrounding the development of such a regime both as a collective approach by the Pacific island states, and individually. The paper suggests possible legal approaches to the introduction of a rights based fisheries management regime, drawing on ways in which they may structure their fisheries legislation, and experiences from other regions in which a rights based fisheries management approach have been applied and implemented. The paper concludes by examining fisheries management implications for the Pacific island states of such an approach.

INTRODUCTION

When the late Arvid Pardo made his famous speech to the United Nations General Assembly in November 1967 calling on the international community to declare the deep seabed of the oceans as the common heritage of mankind, it was the precursor to developments that were to radically transform traditional ideas about rights and ownership over resources in the ocean environment[1]. Up until that time most of the world's fisheries resources were what Hardin characterised as "common property"[2]. The ocean space and the fisheries resources that lived there did not belong to anyone in particular and states were therefore free to catch as much fish as they wanted. This obviously had negative consequences for fish stocks because as more fish was being taken, it increased competition for dwindling stocks, fuelling investments in more modern and technologically advanced fishing vessels. The problem became a cycle and the open access, free fishing for all was anathema to sound fisheries management. Arvid Pardo's call for the preservation of the deep seabed as the common heritage of mankind was to spark calls for more equitable distribution of the benefits from the world's oceans as well as the establishment of a new economic order for the oceans. These calls coincided with the wave of countries that became independent in the 1960s and 1970s who wanted the stranglehold that a few developed countries had over the ocean space to be unravelled. Thus, the Third United Nations Conference on the Law of the Sea was convened in 1972 on the back of calls for a more equitable system of ocean management.

While the first Pacific island state, Samoa became politically independent in 1962, the vast majority of them only gained political independence in the 1970s. They therefore gained self-governance at the same time when the notion of extended maritime jurisdictions became internationally accepted. The idea that they would have rights to an extended area of ocean space became very attractive to them because the newly independent states viewed

1 See generally Churchill, R.R. & Lowe, A.V. 1999. *The Law of the Sea* (Third Edition), Manchester University Press, Manchester.
2 See Hardin, G. 1968. The tragedy of the commons. *Science* 162: 1243-1248.

this as a means of expanding their revenue base. They quickly grasped the idea and enacted necessary legislation to claim exclusive economic zones (EEZs). Some of the Pacific island states claimed fisheries zones which gave them fisheries rights over the same breadth of water, up to 200 nautical miles but not the same extended rights that an EEZ would have given them. The Pacific island states viewed the EEZ regime as an opportunity to enhance their income generating options. By 1982, the EEZ regime had been firmly entrenched in international law. The rights, powers and responsibilities of coastal states in the EEZ are to manage, conserve, explore and exploit the living and non-living resources. These rights are couched in terms of sovereign rights. The broad policy question which has challenged many developing coastal states is how can these rights be translated in tangible and meaningful ways to positively contribute to the social and economic welfare of their citizens? The purpose of this paper is to answer the query about how best Pacific island states can transform those rights in ways that would enhance the quality and standard of living of Pacific Islanders. The Pacific island states are custodian of the last remaining healthy tuna stocks. The value of the tuna stocks in the western and central Pacific (WCPO) to the global market cannot be underestimated. As developing countries with relatively narrow economic opportunities, the Pacific island states have a high stake in ensuring that they maximise the economic benefits from the tuna resource.

The paper traces the evolution of the way in which the Pacific island states manage tuna and argues that the conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean paves the way for Pacific island states to introduce a rights-based fisheries management system for the management of the region's lucrative tuna fisheries. The paper suggests ways in which the Pacific island states may go about introducing a rights-based fisheries management system from a legal perspective. The paper will also examine the implications of a rights-based fisheries management regime for the Pacific island states.

The exclusive economic zone (EEZ) regime: transforming international fisheries

The idea of a rights-based fisheries management regime is not unknown in the Pacific island states. Most nearshore fisheries are subject to customary fishing rights in which ownership and access rights to reef areas and the fisheries resources in those areas are exclusive to families and individuals who are affiliated to the tribes that own customary rights. These rights however are not exercised in a commercial sense and therefore access, while controlled and limited to family and tribal members, is fairly open. A rights-based fisheries management regime in the more modern and contemporary sense is novel and only now is being attempted in some Pacific island states. In terms of commercial fishing, the approach of the Pacific island states towards harnessing of the tuna resources has been one of open access. It would be useful to see the transition that is now taking place in the region in terms of the approach to fisheries management.

Traditionally the approach to the exploitation of tuna and other fisheries resources was based on freedom of fishing on the high seas[3]. The extent of the coastal states' territorial seas was limited to 6 miles and then later 12 miles. Beyond that was high seas and fishing vessels from all states were free to fish the resources in the adjacent high seas. There were no restrictions and controls over the amount of fish that could be caught and anyone that had vessels was pretty much free to fish wherever they wanted. The idea that the high seas were open to all and not capable of subjugation by any one state underpinned international fisheries law. It was possible therefore for fishing vessels from foreign states to fish on the margins of the territorial sea and exhaust the coastal state's fisheries resources. The problems that this caused were soon recognised and international fisheries commissions were established to manage the fisheries but these were largely ineffective because of poor flag state enforcement, and the inability of the commissions to deal

3 For a discussion of pre-1970s management of fish stocks see, Christy F. T. & Scott, A. 1965. *The common wealth in ocean fisheries.* John Hopkins Press, Baltimore, Maryland; Gulland, J.A. 1974. *The management of marine fisheries.* Scientechnica, Bristol. Johnston, D.M. 1965. *The international law of fisheries.* Yale University Press, New Haven, Conn.

with non-member states. Unrestricted and open access under a freedom of fishing regime was inimical to good and sound fisheries management. It led to overcapitalisation of fleets, increased competition and overexploitation of fish stocks.

The EEZ regime was therefore viewed as the panacea to the problems caused by the open access freedom of fishing regime[4]. It was thought that by expanding coastal state jurisdiction and giving them custodian and stewardship rights over the fisheries resources, it would lead to better management of the fisheries resources. The idea of an EEZ was not without its problems. Distant water fishing nations (DWFNs) who had traditionally dominated international fisheries resisted it because it curtailed access to areas that they had previously fished freely. The Third United Nations Conference on the Law of the Sea agreed to it on the basis that coastal states would act as stewards; custodians of the fisheries resources in the EEZ on behalf of the international community. It is argued that the acceptance of the EEZ regime constitutes recognition of a quasi rights-based approach to fisheries management because it moved away from open access and gave control over the fisheries resources within a defined spatial area to the coastal states.

In the EEZ, the coastal states have sovereign rights for the purposes of managing, conserving, exploiting and exploring the living and non-living resources. It is argued that while the rights are not absolute and are qualified, they are nonetheless broad and wide ranging and give the coastal states the opportunity to utilise them in various ways. In the Pacific islands, the exercise of these rights has until very recently been loose and fairly open. This may come as a surprise given the fact that the Pacific island states were some of the first countries to embrace the EEZ regime through legislation. Furthermore, the Pacific island states were quick to recognise the enormous economic potential that the EEZ regime offered. The reason for the slow pace with which the Pacific island states have developed innovative economic measures to strengthen the exercise of their sovereign rights is largely because of resource constraints.

The Pacific island states are amongst the smallest and poorest countries in the world. Thus, while the EEZ regime gave them some hope, the large area of ocean space that came under their control imposed considerable pressure on their meagre resources. They did not have the skills, expertise, let alone the physical assets to carry out surveillance and monitoring of their EEZs. In most instances, the Pacific island states only established separate fisheries departments when they declared EEZs. They therefore did not have the capacity to manage their EEZs. The most basic information and data about the status of stocks in their EEZs ware lacking. In view of these constraints, the Pacific island states could not afford to be innovative.

4 For general reading on the EEZ regime see, Burke, W.T 1992. *The new international law of fisheries.* Clarendon Press, Oxford.

To address these concerns, the Pacific island states established a regional organisation, the Pacific Islands Forum Fisheries Agency to provide technical and policy advice to the Pacific island states on how to manage the tuna in their EEZ and deal with the foreign fishing fleets that fished in their EEZs[5]. Obviously the biggest challenge facing the Pacific island states at the time was how to exercise their newfound sovereign rights in a way that would not unduly impose a considerable burden on their limited resources. The way in which they decided to do this was through bilateral access agreements. It may be argued that although in hindsight it may not have been the best approach, it provided the most stable environment through which the Pacific island states could deal with the DWFNs fishing fleets, and at least brought some order to the operations of foreign fishing fleets in their EEZs. Bilateral access agreements provided the compliance umbrella that enabled the Pacific island states to control foreign fishing vessels. Typically, bilateral access agreements contained two key provisions. The first was recognition by the DWFNs of the Pacific island states' sovereign rights over the tuna resource in their EEZ, and the second was a commitment by the DWFNs to ensure their vessels comply with the Pacific island states' fisheries laws and regulations. As explained above, the Pacific island states did not have the capacity to ensure vessels that they licensed to fish in their waters comply with their fisheries laws and regulations. Thus, ensuring DWFNs exercised flag state responsibility albeit limited, over their fishing vessels addressed this constraint.

In return for access, the DWFNs paid licence fees as well as a certain percentage of the value of the landed catch. Initially, DWFNs paid a lump sum in addition to the licence fees but eventually these were phased out as they did not reflect the economic value of the resource. The lump sum approach was supplanted by the per trip system whereby the fee is based on the value of the landed catch per trip. While the per trip system ensured the Pacific island states received a return that generally reflected the agreed market value (this was initially set at three percent) of the tuna, it required a greater level of monitoring and compliance. The general fisheries management approach however was one of open access. The Pacific island states kept things simple and straightforward. No limits were placed on the amount of fish that could be taken from the EEZ. It was also relatively easy for DWFNs to obtain foreign fishing licences to fish in the Pacific island states EEZs. All they had to do was inquire with the national fisheries authorities, negotiate a bilateral access agreement and they were then issued with licences for their fishing vessels. The system worked smoothly for the first few years following the declaration of EEZs by the Pacific island states. It was not complicated and did not require considerable investment of time and energy.

5 Gubon, F. 1987. History and role of the Forum Fisheries Agency. pp. 245-256. In: Doulman, D. (ed.), 1987. *Tuna issues and perspectives in the Pacific islands region*. East-West Centre, Honolulu.

Arguably, this approach ensured that the DWFNs were the major beneficiaries of the sovereign rights over the tuna resources. In other words, the Pacific island states exercised their sovereign rights on behalf of the DWFNs. This posture was understandable given that the nature of sovereign rights has never really been clarified. For instance, although Japan has had bilateral access agreements with a number of Pacific island states since 1977, it has never really accepted the fact that coastal states have sovereign rights over the tuna resources unless those rights are exercised collectively through an international fisheries management organisation of which they are a member. Thus the bilateral access agreements that it has signed with a number of Pacific island states has invariably qualified Japan's recognition of the coastal states' sovereign rights over the tuna resources as being "sovereign rights in accordance with international law". However, Japan's interpretation of international law with respect to fisheries is that because of its highly migratory nature and because of the explicit obligation in Article 64 of the LOSC for coastal states and states whose nationals fish for tuna to co-operate through an international fisheries organisation, coastal state do not have rights over the tuna resources in their waters. The only way in which the tuna resource can be properly managed is through an international fisheries organisation. These legal uncertainties coupled with a lack of resources combined to prevent the Pacific island states from pursuing alternative management arrangements for the tuna resource. The direct licensing of foreign fishing vessels provided a relatively stable environment with which to manage the fisheries. It was relatively straightforward, simple and did not impose significant workload on the small fisheries administrations.

In essence the general approach towards the exploitation of the tuna resources was one of open and unlimited access. There were however some attempts to impose restrictions on access. The Solomon Islands introduced a quota system for its tuna fisheries in the 1980s. Preference was given to its domestic tuna industry which had access to all of the Solomon Islands EEZ, and a limited quota of 6,000 metric tonnes was allocated to foreign longline access. Restrictions were imposed on the licensing of foreign purse seine vessels to protect the pole-and-line based domestic tuna industry. When its second domestic tuna company, National Fisheries Development Ltd, secured two purse seine boats, they confined access of the two vessels to waters beyond the territorial sea and outside the archipelago waters[6]. Kiribati also introduced limited effort controls by regulating the number of purse seine vessels in any given year. These approaches were preliminary attempts by some of the Pacific island states to put in place limits to fishing access to their waters[7]. On the whole however, it was generally open access.

6 Solomon Islands Government, 1989. *Annual report of the Fisheries Department 1989*. Solomon Islands Government, Honiara.
7 Government of Kiribati, 1988. *1988 Annual report of the Fisheries Department*. Government of Kiribati, Bairiki.

By the late 1980s, the lack of controls over the growth of the tuna fisheries in the WCPO led to concerns about the state of the tuna socks, in particular yellowfin tuna. This was fuelled by the rapid expansion of the purse seine fishery. Concerns about the declining state of yellowfin tuna and the exponential increase in the purse seine fleet prompted the grouping of Pacific island states, in whose waters most of the surface tuna fishery takes place, to develop a regional arrangement to cap the number of purse seine vessels. The arrangement, which is known as the Palau Arrangement for the Management of the Western Central Pacific Purse Seine Fishery (Palau Arrangement), was concluded in 1992[8]. Up until the conclusion of the Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (WCPF Convention)[9] and the establishment of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific (WCPF Commission), the Palau Arrangement, apart from bilateral access agreements, was the only regional mechanism through which the Pacific island states could constrain effort[10]. The Palau Arrangement was therefore the first serious attempt by the Pacific island states to impose some form of limits. The objective of the Palau Arrangement was two pronged: to address concerns about the large catch of juvenile yellowfin tuna, and to foster competition amongst the fleets for the limited number of licences. It was argued that the restrictions on the number of fleet vessels each party could licence would lead to competition amongst the fleet for the limited number of licences. Unfortunately, the way in which the limits were established was not conducive towards the stimulation of competition. The capacity limits were allocated by fleet and not by EEZ. Furthermore, the parties kept changing the limits as vessel numbers increased and as a result the Palau Arrangement did not have the desired economic effect that its parties had anticipated.

The conclusion of the WCPF Convention however provides the Pacific island states with a real opportunity to take more serious concerted steps to introduce a truly rights based fisheries management approach at the national and regional level, one that can put the wealth of the region's tuna resources in the hands of Pacific Islanders.

8 See Aqorau, T. & Bergin, A. 1997. Ocean governance in the Western Pacific Purse Seine Fishery - the Palau Arrangement. *Marine Policy* 21(2): 174-188.

9 FFA, 2000. *Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific.* Forum Fisheries Agency, Honiara.

10 The 1990 Wellington Convention for the Prohibition on the Use of Long Driftnets in the South Pacific, also led to the total elimination of the use of long driftnets in the South Pacific in the late 1980s to the 1990s.

The convention for the conservation and management of highly migratory fish stocks in the western and central pacific: entrenching fishing rights

The WCPF Convention fundamentally transforms the way in which the Pacific island states will conduct the business of tuna management. Unlike the pre-WCPF Convention period, for the first time the Pacific island states will have learn to live within limits. As discussed above, the Pacific island states have generally managed their tuna fisheries through open access. The WCPF Convention however imposes limits on the amount of fish that can be taken, and limits on who can have access to the tuna resource. Because of these limits, it may be argued that access to the resource will become scarce resulting in substantial increase to the value of the resource. In respect of defining rights, it is worth quoting the views of an international expert:

Currently, Island states exercise sovereign rights over the exploitation of tuna in their EEZs from the point of view of international law, but the exercise of those rights in economic terms to secure benefits is weakened by the lack of definition of those rights. At present, the rights are not unique, but are to a large degree overlapping and substitutable in the sense that tuna not caught in one zone can be caught elsewhere. For this reason, there are limits to the extent to which rights can be exercised at the national level, and so over time FFA states have built up a regional framework for strengthening the exercise of those rights. When the Commission moves to national allocations of fishing, whether in the form of catch quotas or effort limits, the extra definition that the allocation process will give will add additional strength and value to the exercise of those rights at the national level, because whatever process of allocation is used, an FFA state should end up with a right to a measured volume of fish that it will be able to exercise in much more powerful way – whether it passes those rights on to its nationals or whether it enters into arrangements with foreign fishing interests[11].

11 Clark, L. 200. *Implications of the WCPF Convention on national fisheries management*. Paper presented at the FFA/ADB Workshop on the implementation of the WCPF Convention, 25–29 September 2000.

Given that the WCPF Convention now clarifies the legal uncertainties surrounding the question of the nature of the Pacific island states rights over the tuna resource, it is timely that they pursue a rights-based approach to fisheries management as an alternative to current arrangements. The key features of a rights-based alternative are[12]:

- The use of rights as the primary management instrument: This entails shifting the emphasis of control to managing businesses rather than boats.
- The granting of rights to nationals: This entails allocating rights to nationals whether they are individuals or locally registered companies with whatever level of foreign shareholding is agreed upon by the state concerned.
- Limited number of rights: This entails restricting the number of rights available to make the rights valuable.
- Imposition of standards on rightholders: This entails imposing stringent terms of investment and job creation or otherwise they lose their rights.
- Payment of fees by rightholders: This entails the imposition of fees on rightholders.
- Reduced role for access agreements: This entails requiring foreign vessels to operate only under charter to rightholders.

Putting a rights based system for the Pacific island states will require careful planning and consideration. As explained above, the Pacific island states have become accustomed to a certain way of conducting business. Thus, reorienting their approach will require careful planning. In order to put a rights based system in place, the Pacific island states need to undertake a number of steps. These include defining the application of rights, developing criteria for the identification of right holders, characterising the nature of the rights, and the form of the limits. Some discussion of these steps might be useful.

- Defining the application of rights: It will be necessary to define the application of rights. In other words, what is it that only rightholders may do. Given the importance of tuna fishing in the fabric of life in the Pacific island states, it might not be necessary to regulate all commercial tuna fishing by rights at this point. Provision should be made to leave open access for small boats so that anyone can fish using boats up to 10 metres but that rights are required for commercial fishing in any vessel larger than 10 metres.
- Numbers of rights: Work will be required to decide on the number of rights taking into account resource sustainability and economic/financial viability. Often there might be a trade off between maintaining a relatively

12 Cartwright, I. 2002. *The role of rights-based management in the tuna fishery of the western and central Pacific.* Discussion paper prepared for presentation to the FFA Rights-based Fisheries Management Workshop, Mocambo Hotel, Nadi, Fiji, 24–26 June 2002

small number of rights to allow right holding businesses to be big enough to be viable, and wanting to broaden participation as much as possible by granting a larger number of rights. In some of the Pacific island states, internal geo-political considerations might also come into play in determining the number of rights.

- Criteria and process for identifying right holders: The most difficult issue is to identify those to be granted rights. Given that rights are expected to be valuable, it will be necessary develop transparent procedures on who gets rights and who is excluded. In developed countries, this can often be done by reference to the heritage of the sea; identifying those with a valid history of dependence on fishing as the initial right holders. In developing states, including the Pacific island states, there may not be a history of fishing at this scale, and experience in smaller scale fishing may not be the only useful basis for identifying right holders. A different approach will be necessary. Technically, it does not matter much how rights are allocated but it may have important implications for the sustained acceptability of the system.
- Terms of rights: It will be necessary to look carefully at the terms of rights. The terms of rights should be long enough to secure investment, but provide for a reasonable degree of review as to whether right holders have met their obligations and should keep their rights or have them extended.
- Conditions on right holders to encourage investment and job creation: It will be necessary to impose conditions that would require the rightholder to invest in the fishery to create jobs and commit to responsible resource use in accordance with adopted conservation and management measures. In other words, in return for the granting of the privilege of a right which could have been granted to others, right holders should be required to make investments, create jobs and support responsible fishing operations and not just pocket the earnings from the sale or lease of rights.
- Fees: Consideration needs to be given to fees. The right holders should be required to pay fees, perhaps with scales that recognise economic benefits generated from the right.
- Forms of limits on fishing: Work needs to go into the form of rights. These may be expressed in terms of the numbers of licences or vessels, limits on vessel capacity, or quotas.
- Transferability/Non-transferability: It will be necessary to decide on the extent to which rightholders can trade rights and to which shares in rightholding companies can be traded.
- Limits on concentration: There will be a need to ensure broad, balanced participation. If there is an element of tradability the Pacific island states may want to ensure that rights do not become concentrated in the hands of a few.

Possible approaches to implementation of a rights-based fisheries management system in the Pacific island states

The Pacific island states have relatively small fisheries administrations. The introduction of a rights-based system therefore must be planned carefully. Some suggestions on possible approaches to implementation are:

- Take it easy: Rights systems need to be finely tuned to local political, technical and economic realities if they are to be successfully implemented in the long run.
- Relate implementation to WCPF Commission progress: With rights Pacific island states are essentially giving rightholders a ticket which they expect will have economic power and value. This power and value is going to be greatly enhanced with limits in place and the value will increase as these limits loom. For some states there may already be sufficient value in such a right, but for other states it may pay to wait until the prospect of limits and exclusion begins to bite.
- Begin with the fishery where it is easiest for nationals to become real participants: For most island states this will be the longline fisheries
- Apply it only to larger vessels initially: Leaving open access to operators of smaller boats greatly simplifies establishment of a rights-based system and reduces opposition to the limiting of entry.
- Try to apply it in a relatively simple legal framework: Any rights-based system will require refining at a national level. It will probably be better to introduce it by regulation or statutory plan rather than through an act.
- Develop a transparent process for allocating rights and reviewing them: At the core of such a process is good governance and accountability. Processes will need to be put in place to ensure that corruption does not vitiate the system.

The first Pacific island state to legislate to implement a rights-based fisheries is the Cook Islands. The Cook Islands Marine Resources Act 2005 was enacted in July 2005. Section 11 of the act provides for the nature of a fishing right. This is defined fairly broadly and includes:

a) a right to take a particular quantity of fish, or to take a particular quantity of fish of a particular species or type, or a proportion of fishing capacity, from, or from a particular area in, a designated fishery;
b) a right to engage in fishing in a designated fishery at a particular time or times, on a particular number of days, during a particular number of weeks or months, or in accordance with any combination of the above, during a particular period or periods;
c) a right to use a boat or particular type of vessel, or a particular size of vessel, or a boat having a particular engine power, in a designated fishery;
d) a right to use a particular fishing method or equipment in a designated fishery; and
e) any other right in respect of fishing in a designated fishery.

Section 12 of the Marine Resources Act obliges the secretary to administer a system of rights. The secretary is also empowered to impose conditions on the rightholder. These include: -

a) the holder of the fishing right must comply with any obligations imposed by the fishery plan or imposed by the secretary in accordance with that fishery plan;
b) the fishing right will cease to have effect if the fishery plan for the fishery to which the fishing right relates is revoked under section 6(8) of this act;
c) no compensation is payable because the fishing right ceases to have effect or ceases to apply to a fishery;
d) the holder of the fishing right complies with the requirements of this act that pertain to the holding of the fishing right itself and the fishing or the possession or sale of any fish taken under any fishing right; and
e) the fishing right may only be exercised from or in respect of a Cook Islands fishing vessel.

A developing country that has had a very successful rights-based system in place is Namibia. The Namibia Marine Resources Act 2002 states "no person shall harvest any marine resources for commercial purposes, except under a right". The main purpose of fishing rights is to limit entry into the fisheries sector to protect the fisheries resources and maintain sustainable operations[13]. While the situations in Namibia and the Pacific island states are vastly different, the success of Namibia's rights-based approach offers hope to the Pacific island states.

Churchill argues that "overall… it is likely that the introduction of the EEZ concept has not produced as much material gain for the developing countries

13 Nichols, P. 2003. Marine fisheries management in Namibia: Has it worked? Fisheries Economic Research Support Unit, Namibia, pp. 319-332

as its original proponents suggested"[14]. This paper argues that while the EEZ regime transformed international fisheries and paved the way for a rights based system, the legal uncertainties surrounding the nature of those rights, and the unfair terms of the global trading system have not allowed developing countries to take full advantage of those rights. The paper has shown that the WCPF Convention offers the Pacific island states the opportunity to develop an alternative fisheries management system. Fundamental to the success of the system is good governance. A rights based system will inevitably expose the small fisheries administrations of the Pacific island states to all sorts of pressures. This will require structural reforms to existing fishing arrangements. The benefits however are worth pursuing.

14 Churchill, *supra note* 1 above at p. 179