

RIGHTS-BASED FISHERIES MANAGEMENT:

A Snapshot of Fisheries Legislation in Selected Pacific Island Countries



Photography by Francisco Blaha

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Pacific Island countries and territories (PICTs) have recently committed to progressively develop rights-based approaches to the management of their valuable offshore and coastal fisheries resources (FFA & SPC 2015).

These commitments reflect a large body of work by fisheries management researchers demonstrating that well-defined access and harvesting rights can help to ensure the sustainable and profitable use of fish resources, where profit maximization is the primary goal motivating fishers. Such approaches based on property rights emphasise the establishment of exclusive rights to use the resource, whether by commercial fishers or coastal communities with customary rights to marine resources, or using traditional practices (Arnason 2007).



Various forms of rights-based management (RBM) have been applied in commercial fisheries and coastal, community-based fisheries around the world. The Parties to the Nauru Agreement pioneered the use of RBM in an international fishery through the establishment of a “vessel day scheme” for the management of the tropical purse seine fishery of the Western and Central Pacific (Aqorau 2007). Customary rights and traditional practices play an important role in the livelihoods and food security of many Pacific communities (Aswani 2005).

To inform Pacific Leaders’ efforts to expand the use of RBM, Pacific Catalyst surveyed the national fisheries legislation of 15 Pacific Island members of the Pacific Islands Forum Fisheries Agency (FFA). The study’s aim was to assess the extent to which fisheries legislation supported RBM for commercial fisheries and community fisheries by asking three questions:

1. To what extent is RBM in offshore commercial fisheries permitted in national fisheries legislation?
2. How strong are the RBM legislative provisions relating to offshore commercial fisheries?
3. Are traditional or customary marine fishing rights recognised in national fisheries legislation?

The results for each question are discussed briefly below and summarised in Figure 1 and Figure 2.

1. To what extent is RBM in offshore commercial fisheries permitted in national fisheries legislation?

The study looked at whether the main fisheries legislation in each PICT established a basis for rights-based approaches to fisheries management, by scoring the key fisheries legislation in each PICT on a three-point rating scale to indicate whether its legislation envisaged RBM as a preferred approach¹, merely allowed RBM² or was silent or vague on whether RBM should be employed³.

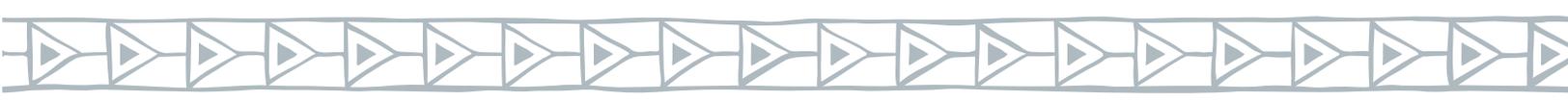
Eight PICTs’ legislation was found to envisage some form of RBM as a preferred approach to addressing sustainability of fisheries resources. Federated States of Micronesia (FSM) and Fiji appeared to mandate RBM in some situations. Six were found to allow RBM as a policy option rather than a focus of the legislation. One jurisdiction was silent or vague.

In at least three PICTs, RBM provisions relate most clearly to offshore fisheries and/or to foreign fishing vessels in the context of regional fishing agreements and arrangements. In most others, RBM appears to be available to a wider range of commercial fisheries and fishers, whether foreign, local, or foreign-owned, locally-based.

¹**Envisaged:** if legislation envisaged RBM in some or all circumstances, evidenced by a clear policy intention in legislation that RBM be adopted as the preferred approach to addressing sustainability in particular fisheries, for example, by the use of “shall” in key provisions.

²**Allowed:** if legislation expressly allowed RBM but fell short of requiring it, as evidenced by, for example, the use of “may”.

³**Silent or vague:** if the legislation was silent on RBM or any elements of RBM, or made only vague references to RBM concepts or elements.



2. How strong are the RBM legislative provisions relating to offshore commercial fisheries?

The study assessed the strength of RBM provisions in the main fisheries legislation based on whether they met (score 1) or did not meet (score 0) four core criteria and three other criteria based on a simplified version of the Environmental Defense Fund's SEASALT⁴ framework (Bonzon et al 2013). The results are presented in detail in Figure 1 and summarized in Figure 2.

No legislation contained provisions that addressed all four core strength criteria. However, six possessed three core criteria and at least one other, scoring an RBM strength rating of strong. Only three PICTs' legislation was found to be weak, while the remaining six jurisdictions' legislation was assessed as moderate.

Across the region, no jurisdictions were assessed as providing users with sufficiently secure⁵ rights and only four PICTs clearly allowed for transferable⁹ rights. However, rights in almost all were found to be exclusive⁶ (13/15) and accountable⁷ (14/15), and rights in a majority (9/15) were limited⁸.

Criterion	Cook Is	Fiji	FSM	Kiribati	Nauru	Niue	Palau	PNG	RMI	Samoa	Sol Is	Tokelau	Tonga	Tuvalu	Vanuatu	Region
<i>Secure</i> ⁵	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
<i>Exclusive</i> ⁶	1	1	1	0	1	1	1	1	1	1	1	1	1	1	0	13
<i>Accountable</i> ⁷	1	1	1	1	1	1	1	1	1	1	1	0	1	1	1	14
<i>Limited</i> ⁸	0	1	1	0	1	0	0	1	1	0	1	0	1	1	1	9
<i>Transferable</i> ⁹	0	1	0	0	0	0	0	0	0	1	1	0	1	0	0	4
<i>Scaled</i> ¹⁰	1	1	1	0	0	0	1	0	1	0	0	1	1	1	1	9
<i>All sources</i> ¹¹	1	1	1	0	0	0	0	0	0	1	0	0	0	1	1	6
Total	4	6	5	1	3	2	3	3	4	4	4	2	5	5	4	
RBM Strength Rating	Moderate	Strong	Strong	Weak	Moderate	Weak	Moderate	Moderate	Strong	Moderate	Strong	Weak	Strong	Strong	Moderate	

Figure 1: Strength of RBM across 15 PICTs based on 7 criterion. Core criteria are shaded grey. Aggregate scores for each criterion across the region are contained in the final column. RBM strength ratings for each PICT are in the last row.

⁴ SEASALT is an acronym of seven rights-based management criteria: secure; exclusive; accountable; scaled; all sources; limited; transferable. The criteria are listed in the first column of Figure 2.

⁵ **Secure:** Can rights be protected, defended, and renewed, and do they have lengthy tenure?

⁶ **Exclusive:** Rights as shares of a TAC or TAE are allocated to individuals or groups. Allocations are recognised and protected by law, limits are monitored and enforced under law.

⁷ **Accountable:** Regulations require compliance, including with fishing limits, back by strong monitoring.

⁸ **Limited:** Scientifically (best available science) determined catch or effort limits to allow long term sustainability, and controls.

⁹ **Transferable:** Allocations may be transferred, possibly with limits to prevent concentration and maintain equity.

¹⁰ **Scaled:** Management scale takes account of geographical limits of the stock, and/or different user interests.

¹¹ **All sources:** Shares include all sources of fishing mortality (landed and discarded) and when combined do not exceed the catch limit(s) or other controls on mortality.

3. Are traditional or customary marine fishing rights recognised in national fisheries legislation?

Consistent with their strong historical and cultural connections with the ocean and fisheries, a large majority of PICTs (10/15) recognised customary rights¹² in fisheries legislation (Figure 2 horizontal axis). Only three were judged to be silent or vague¹³ and another two recognised traditional interests¹⁴ but did not go as far as to recognise those interests as rights. It is very likely that further legal provisions regarding relevant customary institutions are contained in other areas of law in most PICTS.

CONCLUSION

Results		Customary rights		
		Silent or vague	Interests recognised	Rights recognised
RBM Provisions	RBM envisaged	Palau Tokelau		Cook Is Fiji FSM Samoa Solomon Is Tuvalu
	RBM allowed	Nauru	Tonga RMI Vanuatu	PNG Niue
	Silent or vague			Kiribati

Figure 2: Summary of overall results. The arrow indicates a trend towards greater recognition of fishing rights. Each country is additionally colour-coded to represent the degree to which rights are recognized, with green being the highest and red the lowest relative to each other.

This study provides a simple assessment of the extent to which the legislation of Pacific Island Forum members has given effect to Leaders' commitment to rights-based approaches to fisheries. It focused almost exclusively on primary fisheries legislation, rather than regulations and policy statements. It is therefore a useful starting point in understanding the legislative basis for rights-based management, but is far from a complete picture.

¹² **Rights recognised:** legislation formally recognises traditional or customary rights.

¹³ **Interests recognized:** legislation recognises the interests of subsistence or traditional fishers, or fishers using traditional methods, but falls short of a formal recognition of those interests as rights.

¹⁴ **Silent or vague:** legislation is silent or contains only very vague provisions on traditional or customary rights and interests



The key finding from this study is that RBM is possible in all 15 Pacific jurisdictions under current legislation. However, in some cases an unclear distinction or relationship between quotas and licensing regimes made it difficult to identify which instruments could constitute a stronger form of property right or simply permission to fish. The study also found some PICTs' legislation contained more detailed RBM provisions for certain segments of a fishery (e.g. foreign fishing vessels). There was considerable variation among PICTs in overall RBM strength scores. Consistently high scores for accountable RBM arrangements support the current strong regional approaches to monitoring, control and surveillance, and enforcement, particularly through the FFA. Legislation typically provides for limited and exclusive rights, but the effectiveness of this exclusivity is undermined by the weak security afforded to fishing rights in legislation across the region. Insecure rights also constrain the transferability of rights. The widespread recognition of customary rights across the region stands in contrast to the variability of broader RBM provisions. In conclusion, legislation in the region appears to provide a basis for the development of RBM for commercial fisheries in FFA waters, with a number of areas identified where further analysis could support future improvements.

For a copy of the full working paper supporting this summary document, please contact kamalyazmi@gmail.com.

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