

Why is so little being done when so many high-sounding resolutions are regularly passed at regional fisheries meetings concerning the importance of such work? Maybe some of our readers can throw some light on this question.

The proceedings of the conference will be published by the University of the South Pacific.

Forthcoming changes to the legal status of traditional fishing rights in Fiji

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Fijian customary fishing rights have been legally recognised for the best part of a century. Indeed, the Fijian commercial reef and lagoon fishery has evolved entirely within the context of traditional fishing rights ownership. Whilst many countries are now looking at ways of re-potentiating traditional marine tenure systems, or even imposing new resource ownership systems on an already-developed commercial fishery, Fiji is one of the few countries in the world where the fundamental basis of such a concept is still in place and still strongly exercised.

There are over 200 legally-defined customary fishing rights areas, or *qoliqoli*, registered with the Native Lands and Fisheries Commission (NLFC) and these essentially cover every reef and lagoon in Fiji. Anybody wishing to fish commercially in Fiji (to catch fish by way of trade or business) must obtain a fishing licence from the Government, and anyone wishing to fish commercially in *demarcated areas* (areas subject to customary fishing rights, or *qoliqoli*) must first obtain the written permission of the registered owner of that area (usually the chief of the relevant coastal village), through the Divisional Commissioner, before the Government will issue a fishing licence.

This is an active, working system, and nearly 1,700 such community-sanctioned inshore fishing licences were issued in 1991. Communities also have the right to qualify their consent by excluding certain fishing gear types from being used, by prohibiting the catching of certain species, or by limiting fishing on certain sub-areas within the *qoliqoli*. Many communities have also exercised their legal option of appointing an *Honorary Fish Warden* to patrol their *qoliqoli*. Such wardens are unpaid and part-time, seeing this as a natural part of their traditional service to the community, but some of their costs may be subsidised out of *sevusevu*, or gifts, made to the community by fishermen seeking permission to use the *qoliqoli* at the start of each year.

The system is not without its problems, of course. One of the main problems in enforcing traditional measures in national law has been the difficulty of defining *qoliqoli* boundaries to a standard accept-

able by law. Indeed, such rigorous definition has been seen by many as being an unacceptable strait-jacket on what should be a dynamic and evolving customary system.

However, rigorous definition is a practical necessity for effective management. There are considerable financial returns to be made from the exploitation of certain inshore fisheries, and a purely traditional system cannot, without legal backup, cater for outsiders.

The Fiji Government Hydrographic Unit, together with the NLFC, is undertaking a long-term exercise to accurately survey *qoliqoli* boundaries. The existing system of dispute settlement, arbitration and registration through the NLFC is considered to give the system adequate flexibility to cope with any future changes.

Another problem lies in the differing concepts of marine spaces *ownership* between Fijian custom and British-derived law. The Fijian *vanua* concept embraces ties to the land and sea equally, whilst the law treats all of the sea-bed as State property and does not allow for marine spaces ownership either by the local community or by the individual.

Thus rural Fijian communities see fishing rights categorically as *ownership* rights, both of the geographical area of the *qoliqoli* and of the resources that it contains. But the law sees the geographical area of the *qoliqoli* as belonging categorically to the State, whilst the ownership of the resources it contains is somewhat confused. Some legal opinions state that fishing rights are *usage* rights to the resource only whilst others, pointing out the powers of management vested in the community (although, strictly speaking, these are powers to advise the Divisional Commissioner), opine that they are *ownership* rights over the resources.

Over the past few years there have been several different moves towards harmonising these conflicting ownership viewpoints and giving greater legal weight to the traditional concept. Many of these initiatives have stalled because of the delicate nature of the issue. Marine space ownership is

inextricably intertwined with land ownership, and is such a fundamental part of both Fijian law and society that any change has to be very carefully approached.

According to a news item in the *Fiji Times* of 25 November 1992, the Native Lands Trust Board is trying to increase integration of Fijian customary marine tenure with the legal system, by seeking more formal Fijian ownership of proposed Marine Park areas (see box).

The Ministry of Primary Industries in Fiji has the practical responsibility for controlling and managing all exploitation of the living resources within Fiji waters, and has plans to devolve even more of the responsibility for regulating inshore fisheries to the owners of traditional fishing rights, according to Ratu Tui Cavuilati, then Permanent Secretary of the Ministry, speaking at the 1992 Parkinson Memorial Lecture at the University of the South Pacific.

Ratu Tui drew attention to the fisheries for sedentary resources such as bêche-de-mer, trochus and pearl shell, giant clam, and mangrove crab which were showing stress and, in some cases, were grossly over-exploited. He said that Government was trying to educate people about the vulnerability of resources. He pointed out that the legal responsibilities of customary fishing rights were in urgent need of definition. Harassment of commercial inshore fishermen was becoming a major problem.

Environment: Fiji, the National State of the Environment Report, published by the Ministry for Housing and Urban Development of the Fiji Government in 1992, includes some discussion on the role of traditional fishing rights in conservation, and makes the point that any strengthening of traditional (extraction) rights must be balanced by the strengthening of traditional (resource management) responsibilities. The report says that "Increasingly, members of the ownership of a *qoliqoli* are becoming involved in business and, in certain cases, consider that the *qoliqoli* is simply a source of disposable income to be tapped for immediate gain, or to attract joint-venture partners".

Ownership of fishing rights in the pipeline

(*Fiji Times*, 25/11/92)

Moves are afoot to give landowners ownership of their fishing grounds, a divisional development committee was told.

Current legislation gives Fijian landowners the right to fish in such waters but not to own them. These currently belong to the state.

But a senior officer at the Native Lands Trust Board in Labasa, Peni Vaniqi, said the board was supporting a change in legislation.

He told the recent Northern Division Development Committee that instead of having the right to fish, landowners should have fishing ownership rights.

The change would allow landowners to benefit from the Board's tourism plan, he said.

Under the plan, the NLTB has singled out areas that could be turned into marine parks.

For the Northern Division, Rainbow Reef, off Dakuivuta in south eastern Vanua Levu, and Viani in Natewa Bay have been earmarked for this purpose.

"But landowners won't reap the benefits because they don't own the fishing grounds", Mr. Vaniqi said. "They will have to lease these from the State."

He said any changes to land laws however would have to be approved by Cabinet.

Clearly, the application of traditional fishing rights in the modern world is fraught with pitfalls, but Fiji is a country which is actively coming to terms with the occasional problems that result. It is a continually evolving system that is well worth study for the examples it contains.

Land and sea disputes in French Polynesia

Source: *Pacific Islands Monthly*
(December 1992)

Endemic problems of indigenous land rights in French Polynesia were highlighted recently by a dispute between the Territorial Government and the Pomare Party about the island of Mopelia.

The Pomare Party began to file claims to the island of Mopelia in 1983 and has been occupying the land, first intermittently, and then permanently, ever since. Their removal became more pressing as