

under the authority of the chief and traditional law. Fisheries Regulations (that provide national protection regulations for specific species through size limits, quota and/or absolute protection) co-exist with traditional enforcement mechanisms. Potential gaps in enforcement remain, however, as there would be no enforcement and/or penalties if a species is covered under the regulations, and if a general breach of the tabu (as a legally marine protected area) has not taken place.

Lessons learned and recommendations

- For traditional law and practices to be effective and to contribute to environmental management, they must be established and managed from within the affected community.

- Absence of codification need not prevent governments from engaging with communities that are seeking to apply their traditional laws.
- Government agencies and NGOs will be a source of valuable science-based information, technical expertise, and assistance that is vital to the overall success of traditionally-based management efforts.
- Gaps or conflicts persist between traditional enforcement and the capacity of government agencies to impose penalties or engage in dispute resolution, as a government agency may have limited powers granted to them under legislation and/or regulations.

Case Study 7

Kaitiakitanga: customary fisheries management in New Zealand

Paul Havemann⁹

Traditional laws and conservation practices

Pre-western contact

Kaitiakitanga is a traditional Maori concept capturing rights and responsibilities for being the custodian and steward of the well-being of places, resources and species. *Kaitiakitanga* is deeply embedded into Maori culture, as part of the intermingled laws, knowledge and protocols ruling society, called *tikanga Maori*. The concept of *kaitiakitanga* has traditionally been of particular significance to the sustainable management of fisheries resources. The Treaty of Waitangi signed by Maori chiefs in February 1840 recognised Maori sovereignty over fisheries. However, Maori fisheries rights like rights to land, underwent a process of denial and erosion from 1840 onwards. Only six per cent of New Zealand land is in the hands of Maori today.

By the 1920s, the Government had ceased recognising customary rights over fisheries. State recognition of these rights began in the 1980s, when the government admitted its past breaches of the Treaty. Since the 1980s governments have sought ways to accommodate the Maori Treaty rights within New Zealand's legal and resource management framework. Maori own 52 per cent of the commercial fishing enterprises in recognition of their Treaty rights. *Kaitiakitanga* as a concept that has been incor-

porated into state laws to promote recognition of Maori rights and participation in resource management at the local level.

Interface between traditional and governmental laws: Issues and challenges

Kaitiakitanga has been recognised by law in the Resource Management Act (1991) and in the Fisheries Act of 1996. The last act interprets *kaitiakitanga* as "the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate *tangata whenua* [people of the land] in accordance with *tikanga Maori*".

Kaitiakitanga is a vehicle for Maori stakeholder participation in land-based planning, resource development, general fisheries and non-commercial fisheries establishment and management, but also serves as a tool for recognising Maori customary fishing, and for empowering Maori communities to manage and police customary fisheries.

Boundaries, enforcement, penalties and conflict resolutions

Under the Fisheries Act local Trust Board Committees can now appoint a team of Maori

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experts (*kaitiaki*) to administer and enforce rules in traditionally controlled areas, depending on local capacity. This team may assist fisheries officers and give access permission to indigenous areas, and propose the creation of reserves, management plans, and bylaws. This process of devolving fisheries management to the local level is reasserting local control over customary fisheries; however, the Maori Land Court or, the Minister of Fisheries, keeps control by maintaining a veto and major decision power. One of the benefits of this policy is the gathering of data from customary owners and the improvement of traditional management skills in both traditional and commercial fishing. Traditional knowledge can also be taken as an indicator for the conservation of resources, and be linked with science knowledge through observation (e.g. stock evaluation).

Lessons learned and recommendations

A few principles can be derived from this case study, which strike a chord with Principle 22 of the Rio World Summit Declaration of 1992, and Article 1 of the International Labour Organisation Convention 169 on international regulations recognising the rights of indigenous people. These principles call for:

- local participation in governance with a goal of ecological sustainability;
- local management with local knowledge for local needs;
- respect for and incorporation of traditional knowledge, institutions, custom and laws into conservation; and
- planning policy and implementation that serves to integrate local, national and international ecological conservation.

Case Study 8

Pohnpei watershed management: A case study of legal and institutional reform for co-management in the Pacific

Justin Rose¹⁰

Pohnpei is one of the four states of the Federated States of Micronesia (FSM). Pohnpei's main island has a population of around 30,000 people, a surface area of 343 km², and 200 villages in five municipalities. Since the mid 1970s there has been nearly a 66% loss of intact catchment forest in Pohnpei. Downstream impacts have been severe and include erosion, sedimentation of mangroves and reefs, contamination of water supplies, loss of habitat for endemic species and threats to biodiversity. The primary cause of forest disturbance and clearing is the dramatic increase in kava (*sakau*) production. Kava consumption has expanded beyond ceremonial uses and is now a popular recreational drug.

Traditional laws and conservation practices

Traditional authority in Pohnpei

Pohnpei is divided into 200 *kousapw* (villages) and 5 *wehi* (traditional kingdoms). Customary authority in Pohnpei resides with the island's traditional title holders, whose roles and responsibilities are allocated and organised within complex hierarchical systems that operate in each *kousapw* and *wehi*. While the *nahmawarki* (para-

mount chief) is the symbolic owner of all land within a *wehi*, the *kousapw* is the centre of social organisation and culture.

Traditional titles, while earmarked for men of particular matriarchal lineages, are earned through community service, displays of traditional skills and accumulation of traditional knowledge. Title holders were accountable to their constituents and titles could be revoked if the holders failed to perform their duties adequately. Historically, specific title holders were responsible for management of natural resources.

A society in transition

At the time of FSM's independence in the early 1980s, the Pohnpei state government took over governance of the island from the Trust Territory administration. The adoption of a western-style legal system and institutional structure reflected the need for Pohnpei and FSM to operate within modern economic and political contexts. The young Pohnpei state government is in some respects a model of good governance and democracy, with effective systems of administration and a general respect for the law.

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