

Workshop Information Paper 1

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Background information on coastal fisheries and aquaculture monitoring control surveillance and enforcement



Workshop on Coastal Fisheries and Aquaculture
Monitoring, Control, Surveillance and Enforcement
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Introduction

1. Illegal, Unreported and Unregulated (IUU) fishing has been promoted as a very serious crime in the offshore tuna fisheries. IUU fishing causes great damage to the targeted fish stocks that provide valuable income and economic benefits to many of the Pacific Community (SPC) member countries and territories. Fines and penalties for IUU activity are very high and the coastal fisheries and aquaculture monitoring control surveillance and enforcement (MCS&E) process is undertaken by Pacific Island countries and territories strongly supported by an alliance of international partners. There is a huge range of data and multiple compliance assets available to member countries to support activities designed to detect, deter and ultimately reduce IUU fishing.
2. By comparison, IUU fishing in coastal fisheries and aquaculture (CFA) has received very little attention. There are many reasons why this is the case, including limited national resources, which means CFA tends to be competing with other areas such as education, health care and infrastructure for a slice of the government's budget.
3. In addition, regional policies relating to CFA make it clear that coastal fisheries management in the Pacific centres on communities. This is due to the difficulties faced by island fisheries agencies in servicing their widespread and logically challenging provinces or outer islands and the traditional or historical rights that communities possess over coastal fisheries.

The main differences between offshore fisheries and coastal fisheries monitoring control surveillance and enforcement (MCS&E) operations

4. In the offshore fisheries world, most offences are relatively straightforward. Offences are generally committed by industrial fishing vessels, usually from a Distant Water Fishing Nation (DWFN) that may be fishing in the Exclusive Economic Zone (EEZ) of a coastal State under an access agreement or a charter arrangement between the flag State of the industrial fishing vessel and that particular coastal State. Fisheries officers usually have a very clear-cut case to address. An offence has been committed by an industrial fishing vessel against their national law or against the coastal State legislation, then an appropriate penalty is applied for the offence. It is very clearly a Pacific Island versus an industrial fishing vessel or company scenario (or "us versus them") and there is no room, or expectation, of compromise. Once the crime has been committed all parties are aware of the consequences.
5. In the case of CFA, the fisheries enforcement officer is working in a very different arena that is nowhere near as clear-cut as the offshore sector. The officer may be required to notify an offence by his cousin for using banned fishing equipment, or confiscate undersized product from a relative at the local market, or fine an aunty for selling a banned species. While these are all infringements of the regulations, it is more difficult for a fisheries officer to penalise a family member or individual from the same community than it is to arrest an offender in the offshore sector, to which the fisheries officer has no personal relationship.
6. This highlights the need for a strong and ongoing community awareness and education programme that receives widespread publicity. Such a programme may include information posters for display at markets, brochures that provide details of why certain species are banned and larger information billboards at boat launching ramps/ fish vendor sites and restaurants where marine species are served.
7. While the development and implementation of such an awareness programme is not the responsibility of a fisheries officer, however, a good officer will have sound input into the

awareness material and how it is presented to best convey the desired message to the general public. This increase in their knowledge level will make the fisheries officers' task considerably easier when they have to deal with a relative or friend.

Why MCS&E is required in coastal fisheries and aquaculture

8. There are many scientific documents in the region that conclude coastal fisheries are fully exploited and, in many cases, over-exploited. This is not only finfish and sharks, but increasingly includes invertebrates such as clams and sea cucumbers, along with corals and sponges. Coastal fisheries resources provide the bulk of the daily animal protein requirements for many of our members' coastal communities and their exploitation rates need to be regulated to ensure they remain sustainable for the future.
9. During our work at the Pacific Community, we often hear that nothing is thrown back in the Pacific when fishing. This is great from the point of view that there is no wastage but also means young fish are removed from the sea before they have had a chance to spawn. This requires a change in the mind-set amongst communities and the general public with the ultimate aim that it will become socially unacceptable to catch and retain juvenile fish. Several countries are already making strong progress in this area with new legislation relating to the catch of juvenile or spawning fish, backed up by well supported community awareness and education campaigns.
10. Strong MCS&E is required in aquaculture to prevent the importation of biosecurity risks and ensure aquaculture farms are not having a negative effect on the environment. Land tenure, water usage and land clearing are other areas that require regulation. MCS&E is also required to protect the aquaculture farmers investment as theft of stock is one of their biggest concerns.
11. Growing human populations and climate change are increasing pressure on small island nations' marine resources. CFA are very important to these nations' economic and food security, and must be carefully managed to ensure these pressures are minimised. Effective and efficient MCS&E is critical to ensuring management measures work and is integral to the sustainable future of a nations CFA resources.

Reasons why coastal fisheries and aquaculture MCS&E currently has limited effectiveness

12. The main reason why we have limited effective MCS&E at the CFA level is the strong family and community bonds that exist between fisheries officers, decision makers and offenders. As previously explained these close personal bonds become a barrier to enforcing minor infringements such as possession of a few illegal products or a couple of undersized fish as these are not seen as serious IUU fishing offences.
13. A secondary, but equally important reason why we have limited success in CFA MCS&E is that the traditional western developed world enforcement system is complex and resource intensive, both in terms of capital and labour requirements. Both of these are in short supply among many of our member countries.
14. The western world MCS&E system follows a series of well-developed and historically supported protocols that are accepted in these societies. In the first instance, fisheries officers observe suspicious behaviour during a routine inspection or activity or get a tip off that some form of illegal behaviour is going to happen. The fisheries officers take comprehensive notes on the suspicious behaviour, interview suspects and witnesses, gather additional evidence in the form of photographs

or confiscated product, store the evidence for future use, document everything that is seen, heard or related to the incident and then compile all this information back in their office. The information is then processed to develop a case file that could be used by a prosecutor in court. The case file may evolve over several inspections or incidents and take time to develop. Once developed to a stage where the officer is satisfied, they have a sound case, the case file is provided to an administrator or decision maker who decides on the next course of action. This may be a simple warning, a fine or full prosecution in the case of serious offences.

15. This approach is labour and capital intensive but provides the best possible chance of a successful prosecution, particularly for more serious offences where painstaking case file preparation is required to prevent a defence counsel undermining the prosecutor's case. However, is it the best approach for minor infringements, such as a market vendor selling a few banned green snail shells or similar banned product, or a fisher landing one or two undersized fish?

A different MCS&E approach for minor offences

16. The Pacific Community is suggesting a simplified approach for those countries who may be interested. We suggest that those countries where the traditional approach to MCS&E is working well should continue with that and enhance its effectiveness with more advanced training, which could include more in-depth case file development¹. This additional training would be provided to build on members' existing strengths and structures.
17. Members that have limited MCS&E capability, or rely largely on authorised officers and community enforcement officers, may like to consider a different approach that revolves around the use of an incident-interview book to report offences, that may be supported by on-the-spot fines or infringement notices to avoid judicial proceedings for minor offences where possible.
18. One of the key facets of our current CFA MCS&E training is the importance of correctly completing a notebook when undertaking inspections, doing field work or other official duties. The notebooks consist of blank lined pages and fisheries officers and authorised officers receive training on how they should be completed so they can be used in court as a legal document. Unfortunately, no amount of training can beat the practical experience of filling out a notebook on the job and naturally this can only be achieved with several years' work experience. There are several examples of CFA IUU cases proceeding to court but failing due to inadequate case file preparation for the prosecutor, in some instances because of incorrectly documented notebooks.
19. The incident-interview book is a step-by-step guide for fisheries officers and authorised officers on how to proceed when they encounter illegal activity, so they do not miss important information when dealing with an offence. It contains details of each step required to document the incident and includes a checklist at the end so an officer can make sure they have all the required information before leaving the incident.
20. The proposed incident-interview book may help fisheries officers and authorised officers deal with minor crimes. The incident-interview book by itself may not be sufficient to support a prosecution against a larger IUU offence unless it is accompanied by other evidence such as photographs, physical specimens or official documents such as sales receipts. However, for minor regulatory offences such as a fish vendor selling a few green snail shells, it would contain sufficient

¹ This training would include case file management, investigations, enquiries, advanced interviewing techniques with a view to prosecutions for the larger offences. This will be discussed in greater depth during a presentation by New Zealand Ministry of Primary Industries in the afternoon of the workshop.

information for a fisheries manager to be able to make an informed decision on an appropriate outcome (such as a formal warning, infringement notice or prosecution).

21. To remove the need for court action for some offences, an area where many Pacific Island countries and territories have a poor record of prosecution success, the incident-interview book could be supported by infringement notices, spot fines or a demerit point type system². Domestic legislation would have to enable the fisheries officer or authorised officer to apply a fixed penalty for the illegal behaviour of the offender. Just as a parking inspector can issue a parking ticket, a traffic policeman a speeding ticket, so a fisheries officer would be able to issue a spot fine or similar for an infringement at the local market or community level. An appeal or review mechanism would need to be in place for those who think they have been unfairly issued a fine or an infringement notice, although this need not be complex as the offender would always have access to the courts to address their grievances.
22. Many Pacific Island countries and territories already make use of spot fines, infringement notices or similar arrangements to avoid court proceedings for certain offences so there is precedent for such an approach within the region. Some examples of spot fines are found in the marine resources legislation of American Samoa, Cook Islands, Fiji, Kiribati, New Caledonia, Papua New Guinea, Solomon Islands and Vanuatu. Some countries such as Marshall Islands, Papua New Guinea, Solomon Islands or Tuvalu have compounding procedures in place for out-of-court settlement of certain fisheries offences.
23. The incident-interview book can be used as a legal document both for court action and for spot fines. In case of prosecution, it may serve as evidence before a magistrate in the same way as a notebook. If there is no prosecution, the book provides a record for decision making by the fisheries manager and a basis for appeal for the offender who has been issued an infringement notice or a spot fine.
24. The interview-incident book would be tailored to suit each countries requirements and appropriate training on how to use it provided to countries that were interested. Additionally, a well-documented and completed incident-interview book will provide a history of illegal activity that can be used to focus future MCS&E operations most effectively.

Improving CFA MCS&E

25. Fundamental to improving MCS&E in the coastal fishing and aquaculture worlds is getting communities and the general public accepting that infringements against fisheries regulations are crimes, regardless of their size or nature. Ultimately, we want a scenario where it is socially unacceptable to break any fisheries or aquaculture regulations and we need suitable deterrents and penalties in place to ensure this happens.
26. During this workshop, we will demonstrate how organised crime on a large scale starts with small incidents at the community or individual level. After-all, the market vendor in Hong Kong selling dried shark fins for USD100 per kg certainly did not travel to the Pacific and collect them from the sea. They would have been acquired through a chain of middle persons/suppliers/buyers that would start with a fisher from a community catching that product. The effect on the stock from one individual finning a few sharks may be limited but the cumulative effect over time could be catastrophic. If the community does not understand that the small offence by the fisher is still a

² This is discussed in greater detail in Information Paper 2 – Use of Administrative Penalties in Coastal Fisheries and Aquaculture.

crime, then the chances of stopping or reducing the export of dried shark fins on a greater scale is significantly reduced.

27. Ideally, MCS&E practitioners want to be able to track down the serious offenders and organised criminals through the individuals where the crime starts. If the community knows it is illegal to take a certain species and supports that regulation, then an easy supply of product to the crime organisers dries up and they have to use other means. And every time these people change their modus operandi, they increase their chance of being caught undertaking illegal activity.