



5th SPC Regional Technical Meeting on Coastal Fisheries and Aquaculture

11–14 October 2022



Original: English

Information Paper 8

Building legal capacity for sustainable and equitable coastal fisheries and aquaculture management

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Assessing PICTs' needs in coastal fisheries law

Regional policies

1. PICTs have adopted regional policies that outline the clear need for supportive and enabling legislation for coastal fisheries management, underpinned by community-based management approaches. This was first stated in the *New song for coastal fisheries*, endorsed by SPC Heads of Fisheries (HoF) in 2015. In particular, the New Song's outcome areas include: empowered coastal communities with clear user rights; strong and up-to-date management policy, legislation and planning aiming at minimising illegal unsustainable and unregulated fishing and at improving compliance rates; and equitable access to benefits and decision making within communities, including women, youth and marginalised groups.
2. The New Song is now being implemented through the *Pacific Framework for Action on Scaling-up Community-based Fisheries Management 2021-2025*, endorsed by Fisheries Ministers in 2021. One of the main objectives of the CBFM Framework is to have CBFM adequately supported in policy and legislation for successful scaling-up of effective CBFM approaches at the national level (objective 3). The two main outcomes pursued under this objective are: clear user rights and CBFM mandate; and adequate monitoring, control, surveillance and enforcement is ensured, including through community officers with powers in their respective coastal area. These outcomes are complemented by awareness raising, information dissemination and communication to ensure meaningful participation and improve voluntary compliance.
3. Another relevant instrument is the *Regional framework on aquatic biosecurity*, endorsed by HoF in 2020 with a view to promoting sustainable aquaculture and healthy ecosystems in the Pacific Island region. Its first objective focuses on governance and seeks to harmonise, develop and promote enforcement of coherent national aquatic biosecurity policies, regulations, procedures and practices. Other objectives focus on the improvement of aquatic biosecurity practices, the responsible transfer of aquatic species, and the strengthening of capacity building and institutional collaboration. FAME has started a legal review of aquaculture and aquatic biosecurity legislation in 14 PICTs (see Working Paper 4 for more information).

Programmes and projects

4. Legal support is needed to build legal capacity in PICTs government agencies for sound coastal fisheries management through drafting support and training¹. FAME started providing legal support on coastal fisheries law and enforcement through the New Zealand -funded Effective Coastal Fisheries Management (ECFM) project in 2017². Two major projects cover these needs today: the Sustainable Coastal Fisheries and Aquaculture for Pacific Livelihoods, Food and Economic Security (SCoFA) project, funded by the New Zealand Aid Programme, and the Pacific Coastal Fisheries Management and Compliance (PaFMaC), funded by USAID. In particular, SCoFA envisages PICTs with legislation and policies that enable clearer and more transparent decision making for coastal fisheries and

¹ This need was first identified in Recommendation 4 of the *Strategic plan for fisheries management and sustainable coastal fisheries in Pacific Islands*, endorsed by HoF in 2003: "It is recommended that SPC establish a legal service to respond to requests from island countries for assistance in legislation related to coastal fisheries." (HOF3/WP7 p. 13; see HOF3 Recommendations, n. 13).

² <https://fame1.spc.int/en/projects/mfat>

aquaculture, including aquatic biosecurity. Other outcomes include robust laws and regulations, as well as regional and sub-regional arrangements. SCoFA Output 3 focuses on the development of legal frameworks for coastal fisheries and aquaculture management, including through drafting advice, mentoring and training. Similarly, PaFMaC Output 2 covers the review of laws and policies on coastal fisheries enforcement, the development of laws and policies, and the delivery of training in legal and policy drafting skills to improve coastal fisheries management, compliance and community empowerment.

Training and information tools

Current projects

5. Since the beginning of the pandemic, FAME has also been providing legal online training focusing on different areas of coastal fisheries management. We have used a variety of tools to provide quality training material and accessible learning platforms. Moodle course; legal reviews and guides; Zoom and in person meetings; remote and in person internships; and legal presentations in technical meetings on policy, planning, awareness raising, and monitoring, control, surveillance and enforcement (MCS&E).
6. The *Legislative Drafting Online Course: Coastal Fisheries* has been launched to build capacity of PICTs agencies to prepare coastal fisheries laws and regulations³. Over 40 participants from 9 PICTs attended the inception workshop, held over Zoom on Tuesday 19 July 2022 to introduce the team and the course to those interested. The course covers legal drafting and analysis techniques, including how to draft clearly and unambiguously, how to organise concepts logically, and how to convert policy proposals into legislation. It has been developed by FAME in collaboration with the University of California, Hastings College of the Law⁴ to train and guide participants in preparing new or revised legislation on coastal fisheries. Participants for Cohort 1 were nominated in May this year; an official announcement will be sent out to PICTs for Cohort 2 next year.
7. The course is delivered on Moodle in two phases of five modules each to be taken online through video lectures, reading material and exercises. So far, 25 participants from the first cohort have finished Phase I, which explores the basics of legal drafting. A mid-term workshop was organised in early September for participants to exchange about their experience. Phase II of the course is more writing intensive, with participants building out their own draft regulation and receiving personalised feedback along the way. A final competency assessment workshop will be held in hybrid mode at the end of the course, focusing on specific topics of the Moodle course: policy objectives; management measures; implementation and compliance measures, including community enforcement and mock consultation. Group work is intended to strengthen exchange between participants from different PICTs and increase collaboration.
8. Legal training on gender and human rights has been conducted in Micronesia through the *Subregional Workshop on Gender, Social Inclusion and Human Rights issues in Coastal Fisheries and Aquaculture* that was held virtually on 28-30 June 2022. About 30 participants from the Federated States of Micronesia (Pohnpei, Chuuk and Yap) and the Marshall Islands discussed the rights of small-scale fishers (e.g. right to food, participation and sea safety). The online workshop aimed at providing

³ https://www.spc.int/DigitalLibrary/Doc/FAME/InfoBull/FishNews/167/FishNews167_10_DAndrea.pdf

⁴ https://www.spc.int/DigitalLibrary/Doc/FAME/InfoBull/FishNews/164/FishNews164_53_Sauerwein.pdf

participants with enhanced understanding of gender and human rights to improve mainstreaming into national policies, laws and actions. These representatives from national and state agencies in charge of fisheries, women affairs and justice also had an opportunity to discuss the findings and recommendations of a recent comparative legal analysis on gender and human rights in coastal fisheries and aquaculture in FSM, Marshall Islands and Palau (in review by FAME)⁵, as well as those of the recent gender and fisheries assessments conducted by HRSD⁶.

9. Training of students from the University of New Caledonia (UNC) to raise awareness of the need for coastal fisheries management and regulation. On 30 August 2022, a mock regional consultation was held at SPC with 15 Master of Law students to discuss the implementation of the CBFM Framework for Action. Students, who fictitiously represented fisheries agencies of Kiribati, Fiji, New Caledonia and Tonga, presented the current status of CBFM in their PICT, its legal framework, and their ambitions in terms of awareness raising. Since July 2022, the initiative called “Keep our fisheries sustainable”, led by FAME, involved 18 students in Pacific Cultures and Languages who, guided by SPC and New Caledonian fisheries authorities, wrote stories, combining symbols, customs and rules related to fishing practices. The stories will be recorded in studio at the end of October as audio podcasts and will be broadcasted to celebrate the International Year of Artisanal Fisheries and Aquaculture.
10. FAME has also provided training opportunities on a variety of topics related to fisheries and marine resources, where legal aspects have been incorporated in the training material. For example, the legal component of the USP Certificate IV on Coastal Fisheries and Aquaculture Compliance focuses on coastal fisheries MCS&E in national and international law. Ongoing Cohort 5 includes over 20 participants from four PICTs from 6 June to 11 November 2022. The Fisheries Management Policy and Planning Workshops at country and regional level also include a session on linkages between policies, plans and regulations (e.g. in Tonga from 9 to 11 August 2022). Recently, legal aspects related to the beaching of FADs in coastal areas were discussed with participants from PICTs in an SPC training workshop on drifting FADs held on 7-8 September 2022.

Upcoming and recurring projects

11. We intend to develop an elective module on Moodle to provide legal training on fisheries co-management and CBFM and assist PICTs in securing an enabling environment for scaling up CBFM. The training material will be based on the *Legal guide to enabling and strengthening coastal fisheries co-management in the Pacific* (in press) that FAME and the Environmental Law Institute (ELI) have developed to identify enabling provisions for CBFM and support implementation of the CBFM Framework for Action⁷. The main objective of the guide is to allow PICTs to select among different legal approaches and develop a CBFM framework that is adapted to their national context or strengthen the existing one. The guide is intended to assist PICTs’ fisheries agencies in implementing CBFM on a larger scale by assessing and improving their legislative framework. Examples of legal provisions on CBFM are taken from 30 jurisdictions in the Pacific and beyond, covering 15 PICTs and

⁵ This workshop follows the [first virtual Regional workshop on gender and human rights in coastal fisheries legislation](#) that was [successfully held in August 2020](#), followed by the publication of a legislative review for 6 PICTs and a Policy Brief (No 36/2021). More information in D’Andrea A. and Graham A. Human rights law in coastal fisheries and aquaculture in the Pacific. In: SPC Fisheries Newsletter #164. Available at: <https://coastfish.spc.int/en/component/content/article/523>.

⁶ The Gender analysis of the fisheries sector in Federated States of Micronesia published in 2019 can be found at <http://purl.org/spc/digilib/doc/opmx2>; the gender assessment for the Marshall Islands is currently under review.

⁷ https://www.spc.int/DigitalLibrary/Doc/FAME/Brochures/Anon_22_snapshot_legal_guide_for_Pacific_CBFM.pdf

15 countries from other world regions (Africa, Asia, Central and North America and Europe). In addition, SPC members may request training workshops to be specifically organised to review their legal framework for CBFM.

12. Online training on how to use and update REEFLEX will be conducted both for users and potential contributors to the database⁸. Through this tool (mentioned in Working Paper 5), FAME can provide support to PICTs in reviewing coastal fisheries legislation to identify gaps before engaging in drafting new legislation. The information base for comparative legal analyses is provided by this dedicated law and policy database, which gives access to full text of laws and regulations, policies and plans for 22 PICTs and Timor Leste (over 1000 documents, with 150 new texts uploaded this year). It also provides an online application to search and compare different types of management measures (2000 and counting) currently in force for each marine species or group of species. The training sessions will explain how to find laws and policies of PICTs, how to conduct comparative research online and how to regularly update the database.
13. Finally, legal training opportunities include the upcoming Pacific Island Fisheries Professional positions focusing on legal matter and MCS&E (12 months), as well as short-term attachments at SPC Headquarters (1 or 2 weeks) and remote or in-person internships (from 3 to 6 months). Since the beginning of the Covid pandemic, legal interns (mostly working remotely) have covered a wide range of topics going from small-scale fisheries in Tonga⁹ and New Caledonia, safety at sea in 15 PICTs, aquaculture and aquatic biosecurity in Micronesia¹⁰, and the rights of nature¹¹. The work done by interns is directly geared towards better understanding of PICTs' legal frameworks in order to provide sound advice on coastal fisheries and aquaculture legislation.

⁸ <https://www.spc.int/CoastalFisheries/Legislation/main>

⁹ https://www.spc.int/DigitalLibrary/Doc/FAME/InfoBull/WIF/36/WIF36_41_Von_Rotz.pdf

¹⁰ https://www.spc.int/DigitalLibrary/Doc/FAME/InfoBull/FishNews/163/FishNews163_17_Calavan.pdf

¹¹ https://www.spc.int/DigitalLibrary/Doc/FAME/Brochures/DAndrea_22_info_paper_rights_of_nature.pdf