

Nature is increasingly claiming legal rights for itself, but what about fish?

Introduction

Over the past 15 years, a new type of rights, known collectively as the rights of nature, has emerged in a growing number of countries to find a new approach enabling a better protection of the environment and stop the increasing degradation of nature, including fisheries resources. In 2021, the Pacific Community (SPC) has commissioned a study to review national and local initiatives in the world and produce a comparative legal analysis to identify trends and lessons learned for Pacific Island countries and territories (PICTs).

Main findings

Yes, nature has rights just like humans

In certain countries, nature has been granted rights of its own, either as a whole or through specific ecosystems such as a river, a mountain, a forest, or a land area. While Ecuador and Bolivia have recognised rights to nature as a whole – the former in its constitution and the latter in its national legislation – Canada and New Zealand have granted the rights to a particular ecosystem, a river. If a large variety of ecosystems have been granted rights of their own, countries have chosen different pathways to do so that are often linked to the country's history and to local circumstances.

What rights does nature have?

The rights of nature approach rejects the notion that nature is human property, meaning an object to be owned and used at will by human beings. It rather advocates for the recognition of the rights of the natural world to exist, thrive, regenerate and naturally evolve – nature as a subject with legal rights. These fundamental rights often include the right to restoration, which is not limited to financial remedies but may also include concrete measures to restore ecosystems to their original state.

To these inherent rights of nature and natural beings, some countries such as New Zealand have added procedural rights that are associated with legal persons, for instance the rights to sue and be sued, enter into contracts and own property.

“ *How can rights of nature become an asset for effective coastal fisheries management, underpinned by an ecosystem approach and implemented by local communities?* ”

In the Pacific, nature can be granted legal personality. . .

“The unitary principle of life – according to which humans belong to the natural environment that surrounds them and identify themselves in the elements of that natural environment – is the founding principle of the Kanak society. To reflect this worldview and the Kanak social system, **certain elements of Nature may be recognised as legal persons with rights of their own**, subject to applicable laws and regulations.”

(Unofficial translation of Article 110-3 of the Environment Code of the Loyalty Islands Province, New Caledonia)

« Le principe unitaire de vie qui signifie que l'homme appartient à l'environnement naturel qui l'entoure et conçoit son identité dans les éléments de cet environnement naturel constitue le principe fondateur de la société kanak. Afin de tenir compte de cette conception de la vie et de l'organisation sociale kanak, **certaines éléments de la Nature pourront se voir reconnaître une personnalité juridique dotée de droits qui leur sont propres**, sous réserve des dispositions législatives et réglementaires en vigueur. »

(Article 110-3, Code de l'environnement de la province des îles Loyautés, Nouvelle Calédonie)

Who stands in court on behalf of nature?

When nature or a particular ecosystem has been recognised as a legal person, the protection of its rights is generally entrusted to a legal guardian (individual or group) specifically appointed for that purpose. By contrast, when nature or a given ecosystem has been granted rights without being recognised as a legal person, the protection of these rights is generally the responsibility of the public at large, either collectively or individually, meaning that nature appears as a plaintiff in court through the representation of the legal guardian or the public at large.

Can marine ecosystems have rights?

To date, no rights have been accorded to marine areas or oceans. However, Australia attempted to recognise rights of the Great Barrier Reef in 2018. The purpose of the bill is to protect the health and well-being of the Great Barrier Reef by recognising the inherent rights of the Barrier to naturally exist, flourish, regenerate and evolve, and its right to restoration.

There has been growing enthusiasm around this approach and a great diversity of ecosystems have been granted rights, as have plant species (such as the Manoomin rice in the US). One may wonder how long before legal rights are recognised for marine ecosystems (e.g. tabu or sacred areas) or even to marine species (e.g. endangered seaweed species or totem animals, such as sharks in certain cultures).

Next steps

The SPC study, which is currently under review, attempts to explain the emergence of the rights of nature, their mode of recognition and the types of rights recognised. It also raises the question of how the rights of nature can strengthen or improve coastal fisheries management in the Loyalty Islands Province and perhaps in the Pacific region.

In view of the special relationship between the natural environment and the Pacific people and the high level of reliance of the Pacific Islands’ economies and livelihoods on marine resources, the variety of examples contained in this study could inspire the region in the preservation of coastal areas.

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The Bay of Prony “needle”, in New Caledonia, and one of its many inhabitants, New Caledonia. (image: ©Matthieu Juncker)

Selected countries or territories where rights of nature have been recognised

 Bolivia	Law on the Rights of Mother Earth 2010
 Colombia	Constitutional Court Decision 2016 (Atrato River)
 Ecuador	Constitution of 2008
 Canada	Quebec Ekuanitshit Innu Council Resolution 2021 (Magpie River) Quebec Minganie Regional County Municipality Resolution 2021
 New Caledonia	Environment Code of the Loyalty Islands Province 2016
 New Zealand	Te Urewera Act of 2014 (land area and indigenous communities) Te Awa Tupua (Whanganui River Claims Settlement) Act 2017
 USA	Nottingham Water Rights and Self-Government Ordinance 2008 Minnesota Rights of Manoomin Ordinance of 2018

