

Legislating for A New Song: Ensuring effective and up-to-date coastal fisheries laws in the Pacific Region

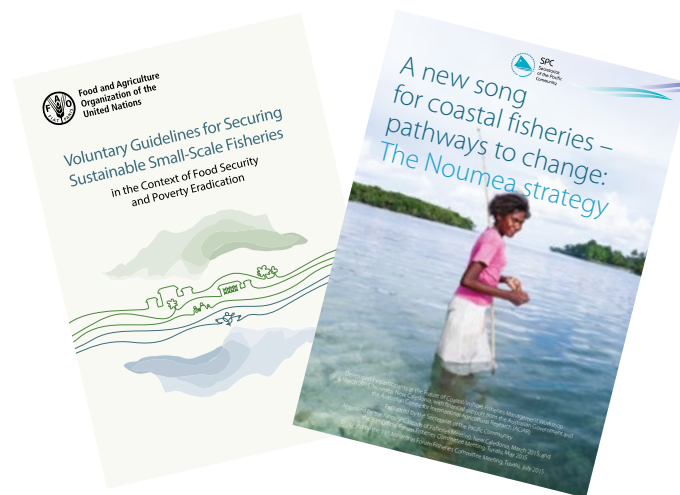
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Background

The significant benefits derived by Pacific Island countries and territories (PICTs) from oceanic fisheries are already recognised in well-developed laws and policies designed to assist PICTs in harnessing the value of commercial tuna fisheries (Gillett 2016). However, to date, coastal fisheries have received far less attention from governments. This is despite the fact that nearshore fisheries play a critical role in many local communities, make a substantial contribution to household income and food security and are declining in many PICTs under the dual pressures of growing populations and unsustainable fishing activities (Charlton et al. 2016; Gillett and Cartwright 2010).

A new song for coastal fisheries – pathways to change: The Noumea strategy ('A New Song') (SPC 2015) presents a broad strategy to deal with the challenges of coastal fisheries management, and works towards the long-term objective of 'improved wellbeing of coastal communities [and] productive and healthy ecosystems and fish stocks'.⁵ Insufficient attention to management of coastal fisheries, and outdated planning, policy and legislation are identified in A New Song as key barriers to achieving these goals.⁶ A requirement of 'strong and up-to-date management policy, legislation and planning' for coastal fisheries is therefore designated a key outcome area for the strategy.⁷

For many PICTs, this will require new or updated legislation, typically to expand coverage beyond the high value offshore fisheries with their distinct management and policy issues. How might PICTs, then, embark on the task of ensuring that coastal fisheries regulations in each jurisdiction are 'strong and up-to-date'? One approach would be to benchmark existing legislation against a set of 'best practice' guidelines.



The 'SSF Guidelines' and 'A New Song' were both published, respectively by FAO and SPC, in 2015

The study

In a recent study published in *Marine Policy*, this is the task attempted by a group of researchers with a particular concern as to how PICT coastal fisheries legislation could facilitate adaptive and community-based ecosystems approaches to fisheries management in light of climate change (Gourlie et al. 2017). A central conclusion of the study was that the utility of nearshore fisheries laws, in the face of climate change, would depend largely on the ability of the legal regime to support *resilient* coastal fisheries. The paper's consideration of best-practice guidelines for coastal fisheries legislation is therefore of broader relevance to the current question of what criteria to apply when assessing the strength and currency of existing law and policy.

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⁵ A New Song, 10.

⁶ A New Song, 8.

⁷ A New Song, 10.

The authors referred to both A New Song and to the FAO's 2015 *Voluntary guidelines for securing sustainable small scale fisheries in the context of food security and poverty eradication* ('SSF Guidelines') (FAO 2015) to construct a list of benchmarks for use in their assessment of PICT coastal fisheries laws. As with A New Song, the SSF Guidelines also recognise the importance of suitable national legislation as part of the enabling environment for supporting sustainable coastal fisheries.⁸ Both policy documents identify a number of considerations that are seen as important – either in improving the management of coastal fisheries directly, or in achieving broader socio-economic goals within the small-scale fisheries sector. From these considerations, the authors derived a set of twelve benchmarks and used these as the basis for assessing coastal fisheries legislation across PICTs.

Coastal fisheries law: Benchmarks

1. *Recognition and protection of tenure* – in particular does the law ensure that small-scale fishing communities have equitable and socially and culturally appropriate tenure rights to support their nearshore fishing?⁹

2. *Recognition and support for local communities and traditional management* – remembering that 'Coastal fisheries management is not only about managing fish; it is about supporting people at the community level.'¹⁰ Does the law promote recognition and respect for 'existing forms of organization, traditional and local knowledge and practices of small-scale fishing communities',¹¹ as these are essential for empowering community stewardship?¹²

3. *Long-term conservation policies/sustainable management principles* – does the law incorporate such principles? Support for sustainable, well-managed coastal fisheries that provide food security and long-term economic, social and ecological benefits to communities are key concerns of both A New Song and the SSF Guidelines.¹³

4. *Adequate enforcement mechanisms* – to what extent does the law incorporate these? Compliance, enforcement and variable or inadequate sanctions are identified as a barrier to effective coastal fisheries management in the Pacific context.¹⁴

5. *Support for co-management strategies* – to what extent does the law support management cooperation between government and stakeholders (as this is critical in supporting A New Song's central goal of scaling out community-based ecosystem approaches to fisheries management)?¹⁵

6. *Protection for local workers and immigrant fishing communities* – to what extent does the law incorporate such protection? While this is not a central concern of A New Song (which does, however, recognise the diversification of livelihoods as a component of coastal fisheries management¹⁶), this is a major concern in the broader SSF Guidelines¹⁷ and may become more of an issue in the Pacific region as a result of migration and resettlement in response to climate change.

7. *Equity for all stakeholders, both pre- and post-harvest, with a focus on women and children* – to what extent are equity considerations embedded in the legal framework? A New Song targets the greater inclusion of women and youth in decision-making and more equitable access to the benefits flowing from coastal fisheries.¹⁸

8. *Identification of climate change as a relevant consideration* – to what extent is climate change recognised in the law? The potential for climate change to negatively affect small-scale fishing resources and communities is now well-recognised, highlighting the need for adaptation strategies and building resilience in coastal fishing communities.¹⁹

9. *Support for institutional coordination and policy cohesion* – to what extent does the law encourage a coordinated approach across agencies and stakeholders?²⁰ A New Song notes that poor institutional connections at various governance levels have been a key barrier to sustainable management strategies in PICTs, and stresses that successful approaches require stakeholders and policies to 'sing in harmony from the same songbook, or risk being ineffective'.²¹

10. *Data, research, and information sharing* – to what extent does the law mandate the collection and use of data? Collecting data, conducting research, and communicating knowledge and information effectively amongst stakeholders is an integral part of sustainable coastal fisheries management.²²

11. *Effective monitoring and evaluative mechanisms* – to what extent does the law support responsive management using monitoring, evaluation, and adaptation mechanisms?²³

12. *Transparent, accountable, and adequately resourced management structures* – to what extent does the law support these? The long-term success of small-scale fisheries management requires strong administrative mechanisms, supported by adequate resources, formal institutions, and cooperation of all parties.²⁴

Relevant legislation for 14 PICTs was surveyed to identify provisions that could be regarded as supporting each of

⁸ SSF Guidelines, 3

⁹ A New Song, 7, 10.

¹⁰ A New Song, 6.

¹¹ SSF Guidelines, 2.

¹² A New Song, 10, 14.

¹³ A New Song, 8; SSF Guidelines, 1.

¹⁴ A New Song, 8, 13.

¹⁵ A New Song, 10, 11.

¹⁶ A New Song, 10, 14.

¹⁷ SSF Guidelines, 8.

¹⁸ A New Song, 6, 14.

¹⁹ A New Song, iii, 7.

²⁰ A New Song, 7, 10.

²¹ A New Song, 6.

²² A New Song, 8, 12.

²³ A New Song, 8, 11.

²⁴ A New Song, 10, 13.

Table 1. Abbreviated results of the number of countries (out of 14 total) with legislation that meets, has the potential to meet, or does not meet each of the 12 benchmarks.

	Meets benchmark	Has potential	Does not meet benchmark
Recognition and protection of tenure	3	5	6
Recognition and support for local communities and traditional management	9	2	3
Long-term conservation policies/sustainable management principles	5	7	2
Adequate enforcement mechanisms	11	3	0
Support for co-management strategies	4	8	2
Protection for local workers and immigrant fishing communities	1	5	8
Equity for all stakeholders (gender and age focus)	5	6	3
Identification of climate change as a relevant consideration	2	1	11
Support for institutional coordination and policy cohesion	6	2	6
Data, research and information sharing	3	8	3
Effective monitoring and evaluative mechanisms	0	10	4
Transparent, accountable and adequately resourced management structures	3	8	3

these 12 benchmarks. Legislation was judged against a simple rubric: ‘yes’ (supports the benchmark); ‘no’ (does not support the benchmark); and, ‘has potential’ (i.e., there are provisions that could support this benchmark but further clarification on how the provision is interpreted or supported is required).

Table 1 provides a high-level, region-wide summary of the number of the results for each benchmark. The data corresponds to the number of countries with legislation that falls under each column.

There are three significant limitations with this assessment process. Firstly, the process for selecting the guidelines to use as benchmarks was necessarily imprecise and focused on relatively broad principles; secondly, for practical reasons the assessment looked only at laws from fourteen independent PICTs; and finally, the assessment of legislation against benchmarks was based on a paper reading of those laws and not an analysis of how coastal fisheries regulation is implemented in practice. Despite these limitations, the assessment provides a useful starting point for identifying broad strengths and weaknesses in existing coastal fisheries legislation and its implementation in the region.

Lessons learned

Most PICTs have marine resource and fisheries management legislation in place, supplemented by other statutes for the environment and land use that are relevant to coastal

fisheries. However, significant shortfalls come to light when the legislation is measured against the benchmark principles found in A New Song and the SSF Guidelines.

The deficiencies in existing legislation vary considerably across the region. Some countries have legislation directed at offshore fisheries but only limited, or no, regulation of coastal fisheries. Others have legislation directed at coastal fisheries but that legislation is deficient in some key respects.

As Table 1 demonstrates, some benchmarks from A New Song and the SSF Guidelines are strongly represented in existing legislation. Recognition of traditional management and enforcement provisions are frequently found in existing legislation. However, even when the legislative provisions appear strong on paper, the applicability of those provisions is another question altogether. For example, while on paper the enforcement provisions across PICTs rate strongly, in practice compliance and enforcement are identified as significant barriers to effective coastal fisheries management in A New Song.²⁵

In other areas, legislation appears are in need of updating. Existing laws frequently lack protection for fishing communities, support for institutional and policy coordination, and effective monitoring and evaluative mechanisms. And while legislation often expresses some degree of recognition for local communities and traditional management interests, the table also suggests that this is often not followed through with mechanisms that could support co-management strategies and ensure equitable participation across stakeholders.

²⁵ A New Song, 8.

Support for transparency, accountability and resourcing of management structures is commonly in need of attention; so too are the requirements that support effective decision-making in pursuit of sustainable, ecosystem-based management of nearshore fish stocks. In particular, the benchmarks relating to adequate data collection and information sharing and to effective monitoring and evaluation mechanisms – which are essential for supporting informed and responsive decision-making – are not strongly represented in current legislation.

A New Song and the SSF Guidelines will provide a catalyst for many PICTs to review their legal and regulatory frameworks for coastal fisheries. It should be seen as an opportunity to ensure that, so far as is possible, coastal fisheries management is supported by clear and coherent laws that address A New Song requirements. The 12 benchmarks distilled from A New Song and the SSF Guidelines can aid this process, as they are designed to facilitate effective and sustainable management of small-scale fisheries. Legislation can support sustainability of coastal fisheries by requiring the collection of key information for evidence-based decision-making, outlining how such information will be collected and subsequently used. Similarly, statutory provisions can include goals of social, cultural, and economic sustainability, and require that the management scheme accounts for and protects current and future user interests. New administrative structures and funding appropriations via statute can guarantee the long-term viability of decision-making structures and ensure that institutional knowledge and capacity increase over time. However, governments must strive to ensure that legislation can be feasibly implemented under projected capacity and funding levels, and in the context of individual countries. Perhaps most importantly, the study reminds us that it is one thing to have well drafted legislation on the statute books, but the real test is in its implementation and enforcement.

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References

- Charlton K.E., Russell J., Gorman E., Hanich Q., Campbell B. and Bell J. 2016. Fish, food security and health in Pacific Island countries and territories: a systematic literature review. *BMC Public Health* 16:1–26.
- FAO (Food and Agriculture Organization of the United Nations). 2015. Voluntary guidelines for securing sustainable small scale fisheries in the context of food security and poverty eradication. Rome: FAO. 18 p.
- Gillett R.D. 2016. Fisheries in the economies of Pacific island countries and territories. Noumea, New Caledonia: Pacific Community. 684 p.
- Gillett R.D. and Cartwright I. 2010. The future of Pacific Island fisheries. Noumea, New Caledonia: Secretariat of the Pacific Community. 139 p.
- Gourlie D., Davis R., Govan H., Marshman J., and Hanich Q. 2017. Performing 'A New Song': Suggested considerations for drafting effective coastal fisheries legislation under climate change. *Marine Policy*. <http://dx.doi.org/10.1016/j.marpol.2017.06.012>
- SPC (Secretariat of the Pacific Community). 2015. A new song for coastal fisheries – pathways to change: The Noumea strategy. Noumea, New Caledonia: Secretariat of the Pacific Community. 16 p.

Fishing for octopus, Tarawa Atoll, Kiribati (image: Q. Hanich)

