

Workshop Information Paper 2

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## Use of administrative penalties in coastal fisheries and aquaculture

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## Use of administrative penalties in coastal fisheries and aquaculture

1. In most Pacific Community member countries and territories (PICTs), monitoring, control, surveillance and enforcement (MCS&E) in coastal fisheries and aquaculture (CFA) could be improved by adopting a simplified approach to enforcement (see [Workshop Information Paper 1]). The proposed approach includes awareness raising initiatives to promote compliance among stakeholders, increased training of fisheries officers on case file building for prosecution, and adoption of an incident-interview book for CFA offences. An additional tool for this simplified approach is the introduction of administrative penalties issued by a regulatory body to avoid criminal prosecution in court for certain offences.
2. There is growing recognition that criminal prosecution is a blunt instrument that is not suitable to use for all the gradations of regulatory offences that may be committed. Apart from the difficulty of prosecuting a fellow member of a small community, it is arguably better to have a range of sanctions that can be used proportionately to address a particular breach of legislation. This enables the enforcement action to be tailored to the nature, size and significance of an offence. Examples of administrative sanctions include:
  - a formal warning or reprimand;
  - an enforcement or compliance notice, giving the offender a specified amount of time to cease or remedy the breach;
  - a ‘stop work’ notice or ‘stop fishing’ order;
  - a spot fine or instant fine for minor infringements;
  - the confiscation of catch and fishing gear;
  - the suspension or withdrawal/revocation of a fishing licence;
  - the requirement to perform community service for a number of hours;
  - an out-of-court settlement procedure.
3. To avoid abuse or unfair application of administrative penalties, legislation must provide for safeguards such as the right to seek review (e.g. by a senior officer or panel of officers) and right to appeal in cases where the sanction has significant effects on a person’s finances (e.g. a spot fine) or livelihood (e.g. a ‘stop fishing’ order).
4. In PICTs legislation, spot fines and infringement notices are types of administrative penalties that can be applied by a fisheries officer or the decision maker for minor offences. The terminology for these types of penalties will vary from country to country – penalty notice, fixed penalty notice, infringement notice, on-the-spot fine or notice of violation<sup>1</sup>. Although the concept is generally the same: a government agency or officer may impose a monetary penalty without going through the judicial process.
5. Spot fines and infringement notices must be established through legislation that clearly and carefully defines the authority and procedures to issue them. Usually infringement notices apply a fixed monetary penalty (fine) prescribed for a given offence, and no discretion to this can be applied by the issuing officer. In some cases, an infringement notice may result in the confiscation of fishing equipment and/or the illegal product, depending on how the supporting

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<sup>1</sup> In Vanuatu, Papua New Guinea and Kiribati they are called penalty notices, while in Fiji they are labelled fixed penalty notices, in Cook Islands they are called on-the-spot fines, in Solomon Islands they are known as infringement notices with fixed penalties and in American Samoa offenders may be issued a citation for violation.

legislation is worded. In some other cases, default in payment of the instant fine automatically leads to prosecution in accordance with normal court procedures.

6. Several members of the Pacific Community already have administrative penalties in place so there is a 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 (e.g. summary administrative proceedings).
7. An important point that must be clearly defined in legislation is whether fisheries officers have the authority to collect money from the offender upon issuance of a payment receipt or if all payments have to be done in the central office of the fisheries administration or other government agency.
8. A disadvantage of spot fines or infringement notices is they may not be sufficient disincentive to stop repeat offenders. For example, if a spot fine for possession of undersized lobsters has a fixed penalty of NZD 40 and the lobsters are valued at NZD 40 each then it is worthwhile for the offender to take the chance of being caught as 5-6 lobsters could return NZD 240 while the deterrent is only NZD 40. Some punters would consider this very good odds when balanced against the likelihood of being caught. In this example, the penalty just becomes a cost of doing business and is passed onto the buyer. To note is each time the offender risks getting caught it will only cost them NZD 40, so there is little deterrent effect in this case and no additional penalty for repeat offending, or for multiple possession of the banned item.
9. There are several solutions to this issue and one way this can be addressed is by adopting a demerit point system linked to spot fines or infringement notices. An example of a demerit point system and how it may work is provided in Annex 1.

## Annex 1

### *Demerit Point System*

#### **What is a demerit point system?**

A system where fishers, fish vendors or members of the public accumulate points for each offence or transgression of the fisheries legislation and, when a certain pre-agreed total of points has been reached within a certain pre-agreed time period, a penalty such as a suspension of licence is imposed.

#### **How does a demerit point system work?**

In the example below, which applies to a fish supplier, once 12 demerit points have been accumulated over a 3-year period an automatic penalty of loss of licence is imposed. In this example, the fine for each demerit point offence doubles as the number of offences increases as a further deterrent to non-compliance with the regulations; the number of demerit points per offence also increases with repeat offending.

1st offence – formal warning

2nd offence - 1 demerit points and  
\$40 fine

3rd offence - 2 demerit points and  
\$80 fine

4th offence – 4 demerit points and  
\$160 fine

5th offence – 8 demerit points, \$320 fine and  
automatic loss of licence to operate as a fish  
vendor for 6 months

The benefit of a demerit point system is its flexibility as it is an ideal way to introduce regulations where none have previously existed. A demerit point system allows officers some discretion initially in that they can issue a warning for a first offence while the community is being educated and made aware of the new regulations. After an agreed period of time, a demerit point system also allows for heavier set penalties for serial offenders without having to involve expensive and time-consuming court processes.

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A demerit point system can be designed to be as simple or as complex as required. A simple system might be where transgressions against the regulations carry the same weighting as an offence and therefore attract the same penalty. A more complex system could have different weightings for different offences according to the severity of the offence. For example, catching and killing a protected species such as a marine turtle may incur a higher penalty than being in possession of one undersized coconut crab.

As mentioned earlier, penalties do not necessarily have to be monetary fines either, some level of agreed community work such as cutting road verges or maintenance/painting of a community building could also be applied. The key is to apply penalties that are socially acceptable but still act as sufficient deterrent to committing the offence.

### **How much does a demerit point system cost?**

Depending on the population size and geographic area of a country or territory, costs can be kept to a minimum and absorbed at least partially by the government. A simple excel spreadsheet is all that is required to operate a demerit point system, and with appropriate training such a record system can be managed by one person. The level of compliance with regulations that already exist and the number of offences, obviously dictates how much time this person would have to spend on the system each week. Initially this may be about 2 hours per day but as the community gets accustomed to the system and re-offending becomes less common this should drop down to around 1-2 hours per week.

### **Other issues to consider**

A demerit point system would have to be provided for in legislation and, if such provision does not already exist, then an amendment to the most appropriate current legislation would be required. Ideally, a demerit point system should be tied to a licensing or registration system. This would allow the person to be known to the administration, who would keep a record of any offences committed or citations issued and, of course, the number of demerit points accumulated.

Another issue to consider is if the demerit point system would apply equally to locals, foreign operators and tourists. Theoretically, foreign operators and tourists would be able to transgress at least once with

a warning or minimum penalty so perhaps a system of increased on-the-spot fines should be applied to recalcitrant holiday makers and foreign operators who infringe the regulations?