

# INFORMATION PAPER

## Rights of nature and their relevance to coastal fisheries

### Purpose

This information paper provides a brief overview of the rights of nature movement that has spread in a growing number of countries throughout the world, highlights the key features of these rights and identifies the challenges to their effective implementation, including in coastal fisheries management.

### Context

The rights of nature arose in the face of the ever-increasing degradation of the natural world and the recognition that existing legal and policy frameworks based on the sustainable development principle are failing to ensure adequate protection and preservation of the environment. Worse, some critics have argued that existing environmental law is not designed to protect the environment, but to determine how much human beings can legally harm or exploit nature.

In 2009, the United Nations General Assembly proclaimed 22 April as International Mother Earth Day. It has since adopted a series of resolutions on “harmony with nature”, promoting the rights of nature as part of its agenda on sustainable development. The Universal Declaration of the Rights of Mother Earth, endorsed by a number of countries in 2010, is yet to be adopted by the United Nations.

In the Pacific region, New Zealand and Australia have enacted legislation recognising rights to elements of nature largely in the context of reconciliation between the government and indigenous peoples. This approach has also been introduced in the Environmental Code of the Loyalty Islands' Province in New Caledonia, while a feasibility study exploring the possibility of recognising the Pacific Ocean as a legal entity has been launched under the framework of the United Nations Ocean Conference.



# Theory

The rights of nature stem from the emerging theory of Wild Law and based on Earth Jurisprudence, which is a philosophy or approach to governance that sees humans as an integral part of the whole living community called Earth. To flourish, humans must govern themselves in ways that accord with the laws of that community. One of the central premises of the Earth Jurisprudence approach is that long-term human well-being and survival (as with other species) depend on the degree of adaptation to our habitat. Thus, the primary goal of human governance systems should be to ensure that humans behave in a manner that enables them to thrive without degrading the Earth community that is essential to life. The translation of this theory into practice gave rise to the rights of nature movement, which rejects the notion that nature is human property (an object to be owned and used at will by human beings) and advocates for the recognition of the rights of the natural world to exist, thrive and evolve (a subject with legal rights).

Rights of Nature is a new approach to environmental law, which views nature not as a series of resources that human beings can use, but as a living subject with its own interests and rights.

Source: International Tribunal for the Rights of Nature

## Rights of nature

### How have rights been granted to nature?

- Constitution
- National laws
- Municipal or local laws
- Court decisions

### Which elements of nature have legal rights so far?

- Nature as a whole (Mother Earth, within a country or a municipality)
- The entire animal kingdom, including aviary and aquatic species
- Specific ecosystems (rivers, lakes, mountains, glaciers, forests or land areas)
- Specific species (wild rice)
- Specific animals in captivity (chimpanzee Cecilia)

### Who can legally act on nature's behalf?

- Legal guardian(s)
- A board of trustees
- The public at large

### What rights have nature been granted?

#### Fundamental rights to:

- naturally exist
- flourish
- regenerate (its life cycles)
- naturally evolve
- restoration

These rights are inherent to all elements of nature. They are like human rights for us.

#### Procedural rights to:

- sue and be sued
- enter into contracts
- own property

These rights are given to legal persons, either human or non-human entities, which may include ecosystems.

### Ecuador

#### Constitution Article 71

Nature, or Pacha Mama, where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary processes.

All persons, communities, peoples and nations can call upon public authorities to enforce the rights of nature. To enforce and interpret these rights, the principles set forth in the Constitution shall be observed, as appropriate.

The State shall give incentives to natural persons and legal entities and to communities to protect nature and to promote respect for all the elements comprising an ecosystem.

In a 2015 judgment, the constitutional court of Ecuador stated that courts have the task of ensuring guardianship and protection of nature's rights.

## New Zealand

### Te Urewera Act 2014

Te Urewera is a place of spiritual value, with its own mana and mauri.

Te Urewera has an identity in and of itself, inspiring people to commit to its care.

Te Urewera is a legal entity, and has all the rights, powers, duties, and liabilities of a legal person.

The rights, powers, and duties of Te Urewera must be exercised and performed on behalf of, and in the name of, Te Urewera by Te Urewera Board.

The liabilities are the responsibility of Te Urewera Board.

The Board has nine members (six appointed by indigenous communities and three by the government).

## Challenges

In many countries the rights of nature are defined in broad terms that are not sufficiently elaborated or precise to allow for their direct implementation. Therefore, further guidance and development of standards for their application are required.

### How much protection is enough for nature?

One particularly challenging issue will be to determine the levels or thresholds of protection to be accorded to nature or particular ecosystems to achieve the overarching principle of living in harmony with nature. Should they be tied up to planetary boundaries or should they be based on other criteria such as ecological integrity, social acceptability or any others? These thresholds and limits will have to be determined in such a manner that they create the enabling conditions for implementation of the rights of nature. Balancing the interests of nature with that of humankind will not be easy to achieve and may require frequent adjustments.

### Would people comply if nature had rights?

Ensuring an adequate level of compliance with, and enforcement of, the rights of nature is likely to be a major challenge in many countries, particularly where exploitation of natural resources is a pillar of the economy and where poor enforcement of environmental law is a common feature.

### What about human rights?

Recognition of the rights of nature challenges the idea that nature and its components are human property that can be exploited for human benefits. This represents a major shift in the relationship between nature and humanity. The difficulty now is to make this change in theory a reality in practice. Interestingly, the human right to a clean and healthy environment has been used by lawmakers, in several jurisdictions, as a means to advance the rights of nature and vice versa, highlighting the fact that these fundamental rights of human and other living beings are complementary and reinforce each other.

## Minnesota (USA)

### Rights of Manoomin Ordinance 2018

Legal standing is recognised to a particular plant species (the Manoomin wild rice) within the White Earth Reservation.

Inherent rights include the right to clean water and to a natural environment free from industrial pollution.

The Earth Reservation Business Committee represents the Manoomin within the White Earth Reservation to defend and enforce its rights.



# Can the rights of nature strengthen coastal fisheries management in the Pacific region?

When applied to fisheries management, the recognition of the rights of nature raises a host of questions. Would the recognition of such rights to a given coastal area or marine ecosystem improve the management of the resources occurring therein? Would it be any different from, and more effective than, traditional fisheries management measures such as the establishment of marine protected areas, exclusive zones for small-scale fisheries, or co-management areas? Could it be instrumental in strengthening community-based fisheries management (CBFM) and have the effect of reinforcing customary fishing rights?

Some forms of co-management regimes have been established by fisheries legislation in most Pacific Island countries and territories to facilitate the participation of local communities in the management of coastal fisheries and to safeguard the exercise of traditional fishing practices and customary rights. A central challenge for co-management regimes is that statutory law, generally, requires communities to work through a lengthy review process to formalise and give effect to local rules and regulations. In addition, these rules and regulations can be approved and given force of law only if they are consistent with the main fisheries legislation.

Would the recognition of intrinsic rights to a given marine area or co-management area result in giving local and indigenous communities living within such an area more powers over natural resources management, including fisheries? While there is no simple and obvious answer to this question, it would seem that the recognition of legal personality to a given marine area or ecosystem may, through the mechanism of legal guardianship, provide an opportunity for local communities to ensure that traditional practices and customary law receive appropriate consideration in the decision-making process and be regarded as equal to statutory law on certain matters, consistently with the constitution. Importantly, implementation of the rights-of-nature approach will have to be tailored to the national context.

While it is too early to say whether the rights of nature will better protect fisheries resources than traditional management measures, the effectiveness of these rights will require adequate political will and support from governments, as well as sufficient buy-in by local communities, civil society and other stakeholders. Such will, support and buy-in are critical for successful implementation and enforcement of the rights of nature as a new approach to improve fisheries management, to support the emergence of robust CBFM mechanisms, to strengthen traditional and customary rights and to promote local and indigenous knowledge.

## Quebec (Canada)

### Ekuanitshit Innu Council Resolution 2021 and Minganie County Regional Municipality Resolution 2021

The Magpie River is granted legal personality with specific rights, such as the right to live, exist and flow; the right to evolve naturally, to be preserved and to be protected; the right to maintain its natural biodiversity or the right to sue.

Guardians to be appointed by the Minganie County Regional Municipality and the Innu First Nation of Ekuanitshit are entitled to undertake legal action to seek redress for damage suffered by the river and to receive compensation for the benefit of the river.

## Further reading

Burdon, Peter D. 2012. 'A Theory of Earth Jurisprudence'. *Australian Journal of Legal Philosophy* 37:28–60. Retrieved from: <http://classic.austlii.edu.au/au/journals/AUJLegPhil/2012/1.pdf>

Stone, Christopher D. 1972. 'Should Trees Have Standing? Toward Legal Rights for Natural Objects'. *Southern California Law Review* 45:450–501. Retrieved from: <https://iseethics.files.wordpress.com/2013/02/stone-christopher-d-should-trees-have-standing.pdf>