

# Inshore Fisheries Law and Governance- An Overview

James Sloan

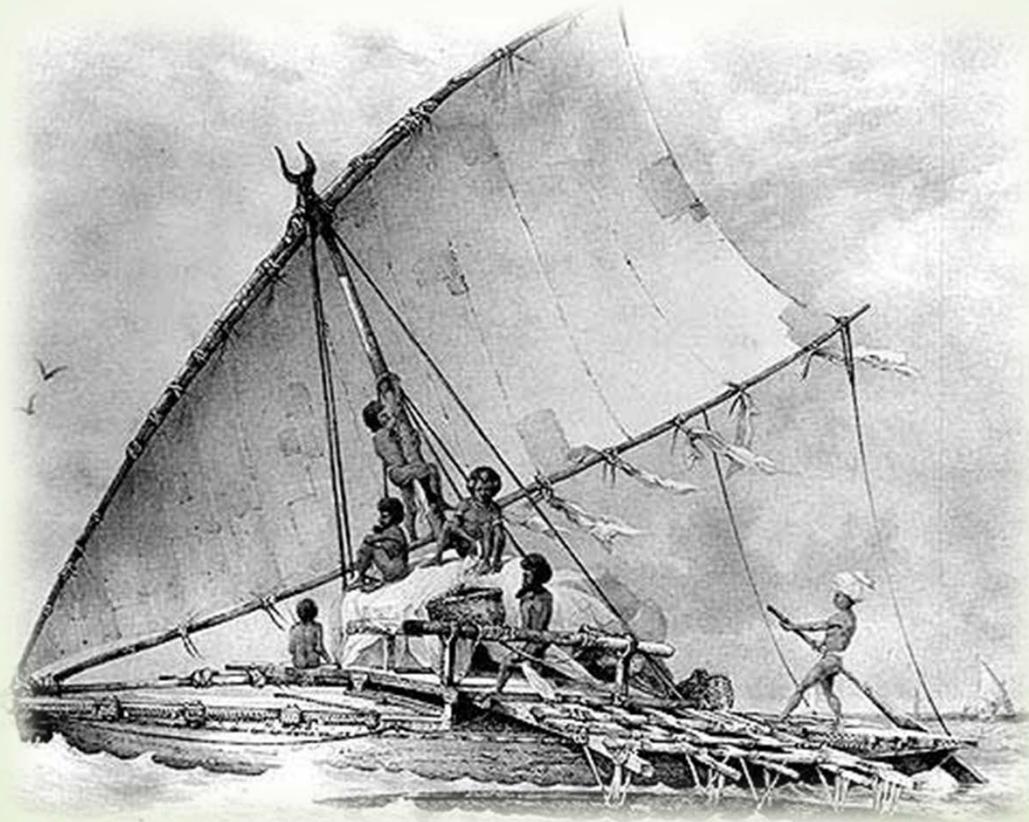
Fiji Environmental Law Association



# Presentation Overview

- Scope of this presentation
  - Legal overview of inshore fisheries/ qoliqoli
- Aims of this presentation
  - Describe historical context
  - Cover the 'nuts and bolts'
  - Qoliqoli rights in law and in practice
  - Challenges and issues

# Part 1: Contextual History





# Pre-colonial governance system

- Traditional systems
- Land and the sea as one
- Group rights



## The British arrive..

- ▶ 19th century views and common law
- ▶ Early concept of Territorial Sea/ Sovereignty (different from property ownership) up to 3nm [Behring Fur Seals Arbitration (1893)]
- ▶ Distinction between ownership of the land and sea
- ▶ 'Canon shot' rule
- ▶ *Ferae naturae* applies to wild animals including fish

# Colonial Administration

- ▶ The Lawyers arrive...
- ▶ Deed of cession
- ▶ New system of marine tenure, and unique to Fiji.
- ▶ Fisheries Act enacted- regulate fishing, creation of Native Fisheries Commission to demarcate traditional fishing grounds, and record qoliqoli rights



R. C. Church

E. Consulate

House of Assembly

Hotel

Hotel

VIEW OF LEVUKA FROM THE ANCHORAGE



# Developments in International Law

United Nations Convention on Law of the sea (UNCLOS)

Fiji, the first country to ratify UNCLOS (167 ratified)

Defines marine spaces and the State's sovereignty therein.

- Internal Waters
- Territorial Seas
- Archipelagic Waters
- Exclusive Economic Zone (EEZ)

# FIJI'S MARITIME LIMITS

- Claimed archipelagic straight baselines
- Baseline specified in Fiji Legal Notice No. 117, November 10, 1981. See text for geographical coordinates.
- Claimed archipelagic waters
- Claimed 12 nautical mile territorial sea limit
- Claimed 200 nautical mile Exclusive Economic Zone

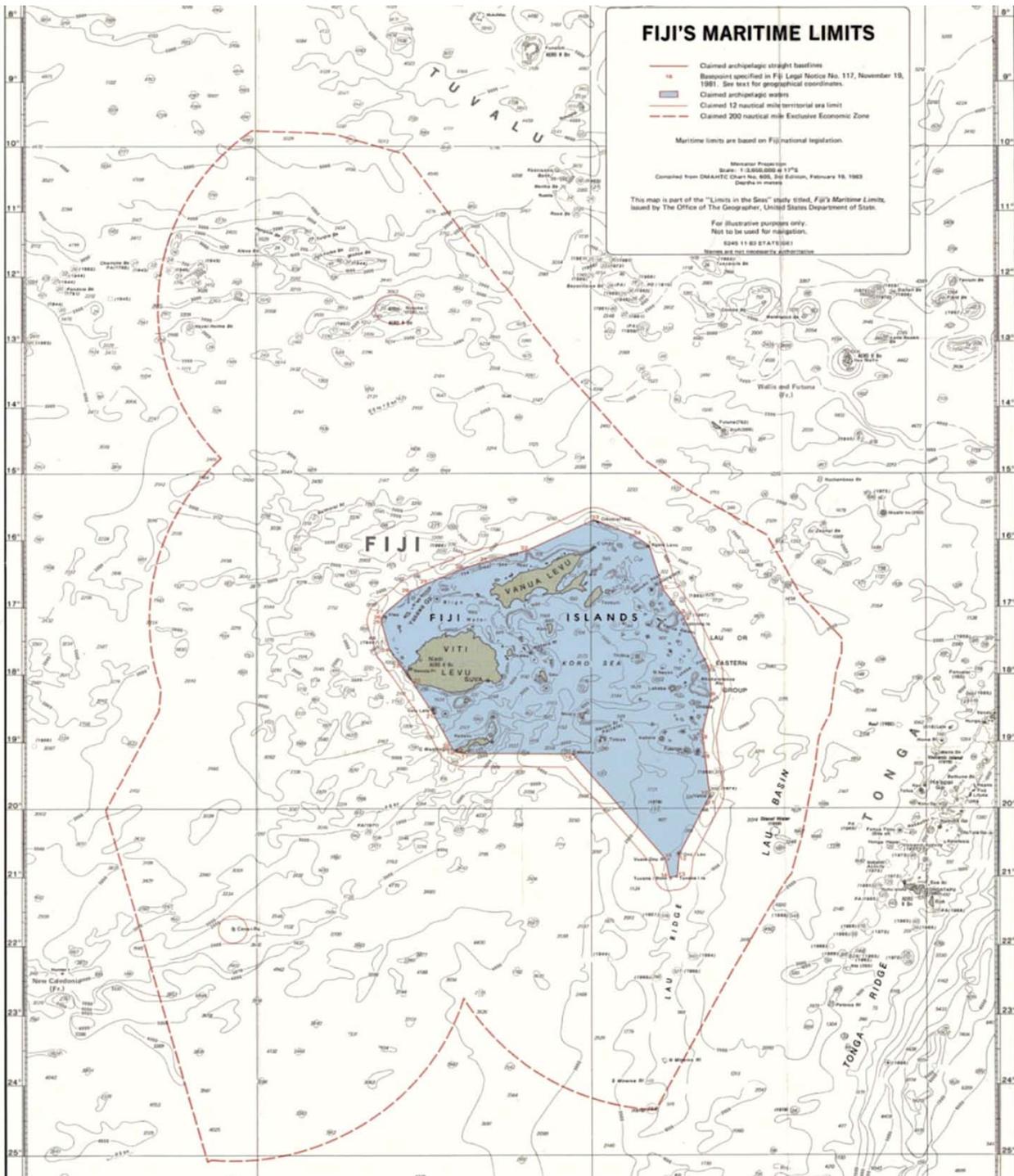
Maritime limits are based on Fiji national legislation.

Minimum Projection: Scale: 1:500,000 at 17°S  
Computed from ICAO/ITC Chart No. 600, 2nd Edition, February 19, 1983  
Depth in meters

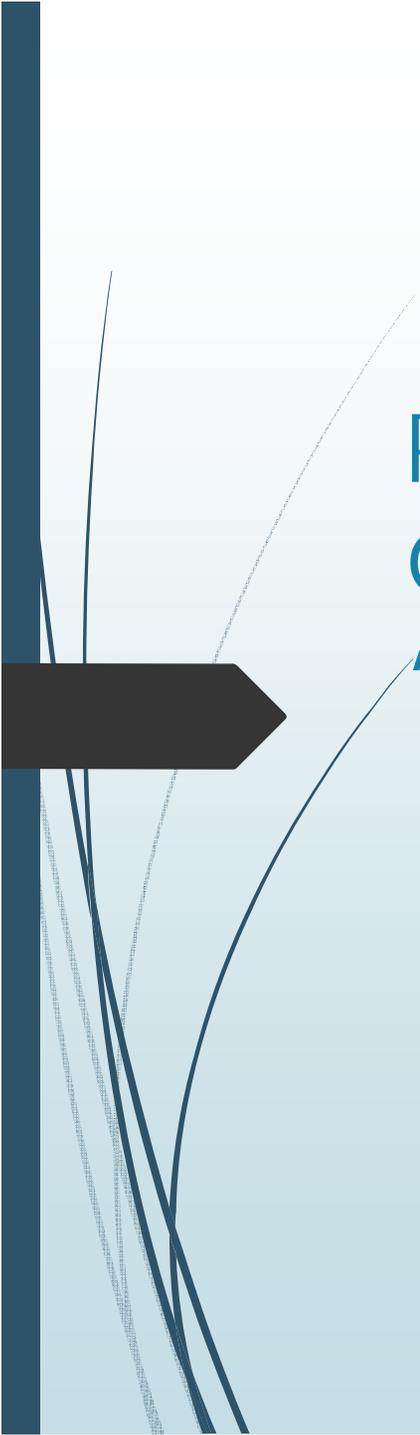
This map is part of the "Limits in the Sea" study titled, Fiji's Maritime Limits, issued by The Office of The Geographer, United States Department of State.

For illustrative purposes only.  
Not to be used for navigation.

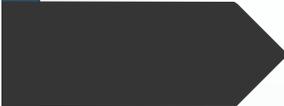
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NAMES AND NUMBERS AUTHORITY







## Part 2: The Legal and Governance System- the 'nuts and bolts'



# Inshore Fisheries Law

## Constitution

- Recognition of itaukei land- Resource ownership, s28
- Right to adequate food (food security) s36
- Environment, s40
- Administration, s16
- Equality, s26
- Right to compensation, s30

## Fisheries Act

- Protection of customary fishing rights, s13
- Regulates Inshore fisheries permits and licences, s5 & s13
- Provisions for fisheries management (MPAs, size limits, fishing methods, seasons etc), s9
- Creates the Native Fisheries Commission, s14

# ...Inshore Fisheries Law

## Offshore Fisheries Management Decree

- Definition of 'fish'
- 'Inshore' is being treated as traditional fishing grounds, qoliqoli by the DOF

## Marine Spaces Act

- Defines maritime spaces, i.e., internal waters, territorial seas, EEZ and the jurisdiction of the State in the respective zone

## Environmental Management Act

- Recognition and regard to the relationship between itaukei and their ancestral land and waters, s3(2)
- Environmental Impact Assessment
- Section 2 definition of coastal areas 30m above high water mark (this does not accord with qoliqoli boundary)

# ...Inshore Fisheries Law

Itaukei Affairs Act

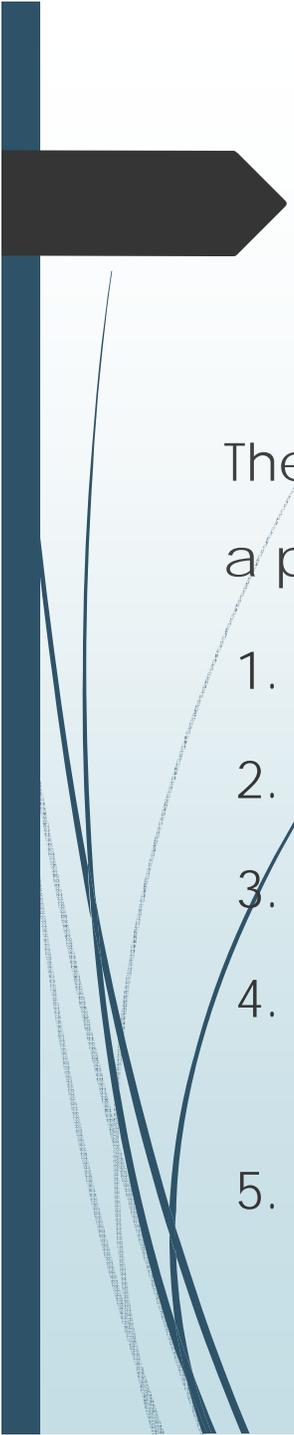
- Regulates the affairs of itaukei (bylaws)
- NLFC

State Lands Act

- State ownership of foreshore, s2

Endangered and Protected Species Act

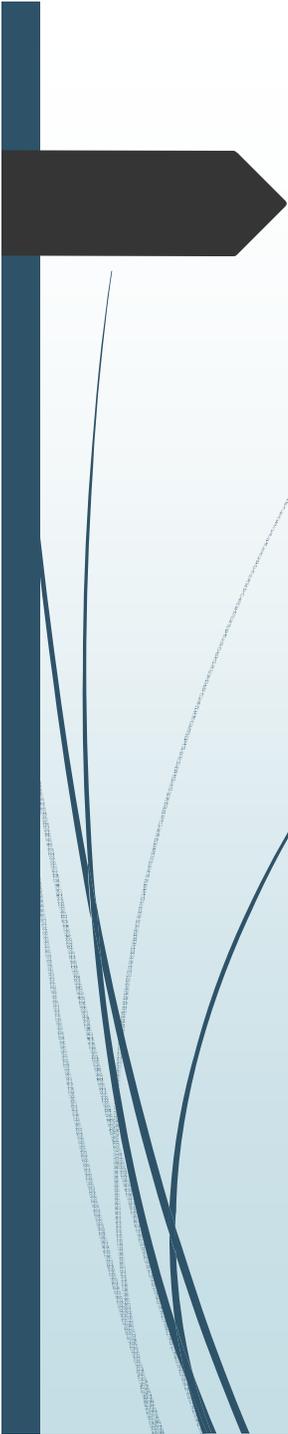
- Regulates the trade, possession and transportation of endangered or threatened species listed in CITES and of the Act. Applies to fish species.



# Fisheries Act and Regulations

The framework for regulating inshore fisheries in Fiji through a permit and licensing system.

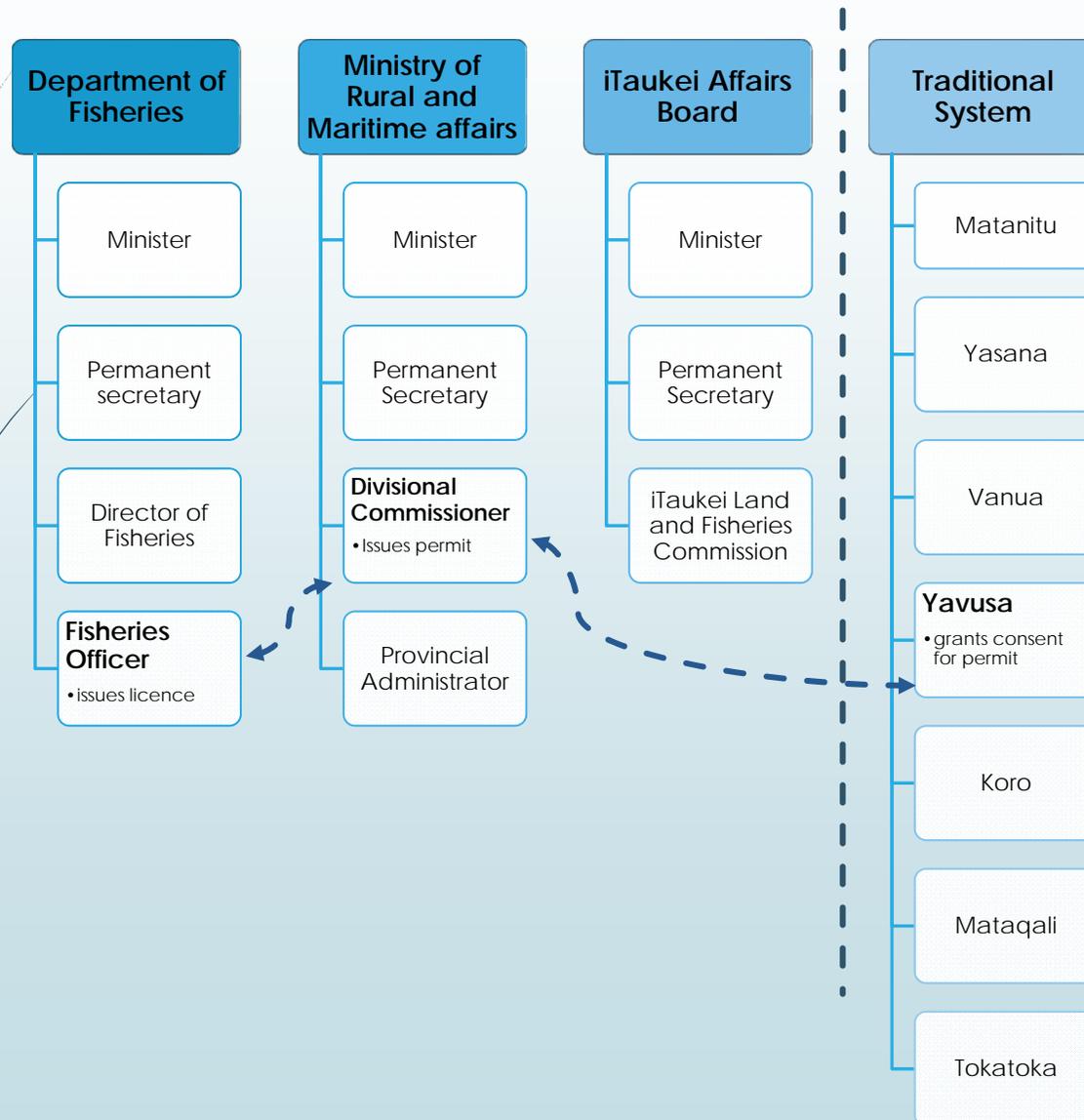
1. Recognition of '*qoliqoli*'
2. Read with Marine Spaces Act and other legislation
3. Marine Protected Areas- discretion of Minister
4. Permits and licensing – both are required to fish commercially in a *qoliqoli*
5. Commissioner's discretion to grant permit but shall consult with Fisheries Officer and *qoliqoli* owners



# Fisheries regulation

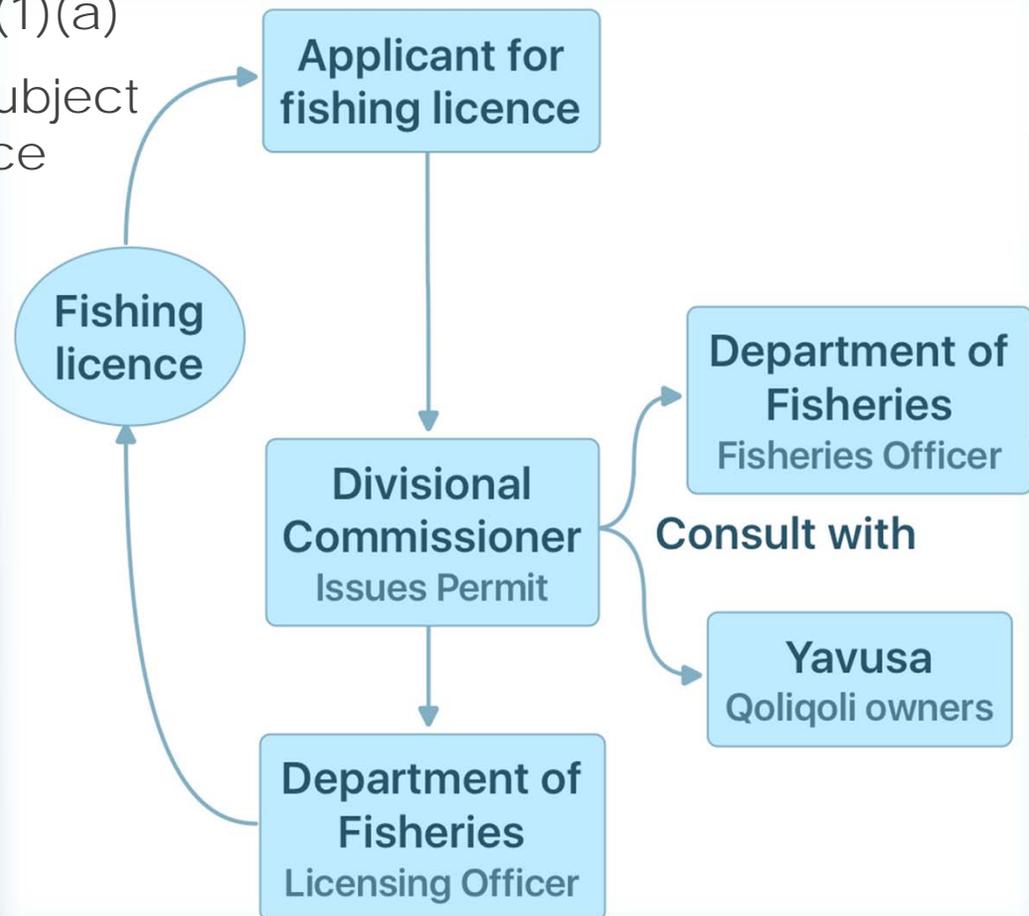
- ▶ Permits/Licences / Conditions/ Breach of- Penalties- Fisheries Act
- ▶ Size and species related- Fisheries Act, Endangered and Protected Species Act
- ▶ Marine Protected Areas- Fisheries Act (s9)
- ▶ Tabu areas- Community rules but can be formalised in permit and licence under the Fisheries Act
- ▶ Fishing Methods (net size, gear restrictions, UBA, poisons, explosives, fish fences)- Fisheries Regulations
- ▶ Fish Wardens- Fisheries Act and community
- ▶ Prosecution powers rest with Police and judiciary (take over once offence reported)
- ▶ Penalties- vary

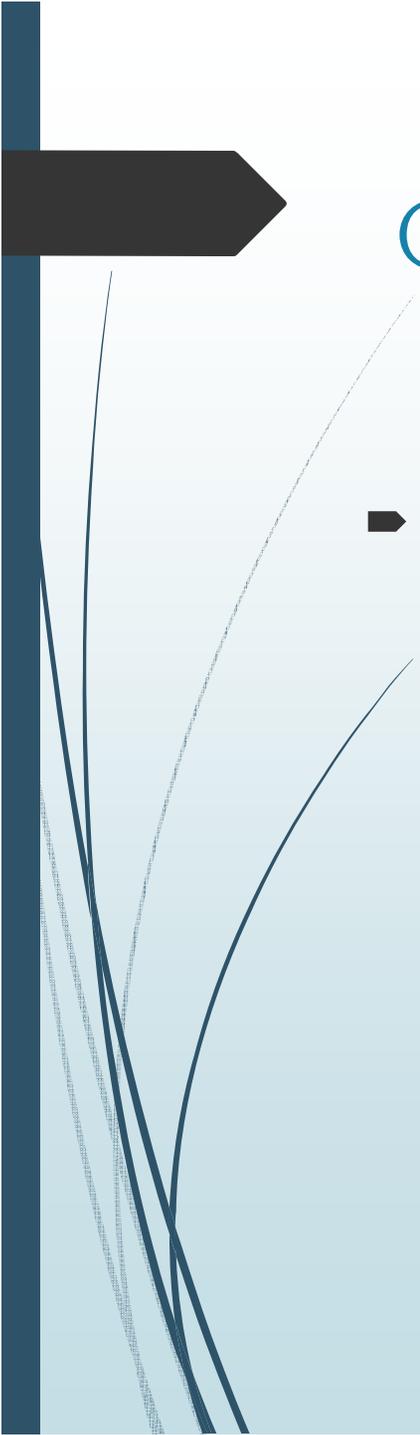
# Intersection of governance systems- modern and traditional



# Fishing in a qoliqoli

1. Subsistence fishing- there is a public right to fish in a qoliqoli subject to s13(1)(a)
2. Commercial fishing- subject to a permit and licence system. See diagram





# Centralised control

- ▶ No devolved law making powers below central government/ ministerial level



# Part 3: Analysis of Qoliqoli rights

Law and practice



# The legal interpretation of 'qoliqoli'

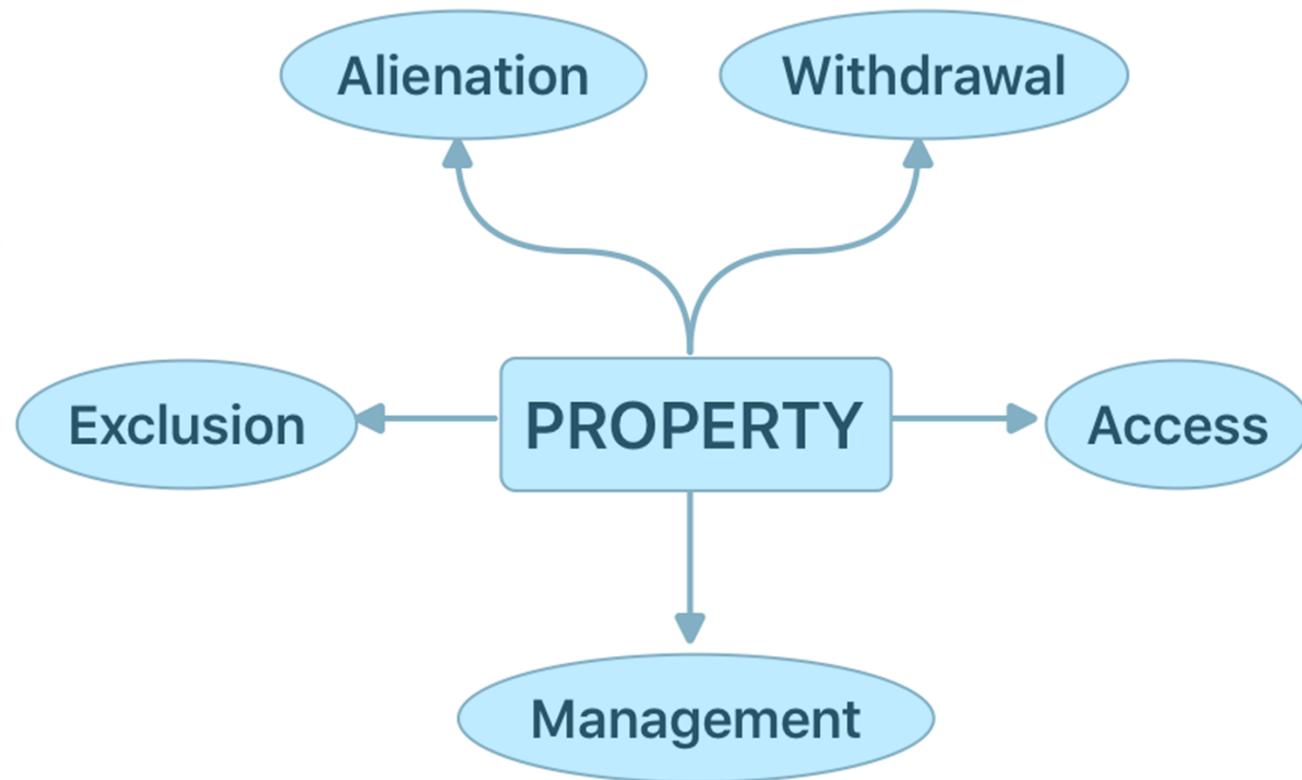
- Recognition of customary fishing rights (Fisheries Act)
- Compensation to customary fishing rights holders for mineral extraction in their registered areas (Constitution)
- The foreshore is owned by the State (State Lands Act)
- Predominant property rights of marine areas vest in the state

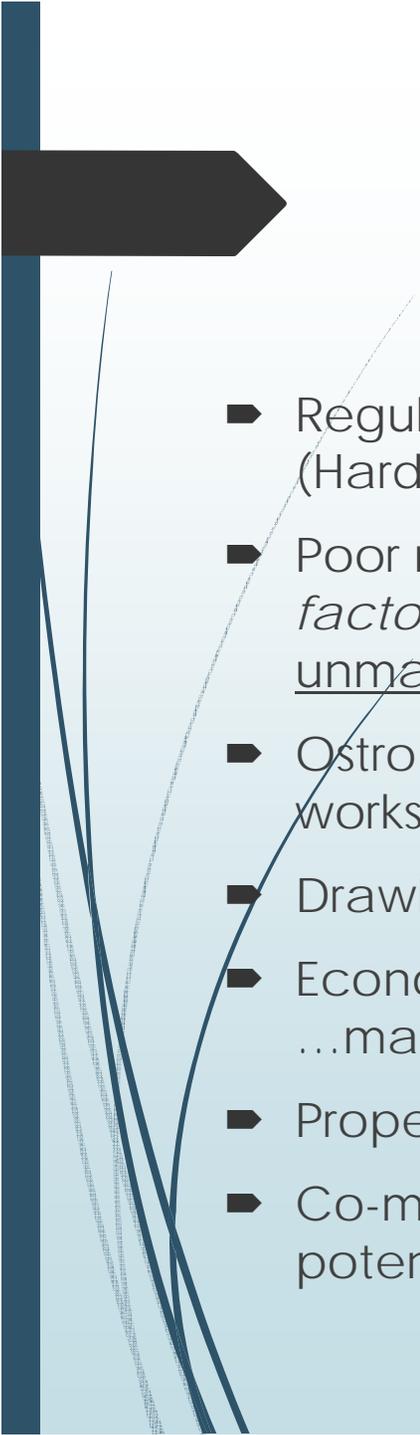


# Practice

- ▶ Compensation payment/ waiver of fishing rights
  - ▶ Cabinet decision/papers 1974/1978/2010
  - ▶ Fisheries Impact Assessment
  - ▶ State of resources a factor
- ▶ Control over access- permits
- ▶ Management rights (FLMMA, Tabu)
- ▶ Co-management with Department of Fisheries (DoF Initiatives)
- ▶ Perception of qoliqoli and resource “ownership” - factors into numerous decision making processes/ consultations- administrative law underpinnings
- ▶ Community expectations of property rights, untested in court
- ▶ Would benefit from further thought based on modern property law concepts- bundle of rights

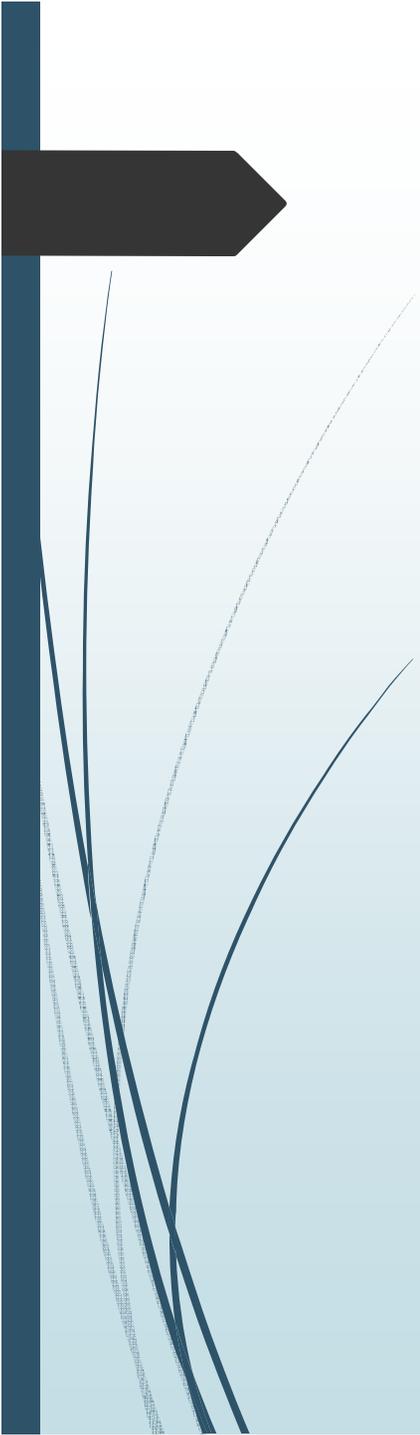
# Property is a "bundle of rights"





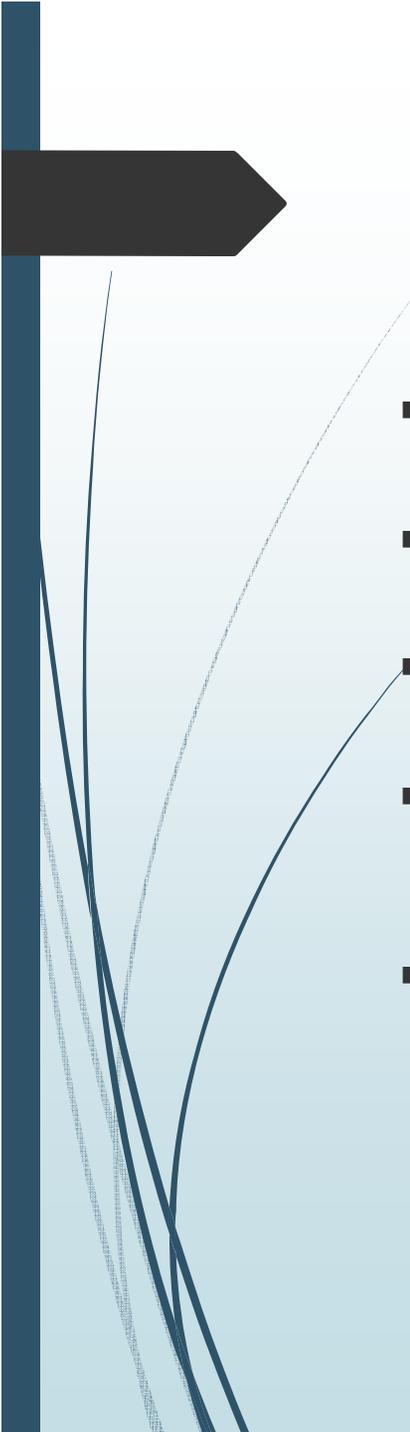
# Challenges and issues

- ▶ Regulation of common pool resources is a universal challenge (Hardin's "tragedy of the commons")
- ▶ Poor management and the lack of usage rules leads to a *de facto* open access (Ostrom's alluding to the "tragedy of the unmanaged commons")
- ▶ Ostrom's vision for management of commons based on "what works in practice works in theory"
- ▶ Drawing on traditional knowledge and local context
- ▶ Economic Theory- linking benefit with sustainability of resources. ...markets, middlemen
- ▶ Property rights- allocation of wealth in society
- ▶ Co-management- DoF supporting and unlocking community potential



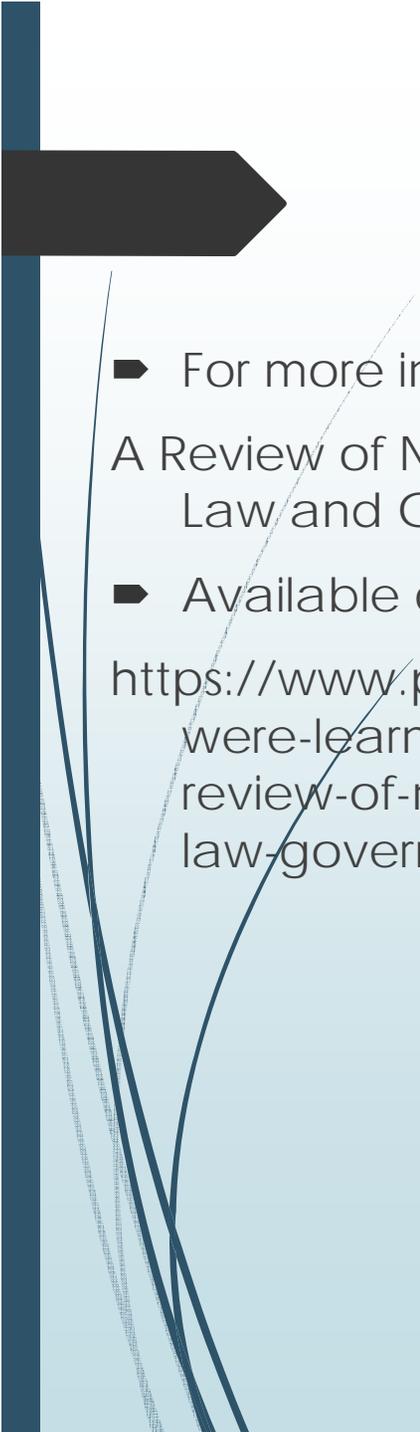
# Exciting changes ahead

- ▶ Led by Department of Fisheries
- ▶ NGO initiatives that we'll hear about
- ▶ Traditional Chiefs calling for change in response to threats
- ▶ Growing awareness of the importance of inshore fisheries and food security



# References

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- ▶ Hardin, G. 1968 *Tragedy of the Commons*. Vol. 162, SCIENCE
- ▶ Minter, A. 2008. Compliance and Enforcement for Coastal Fisheries Management in Fiji. IUCN
- ▶ Schlager, E. and Ostrom, E. 1992. *Property-Rights Regimes and Natural Resources: A Conceptual Analysis*. Vol. 68, No. 3. Land Economics, 249-262
- ▶ Stewart, C. 2004. Legislating for Property Rights in fisheries. FAO Legislative study 83, Rome.

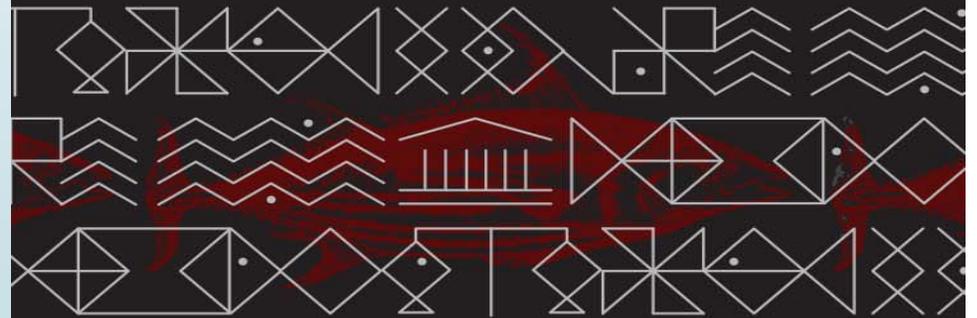
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- For more information:

A Review of Near Shore Fisheries Law and Governance in Fiji

- Available online:

<https://www.packard.org/what-were-learning/resource/a-review-of-near-shore-fisheries-law-governance-in-fiji/>

## A Review of Near Shore Fisheries Law & Governance in Fiji



James Sloan & Kevin Chand