



A legal discussion - Proposed Inshore Fisheries Law

Kiji Vukikomoala, FELA Coordinator

Fiji Environmental Law Association and Department of Fisheries
Coastal Fisheries Management Legal Development Forum
11 February 2016



fela.org.fj | P: 330 0122

22 Dhanji Street | Suva | Fiji



Promoting Sustainable Natural Resource Management through Law

Purpose

- Stimulate/reinvigorate discussion of the Proposed Inshore Fisheries Law



Approach

Fisheries Act

v

Proposed Inshore
Fisheries draft law



- *Objectives & Principles*
- *Institutional Arrangements*
- *Legal Mechanisms/Tools*

Part 1 : Objectives and Principles

	Draft Inshore Fisheries Law	Fisheries Act
Objective	“...the conservation, management and development of inshore fisheries to ensure their long-term sustainable use for the benefit of the people of Fiji Islands.”	No stated objectives – limited to fisheries management.
Principles	<ul style="list-style-type: none"> • Sustainability • Use of best science, data and information • Recognising interests of key stakeholders: industry, customary owners, artisanal and subsistence fishers • Effective monitoring, control and surveillance 	No stated principles – limited to fisheries management

Objectives & Principles – Questions

- Do the objectives and principles reflect Fiji's international and regional obligations?
- What's the focus of the objectives? People, biodiversity, something else or all of these things?
- What interests are recognised?
- Under the proposed law, what would be the consequences if a decision is made by the Minister which is not consistent with the objective and guiding principles?



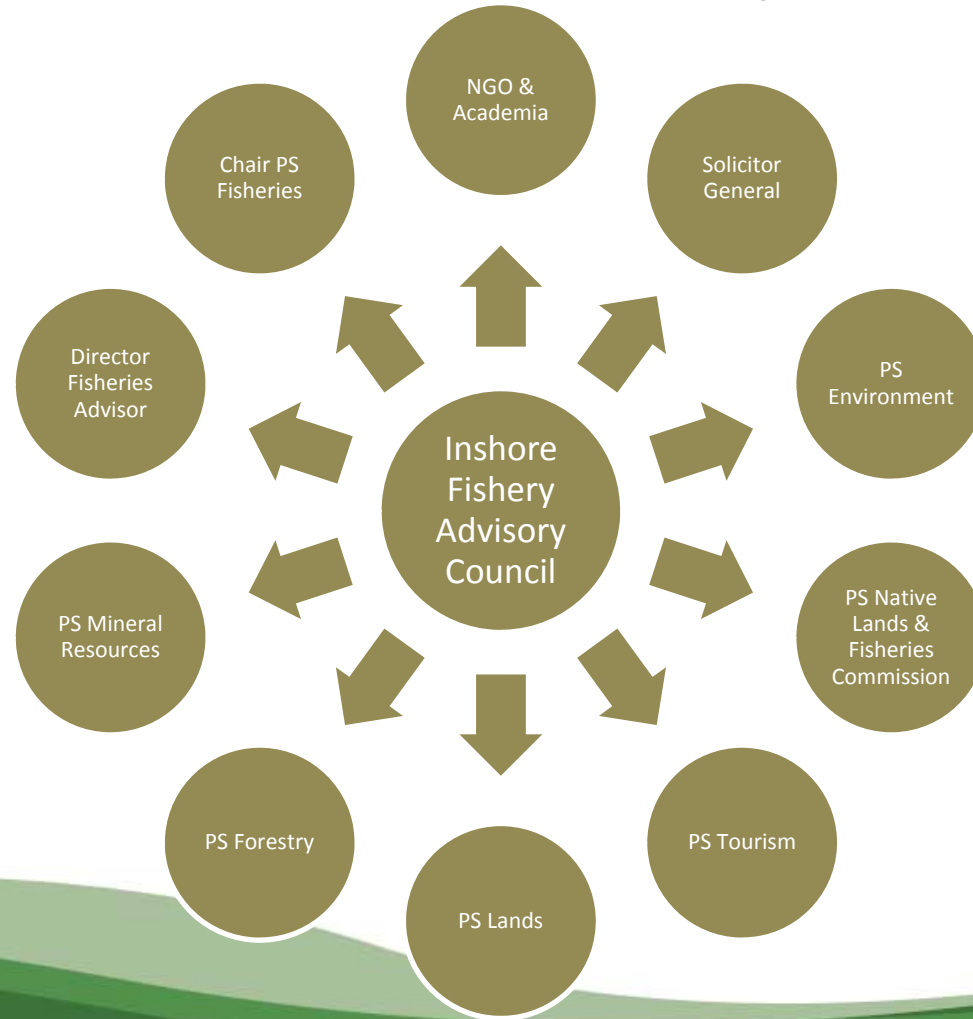
Part II : Institutional Arrangements

	Draft Inshore Fisheries Law	Fisheries Act
Minister, Permanent Secretary, Director	Sets out roles and responsibilities in some detail.	Confers most powers and responsibilities to the Minister. No notable difference in roles and responsibilities in practice.
Inshore Fishery Advisory Council	New body under the proposed law	No Advisory Council under the Act



Inshore Fishery Advisory Council

- Role - Advise Minister on Policy Matters



Inshore Fishery Advisory Council

- Advisory Council – Questions
 - What is the rationale behind establishing an Advisory Council? Is having such an Advisory Council consistent with international best practice?
 - Are there any other interests that should be represented on the Advisory Council?
 - How will the representatives from industry, NGOs and academia be selected?



Native Fisheries Commission & Customary Fisheries Appeals Tribunal

	Fisheries Act	Draft Inshore Fisheries Law
Native Fisheries Commission	Responsible for determining customary fishing rights	No changes.
Customary Fisheries Appeals Tribunal	Hears and determines appeals from Native Fisheries Commission	No changes
Provincial Administrators / Commissioner of the Division	Commissioner of the Division – responsible for issuing permit	Provincial Administrator - Responsible for issuing “customary fisheries permit”

Institutions - continued

	Fisheries Act	Inshore Fisheries Law
Fishery Officers	Officer appointed by the Public Service Commission	Wider meaning under Decree, includes Minister, Permanent Secretary.
Fish Wardens	Duties are broad – prevention and detection of offences under the Act	Roles and responsibilities may be limited to customary areas.
Authorised Officers	Fisheries Licencing Officer, Customs Officer, Police Officer, Honorary Fish wardens.	Fisheries officer, customs officer, police officer, naval officer,... and honorary fish wardens

Institutions – Questions

- How will the various institutions be resourced?
- What is an appropriate level of funding for these institutions?



Part III : Legal Mechanisms/Tools

	Fisheries Act	Draft Inshore Fisheries Law
Subsistence Fishing	Only needed if using a method other than a hook and line, spear or portable fish trap & not a customary rights owner.	Not clear – May apply to all subsistence fishers.
Licences	Licence is required for fishing for trade or business – exception for line fishing from shore or spear fishing	Licence required to fish for trade or business irrespective of the fishing method.
Permits	Discretion lies with the Commissioner after consultation with customary rights owners and Fisheries officer	Written consent of customary fishing rights owners required in addition to Permit.

Legal Mechanisms - continued

- Licences and permits – Questions:
 - Under the draft law, will all subsistence fishing require a permit?
 - Will the practice of requiring applicants for inshore fishing licences to first obtain a permit be continued?
 - It is expected that licences fees will be higher than those under the current regime. The question then arises what will the amount of the licence fee be under any new regime? Further, will licence fees include compensation for goodwill or will they be dealt with separately ?



"Excuse me, sir. Do you have a permit to fish there?"

Legal Mechanisms - continued

	Fisheries Act	Draft Inshore Fisheries Law
Registration of fishing vessels	<ul style="list-style-type: none">• Penalty is 3 months imprisonment, \$500 or both• Exemption for punts or skiffs	<ul style="list-style-type: none">• Penalty is \$5,000 - \$10,000• No exemption for punts or skiffs.
Registration of fishing companies	No such requirement.	New requirement.

Legal Mechanisms - continued

- Registration – Questions
 - It is noteworthy that the term “fishing company” is not defined in the Decree.
 - What is the rationale for the requirement to register a “fishing company”?
 - What are the implications of the new Maritime Transport Authority Decree or other laws if any on the registration of vessels?



Legal Mechanisms - continued

	Fisheries Act	Draft Inshore Fisheries Law
Protected areas/no take zones	<ul style="list-style-type: none">• Possible to create protected areas by making regulations.	Possible to create aquatic protected areas by regulation but no specific provision providing Minister with power to create aquatic protected areas

Legal Mechanisms - continued

	Draft Inshore Fisheries Law	Fisheries Act
Customary Fisheries Management and Development Plan	New mechanism under draft law	No such mechanism
Inshore Fishery Management and Development Plan	New mechanism under draft law	No such mechanism

Legal Mechanisms – Customary Fisheries Management and Development Plan

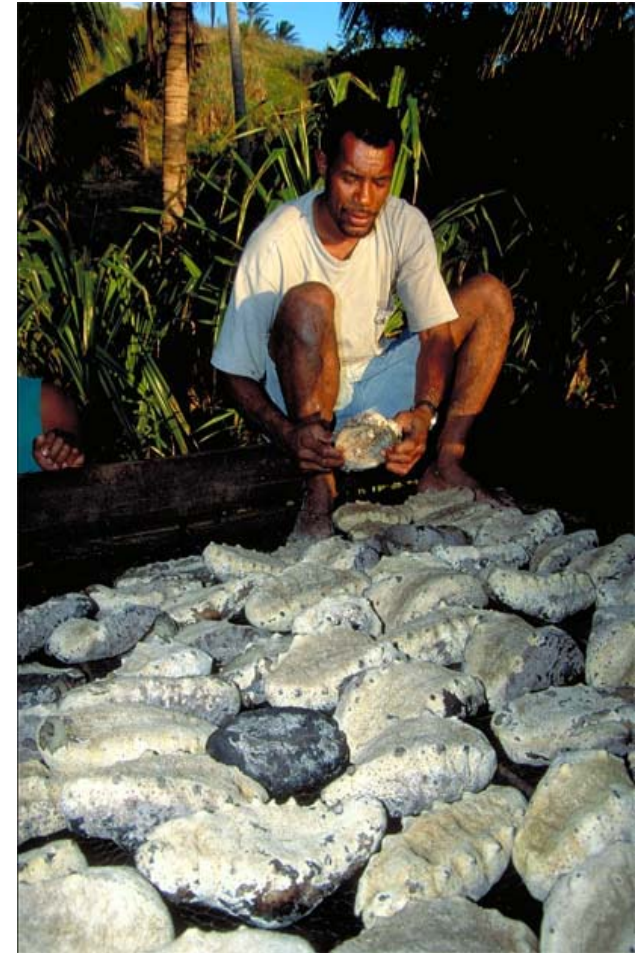
Questions:

- Can LMMA's be turned into Customary Fisheries Management and Development Plans? If so, what would be the process for turning a LMMA into a Customary Fisheries Management and Development Plan?
- Should it apply to all customary fisheries management areas?
- What are the benefits or disadvantages of having such plans?
- Are these plans enforceable?



Legal Mechanisms – Inshore Fishery Management and Development Plan

- is a fishery established by the Minister
- Director is responsible for preparing the inshore fishery management and development plan.
- Unless specified in plan, applies to all fishing and related activities including artisanal, customary, subsistence, commercial and related activities.
- Has full force and effect of the regulations made under the proposed law.



Legal Mechanisms - continued

	Fisheries Act	Draft Inshore Fisheries law
Prohibitions - fishing methods, fishing gear, species	<ul style="list-style-type: none"> • Prohibitions are in the regulations • Minister has power to issue permit to use explosives • Penalties are 3 mths imprisonment, \$500 fine or both • Only prohibits fishing of a small number of specified species 	<ul style="list-style-type: none"> • Prohibitions are contained in the main law itself. • No power to issue permit to use explosives • Penalties vary and include fines of between \$5,000 to \$10,000 and imprisonment of 2 years • Prohibits fishing of all CITES listed species plus Indigenous species

Legal Mechanisms - continued

- Prohibitions - Questions
 - Are the penalties appropriate or adequate?
 - Should authorised officers be considered for appointment as authorised officers under the Endangered & Protected Species Act for fish species?



Legal Mechanisms - continued

	Fisheries Act	Draft Inshore Fisheries Law
Export and import of fish	<ul style="list-style-type: none">• Prohibits export and import• Prohibits export and import of all CITES listed species, indigenous species, and other specified species including turtles and whales• Does not specifically mention turtle eggs and bech de mer	<ul style="list-style-type: none">• Prohibits export only• Prohibits export of live fish and small number of specified species• Specifies turtle eggs and bech de mer

Legal Mechanisms - continued

	Fisheries Act	Draft Inshore Fisheries law
Monitoring and control	<ul style="list-style-type: none">• Contains examination and detention powers	<ul style="list-style-type: none">• Similar examination and detention powers to Act• Establishes additional duties owed to “authorised officers”, including complying with instructions and ensuring safety

Legal Mechanisms - continued

	Fisheries Act	Draft Inshore Fisheries law
Prosecution of Offences	<ul style="list-style-type: none">• Prosecutions conducted primarily by Police Prosecutions.	<ul style="list-style-type: none">• Fisheries Officer may conduct prosecutions and offences prosecuted in accordance with the Criminal Procedure Decree.

Legal Mechanisms - continued

Questions

- What level of resources are required to establish a prosecution unit?
- How will this be practically implemented?
- Role of the DPP with respect to enforcement agencies?



Legal Mechanisms - continued

	Draft Inshore Fisheries Law	Fisheries Act
Offences and fines	<ul style="list-style-type: none"> • Default penalty is a fine of between \$5,000 - \$10,000 	<ul style="list-style-type: none"> • Default penalty is 3 mths imprisonment, fine of \$500 or both
Administrative penalties	New mechanism under draft law – Permanent Secretary agrees on sum of penalty	No such mechanism
Penalty notice	New mechanism under draft law – Issued by “authorised officer”	No such mechanism
Strict liability	No need to prove intention	No such provision
Reward	No such mechanism	Provides for reward
Cancellation/suspension	Permanent Secretary also has power to cancel or suspend licence	Only court has power to cancel or suspend licence

Legal Mechanisms - Questions

- Should penalty amounts and time periods relating to administrative penalties be prescribed in the regulations?
- What offences should be issued with a penalty notice?
- Should the offences under the Decree be harmonised with the offences under the EPS Act?



Conclusion

- Does the proposed inshore fisheries law adequately address the gaps/loopholes/challenges in the Fisheries Act?
- Is the current inshore fisheries draft law the way forward for inshore fisheries management in Fiji?

Thank you for your attention!



Promoting Sustainable Natural Resource Management through Law