



## FFA REGIONAL WORKSHOP TO DEVELOP A LEGAL STRATEGY OF ASSISTANCE FOR THE NEXT FIVE YEARS

Port Vila, Vanuatu

14<sup>th</sup> – 16<sup>th</sup> November 2005

### SUMMARY REPORT

1. Representatives from Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Palau, Papua New Guinea, Tokelau, Tonga, Tuvalu and Vanuatu participated at the FFA Regional Workshop in Port Vila, Vanuatu from 14 – 16 November 2005, to develop a strategy for the provision of legal assistance over the next five years through the GEF Pacific Islands Oceanic Fisheries Management Project. Solomon Islands sent in its apologies for its absence. Samoa and the Marshall Islands were invited but did not respond to the invitation. The University of the South Pacific and Greenpeace (Pacific Campaign) also participated at the workshop. A list of the participants is attached as **Appendix I**.
2. The Workshop was opened by the Legal Counsel of the Forum Fisheries Agency, Dr. Transform Aqorau on behalf of the Director-General of the FFA, Mr. Feleti P. Teo. His opening statement is attached as **Appendix II**.
3. The programme for the workshop is attached as **Appendix III**.
4. The Executive Officer of the FFA, Barbara Hanchard made a presentation on the development of the Pacific Islands Oceanic Fisheries Management Project. Her presentation is attached as **Appendix IV**.
5. The Legal Counsel, Dr. Transform Aqorau made presentations on the legal components of the Pacific Islands Oceanic Fisheries Management Project, and the FFA's Strategic Plan 2005 – 2020 and Business Plan. His presentations are attached as **Appendix V** and **Appendix VI** respectively.
6. Mr Les Clark, Fisheries Management Consultant made a presentation on fisheries management and national laws. His paper is attached as **Appendix VII**.
7. Following the presentations, the Workshop participants discussed their national legal priorities. A revised list of national priorities is attached as **Appendix VIII**. The revised list of national priorities will inform the development of a comprehensive

work programme for the FFA's Subprogram on Legal Framework and International Law.

8. The Workshop participants also developed key principles that should be reflected in national fisheries legislations. The key principles developed by the Workshop is attached as **Appendix IX**. The Workshop participants noted that these principles were discussed in the context of the region's tuna fisheries and therefore their application may need to be qualified particularly with respect to non-tuna fisheries.

9. The Workshop participants issued a press release on the importance of transparency, good governance and accountability in the management of the region's tuna fisheries. The press release is attached as **Appendix X**.

10. The Workshop was closed by the Legal Counsel, Dr. Transform Aqorau. In closing the Workshop, the Legal Counsel highlighted the importance of the project and its implementation at the national level. He thanked the participants for their contribution towards the success of the Workshop.

**APPENDIX I**

**LIST OF PARTICIPANTS**



**FFA REGIONAL WORKSHOP TO DEVELOP A LEGAL STRATEGY OF ASSISTANCE FOR THE NEXT FIVE YEARS**

**14<sup>th</sup> – 16<sup>th</sup> November 2005, Port Vila, Vanuatu**

**Opening Statement**

**Dr. Transform Aqorau  
Legal Counsel**

1. Ladies and gentlemen, on behalf of the Director General of the Forum Fisheries Agency, Mr Feleti Teo, I would like to warmly and sincerely welcome you to the beautiful shores of Vanuatu. I trust that you have had time to visit the many beautiful places that this lovely country has to offer and to meet her wonderful and hospitable people. I know that for quite a number of you, coming here is like returning to your second home. I trust that you have had occasion to renew acquaintances with your former school mates, lecturers and friends since your arrival

2. Let me first of all, thank you for accepting our invitation to participate at this meeting which we hope will be the beginning of a process of close consultations between the Secretariat and legal officials who are closely involved in the management and conservation of the region's highly migratory fish stocks. I know you are very busy people and have made yourselves available over the next two and half days to provide guidance and wisdom for the Secretariat. We are gathered here to develop a strategy for the Secretariat to deliver legal assistance in systematic way that is reflective of the needs and aspirations of member countries. We are fortunate in that over the next five years at least, we are the beneficiary of a major UNDP funding through the Global Environment Facility that is intended to achieve global environmental benefits by enhanced conservation and management of transboundary oceanic fishery resources in the Pacific Islands region and protect the biodiversity of the western tropical Pacific warm pool large marine ecosystem. What we do not want is for us to ask at the end of the five year period, whatever happened to all that financial assistance. One of the challenges of development assistance is ensuring that we deliver on the outcomes that we say we will achieve. No doubt this is of concern to both the Secretariat and also to those who have generously given their hard earned tax payers money to ensure that we look after the ocean environment and its resources on behalf of the global community.

3. We in the Pacific Islands region cannot afford to be complacent about the opportunities that we have been given because more than ever before we face considerable challenges in maintaining and ensuring that the health of the region's tuna stocks remain viable and lucrative enough to support our economies. For us in

this region, the marine environment not only provides us with the means through which goods and services are carried through and across the region, more significantly it provides the very basis on which our economies survive. It is therefore absolutely crucial that we look after the marine environment and its resources because not to do so would only spell disaster for ourselves. We face increasing threats though from localised depletion of fisheries resources, arising from increasing population and pollution of the marine environment from land based activities all of which endanger the marine habitats of the fisheries resources upon which we are dependent. We are also facing increasing competition from outsiders who also view our lucrative fisheries resources as source to supply their food security needs. It is therefore important that we take a holistic view and approach towards the management of the region's fisheries resources.

4. Most recently, our fisheries scientists have said that the state of the region's yellowfin and bigeye tuna are in a far worse condition than had been previously thought. Is there then cause for alarm amongst the Pacific Island States, should we not be spurred into taking strong collective action to prevent the overexploitation of our fish stocks. The answer no doubt is quite obvious and that is we do need strong resolve in ensuring that the fish stocks remain healthy. The challenge of course not only lies amongst ourselves but is also shared by those whose nationals also prosecute the fishery.

5. The task of meeting this challenge is being met through a number of fronts. At the regional level, the Forum Fisheries Committee agreed to shift the focus of the Agency's work programme to two strategic areas namely fisheries management and fisheries development. This combined with the new emphasis on more in-country work at the national level will augur well for the way in which the national needs of member countries are met. At the international level, the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific has already had its first meeting and is gearing up for its second meeting next month. While its effective functioning has been beset with start up problems, it is already being expected to make some critical conservation and management decisions.

6. Obviously if the participation of FFA members in the Commission is to be effective and if FFA members are going to be rigorous managers of the region's lucrative tuna resources, we must ensure that we have the necessary tools that would allow us to discharge our international obligations and duties effectively.

7. The pace of change of international law relating to oceanic fisheries has imposed a large workload on Pacific SIDS for the establishment and revision of national laws. In the 1980s, this involved putting in place the basic framework for the extension of jurisdiction over 200-mile zones arising from UNCLOS, including declarations of maritime boundaries and arrangements for management and control of activities within EEZs. Through the 1980s, much of the emphasis involved revising these laws to give effect to the various regional Treaties and Agreements between FFA members, including the implementation of the Regional Register, the driftnet Convention and satellite-based vessel monitoring. In the late 1990s, there was a further round of revisions to national laws to provide for implementation of the UN Fish Stocks Agreement. This time around, the work involves revisions in response to the WCPF Convention. This time, however, the changes are more fundamental, because the implementation of the Convention is part of a major change in approach

to fisheries governance, including at national level. Indeed, the Convention itself not only requires Parties to adopt certain specific new measures to control fishing, especially in the high seas - it also requires Parties to apply principles such as the precautionary approach, the ecosystem-based approach, protection of biodiversity and preservation of long term stock sustainability to the management of oceanic fisheries in their national waters.

8. Some Pacific Island States have amended their legislation to provide for implementation of the more specific elements of the UN Fish Stocks Agreement and the WCPF Convention as part of the process of preparation for ratifying the Convention, but most have not completed this process. Good progress was made in this direction under the South Pacific SAP Project, which made a major contribution to ratification of the Convention. However, this work has stalled since the completion of the pilot legal activities of that Project, due to the critical shortage of skills in international oceans and marine and fisheries law, especially in the smaller countries. However, beyond the specific requirements of the Fish Stocks Agreement and the Convention, almost all Pacific Island States need to amend their legislation further to provide for broader changes in principles, policies and institutional arrangements to align their laws more closely with the Convention, or to review regulations, license conditions and access agreements to provide the detailed regulatory framework for implementation of the WCPF Convention.

9. In addition to the changes in national laws, the Convention has implications for some of the regional Treaties and agreements which Pacific Island States have concluded amongst themselves.

10. Our objective here is to propose a strategy on how best we can move forward with the legal components of the GEF funded Pacific Islands Oceanic Fisheries Management Project. If we have time, I would also like us to spend some time developing at least five key principles that would constitute best practice for fisheries legislation. We would like then to take these principles as the basis for the development of a template for model fisheries legislation against which existing fisheries legislations may be evaluated.

11. Over the next two days, we want to explore with you ways in which this can be done. We are fortunate to have with us Les Clark and Barbara Hanchard who have been very closely involved in the formulation of the project to share with us their knowledge of the project.

12. I thank you very much.



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**PORT VILA, VANUATU**

**14<sup>th</sup> – 16<sup>th</sup> November 2005**

**DRAFT PROGRAMME**

**Day One - Monday 14<sup>th</sup> November**

- |                    |   |
|--------------------|---|
| 0900 – 0915        | Registration  |
| 0915 – 0930        | Opening Prayer  |
|                    | Welcome to the Meeting ( <i>Dr Transform Aqorau – FFA Legal Counsel</i> )   |
| <b>0930 – 1000</b> | <b>Morning tea/Group photo</b>  |
| 1000 – 1030        | Fisheries Management Challenges ( <i>Les Clark – FFA Consultant</i> )   |
| 1030 – 1100        | Outline of Regional Pacific Islands Oceanic Fisheries Management Project funded by the UN Global Environment Facility ( <i>Barbara Hanchard – FFA Executive Officer</i> ) |
| <b>1100 – 1300</b> | <b>Lunch</b>  |
| 1300 – 1400        | Overview of the legal components in the Pacific Islands Oceanic Fisheries Management Project ( <i>Dr Transform Aqorau – FFA Legal Counsel</i> )                           |
| 1400 – 1430        | Detailed description of FFA Strategic Plan and Business Plan  |
| <b>1430 – 1500</b> | <b>Afternoon tea</b>  |

1500            End

**Day Two – Tuesday 15<sup>th</sup> November**

0900 – 1030            Discussions on possible strategic focus and national needs and priorities

**1030 – 1100            Morning tea**

1100 – 1200            Continue discussions on possible strategic focus and national needs and priorities

**1200 – 1400    Lunch**

1400 – 1700            Preparation of Draft Report and Proposal by FFA team

1700                      End

**Day Three – Wednesday 16<sup>th</sup> November**

0900 – 1000    Presentation of Draft Report and final discussions

**1000 – 1030    Morning tea**

1030 – 1230    Continue discussions on Draft Report

1230    Closing Prayer

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## **APPENDIX VII**

### **TUNA FISHERIES MANAGEMENT ISSUES AND NATIONAL LAWS**

**Les Clark**

(A note prepared for the FFA Legal Consultation,  
Port Vila, Vanuatu, 14-16 November 2005)

#### **INTRODUCTION**

The fisheries laws of most FFA Members in their current form trace from the period of the late 1970s and early 1980s when Pacific Island Countries moved to extend their jurisdiction in respect of fisheries over waters within 200 miles of their shore at the same time as many were coming to Independence.

That early legislation was set up with a number of features which were a response to the position of Pacific Island countries at that time and reflected current thinking on how small island developing states should respond to that position. The laws have been revised, in some cases several times, and some of the original features have been modified and removed, and new features added. But some of the original elements still exist and deserve review – and some of the newer features also merit a new look in the light of more recent changes and experience.

The aim of this paper is to identify some of the areas in the fisheries laws in the region that might be reviewed, and in some cases to suggest new approaches, as far as possible drawing on experience within the region.

In any regional review of this kind, it is useful to begin with a caution that while Pacific Island countries share many common attributes, they are also characterised by very great differences. In tuna fisheries those differences include the size of zones, richness of resources, economic environment, access to markets, pattern of infrastructure, political associations and even legal systems. This pattern of commonalities and differences makes it useful to share and compare, but dangerous to generalise. The following ideas are offered in that context. The comments made won't always apply to all Pacific Island countries, but hopefully some of the ideas might be found useful at some time by a fair number of Pacific Island administrations.

The note is written with an orientation towards the tuna fisheries, as it is part of an FFA activity. That is a problem because the fisheries laws of the region are already overly focused on offshore/oceanic/tuna fisheries largely because of the economic importance of those fisheries, the major regional and global developments in management of those fisheries, and because of the relevant strength in fisheries law of FFA, with its focus on tuna. That focus has been changing as awareness has increased of what governments' roles should be in managing small scale fisheries and aquaculture development, but it remains important to ensure that there is the right kind of balance in fisheries or marine resources legislation with respect to the different kinds of activities to which the legislation applies.

#### **SOME RELEVANT TRENDS**

There are a number of different strands of change that are influencing fisheries management policies and fisheries law making in the region. They include the following.

***Greater acceptance of sovereign rights:***

In the earliest days of establishing EEZs, there were substantial challenges by fishing states to the exercise of sovereign rights over tuna by coastal states, including FFA Members, and FFA Members' strategies were aimed at ensuring the effective exercise of those rights. Today, there is much greater recognition of those rights, though it is still not complete;

***Enhanced monitoring, control and surveillance and enforcement capacities.***

When the earliest legal frameworks were put in place, there was virtually no national or regional MCS capacity – virtually no sea or air patrols, and no VMS. This factor was important in shaping early attitudes to the kind of partnership with foreign fleets that was most effective. Now, strengthened national compliance capacities and regional cooperation in MCS and in enforcement through mechanisms such as the regional register, the Niue Treaty and collaboration between partner developed states undertaking air surveillance and its blacklisting process mean that the risks of being involved in illegal fishing are significantly greater, and give Pacific Island countries a wider range of options in how they frame their relationships with foreign partners. A whole new element is being added in this direction by the implementation of the WCPF Convention which makes puts flag states whose vessels fish illegally in national waters in a position of not complying with the Convention

***Reduced role for foreign distant water vessels***

When extended fisheries jurisdictions were first established, the exclusive economic zones were very largely fished by foreign distant water vessels. The initial needs were to establish control over those fleets and to secure maximum benefits from them – in the short term from fees, with the intention of encouraging foreign participation in developing domestic fleets. Part of the strategy for dealing with foreign fleets was to take issues off the negotiating table by entrenching them in the legislation – the regional register and limiting licence durations to 12 months are good examples. Twenty five years later, there has been a major change in that pattern, in that for most FFA Members, the benefits from domestic tuna industries, including locally based foreign vessels, are more important than those from foreign distant water fleets. Presently there are probably only 6 of 15 Pacific Island FFA Members for whom access fees are more beneficial than domestic development - and for two of those (Tokelau and Vanuatu), the bulk of the benefits in the next few years are likely to come from licensing the vessels of other FFA Members, rather than foreign distant fleets. And in the licensing of foreign vessels, there has been a substantial shift in power in favour of Pacific Island Countries, so that there is less pressure on countries to compromise their requirements for foreign fishing vessel management;

***Enhanced local development, including processing***

The flip side of the reduced role for foreign fleets. Five Pacific Island countries no longer licence distant water vessels to fish in their waters. Several others have a mix of locally based and foreign distant water vessels. In brief, the kind of fisheries management framework that has typically developed for managing foreign access fishing with short term licensing, powerful discretion to managers to decide on the licensing system, and to suspend or cancel licences might not be the kind of framework necessary to encourage investors to participate in a domestic industry. Within the increase in domestic tuna fisheries generally, there is a particular increase in onshore processing. This is driven by a range of factors, including improving

comparative economic advantage for some forms of onshore processing and more effective leverage by Pacific Island countries to secure onshore investment as a condition of access. In some countries, it seems clear that young men are not attracted to a life at sea for long periods. Shifting focus from generating benefits from fishing to processing has a number of implications for fisheries laws and regulations ranging from the criteria for granting access or determining fees to the relative importance of the powers of authorised officers onshore and the authority for scientific observation and sampling.

### ***Shift from promoting fisheries to managing fisheries and conserving fish stocks***

Following some systematic failures in fisheries management both in high seas and in national waters, global concerns about overfishing and improved understanding of the risks of heavy fishing have led to a major shift in the overall objectives of fisheries policies and laws. Recent scientific advice indicating overfishing of bigeye and yellowfin in this region reinforce the application of that trend for FFA Members. As a result, while the objectives of early fisheries laws in the region often emphasised the promotion of the fisheries sector and increasing fisheries outputs, more recent legislation is more likely to set objectives related to optimum utilization, long term conservation and responsible management. A side effect of the increase in local fleets and strengthened exercise of power in the regional tuna fisheries by Pacific Island Countries is that effective conservation increasingly depends on decisions made in Port Moresby, Suva and Tarawa, as well as Tokyo and Kiaoshiung.

### ***Limits and value***

One of the outcomes of the increased emphasis on conservation is the application of limits – in national waters across the region, and indeed in tropical tuna fishing grounds globally. Limits conserve, and at the same time generally increase the value of access to resources. Over time, we can expect to see fisheries laws reshaped both to provide for more effective application of limits, and to respond to some of the effects of making resources more valuable. Those effects include increasing the incentives for illegal fishing and corruption.

### ***Increased emphasis on improved fisheries governance and transparency***

It is not clear that there has been any increase in the incidence of corruption in fisheries affairs, but it is clear that there is a greater concern about the level and effects of corruption and associated weaknesses in governance across the region and in Pacific Island economies and societies generally. The importance of fisheries in many Pacific Island Countries and some recent findings of corruption in fisheries affairs increase that concern. In part, these concerns are enhanced by the level of secrecy about access fees and licensing. Keeping access conditions confidential may in some circumstances make good economic sense. There may for example be sound reasons for one fleet to pay more for annual licence fees than another if they fish more heavily in zone or their catch rates are higher, and keeping those details confidential may make access negotiators' jobs easier, but it feeds suspicion about the process. In addition, the incentives for boat owners to corrupt officials and politicians seem bound to increase. Not only will the value of resources increase, but the increasing application of limits is going to mean more boat owners will have applications for a licence refused and be shut out of what they perceive as a valuable commercial activity. In this circumstance, the amount they will be prepared to pay to influence that decision is usually a lot more than they will be prepared to pay to influence a

decision on access fees. This kind of pressure is if anything even greater when it involves the domestic industry, often tied as it is in small countries to other political and personal interests.

### ***Application of binding regional arrangements***

The entry into force of the WCPF Convention and the establishment of the WCPF Commission will bring FFA members into a new process under which they will be subject to legally binding arrangements affecting fishing in their waters and by their vessels. The significance of this development may not be completely understood by all those participating. FFA Members are used to a process of cooperation in fisheries based on agreements reached through the Forum Fisheries Committee and decided upon by the Forum. These outcomes are politically binding but not legally so, and there has been flexibility exercised in the way the decisions are applied that reflects and respects the positions of individual Forum Members. On the other hand, decisions by the Commission may be legally binding. FFA Members have long held the view that they should be responsible for the management of the tuna resources in their waters, while the Commission would be responsible for overall standards, and for management of the high seas. This position does not mean that FFA Members will not be subject to binding Commission decisions that will affect them. It means rather that FFA Members will be part of a process, of which they are a major part, which will decide on the appropriate pattern of arrangements for management and conservation of regional stocks, and the extent to which Commission decisions will be binding on them. In this process, there is a risk that Pacific Island FFA Members, especially those with smaller administrations, will become a party to binding Commission decisions without appreciating the implications of those decisions at their national level. Already, decisions were made at the first Commission meeting last year, which had implications that were not fully understood by all FFA Members. Some of those decisions required action to be taken by 1 July and it seems that some FFA Members may not have undertaken that action.

### **Legal Impacts**

The trends outlined above can be expected to have a range of impacts on the drafting and implementation of national fisheries laws and regulations. Some of these are as follows.

#### ***Role of Access Agreements***

There are good grounds for less reliance on access agreements, and more use of methods of direct licensing through regulations and standard licensing conditions. Most Pacific Island Countries entered into access agreements with fishing states as an early step in developing their oceanic fisheries. Often these access agreements were at a government-to-government level, with subsidiary commercial arrangements underneath. There were three main reasons for managing foreign fishing through access agreements rather than through more direct licensing arrangements. They were:

- i) **to secure recognition of rights over tuna:** at a point where some fishing state were disputing the exercise of sovereign rights by coastal states over highly species, many FFA Members considered it valuable to secure recognition of sovereign rights and management authority over tuna, and pursued this by requiring flag states or fishing associations to agree to this

in access agreements. Many FFA Members had this requirement in their law, and some still do. Two factors make this less important today. Firstly, there has been broader acceptance of the coastal state position on their jurisdiction over tuna, tracing in particular from the change of policy by the United States on this issue. As a result, FFA Members are generally more confident about the exercise of their sovereign rights. It is set out in their laws. It is expressed in the way they exercise those rights and in the acceptance by all major fishing states of the application of their national laws, and they do not need the kind of assurance that is available through access agreements to secure those rights. This is not to say that the struggle for recognition of those rights is complete. Indeed, the second reason that the recognition in access agreements now might seem less important is that it has not been completely effective. Fishing states have generally been prepared to accept wording under which they agreed to recognise the exercise of sovereign rights by the licensing FFA Member “in accordance with international law”, but have simply maintained a different interpretation of what is meant by “in accordance with international law. The following position set out by Japan in the ICCAT Allocation Working Group makes that clear:

*“Highly migratory fish do not belong to any one zone. Those areas to which they migrate represent a transitional route only. Japan can not accept the concept of zonal approach for the management of tuna stocks.”*

- ii) **to provide a compliance umbrella:** in the position where most Pacific Island Countries had little MCS capacity and there were real problems with enforcing domestic laws against businesses that were in general not represented in the countries in which they operated, one strategy adopted was to only licence vessels that were subject to some kind of umbrella arrangement with a flag state government or association that would take responsibility for ensuring that all vessels in a fleet complied with national laws. This can be an important advantage over direct licensing, where the legal requirements and conditions can at best apply to all vessels with the same owner. This condition is still in some national laws, and may well still be valuable for some countries, but with the strengthening of national and regional compliance capacities and arrangements, it is certainly less important than it used to be;
- iii) **for flexibility:** setting fishing terms and conditions in access agreements provides the flexibility to set different conditions, including different fee levels, for different fleets.

But there are some disadvantages to access agreements, particularly in comparison with arrangements such as direct licensing of vessels as described below as follows:

- i) **reduction of government authority:** over time, access agreements have come to be increasingly applied to licensing particular vessels or the vessels of a single company rather than a whole fleet. This brings a Government into a position of effectively subjecting the application of its laws to a process of agreement by a business without the general benefits of umbrella-type access agreements noted above. In some cases, it seems as if this approach is being followed as a matter of convenience because the texts of agreements are available and easily applied, whereas there are

no regulations in place under which vessels could be licensed without agreements.

- ii) **nationality of catch and allocations in the WCPF Commission:** fishing states and FFA Members generally have different approaches to how allocated limits to fishing would be applied in the WCPF Commission. FFA members have supported allocations based on zones. Fishing states seek allocations based on catches by flag. In the end, some form of compromise will be likely. Countries can reduce the risk by taking steps to have as much catch as possible counted as being made by their national fleet. That is very difficult and probably not possible where vessels are licensed under access agreements with foreign parties.
- iii) **Reduced competition:** in a process where fees are set for a whole fleet under a single agreement, fee levels tend to be limited by the least efficient operators. Licensing vessels directly creates more competition, and should lead to licensing countries extracting greater benefits
- iv) **Transparency:** having vessels operate under licences granted in accordance with conditions set out in regulations with a standard set of fees applicable to broad classes of vessels is generally more transparent than licensing under access agreements.

Against this background, there may be benefits for some Pacific Island countries from moving away from access agreements, and several have already done so. This doesn't mean putting aside all existing agreements. Rather, it means removing the requirement where it still exists, that foreign vessels can only be licensed under an access agreement; developing an alternative by getting appropriate regulations in place; and looking at whether some foreign fishing wouldn't be better managed by direct licensing rather than through access agreements. Certainly, if individual companies are being licensed under access agreements, there is room to consider an alternative.

Notwithstanding the comments above, access agreements between Pacific Island countries may become important in allowing domestic fleets to operate more widely.

### ***Direct Licensing Under Regulations***

The alternative to access agreements is direct licensing under terms and conditions set out in regulations. This is the standard way in which governments manage business operations within their territory. It is simpler once the regulations are established and more transparent. It also allows foreign flag vessels to be transferred into charter arrangements, which can serve more effectively to promote national participation, especially by indigenous businesses, and under which the catch can be classified as the catch of the host state rather than the foreign flag state.

### ***Local/locally-based/foreign***

One of the first approaches used in national laws was to provide separate structures for local, locally based foreign and foreign vessels. That approach was originally put forward by FAO, not just in this region but in other regions of the developing world, and the model can be found in legislation in the Caribbean and Africa. The basic strategy was to make it attractive for the distant water vessels that were fishing in the waters of many tropical developing countries to go through a process of first landing their catch or transshipping locally, and then in time becoming flagged in the countries

in which they were fishing and become fully integrated into those economies. That approach was reinforced in this region by the adoption of a set of harmonized minimum terms and conditions for foreign vessels that were intended to be tighter than those applied to national vessels. The result was often to have completely separate sections in the legislation and separate regulations for local, locally based and foreign vessels. That overall approach never really worked, especially in tuna fisheries. When investment in domestic tuna fisheries did come, it usually involved smaller vessels than the distant water fleet and often involved investors from different countries or at least from different companies, than the owners of the distant water vessels. In time too, the conditions for fishing applied to domestic vessels have become closer to the requirements for foreign vessels, with the basic reporting and compliance requirements being driven increasingly by concerns about sustainability that apply equally to national and foreign vessels. As a result, many countries have reduced the differentiation in national legislation between local, locally based and foreign vessels. Reducing that differentiation is important for countries that choose to adopt options such as charters because it enables foreign charter vessels to be seen more clearly as integrated into the domestic fleet. Differentiation can still be retained where appropriate such as in levels of fees or penalties or licensing or allocation criteria by specific references to foreign and national vessels.

### ***Transparency***

Transparency is important for two main reasons. Firstly, transparency promotes honest government. In fisheries that contributes to ensuring that funds are not diverted from the public sector for private ends. Secondly, transparency promotes investment and the associated growth in jobs and incomes. Investing in fisheries for Pacific Island nationals is risky enough because of economic factors, without adding to that risk by policy instability due to personal and political factors. Two directions seem important in promoting greater transparency in fisheries management:

- i) **Spreading the authority for key decisions:** early legislation deliberately gave great power and almost unfettered discretion to Heads of Fisheries Administrations and to Ministers to make decisions about the granting of licences and conditions of licences. While this is often exercised within broader government processes such as Cabinet Committees or collective Cabinet responsibility, the effectiveness of these processes varies, and the result has sometimes been to leave power over important and valuable fisheries decisions concentrated with one person. That kind of structure can invite commercial attention and pressure on the decision-making process. One way of diffusing that attention is to establish a formal committee or authority for fisheries licensing/management decision-making with participation drawn from a range of agencies such as those responsible for commerce, environment, finance, foreign affairs, legal or police;
- ii) **Openness:** part of the process of improving governance is to make more information available for public scrutiny and to establish consultative processes in which policy decisions are discussed with a wider group of stakeholders. Examples of this approach include:
  - requiring registers of licences and details of access agreements to be public;

- establishing statutory consultative arrangements such as advisory fishery management committees and
- setting out important policies such as licensing criteria in fishery management plans

### ***Duration of Fishing Authorisations***

Many national laws provide that licences or other forms of authorisation shall be granted for one year, or for no more than one year. That approach was initiated largely to avoid the development of any sense of long term rights attaching to licences for foreign vessels, and to provide Governments with great flexibility in deciding who to licence on a year-to-year basis. That policy may have served well for the early stages of managing foreign vessels, but it is almost certainly not the best way to manage domestic vessels or encourage domestic development. Longer term rights are an important component of a strategy to develop a domestic fleet, with the possibility of different durations being used to encourage greater national economic benefits. For foreign distant water vessels, longer term access arrangements might also generate greater revenue, although these vessels generally don't want to be locked into longer term arrangements that might limit their ability to range across fishing grounds, and longer term foreign access may complicate discussions about catch history allocation. As domestic fleets develop, there may also be benefits from shorter term licences that provide opportunities for Pacific Island vessels to fish seasonally in the waters of neighbouring states. For the purposes of national laws, greater flexibility in the duration of licences or other forms of fishing authorisation involves leaving durations to be established as conditions by licensing authorities or set out in management plans.

### ***Cancellation and Suspension of Licences, and Seizure***

In many national laws, there is a great deal of discretion given to Heads of administrations and Ministers to cancel and suspend licences, and seize vessels and other property. That power is very much a response to the need for governments to have swift and effective remedies against illegal foreign fishing. However, that becomes a problem when it deters nationals from investing in fishing for fear that their business might be destroyed by a single decision by a single government officer or Minister. It is even more of a deterrent to financial institutions to finance such businesses if even minor offences can lead to the business being effectively destroyed. This doesn't mean that penalties should be lighter. In general the monetary penalties provided for in many national laws are if anything too low. But it means that penalties which stop a local fishing business from operating should only be applicable for serious offences, and then only on conviction.

### ***Powers of Authorised Officers and Scientific Observers on Land***

The powers of authorised officers and scientific observers in most national laws are very much focused on inspections at sea and gathering of information by onboard observers because this was the original focus of national compliance and enforcement efforts. As greater shares of the catch are landed or transhipped locally, a greater share of fishery monitoring for both compliance and science purposes can be carried out in ports or at processing facilities. For some countries this will require some changes to the powers of authorised officers and observers.



## APPENDIX VIII

### Revised National Priorities for Legal Reform

Country	Regional Legal Workshops and Advice	National Legal Reviews	In-Country Training	Attachments	Other
Cook Islands	X	<ul style="list-style-type: none"> <li>• Development of fisheries regulations</li> <li>• Licensing guidelines</li> <li>• Review of licensing arrangements under access agreements</li> </ul>	<ul style="list-style-type: none"> <li>• Convene a workshop for Cabinet on the obligations under the WCPF Convention; and</li> <li>• Conduct a prosecutions workshop</li> </ul>	X	
Federated States of Micronesia	X		<ul style="list-style-type: none"> <li>• Conduct a national workshop on the WCPF Convention and its legal obligations</li> <li>• Conduct fisheries prosecutions workshop</li> </ul>	X	
Fiji	X	<ul style="list-style-type: none"> <li>• Drafting of the revised Fisheries Act and Regulations;</li> <li>• Development of licensing guidelines; and</li> <li>• Harmonization of fisheries laws with existing environmental and marine related laws and regulations.</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct a prosecutions workshop;</li> <li>• National workshop on the legal obligations under the WCPF Convention; and</li> <li>• Conduct training for Legal Officers</li> </ul>		
Kiribati	X	<ul style="list-style-type: none"> <li>• Development and formulation of revised Fisheries Legislation and Regulations;</li> <li>• Review of access agreements.</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct a prosecutions workshop;</li> <li>• Workshop on the legal implications and obligations under the WCPF Convention;</li> <li>• Promote awareness workshop on national fisheries legislation</li> </ul>		
Marshall Islands	X		<ul style="list-style-type: none"> <li>• Prosecution workshop</li> </ul>		
Nauru	X	<ul style="list-style-type: none"> <li>• Revise Act and Regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Convene workshop on legal implications on the WCPF Convention;</li> <li>• Conduct a fisheries prosecutions workshop</li> </ul>	X	<ul style="list-style-type: none"> <li>• Institutional strengthening</li> </ul>
Niue	X	<ul style="list-style-type: none"> <li>• Revise Act, Regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct a legal workshop on the</li> </ul>	X	<ul style="list-style-type: none"> <li>• National legal advice</li> </ul>

			implications of the WCPF Convention		
Palau	X	<ul style="list-style-type: none"> <li>• Revise Act for consistency with the UNFSA and WCPF Convention;</li> <li>• Harmonization of public laws with the WCPF Convention</li> </ul>	<ul style="list-style-type: none"> <li>• Prosecution workshop;</li> <li>• Conduct a national workshop on the legal implications of the WCPF Convention</li> </ul>	X	<ul style="list-style-type: none"> <li>• National legal advice;</li> <li>• Institutional strengthening</li> </ul>
Papua New Guinea	X	<ul style="list-style-type: none"> <li>• Review of the Fisheries Act and Regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct a legal workshop on the WCPF Convention;</li> <li>• Conduct national workshop for Judicial Officers.</li> </ul>		<ul style="list-style-type: none"> <li>• Conduct subregional workshops on MCS issues and WCPFC issues</li> </ul>
Samoa	X	Review Act			
Solomon Islands	X	<ul style="list-style-type: none"> <li>• Harmonize Act and plan</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct national training for fisheries legal officer</li> </ul>		
Tokelau	X	<ul style="list-style-type: none"> <li>• Revise fisheries Act and regulations where necessary</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct a fisheries prosecutions workshop after the establishment of the licensing regime</li> </ul>	X	<ul style="list-style-type: none"> <li>• Village consultations;</li> <li>• National legal advice</li> </ul>
Tonga	X		<ul style="list-style-type: none"> <li>• Prosecution W/shop;</li> <li>• Conduct training in law of the sea</li> </ul>	X	
Tuvalu	X	<ul style="list-style-type: none"> <li>• Review Access Agreements</li> <li>• Assistance in the drafting of fisheries legislations and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct and workshop on the legal implications of the WCPF Convention</li> <li>• Conduct workshop on fisheries prosecutions</li> </ul>	X	<ul style="list-style-type: none"> <li>• National advice on IUU fishing;</li> <li>• Awareness of access agreements;</li> <li>• Conduct awareness in villages</li> </ul>
Vanuatu	X	<ul style="list-style-type: none"> <li>• Revise Act and regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct Prosecution workshop;</li> <li>• Conduct training for legal staff; and</li> <li>• Conduct a workshop for judicial officials</li> </ul>	X	<ul style="list-style-type: none"> <li>• National legal advice</li> <li>• Training for fisheries legal drafting</li> </ul>

## FFA MEETING TO DEVELOP A LEGAL STRATEGY OF ASSISTANCE

Port Vila, Vanuatu  
14-16 November, 2005

### Update of National Priorities for Legal Reform

#### Cook Islands

- Recently, Parliament has passed a new *Marine Resources Act* on 29 July, 2005 which entered into force on 27 November, 2005
- Currently, working on regulations with FFA Legal Division
- Need to revise the licensing regime for fishing within and outside the waters
- Need to ensure their licensing forms need to be compatible with the requirements under the WCPFC
- Prosecution workshop already undertaken, however, because of its success, it is a priority to have the same workshop again
- Cabinet workshop with Les Clark, who was instrumental in rights-based fisheries regime in incorporating this into their Act – underlines fisheries governance and transparency
- In-country national legal workshop to get locals and stakeholders involved
- In-country workshop on obligations under the WCPFC
- Legal attachment

#### FSM

- Assistance in ensuring the legal framework is in place to support compliance issues as they come up *i.e.* if they agree to a boarding and inspection scheme, legal framework should support this
- In-country training as opposed to regional so that more people can participate including stakeholders

#### Fiji

- Currently revising Bill, still being considered by stakeholders – closely aligned with WCPFC
- Harmonise existing laws with environmental legislation, such as *Waste Management Act* and marine laws which cover chartering arrangements
- Prosecution workshop
- Workshop on obligations under the WCPFC
- Training for judiciary and magistrates
- Need legal specialist for fisheries

#### Kiribati

- Policies in place but minimal implementation
- Cabinet workshop

- Prosecution workshop
- Workshop for the enforcement office fit under Prosecution workshop

### Nauru

- Revise Act
- Ensure obligations under the WCPFC are incorporated into legislation
- Update regulations
- Workshop on obligations under the WCPFC
- Consultancy to ensure none of the other sectors are compromised *i.e.* a lot of the focus is on oceanic to neglect of coastal fisheries – institutional strengthening
- MCS Plan to be developed
- Legal attachment

### Niue

- Licensing regulations not yet before Cabinet
- VMS regulations
- In-country legal workshop
- Legal attachment

### Palau

- Need to review Act – team working on legislative review – compile legislation into draft *Marine Act* – still need to harmonise legislation with FSA and WCPFC
- Workshop on obligations under the WCPFC
- In-country legal workshop – institutional strengthening – major priority

### Papua New Guinea

- Already reviewed Act but need to revise laws as Commission decisions are made; policy and/or institutional review may also be needed; review legislation, regulations where appropriate
- International legal workshop for new lawyers and new law enforcement and licensing officials
- Workshop on WCPFC issues *i.e.* issues between high seas and in-zone
- More focus on evidence-gathering, charter issues, flag issues – take into account other aspects not just prosecution
- Raise awareness for magistrates and judges to be coordinated with Continuing Legal Education Programme
- Sub-regional workshops on MCS issues, WCPFC issues etc

### Tokelau

- Capacity of human resources is limited and will continue to rely on FFA for assistance
- Working towards self-determination so there will be a need to repeal the NZ Act
- Need assistance where Commission decisions are made to amend regulations accordingly
- Priority is revision of regulations for licensing
- Prosecution workshop – intention to recruit more lawyers
- Legal attachment

### Tonga

- Immediate priority to submit 7 sets of regulations to Crown Law before Xmas 2005
- Small amendments to *Fisheries Management Act*
- Fisheries Processing, Marketing and Export Regulations left for next year
- Legal attachment
- In-country training for fisheries staff

### Tuvalu

- Currently *Fisheries Act* is being reviewed – first reading before Parliament
- Need assistance in drafting regulations under this new Act
- Legal attachment
- Cabinet workshop
- Prosecution workshop
- Raising legal awareness

### Vanuatu

- Revised *Fisheries Act* – bill ready for debate before Parliament
- Prosecution workshop for new, young lawyers
- Workshop for judiciary to understand fisheries laws
- Legal attachment
- Workshop held with Drafting Section of the State Law Office