

Heads of Fisheries paper

REVIEW OF AQUACULTURE POLICY AND LEGISLATION IN THE PACIFIC ISLANDS REGION

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BACKGROUND

1. In March 2003, the Secretariat of the Pacific Community (SPC) contracted the Marine Studies Programme at The University of the South Pacific to conduct a “Review of Aquaculture Policy and Legislation in the Pacific Islands Region”. This Review is an initiative under the broad umbrella of the regional aquaculture network of SPC members to assist in further promoting communication and collaboration among countries and territories.
2. The Review seeks to describe the current legislative setting for aquaculture arrangements in the region, thereby providing a starting point for the creation of a regional aquaculture policy framework, and to assist individual countries and territories in their national legislative drafting efforts.
3. Some difficulties were encountered with undertaking this review. Whilst every effort was made to gather the most complete and detailed information available, practical collection difficulties meant that some sources may now be out of date, or that interpretations of particular laws do not correspond with their national interpretation. Nonetheless, the report does provide a robust introduction to the status of law and policy addressing aquaculture in the region.

OVERVIEW OF LEGISLATION AND POLICY

4. Aquaculture in Pacific Island Countries and Territories (PICTs) is a rapidly evolving activity and it is evident that legislation tends to lag behind development. Moreover, no generalised relationship could be drawn between the nature of regulation and level of aquaculture development.
5. Some countries or territories had regulations and/or legislation that did not correspond with the level of aquaculture development. For example, some PICTs with no or relatively little aquaculture development had enacted legislation or prescribed regulations that were more elaborate than those countries with substantial aquaculture interests.
6. However, the vast majority of countries surveyed had few, if any, specific laws on aquaculture, relying on the provisions of other legislation to provide some form of control. PICTs that have some provisions for aquaculture mostly address activities



under their Fisheries or Marine Resources Act by allowing for the regulation of aquaculture activities where necessary.

7. There have been several incidents highlighting the need to establish a policy framework or to exercise some legal controls over aquaculture. These include: the introduction of the unwanted tilapia *mossambicus*; importation of pest-infested oyster spat; the lack of an enabling environment for the development of sustainable aquaculture; and lack of clarity over jurisdictional mandates between regulatory agencies.

CONSIDERATIONS FOR AQUACULTURE LAW AND POLICY

8. “Aquaculture” tends to be undefined or not well defined in most PICTs, leaving the ambit of law and policy somewhat unclear. A particular issue is the application of fisheries controls to aquaculture activities. One example of this is the collection of broodstock and spat (such as taking coral and ornamental fish from the wild for marine ornamental aquaculture). Clearly these are fishing activities for the purposes of aquaculture; the issue is should these collection activities be managed as “fishing” or as “aquaculture”. A second issue is how the harvesting of fish from an aquaculture operation can be exempted from any Fisheries Act controls on the “taking” of fish for sale.
9. In some PICTs, especially territories with a metropolitan jurisdiction, the task of obtaining approvals is often rigorous. However, once aquaculture operations commence the incentive for compliance, through monitoring and enforcement, is often absent or inadequate. Attention should be given to not just enacting legislation but also to implementation capacity at both national and regional levels.
10. The system of demerit points, which has some parallels in regional fisheries management, is worth considering for its possible application to aquaculture. Under this approach, demerit points accrue to an operator according to the severity of the breach of the regulations or licence conditions. An advantage of the demerit system is that it will not stifle the development of aquaculture by imposing heavy penalties, but will compel operators to strive to meet set performance standards.
11. Because the purpose and scale of operations differ, a regulatory regime could provide for several classes of licences. Controls will be fairer to subsistence and small-scale aquaculture operators if the size of operations is a factor in determining the need for and cost of approvals and clearances. In such a regime, artisanal aquaculture activities that are being encouraged as a means of reducing fishing pressure in coastal and inshore fisheries, and for raising the standard of living for the local community, may have reduced regulatory requirements. There are dangers, however, in making such activities exempt from all controls.
12. There is a trend within the region towards the drafting of aquaculture legislation as stand alone Bills. However, given the drafting and consultation efforts involved in passing a Bill through the legislature, the enactment of new legislation immediately may be too difficult and resource intensive. Within most PICTs, the legal requirements for aquaculture development may be better integrated into existing statutes rather than through the enactment of dedicated legislation.

13. In terms of amending an existing statute, the fact that aquaculture and fishing activities use the same resource base lends support to the concept of integrating fishing and some of the aquaculture measures within existing fisheries legislation. Moreover, the scope for expansion of the sector lies in the marine field, so fisheries legislation would be the most appropriate enabling source.
14. Recognising the circumstances for each country as distinctive, there is nonetheless a commonality of issues relating to aquaculture. A set of minimum considerations for aquaculture that should be prescribed in legislation by all PICTs are:
 - Provide for an efficient means to allocate space for aquaculture:
 - The ideal situation is for the allocation of space for aquaculture to occur along with the allocation of space for other coastal and marine users under a framework with generic provisions, such as a mechanism for zoning coastal and marine areas for different uses (including aquaculture).
 - Pending the development of such an elaborate legislative planning system, each jurisdiction will need to have in place an efficient means to allocate access to the marine environment; such a means may be generic or sector-specific (eg, aquaculture leases).
 - Providing statutory rights for the taking of aquacultured fish for sale and the collection of broodstock and spat.
 - Renewable licensing for the environmental effects of aquaculture, for example:
 - Regulating the transfer and relocation of live exotic organisms
 - Regulating the extraction and discharge of water
 - Controls on the use of chemicals and pharmaceuticals
 - Devolution of the monitoring and enforcement of controls
 - Seafood safety controls (the role of government in assuring the safety of product)
15. Given the commonality of some of the major aquaculture issues between PICTs, and constraints regarding the development of a legal framework faced by some PICTs, a regional approach may be the most efficient method to establish certain important components of the regulatory framework. Advantages of a regional approach may include economies of scale and equity gains. These issues include:
 - Translocations of live aquatic organisms into and within the region
 - Customary, private and investor rights and responsibilities
 - Transfer of technology for aquaculture purposes
 - Information collection and record keeping
 - Conduct of responsible aquaculture research or trials

FUTURE WORK

16. The legislative environment can either stimulate or constrain aquaculture development. It is therefore important that PICTs enact suitable legislation that will promote sustainable aquaculture development.
17. One important factor in need of attention is the role of traditional management practices in aquaculture as well as other components such as traditional tenure systems, rights over native land, and traditional and/or community based aquaculture activities. These issues are likely to be unique to different PICTs and therefore require that national solutions be incorporated into a regional template.

18. The absence of set standards in legislation specifying acceptable limits for output of contaminated or polluted wastewater, and ambient water quality, needs addressing, either in aquaculture legislation or in generic environmental legislation. Standards for quarantine, genetic and resource ownership and protection of intellectual property rights should be considered.
19. Land leases for aquaculture often do not describe any clear process for lease allocation, and this may act as a disincentive for development and investment, especially in a region known for its sensitivity towards land use. The importance of long-term leases for aquaculture to allow investments to be recovered should be considered.
20. In-country studies building upon this preliminary review would allow for a more complete understanding of the practical implementation of existing legislation in each of the PICTs. Such studies would provide guidance as to the commonalities for possible regional policy approaches. A country-specific survey would ultimately establish the potential for a model approach for the control and management of aquaculture in the PICTs.

RECOMMENDATION

21. The meeting is invited to endorse the continued efforts of regional organizations to address the aquaculture policy and legislation needs of PICTs identified in this study.