

# Compliance and Enforcement for Coastal Fisheries Management in Fiji

*Annabelle*





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The paper was prepared by Annabelle Minter, Legal Research Intern, under the supervision of Pepe Clarke, Legal Advisor, IUCN Regional Office for Oceania.

The recommendations of the paper are based on a review of relevant legislation and interviews with selected stakeholders. The author wishes to acknowledge the contributions of each of the interviewees, who are identified individually in the footnotes to this report.

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- Inadequate licence conditions
- Breach of licence conditions
- Community imposed goodwill payments may act as an incentive for people to fish without a licence
- Restricted areas:
  - Exemptions for certain fishing methods means that it is not currently possible to create a complete fishing prohibition
  - Long delays in achieving gazettal of a restricted area
  - Perceived loss of community ownership once an area is gazetted as restricted
- Internal compliance:
  - Breach of *tabus* by resource owners
  - Lack of community education about fisheries law and reef ecology
- Fish wardens:
  - Lack of certified fish wardens
  - Inadequate training of fish wardens
  - Inadequate resourcing of fish wardens
  - Lack of recognition of fish wardens
  - Conflict and aggression between fish wardens and fishermen
- Police:
  - Possible inadequacies in implementation of law
  - Police reluctance to investigate and prosecute fisheries crime
  - Unfamiliarity with fisheries law
  - Mischaracterisation of their role in prosecution
- Prosecution:
  - Rarity of prosecution of fisheries crime
  - Lenient sentencing when prosecution occurs

## RECOMMENDATIONS

Following analysis of legislation and interviews with key stakeholders, the paper makes the following recommendations which are divided into recommendations relating to (1) the improved administration of the Act (2) adoption of policy or subsidiary legislation and (3) legislative amendment:

### Recommendations for the improved administration of the Act:

Rec. 1	Implement statutory permit scheme.
Rec. 3	Develop and implement a community based warning and permit or licence non renewal system for repeat offenders.



### Recommendations for the adoption of policy or subsidiary legislation

Rec. 6	Adopt guidelines clarifying the meaning of “trade or business” for licences.
Rec. 9	Remove exceptions for exempted fishing methods in restricted areas from regulation 11 of the <i>Fisheries Regulations</i> .
Rec. 10	Initiate a consultation process for formalising the role of Qoliqoli Committees through the creation of regulations.
Rec. 11	Create regulations to clarify and streamline the restricted area gazetting process
Rec. 12	Initiate a consultation process to consider the creation of by laws to address compliance issues within the community.

### Recommendations for legislative amendment

Rec. 2	Initiate a consultation process regarding the removal of permit exceptions.
Rec. 7	Remove licence exceptions from the section 5 of the <i>Fisheries Act</i> .
Rec. 20	Introduce a legal requirement for fish wardens to be paid.
Rec. 27	Increase penalties in the <i>Fisheries Act</i> .

# COMPLIANCE



mangroves.<sup>13</sup> Freshwater ecosystems have been affected by over extraction and pollution which have downstream effects on the marine environment.<sup>14</sup> The islands of the South Pacific are

For the purposes of this report, analysis will be restricted to the coastal marine area. The Fiji Islands, added together, feature 1,130 km of coastline and an Exclusive Economic Zone<sup>17</sup> of around 1.26 million sq. km. The coastal zone, which covers 31,000 sq. km of coastal and inshore waters,<sup>18</sup> is defined under Fijian law as “the area within 30 meters inland from the high water mark and includes areas from the high water mark up to the fringing reef or if there is no fringing reef within a reasonable distance from the high water mark”.

This approach is partly reflected in Fiji's national fisheries legislation. The *Fisheries Act (Cap. 158)*, which

- Prescribing limits to net or mesh size.<sup>32</sup>
- Regulating the procedure with respect to issuance of licences or registration of vessels.<sup>33</sup>
- Prescribing fees.<sup>34</sup>
- Regulating any other matter relating to the conservation, protection and maintenance of a stock of fish.<sup>35</sup>

Fish is defined broadly by the Act as “any aquatic animal whether piscine or not, and includes shellfish, sponges, holothurians, sea urchins, crustaceans and turtles and their eggs.”<sup>36</sup>

### 2.2.1. Administration

The power to administer the Act is vested in the Department of Fisheries of the Ministry of Fisheries and Forests. The Department is organised into divisions: the Western Division administrated in Lautoka, the Northern division administrated in Labasa, the Central division administrated in Nausori and the Eastern division administrated in Lami. Although the Native Fisheries Commission is established under the Act, it is a major exception to the jurisdiction of the Department of Fisheries. The Commission has jurisdiction over the jurisdiction of the Department of Fisheries.

Most inquiries undertaken by the Commission were completed in the decade after its creation,<sup>45</sup> and all inquiries as to the boundaries of customary fishing areas were completed in 1996. The titling system is however

for a particular species, within a particular area or using a particular method.<sup>53</sup> The combination of the requirement for community consultation and the power to impose restrictive conditions gives the community an opportunity to nominate *tabu* areas where fishing is prohibited.

Table 1. Summary of contexts in which a permit and/or licence is required.

ACTIVITY	PERMIT?	LICENCE?
Non resource owners fishing in a <i>qoliqoli</i> for subsistence using a hook and line, spear or portable fish trap	No (Fisheries Act s 13(1)(a))	No (Fisheries Act s 5(3))
Non resource owners fishing in a <i>qoliqoli</i> for subsistence using a method other than a hook and line, spear or portable fish trap	Yes (Fisheries Act s 13(1)(a))	No (Fisheries Act s 5(3))
Non resource owners fishing in a <i>qoliqoli</i> for the purpose of trade or business with a line from the shore or a spear	Yes (Fisheries Act s 13(1)(a))	No (Fisheries Act s 5(3)(a))
Non resource owners fishing in a <i>qoliqoli</i> for the purpose of trade or business using a method other than a line from shore or a spear	Yes (Fisheries Act s 5(3) and Fisheries Reg. r 4(1))	Yes (Fisheries Act s 5(3) and Fisheries Reg. r 4(1))
Resource owners fishing in a <i>qoliqoli</i> using any method for the purpose of subsistence	No (Fisheries Act s 13(1))	No (Fisheries Act s 5(3))

Resource owners fishing in a *qoliqoli* for the purpose of trade or business with a line from the shore or a spear

No  
(Fisheries Act s 13(1)(a))

No  
(Fisheries Act s 5(3)(a))  
Fishing in a *qoliqoli* for the purpose of trade or business with a line from the shore or a spear

### 2.2.5. Restricted Areas

Although the *Fisheries Act* does not create a marine protected areas regime, it does offer scope for regulating fishing within “restricted areas”.

The *Fisheries Act* and regulations allow the Minister to designate areas where the taking of fish is restricted or prohibited.<sup>61</sup> Although generally referred to as a Marine Protected Areas regime, it is currently not possible to establish areas where all forms of fishing are completely prohibited. This is because the Fifth Schedule to the Act (regulation 11) allows for the creation of marine reserves that prohibit fishing except by hand net, wading net, spear or line and hook. The protection offered by the Act is further undermined as individuals may apply to the Commissioner of the Division for authorization to take fish from restricted areas. The Act does not outline any considerations that must be taken into account before the Commissioner can make such an authorization. As such, the Commissioner’s discretionary power appears to be unfettered.

In addition to the Ministerial power to create restricted areas, it should not be forgotten that there are two other avenues for creating restricted fishing zones. As outlined above, communities may enforce a *tabu* site within their designated *qoliqoli* area by prohibiting fishing as a condition of a permit or as a condition of a licence.

### 2.2.6. Restricted Methods

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### 2.2.8. Protected Species

Fiji's protected species regime spans and intersects multiple pieces of legislation. It is thus necessary to appreciate the connection between the *Fisheries Act (Cap 158)* and accompanying regulations, the *Endangered and Protected Species Act 2002* and the *Birds and Game Protection Act (Cap. 170)*.

Pursuant to the *Endangered and Protected Species Act 2002*, it is an offence to possess or control, offer or expose for sale, or *Act*

Table 3. Protected Species.

Common Name	Scientific Name	Regulatory Instrument
<i>Fish</i>		
Species of goby	<i>Bryanninops diannoea</i>	<i>Endangered and Protected Species Act 2002</i>
Species of blenny	<i>Ecsenius figiensis</i>	<i>Endangered and Protected Species Act 2002</i>
Reve	<i>Mesoprisles kneri</i>	<i>Endangered and Protected Species Act 2002</i>
Species of blenny	<i>Plagiotremus laudandus flavus</i>	<i>Endangered and Protected Species Act 2002</i>
Species of sea bass	<i>Plectranthias fijiensis</i>	<i>Endangered and Protected Species Act 2002</i>
Species of common wriggler	<i>Rotuma lewisi</i>	<i>Endangered and Protected Species Act 2002</i>

### 2.2.9. Enforcement and Offences

The Act gives power to the Permanent Secretary to appoint fisheries extension officers and fish wardens for the purpose of prevention and detection of offences and the enforcement of provisions of the Act.<sup>95</sup> Fish wardens are usually harvesters appointed by their communities. Fish wardens, fisheries officers, police officers, customs officers and any other officer appointed by the Minister have powers of examination and detention including:

- Requiring any person engaged in fishing to exhibit their documents

Table 4. Offences and penalties in the Fisheries Act (Cap. 158)

Section	Offence	Penalty
10(1)	Taking fish without a licence	Prison: 3 months Fine: \$500, or both
10(1)	Possessing apparatus for the purpose of taking fish without a licence	Prison: 3 months Fine: \$500, or both
10(2)(a)	Failure to comply with the conditions of a licence	Prison: 3 months Fine: \$500, or both
13(1), 10(2)(b)	Failure to obtain a permit or comply with the conditions of a permit	Prison: 3 months Fine: \$500, or both
10(4)	Fishing with, attempting to fish with, possessing, or selling fish killed with dynamite, gelignite or other explosive substance.	Severity depends on prior convictions. Prison: 6 months to 2 years Fine: \$1000 \$5000 Licence cancellation
10(5)	Failing to supply an officer with information regarding the source of illegally caught fish	Prison: 3 months Fine: \$500, or both
10(2)(b)(c)	Catch all offence: violation of any provision of the Regulations, or of any offence under the Act for which a penalty is not specified.	Prison: 3 months Fine: \$500, or both

In addition to monetary and imprisonment penalties, the court has the power to cancel a fishing licence upon conviction of an offence.<sup>101</sup> The court has no equivalent power to cancel a permit.

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<sup>101</sup> Fisheries Act (Cap 158) s 8



## 2.4. Fijian Affairs Act (Cap 120)

The *Fijian Affairs Act (Cap 120)*, administered by the Ministry of Indigenous Affairs, is relevant to the extent that it authorises Provincial Councils to create by laws on fisheries issues.

The Act requires the establishment of Provincial Councils in every province whose function it is to “promote the health, welfare and good government of Fijians resident in the province...”.<sup>107</sup> In order to carry out this function, Provincial Councils are authorised to create by laws on any matter relevant to the health, welfare and good government of Fijians.<sup>108</sup> Notwithstanding this broad power, the regulations specifically prescribe the power to make by laws with respect to “...the promotion of fisheries...”.<sup>109</sup>

*Qoliqolis* are registered under a village, district and province.<sup>110</sup> The legal definition of the *qoliqoli* is recorded with the Native Fisheries Commission and for the purposes of administration by the Provincial Council, is considered an extension of the land boundary.<sup>111</sup>

Once the district or village has informed the Provincial Council of the by laws it wishes



### 3. KEY LEGAL AND INSTITUTIONAL ISSUES

#### 3.1. Permits

##### 3.1.1. Permit System

The *Fisheries Act* explicitly requires the establishment and implementation of a permit system for the authorisation of fishing by non resource owners. The relevant provision is section 13 which states:

13. (1) ... [I]t shall be an offence for any person to take fish on any reef or on any kai (cockle) or other shellfish bed in any area ... registered by the Native Fisheries Commission in the Register of Native Customary Fishing Rights unless he shall be a member of such mataqali... who does not require a licence under section 5 to take such fish **or shall first have obtained a permit to do so** from the Commissioner of the Division in which such area is situated:

Provided that

(a) such permits shall not be necessary in the case of persons taking fish (other than by way of trade or business or as the employee of a

- resource owners fishing in their own *qoliqoli* for trade or business.

If fishing is conducted for trade or business, a licence is required in addition to the permit<sup>116</sup> (discussed below). Permits are granted by the Commissioner of the Division<sup>117</sup> for up to 3 years<sup>118</sup> and the community must be consulted before a permit is issued.<sup>119</sup>

Exceptions to the requirement for a permit exist for specific methods of fishing. Where the method of fishing is via hook and line, with a spear or with a portable fish trap, a permit is not required. Notably, this exception does not apply in the commercial context.<sup>120</sup> For example, a person fishing with a portable fish trap for the purpose of trade or business does require a permit in addition to the normal commercial fishing licence (discussed below).

The Act allows for the inclusion of conditions on the permit. These conditions are broad and may relate to any species, any area or any method.<sup>121</sup> The requirement for community consultation before a permit is granted gives resource owners an opportunity to request the incorporation of conditions into the permit. This feature of the process is particularly important as it gives the community the opportunity to create conditions prohibiting fishing in *tabu* areas as restricted areas.

### 3.1.2. Current Application of the Permit Sy52.04370TD031Tf2.730TD.730af4.86890TTc7omm60503.84



involvement in managing the *qoliqoli*. At FLMMA managed sites, it is common for *qoliqoli* committees to have been established.<sup>129</sup> *Qoliqoli* committees are constituted by community members who make collaborative decisions about fishing access. In non FLMMA managed sites, it is common for fishing access decisions to be made exclusively by the Chief at his own discretion. In this latter situation, broader community involvement is limited.<sup>130</sup>

In summary, in its current manifestation, the permit system is absorbed by and subordinated to the licence regime. This is based on a mischaracterisation of the permit scheme as a step in the licence process rather than a discrete system of its own. The current system utilises community involvement through a consent system for commercial fishers. There exists some tension between resource owners and subsistence fishers because of the absence of a functioning consent system that respects the traditional resource user's native rights to the *qoliqoli*. An additional issue is that in most areas, the broader community has limited opportunity to contribute to fisheries decision making. This is not an issue at sites with established *qoliqoli* committees. The current permit system constitutes part compliance with the requirements of the Act. However, the absorption of the permit system by the licence regime has suppressed the full functionality of the permit scheme.

### 3.2. Licences

In accordance with section 5 of the *Fisheries Act*, any person fishing for trade or business is required to first obtain a licence to fish within a particular area. The licence system is a very positive feature of inshore fisheries management in Fiji and has been effectively used to protect *tabu* areas. As described above, the Macuata community's use of licence conditions to protect *tabu* in their *qoliqoli* is an excellent example of this.

However, there are also numerous issues with the functioning and enforcement of the current licensing system that require attention. Firstly, the term "trade or business" is ambiguous and creates confusion as to who needs a licence and ultimately, who can be prosecuted for not having a licence. Secondly, the requirement of good will pa        prosecute d

However, the status of other activities is less clear. For example, have local fishermen who sell their small catch by the side of the road undertaken fishing for the purpose of business? Even more difficult is whether a fisherman who sells the surplus of his catch after meeting the requirements for his family's subsistence has fished for the purpose of trade or business? And if so, the question of whether it is appropriate for the licence system to extend this far, arises.

Enforcement and compliance becomes difficult when such crucial terms in the Act are ambiguous and left undefined. Both fishermen and fish wardens are unclear about their respective responsibilities. Fishermen are unsure about whether they need a licence and face the potential of prosecution for an offence they couldn't reasonably have known they committed. The common use of the term "commercial" to describe fishermen holding licences amplifies the confusion. Many may not consider themselves to be "commercial" fishermen, although their activities may fall within the plain and ordinary meaning of "trade or business".

Fish wardens are unsure as to their powers and are placed in potentially dangerous and volatile situations when attempting to enforce the Act. A fish warden in Suva was badly beaten whilst trying to confiscate an unlicensed fisherman's catch. The

That the amount of the payment is based on racial grounds potentially violates the constitutional right of equality. As discussed above, the Constitution

systems. Given that the issuance of a permit has simply become a step in the licensing process rather than retaining integrity as a distinct process, the Commissioner's role appears to have

Secondly, there is the issue of breach of licence boundaries. FLMMA representatives have identified this as a major problem.<sup>146</sup> For example, fishermen licensed in the Suva area have been known to fish as far as the Lau group of islands.<sup>147</sup> In some situations it is possible that violation of licence boundaries is accidental and due to a lack of clear demarcation. However, when fishermen are travelling such long distances as Suva to the Lau group, it would appear that the boundary violation is deliberate. Thus the issue appears to be one of enforcement rather than lack of demarcation. Enforcement becomes very difficult in these more remote areas.

These breaches are in addition to the issue of fishing without a licence which was detailed above in the discussion of the ambiguity of the term "trade and business".

### **3.3. Restricted Areas**

Pursuant to regulation 11 of the *Fisheries Regulations*, the Commissioner has power to designate areas where fishing is restricted. This occurs through an application and gazettal process. There are four major issues with the restricted areas regime: its limited scope, its inflexibility, difficulties in gazetting and lack of community ownership once gazettal has occurred. Although the final issue is the one most related to compliance and enforcement, the others will be mentioned to provide context to the situation.

Firstly, the restricted areas regime is often described as creating a Marine Protected Areas system.



perception that their traditional connection has been severed.<sup>152</sup> They are thus less likely to be involved or interested in monitoring and enforcement. Continuing community involvement in managing the restricted area is paramount to ensure compliance with and enforcement of the restrictions.

Thus, although a great deal of emphasis is placed on the importance of restricted areas, its limitations must not be overlooked. Restricted areas should be utilised in appropriate contexts and other forms of marine protection should be used where more flexibility be

Given that the *Fijian Affairs Act* designates enforcement of by laws to Fijian magistrates, prosecution of by laws could be heard at the Magistrates Court.<sup>158</sup> However, the Magistrates Court is arguably not the appropriate forum for the prosecution of by law offences. There are a number of reasons for its unsuitability:

- The Magistrates Court is already overrun with cases and long waiting periods apply.
- The Magistrates Court is not geographically accessible for many Fijian villages.
- Communities may lose ownership over the process.
- The impetus for enforcement may be lost because of the process involved.
- Magistrates may react negatively to having court time taken up by small village based matters.

Magistrates Courts have been used sparingly in the past for prosecution of by laws. However, these have generally been larger, provincial level health related by law infringements<sup>159</sup> and not small scale village based infractions. It is not feasible for every village by law infraction to be taken to a Magistrates Court.

Provincial by laws gazetted in gazett1003>Tj/TT41Tf8Tc<3>Tj/TFijia41Tf093060TDD-0007Tc[(gazett)4.5(1003>Tj/TT

watchmen are employed to monitor the regulated areas.<sup>163</sup> By laws are enforced by the village *fono* using traditional penalties such as the provision of pigs and taro.<sup>164</sup>

### **3.5. Monitoring and Surveillance**

#### **3.5.1. Fish Wardens**

Fish wardens are the key figure in monitoring and surveillance of inshore fisheries.<sup>165</sup> As described previously, fish wardens are community members appointed under the *Fisheries Act* to take on monitoring, inspection and, to a more limited degree, enforcement functions under fisheries law. To fulfil this role, fish wardens have relatively wide powers of entry, inspection and arrest. The legal establishment of the position of fish warden is sound and represents an important step towards effective enforcement of fisheries law. The fact that fish wardens originate from the community ensures they have a close understanding of local fisheries issues. It also gives the community a stronger sense of ownership over and responsibility for their marine resources. However, a number of factors undermine the effectiveness of the position of fish warden as a mechanism for enforcement.

##### *3.5.1.1. Uncertified Fish Wardens*

The effectiveness of the fish warden position is limited from the outset by a deficiency in the number of fish wardens so far certified by the Department of Fisheries. A rough estimate provided by FLMMA suggests that less than 50% of FLMMA sites have

- the *Fisheries*

When questioned further, the Department recognised that in most cases communities do not have the resources to purchase boats, fuel and equipment, or to financially support fulltime fish wardens.<sup>175</sup> Because there is a lack of institutional support, fish wardens undertake their role only when resources are available. Consequently, a fragmented and sporadic monitoring regime is created. Without consistent and reliable monitoring, enforcement is very difficult.

#### *3.5.1.4. Community Recognition*

Both FLMMA and WWF have identified a lack of community recognition of fish wardens as an issue within the communities they work.<sup>176</sup> Lack of community recognition creates a significant barrier for fish wardens in asserting their authority over offenders. This is amplified when offenders are highly ranked community members. WWF recognised this as a significant problem for communities in Macuata. This issue is being overcome in that area through the development of internal governance structures. WWF has identified a strong correlation between effective enforcement by fish wardens and a developed and structured internal governance system for fisheries management within the community.<sup>177</sup> Good internal governance includes strong leadership by the Chief, an active and transparent *qoliqoli* committee and organised fish warden meetings. Fish wardens from the Macuata region meet regularly to discuss issues they face and ways to resolve them. This process is strongly supported by the Chief, which is a major reason for its success.<sup>178</sup>

#### *3.5.1.5. Conflict*

Finally, a significant and very serious issue is violence between fish wardens and fishermen. This occurs in both directions: fish wardens being assaulted by fishermen, and fishermen being assaulted by fish wardens. The latter situation has occurred on numerous occasions, most notable of which was the spearing of a poacher by a fish warden at Navakavu.

### 3.5.2. Fisheries Extension Officers

Fisheries extension officers are the arm of the Department of Fisheries in the field. They have the same powers as fish wardens, as discussed above. In addition, fisheries extension officers should provide the role of a contact for fish wardens to the Department of Fisheries. The potential for extension officers to be effective in their role is undermined by their



#### 4.1.1. Improved Administration of the Act

##### **Rec. 1: Implementation of the statutory permit scheme.**

The non implementation of the permit scheme provided for under the *Fisheries Act* is a major impediment to the fair and effective operation of coastal fisheries law in Fiji. It represents a significant departure from the will of the legislature in creating the Act. Beyond this, it undermines community efforts to manage the *qoliqoli* and has contributed to ongoing conflict between resource owners and non resource owners fishing in the *qoliqoli*. It is strongly recommended that the statutory permit system, established by section 13 of the *Fisheries Act*, be implemented as prescribed.

The permit system creates an opportunity to foster community involvement in fisheries management and to manage fishing quotas as appropriate to each *qoliqoli*. Every non resource owner will require a permit before fishing in a *qoliqoli*, except if fishing with hook and line, spear or portable fish trap. Community consultation is required before a permit is issued. This gives the community the opportunity to limit the amount of fishing conducted in the *qoliqoli* by denying their consent once a quota is reached. The request for consent functions as a substitute to traditional *sevusevu* and may assist in allaying tensions and conflict between resource owners and outsiders fishing for non commercial purposes within the *qoliqoli*.

The opportunity to request the imposition of conditions on the permit creates a significant management opportunity. This will most notably be valuable for imposing restrictions on fishing in *tabus*. Given that every person fishing in the *qoliqoli* who is not a resource owner requires a permit, the potential for protecting *tabus* from fishing is potentially very far reaching, so long as conditions are applied universally and consistently.

Communities must be aware that race cannot be used as a ground for deciding whether to give their consent to a permit, or as to the conditions placed on a permit. Discrimination in treatment based on a person's race constitutes a violation of the Constitutional right to equality.<sup>189</sup>

The potential impact of implementing the permit system should not be understated, particularly at the initial stages. Great care in planning must be taken to ensure that communities and fishermen understand the changes. An awareness program is required as a minimum. The principles of procedural fairness require that the system be phased in, allowing time for fishermen to apply for and be issued with permits before imposing sanctions for non compliance. It is important that distinct timeframes that



## Rec. 2: Initiation of consultation process regarding the removal of permit exceptions.

Permits are currently not required for fishing with a hook and line, spear or portable fish trap.<sup>190</sup> This exception undermines the potential value of the permit scheme as a mechanism to manage non resource owner use of the *qoliqoli*. Removal of the permit exceptions has several advantages:

- Permits would be required for all non resource owner use of the *qoliqoli*. Thus the permit system would become an initial catch all tool for managing non resource owner activities within the *qoliqoli*.
- Conditions, such as prohibition on all fishing in *tabu* areas, could be placed on all permits thus legally prohibiting all fishing in *tabu* areas by non resource owners. No take zones are an important aspect of contemporary fisheries management practice and part of the ~~DFMA~~ ~~sum~~ ~~3825ent~~

- **A breach occurs** (for example, size limit breach)
  - **Breach is not serious:** Community gives first warning
  - **Breach is serious:** Licence not renewed at next application and/or engage police and proceed to prosecution
    - § **Fisherman has opportunity to respond to warning**
  
- **A second breach occurs**
  - **Breach is not serious:** Community gives second warning
  - **Breach is serious:** Licence not renewed at next application and/or engage police and proceed to prosecution
    - § **Fisherman has opportunity to respond to warning**
  
- **A third breach occurs**
  - ***Qoliqoli* committee refuses to give consent to the next licence renewal during the community consultation process;** and
  - **Engage police and proceed to prosecution**

Central to this process is the giving of warnings and the opportunity for the offender to respond. After each breach, the *qoliqoli* committee has the option to choose non renewal or referral to the police in the case of serious breaches, or a warning in the case of less serious breaches. In addition, the community can revoke the warning if the fisherman can show that they did not commit the breach. It is important that the *qoliqoli* committee decides collaboratively and democratically the gravity of the offence and whether a warning, decision of non renewal or referral to the police is ordered.

For the sake of consistency between offences and offenders, an informal system of precedent should be developed. This could consist of a form that is completed by the *qoliqoli* committee outlining who committed the breach, the nature of the breach, any response from the offender and the decision of the committee. It will also be necessary for the *qoliqoli* committee to keep a record of warnings for each offender.

It is recommended that a warning and non renewal system be established within communities with *qoliqoli* committees. This system will give communities a mechanism for dealing with non compliance and by doing so, it is



#### 4.2.2. Adoption of Policy or Subsidiary Legislation

##### **Rec. 6: Adoption of guidelines clarifying the meaning of “trade or business.”**

In order to remove confusion about who needs a licence and who can be charged for not having a licence, it is

house was not considered trade or commerce,<sup>194</sup> the selling of audio cassettes at 12 meetings was considered to be trade or commerce.<sup>195</sup>

On the basis of these statutory interpretation principles, it is recommended that a general, plain meaning interpretation of “trade or business” be adopted. However, the potential magnitude of the impact of such a broad definition should not be underestimated. Under a broad definition, all fishermen selling fish informally, whether it be on the side of the road or at small markets, will be required to obtain a licence. In order that these people can continue to sustain their livelihoods through this means, a review of the costs associated with obtaining a licence should be conducted.

Once a definition has been developed, it is recommended that there be an awareness program, possibly incorporated with the training programs discussed below, for fish wardens and the general public.

#### 4.2.3. Legislative Amendment

##### **Rec. 7: Legislative reform to remove licence exceptions from the section 5 of the *Fisheries Act***

Pursuant to section 5(3)(a) of the *Fisheries Act*, a licence is not required for people fishing by way of trade or commerce if they use a line from the shore, or a spear. The utility of such an exception is not apparent. It is recommended that these exceptions be removed via legislative amendment in order that all trade or business fishing is captured by the licensing regime. This will provide consistency in the regulation of all trade and business fishing and provide an accurate record of the extent of inshore commercial fishing in Fiji.

#### 4.3. Restricted Areas

##### 4.3.1. Improved Administration of the Act

##### **Rec. 8: Development of an information sheet for communities detailing issues that could be considered when deciding whether to establish a restricted area.**

As discussed, compliance and enforcement is a particular issue in restricted areas when  
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### Advantages:

- Creates a no fishing zone enforceable against all people
- Offenders can be prosecuted under the Act
- Provides a sanctuary for fish to breed
- Helps to enhance the abundance of fish in the greater area
- Provides a sanctuary for environmental protection
- Helps to enhance the environmental health of the greater coastal region
- Suitable for:
  - areas requiring long term or permanent protection from fishing
  - areas where another use is designated, for example tourism or scientific research
  - areas where the community feel they can undertake monitoring and surveillance

### Disadvantages:

this option to be available to communities if they wish to

#### 4.4. By Laws

##### 4.4.1.



**Disadvantages:**

- Low penalties. \$50 is an inadequate deterrent, and imprisonment is unlikely.
- The Magistrates Court is the only avenue for judicial enforcement and it is non accessible in many situations.
- Fish wardens are not legally empowered to enforce by laws.
- Multiple layers of regulation, inconsistency between provinces, and fragmented enforcement responsibilities may exacerbate existing uncertainty and conflict.
- The process for creation and adoption of by laws is multi layered, from the community to the Provincial Council and approval by the Fijian Affairs Board. This process may not prove to be any more efficient or have fewer problems with delays, t h e n



be resolved. It represents an excellent opportunity to co ordinate monitoring and surveillance and ensures consistency in the treatment of offences.

It is recommended that organisations and communities continue to develop and strengthen these internal governance structures.

**Rec. 15: Development of a comprehensive training program for fish wardens.**

It is recommended that the Department of Fisheries develops a comprehensive training program, building on the current training materials. It is difficult to quantify the duration of a training program, but as a minimum it is considered that training would take at least one week. The training program should include:

- Fish biology and coastal marine ecology
- An overview of the *Fisheries Act*
- A detailed discussion on the permit system including:

It is recommended that at appropriate

Each enforcement kit should be provided in a waterproof bag and should ideally include:

- Enforcement handbook, described above
- Notebook with waterproof protective covering and pencil for recording evidence
- Template form for taking offender's details and recording important information
- Large garbage bags and smaller plastic sealable bags for storing evidence
- Measuring tape or fish size chart
- Protected fish species identification chart
- Waterproof digital camera with memory card and battery charger, for photographing evidence (subject to the availability of resources)

**Rec. 18: Development and implementation of an awareness program for the public.**

An awareness raising campaign aimed at the general public is essential. Without a change in community attitudes from resource use to conservation and sustainable use, it will be impossible to increase fisheries law compliance. A recent study conducted by Secretariat for the Pacific Community found that if the majority of users support and comply with the law, peer pressure becomes a strong deterrent against non compliance.<sup>200</sup>

An awareness program is the crucial first step in recruiting fish wardens, and also in developing

**Rec. 19: Development and implementation of a “Train the Trainers” program for staff at the Department of Fisheries.**

Ongoing training for fish warden trainers and general staff within the Department of Fisheries is crucial. In particular, confusion over what constitutes an offence and the procedure for fish wardens once an offender is apprehended, needs to be clarified. This recommendation is given in the context of reports of Fisheries staff providing inaccurate advice to fish wardens that offenders should be dealt with according to traditional practice and not taken to the police.<sup>201</sup>

The main purpose of the training would be three fold. Firstly, to give an overview of the Act and regulations, highlighting the key provisions relating to permits, licences, registration of fishing vessels, size limits, protected species, restricted areas, fish warden powers, offences and penalties and post arrest procedures.

Secondly, it would clarify the procedure to be taken once an

s p e c i e

2. Communities are solely responsible for paying fish wardens at a rate designated within the community;

which revealed that they were not in possession of the Act or regulations.<sup>204</sup> The Lami Police indicated that if they were in possession and had a better understanding of the Act, they would



**Rec. 25: Development of a black list of convicted offenders.**

It is recommended that a black list of convicted offenders is developed and kept for each *qoliqoli*. The blacklist would be stored in a centralised database and regularly updated. The purpose of the blacklist is twofold. Firstly, it would provide information about past fisheries convictions to help communities in deciding whether or not to consent to the issuance or renewal of a licence or permit to a particular person. Secondly, it would act as a deterrent against potential poachers. As discussed previously, several interviewees expressed the view that threat of licence non renewal or non issuance of a licence was the strongest imperative for compliance.<sup>209</sup>

**Rec. 26: Development and implementation of Magistrates training for fisheries offences and penalties.**

It is recommended that a training course for Magistrates be developed and implemented. The purpose of a Magistrate training program is to brief Magistrates on fisheries offences and relevant sentencing principles to be applied should a fisheries prosecution be successful. Although fisheries prosecutions are currently very uncommon, it is hoped that with an increase in police involvement prosecutions will become more frequent. In that case, it would be very disappointing for the potential deterrent effect on other poachers to be lost through lenient sentencing.

It is important that Magistrates recognise that fisheries crimes and indeed environmental crimes in general, cannot be treated in

- Vanuatu: Breach of a local licence condition attracts a maximum penalty of VT5,000,000.<sup>212</sup> This is equivalent to over FJ\$81,000.
- Samoa: Contravention of any management measure under the Act (for example fishing in a protected area) attracts a maximum fine of 50,000 tala.<sup>213</sup> This is equivalent to over FJ\$29,000.
- Tonga: Fishing in a reserved area (protected area) and breach of minimum net size or gear restrictions both attract a maximum penalty of \$50,000.<sup>214</sup> This is equivalent to over FJ\$40,000.

In comparison, Fiji's offence penalties outdatTD(reserved)Tj/TT31Tf0.10930TD0Tc<0003>Tj/TT41Tf0.3060TD0.0

## 5. CONCLUSION

Compliance and enforcement of fisheries law is a major obstacle to the effective management of coastal marine areas in Fiji. As a key legislative instrument in the fisheries regulatory framework, the *Fisheries Act (Cap 107)* provides important mechanisms for fisheries management. Of most practical importance, the licence system permits the establishment of restricted areas regulate size and species prohibitions and the establishment of a guardian role. Non-compliance with the law by fishermen, incomplete implementation of the Act by government inadequate training of wardens and non-enforcement of offence provisions by all contributors collectively to undermining the effectiveness of the Act.

In addressing these issues the following recommendations have been made. These recommendations have been developed with the aim of strengthening the existing legislative framework rather than attempting to overhaul Fiji's coastal management law. However, in some cases the need for legislative reform is critical. The recommendations reflect the importance of community based management which has been central to the discussion and formulation of these recommendations and should not be undervalued.

### RECOMMENDATIONS

Recommendations for the improved administration of the Act:

Rec. 1	Implement statutory permit scheme.
	Implement a community based warning and licence non-renewal system for repeat offenders.
Rec. 4	Include a plain language summary of restrictions with all licences

<b>Rec. 17</b>	Develop and distribute enforcement kits to all fish wardens.
<b>Rec. 18</b>	Develop and implement an awareness program for the public. aTc<0003(Rec.)Tj/TT51Tf1. 75410

## Recommendations for legislative amendment

<b>Rec. 2</b>	Initiate a consultation process regarding the removal of permit exceptions.
<b>Rec. 7</b>	Remove licence exceptions from the section 5 of the <i>Fisheries Act</i> .
<b>Rec . 20</b>	Introduce a legal requirement for fish wardens to be paid.
<b>Rec. 27</b>	Increase penalties in the <i>Fisheries Act</i> .