

Case Study 6

Customary law on Malo, South Santo, Vanuatu, and the protection of the marine environment

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Traditional laws and conservation practices

Pre-western contact

On the island of Malo, customary rights to fish and use the marine environment rested with specific *man blong solwota* (men of the sea). Marine resources were harvested to feed the immediate and extended family of a fisherman; for sale or exchange in and around the fisherman's village; and for exchange more widely to obtain other food and/or resources from interior parts of the island (i.e. from the bush and gardens).

Many different methods were used, including netting, bow and arrow, spearing, poisoning, stoning, and other specific customary methods. In some communities, distinctive demarcation signs called *namele* were (and are still) used to indicate protection of an area, species protection, or customary land disputes. Protection may have been put in effect for months, seasons or years (ranging from 1–5 years). Certain ceremonial or special community events led the high chief to relax the restrictions for a specified period (usually one or two days). Tabus were put in place by chiefly authority and were applied over entire marine ecosystems in designated areas, for a designated timeframe.

What remains today?

Today, diving with a mask and snorkel for shellfish, lobster and crab is common, but traditional customs are also practised. For example, tabus are still commonly used throughout Vanuatu, and significant time and resources have been invested in researching and recording the application and variation of tabus throughout the country. Notably, there are many regional and island variations of tabus. In some cases, the entire environment is tabu, while in other cases, only portions of the environment and/or certain species are protected. This approach is valid and effective because it emanates from within the community, rather than being imposed from the outside. It forms a basis for community education and awareness, and also empowers the community to own and take responsibility for the initiative and to observe traditional law.

Interface between traditional and governmental laws: Issues and challenges

Traditional practices are not expressly recognised by the Vanuatu government, however, there is high-level recognition of the application of customary law in the constitution. Relevant parts of the Fisheries Act do not expressly recognise traditional laws, but as a matter of policy, government agencies have fully engaged and given technical assistance to the community in these cases.

Although the Fisheries Act is based on western theories of marine protection, and drafted according to western convention, the act recognises customary owners of marine areas, and requires that they be consulted when areas are declared protected under the act.

Conservation initiatives in Malekula

In Malekula, chiefs, communities and various government officials recently met and decided to impose a tabu on the customary marine environment and adjacent mangrove forests for a year. The tabu was declared after government officials engaged with local chiefs and communities and provided them with technical and scientific information. This helped local communities understand that their marine environment is potentially vulnerable; they also gained an understanding of management options. The government officials empowered chiefs and communities by giving them responsibility for the initiative, and by allowing the tabu to be enforced under chiefly authority. Establishment of a comprehensive monitoring programme has served to give chiefs and communities the means to make informed decisions in the future. This example of co-management is a step forward towards the "incorporation of traditional management systems into overall fisheries management strategies"⁸ and therefore codified law.

Boundaries, enforcement, penalties and conflict resolutions

In the Malekula Case Study, enforcement, penalty and conflict resolution mechanisms will also come

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8. The Ray Parkinson, Memorial Lectures 1992. Marine Resources and Development. South, G.R. (ed) PIMRIS, University of the South Pacific, Suva, 149 p.

under the authority of the chief and traditional law. Fisheries Regulations (that provide national protection regulations for specific species through size limits, quota and/or absolute protection) co-exist with traditional enforcement mechanisms. Potential gaps in enforcement remain, however, as there would be no enforcement and/or penalties if a species is covered under the regulations, and if a general breach of the tabu (as a legally marine protected area) has not taken place.

Lessons learned and recommendations

- For traditional law and practices to be effective and to contribute to environmental management, they must be established and managed from within the affected community.

- Absence of codification need not prevent governments from engaging with communities that are seeking to apply their traditional laws.
- Government agencies and NGOs will be a source of valuable science-based information, technical expertise, and assistance that is vital to the overall success of traditionally-based management efforts.
- Gaps or conflicts persist between traditional enforcement and the capacity of government agencies to impose penalties or engage in dispute resolution, as a government agency may have limited powers granted to them under legislation and/or regulations.

Case Study 7

Kaitiakitanga: customary fisheries management in New Zealand

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Traditional laws and conservation practices

Pre-western contact

Kaitiakitanga is a traditional Maori concept capturing rights and responsibilities for being the custodian and steward of the well-being of places, resources and species. *Kaitiakitanga* is deeply embedded into Maori culture, as part of the intermingled laws, knowledge and protocols ruling society, called *tikanga Maori*. The concept of *kaitiakitanga* has traditionally been of particular significance to the sustainable management of fisheries resources. The Treaty of Waitangi signed by Maori chiefs in February 1840 recognised Maori sovereignty over fisheries. However, Maori fisheries rights like rights to land, underwent a process of denial and erosion from 1840 onwards. Only six per cent of New Zealand land is in the hands of Maori today.

By the 1920s, the Government had ceased recognising customary rights over fisheries. State recognition of these rights began in the 1980s, when the government admitted its past breaches of the Treaty. Since the 1980s governments have sought ways to accommodate the Maori Treaty rights within New Zealand's legal and resource management framework. Maori own 52 per cent of the commercial fishing enterprises in recognition of their Treaty rights. *Kaitiakitanga* as a concept that has been incor-

porated into state laws to promote recognition of Maori rights and participation in resource management at the local level.

Interface between traditional and governmental laws: Issues and challenges

Kaitiakitanga has been recognised by law in the Resource Management Act (1991) and in the Fisheries Act of 1996. The last act interprets *kaitiakitanga* as "the exercise of guardianship; and, in relation to any fisheries resources, includes the ethic of stewardship based on the nature of the resources, as exercised by the appropriate *tangata whenua* [people of the land] in accordance with *tikanga Maori*".

Kaitiakitanga is a vehicle for Maori stakeholder participation in land-based planning, resource development, general fisheries and non-commercial fisheries establishment and management, but also serves as a tool for recognising Maori customary fishing, and for empowering Maori communities to manage and police customary fisheries.

Boundaries, enforcement, penalties and conflict resolutions

Under the Fisheries Act local Trust Board Committees can now appoint a team of Maori

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