

National Parliament of Solomon Islands

Bills and Legislation Committee

Committee Report

Report on the Fisheries Management Bill 2015
(No.2 of 2015)



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CHAIR'S FOREWORD

REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr. Speaker,

Pursuant to Standing Orders No. 71 (g) of the National Parliament of Solomon Islands, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the **Fisheries Management Bill 2015** for laying before Parliament.



Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

22 April, 2015

COMMITTEE FUNCTIONS

The Committee is established under *Standing Order*⁷¹; an Order made pursuant to the *Constitution*¹ and has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

¹Section 62, *Constitution of Solomon Islands* 1978.

EXECUTIVE SUMMARY

It is apparent that the manner in which the Fisheries Management Bill 2015 was introduced for passage in Parliament was done so with a matter of urgency to fulfil the European Union fisheries standards and requirements. Failing this, Solomon Islands would lose its European Union market for tuna.

As such, the Bills and Legislation Committee welcomed the reform as it improves and updates the regime with current acceptable and recognised practices. However, the focus of the Bill is so much on offshore fisheries and fisheries activities that the regulation of inshore and coastal fisheries and fisheries activities is neglected, if not segregated to community management and provincial Ordinances.

Although, there is positive anticipation of the outcome of the proposed law, enforcement and compliance will still remain a challenge for the Government.

Furthermore, the decision-making paradigm ought to be overhauled for the purposes of accommodating the principles of transparency and accountability.

Notwithstanding the recommendations expressed herein, the Committee welcomes the changes proposed by the proposed law.

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1.0 INTRODUCTION

This Report contains the findings and recommendations of the Bills and Legislation Committee ('the Committee') after having reviewed the **Fisheries Management Bill 2015** ('the Bill') as required under the Standing Orders of the National Parliament of Solomon Islands ('the Standing Orders').

The Committee resolved to conduct an inquiry into the Bill and invited relevant stakeholders² to appear before the Committee and make presentations on the contents, policy matters, and intentions of the Bill.

Hearings into the Bill were held on the 18th and 19th Day of April 2015 at the National Parliament Building. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendix 1 and 2 respectively.

Written submissions were also received from witnesses that appeared before the Committee. A list of Written Submissions can be found in Appendix 3.

²See Appendix 1

2.0 BACKGROUND INFORMATION

This part provides the historical and legal context of the fisheries laws.

2.1 Historical context

The Fisheries Act was first enacted in 1972. Several amendments were done over the years.³ The amendments and legal notices were consolidated in 1996 under the Revised Edition, thus the *Fisheries Act* (Cap.38). In 1998, the *Fisheries Act 1998* (No.6 of 1998) was enacted to revise the fisheries laws. In effect, the 1998 Act repealed the Fisheries Act 1972 and consequently the *Fisheries Act* [Cap.38]. Furthermore, in 2009, the *Fisheries (Amendment) Act 2009* was enacted to increase certain fines.⁴

2.2 Legal context

The United Nations Convention on the Law of the Sea 1982 (UNCLOS III)

The Law of the Sea Treaty, formally known as the Third United Nations Convention on the Law of the Sea, or UNCLOS III, was adopted in 1982. Its purpose is to establish a comprehensive set of rules governing the oceans and to replace previous UN Conventions on the Law of the Sea, one in 1958 (UNCLOS I) and another in 1960 (UNCLOS II), that were believed to be inadequate.

Negotiated in the 1970's, the treaty was heavily influenced by a set of economic principles⁵ first formally advanced at the United Nations Conference on Trade and Development (UNCTAD). That agenda called for 'fairer' terms of trade and development financing for the so-called under-developed and developing countries.

The UNCLOS III calls for technology transfers and wealth transfers from developed to undeveloped nations. It also requires parties to the treaty to adopt regulations and laws to manage marine resources and control pollution of the marine environment.

Maritime zones

UNCLOS III accommodates the interests of coastal States and other States by delimiting various maritime zones and by specifying the rights and duties of States within those zones. Maritime

³ No.9 of 1977; LN 46A of 1978; LN 88 of 1978.

⁴ No.6 of 2009

⁵ 'New International Economic Order'

zones serve at least two purposes: (a) they define the competence of coastal States to make and enforce laws against foreign States and their nationals; and (b) they define the rights and duties of foreign States and their nationals in specific parts of the sea.

The most important zones are the internal waters, territorial sea, contiguous zone, exclusive economic zone (EEZ), continental shelf, and high seas. UNCLOS III also creates a regime of archipelagic waters for States comprised wholly of one or more archipelagos. As a general rule the rights of a coastal State diminish and the rights of other States increase as one moves from zone to zone away from a State's coastline.

All land territory generates maritime zones of one kind or another. A small and remote island is thus a sufficient basis for a coastal State to lay claim to an adjacent territorial sea, contiguous zone, EEZ and continental shelf, although UNCLOS III makes an exception for rocks that cannot sustain human habitation or economic life of their own.⁶ Territorial claims to island outposts therefore give coastal States rights to enormous marine resources. This is especially important for Pacific Island Countries.

One zone of special importance to the Pacific is the new regime for archipelagic states established under UNCLOS III. *Archipelagic states* are permitted to draw *archipelagic baselines* around its principal islands, according to a detailed formula. Waters within the archipelagic baselines are designated not as internal waters but as *archipelagic waters*. The coastal state has sovereignty over these waters, subject to the right of other States to exercise *archipelagic sea lanes passage* (a variant of the innocent passage allowed in the territorial sea).

UNCLOS III also establishes specific jurisdictional limits on the ocean area that countries may claim, including a 12-mile territorial sea limit and a 200-mile exclusive economic zone (EEZ) limit measured outward from the archipelagic baselines.⁷ Refer to Diagram #1 below.

⁶ Article 121

⁷ Articles 46 – 54

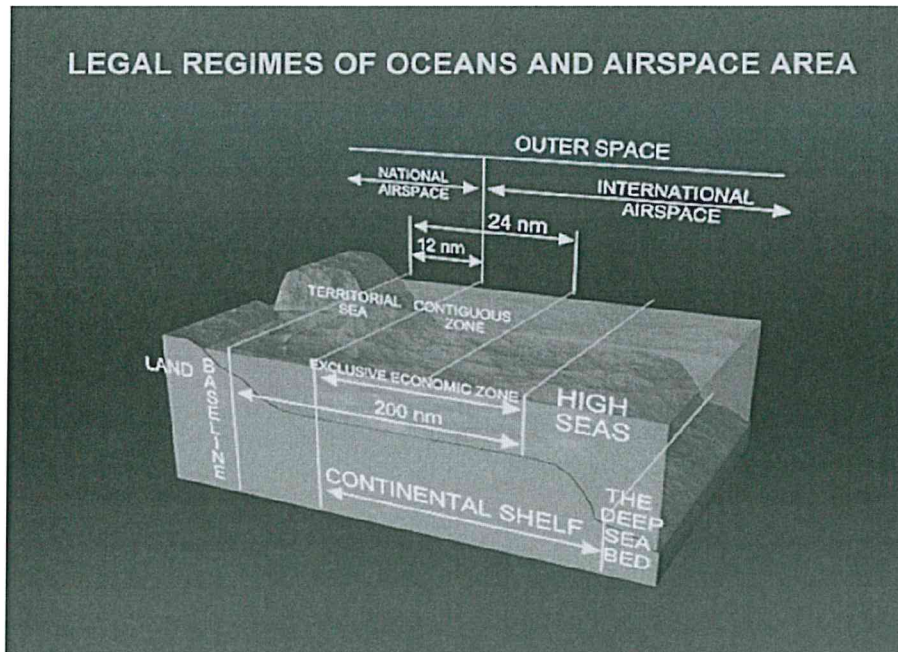


Figure 1: Diagram showing descriptions of different coastal and offshore zones

The Delimitation of Marine Waters Act [Cap.95]

There are five types of marine zones prescribed by the *Delimitation of Marine Waters Act* [Cap.95].

Internal waters

Section 3(1) defines internal waters as “all waters on the landward side of the baseline of Solomon Islands”. Section 5(3) says that the relevant baselines are the low-water line or fringing reefs. It can be added that this applies only to islands that are not included in any of the five archipelagos. Section 3(2)-(3) allows for internal waters to be delimited by closing lines within archipelagic waters but it appears that these have not been prescribed yet.

Archipelagic Waters

Section 4 allows for archipelagic waters which have been claimed around five archipelagos.

Territorial Seas

Section 5 provides for a 12-mile territorial sea which is measured from the archipelagic baselines and other baselines of islands that are not included in the archipelagos.

200-mile Exclusive Economic Zone (EEZ)

Section 6 claims a 200-mile EEZ for the country.

Continental Shelf

Section 7 deems the seabed and subsoil underlying the EEZ to be part of the continental shelf of the Solomon Islands. Yet the *Continental Shelf Act* [Cap 94] defines the “continental shelf” to “the sea bed and subsoil of those submarine areas adjacent to the coasts of the islands of Solomon Islands but beyond the territorial limits of Solomon Islands, to a depth of two hundred metres below the surface of the sea, or, beyond that limit, to where the depth of the superjacent waters admits of exploitation of the natural resources of those areas”.

3.0 OBJECTIVES OF THE BILL

The Fisheries Management Bill 2015 seeks to repeal the current Fisheries Act which was enacted in 1998 and make new provisions relating to the conservation, management, development and sustainable use of fisheries and marine resources in accordance with modern best practices of fisheries management that prevail in the region and internationally.

The Bill further seeks to monitor and control fishing vessels within and beyond the fisheries waters, and to make consequential amendments to the *Provincial Government Act 1997*, the *Town and Country Planning Act* [Cap.154], and the *Fisheries (United States of America) Treaty Act* [Cap.39].

The Bill is divided into thirteen (13) parts, two (2) Schedules, and one hundred and thirty one (131) Clauses.

4.0 SCOPE OF THE BILL

4.1 Governance and institutional development

The Bill seeks to address four key areas. These are –

1. governance and institutional development,
2. fisheries compliance (monitoring, control & surveillance),
3. fisheries resources and ecosystem management, and
4. private sector development and investment.

These areas are considered below.

Powers, functions, & duties of the Minister, PS, & the Director

Under the current Act, the powers and functions of the Minister and the Director is not clearly provided for. The Bill, however, clearly provides for and demarcates the powers, functions and duties of the Minister and the Director. New provisions are also provided for the powers, functions and duties of the Permanent Secretary.

Delegation of powers

The Minister, Permanent Secretary, and the Director may delegate powers to other subordinate officers within the Ministry. A delegation of power must be made in writing and requires both the delegator and the delegate to comply a compressive list of the manner in which a delegation of power can be made and exercised.

Establishment of Fisheries Licensing Committee

This is one of the improvements of the Bill. A Fisheries Licensing Committee is established to make recommendations to the Director whether or not a licence should be granted. Under the current Act, the Director does not have this assistance. The membership, Chair and criteria for membership and procedural matters are yet to be prescribed but committee members can be Ministry officials or relevant expertise. They are to be appointed by the Permanent Secretary.

Although, a Committee was established to make recommendations to the Director on the grant, renewal, suspension or revocation of licences and authorisations, the power to do so remains with the Director.

Establishment of Fisheries Appeal Committee

This is another innovation of the Bill which is not provided for under the current Act. The Appeal Committee hears appeal from fisheries licence applicants who would have their applications granted or their licence not renewed or suspended or cancelled.

The membership is prescribed for and shall consist of the Chair of the Fisheries Advisory Council, a representative of the Central bank of Solomon Islands, and a representative of the Attorney-General. The duration of their membership is provided for, and gives the flexibility for the Committee to adopt procedures necessary for the conduct of its business.

Fisheries Advisory Council

The Fisheries Advisory Council and its functions are maintained under the Bill. It is to advise the Minister and make recommendations at the request of the Permanent Secretary on matters relating to fisheries conservation, management, development and sustainable use.

New inclusions are the prescription of the Permanent Secretary as the secretary to the Council, and the Council's mandate to conduct inquiries and researches. However, the Bill does not provide for the areas in which inquiries or researches can be done.

Responsibilities of Provincial Governments

The Bill retains the prescription for the responsibilities of Provincial Governments to enact fisheries Ordinances in accordance with Schedule 3 of the *Provincial Government Act 1997*. Schedule 3 was consequentially amended to comprehensively provide for the areas in which a Provincial Government can enact required Ordinances.

Although the Bill prescribed for the responsibilities of Provincial governments, there is no indication in the Bill of the technical and financial support to be provided by the national government.

Disclosure of conflict of interest situations

Another innovation of the Bill is the provision for the disclosure of a Conflict of Interest. It requires the Minister or any other person who discharges responsibilities or performs functions or duties that fall within the scope of the Act, his or her family members, or any other person who has a financial or fiduciary relationship with the persons concerned, or, to disclose the conflict of interest.

The Bill also provided for the circumstances in which a person may have a conflict of interest.

The Director of Public Prosecutions welcomed this innovation as necessary requirement, not only for compliance and enforcement purposes, but for the purposes of good governance.

The Minister, Director, fisheries officers and other authorised officers are required to disclose their conflict of interest in certain circumstances. However, the requirement for disclosure is voluntary. This means a fisheries officer may or may not disclose his or her conflict of interest. There is no requirement of a 'whistle blower' provision in the Bill where any other person who is not

responsible for the implementation of the propose law can disclose a conflict of interes on behalf of fisheries officers.

Committee comment

The Committee noted the immense power vested in the Director. This sentiment was also presented to the Committee by witnesses who have a vested interest in the fishing industry.⁸

The Committee was concerned of the possibility that the officer being delegated with powers from the Director could not be the proper person. However, the Committee was assured that there is already an established working administrative chain of command in the Ministry to cater for the circumstances in which the Director is not able to exercise his or her functions because of the absence of the Director or where the Director is present but makes a specific delegation. The Committee was informed that each of the Divisions or Departments within the Ministry is headed by a Deputy Director who would act on behalf of the Director as instructed.⁹

The Committee is also of the view that the composition, tenure of office, and relevant processes for the Fisheries Licensing Committee must be prescribed for, as the Bill did for the Fisheries Appeal Committee.

The Committee also notes that the function of the Fisheries Licensing Committee could be made redundant without any requirement for the Director to act upon the advice of the Fisheries Licensing Committee.

Recommendation 1

That the Ministry responsible for Fisheries amend the Bill to include a 'whistle-blower' provision for persons other than fisheries officers to disclose a fisheries officers' conflict of interest.

Recommendation 2

That the composition of the Fisheries Licensing Committee must be inclusive of other stakeholders in the industry to properly advice the Minister on the fisheries affairs of the country.

⁸ Hansard Transcript, Evidence, April 19th 2015.

⁹ Hansard Transcript, Evidence, April 18th 2015.

Recommendation 3

That the function of the Fisheries Advisory Council be elevated to a decision making body rather than reduced to an advisory body only.

4.2 Fisheries Compliance (monitoring, control, & surveillance)

This part of the Bill is an improvement of Part III of the current Act which deals with enforcement. The Bill expanded the enforcement aspects to five (5) separate parts. These are in relation to the appointment and powers of authorised officers; appointment, functions and duties of observers, port samplers, fish quality control auditors, and police officers; disposal, release and forfeiture of seized items; jurisdiction, procedure, fines and liabilities; summary administrative proceedings; and evidences.

Appointment and powers of authorised officers

A Director, a Chief licensing officer, licensing officers, fisheries officers, and other officers are responsible for monitoring, control, surveillance, and enforcement of the proposed law or other measures within and beyond the fisheries waters.

Public officers are appointed by the Public Service in accordance with the Constitution or by the Minister in writing. The Minister may also appoint a police officer as an authorised officer acting within the limits of his or her authority.

Appointed officers have extensive powers to enter and search premises; to take, detain, remove or secure information and evidence; power to arrest; power to direct and control a vessel suspected of committing an offence; power to seize vessels, aircraft and relevant items; and power to remove any parts from a vessel so as to disable it from sailing.

The effort to enhance compliance by clearly providing for the functions and powers of fisheries officers is an innovation welcomed by the private fisheries sector. However, the National Fisheries Development Ltd, a major contributor with years of experience in the private fisheries sector engaging in pole and line, purse seiner, and long line operations, has cautioned that 'the capacity of the Ministry of Fisheries and Marine Resources to implement this Bill is going to a big challenge'¹⁰ because the elaborate functions and powers of authorised officers would require more

¹⁰ Hansard Transcript, Evidence, 19 April 2015, p.3

human and financial resources and support. As a point of illustration, tuna catchment, landing, storage and processing operations has been facilitated and hosted in Noro, Western Province since 1980s, but it was not until towards the end of last year (2014) that the Ministry of Fisheries and marine Resources has established its office in Noro.

The Maritime Division of the Royal Solomon Islands Police (RSIP) also welcomed provisions relevant to the execution of their duties. In a statement to the Committee, relevant provisions now empower them to pursue hot pursuit of foreign vessels within and beyond fisheries waters. It also protects them from other States whose flag a vessel is flying.¹¹ The provisions also allow RSIP Maritime Division to participate in regional policing and joint operations with other States. A specific provision also allows for parts of a vessel to be removed from the vessel for the purpose of disabling the vessel from absconding.

However, it transpired during the capability of RSIP Maritime Division to control and monitor the fisheries waters depends on the availability of the only two patrol boats, which are also used other government operations such as relief transportation during disasters and emergencies. Even if used primarily for monitoring the fisheries waters, the boats are becoming old and stretched for travelling greater distances at a much faster speed. Furthermore, the Division relies largely on a bilateral arrangement with Australia for the provision of fuel and ration.¹²

Appointment, functions & powers of observers, port samplers, & fish quality control auditors

Another innovation of the Bill is the provision for the appointment, functions, and powers of observers, port samplers, and fish quality control auditors.

Port samplers and observers will be appointed, by the Director with the Minister's approval, to engage in a program for collecting, recording and reporting reliable and accurate information for scientific, conservation, management and compliance purposes.

Observers may be deployed on any vessel for fishing, transshipment, transportation or landing of fish within and beyond the fisheries waters accordance with the proposed law and other applicable international agreement or applicable international conservation and management measures.

¹¹ Hansard Transcript, Evidence, 19 April 2015.

¹²

According to the NFD representative, this is an opportunity for employment in-country as well as overseas in a country with the EEZ bilateral arrangement. Recently, two trainers from Tuvalu are on attachment with local vessels who would return and train their own personnel. Such arrangement is showing positive signs as alluded to by the representative.

We also send fisher men to fish on some of the tri-marine boat Pangopango there have been very good feedback of Solomon Islands fishermen who are hardworking, easy to work along with and there are so much potential to be given more employment on boats.¹³

It is a requirement under the Bill that port samplers and observers are expected to comply with the laws of the State they are in. It is also an obligation for vessel operators, licence holders and crew members to assist port samplers and observers perform their duties and to provide free of charge full board, accommodation, work space and access to cooking and toilet facilities and amenities.

Fish quality control auditors are to be appointed to any place, facility, or vessel which has been, or is being, or is intended to be used for commercial storage or preparation of fish or fish products. In the execution of their duties, a fish quality control auditor may enter such facility, obtain necessary information required for the inspection and certification of fish and fish products, inspect and take samples for scientific purposes, and can seize, segregate or dispose of fish or fish product that does not conform to standards for fish quality control.

However, the Environment Health Division (EHD) of the Ministry of Health and Medical Services (MHMS) who appeared before the Committee expressed their concern on the functions they perform as the Competent Authority (CA) for fish and fish products, and the function of fish quality control auditors.

The CA is responsible for applying controls for regulating the appropriate sanitary handling, processing, storage, distribution and export of fish and fishery products. Control activities of the CA includes fish landing on vessels, hygiene conditions of vessels, loading/unloading, storage, processing and certification for export.

The CA is regulated by and administers the *Pure Food Act 1996*, the *Pure Food Fisheries Product Regulation 2005* and subsequent amendments, the *Pure Food Control Regulation 2010* and subsequent amendments, and the *Quarantine Act 1931*.

¹³ Above, n10.

According to the CA, the definition of 'fish' for their purposes is food for human consumption but under the Bill means 'fish' means 'any water dwelling aquatic or marine animal and plant alive or dead and include their eggs, spawns, spat and juvenile stages, and any of their parts'. This is an inconsistency with the use of the terminology between the two regimes, although they may have specific applications.

The CA emphasised the possible duplication of resources and functions of the CA and fish quality control auditors in the licensing and approval for any fish processing, import and export of fish and fish products, and buying, selling, storage and processing of fish and fish products for export.

Protection and obstruction of authorise of authorised officers

This provision is again welcomed by the NFD representative as it has been a concern for some time now. Port samplers and observers placed on facilities and fishing vessels are sometimes treated unfairly, especially in a foreign fishing vessel.¹⁴ Under the Bill, obstructing authorised officers in the discharge of their duties is an offence warranting a hefty penalty of SBD8, 000, 000.00

Jurisdiction, procedure, fines & liability

Offences committed under the Bill are to be prosecuted before the High Court, except where jurisdiction is within the Magistrates Court and where summary proceedings are taken. An authorised officer may lay an information under the guidance and control of the Director of Public Prosecution (DPP) as a precondition for the Solomon Islands Government to sue for and recover fees, levies and charges.

It further provides that any limitation on the laying of any information under any Act will not apply to an offence under the proposed law.

The DPP raised his concern in one of the hearing seasons of the possible misinterpretation of Clause 98(2).¹⁵ The limitation on laying of an information could mean either such limitation is by of the Statute of Limitation Act, or it could be interpreted to mean limiting the powers of the DPP in relation to what is provided for in legislation. If the former is the intention of the provision, then it must be specifically spelt out. If it refers to the latter, then that provision must be read with Section

¹⁴ NFD

¹⁵ Hansard Transcript

91 of the Constitution ‘...and if it steps into the corridors that is provided for or as section 91 of the Constitution says, then it should also be made clear so as to avoid any conflict.’¹⁶

Committee comment

The capacity issue raised during the hearings is a major concern and an obstacle in advancing national developmental advancement. This is a general issue throughout the public service administration. However, the Committee is adamant that as the proposed law is enacted and implemented, the need for gradually increasing financial and technical assistance is necessary.

The issue raised by the Competent Authority is worth noting. Possible duplication of functions of the Competent Authority and fish quality control auditors could mean squandering scarce resources unnecessarily. The distinction of the functions and powers of the Competent Authority and fish quality control auditors must be clearly demarcated and provided for.

The implication of the limitation of laying an information in a court must be clearly expressed so as to avoid misinterpretations. If such limitation is required by the Statute of Limitation Act, then it must be clearly expressed. If it is limiting the DPP’s powers to laying an information in relation to other legislation, then such interpretation ought to be construed carefully as there could be a possible breach of the Constitution.

Recommendation 4

That the Government expedite financial and technical support to ensure compliance is effective and efficient.

Recommendation 5

That the distinction and demarcation of the functions of the Competent Authority and fish quality control auditors is clearly expressed and provided for.

Recommendation 6

That the limitation of laying an information in the courts by an authorised officer is clearly expressed so that it does not infringe the constitutional duty of the Director of the Public Prosecution.

¹⁶ DPP

4.3 Fisheries resources and ecosystem management

This aspect of the Bill seeks to regulate inshore and coastal fisheries with ‘conservation, management and sustainable use’ as its theme.

Fisheries Management Plan

Inshore and coastal fisheries and fisheries activities are to be regulated by a national Fisheries Management Plan (FMP) and/or a Community Fisheries Management Plan (CFMP). The Director is responsible for devising the FMP outlining the management measures, licensing, enforcement powers and authorities, and fines, penalties and sanctions to be applied.

Community Fisheries Management Plan

Customary rights holders may also devise a CFMP in consultation with the Director and the Provincial Government in which the community is located. The CFMP must be clearly demarcated in the Plan and it shall not extend beyond the outer edge of the reef or fringing reef and the provincial waters.

Both the national FMP and the CFMP are required to be gazetted so as to assume the legal status of regulations.

A local community, its Provincial Government and the Director may enter into an agreement for ‘the coordination of and cooperation in fisheries conservation, management and development’.¹⁷ However, the Bill is not helpful as to what the phrase means or refers to.

Apparent issues

Although local communities and provincial governments are empowered to register their FMP and enact fisheries Ordinances, there is little indication in the Bill as to how the national government would provide financial and technical support to local communities and provincial governments. It is obvious, that local communities and provincial governments may not have the capacity nor the resources to manage, conserve, and sustainably use their marine resources.

It has been pointed out that there is no definition or description in the Bill of ‘marine resources’ and what they are relative to ‘fish’ or ‘fisheries’. Are ‘marine resources’ equivalent to ‘fish’, or does it also include non-living marine resources?¹⁸

¹⁷ Clause 20

There are no other definition or reference to ‘Solomon Islanders’, so this the definition of ‘indigenous Solomon Islander’ could discriminate against the Gilbertese communities in relation to artisanal and customary fishing rights.

It was also highlighted that the definition of ‘precautionary approach’ is narrow because it refers to the environment, compared to the definition provided by Food and Agriculture Organisation of the United Nations (FAO), which includes resources and people.¹⁹

Declaration of national Marine Protected Areas & Marine Managed Areas

Another measure in which inshore and coastal fisheries activities are regulated is through Marine Protected Areas (MPA) and Marine Managed Area (MMA). These are coastal and inshore ecosystems that are to be declared by the Minister as an MPA or a MMA pursuant to a FMP or CFMP. A declaration by the Minister must be published by Order in the Gazette.

It is an offence to engage in activities prohibited under a declaration warranting a fine of up to SBD5, 000,000. It is the duty of the Director to ensure records are made available when needed and such records and information are to be kept in a form of a register.

It was highlighted the concern that the MPA would duplicate Marine Protected Areas regulated by the *Protected Areas Act 2010*. However, it was explained that the latter regulates biodiversity conservation and management, and may be more of a permanent nature than the protected or managed areas envisaged under the proposed law.²⁰

It was also noted that ‘mariculture’ was mentioned in Clause 5(1)(a) but is not defined elsewhere in the proposed law. Should it means aquaculture, it must expressly state so.²¹

Committee comment

The impression the Committee gets from this part of the Bill is that the regulation of inshore and coastal fisheries activities is left for the local communities and provincial governments to care of,

¹⁸ WWF

¹⁹ WWF

²⁰ Worldfish

²¹ *Ibid*

whilst the focus of the proposed law is on offshore fishing. Whilst there may be advantages and disadvantages of the balance of scheme adopted in the proposed law, the Committee is concerned that the very aspect that touches coastal communities' livelihood is left under-regulated. Although the form of regulation envisaged is through community management and by Provincial Ordinances, this creates a two tier scheme of fisheries regulation. At the higher end is offshore fishing which receives ample attention by the proposed law, whilst at the lower spectrum, community management and Provincial Ordinances receives a lower recognition in the hierarchy of laws, even if they are gazetted so as to elevate its statutory status.

Recommendation 7

That the Ministry responsible for Fisheries enact a legislation to regulate inshore and coastal fisheries and fisheries activities.

Recommendation 8

That the Ministry of Fisheries amends the Bill to include provisions for national technical and financial support to local communities and Provincial Governments.

4.4 Private sector development and investment

This part of the Bill improves offshore fishing and fisheries activities taking into account best international practices. This entails fisheries access by foreign fishing vessels and management agreements, licensing, and compliance requirements.

Fisheries access by foreign fishing vessels & management agreements

In order to access Solomon Islands fisheries waters, the Minister may enter into an agreement with a foreign vessel of another State to access Solomon Islands fisheries waters. A foreign vessel is required to be licensed and comply with its terms and conditions. Any such agreement is subject to an annual review. A Regulation will establish a tendering and trading process for the allocation of vessel days, consistent with a scheme or other measures taken under a relevant international agreement.

Import and export of live fish

Prior to issuing a licence for the import and export of live fish, a risk assessment must be performed to ascertain the likely impacts on Solomon Islands fishery. In the case of export,

potential impact of such export on Solomon Islands fisheries must also include the rights of customary holders.²²

Licensing

The Bill provides for the fisheries activities to be licensed. These are in relation to the buying, selling, storage and processing of fish and fish products for export.

The Bill also provides for processes for granting or renewal of licences. When granting or renewing fishing licences, the Director must adhere to certain standards based on the advice of the Fisheries Licensing Committee. Grounds for refusing, cancelling, or suspending an application are also provided for.

Compliance & requirements

The import and export of live fish and the storage and processing of fish and fish products are expected to be done in accordance with European Union health standards.

Committee comment

The Committee noted the immense power vested in the Director of Fisheries, especially in relation to the granting, refusal, renewal, suspension, or cancellation of a fishing licence. Although, the Fisheries Licensing Committee makes recommendation to the Director, there is no requirement that the Director is obliged to act upon the advice of the Fisheries Licensing Committee. As such, the Director may tend to ignore worthwhile advice or intentionally prolonging the process.

The Committee is aware that the trend of mounting huge powers on Directors is a practice enjoyed by the Public Service for quite sometime now. However, this practice is becoming questionable as the powers vested on the Director tends to supplant that of the Permanent Secretary and is vulnerable for abuse because there is no requirement that for checking or vetting the Director's decision.

Recommendation 9

That the Bill is amended to provide for a requirement that the Director act upon the advice of the Fisheries Licensing Committee.

²² WWF

Recommendation 10

That the Bill is amended to provide for a requirement that the Director acts upon the advice of the Fisheries Licensing Committee within a specified timeframe.

5.0 OFFENCES AND PENALTIES

The offences and penalties under the proposed law are improved and capture most of the prohibited activities and failure to comply with prescribed requirements. The range of fines are increased so that SBD100, 000 is at the lower spectrum whilst SBD12, 000,000 is at the upper spectrum.

6.0 ACCOUNTABILITY MECHANISMS

The Ministry is required to prepare, or cause to prepare, facilitate, and develop, monitor and review fisheries management and development plans, corporate plans, and annual working plans and reports. However, there is neither a requirement for the tabling of annual reports to Parliament, nor a requirement for the Bill/Act to be reviewed and updated.

Committee comment

The Committee noted that the requirement for a Ministry to table in Parliament its workings in the form of an annual report is a requirement pertaining to the Minister's accountability to Parliament. This characteristic is central to the checks and balances mechanisms embedded in the doctrine of the separation of powers between the three institutions of the State. Parliament endows the Minister and his or her officers with the powers, functions and duties under an Act of Parliament. Therefore, the Minister is responsible to Parliament for the decisions and actions taken under the Act.

Recommendation 11

That the Bill is amended to provide for the requirement that the Minister table in Parliament the Ministry's annual reports.

8.0 RECOMMENDATIONS

At the conclusion of the hearing and based on the evidences collected at the hearing, the Committee makes the following recommendations –

Recommendation 1

That the Ministry responsible for Fisheries amend the Bill to include a ‘whistle-blower’ provision for persons other than fisheries officers to disclose a fisheries officers’ conflict of interest.

Recommendation 2

That the composition of the Fisheries Licensing Committee must be inclusive of other stakeholders in the industry to properly advice the Minister on the fisheries affairs of the country.

Recommendation 3

That the function of the Fisheries Advisory Council be elevated to a decision making body rather than reduced to an advisory body only.

Recommendation 4

That the Government expedite financial and technical support to ensure compliance is effective and efficient.

Recommendation 5

That the distinction and demarcation of the functions of the Competent Authority and fish quality control auditors is clearly expressed and provided for.

Recommendation 6

That the limitation of laying an information in the courts by an authorised officer is clearly expressed so that it does not infringe the constitutional duty of the Director of the Public Prosecution.

Recommendation 7

That the Ministry responsible for Fisheries enact a legislation to regulate inshore and coastal fisheries and fisheries activities.

Recommendation 8

That the Ministry of Fisheries amends the Bill to include provisions for national technical and financial support to local communities and Provincial Governments.

Recommendation 9

That the Bill is amended to provide for a requirement that the Director act upon the advice of the Fisheries Licensing Committee.

Recommendation 10

That the Bill is amended to provide for a requirement that the Director acts upon the advice of the Fisheries Licensing Committee within a specified timeframe.

Recommendation 11

That the Bill is amended to provide for the requirement that the Minister table in Parliament the Ministry's annual reports.

END OF REPORT

9.0 APPENDICES

Appendix 1 Witnesses

Date	Name	Position & Organisation
Sat 18 April 2015 9 am	Ranjit Hewagama	Chief Legal Draftsman, AG Chambers
	Joanna Kenilorea-Hanu	Senior Crown Counsel, AG Chambers
	John Muria (Jnr)	Principal Crown Counsel, AG Chambers
	Dr Chris Ramofafia	PS, MFMR
	James Terri	Director, MFMR
	Sylvester Diake	Undersecretary Fisheries, MFMR
	Alick Misibini	Financial Controller, MFMR
	Francis Tofuakalo	DDP, MFMR
	Edward Honiwala	Deputy Director, MFMR
	Tom Rarakani	HRM, MFMR
	Jean A Gordon	Legal Advisor, MFMR/AG Chambers
1:30pm	Filimon Manoa	Legal Adviser, FFA
	Mike Batty	Director Development, FFA
	Delvene Boso	Country Manager, WorldFish
	Shannon Seeto	Country Manager, WWF
3:30pm	Tom Nanau	Director, Environment Health Division, MHMS
	Patricia Soqoilo	Competent Authority Officer, MHMS
	Ronald B. Talasasa	DPP, MJLA
	Russell Tagini	Director HR, Rove HQ, RSIPF
	Michael Moali	Director, Police Maritime, RSIPF
Sun 18 April 2015 3:00pm	Frank Wickham	General Manager, NFD

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

BILLS AND LEGISLATION COMMITTEE

P.O. Box G19,
Honiara.
Tel: 28520/23424.
Fax: 24272

Minutes of Proceedings
Committee Hearing into the Fisheries Management Bill 2015

Day 1/Saturday 18th April 2015, CR II, Parliament House 9:38am.

1. Members Present

Hon. Connelly Sandakabatu, MP (Chairman)
Hon. Jeremiah Manele, MP
Hon. Rick Hou, MP
Hon. Dr Culwick Togamana, MP
Hon. Christopher Laore, MP
Hon. David Tome, MP
Hon. Steve Abana, MP

Apologies

Hon. Namson Tran, MP

Secretariat

Wilson Anii
Jefferson Hallu
Wilson Orisi
Vanessa Rodie
Salome Pilumate

2. Welcome and Opening Remarks

Hon. Jeremiah Manele said the opening prayer

The Chairman made opening remarks and welcomes the Permanent Secretary (PS) and other officials from the Ministry of Fisheries and Marine Resources (MFMR) and the Attorney Generals Chamber. He then invites the PS to introduce his group and made his presentation.

3. Committee hearing into the Fisheries Management Bill 2015

The Hearing proper commenced and the following witnesses were admitted:

Hearing 1 Witnesses

Ranjit Hewagama	Chief Legal Draftsman, AG Chambers
Joanna Kenilorea-Hanu	Senior Crown Counsel, AG Chambers
John Muria (Jnr)	Principal Crown Counsel, AG Chambers
Dr Chris Ramofafia	PS, MFMR
James Terri	Director, MFMR

Sylvester Diake	Undersecretary Fisheries, MFMR
Alick Misibini	Financial Controller, MFMR
Francis Tofuakalo	DDP, MFMR
Edward Honiwala	Deputy Director, MFMR
Tom Rarakani	HRM, MFMR
Jean A Gordon	Legal Advisor, MFMR/AG Chambers

The PS with assistance from the AG Chambers made their presentation before the committee. The Committee questioned the PS, other MFMR officials and the Legal Draftsman on the contents of the Bill.

The PS and his officials answered, made clarification and commented on the Bill.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

Hearing suspended.

The Hearing resumed at 1:30 pm and the following witnesses from the NGOs were admitted:

Hearing 2 Witnesses

Filimon Manoa	Legal Adviser, FFA
Mike Batty	Director Development, FFA
Delvene Boso	Country Manager, WorldFish
Shannon Seeto	Country Manager, WWF

The Chairman made opening remarks and welcomes representatives from NGO's to introduce themselves and make their presentations.

Members of the Committee then question the representatives on their presentations.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

Hearing suspended.

The Hearing resumed at 3:30 pm and the following witnesses were admitted:

Hearing 3 Witnesses

Tom Nanau	Director, Environment Health Division, MHMS
Patricia Soqoilo	Competent Authority Officer, MHMS
Ronald B. Talasasa	DPP, MJLA
Russell Tagini	Director HR, Rove HQ, RSIPF
Michael Moali	Director, Police Maritime, RSIPF

The Chairman made opening remarks and welcomes representatives from line Gov't departments to introduce them and make their presentations.

Members of the Committee then question the representatives on their presentations.

Evidence concluded and the Chair thanks the witnesses for their attendance and contribution on the Bill.

4. Adjournment

Closing remarks from the Chair

The Committee hearing closed at 5:41 pm.

Day 2/ Sunday 19 April 2015, CR II, Parliament House 2:57 pm

1. Members Present

Hon. Connelly Sandakabatu, MP (Chairman)
Hon. Jeremiah Manele, MP
Hon. Rick Houenipwela, MP
Hon. Dr Culwick Togamana, MP
Hon. Christopher Laore, MP
Hon. David Tome, MP
Hon. Steve Abana, MP

Apologies

Hon. Namson Tran, MP

Secretariat

Wilson Anii
Jefferson Hallu
Wilson Orisi
Marson Lilopeza
Jasmine Waleafea

2. Welcome and Opening Remarks

Hon. David Tome said the opening prayer

The Chairman made opening remarks and welcomes the General Manager of the National Fisheries Development Co. and invites him to make his presentation.

3. Committee hearing into the Fisheries Management Bill 2015

The Hearing proper commenced and the following witnesses were admitted:

Hearing 4 Witness

Frank Wickham - General Manager, NFD

Members of the Committee then question the GM on his presentations.

Evidence concluded and the Chair thanks the witness for his attendance and contribution on the Bill.

4. Adjournment

Closing remarks from the Chair

The Committee hearing closed at 4:00 pm.

Appendix 3: Submissions

No	Author
1.	MFMR - Legal Context Overview of the Fisheries Bill 2015
2.	Mr Stanley Pirione – PS, MPGIS – Submission on the Fisheries Management Bill 2015
3.	Mr Shannon Seeto – Country Programme Manager, WWF-Pacific Solomon Islands Office – Comments with regards to the Solomon Islands Fisheries Management Bill 2015
4.	Competent Authority-National Environmental Health Division, MHMS – Submission to BLC on Fisheries Management Bill 2015
5.	WFC – WorldFish comments for the Hearing into the Fisheries Management Bill 2015
6.	Dickson Manongi-Director, National Public Health Laboratory, MHMS - Submission to BLC on Fisheries Management Bill 2015

