Partners or adversaries? the role of NGOs in the implementation of international fisheries instruments.

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Abstract
Non-government organisations (NGOs) are regarded as ‘heavyweight’ actors in international fora.1 The term NGO refers to any organisation that is not a government or inter-governmental organisation. In fisheries governance in the Western and Central Pacific Ocean, the increasing involvement of NGOs is a consequence of post United Nations Conference on Environment and Development (UNCED)2 developments and globalisation processes. The 1992 UNCED, also referred to as the Earth Summit, provided the platform for greater participation of civil society in the pursuit of sustainable development and key fisheries principles were elaborated. Other international meetings such as the World Summit on Sustainable Development have reaffirmed principles raised since the Earth Summit.

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7. Partners or Adversaries? The Role of NGOs in the Implementation of International Fisheries Instruments

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Introduction

Non-government organisations (NGOs) are regarded as ‘heavyweight’ actors in international fora.\(^1\) The term NGO refers to any organisation that is not a government or inter-governmental organisation. In fisheries governance in the Western and Central Pacific Ocean, the increasing involvement of NGOs is a consequence of post United Nations Conference on Environment and Development (UNCED)\(^2\) developments and globalisation processes. The 1992 UNCED, also referred to as the Earth Summit, provided the platform for greater participation of civil society in the pursuit of sustainable development and key fisheries principles were elaborated. Other international meetings such as the World Summit on Sustainable Development have reaffirmed principles raised since the Earth Summit.

In fisheries decision-making at the regional and international levels, the participation of interested stakeholders including NGOs is now the norm. When the 1982 United Nations Convention on the Law of the Sea\(^3\) (LOSC) was negotiated, the emphasis was on promoting cooperation among States and between States and inter-governmental organisations. This is reflected in the duty to cooperate for conservation and management purposes in waters under national jurisdiction\(^4\) as well as on the high seas.\(^5\) As the fisheries management paradigm evolved to include more environmental principles and the promotion of transparency and accountability, texts of international fisheries instruments extended participation to NGOs. Explicit references to participation are made in the 1995 Food and Agricultural Organisation Code of Conduct for Responsible

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\(^4\) See Articles 61 and 64 LOSC for instance.

\(^5\) For example, Article 118 LOSC.
Fisheries (FAO Code of Conduct). \(^6\) In addition, both the 1995 United Nations Fish Stocks Agreement \(^7\) (UNFSA) and the 2000 Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean \(^8\) (WCPF Convention) explicitly promote transparency in decision-making processes and other activities. \(^9\)

At the national level, the extent of NGO recognition and participation in national fisheries consultations varies throughout the region and depends primarily on the policy of the host government and its international and regional commitments, the approach and reputation of the NGO, and the nature of that NGO’s activity. Generally, most NGOs are still considered to be controversial in their approach with ulterior motives believed to be disguised in the relevance and importance of their programmes in the region.

This chapter places emphasis on NGOs accredited as observers to the Western and Central Pacific Fisheries Commission (WCPFC). \(^10\) The central question is whether NGOs should be considered partners or adversaries in the implementation of fisheries instruments. In addressing the question, this chapter first provides an historical overview of the activities of accredited NGOs. A cursory analysis of NGO fisheries management objectives is then made and compared with objectives provided in fisheries instruments. A discussion of existing and future roles played by NGOs follows the analysis of objectives.

**An Overview of Accredited NGOs**

The NGOs accredited with the WCPFC may be broadly categorized as environmental NGOs or industry NGOs. Accredited NGOs have either been working in the Pacific for years or are relative newcomers to the region. Generally,

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\(^9\) UNFSA, Article 12; and WCPF Convention, Article 21.

\(^10\) The NGOs that have been accredited as observers to the Western and Central Pacific Fisheries Commission include: Greenpeace, Marine Stewardship Council (MSC), Sea Turtle Restoration Project, Pacific Islands Tuna Industry Association (PITIA), World Wildlife Fund, Traffic, the International Game Fishing Association, Humane Society, Blue Ocean Institute, Earth Island Institute, Constitution of the Centre for Environmental Law and Community Rights Inc., Organisation for the Promotion of Responsible Tuna Fisheries (OPRT), World Tuna Purse Seine Organisation (WTPO), Birdlife International, Oceana, and Agreement for the Conservation of Albatross and Petrels.
NGOs that are not based in the region are not as sensitive to the realities and uniqueness of Pacific Island nations compared to locally based ones.

Each environmental NGO campaigns on their own specific interests and on interests that overlap with other NGOs. For instance, Oceana aims to protect the world’s oceans but its most recent objective in the region is the protection of endangered shark species.\textsuperscript{11} Similar concerns on sharks have been raised by others such as World Wildlife Fund (WWF) and Traffic.\textsuperscript{12} Overlaps may not be considered a total waste of resources if there is complementarity. Another example is by-catch. The majority of accredited NGOs campaign for the reduction of by-catch in the fishery and while some campaign broadly on the issue, others advocate the protection of specific species. For example, the Sea Turtle Restoration Project recently campaigned for the protection of Leatherback turtles, the Earth Island Institute advocates ‘dolphin safe’ tuna and monitors tuna canneries, while Birdlife International is focused on the mitigation of albatross and petrels caught in the longline fishery. Amidst overlapping campaign objectives, a healthy competitive environment is emerging. In some cases, the competition is for greater external support for their respective cause.

Unlike environmental NGOs, industry NGOs comprised of the Marine Stewardship Council (MSC), the International Game Fishers Association, the Pacific Islands Tuna Industry Association (PITIA), the World Tuna Purse Seine Organisation (WTPO), and the Organisation for the Promotion of Responsible Tuna Fisheries (OPRT) are diverse. The MSC and OPRT are examples of industry NGOs concerned about sustainability and consumer choice. The MSC was established through a partnership between WWF and Unilever in the mid-1990s and has developed a widely recognised set of environmental principles for the sustainability assessment of a fishery.\textsuperscript{13} Once a fishery satisfies the criteria, it can be certified by MSC. In contrast, the OPRT aims to “link the oceans with the consumers and promote sustainable use of tunas.”\textsuperscript{14} Established in 2000, the OPRT comprises tuna longline producers from various countries,\textsuperscript{15} and associations of traders, distributors, consumers and public interest organisations.

On the other hand, PITIA and WTPO advocate interests of their members in the exploitation of fisheries resources. WTPO was created in 2001 and PITIA was formed three years later. The former is comprised mainly of purse seine vessel owners from developed fishing nations while the latter is made up of national

\textsuperscript{13} For more information see MSC website, accessed 16/12/08. \url{http://www.msc.org/}
\textsuperscript{14}OPRT official website, accessed 16/12/08. \url{http://www.oprt.or.jp/eng/e_home.html}
\textsuperscript{15} Japan, Chinese Taipei, Republic of Korea, the Philippines, Indonesia, China, Ecuador, Seychelles and Fiji.
commercial tuna associations and operators in Forum Island countries. The two organisations are in direct competition for access to the lucrative high seas fish stocks. Although PITIA members are expected to have an advantage over WTPO in terms of access to waters under national jurisdiction, the combined sum of fishing capacity of its members is small. PITIA advocates increased participation of its members in the fishery and greater benefits for Pacific communities. WTPO on the other hand, argues for improving levels of access to the fishery and its members contribute a significant amount of capacity to the fishery. One can foresee intense debate between these two NGOs in future. The scenario will be similar to relations between Pacific Island nations and Distant Water Fishing Nations (DWFNs) where Pacific nations are calling for greater participation and benefits and DWFNs are reluctant to relinquish access privileges to the fishery.

The final example of an industry NGO is the International Game Fish Association (IGFA). Unlike other industry NGOs, the IGFA represents recreational fishers. IGFA was formed in 1939 and as the governing body for international recreational fishing, formulates rules for ethical angling practices. The IGFA currently plays a passive role in WCPFC matters and is likely to challenge the WTPO and the PITIA when its target species, including swordfish and striped marlin, are over-exploited.

Putting these issues aside, this chapter now focuses on the NGOs that are based in the region: Greenpeace, WWF and PITIA. A discussion of the rationale for their establishment in the Pacific and their current activities sets the context for the next discussion of objectives and trends.

Greenpeace is known for its confrontational stand in raising awareness of environmental concerns. Since witnessing underground nuclear tests in Amchitka in 1971, the organisation has set up offices in at least forty countries. Its first activity in the Pacific Islands region was the campaign against nuclear tests in the middle of the 1970s. Once nuclear tests in the region were stopped, Greenpeace worked to establish an office in Fiji but faced some difficulty with registration until 1994 when a company was successfully incorporated. In the early years of its operation the organisation was funded by its international office. When funds were no longer available, the organisation had to merge with its Australian office and now operates under Greenpeace Australia Pacific. The organisation’s activities are funded by individual donors. The organisation has had to adapt to working within

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16 Forum Island member countries are: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.

17 International Game Fish Association website. http://www.igfa.org/

the Pacific Islands context but the challenge continues. The focus of its fisheries campaign is pirate (or illegal, unreported and unregulated - IUU) fishing with attention on fishers, transhipments, ports and markets.\(^{19}\)

The World Wildlife Fund for Nature was established over five decades ago with the ultimate goal of building a future where people live in harmony with nature. Over time its campaigns and priority areas of focus have evolved. In 1990, the World Wildlife Fund for Nature South Pacific Programme (WWF-SPP) was set up with the aim of promoting its climate change campaign and initiating a regional marine programme.\(^{20}\) WWF-SPP is funded primarily by the WWF network, government and aid agencies, corporations and foundations. In addition to its regional office, WWF also operates national offices in the Cook Islands, Solomon Islands, Papua New Guinea and Fiji. WWF also utilises its partner organisations, particularly TRAFFIC Oceania to further its campaign objectives.\(^{21}\) TRAFFIC Oceania was set up in 1987 and its main focus is to work with governments and other stakeholders to build capacity to implement the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)\(^ {22}\) within the region.

PITIA is the other accredited NGO based in the region. Its membership is restricted to national commercial export tuna associations and operators in the Forum Island countries. The association is an example of a locally grown NGO incorporated by regional tuna representatives at a workshop in 2004.\(^ {23}\) Although the workshop also included participants from government and academia, industry participants led the formulation of objectives and functions of the association. The objectives are tailored to allow the association to provide a united voice for the domestic tuna fishing and associated industries in FFA Island countries, to promote the sustainable use of tuna and related resources taking into account economic and biological considerations, and to advocate interests of its members in negotiations at all levels.\(^ {24}\) PITIA is seen as a key proponent for greater participation by small island developing States (SIDS) and is expected to play an important role in raising awareness of special consideration for Pacific SIDS and in defining development aspirations of FFA Island countries.


\(^{23}\) Summary report of discussion on the formation of a Regional Tuna Industry Association as agreed at the Workshop on the Implications of the Western and Central Pacific Fisheries Convention to the Private Sector, Forum Secretariat, Suva, Fiji Islands, 14-16 September 2004.

\(^{24}\) Ibid.
The process that each accredited NGO follows to develop its objectives and priorities may differ. In the example of PITIA, objectives and functions of the organisation were defined at a regional meeting and implemented by its executive committee. For Greenpeace and WWF-SPP, planning meetings are conducted at the regional and international levels in which campaign objectives and strategies are negotiated and defined. The inclusion of regional perspectives depends largely on where the meetings are held and the active participation of regional representatives. It follows generally that the farther the meeting from the region, the weaker the representation. A short discussion on influences on NGOs is warranted.

NGOs are influenced by their members, partners, donor agencies, governments, the political environment in which they operate, and their employees and representatives. The extent of influence within each NGO shifts between a wide range. For instance, Greenpeace indicates that it only accepts support from individual donors and does not accept money from corporations or governments. This means that individual contributors would have some influence, albeit small, on the campaigns that the organisation runs but the finer details of the campaign are the responsibility of the campaign team. The campaign team will undertake the necessary analyses and develop the objectives and strategy. The approach of Greenpeace is unique in that the organisation does not work in partnership with governments. Compared to other NGOs, the organisation has been described on the one hand as, ‘loud’ and ‘bold’ and on the other hand as ‘eco-terrorists.’

While the campaign planning processes may be similar, the approach of WWF is considerably different from that taken by Greenpeace. WWF-SPP works with donor agencies, national and regional partners and governments. Memorandums of Understanding have been concluded with key partners. The campaign approach involves working in partnership with governments, regional organisations and communities. This approach promotes strong working relationships and fosters long term commitment by all parties. Compared to Greenpeace, WWF is ‘quieter’ and perhaps more strategic in partnering with other organisations and governments. Through partnerships with government, WWF is able to influence national policy and play a lead role in national programmes. Governments also rely on NGOs to implement and legitimise national policies.

Influences aside, NGOs have been described as not being ‘technically’ or ‘democratically’ fit to engage in fisheries decision-making. Taking technical fitness first, all of the locally based NGOs have technical capabilities in their respective areas of interest. In some instances, these capabilities may be of a


26 Ibid.
higher level than that available in national administrations. This is attributed, in part, to the attraction of higher salaries and benefits provided by NGOs compared to those offered by governments. NGOs have access to a wider network of individuals that are either employed or act as advisors. For instance WWF-SPP has direct access to fisheries trade specialists in TRAFFIC and other individuals throughout its network. Having said this, the point needs to be made that technical experts may not necessarily be knowledgeable about the region, behaviour of fishers, the characteristics of the stocks concerned, or other matters particular to Pacific Islanders.

On the question of democratic fitness, the answer varies from one NGO to another. Strictly speaking, the accredited NGOs discussed in this chapter are accountable to its members and partners. The membership base may be a minute fraction of the population of the country or region in which the NGO is based. NGOs normally do not say that they represent the society but the NGO’s interests and activities may appeal to others beyond its membership. Should there be a precondition for NGO involvement in fisheries consultations and decision-making? It has been said that before governments establish partnerships with an NGO, the NGO must show that it is internally democratic and characterised by genuine popular involvement. When applied to national or regional NGOs in the Pacific region these two criteria attract some debate.

Firstly, the internal democratic processes of an NGO are defined by that NGO’s governing body. The democratic processes of an NGO affiliated with a wider international network would be different from another that is developed locally. The former may have some control over campaign direction but would be heavily influenced by decision-making authorities overseas. Meaningful participation in any decision-making by locally based representatives of international NGOs is critical to ensuring appropriate national and regional representation. The foregoing description would apply to Greenpeace and WWF. Both operate offices in the region; however, decision-making processes allow for wider input from their respective international offices. It follows that local participation and representation in campaign decision-making will remain a challenge.

In contrast, a locally grown NGO would be primarily controlled locally or from within the region and would be more committed to satisfying interests of its members. PITIA, for instance, has an executive committee made of industry representatives from the region that are elected and mandated by the membership to carry out functions of the organisation. Committee members are accountable to members. In general, there should be greater participation of members in a locally

grown NGO rather than an international NGO. Genuine popular involvement therefore differs between NGOs.

Returning to the question on preconditions for NGO involvement in fisheries consultations and decision-making, governments ultimately determine the extent of participation based on their policies. The requirements of internal democratic processes and genuine involvement are quite useful in the Pacific Islands context. By satisfying these and other attributes, NGOs are supporting transparency and better governance. Having discussed accredited NGOs briefly and how they are influenced and function, this chapter now devotes attention to fisheries objectives of selected NGOs.

**Complementary or Conflicting Objectives?**

Since the 1992 Earth Summit wide stakeholder participation in sustainable development is encouraged at all levels. The FAO Code of Conduct is the first instrument legitimising NGO involvement in fisheries management and decision-making. The FAO Code of Conduct, a voluntary instrument, is directed toward a wide constituency from members and non-members of the FAO, fishing entities, to sub-regional, regional and global organisations, “whether governmental or non-governmental, and all persons concerned with the conservation of fisheries resources and management and development of fisheries.”

In the strict legal sense, implementation is the responsibility of States that are committed to satisfying their rights and obligations under various instruments. But NGOs and other stakeholders mentioned are mandated to collaborate in the fulfillment and implementation of the objectives and principles contained in the FAO Code of Conduct, promote its understanding, as well as its voluntary acceptance and effective application. NGOs and other relevant organisations “should be afforded the opportunity to take part in meetings of regional and sub-regional fisheries management organisation and also be given timely access to the records and reports of such meetings.”

As correctly put, the FAO Code of Conduct provides the justification for NGO participation in fisheries management decision-making. If NGO participation in the meetings of the FAO Committee of Fisheries (COFI) is anything to go by, NGO participation has increased at least two and half times between 1995 and

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29 See also Articles 4.1 and 4.4, FAO Code of Conduct.
30 Article 7.1.6, FAO Code of Conduct.
2005. This is in light of the fact that the Fisheries Department of the FAO has actively encouraged NGO participation in COFI meetings since 1983.

NGOs participated actively in elaborating the FAO Code of Conduct. The FAO highlights that NGOs “were able to provide information and insights to the elaboration process concerning a broad range of global fisheries and environmental problems and, in some cases, to sensitize government representatives about the extent and severity of these issues.” NGOs clearly made a positive contribution to the process and consequently influenced provisions supporting their involvement in the implementation.

The FAO Code of Conduct, however, does not qualify NGOs or set conditions for NGO engagement. The Code promotes inclusiveness and broad participation to achieve maximum effectiveness in fisheries governance. National governments are responsible for determining the extent of NGO participation based on their policies. Unlike national governments, regional and sub-regional fisheries management organisations are influenced by international developments and are required to promote transparency and inclusivity.

**Should Complementarity or Conflict in Objectives Matter?**

In promoting inclusivity, the intention appears to be that as long as the objective for an NGO is related to the conservation and management of fisheries resources and the trade thereof, they have a role to play in the implementation of the FAO Code of Conduct.

This chapter argues that broad complementarity of objectives held by NGOs and fisheries management organisations should be an important consideration. In situations where objectives conflict to a large degree, the objectives of fisheries instruments will be undermined. The question whether this consideration should be placed only at the international and regional levels or should extend to the national level also arises.

Fisheries objectives in post-Earth Summit international fisheries instruments advocate long term sustainable fisheries and responsible fisheries. A cursory analysis of the broad objectives of accredited NGOs finds that there is general complementarity of objectives. The industry NGOs support sustainability and responsible fishing. The objectives of environmental NGOs easily complement responsibility in the fishery yet dissenting views exist in what sustainable fisheries

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33 FAO Code of Conduct.
34 Article 2, UNFSA; Article 2, WCPF Convention.
should mean. Other accredited environmental NGOs are more concerned about specific species rather than sustainability of the fishery as a whole, arguably undermining an ecosystem approach to fisheries governance. While there is congruity between the broad objectives of fisheries at the international and regional levels and the broad objectives of NGOs, conflicts may arise in the interpretation and application of principles.

The need for complementarity of objectives is heightened at the national level. In addition to the fisheries objectives in binding instruments, national governments in the Pacific Islands region have their own objectives and policies. Typical fisheries objectives and policies in the region promote, among other things, greater local participation in the fishery, increased returns, the realisation of development aspirations, and the objective of maximum sustainable yield. Sovereignty over resources extends to the limits of the territorial sea, and beyond that, sovereign rights to conserve, manage, explore and explore continue to the limits of the exclusive economic zone. Given these powers, the history of foreign exploitation of resources in national waters, and the absence of capacity by most Pacific Island States to participate in the fishery, national objectives are in most cases skewed towards greater local development and participation. This is where conflict can arise.

The environmental NGOs based in the region acknowledge the situation and aspirations of Pacific Island States and to a certain extent are sympathetic. WWF-SPP for instance, considers the critical role of coastal communities to minimise adverse economic and social impacts and to support sustainable human communities and ecosystems. Its principles of ecosystem-based management include the reality that human use and values of ecosystems are at the core of establishing objectives for the use and management of natural resources. There is also recognition that economic, social and cultural factors can affect resource management. In promoting an ecosystem-based management approach, WWF considers that it is vital to take into account the needs and aspirations of Pacific Island communities.

Like WWF, Greenpeace supports small-scale fisheries with less adverse impacts to the ecosystem rather than large-scale industrial fisheries. The first fisheries principles developed by Greenpeace advocates the quest for ecologically responsible low-impact fisheries. The organisation seeks “a substantial transformation from fisheries production dominated by large-scale, capital-intensive, destructive methods to smaller scale, community-based, labour-
intensive fisheries using ecologically responsible, selective fishing technology and environmentally sound practices.”  

Further, recent messaging of the organisation challenges IUU fishing, capacity migration and overfishing in the region.  

NGO recognition of local realities aside, the FAO Code of Conduct elaborates general principles that all stakeholders may wish to adopt in its decision-making. These principles were derived from the Earth Summit. The UNFSA is the first binding international instrument that includes broad principles. General principles supporting conservation and management must be applied in areas under national jurisdiction and in areas beyond. Accredited NGOs are in a useful position to contribute to the debate on the implementation of principles at all levels. While dissenting views on relevant considerations may exist between NGOs and fisheries management organisations, debate is healthy and is constructive in the evolutionary process. This chapter exemplifies NGO views on two principles – the precautionary approach and the ecosystem approach and how these contribute to implementation.

Is There Conflict in the Application of the Precautionary Approach and Ecosystem-Based Approach?

The international community defined the precautionary approach in principle 15 of the Rio Declaration. The UNFSA elaborates on how the precautionary approach is to be implemented and introduces guidelines in Annex II. Simply put, precautionary reference points in the form of limit references points and target reference points are to be used. Limit reference points restrict fishing levels within safe biological limits that can produce maximum sustainable yield, while target reference points are designed to meet management objectives. The fishing level that generates maximum sustainable yield “should be regarded as the minimum standard for limit reference points.” While States and industry groups are generally content with the framework for the application of the precautionary approach, NGOs support the adoption and implementation of higher standards.

For instance, Greenpeace asserts that to cover for the lack of understanding of marine ecological processes, fisheries management must be based on the

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38 Section 2.3, 1998, Greenpeace Principles.
40 Article 7, FAO Code of Conduct.
41 Article 3, UNFSA, Article 7, WCPF Convention.
43 See also Article 7.5, FAO Code of Conduct.
44 Annex II, Section 7, UNFSA.
Precautionary Principle with emphasis on prevention of damage rather than efforts to repair mistakes through mitigation or restoration measures.\textsuperscript{45} According to Greenpeace, exploiters and institutions responsible for management have a fundamental duty of care.

A duty of care arguably exists today in almost all FFA member jurisdictions. This duty arises once general fisheries principles are incorporated in national legislation. Fisheries legislation binds the government and the public. Therefore, in the event that a fisheries management institution does not exercise its duty through an act or omission, there would be, at the very least, grounds for a review of the relevant decision. The approach is reactive yet may still have a role in mitigating the effects on ecosystems.

Greenpeace refers in passing to reference points but then calls for the performance of management procedures to be tested before being implemented. Simulations or otherwise should be made under a “wide range of alternative assumptions and scenarios about the dynamics of the system.”\textsuperscript{46} The prerequisite for the simulation of management procedures to ensure that a high probability for conservation and management of the stocks and the environment is attained, is not an explicit requirement in fisheries instruments. Testing of reference points and management procedures is, however, important to ensure that stocks and their ecosystems are sustained. Although not explicit, the analysis of management options under various fishing conditions already occurs to an extent at the national and regional levels in the formulation of total allowable catches and the preparation of WCPFC management measures. The application of target and limit reference points would also attract an analysis of biomass and economic yields under various conditions.

WWF also supports the application of the precautionary approach and puts the approach within its ecosystem-based management framework. WWF publications provide constructive commentary on the application of the approach and recommend best practices.\textsuperscript{47} Management strategies are to be based on precautionary reference points “reflecting a sufficiently high probability of sustainability” for all target stocks.\textsuperscript{48} The threshold of a high probability of sustainability advocated by both WWF and Greenpeace goes beyond the requirement in the UNFSA and related instruments. Annex II of the UNFSA provides that strategies are to “maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with

\textsuperscript{45} Section 2.2, Greenpeace Principles.
\textsuperscript{46} Section 2.2(6), Greenpeace Principles.
\textsuperscript{47} For instance, Willock, A. & Lack, M. \textit{Following the Leader: Learning from Experience and Best Practice in Regional Fisheries Management Organisations}, WWF International and TRAFFIC International, 2006.
\textsuperscript{48} Ibid. p. 17.
previously agreed precautionary reference points. As noted earlier the rate of fishing mortality that generates maximum sustainable yield is regarded as a minimum standard for limit reference points. Neither WWF nor Greenpeace refer to maximum sustainable yield as the criteria for setting limit reference points and this is perhaps due to the fact that, in their view, the maximum sustainable yield standard may not be ideal for ensuring sustainability of target stocks and associated species.

Based on the above, it is apparent that there is some incongruity between the way both WWF and Greenpeace and international fisheries instruments advocate the precautionary approach. There is agreement on the definition and the application of reference points. But the threshold of a high probability for sustainability goes beyond the standard in international fisheries instruments. A high probability involves more effort than merely maintaining or restoring populations. Both NGOs argue that fisheries managers need to apply the precautionary approach to the wider ecosystem rather than on target stocks alone. Extending existing practices to associated and dependent species as well as their habitats presents a challenge.

Precautionary approach aside, this chapter now asks whether there is conflict between the way the ecosystem approach is defined and promoted by fisheries instruments and NGOs. The ecosystem approach is supported in the LOSC in relation to the management of associated and dependent species. The FAO Code of Conduct contains additional provisions calling on States to have measures that minimise waste and discards of non-target species and to determine impacts on associated or dependent species to improve gear selectivity. The FAO Code of Conduct also calls on States to assess the impacts of environmental factors on target stocks and species belonging to the same ecosystem and to also assess the relationship between populations in the ecosystem. The UNFSA includes provisions for the assessment of impacts of fishing, human activities and other environmental factors on target stocks and species in the same ecosystem as well other points raised in the FAO Code of Conduct. In addition, the FAO has provided technical guidelines for the application of the approach. Unlike the precautionary approach, implementation of the ecosystem approach has been slow and this is attributed to how widely the concept is understood and the constraints faced by management bodies.

49 Section 4 of Annex II, UNFSA.
50 Article 61, LOSC. See also FAO, ‘The Ecosystem Approach to Fisheries,’ FAO Technical Guidelines for Responsible Fisheries, No. 4, Suppl. 2, Rome, 2003, 112pp, 73 – 82 for a list of relevant instruments and institutions supporting EAF.
51 Articles 7.2.2(g) and 7.2.3 FAO Code of Conduct.
52 Article 5(d), (e) and (f) WCPF Convention. See also Article 5(d) and (e) WCPF Convention.
53 FAO, 2003, above n.50.
Of the NGOs based in the region, WWF has devoted considerable attention to
developing a framework for ecosystem-based management. WWF posits that “our
underlying principle [to promote sustainable fishing] is ecosystem-based
management, which aims to achieve the sustainable exploitation of natural
resources by balancing the social and economic needs of human communities with
the maintenance of healthy ecosystems.”\(^5^4\) On the face of it, ecosystem-based
management appears to be an alternative form of the ecosystem approach found in
international instruments. But on closer analysis, the two are virtually the same.

The FAO guidelines on the application of the ecosystem approach are practical
and describe considerations for the implementation of the approach. The
guidelines state that the ecosystem approach originated from the Stockholm
Conference on the Human Environment and the LOSC and as a result the two
main pillars are: (i) the elimination of overcapacity and overfishing, rebuilding of
depleted stocks and protection of associated and dependent species; and (ii) the
maintenance of ecosystem habitats, functional relations between components and
productivity.\(^5^5\) Further the principles of relevance in Ecosystem Approach to
Fisheries (EAF) are: avoiding overfishing, ensuring reversibility and rebuilding,
reducing by-catch, taking into account species interactions, promoting
compatibility, applying the precautionary approach, improving human well being,
allocating user rights, promoting sectoral integration, extending stakeholder
participation, and maintaining ecosystem integrity.\(^5^6\)

On the other hand, the principles of ecosystem-based management proposed by
WWF are summarised as: maintaining ecosystems, ensuring that human use and
values of ecosystems are central to management, acknowledging the ecosystems
are dynamic, promoting broad stakeholder participation, and that successful
management is adaptive and based on scientific knowledge and monitoring.\(^5^7\)
Compared with the FAO principles, there are close similarities. However the FAO
principles appear to be wider in scope because specific principles are enunciated.

That said, the key difference between the approaches lies in the procedures for
implementation. The FAO guidelines describe planning requirements and
ingredients for an EAF management plan as well as the requirements and process
for implementation. WWF introduces planning by ecoregions of species, habitats
and oceanographic features and calls for a determination of ecosystem values in
habitats, species and uses. Ecoregions identified may be found in one jurisdiction
or be spread over a number of jurisdictions. Implementation of the ecosystem-

\(^5^4\) [http://www.panda.org/about_wwf/what_we_do/marine/our_solutions/sustainable_fishing/reducing_impac
ts/improving_policy/index.cfm] [accessed 26/02/08].
\(^5^5\) FAO, above n.50, 74.
\(^5^6\) FAO, above n.50, 83 – 88.
\(^5^7\) Ward et al, above n.36.
based management approach, therefore, is more demanding and requires countries to cooperate with each other in management. This goes beyond the duty to cooperate in the LOSC because it potentially involves, among other tasks, joint mapping of ecoregions, assessment of ecosystem values of habitats, species and uses, the determination of hazards and risks, and agreement on management goals and reference points.

The ecosystem approach is promoted by Greenpeace in its principles for low impact ecologically responsible fisheries. Although there is no specific part relating to the approach, the principles included in the FAO guideline are embodied. Fisheries that threaten the biodiversity, productivity or characteristic structure and function of marine ecosystems should be addressed. The organisation also states that fisheries management generally concerns the management of fishers and their activities, not the management of ecosystems. In their view, attempts to supplement fisheries production must not include the culling of predator species or the fertilization of marine ecosystems.

In the final analysis both NGOs provide useful insight into the application of the approach. Although biased toward conservation, their guiding principles urge more integration and a holistic approach to management. WWF’s ecoregion approach draws some attention and requires transboundary action. If applied in the WCPO, there would be a role for institutions including the WCPFC, the proposed South Pacific Regional Fisheries Management Organisation, and the International Sea Bed Authority.

**NGO Roles and Responsibilities**

A basic analysis shows that NGOs directly promote two pillars of sustainable development. Industry NGOs involved in fishing will advocate interests of their members and support sustainable catch levels that would not harm the economic viability of their operations. Although the focus of industry NGOs would be development and increased economic benefits, there would also be strong interest in long term sustainability. Environmental NGOs, on the other hand, are more concerned about the ecosystem and its importance in sustaining human life. Social and cultural aspects are addressed to a certain extent by industry and environmental NGOs but this is largely left for governments.

Broad roles aside, the role of NGOs in the implementation of international fisheries instruments is diverse and arguably goes beyond that envisaged by drafters of the FAO Code of Conduct. At an NGO and civil society workshop held in Fiji in 2007, participants comprised of environmental NGOs, outlined current
and future roles and challenges in improving their effectiveness. Current roles include: developing materials on fisheries management and the plight of fish stocks, monitoring the public sector and calling for transparency in decision-making, engaging communities, and building capacity through meetings and workshops.

In addition, NGOs are in a position to contribute significantly because of their combined ability to work at all levels and on transboundary issues. Their ability to access funds and technical expertise is another strength that can complement limited resources of national governments. Working with NGOs in specific activities would be mutually beneficial for governments and regional organisations. Current and future NGO roles include:

- influencing the contents of new fisheries instruments to address existing governance gaps;
- monitoring and guiding the implementation of international principles and concepts;
- identifying inherent weaknesses and enhance roles of national governments and regional fisheries management organisations in fisheries governance;
- acting as a conduit for information dissemination between local communities and national governments;
- motivating local communities to promote sustainability by implementing sound practices;
- promoting responsible fishing among fishing communities and decision-making authorities; and
- encouraging the continual improvement of fisheries governance.

These are not minor but substantive roles that demonstrate the future level of influence of NGOs on fisheries governance. This chapter has elaborated on a number of these roles above and will only concentrate on the role of NGOs in influencing the development of new instruments and in local level initiatives.

NGOs have participated actively in international and regional fora on sustainable development and fisheries management. Their involvement in the development of the FAO Code of Conduct is noted. One observer comments that NGOs made “substantial and important written contributions … on all articles in the Agreement.” In the negotiations for the WCPF Convention, NGOs participated

through national delegations. As far as new instruments are concerned, NGOs are currently lobbying for an instrument for the protection of high seas biodiversity.

Environmental NGOs in the region have long raised concerns of the impacts of fishing activities on the biodiversity of the high seas. An international coalition to conserve high seas biodiversity was established to primarily secure a moratorium on high seas bottom trawling and protect fragile and unique ecosystems of the deep seas. Accredited NGOs such as Greenpeace, Oceana, Birdlife International, and Friends of the Earth are part of the coalition. Greenpeace has challenged international law principles, particularly, the freedom of the high seas as an obstacle to the protection of high seas biodiversity. It argues that the freedom should be reversed. In their view the high seas should be viewed as marine reserves and nations have the burden of proving that they will not harm the ecosystem before being given access. They posit that the longstanding freedom of the high seas should be replaced by the freedom for the seas where the ecosystem approach and the precautionary principle are considered fundamental to management. This proposal is akin, albeit narrower in scope, to that originally recommended by Ambassador Arvid Pardo in the common heritage of mankind concept.

It is only a matter of time before there is a new instrument addressing legal challenges in high seas fisheries governance. By adopting resolution 61/105, members of the United Nations General Assembly concur that there is a need for international, regional and national action. The resolution is a testament to the commitment of NGOs in influencing change in existing practices. It also shows the importance of their role in highlighting governance gaps and weaknesses in long standing legal concepts.

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62 Greenpeace, 2005, above n.60.
63 Ibid.
On NGO relations with local communities, NGOs are vital in extending national fisheries awareness and capacity building to these communities. While NGO motives may be to establish programmes in accordance with their own campaign initiatives, the programmes are nevertheless useful in raising awareness of the ecosystem and sustainability. An example is WWF’s work in Macuata, Fiji, to protect globally significant seascapes. The work has seen the completion of surveys of the world’s third longest barrier reef, the Great Sea Reef, and empowerment of local communities to establish marine reserves and to carry out monitoring and management activities.66

Taking all the above considerations into account, the level of participation of NGOs in fisheries governance at all levels is likely to increase over time. In recent international fisheries instruments such as the FAO Code of Conduct, NGO and stakeholder participation was considered vital. In time the international community is expected to provide greater recognition to particular NGOs that are capable of possessing international rights and duties. By being able to exercise international rights and duties, NGOs would be conferred international legal personality.67

Concluding Remarks

Although NGOs generally have been viewed with scepticism by Pacific Island governments, this view is gradually changing. Change is influenced primarily by international trends embracing wide stakeholder participation in fisheries governance, and current activities of NGOs in the region. The initial sentiment of distrust toward NGOs diminishes as cooperation and partnerships emerge. But will there be a symbiotic relationship where all stakeholders mutually benefit? The answer depends upon NGO approaches and the policies of sovereign nations in the region.

In assessing whether NGOs should be considered partners or adversaries in the implementation of fisheries instruments, it is clear that NGOs have a vital role. NGOs have participated in the development of international instruments and helped to legitimise such instruments. National policies are also legitimised, to a certain degree, when used by NGOs in local awareness, capacity building and management initiatives. While some NGOs have formal partnerships with

governments in the region, others may be considered informal or “loose” partners. The activities of the latter NGOs may be quietly supported by government(s) as formal agreements are not consistent with policy.

Current national policies on engagement with NGOs are believed to be based on the potential for national contribution and the characteristics of an NGO. Obviously an NGO that challenges or criticises government would not normally be considered as a partner but an adversary. NGOs are not without flaws. Whilst NGOs may not represent significant proportions of the population, in most cases they are supported by individuals outside the region and promote foreign ideas that may not be suitable in the local context. NGOs have also been challenged for lack of transparency and for failing to accommodate regional and local realities. Further, NGOs can only be held accountable by their respective constituents, supporters and donors.

In spite of this, the role of NGOs in implementation is likely to broaden. The limits on the role of NGOs was not provided by the drafters of the FAO Code of Conduct and other instruments and is largely left for States to determine in practice. NGOs are independent enough to highlight weaknesses in regional fisheries management organisations and national administrations and to offer suggestions for change. Their role in monitoring and facilitating compatibility of measures across national jurisdictions and international areas is essential. However, it is important that the involvement of traditional interest groups not be undervalued as more NGOs participate in fisheries governance. In the future, greater recognition will be accorded to NGOs and a select few capable of possessing and exercising international rights and duties would be conferred international legal personality. NGOs working at the national level need to continually reflect on their approach and the nature of their activities. If their activities are compatible and sensitive to the Pacific Islands context, than they are likely to be considered by Pacific Island governments to be real partners rather than mere “partners of convenience.”
Bibliography


