

FISHERIES MANAGEMENT AND THE LAW

INTRODUCTION

This fact sheet was produced by the Environmental Law Association to provide a plain language introduction to legal issues related to fishing, including traditional fishing rights, licensing under the *Fisheries Act*, gazettal of marine reserves, size limits, gear restrictions, protected species and fisheries compliance and enforcement issues.

TRADITIONAL FISHING RIGHTS

The boundaries of traditional fishing grounds (*qoliqoli*) have been mapped by the Native Lands and Fisheries Commission and recorded on the Register of Native Fishing Rights. To request access to the register, contact the Native Lands and Fisheries Commission.

A person who holds traditional fishing rights over a *qoliqoli* ('resource owner') may fish for subsistence purposes (not for trade or business) in the *qoliqoli* without a permit or licence.¹

FISHING LICENCES

Any person (including a resource owner) who wishes to fish for trade or business must apply to the Department of Fisheries for a **fishing licence**.² A licence is not required to fish with a line from the shore or with a spear.³

The Fisheries Department will not issue a licence to fish within a registered *qoliqoli* unless the applicant has obtained a written **letter of consent** from the chief of the relevant resource owning group.

Licences may be granted subject to **conditions** – for example, prohibiting fishing in particular areas, restricting fishing at particular times, prohibiting the use of particular fishing gear, or prohibiting the taking of particular species.

It is a criminal **offence** to fish for trade or business without a licence, or to breach the conditions of a fishing licence. The maximum penalty is 3 months prison and/or a \$500 fine.

Licences are valid for up to 12 months, and expire on 31 December each year.⁴

Licence conditions can be used to protect community declared *tabu* areas. In Macuata, for example, the high chief issues letters of consent on the condition that the licence will prohibit fishing in *tabu* areas. Maps of the *tabu* areas are attached to each licence.

MARINE RESERVES

The Minister for Fisheries may formally declare '**restricted areas**' by publishing regulations in the Government Gazette.

It is an **offence** to take fish in a restricted area without a permit.⁵ The maximum penalty is 3 months prison and/or a \$500 fine. It is not an offence to fish in a restricted area using a hand net, wading net, spear or line and hook.⁶

Restricted areas are usually **permanent**, but it is possible for the Minister to declare a temporary or periodic restricted area. Restricted areas can only be **modified or revoked** by the Minister.

There is **no formal process** for proposing the gazettal of a restricted area. If you want the Minister to declare a restricted area, you should discuss the proposal with the Fisheries Department.

It may be useful to submit a **written proposal**, highlighting the conservation significance of the area, and providing evidence that establishment of the restricted area is supported by local resource owners.

SIZE LIMITS

Harvesting young fish and invertebrates that have not had a chance to breed reduces the productivity of coastal fisheries.

The *Fisheries Act* sets **minimum size limits**. It is an offence to take, sell or display for sale fish, crabs, shells or *beche-de-mer* below the minimum legal size limit (**Table 1**). Maximum penalty: 3 months prison and/or a \$500 fine.

DESTRUCTIVE FISHING METHODS

The *Fisheries Act* prohibits certain destructive and unsustainable **fishing methods**, including:

- dynamite fishing⁷
- fishing with poison⁸
- fishing with SCUBA or a compressor.⁹

The penalties for using destructive fishing methods can be severe. The maximum penalty for dynamite fishing is two years prison and/or a \$5,000 fine.

FISHING NETS

Using large fishing nets with a fine mesh can reduce the productivity of coastal fisheries by overharvesting young fish. The *Fisheries Act* sets **minimum mesh sizes** for different types of fishing nets. It is an offence to use a net with a mesh smaller than the legal minimum mesh size (**Table 2**).¹⁰

Using large nets in estuaries, rivers and streams can disrupt fish migration. Using a fishing net (other than a hand net, wading net or cast net) in an estuary or within 100 metres of a mouth of a river or stream is prohibited.¹¹

| Fijian Name | Common Name | Minimum Length |
|----------------------------|---------------------------------|----------------|
| Ogo | Barracuda | 300 mm |
| Saqa (excluding vilu saqa) | Crevally, Trevally, Pompano | 300 mm |
| Kanace | Grey Mullet | 200 mm |
| Ika Droka | Glassperch, Aholehole | 150 mm |
| Nuqa | Ketang, Spinefoot Rabbitfish | 200 mm |
| Salala | Long-jawed Mackerel | 200 mm |
| Saku Busa | Longtom, Garfish, Greengar | 300 mm |
| Yawa | Milk Fish | 300 mm |
| Matu | Mojarra | 100 mm |
| Ulavi | Parrotfish | 250 mm |
| Kaikai | Pouter, Slimy, Soapy, Peperek | 100 mm |
| Donu, Kawakawa, Kavv | Rock Cod, Grouper, Salmon Cod | 250 mm |
| Kawago, Dokonivudi, Musubi | Sea Bream, Pig-faced Bream | 250 mm |
| Kabatia, Kake | Small Sea Bream | 150 mm |
| Sabutu | Small Sea Bream | 200 mm |
| Balagi | Surgeon Fish | 200 mm |
| Ki, Ose | Surmullet, Goatfish, Whiskercod | 150 mm |
| Damu | Snapper | 300 mm |
| Ta | Unicorn-Fish, Leather jacket | 300 mm |
| Qari dina | Swimming Crab | 125 mm |
| Sici | Trocas shell | 90 mm |
| Civa | Pearl Oyster Shell | 100 mm |
| Sucuwalu, Dri | Beche-de-mer | 76 mm |

Table 1. Minimum size limits. Measurement method: (1) Fish: measure from the point of the snout to the middle of the tailfin when the fish is laid flat. (2) Trochus: measure across the whorl. (3) Pearl Oyster Shell: measure from the butt or hinge to the opposite lip.¹²

| NET TYPE | DEFINITION ¹³ | MINIMUM MESH SIZE ¹⁴ |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| Hand net | 'Hand net' means a net fixed on a frame or on two poles, which can be moved in all directions by one person, with a maximum width of 1.5 metres. | No minimum mesh size |
| Cast net | 'Cast net' means a round net with weights around its edges, which is used by being cast over fish in such a way that it sinks to the bottom. | 30mm |
| Whitebait or sardine net | Must only be used for taking whitebait or sardines, and must not be more than 10.5 metres wide or 1.5 metres high. It is prohibited to join two such nets together. | 30mm |
| Wading net | 'Wading net' means a net fixed on a frame or on two poles which can be moved in all directions by two persons, with a maximum width 4.3 metres. | 50mm |
| Other nets | Any net that does not fall within the above definitions, including nets that exceed the listed size limits. | 50mm |

Table 2. Minimum Net Sizes. Mesh measurement method: Measure the distance between two diagonally opposite corners of the mesh, when the net is wet and stretched.¹⁵

FISHING IN RIVERS AND STREAMS

Using large nets in rivers, streams and lakes can quickly deplete fish stocks. Freshwater fish must only be caught using a hand net, portable fish trap, spear or line and hook.¹⁶

- Humphead Wrasse
- Bumphead Parrot Fish
- Giant Grouper
- Green Turtle
- Leatherback Turtle.²¹

PROTECTED SPECIES

It is an offence under fisheries legislation to catch or sell the following **protected species**:

- triton shell¹⁷
- giant helmet shell¹⁸
- dolphins and porpoises.¹⁹

Molesting, taking or killing **turtles** or their eggs without approval from the Minister for Fisheries is prohibited under national law. It is also an offence to disturb turtle habitat.²⁰

The *Endangered and Protected Species Act* lists species that are in danger of extinction. It is an offence to possess, sell or display for sale listed **threatened species**, including:

The maximum penalty for this offence is two years in prison and/or a \$5,000 fine. For more information about protected species, contact the Department of Environment.

COMPLIANCE AND ENFORCEMENT

Fisheries officers and police are responsible for enforcing national fisheries laws. Courts may impose penalties, including fines and prison sentences, and may make other orders, including cancellation of fishing licences.²²

Members of the public, including resource owners, can improve law enforcement by monitoring and reporting breaches of fisheries legislation, and advocating for stricter enforcement by government.

COMMUNITY FISH WARDENS

Community **fish wardens** play a special role in enforcement of fisheries legislation. Fish wardens have the legal power to:

- order a person to display their fishing licence, gear or catch;
- board and search fishing vessels; and
- if they reasonably suspect that an offence has been committed, take the offender, the vessel, gear and catch to the nearest police station or port.

Obstructing a fish warden from boarding and searching a vessel is a criminal offence.²³

It is important to note that fish wardens only have the power to enforce the *Fisheries Act*. They do not have the legal power to enforce other legislation or community rules.

Detaining or assaulting a person or taking their property without legal authority is a criminal offence. This means, for example, that it is illegal to seize a fishing vessel only because it was found fishing in a *tabu* area.

REPORTING BREACHES

If you believe that a national law has been breached, **report** the incident to the police and the Fisheries Department, providing as much detail as possible, including:

- description of the incident
- location of the incident
- time and date of the incident
- name and contact details of the offender
- registration number of the vessel
- names and contact details of witnesses
- photographs, video or physical evidence.

For more information about reporting breaches, refer to **Fact Sheet 6: Responding to Breaches of Environmental Law**.

USEFUL CONTACTS

Environmental Law Association
15 Ma'afu Street, Suva
Tel: 330 0122

Department of Fisheries
Takayawa Building, Toorak, Suva
Tel: 336 1122

Department of Environment
19 MacGregor Road
Tel: 331 1699

iTaukei Land Trust Board
TTF Building, 87 Queen Elizabeth Drive, Suva
Tel: 310 0909

ENDNOTES

- ¹ Fisheries Act, s.13.
- ² Fisheries Act, s.5(3), Fisheries Regulations r 4
- ³ Fisheries Act, s 5(3)(a)
- ⁴ Fisheries Act, s 5(2).
- ⁵ Fisheries Regulations r 11.
- ⁶ Fisheries Regulations r 11.
- ⁷ Fisheries Act, s 10(4).
- ⁸ Fisheries Regulations r 8.
- ⁹ Fisheries (Restrictions on use of Breathing Apparatus) Regulations 1997 r 4.
- ¹⁰ Fisheries Regulations, r 12-16.
- ¹¹ Fisheries Regulations, r.7.
- ¹² Fisheries Regulations, rr.18, 19, 21, 25B.
- ¹³ Fisheries Act, s.2.
- ¹⁴ Fisheries Regulations, r.14-16.
- ¹⁵ Fisheries Regulations, r.12.
- ¹⁶ Fisheries Regulations r.10.
- ¹⁷ Fisheries Regulations, r.22
- ¹⁸ Fisheries Regulations, r.23
- ¹⁹ Fisheries Regulations, r.25
- ²⁰ Fisheries (Moratorium on Molesting, Taking or Killing of Turtles) Regulations 1997, r.20A. Fisheries (Protection of Turtles) (Amendment) Regulations 2010.
- ²¹ Endangered and Protected Species Act 2002, s.3.
- ²² Fisheries Act, s.8.
- ²³ Fisheries Act, ss.3, 7.

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