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# Reconciling customary and constitutional law: managing marine resources in Palau, Micronesia

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**Abstract**

As in much of Oceania, Palauan society of the pre-European contact era practiced sophisticated systems of tenure and management that extended to the fish and other resources of the surrounding coral reefs and lagoons. With its colonial experiences, the opening up of economic and social links with the outside world, and the introduction of highly efficient fishing technologies, Palau's customary marine resource management systems have eroded.

Like most Pacific Island countries, the Republic of Palau only recently gained independence from a western administrating nation. Its constitution, being based on western models, emphasizes democratic and egalitarian ideals. At the same time, it seeks to preserve and revitalize many aspects of customary Palauan society, particularly its institutions and processes of chiefly authority. These customs, however, are based on titled elitism and other principles contrary to those emphasized in the constitution. Through a combination of a series of court decisions that illustrate the incompatibility of the two bodies of law and a lack of any legislative initiative that could reconcile them, the exercise of purely customary authority has been relegated to matters of only minor importance. Thus, as in many Pacific Island nations, independence has contributed to the erosion of traditional tenure and management systems.

Some recent village-level initiatives, however, may portend an important shift back toward decentralized, if not exactly traditional, control over the use of Palau's inshore resources. The constitution's critical provision that inshore resources are owned by the 16 states has allowed these relatively new village-level political and social units, with their mix of titled and elected leaders, to exert increasing control over inshore resources. They have done so in response to increasing resource scarcity owing to increasing fishing pressure, increasing demand by the booming marine-based tourism sector, and impending resource degradation from physical development. The effectiveness of these emerging local-level management regimes will be determined largely by the degree of support offered by the national government. Little has been forthcoming. The executive branch has been hesitant to support the marine property rights of the states, the judiciary has interpreted the constitution in a manner that has limited the

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authority of traditional leaders, and the legislature has not enacted laws that might guide the other two branches in interpreting and implementing the constitution with regard to either customary law or state ownership of marine resources.



## 1. Introduction

Most island nations of the western and southern Pacific gained independence during just the last three decades, and the decolonization process continues today. The constitution-making processes that accompanied these independence movements placed a heavy emphasis on the relationships between customary law and the new central governments. Many of the resulting constitutions have granted considerable authority to customary authorities, rules and processes (see Ref. [1] for a review of the constitution-making processes in the Pacific).

This widespread constitutional recognition of customary law has provided opportunities to reinvigorate customary systems of marine resource management throughout the region. These were rights-based systems, controlled by village-based institutions of authority. These tenure systems have increasingly been recognized as having the potential to ameliorate a variety of contemporary problems associated with the use of scarce marine resources, especially in tropical island environments featuring decentralized mixed gear and mixed species fisheries (e.g., Ref. [2]).

Despite these constitutional provisions and the widespread calls for action to reinvigorate customary marine tenure systems, little progress has been made in stemming the erosion of customary authority [3]. One partial explanation for this apparent lack of progress is that the recognition of customary law found in the constitutions of the region is not as potent as it may appear. This impotence is due in part to irreconcilable differences between custom and imported forms of law, which tend to render customary law void. Additionally, as long as the central governments retain ultimate political power, as they all do, and because governments constitute such a large part of most Pacific Island economies, customary authorities that remain outside of government will have little wealth or power. Their traditional sources of power – villages and clans – have weakened in cohesion and influence, and thus so have the leaders.

The 17-year old constitution of the Republic of Palau (Fig. 1) grants more authority to customary law than do those of most Pacific Island nations. But Palau's customary leaders, at least those remaining outside government, have retained little authority relative to the central and state governments. Chiefly positions that have been integrated into the state governments, on the other hand, exert considerable influence over local matters. Under a mixed leadership of elected and titled leaders, Palau's 16 states appear to be emerging as cohesive social and political units. At the same time, rapid growth in marine-based tourism and increasing fishing pressure have increased resource scarcity. The result has been greater exertion of marine tenure by the states, expressed through border disputes and the imposition and enforcement of a variety of fishing restrictions and user fees.



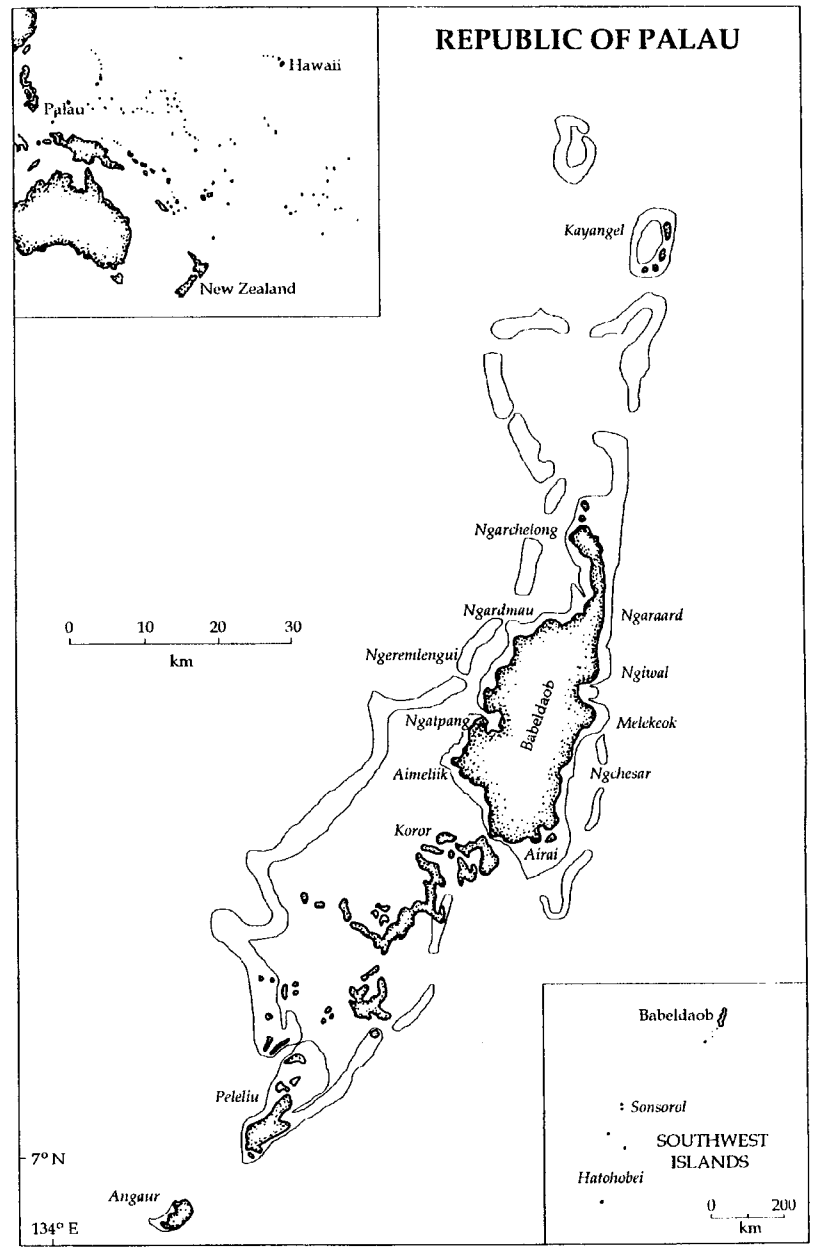


Fig. 1. Republic of Palau.

In this article we discuss the relationships between Palau's customary, state, and national government authorities, and how the constitution has affected the balance of control over inshore marine resources among the three. The states have replaced the villages as the primary rights-holding units, and many aspects of customary management, including chiefly authority, rules and processes, are expressed through the state governments. It remains to be seen, however, whether state-based management of inshore marine resources will be effective. It will depend partly on the interpretation by the national government of the constitution"s necessarily ambiguous provisions regarding the respective roles of old and new systems of governance.

## 2. Traditional rights-based fishing systems

The nations of the tropical Pacific, like other coastal nations, generally claim rights to marine resources out to 200 miles from shore. The living resources in this area can be divided between the offshore resources, including pelagic and deepwater fishes, and the inshore resources, including the finfish and invertebrate resources associated with shallow reef and lagoon systems. Throughout the Pacific Islands, traditional tenure systems in the sea reflected those on land, with hierarchical rights of access and use accorded to islands, villages, families, and individuals. Except in those islands lacking extensive reef and lagoon systems, the outer limit of these rights typically extended to the outer edge of the surrounding reef, encompassing the most used and valuable resources.

Compared to Western common property systems (open access, or unregulated common property, being the extreme example), the relatively high degree of exclusivity in these systems may have provided greater incentives to conserve marine resources [4] and the ability to forestall the dissipation of economic rents [5]. Ruddle et al. [2] and Hviding and Baines [6] summarize some of the specific capabilities and advantages of these systems, including their ability to adapt to fluctuating resource availability and to changing social and economic situations, their ability to minimize and resolve conflicts, and compared with the alternative of centralized government control, their cost-effectiveness.

The decentralized nature of these traditional systems holds much of their modern appeal. The arguments parallel those in favor of more exclusive property rights in fisheries: with more effective engagement of the resource users in management decisions, decisions will be more relevant, compliance with rules will improve, conflicts will be reduced, enforcement will be less expensive, and economic development paths will be more in line with the desires of the people. Relatively decentralized and exclusive tenure systems also lend themselves better to maintaining and applying the vast body of ecological knowledge gained by generations of fishers in intimate contact with the resources they rely on [7].

With some exceptions, especially in Melanesia where some systems appear fairly resilient [6,8,9] these traditional systems have eroded to a large degree. A host of causes has been cited, most associated with colonial experiences, the opening of economic and other links to the outside world, and the importation of new fishing and other technologies [10]. Colonization is often blamed, as many colonial powers replaced the village-based tenure systems with common property regimes under the control of central governments. However, many colonial administrations not only tolerated the authority of traditional leaders, but empowered and sometimes even created them in order to extend colonial control into rural areas [11]. One cause of erosion not often cited, and explored here for the case of Palau, is independence. Despite the obvious effort of constitution-makers through most of the region to reassert cultural identities and to reinvigorate custom, the independence constitutions may have inadvertently weakened many elements of customary marine resource management systems.



## 3. Conflicts between custom and constitution

The constitutions of most Pacific Island nations include some recognition of custom and chiefly authority. The incorporation of customary values and practices and the accommodation of traditional authorities in the constitutions have been described as "the most difficult and complex intellectual and technical problem in the whole exercise [of constitution-making in the Pacific]." [1, p. 39]. Furthermore, despite some fairly bold constitutional assertions of the role of customary law in some countries, a number of conflicts and inconsistencies limit and continue to erode the role of custom in Pacific Island political systems.

Recognition of custom in the region's constitutions was seen as essential to national identity. According to Pulea [12], the inevitable conflicts between statutory law and customary law were knowingly embraced by the constitution-makers. They left these conflicts to be worked out by the law-making bodies and the courts. Now, decades after independence in some countries, the relationships between statutory and customary law are still evolving.

Custom has to compete with not only statutory law, but also with English common law, recognized throughout most of the region, and more critically, with the fundamental rights embodied in most of the region's constitutions. The constitutions are often ambiguous as to the rankings of these sub-systems of law, leaving it to the courts and legislatures to sort them out [13]. Custom sometimes supersedes common law, but it rarely supersedes statutory law or fundamental constitutional rights [1]. Such pluralistic systems of law may appear to have the advantage of allowing the development of alternative systems of control and dispute resolution, but one of the sub-systems tends to dominate at the expense of the others [13]. Pulea [12, p. 2] argues that 'dualism has little in its favour. It is uncertain and often perplexing for indigenous communities whose unwritten laws can be easily overridden by statutes.' Further, some courts are reluctant to apply customary law because of its unwritten nature (lending itself to wide interpretation and endless mutation), the existence of too many customs, too many groups applying variations of the custom, the difficulties in explaining customary concepts in the non-native languages often used by governments, and the difficulties involved in proving custom [12].

But there are even more fundamental differences between the two systems of law. One is the decentralized nature of most traditional political systems. Customary political systems in the Pacific tended to be composed of numerous decentralized power centers coexisting in complex dynamic relationships of alliances and rivalries. The act of constitution-making, however, is to create a nation-state and to establish the ultimate authority of that state, the constitution itself. Such nation-states tend to have strong central governments.

The most fundamental difference between the two systems is the socio-political values that underlie them. Most of the region's traditional socio-political systems were hierarchical, with power vested in a titled elite. The constitutions adopted throughout the region (after varying degrees of promotion by the colonial administrations), however, are based on Western democratic egalitarian models [1]. Those Western ideals are expressed in the fundamental rights guaranteed in the constitutions of most Pacific Island nations, provisions that emphasize individual and property rights [1]. For example, the tenet of equal protection under the law is clearly at odds with the values of traditional societies that were highly stratified, with rights and obligations differing according to social rank.

It is noteworthy that custom, and customary marine tenure systems in particular, appear to have maintained themselves better in the islands of Melanesia than in Polynesia or Micronesia. One explanation is that the customs and values of Melanesian societies are less in conflict with their generally egalitarian constitutions than are those of Polynesia and Micronesia. "Most Polynesians and Micronesians had hierarchical (almost feudal) social structures, with authority vested in hereditary chiefs.... The Melanesians were more egalitarian societies with wide dispersal of political authority and status was based more on achievement than ascription...." [1, pp. 2,3]. An alternative explanation for the Melanesians retaining more of their customs is simply that they are more conservative, more wary of change, than their Polynesian and Micronesian neighbors.

Also in conflict with fundamental rights are customary means of enforcement. Rights of due process, including the right to a fair trial and the presumption of innocence, are not always consistent with customary methods. Prohibitions against corporal punishment and restrictions on freedom of movement are other examples. In New Caledonia, the courts (under French law) found the members of a Council of Elders guilty of arson after the Council carried out its own sentence against a man they found to be illegally occupying a parcel of land. The Council's sentence had been the burning of the man's house and crops [14].

These conflicts between custom and constitution are examined more closely here for the case of the Republic of Palau, which has had only 17 years to sort them out. Discussed are some of the sources of law affecting the role of custom in Palauan law and society, including the constitution itself, subsequent statutes, and a series of important court decisions. Also critical with regard to the fate of custom are a society's values, that is, the degree to which customary practices continue to reflect those values.



## 4. Custom and constitution in Palau

### 4.1. Constitutional provisions

In Palau, the most contentious issues in the making of the constitution were the balance of power between the state governments and the central government, and finding a middle path between the U.S. model of government and the customary model [1]. The two issues are closely related, since the most important seats of customary political power rested at the village level. Seventeen years after adoption of the constitution and two years after independence, these balances appear to have only begun to be worked out, both in the courts and in the national and state legislatures. Both issues are critical with respect to the management of inshore marine resources.

The nations that recently emerged from what was a UN-mandated, US-administered Strategic Trust Territory since the end of World War II (most of the islands of Micronesia) include the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. The constitutions of the latter two have given unprecedented authority to customary law. Palau's constitution provides that:

> "Statutes and traditional law shall be equally authoritative. In case of conflict between a statute and a traditional law, the statute shall prevail only to the extent it is not in conflict with the underlying principles of the traditional law" (Art. V, Section 2).

Although bold, this is a concept "bristling with jurisprudential difficulties and conundrums." (1, p. 41).

As in much of the Pacific, the accommodation of custom in Palau was done in part through the establishment of chiefly councils with certain powers. A council of chiefs composed of one chief from each of the 16 states exercises an advisory role to the President "on matters concerning traditional law, customs and their relationship to this Constitution and the laws of Palau" (Art. VIII, Sec. 6). The merely advisory powers of this council are not as potent as those of its counterparts in some countries, where chiefly councils have powers of appointment (Fiji) or the authority to veto (American Samoa) or require reconsideration of legislation (Marshall Islands) [13].

Finally, the Constitution provides support for traditional authority outside of the government: "The government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution..." (Art. V, Section 1).

### 4.2. Statutes

Palau's national legislature has done little to address matters of custom. It has enacted a few laws that reiterate the constitutional provisions in support of custom, and has established a special court to sort out the numerous and complex disputes over land ownership.

### 4.3. Court decisions

In contrast with the legislature, Palau's courts have been forced to address the conflicts between statute and custom and the ambiguities within the constitution. Palauans have not been reluctant to take their grievances concerning custom to the nation's courts. The courts have presided over numerous disputes concerning chiefly titles. In all these cases, the courts were preoccupied with determining exactly what were the customary processes for appointing chiefs. Through this series of cases, three important precedents were set. First, the courts found that they did have the authority to intervene in matters purely customary. Second, they determined that a higher standard of proof was necessary in matters of custom. Finally, through their preoccupation with "establishing" custom, the courts effectively standardized and transformed some customary rules and processes into written law. The implications of these precedents are illustrated in the cases described below.

A critical precedent was set in 1984 in an appellate decision concerning the rightful holder of a chiefly title in the village of Ngiwal [15]. The court concluded that when the law of custom is involved, a higher standard of proof is necessary. It drew this conclusion by treating Palauan custom similarly to business and trade customary law in the U.S. To constitute a custom recognized by law, "a practice... must possess certainty, generality, fixedness, and uniformity..." [16, p. 16]. While this seems a reasonable approach to recognizing an unwritten body of law and transforming it into written (and therefore more applicable) form, it had a dramatic effect on the application of customary law in Palau and on custom itself.

Palauan custom is anything but certain, general, fixed, and uniform, the attributes sought by the court in establishing custom as law. Nevertheless, the court managed to establish custom in numerous cases, but using its higher standard of proof and only after considering "clear and convincing evidence" by expert witnesses [15]. In so establishing custom, the courts have effectively rendered those practices universal and inflexible. A telling illustration was a title dispute that reached the courts in 1985 among three men from the village of Ollei. The court determined that under Palauan custom, "a male title holder must be appointed by senior female members (*ourrot*) of the clan, and the appointment must be consented to by the council of chiefs of the clan." [17, p. 269]. With this determination, the court found that none of the three men laying claim to the title had in fact been appointed in accordance with Palauan custom, and declared the title to be vacant (and to have been vacant for the previous six years) until filled according to (the court's version of) Palauan custom. In another title dispute in 1992, the court cited its 1985 findings concerning the proper method of chiefly appointment, and again found that a chiefly appointment had not been made as required by Palauan custom [18]. Similar findings were made in 1989 and 1992 in two decisions regarding competing claims to chiefly titles. In both these cases the court found that "consensus" among key clan members was a prerequisite for chiefly appointment, and declared that none of the litigants in either case had been properly appointed [19, 20].

Although the processes for chiefly appointment established by the courts may indeed have been widespread at some point in time, it is clear that many persons



acting as chiefs during the decades preceding these court cases in the 1980s had not been appointed according to those processes. One consequence of these court decisions was a flurry of "customary" activities the most conspicuous being prospective chiefs petitioning for appointment through special feasts, called *blengur*. Disputes over titles continued to occur, however.

Although custom affects the application of law by the government, as intended by the framers of the constitution, it can be seen from these court cases that the government also affects and shapes custom. The courts have become part of the customary process of dispute resolution. The question of whether this was also an intent of Palau's constitution-makers was considered by the court in the 1989 case described above [19, p. 581]:

> "May the court in exercise of its constitutional powers and authority, but within the context of the very influences that serve to degrade and diminish customary processes, take over and supervise the conduct of these processes in order to quiet controversy, bring peace, and settle differences among participants in traditional customary matters?"

In that case, the court sought a balance "between the Court's exercise of authority and the size of the space which customary player/litigants are accorded to play their customary roles" [19, p. 582] and finally directed the litigants and their clan to participate in a supervised meeting that included the court and counsel. A time limit was set for the clan to appoint the chief, and the appointed chief was to receive a certification by the court.

The jurisdiction of the courts was challenged again in a 1992 title dispute in which one of the litigants asserted that "if the court exercises jurisdiction over matters of customary laws it destroys the custom" [18, p. 243]. The court, however, affirmed its authority to intervene, reasoning that because the matter could not be resolved by traditional leaders, and given the broad judicial mandate of the constitution, it was in the interest of justice that the court do so.

Several important implications can be seen in these cases. The first is that with the court finding itself competent to intervene in purely customary issues, the government has not only affected custom, but has become part of it. And aside from establishing its role as arbiter in customary disputes, the courts have also redefined customary processes and rules. By establishing certain customary practices in writing, it has fortified them, but in the process made them less flexible and more universal. This is not the effect cautioned about by numerous observers; that codification of specific customs through statute will fossilize them and dilute their ability to adapt to changing circumstances [21–24]. This is a situation of the court being instructed by the constitution that customary law is legitimate in and of itself, but the court finding it necessary in some cases to intervene and effectively codify custom. As the courts establish and codify custom, they also standardize rules and processes that must have featured some geographical variation. This effect is probably minor for the main islands of Palau, which appear to have had only minor variations in customary systems of authority, at least since Europeans first made contact. Differences in the remote Southwest Islands, however, were much greater. Finally, the method by which the court establishes custom guarantees a bias over which practices will be established

by the court, in favor of those customs for which a convincing witness is available. Well-documented customs, such as those recorded, recognized, and/or altered by Palau's German, Japanese, and American colonial administrators, may be more conspicuous than others.

Although the preceding are all disruptive effects on custom, there is one precedent that will tend to reduce the role of the court in customary matters and minimize these effects. That is the court's finding that a higher standard of proof is necessary in customary matters. This will cause the court to limit its intervention to those matters in which it hears clear and convincing evidence.

Just what the framers of the constitution had in mind when they referred to "custom" and "tradition" is not clear. A strict and narrow interpretation, and one similar to the path being taken by Palau's judiciary, is that it is the specific authorities, processes and rules that were to be preserved in law. The only practical way to do so would be to establish them in writing, a chore for the nation's judiciary. Using its high standard of proof, the court will favor custom that is most convincingly argued as being "traditional." It will thus probably tend to favor custom of some particular era, and most likely the era of early European contact, when custom was first observed by outsiders and described in writing.

A more open and flexible interpretation is reflected in a comment by Sir Tom Davis, former Prime Minister of the Cook Islands, who was interested in Polynesian navigation. When asked why he had used nylon rope and brass bolts in his reconstruction of a traditional Polynesian canoe, he replied that he was doing exactly what his ancestors had done, which was to use the best technology available at the time [25]. At its extreme, this interpretation would allow customary practices to evolve beyond the point where they bear any resemblance to the practices of the pre-European contact era. The inherent flexibility of custom would be preserved to the point where custom could, in effect, adapt itself out of existence.

Somewhere between these two extremes is the interpretation that custom should be left to operate apart from the central government. This certainly takes place in Palau, where not all disputes over customary matters reach the courts. But if the courts are the supreme arbiters of the land, the most contentious issues will undoubtedly reach the courts. One can readily see in Palau that decisions being made in the arena of traditional authority are increasingly being limited to social issues and events of narrow importance, such as marriage and divorce, funerals, and other social occasions. Most decisions of political and economic import are made in government, although often by traditional leaders that are part of the government.

It is clear that under Palau's constitutional government there is no way to preserve customary law as practiced prior to European contact. The approach being taken by Palau's courts is certainly not consistent with custom as practiced in the distant past, and it appears self-defeating in that it is distorting what it was mandated to preserve. On the other hand, it may be the only practical way to satisfy what Pulea [12, p. 17] believes was the constitution-makers' primary objective with regard to the recognition of customary law: to preserve it to the extent possible because it is "essential to national identity and interest."



### 4.4. Changing values

Churney [26, pp. 12, 13] argues that "... below the superficial veneer of Americanism it is the... . Palauan cultural logic which still controls and directs the thinking and behavior of the people." And further, "... titled elitism is still legitimate in the eyes of the people and functional with regards to the workings of their societies, but that there is also a coexistence between the traditional elitism and more democratic egalitarianism and the more pluralistic distribution of status, power and wealth based upon more objective merit and performance."

A chief represents the interests of the clan, and it is in the interest of the clan to appoint an influential, effective chief. Accordingly, chiefly appointments have always been based on a combination of bloodline and performance. But the importance of bloodline is declining and the criteria associated with performance are changing. It can be seen in some recent appointments that wealth and success in the world of business and government were important qualifications.

So although titled elitism may continue to be important in Palauan politics, the power base for the elite, the means of entering the elite, and the institutions through which the elite exerts its influence are appearing less-and-less traditional.

The Palauan government has given as much freedom as possible to customary law outside of government, but such practices are increasingly limited to issues of narrow importance. This is partly because the clan, the main power base of traditional leaders, has lost cohesion and declined in influence. As a source of political power, the clan has been replaced to a large degree by new political factions based on business interests, new social groups, and, of course, the electorate. The first post-constitution elections in the early-1980s saw considerable disruption within clans, as individuals began to tentatively express their allegiance to other groups and ideals. Even the chiefs, who traditionally represented their clans, are now finding mixed constituencies that cross clan boundaries.

## 5. Marine resource management regimes in evolution

Palau is exceptional among Pacific Island nations in its potential for rapid economic development. It has one of the region's most beautiful and diverse coastal and marine environments, and is ideally situated to draw tourists and investors from Asia. Tourism growth and increasing fishing pressure, along with development in other sectors and pressures for physical development, are testing and stressing all of Palau's institutions and positions of authority, both customary and governmental. Control over resources of the sea is being challenged from several directions: from traditional leaders (e.g., clan chiefs charged with custodial responsibilities), from state governments endowed with "ownership" of inshore resources and eager for local economic development, and from the national government, with its broad powers to control the use of natural resources and foreign investment and participation. Tenure over Palau's marine resources is therefore in the process of being re-shaped.

Most marine resource related laws enacted throughout the Pacific since independence have emphasized national goals and jurisdiction. Pulea [12] notes that these laws have strengthened management, but have given little or no attention to the role of custom in such management. The situation is little different in Palau, but some recent local initiatives may portend an important return toward decentralization in management of inshore resources. Although the emerging management regimes do not appear wholly "customary," they do rely on principles and practices that were common in traditional Palau.

The following examples illustrate the degree to which Palau's national, state and traditional authorities claim and exercise jurisdiction over inshore marine resources, and how the extent and balance of control are changing.

### 5.1. National government

The responsibilities and powers of the Palau national government with regard to marine resources are extensive. The constitution mandates the national government to "take positive action [towards the] conservation of a beautiful, healthful and resourceful environment [and the] promotion of the national economy" (Art. VI). The congress is authorized to "regulate the ownership, exploration and exploitation of natural resources" (Art. IX, Section 5).

Laws have long been in place to prohibit destructive fishing methods, control the harvest of trochus and rare species such as sea turtles and dugong, and to prohibit fishing in certain sensitive areas. These laws, however, were adopted from the Trust Territory government, and have rarely been enforced during the last 17 years. The first major act by Palau's congress to address the use of inshore resources was in 1994, when a variety of restrictions was placed on fishing gears, fishing seasons and exports of vulnerable species of reef finfish and shellfish. Enforcement efforts have been moderate.

Neither the executive nor legislative branches have addressed in any depth the role of either custom or the local governments in the management of marine resources.

### 5.2. State governments

One difficult issue faced by the makers of Palau's constitution was the relationship between the national and state governments, an issue closely related to that of statute versus custom, and one equally important with regard to the management of marine resources.

A critical change brought by Palau's colonial administrators was the creation of the political units now recognized as "states" under the constitution. This was a shift toward political centralization, as the previously most important and coherent political, social, and tenurial unit was the village. Each of today's 16 states contains half a dozen or so villages. Each has its own constitution, legislature and executive.

It is at the state level that the authority of traditional leaders has become strongest. All the states incorporate traditional authorities in their governments in one way or another, ranging from advisory functions to representation of certain chiefs in the executive and/or the legislature. But the authority of titled chiefs acting within the state governments has been challenged as unconstitutional. The constitution mandates that the structure of the state governments follow both democratic principles and the traditions of Palau (Art. XI, Section 1), but provides no further guidance to finding a balance between the two conflicting systems. The court has consequently had a difficult time deciding just how far the state governments may veer from democratic principles. In the state of Koror, the House of Traditional Leaders was the executive and had unoverridable veto power over the elected legislature. A lower court decided in 1995 that the government was not democratic enough, but on appeal in 1997, the judgment was overturned [27]. When the issue was subsequently put before the people of the state in a referendum, they chose a slightly more democratic structure, requiring the chiefs to share the executive with an elected Governor and making the chiefs' power to veto subject to override by the legislature. In the state of Airai, the legislators were selected by certain clans, and the governor was chosen from among the appointed legislators. The lack of popularly elected officials, coupled with the fact that Airai's constitution was not adopted by popular referendum (when eventually put on the ballot by order of the court, the referendum failed), led the court to decide that the state government was unconstitutional [28]. Similar not-quite-democratic-enough arrangements in other states may face the same problem and may be forced to be restructured. But notwithstanding these limitations, there is clearly room for substantial representation of the chiefs in the state governments. A separate problem with such mixed governments is the awkwardness of titled chiefs having to deliberate with elected officials, people typically of a class they traditionally would not have consulted with at all.



In Palau, the state governments retain only those powers specifically delegated by the constitution and by statute. One of the few powers given to the states, but a critical one, is "exclusive ownership" of the sea and its living and non-living resources from shore out to 12 miles from the outer edge of the reef (Palau Constitution, Art. 1, Section 2). Just how much control, or real interest, such ownership actually gives to the states remains to be fully revealed, but an outline has begun to emerge through several statutes and court cases.

An assessment of the degree or intensity of the states' interest in their inshore resources is useful because it reflects their incentive and ability to control the flow of benefits from the property. The greater the interest in a resource by an individual or group, the greater the incentive to manage and use the resource in an optimal manner. For example, the fewer fishers sharing a resource, or the higher the exclusivity of the property, the greater is the incentive for each fisher favor long-term over short-term benefits. Exclusivity is not the only important characteristic of property in this regard. Scott [29] suggested six characteristics, the collective magnitudes of which could adequately describe a rights-holder's interest in real property. The six characteristics are exclusivity, duration, quality of title (or enforceability), flexibility, transferability and divisibility. Like some of the novel approaches to privatization of fisheries resources being experimented with in the industrialized countries, such as individual transferable quotas, customary marine tenure systems in the Pacific tended to feature high degrees of many of these characteristics. The question examined here is whether

Palau's current (and still evolving) marine tenure system, centered around the claims of the states (led by a mix of elected and titled leaders), features a comparable degree of real interest.

The "enforceability" and "duration" of the states' marine claims are supported through two constitutional provisions: one that grants "exclusive ownership of all living and non-living resources ..." (Art. I, Section 2) and a second that entitles the states to all revenues derived from the exploitation of resources within its waters, as well as fines collected for violation of any law within that area (Art. XII, Section 6). The courts have somewhat clarified just what rights are conferred on the states by the term "exclusive ownership."

A 1993 court case raised the question of whether the state of Koror could remove a World War II airplane wreck from its lagoon, a wreck protected under national law as part of the Palau Lagoon Monument [30]. Although acknowledging ownership of the airplane by Koror, the court had little problem determining that ownership does not imply that the owner can do whatever he pleases with what he owns. Additionally, it found that the state's constitutional rights of ownership were subject to the national congress' broad grant of power to "regulate the ownership, exploration, and exploitation of natural resources" and to "provide for the general welfare, peace and security" (Art. IX, Section 5). Thus, Koror's rights to the wreck were found to be limited by the national law that prohibits its removal without a permit from the President. Left open was the question of whether the national law's prevention of the state's ability to exploit the wreck constituted a "taking" of property, an action that would require compensation to the owner (Art. XIII, Section 7). Other national laws, such as the current fishing net restrictions and the minimum capture sizes and export restrictions on certain species of finfish and shellfish, would presumably limit the states" rights in the same way.

In 1994, the state of Koror brought a case against a group of fishers accused of violating the state's fishing laws [31]. The authority of the state to enforce such laws was challenged, as the states are accorded only those powers specifically delegated by constitution or statute. Citing a pre-constitution statute that it determined to still be in effect, the court determined that the state did indeed have the authority to enact, enforce and prosecute its own fishing (and other) laws. The same statute, however, limited penalties for state laws to a fine of $100 and/or 90 days in jail. Palau's national legislators have not addressed the issue since then, neither repealing the law nor granting any deeper or broader authority to the states.

The other limitations to enforceability of the states' inshore rights are the practical ones. The high costs of enforcement, particularly marine patrols, constitute one of the biggest challenges in effective marine resource management. Preston [32] cautioned against the enactment of laws in Palau that would require costly marine patrols. Johannes [33] suggested deputizing fishers to enforce fishing laws, to minimize costs and to maximize the involvement of fishers in management. The state of Kayangel, which recently established a marine reserve closed to fishing, has requested the national government to assist in enforcement of the state law.

"Transferability" and "divisibility" of states' rights to inshore resources are limited by the states' inability to permanently transfer title to those resources, but the states



appear free to lend and lease inshore spaces and resources to both insiders and outsiders. One state has leased certain rights to a portion of its reef to a foreign firm to conduct exploratory oil drilling, and several states have considered leasing areas for mariculture.

"Flexibility" is a function of the legal ability of the states to transfer and divide their inshore resources, and of the responsiveness of the states' law-making processes. Regarding the latter, state governments typically consist of a mix of titled and elected leaders. Law-making requires nothing more than initiation and some degree of consensus among these leaders. In this sense it is no different than decision-making in the traditional system, and so should not be any less responsive.

"Exclusivity" is a function of the ability of a state to control and exclude both outsiders and insiders. That the states must share their resources with the national interest to the extent required by national law (such as the law preserving World War II wrecks as a national monument) is one compromise to the exclusivity of their rights. But the states' legal ability to exclude and control outsiders, although not specifically tested in court, is well supported by the constitution. The ability to control insiders is a different problem. It is a function of the degree of cooperation and cohesion within the state, in other words, the degree to which the economic interests of the individual and the group coincide [34]. Johannes [8] noted that community cohesiveness is an index of the potential effectiveness of a tenure system, and observed in Vanuatu that village-based regulation over fishing was being abandoned only in those villages that lacked community unity. It is doubtful that Palau's states today are as cohesive as its villages of the past. But they do appear to be the most viable community-level rights-holding group. With the depopulation of Palau over the last 100 years and migration to its urban center of Koror, most states represent less than a thousand people. Many villages are completely abandoned. Through a combination of a succession of colonial and constitutional mandates and today's demographic situation, it appears that the state has replaced the village as the most cohesive, functional, and viable social and political unit in Palau. If one accepts, then, that today's states roughly reflect the villages of yesterday, the constitutional recognition of state ownership of inshore resources can be viewed as codification of the custom of the villages' rights to inshore resources.

Another factor affecting the exclusivity of the states' rights is the ecological externalities associated with fish resources that may range migrate, and recruit across state boundaries [35]. This problem requires more attention than can be given here, but two points are worth making. First, it is noteworthy that exclusivity is greater with the more sedentary and less ranging animals, such as benthic invertebrates. Second, since the marine areas of the states are larger than those of the villages, exclusivity has apparently increased relative to the older village-centered system. On the other hand, many traditional Pacific Island systems also featured non-geographic rights, such as claims to particular species. It is possible that these rights evolved precisely in order to minimize the externality associated with fishes that range widely.

A final limitation to the exclusivity of the states' claims is the constitutional clause limiting state ownership of inshore resources to the extent that such ownership does not impair traditional fishing rights and practices (Art. I, Section 2). Apparently, this

provision has never been used to challenge the jurisdiction of the states. This may be an indication that customary and state interests largely coincide.

In summary, it appears that the degree of interest of Palau's states in their inshore resources is somewhat less than that held by the villages in the past. However, the degree of interest held by the villages today under the leadership of traditional authorities outside of government is even less. The state governments have integrated traditional authorities to varying degrees and offer an important avenue for expression of customary authority. The importance of this avenue is reflected in the large number of title disputes to reach the courts soon after creation of the states in 1981; most were disputes over titles that had been integrated into the state governments, not ties left outside of government. The states are fairly socially and politically cohesive, and their claims to marine resources enjoy relatively strong legal support. It appears that the stage is set, then, for increasing local control over inshore resources.

As economic development, particularly tourism, accelerates over the next few years and resource scarcity increases, the states are likely to exert more control over their marine resources. Other parties will do the same, however, including individual fishers, chiefs outside the government, local and foreign businesses, and the national government. This will be the test of just how strong the states' interest is and how much that interest is shared by customary leaders. Expression of this interest has been seen in several recent state-level conservation initiatives and in marine border disputes between states.

The one border dispute to reach the courts so far was between Koror and Peleliu, the two states enjoying most of the country's tourism development. Twelve years were spent trying to resolve through customary means a dispute over overlapping marine claims. The problem reached a nearly violent climax in 1995 when government personnel from both states began evicting and confiscating the catch from fishers of the opposing states that were fishing in the disputed area. The court settled the matter in favor of Koror, which, unlike Peleliu, had not tried to claim any more territory than it had as a municipality under the Trust Territory government. The court rejected Peleliu"s arguments that the states" post-constitution marine territories should be reshaped according to "historical and traditional boundaries" [36].

Koror State, which harbors Palau's most valuable and most intensively used marine areas, has taken more initiative than any other state in controlling the use of its marine resources. It maintains a system of licenses and fees for fishing, diving and marine touring, and enforces restrictions on certain fishing gears and fishing areas. In 1997 Koror went so far as to put most of its reef and lagoon areas, including small islands and beaches popular among tourists, off-limits to non-Palauans. Far from the urban and tourism center of Koror, two states, Kayangel and Ngiwal, have established marine reserves.

While these initiatives demonstrate substantial progress in state-based management, the management capacities of the states are still tenuous. There are several factors that will probably make or break that capacity within the next few years.

First, the small populations of most of the states lend themselves to social cohesion. But population growth may weaken that cohesion. This will be tested within the next decade when the villages and states of Palau's largest island, Babeldaob, are



connected by paved road for the first time. The road will not only open links among the states, but will allow families that have temporarily been residing in the urban center of Koror to re-settle in their home villages.

Second, marine law enforcement is expensive. It remains to be seen whether the states can arrange cost-effective mechanisms to enforce their management initiatives.

Third, and most critically, it is unclear to what degree the national government will support the states' authority over inshore resources. Johannes [8] attributed the recent upsurge of village-based management initiatives in Vanuatu in large part to the national fisheries department's initiative to provide advice on trochus management to the local resource owners, along with implicit support for local management initiatives. Palau's executive branch could do the same, providing technical advice and enforcement support. The justice ministry's apparent hesitancy to prosecute cases concerning state laws is not a positive indication that such support is forthcoming. It is unclear how the government will respond to a request by Kayangel State for assistance in enforcing its new marine reserve law. The only positive indication of national support for state authority came in 1995 with the adoption of national-level regulations that govern the harvest of ornamental reef organisms. While the regulations established a national-level license system and nation-wide restrictions on the harvest of those resources, they also recognized ownership of those resources by the states, and specifically provided that no license is valid without endorsement of the appropriate state.

The national legislature could choose to support the states through legislation clarifying and expanding the states' jurisdiction and enforcement powers concerning marine resources. It could also mandate the executive branch to provide the types of assistance mentioned above. So far, the legislature has been silent on such issues. If state management is going to be effective, the national government will have to divest itself of some of its authority and invest more of its resources into the states.

A final and not insubstantial obstacle facing the states is a weak movement to dissolve the state governments altogether. The motivation has little to do with the authority of the states but is more concerned with the financial burden imposed by 16 bulky state governments (in a country of only 18000 people). It is possible that action could be taken to reduce the size and structure of the state governments without totally dismantling them.

### 5.3. *Traditional authorities*

There are several recent examples of traditional leaders exerting their authority over marine resources. The chiefs of Ngarchelong and Kayangel negotiated an agreement to share fishing grounds, and together imposed a closure over a number of reef channels known to be sites for spawning aggregations of reef fishes. Within these two states, respect for this law and for the chiefs is strong, and compliance is believed to be high. But the more meaningful test of this and similar customary laws is in compliance by fishers from other villages. Such a test occurred in 1996, when a fisher from Koror was caught violating the Kayangel/Ngarchelong fishing ground closure. His boat and fishing gears were confiscated by the chiefs of Ngarchelong. After

negotiations between the chiefs of Koror and Ngarchelong, a fine was paid to Ngarchelong. This appears to be a rare event, however, and the ability of chiefly authorities in most states to enforce this type of edict is considered to be precarious, as reflected in the marine reserve law recently enacted by Kayangel State: The area was originally declared closed to fishing by the local chiefs, but to improve its effectiveness with outsiders the chiefs convinced the state legislature to pass a law that mirrored their edict.

With the empowerment of the national and state governments, the authority of traditional leaders has inevitably eroded. Government has become a major source of wealth, so integration into or close association with the government appears to be the most effective way for traditional chiefs to retain their authority. The constitutions of most of Palau"s states incorporate some, but not all, chiefly positions into the legislative or executive branches. It is apparent that those chiefs integrated into government have retained more influence than those left out.

A 1992 court decision will likely have critical effects on the authority of traditional leaders and on the relationships between those leaders and the state governments. When a nightclub owner kept his club open after the curfew set by Koror State's House of Traditional Leaders, he was forcefully removed to his home island and banished from Koror for three months. The man challenged in court the authority of the House to interfere with his freedom of movement. The court decided in his favor, finding no legal authority for his banishment [37]. The decision was not based on the finding that such banishment was in violation of the man"s fundamental rights, but rather that if the chiefs are to exercise their customary authority, they must do it precisely according to custom. That the House of Traditional Leaders was enforcing its edict as part of and under the color of the Koror State government implied that it was not acting as a customary institution. It therefore could not exercise any authority beyond that specifically delegated to the state governments. Like the court decisions over the series of title disputes in the 1980s, this decision is another example of the interpretation that custom consists of an explicit, albeit unwritten, set of rules, processes and authorities. One implication is that custom is incapable of evolution. If customary law is not already archaic, this kind of interpretation might make it so. Most critically, it checks the growing tendency for the chiefs to express their authority through the state governments, a tendency that appears to have empowered both the states and the traditional leaders. The result will be to weaken both the states and the chiefs, ultimately shifting the balance of power to the national government.

## 6. Conclusions

A variety of factors has been recognized as having contributed to the erosion of custom in the Pacific. One is independence. Ghai [1, p. 42] concludes that for the Pacific in general, the independence constitutions have, despite all their recognition of custom, "stacked the cards on the side of statute." Many of the differences between custom and the Western models of law on which the Pacific constitutions are based are simply irreconcilable.



In Palau, some customary authorities, processes and rules have remained strong and influential, particularly in those cases where such custom has been explicitly integrated into government. Chiefly positions that have been incorporated into the executive or legislative branches of the state governments appear to exert greater influence than those outside of government. At the same time, the local state governments have gained security and legitimacy from close association with the chiefs. Customary rules and processes that have been "established" by the courts have similarly gained legitimacy, but an incidental result of court intervention has been the increasing interpretation of custom as an explicit, standard, unchanging set of rules, processes and authorities.

The values of the Palauan people are clearly changing, and some of the customary values and practices of one or two hundred years ago would certainly conflict with those prevailing today. Others are still strong and can be seen in politics at all levels, such as the legitimacy of elitism and the importance of consensus. Some of the most important impacts to custom stem from the decline of the clan as the most cohesive and important social group. The constituencies of both titled and elected leaders, for example, increasingly cross clan lines. One possible indication of how well the constitution reflects the values of Palauan society can be seen in the voters' recent rejection of a referendum calling for a constitutional convention, their first opportunity to do so in 17 years.

Many aspects of customary marine resource management in Palau have been eroding for the reasons given above. Customary *authorities* in most villages and states may remain legitimate and influential within their villages, but their control over outsiders is increasingly limited. The state governments, however, have provided an avenue for re-empowerment of customary leaders, and the resulting mixed leadership in many states is exerting more control over increasingly scarce inshore resources.

Customary *rules* and *processes* regarding marine resource use – especially those related to enforcement – are somewhat limited by constitutional provisions guaranteeing due process, equal protection, and freedom of movement, and prohibiting corporal and cruel punishment. But customary processes for making rules, which relied on building consensus among leaders, can and do persist both within and outside of government. Many of the types of rules used in the past, such as temporary fishing closures over particular areas and species, are consistent with modern legal systems and are increasingly being applied today. Others, such as rules regarding the distribution of the catch, are seen as no longer relevant. Customary processes of arbitration are still used, with chiefs petitioning and negotiating on behalf of their constituents, but serious disputes are likely to reach the national courts. Although the courts endeavor to interpret and apply custom, the process is very different than the traditional one, and the result is the effective codification of at least some aspects of custom, increasing the legitimacy of those aspects, but probably at the expense of others.

One important expression of Palau's customary authorities, rules, and processes was its marine tenure patterns, which featured village-level control. This is a critical aspect of custom in terms of marine resource management, and it is completely consistent with Palau's constitution. Ownership of inshore resources is accorded to

the 16 states, socio-political units led by a mix of elected and titled leaders and not dissimilar to the traditional villages in their cohesion. Incorporation of such a provision in the constitution, therefore, can be seen as an example of preserving some of the underlying principles of custom. But this nominal ownership of marine resources by the states is constrained by competing interests of the national government, and somewhat ironically, by "customary" interests, as interpreted by the courts. Although customary authorities may find it advantageous to be associated with the state governments, as well as *vice versa*, court decisions have limited the degree of allowable integration (state governments must not stray too far from democratic principles) and indicated that such association may nullify the constitutionally-recognized authority of the chiefs (custom in government is not customary).

Lacking any legislative action to sort out the ambiguities and conflicts within the constitution, the courts will likely continue with their narrow interpretation of the constitutional provisions regarding custom. Although such a narrow interpretation may be the best way to faithfully preserve the traditions of the past, it is certainly not the best way to preserve the effectiveness of those traditions with regard to modern problems. In Palau's case, the effect will be to increasingly cut off customary authorities from an important power base, the state governments, and to weaken the marine resource claims of both the states and customary authorities *vis-à-vis* the national government.

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## References

[1] Ghai Y. Constitution making and decolonisation. In: Ghai Y, editor. Law, government and politics in the Pacific Island states. Suva, Fiji: Institute of Pacific Studies, University of the South Pacific, 1988:1–53.
[2] Ruddle K, Hviding E, Johannes RE. Marine resources management in the context of customary tenure. Marine Resource Economics, 1992;7:249–273.
[3] Smith A. Strategies for acquiring and using traditional marine knowledge. In: South GR, Goulet D, Tuqiri S, Church M, editors. Traditional marine tenure and sustainable management of marine resources in Asia and the Pacific. Proceedings of the International Workshop 4–8 July, 1994, Suva, Fiji: International Ocean Institute-South Pacific, 1994:257–265.
[4] Johannes RE. Traditional marine conservation methods in Oceania and their demise. Annual Review of Ecology and Systematics. 1978;9:349–364.
[5] Panayotou T. Comments on Kenneth Ruddle's "The organization of traditional inshore fisheries management systems in the Pacific." In: Neher PA, Arnason R, Mollett N, editors. Rights based fishing (Series E: Applied Sciences, vol. 169). Dordrecht/Boston/London: Kluwer Academic Publishers, 1989:86–94.
[6] Hviding E, Baines GBK. Community-based fisheries management, tradition and the challenges of development in Marovo, Solomon Islands. Development and Change, 1994;25:13–39.



[7] Johannes RE. Words of the lagoon: Fishing and marine lore in the Palau District of Micronesia. Berkeley/Los Angeles/London: University of California Press, 1981.
[8] Johannes RE. Government-Supported, Village-Based Management of Marine Resources in Vanuatu (FFA Report 94/2). Forum Fisheries Agency, Honiara, Solomon Islands, 1994.
[9] Ruddle K. A Guide to the Literature on Traditional Community-Based Fishery Management in the Asia-Pacific Tropics (FAO Circular No. 869). Food and Agriculture Organization of the United Nations, Rome, 1994.
[10] Ruddle K. External forces and change in traditional community-based fishery management systems in the Asia-Pacific region. Maritime Anthropological Studies, 1994;6:1–37.
[11] Crocombe R. Customary tenures and incentives to produce. Paper produced for the Seminar on the Subsistence Sector in the South Pacific, University of the South Pacific, Suva, Fiji, 1974.
[12] Pulea M. An Overview of Constitutional and Legal Provisions Relevant to Customary Marine Tenure and Management Systems in the South Pacific (FFA Report 93/23). Forum Fisheries Agency, Honiara, Solomon Islands, 1993.
[13] Powles G. Law, courts and legal services in Pacific societies. In: Powles G, Pulea M, editors. Pacific courts and legal systems. Suva, Fiji: University of the South Pacific, 1988:6–36.
[14] Trolue F, Agniel G. Customs and state laws in New Caledonia. In: Powles G, Pulea M, editors. Pacific courts and legal systems. Suva, Fiji: University of the South Pacific, 1988:207–210.
[15] Udui v. Dirrecheteet, 1 ROP Intrm. 114 (App. 1984).
[16] Udui v. Dirrecheteet, 1 ROP Intrm. 114 (App. 1984), 116, citing Shipley v. Pittsburgh, 83 F.Supp. 722, 749 (1949).
[17] Uehara v. Obeketang, 1 ROP Intrm. 267 (Trial 1985).
[18] Espangel v. Diaz, 3 ROP Intrm. 240 (App. 1992).
[19] Blesam v. Tamakong, 1 ROP Intrm. 578 (App. 1989).
[20] Ngirmang v. Orrukem, 3 ROP Intrm. 91 (App. 1992).
[21] Johannes, RE. Implications of traditional marine resource use for coastal fisheries development in Papua New Guinea. In: Morauta L, Pernetta J, Heaney W. editors. Traditional conservation in Papua New Guinea: implications for today (Monograph 16). Institute of Applied Social and Economic Research, Boroko, Papua New Guinea, no date, pp. 239–249.
[22] Ruddle K. The organization of traditional inshore fishery management systems in the Pacific. In: Neher PA, Arnason R, Mollett N. (editors). Rights based fishing (Series E: Applied Sciences, Vol. 169). Dordrecht/Boston/London: Kluwer Academic Publishers, 1989;73–85.
[23] Thomas -PEJ, editor. Report of the Workshop on Customary Tenure, Traditional Resource Management and Nature Conservation (Nouméa, New Caledonia, 28 March – 1 April 1988). South Pacific Commission, Nouméa, New Caledonia, 1989.
[24] Hviding E, Ruddle K. A Regional Assessment of the Potential Role of Customary Marine Tenure (CMT) Systems in Contemporary Fisheries Management in the South Pacific (FFA Report 91/71). South Pacific Forum Fisheries Agency, Honiara, Solomon Islands, 1991.
[25] Crocombe R. Workshop overview. In: South GR, Goulet D, Tuquri S, Church M, editors. Traditional marine tenure and sustainable management of marine resources in Asia and the Pacific. Proceedings of the International Workshop 4–8 July, 1994. Suva, Fiji: International Ocean Institute — South Pacific, 1994:291–300.
[26] Churney R. Political culture and the political process: a look at Fiji, American Samoa and Palau. Paper presented at the 5th Pacific Island Political Studies Association Conference in Palau, December 1996.
[27] Koror v. Becheserrak, 6 ROP Intrm. 74 (App. 1997)
[28] Teriong v. Airai, 1 ROP Intrm. 664 (App. 1989).
[29] Scott A. Development of property in the fishery. Marine Resource Economics, 1988;5:289–311.
[30] Toribiong v. Gibbons, 3 ROP Intrm. 419 (Trial 1993).
[31] Koror v. Blanco, 4 ROP Intrm. 208 (App. 1994).
[32] Preston GL. Inshore fishery resource management in Palau (unpublished report). South Pacific Commission, Nouméa, New Caledonia, 1990.

[33] Johannes RE. Some Suggested Management Initiatives in Palau's Nearshore Fisheries, and the Relevance of Traditional Management (Technical Report 91.14), Marine Resources Division, Republic of Palau, 1991.
[34] Dahl C. Traditional marine tenure: a basis for artisanal fisheries management. Marine Policy. January 1988;40–8.
[35] Haines AK. Traditional concepts and practices and inland fisheries management. In: Morauta L, Pernetta J, Heaney W, editors. Traditional conservation in Papua New Guinea: implications for today (Monograph 16). Institute of Applied Social and Economic Research, Boroko, Papua New Guinea, n.d., 279–291.
[36] Peleliu v. Koror, 6 ROP Intrm. 91 (App. 1997).
[37] Koror v. Ngiraingas, 4 ROP Intrm. 15 (App. 1993).