

# Pacific Island Biodiversity Law and Policy: Issues for NBSAP Revision

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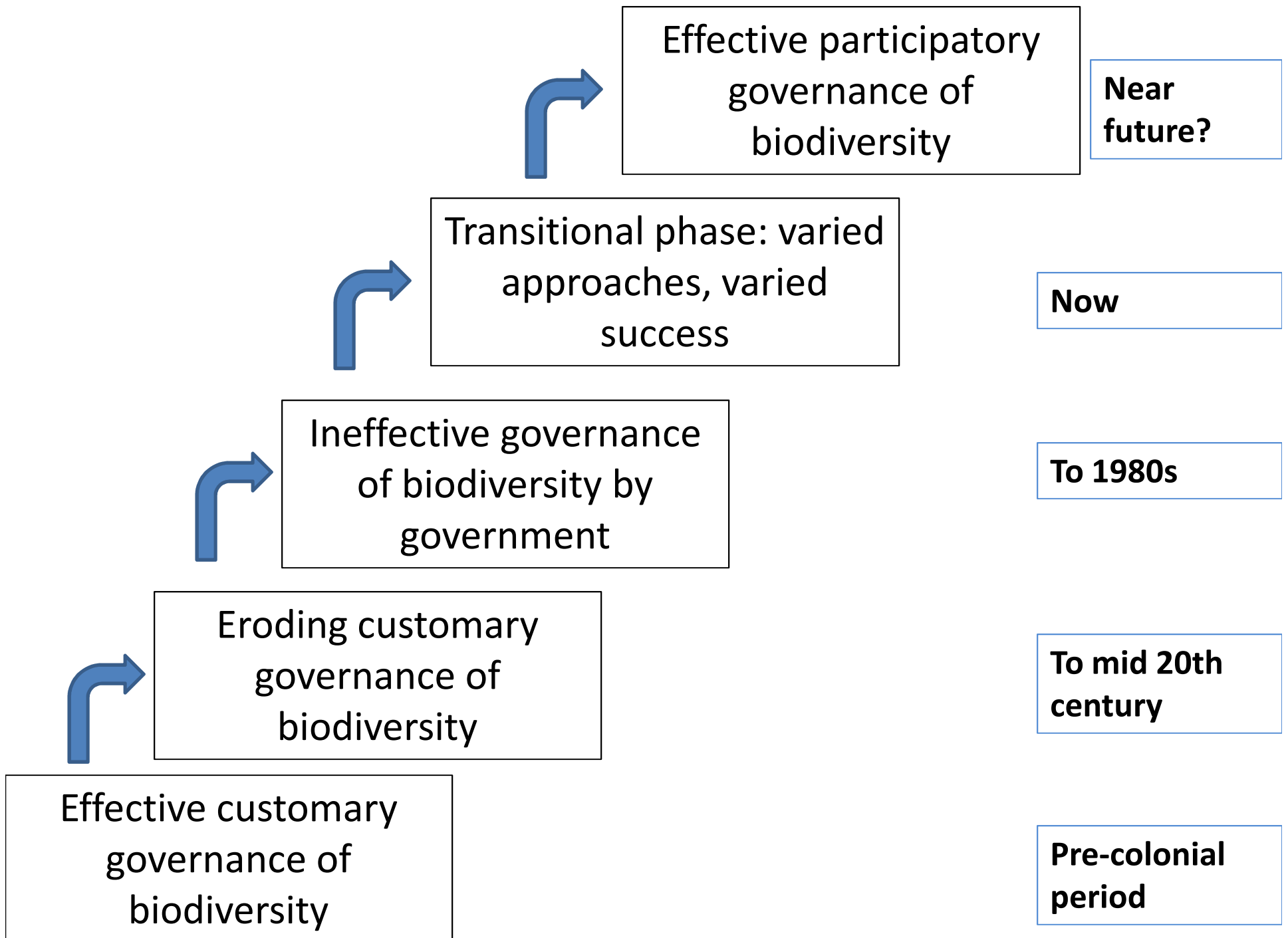


# The task (in 20 minutes!):

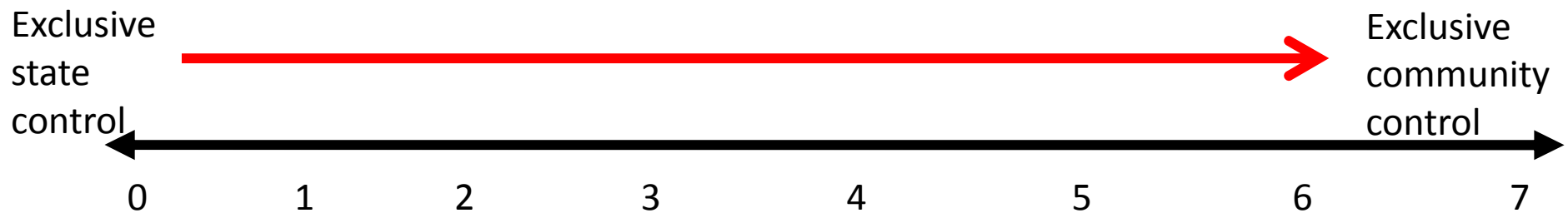
1. Overview biodiversity policy and law in the Pacific island region to date.
2. Discuss the effectiveness of biodiversity policy and law in the Pacific.
3. Identify challenges and constraints to developing and implementing biodiversity policy and legislation in the region.
4. Discuss the most effective (policy) forms for the revised NBSAPs to take.

# Types of Pacific biodiversity law:

- **Customary or traditional law** – ancient, local, belonging to specific groups of people and integrally linked to specific landscapes and marine areas.
- **Government or formal law** – comparatively recent, originating in Europe and reflecting Roman, English and French histories of highly centralised authority.
- **International law** – rules and agreements governing relations between nation states, e.g. CBD and COP decisions.
- **Project law** - Regulations and procedures that arise in the course of development cooperation. The law of aid projects.



# Biodiversity Governance Participation Continuum



1. **Passive participation** – communities receive information about state management
2. **Information-giving** – communities both receives and provides information
3. **Participation for material incentives** – e.g. paid research informants, economic incentives for conservation.
4. **Consultation** - state consults but defines and decides both problems and solutions.
5. **Functional participation** – communities make decisions that meet pre-determined objectives. Occurs after major decisions already made by state (or donors or BINGOs)
6. **Interactive participation** - joint analysis, joint planning, significant degrees of local decision-making.
7. **Self-mobilisation** – biodiversity governance independent of external institutions.

# Transition reflected in regional action strategies

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## Action Strategy for Protected Areas in the South Pacific Region

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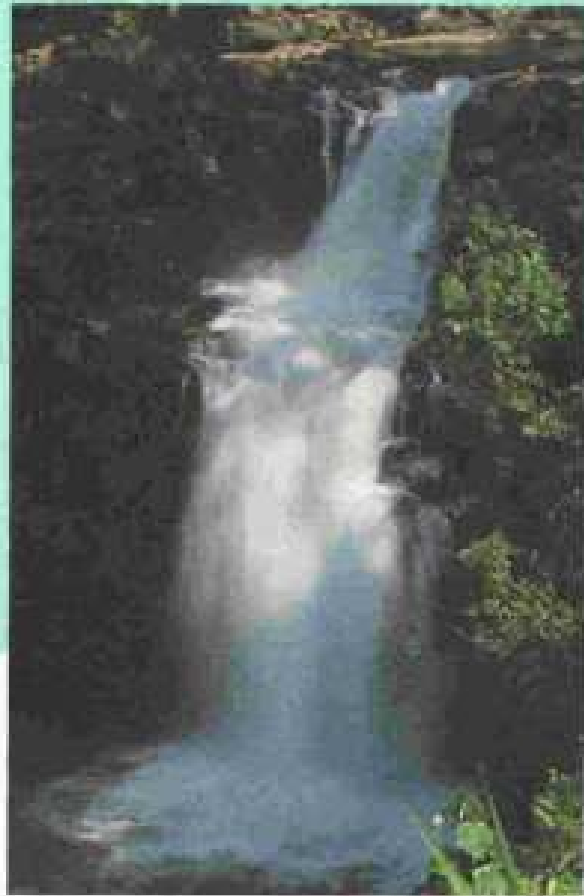
Prepared during the Third South Pacific National Parks and Reserves Conference, Apia, Western Samoa, 24 June - 3 July 1985

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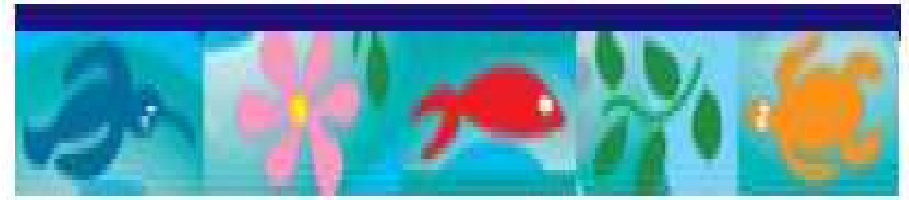
## Action Strategy for Nature Conservation in the South Pacific Region

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Prepared during the Fourth South Pacific Conference on Nature Conservation and Protected Areas, Port Vila, Vanuatu, 4-12 September 1989



**Action Strategy  
for Nature Conservation  
in the South Pacific Region  
1994 - 1998**



# **Action Strategy for Nature Conservation in the Pacific Islands Region, 2003-2007**

**Mainstreaming nature conservation**



# Action Strategy for Nature Conservation and Protected Areas in the Pacific Island Region 2008-2012

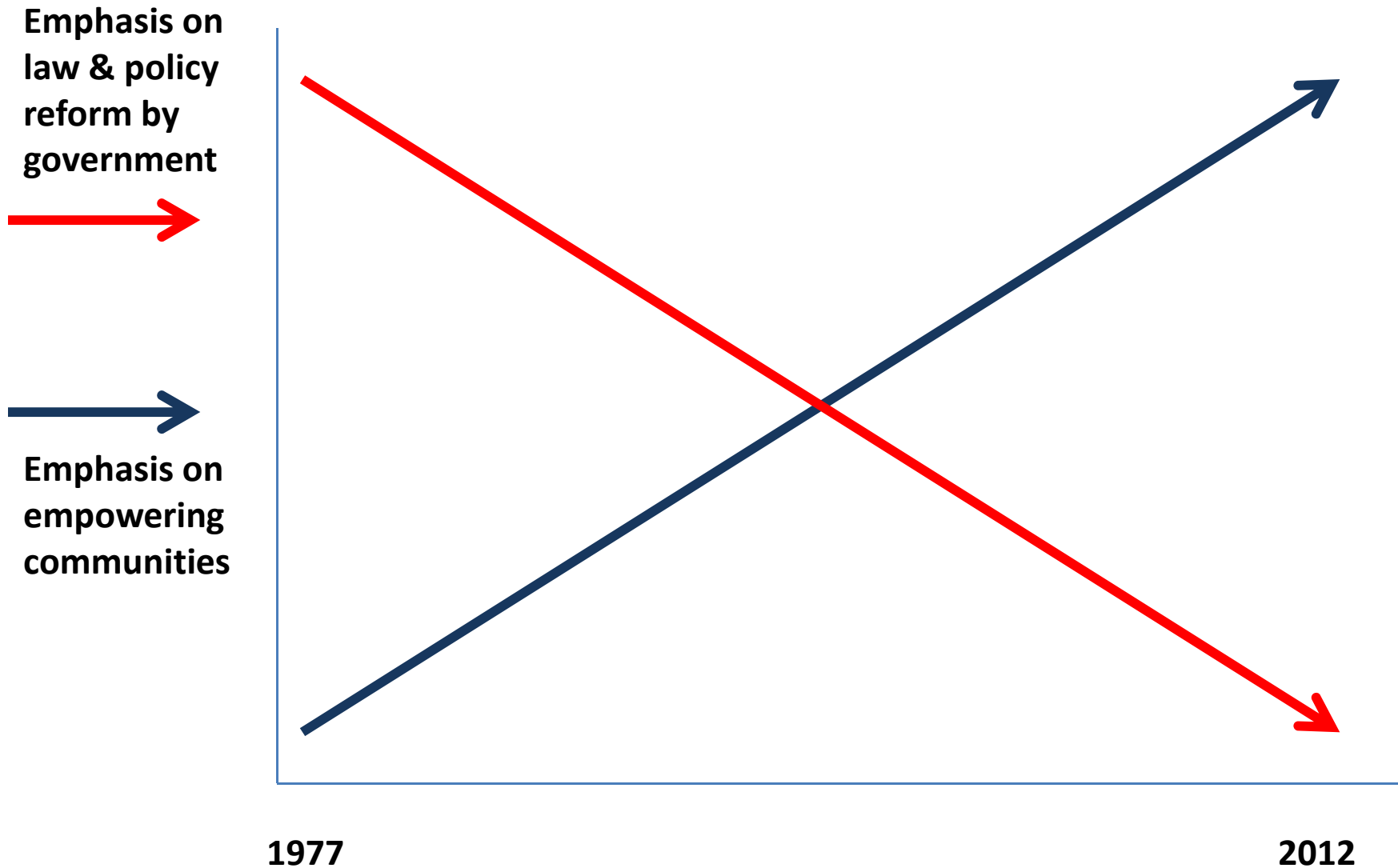


Empowering local  
people,  
communities and  
Pacific institutions





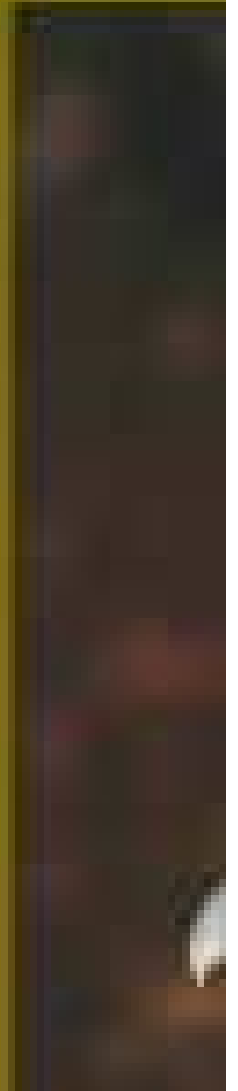
# Law in Pacific Regional Nature Conservation Plans



# **Success of government-centred biodiversity policy and law relies upon . . .**

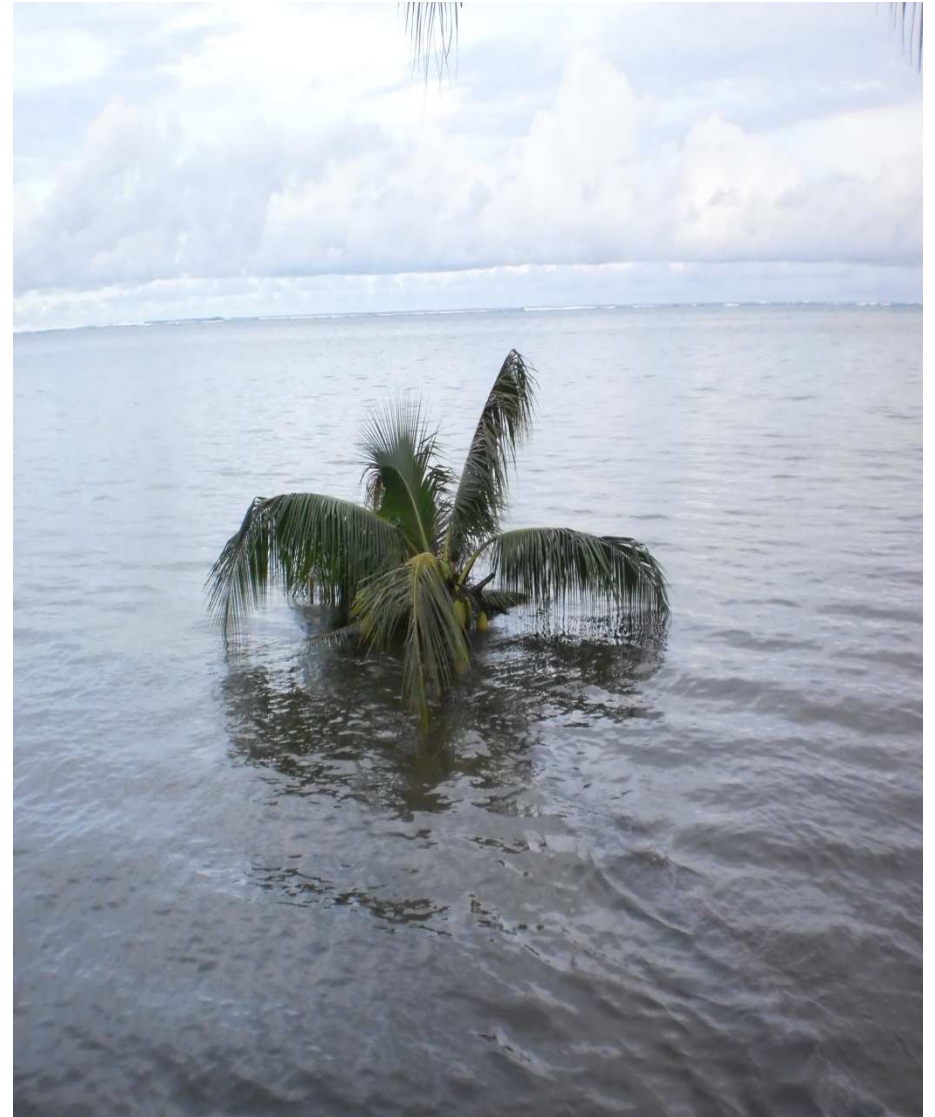
- Government agencies possessing high levels of scientific and other technical knowledge about ecosystems, resource uses and users.
- Government agencies having clear authority to determine how, where and when citizens use natural resources.
- Government agencies exercising effective control over land and marine space, by coercive force if necessary.
- Other factors may include low levels of reliance among populations on subsistence activities for their livelihoods, and an absence of deeply-held cultural connections to land and resources

**Empowering local  
people,  
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# How effective has Pacific island biodiversity policy and law been?

- Some important and notable successes.
- Many shortcomings and failures.
- Many unimplemented plans.
- The general trend is towards degradation.
- Where it is effective, is this due to an NBSAP?



# Examples of successful innovation in Pacific biodiversity law and policy

## **FISHERIES MANAGEMENT BILL 2011**

### **SAMOA**

#### *Arrangement of Provisions*

#### **PART VII**

#### **VILLAGE**

#### **COMMUNITY**

#### **FISHERIES BY-LAWS**

29. Village Community to develop fisheries by-laws
30. Approval of Village Fisheries by-laws
31. Monitoring of Village Fisheries By-Laws
32. Breach of Village Fisheries By-Laws
33. Revocation of Village Fisheries by-laws

- Samoan inshore fisheries
- Vanuatu Community Conservation Areas
- Fiji Locally Managed Marine Area Network
- Pohnpei MPAs
- PNG Local Government initiatives

# Challenges and Constraints to Effective Biodiversity Policy and Law



- Erosion of traditional ecological knowledge and systems of customary authority.
- Complexities arising from customary and communal land tenure.
- Increasing populations with expectations of higher incomes and modern consumption patterns.
- Culture of distrust between local communities and government agencies, particularly in regards to the control of natural resources.

# Challenges and Constraints continued

- Government agencies with inadequate technical, human, financial, enforcement and communications capacity.
- Laws (and policies) that empower government agencies when a better proven approach is to empower communities.
  - These things lead to a
- Large gap between the *de jure* (what the law says) and the *de facto* (what actually happens).



# Challenges and Constraints continued

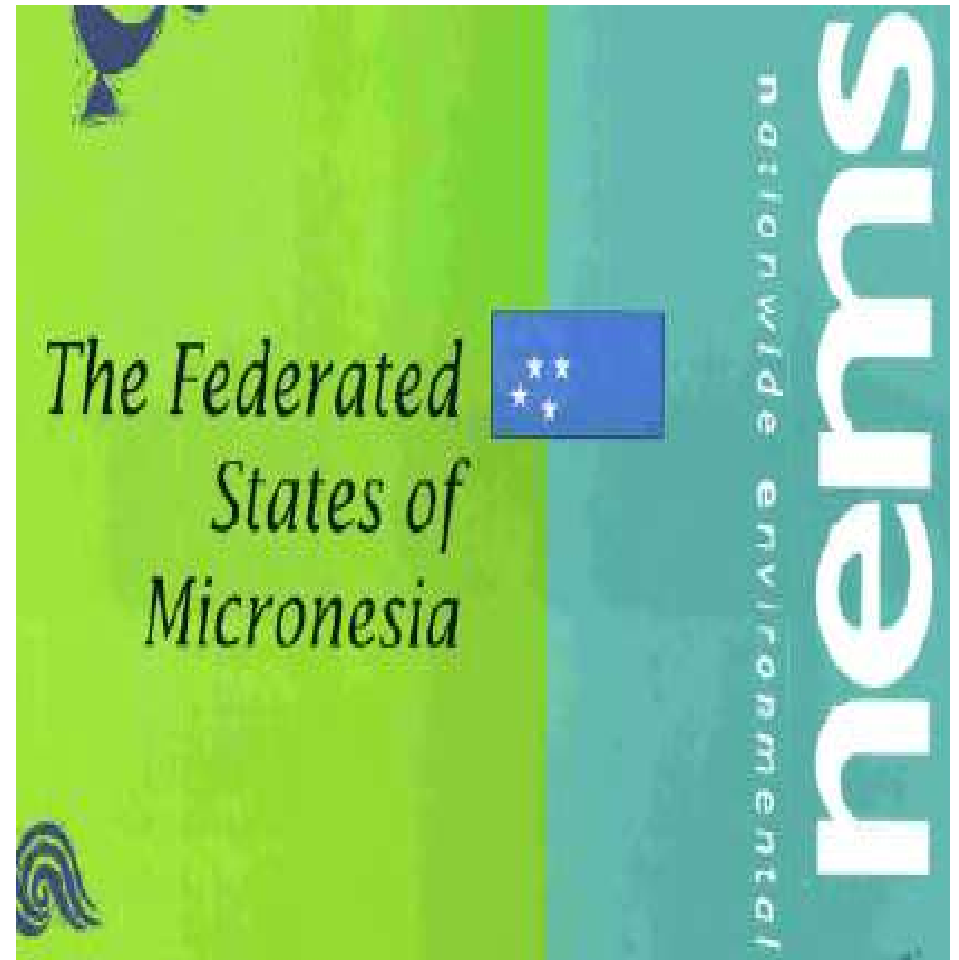
- Donor dependency - fragmentation of planning and implementation due to heavy reliance on donor funding, i.e. national policies are forced to 'follow the money' rather than agreed plans or strategies.

*The point ... is to play the system so that it disgorges the money that the program provides. Whether these funds are used to best effect is a secondary concern, something to be seen to with whatever energy remains after the exhausting task of getting the money released. Fr Fran Hezel, 2003*



# Who remembers the NEMS?

- Early 1990s –National Environmental Management Strategies
- Many parallels with NBSAPs
- Broader scope, but in essence very similar
- By 1994 all Pacific island countries had completed NEMS and environmental law reviews by 1994



# Old plans on dusty shelves

*“There is no escaping the fact that much hard work lies ahead of the central players if these NEMS are not to win the fate of many other planning documents gathering dust on some forgotten shelf.”*

FSM Nationwide Environmental Management Strategy, 1993

# How can revised NBSAPs avoid this fate?

- General principles:
  - **Ownership, ownership, ownership**
  - High-level political commitment
  - Broad stakeholder engagement – NGOs as mediating institutions are very often a key to success.
  - Consistency and coherence – careful focus on highest priorities rather than a grab-bag of actions.
  - Integration with related plans and strategies such as National Sustainable Development Plans, National Adaptation Plans of Action, sectoral plans etc either by cross-reference or **actual integration**.

# Examples of Specific Law and Policy Mechanisms

- Complete revision of core environmental policies and laws in direct response to NBSAP.
- Reference NBSAP within key legislation, e.g. objectives or preamble of key environment legislation.
- Require decision-makers to ensure decisions are consistent with the NBSAP when determining , e.g. EIA approvals, foreign investment permits, fishing licenses, forestry concessions, etc.
- Provide appeal or review mechanisms for 3<sup>rd</sup> parties to hold government to account for those decisions.
- Negotiate donor funding to be country-driven and linked directly to NBSAPs implementation.

# Be bold – it's *your* NBSAP

“There is no ‘right or wrong’ way to produce an NBSAP, and no fixed criteria or ‘mandatory’ checklist that nations are required to follow. It is very much up to individual nation states what approach they feel best suits their needs and challenges.”

COMSEC/SPREP Pacific  
NBSAP Review 2007



**Thank you, and good luck!**



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