

# BOUGAINVILLE INDEPENDENCE AND ITS IMPLICATIONS FOR FISHERIES: A FRESH APPROACH TOWARDS CO-OPERATIVE OCEANS MANAGEMENT

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## Introduction

Bougainville's independence, if achieved, will have implications for the international maritime and fisheries relations between Solomon Islands, Papua New Guinea (PNG) and Bougainville in particular, and the wider Pacific Islands more broadly. As an independent state, Bougainville would be entitled to a 12-mile territorial sea and 200-mile exclusive economic zone (EEZ) and the concomitant rights and responsibilities that are often associated with these maritime zones.

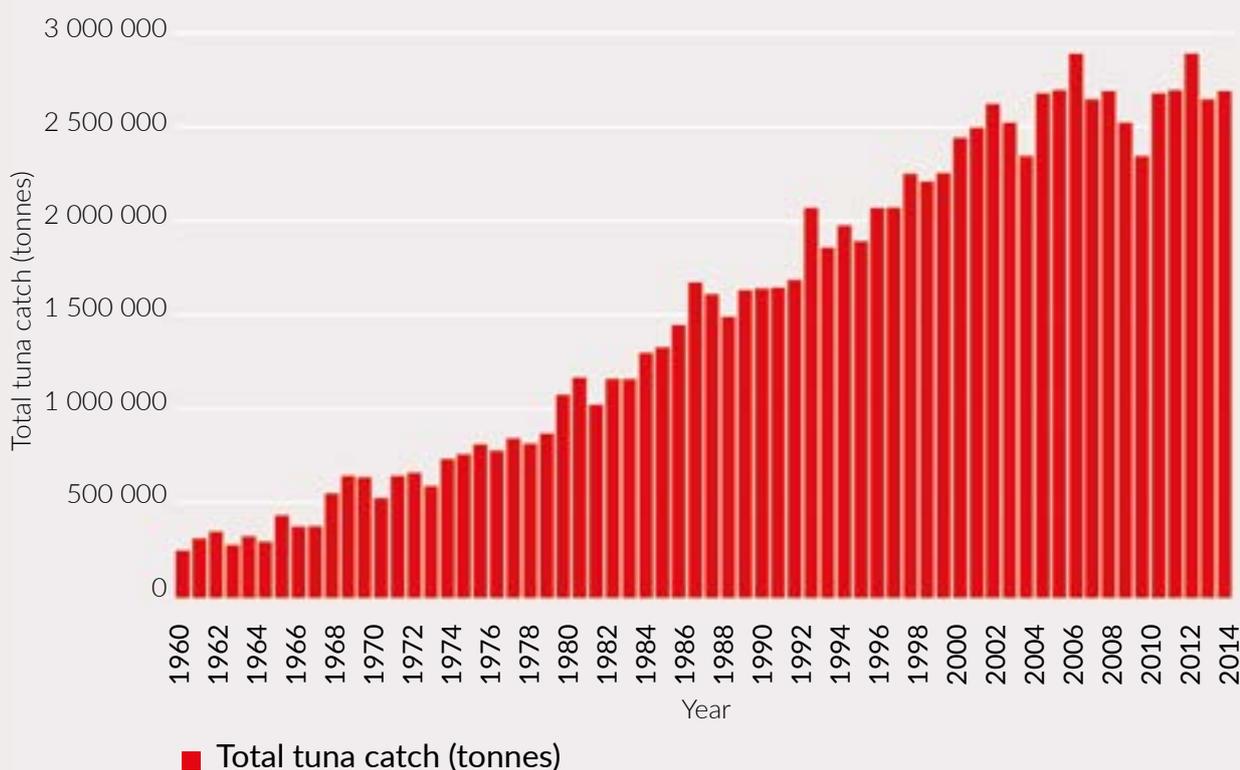
In this paper, the ramifications for an independent Bougainville in the context of the current international maritime and fisheries regime are briefly surveyed. It is argued that independence will provide Bougainville with an opportunity to pursue a forward looking, innovative, rights-based approach to oceans management. Furthermore, there is potential for an independent Bougainville to shape its relations beyond the narrow limits of

statehood by exploring options that would lead to more collaborative and innovative oceans management while at the same time building on its cultural links with the Solomon Islands and PNG.

Before proceeding, it is important to note that subsistence fisheries are a significant source of nutrients (ie protein) and food security in the Pacific. Further, subsistence and small-scale commercial fisheries supports rural economies across the Pacific and can be an important source of cash income for both women and men.

Fisheries are also an important source of revenue for Pacific nations. Graph 1 gives an indication of the total tuna catch from the Western and Central Pacific Ocean (WCPO). Table 1 provides the value of the catch by national waters of Pacific Island states. These provide an indication of what Bougainville can potentially earn under a well-managed fishery working with other Pacific Island states.

**Graph 1: Total WCPO tuna catch (1960-2014)**



Source: Tuna Fishery Yearbook 2016, Western and Central Pacific Fisheries Commission, 2017

**Table 1: Value of catch by national waters US\$ (Millions)**

|                         | 2014 | 2015 | 2016 |
|-------------------------|------|------|------|
| <b>Cook Islands</b>     | 51   | 51   | 46   |
| <b>Fiji</b>             | 37   | 47   | 46   |
| <b>FSM</b>              | 269  | 264  | 330  |
| <b>Kiribati</b>         | 1242 | 936  | 702  |
| <b>Marshall Islands</b> | 168  | 69   | 166  |
| <b>Nauru</b>            | 268  | 86   | 195  |
| <b>PNG</b>              | 562  | 272  | 496  |
| <b>Palau</b>            | 25   | 10   | 25   |
| <b>Samoa</b>            | 5    | 6    | 9    |
| <b>Solomon Islands</b>  | 264  | 312  | 326  |
| <b>Tokelau</b>          | 39   | 70   | 25   |
| <b>Tonga</b>            | 5    | 9    | 13   |
| <b>Tuvalu</b>           | 153  | 107  | 184  |
| <b>Vanuatu</b>          | 27   | 24   | 30   |

Source: Pacific Islands Fourm Fisheries Agency, WCPFC Area Catch Value Estimates, Value of WCPO tuna fishers, 2017.

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## Shifting boundaries: what independence will do

States are for purposes of international law traditionally defined as having a territorially-defined boundary, a population and capacity to conduct international relations. There are some states who arguably do not have all three characteristics but are still considered as states. For example, the international boundaries of Israel are in some respects unsettled but no one denies its right to exist as a nation. There are some doubts that Taiwan is a state because China considers it as its Province but this has not stopped some countries from engaging diplomatically with it nor most from

trading with it making Taiwan among the top 20 economies in the world. There is also the Principality of Monaco and the City State of the Vatican, whose geographic boundaries are scanty but no one doubts their competence to conduct international relations and no one has refused diplomatic ties with them.

If Bougainville were to become independent, it would be the newest and youngest country in the modern era since South Sudan became independent in 2011. Bougainville would be entitled to a maritime boundary because it will be an ocean state. Thus, it would have the right to claim a 12-mile territorial sea and a 200-mile EEZ. These are rights that it would have under customary international law but in order to avoid any doubts as to the legal powers for it to declare such extended maritime zones, one of its first sovereign acts should be to accede to international conventions where these rights are set out. These include the 1982 *United Nations Convention on the Law of the Sea*<sup>1</sup> (LOSC), and the 1995

Boat used for fishing and travelling around the coast



Photo credit: Christina Hill



Photo credit: Christina Hill

***The status of the biodiversity of its surrounding waters is not well known but one can only assume that it swells with rich seafood, marine organisms and ecosystem properties that have considerable management value.***

*United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*<sup>2</sup> (UNFSA). They also include regional agreements such as the 2000 Convention for the Management and

2. United Nations, *The United Nations Convention on the Law of the Sea*, UNGA, (New York: United Nations, 1982).

3. United Nations, *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, UNGA (New York: United Nations, 1995).

Conservation of the Highly Migratory Fish Stocks in the Western and Central Pacific (WCPFC), the Convention establishing the Pacific Islands Forum Fisheries Agency, the Nauru Agreement for the Management of Common Fish Stocks, and the Palau Arrangement for the Management of the Western and Central Pacific Tuna Fisheries which is the overarching umbrella framework that establishes the Longline and Purse Seine Vessel Day Schemes (VDS).

The lines separating Solomon Islands and Bougainville will have to be redrawn on its southern side while new lines demarcating the division between Bougainville and PNG will also have to be negotiated. Article 56 of the LOSC gives states the right to have an EEZ that extend beyond the baselines up to a distance of 200 miles. Bougainville will be entitled to a territorial sea that extends up to 12 miles and to claim a 200 mile EEZ. Its sovereignty would extend to areas where as a Provincial Government and subsequently as



Photo credit: Christina Hill

an Autonomous Region, it has never had to exercise jurisdiction.

The status of the biodiversity of its surrounding waters is not well known but one can only assume that it swells with rich seafood, marine organisms and ecosystem properties that have considerable management value. Its neighbours, PNG and Solomon Islands, have well established tuna processing plants and a rich and diverse coastal fishery and therefore one can only assume that Bougainville also has the same albeit untapped potential. All these rich diverse and valuable ecosystems would fall within the rights of Bougainvillians. Under international fisheries law, Bougainville would have sovereign rights in its EEZ to manage, explore, exploit and conserve the living and non-living resources that are found there.

These rights however are accompanied by certain responsibilities, duties and obligations. These include the duty to ensure the resources

are well managed and that measures must be put in place to prevent overexploitation. Administrative, institutional and legislative structures and systems must be put in place to support its fisheries and oceans management policies. These include having the institutional capacity to carry out the necessary enforcement of its oceans management regulations and policies.

The development of the systems and structures as well as the laws that are required for the effective management of its oceans and fisheries are easy because they are matters of process that any independent country are required to go through. However, there is a considerable amount of capacity building that will be required in developing the expertise in stocks assessment, fisheries management, fisheries law, development, economics and especially their capacity in monitoring, surveillance and compliance. In this regard, they can seek the support of existing regional and international organisations such as the Pacific

Islands Forum Fisheries Agency (FFA), the Secretariat of the Pacific Community (SPC), and the Food and Agriculture Organisation (FAO) of the United Nations to support build their capacity. Negotiating new international boundary lines will be more complex. These are matters of diplomacy and national interest and for PNG and Solomon Islands reshaping the international boundary lines would ultimately result in the reduction of their current ocean space. Reducing the size of their EEZs would also reduce their fishing grounds. These are sensitive areas where national and economic interests intertwine, and it would require careful navigation.

At the same time, it could also perhaps require fresh thinking and new ways of looking at the oceans rather than the traditional view where the oceans are perceived in terms of the geographic limits of the EEZ and territorial seas. This might be the key to unlocking the complexities that would inevitably be associated with taking a very technical and legalistic approach towards the establishment of Bougainville's EEZ.

## Paving the way for new possibilities

Technological innovations have made fisheries management so much easier and with developments in other complementary information technology areas, such as blockchain and cryptocurrency, the challenges of addressing illegal fishing and traceability in the value chain of a fishery are not as pronounced as they once were. Having well defined boundaries is a necessary facet of fisheries enforcement, but in the context of PNG and Solomon Islands and their fisheries relationships with Bougainville, the underpinning policy impetus should be about exploring ways in which they can share in the benefits from the oceans, encourage cross border investments and establish joint development zones. The joint development zone under the PNA-Australia Torres Strait Treaty

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can be used as a possible model. Further, in the case of Bougainville and Solomon Islands, the development of an economic and customs union between Bougainville and the Western and Choiseul Provinces should also be considered.

Pending agreement on the finalisation of the external limits of Bougainville's EEZ, Solomon Islands, PNG and Bougainville could agree on provisional lines. These provisional lines would demarcate for enforcement purposes the outer limits of Bougainville's EEZ. Initially this could be declared as a joint development zone whereby the monitoring of fishing activities could be jointly undertaken in the overlap areas during the transitional phase. Indeed, the EEZs of Solomon Islands, Bougainville and PNG could be declared as a joint development zone for enforcement purposes where reciprocal, joint or individual patrols could be done by authorised vessels from the respective countries. There are economic efficiency gains if this were to be done and would be consistent with regional trends already pursued under the Niue Treaty – which is a broader regional agreement that allows for reciprocal enforcement and patrols that Pacific Island countries have signed. Under this arrangement, the Pacific Island countries are able to have ship rider agreements with US Coast Guard vessels that carry out fisheries surveillance in their EEZs.

As a newly independent country, Bougainville's oceans and fisheries policy framework should be directed at creating jobs for its peoples and ensuring that its EEZ

is secured and its resources are managed sustainably. However, having a joint development zone with Solomon Islands and PNG would contribute towards ensuring that its waters are secured against illegal intruders. Within this broad framework, Bougainville could develop a fisheries policy based on the allocation of long-term rights to incentivize investments in onshore processing to provide jobs. Bougainville has the necessary physical attributes that are required for the development of an onshore fishing processing industry, namely land, water and a ready human power. Developing the right policies will be necessary and having longer-term rights allocated to investors will provide the attraction that investors are invariably looking for when investing in the Pacific. Most fishing opportunities for tuna fishing are rarely if ever issued for more than 12 months. Thus, if Bougainville were to pursue such a policy, it would certainly be a novel approach that would make investments viable.

Almost inevitably, Bougainville would become part of the PNA<sup>3</sup> and participate in the VDS which would allow it to interact with a broader grouping of Pacific Island countries. As part of its strategic approach towards managing its own space, Bougainville may decide to base its policies around the ecosystems valuation of its entire ocean space. In other words, the value of the ecosystems services provided by the oceans forms the basis on which the monetary value of its EEZ is determined. In a marked departure from the traditional norms currently applied to oceans management in the Pacific Islands, Bougainville could elect to pursue a policy around the notion of the blue economy, valuing the oceans for more than just the licenses that can be generated from the living and non-living resources. They could develop an oceans policy based on the integration of the total value of the ecosystems of the oceans into their domestic economy, with management costs based on the total value of the ocean services. These services could also include tourism.

## Conclusion

This paper has only taken a snapshot view of the possible scenarios and options that could inform the development of a comprehensive offshore oceans and fisheries policy for an independent Bougainville. The survey has its limitations in that it has focussed on off-shore fisheries and has not asked questions about appropriate policy interventions relevant to coastal fisheries. It is suggested that Bougainville's interest would be served by pursuing a cooperative approach, leaning towards the creation of joint development zones, having more flexible longer-term arrangements to incentivise investments. In short, it has advocated adopting a Bougainvilleandisation approach to oceans management which at its very core should ensure that Bougainvilleans are not bystanders in the development of their marine resources.

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3. The PNA is an acronym for the Parties to the Nauru Agreement. The Nauru Agreement countries are the Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands, and Tuvalu. The PNA + refers to the fact that Tokelau is a participant of the Palau Arrangement, another agreement consisting of the same grouping of countries and the Vessel Day Scheme. Tokelau is a Territory of New Zealand and is an Observer in the PNA. These grouping countries are the custodians of more than 50% of the World's tuna stocks.