



Indigenous Peoples

What is the issue?

Indigenous peoples are found along the coast of every major continent (except Antarctica): about 27 million indigenous people in nearly 2,000 communities across 87 countries [live in coastal communities](#).

Throughout the centuries, indigenous peoples have managed their lands, territories, waters and natural resources using traditional knowledge and practices but these are increasingly under threat from a wide variety of sources, including industrial and commercial developments that do not take indigenous rights into account.

There has been limited but growing attention to indigenous rights by land-based businesses—including the extractives and forestry sectors — but very little attention has been given to impacts on indigenous peoples in coastal and marine business activities. There are few marine policies and regulations that incorporate respect for indigenous rights. There is also a lack of recognition of indigenous management systems of the marine environment, along with a lack of guidance for ocean businesses on respecting indigenous peoples' rights, sovereignty and customary ownership of ocean resources.

What human rights are impacted?

Indigenous peoples have specific rights set out under international human rights law (see box: *Resources: Standards*). Some countries have incorporated those rights into national laws, but not all. Indigenous peoples and their traditional lands, seascapes, resources, practices, customs, spirituality and food systems are increasingly threatened by multiple and cumulative developments including laws and regulations that privatise indigenous peoples' lands, waters and resources. Privatisation increases unfair competition for the use of traditional lands, seascapes and resources. Privatisation also generates construction projects along coasts and inshore waters and the development of economic activities that lead to overfishing, climate

ABOUT THE OCEAN AND HUMAN RIGHTS PLATFORM

Led by the **Institute for Human Rights and Business** and the **Rafto Foundation**, the Ocean and Human Rights Platform is a collaborative movement to raise awareness to prevent and address adverse human rights impacts across the ocean's industries. The Ocean Platform works with a global network of business, government, human rights defenders, civil society partners, academia and national human rights institutions.

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change, plastics and pollution to name just a few. Some of the human rights impacts include the following:

- Indigenous communities are increasingly **being prevented from accessing traditional territories** due to privatisation and the assignment of exclusive harvesting rights to the highest bidders. Without access to traditional territories, indigenous culture and identity are threatened. Ultimately, activities that threaten indigenous rights also threaten the very fabric of sovereignty and self-determination which are fundamental to the existence of indigenous lives.
- The demand for ocean-derived food is projected to **increase**, which will threaten indigenous peoples' food systems if their access to resources are not protected.
- Indigenous communities may rely on subsistence (hunting, fishing, growing crops, collecting food) or combine subsistence with market-oriented production. Reductions in the availability of those resources due to pollution, encroachment and competition for other users can have **detrimental impacts on livelihoods**.
- Land acquisition, expropriations, blockage of access to seascapes and offshore exploration can adversely impact the ability of indigenous peoples to protect sacred places, landscapes and seascapes which they have traditionally used for ceremonial and cultural practices. Physical cultural heritage – at times ancient artifacts – can be at risk from a whole range of **offshore activities** that impact the seabed.
- Growing attention to the genetic diversity of ocean organisms, brings promises of new sources of medicines through bioprospecting but also concerns about **conservation, equity** and respect for indigenous rights.

Which businesses should pay attention?

Indigenous peoples rights are relevant for any businesses that operate in, or have activities or supply chains that may impact on, coastal or offshore areas where there are indigenous peoples. The sectors that are most likely to come into contact with indigenous peoples include:

Fishing/aquaculture

For example, where large-scale offshore fishing depletes the fish stocks available to local, in-shore boats, where aquaculture displaces traditional fishing and harvesting, or where fish harvesting practices interfere with the migration of species considered sacred.

Shipping

For example, where there is heavy physical transit through indigenous areas, displacement to make way for ports or other infrastructure, or ship-breaking that creates significant pollution.

Tourism

For example, where physical structures as well as tourist activities, transport and logistic operations displace indigenous peoples entirely or limit their activities and access to resources (see separate [Ocean Tourism briefing](#)).

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CASE STUDY

In Australia, an oil and gas company failed to consult with the indigenous communities whose rights would be impacted by the construction of a gas pipe across the neighbouring ocean. In particular, the indigenous peoples' spiritual connection to the ocean and their use of marine resources would be harmed by drilling and construction in the waters. An Australian court **ultimately ruled** that the indigenous communities had to be consulted prior to the approval of the project.



Oil & gas

For example, where offshore projects threaten to [disrupt indigenous cultural practices](#).

Pharmaceuticals

For example, where genetic resources within the boundaries of indigenous territories or traditional knowledge are exploited through intellectual property laws.

Deep seabed mining

For example, where the exploratory or mining stages cause severe disturbances to ecosystems which have a flow-on effect on access to fisheries or disrupt traditional practices. In Papua New Guinea, [deep seabed mining has displaced shark populations](#) and threatened the indigenous practice of “shark calling” (see separate [Deep Seabed Mining briefing](#)).

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What should businesses do?

- **Recognise indigenous peoples.** Businesses must make every effort to identify where their operations or activities (including across supply chains) have an impact on indigenous peoples or touch upon their rights.
- **Engage in meaningful way with indigenous peoples.** Business should engage with indigenous peoples in a meaningful way that gives indigenous people agency, including through gaining their free prior and informed consent (FPIC) (which includes respecting the right of indigenous peoples to say no) for projects that may affect their lands, territories and resources.
- **Carry out human rights due diligence** that specifically considers the rights of indigenous peoples.
- **Conduct impact assessments that incorporate attention to indigenous peoples** where required by law or where projects may have potentially significant impacts on indigenous peoples. Draw upon [guidance](#) on human rights impact assessments and [best practice principles](#) on indigenous peoples and traditional knowledge (see box: *Resources: Standards*).
- **Create positive benefits.** Invest in programmes that develop skills and opportunities, create new sources of income or co-investment opportunities with indigenous communities to [strengthen sustainable local economies](#), and contribute to strengthening language and culture. See for example [IHRB's Community Ownership of Renewable Energy: How it Works in Nine Countries](#).
- **Provide for indigenous management or co-management of marine resources**, based on indigenous traditional knowledge and practices of biodiversity and ecosystem management. For example, indigenous approaches provide [models for food systems](#)

FINANCE

To ensure that the growth of development and “Blue Economy” financing does not come at the cost of indigenous rights, both public and private financial actors should take a human rights-oriented approach to to *all* ocean financing. Further:

- Financial institutions, IFIs and governments **should make funding available specifically for indigenous peoples and indigenous peoples businesses:**

International organisations such as the FAO's [Blue Growth Programme](#) on small scale fisheries, and the [Global Environment Facility](#) have funding for indigenous peoples.

The [\\$1.7 billion pledged at COP 26 in 2021](#) to support indigenous peoples and local communities is focused on forests and terrestrial ecosystems but sets an important precedent of specifically targeting funding to indigenous peoples.

Indigenous peoples have consistently called for support for indigenous businesses and cooperatives as a way of supporting their economic self-determination and as an important alternative to benefit sharing, or even more so, [corporate community development projects](#).

- Financial institutions **should ensure that funding aimed at improving ocean stewardship does not inadvertently undermine indigenous people's rights** and their connections to the ocean, and instead positively supports indigenous peoples to maintain their traditional stewardship and develop new opportunities for their livelihoods.



are capable of providing food and nutritional security, while restoring ecosystems and maintaining biodiversity.

- **Marine spatial planning (MSP)** processes are becoming more central to ocean planning and decision-making to analyse and allocate competing uses of the sea, including among business actors. Indigenous peoples have the right to participate in decisions that affect them, and so planning processes, such as MSPs, should seek their free, prior and informed consent (FPIC) before adopting and implementing measures that may affect them. MSP processes should incorporate historical uses and indigenous rights, tenure, access, norms and practices in decisions that affect indigenous peoples' ability to maintain their common marine property resources that are **critical to maintaining their livelihoods**.
- **Marine scientific research** that may affect indigenous peoples, especially where it is related to resources should not be obtained without **FPIC**.
- **Provide or enable remedy for harms.** Businesses should be prepared to address harms in a culturally appropriate and effective manner.

This includes conservation financing (such as the IUCN's [Indigenous Peoples strategy](#)), climate financing (such as the Green Climate Fund's [Indigenous Peoples policy](#)), small scale fisheries and aquaculture programmes, and blue bonds.

Private sector financial institutions that rely on the [IFC Performance Standards](#) or the [Equator Principles](#) (that are based on the IFC Performance Standards) **should be aware that these standards are not geared towards marine based projects but can be adapted to do so.**

RESOURCES: International standards & guidance

- [UN Declaration on the Rights of Indigenous Peoples \(2007\)](#)
- [ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation \(1958\)](#)
- [ILO Indigenous and Tribal Peoples Convention, No. 169 \(1989\)](#)
- [UN Convention on Biological Diversity \(1992\)](#)
- [UNESCO Convention on the Protection of the Underwater Cultural Heritage \(2001\)](#)
- [IFC Performance Standard 7 on Indigenous Peoples \(2012\)](#)
- [UN Guiding Principles on Business and Human Rights \(2011\)](#)
- [OECD Guidelines for Multinational Enterprises \(2011\)](#)
- [FAO Code of Conduct for Responsible Fisheries and Indigenous Peoples: an Operational Guide \(2009\)](#)
- [FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication \(2015\)](#)
- International Association of Impact Assessment, "[Respecting Indigenous Peoples and Traditional Knowledge: International Best Practice Principles](#)," (2012)
- [Developing Protocols for Reconstructing Submerged Paleocultural Landscapes and Identifying Ancient Native American Archaeological Sites in Submerged Environments: Final Report \(2020\)](#)
- [DIHR Indigenous Peoples Due Diligence Checklist](#)

RESOURCES: Some useful existing work/initiatives

Indigenous-led organisations

- [The Native Women's Association of Canada \(NWAC\)](#)
- [Chugach Regional Resources Commission](#)
- [The Apoqnmulti'k Project](#)
- [Dhimurru Aboriginal Corporation](#)

Civil Society

- [Deep Sea Conservation Coalition](#)
- [The Fishnet Alliance](#)

Resource banks

- [FAO's Blue Growth Initiative and Indigenous Peoples](#)
- [IUCN, The Global Indigenous Agenda for the Governance of Indigenous Lands, Territories, Waters, Coastal Seas and Natural Resources \(2021\)](#)
- [High Level Panel on a Sustainable Ocean Economy emerging ocean action coalition on ocean equity](#)
- [Right Energy Partnership](#)
- [DIHR Indigenous Peoples Due Diligence Checklist](#)