

Recognize Tenure Rights

Formal recognition of marine tenure provides an incentive for small-scale fishers to form and support the overarching structure for responsible governance

Responsible governance of tenure is a central component of the Voluntary Guidelines on Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines). One key issue for small-scale fisheries is tenure rights, which the SSF Guidelines stress must be designed from a broad human-rights perspective that takes into account the local complexities of small-scale fisheries.

The SSF Guidelines urge States to adopt national legislation to strengthen responsible governance of tenure of land, fisheries and forests to ensure that small-scale fishers, fishworkers and their communities have secure, equitable and socially and culturally appropriate tenure rights to fishery resources, fishing areas and adjacent land. Formal recognition of marine tenure provides communities with the security needed to invest in, and manage, their fishery resources for long-term sustainability.

Granting preferential access to fish and water through the creation and enforcement of exclusive use zones and effective and transparent mechanisms, and addressing resource-use conflicts are needed to protect the rights of small-scale fishers. Formal recognition of marine tenure also provides an incentive for small-scale fishers to form and support the overarching governance structure, such as co-management, to manage the tenure rights. The countries of Asia are at different stages in recognizing and supporting marine tenure and in establishing and implementing co-management.

Bangladesh: There is no identification of marine tenure.

This is in contrast to inland fisheries in the country where there is a considerable experience on fisheries tenure. There is also no mention of traditional/customary marine tenure institutions for marine fishing. It is possible that community-based marine tenure institutions exist in coastal areas of Bangladesh, but these have not been formally documented. While community-based fisheries management (CBFM) for inland waters is well established in Bangladesh, CBFM for coastal and marine fisheries is almost non-existent, with only few examples of its use.

Regimes are threatened, however, by a range of local and external factors, many of which are beyond the capacity of local institutions and communities to address.

Cambodia: Community fisheries in Cambodia, as defined by law, is fisheries co-management. The co-management of community fisheries is a partnership between fishers and the government, represented by the Fisheries Administration. Fisheries tenure is undertaken through the Community Fishing Area Agreement and management plan signed between the Fisheries Cantonment Chief and the community fisheries committee, which stipulates the management of the fishing area by the community fisheries members.

Indonesia: No specific existing laws directly establish exclusive access rights to fisheries for local fishing communities. The idea of exclusive use rights in Indonesia is contentious. Article 60 of Law No. 1/2014

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introduces exclusive access rights for communities with traditional rights (*masyarakat hukum adat*) and indigenous communities (*masyarakat tradisional*), but the article only recognizes the rights of these two communities to propose traditional/indigenous community rights in fishing grounds into coastal and small islands zoning plans.

While a great variety of customary laws and marine tenure practices are found throughout Indonesia, except for a few locations, such as Papua, West Papua, and the Maluku region of Eastern Indonesia, the principle of local customary marine tenure is not widely recognized. There is no specific law in relation to fisheries co-management in Indonesia. However, since the early 1990s, when the concept of co-management was introduced in Indonesia, it has become a common principle and practice for fisheries management. It is generally accepted that Fisheries Law No. 31 of 2004 provides a mandate to implement fisheries co-management through eight fisheries management principles that support co-management and the role of local/traditional management and indigenous knowledge. Law 31/2004 was amended through Law 45/2009 to include three additional principles of togetherness, self-sufficiency and sustainable development.

Philippines: The 1998 Fisheries Code is considered a breakthrough in fisheries legislation because it “returns” the management of municipal waters from national to local governments. Fishers are given the opportunity to formally participate in co-management through, among other means, the Fisheries and Aquatic Resources Management Councils (FARMCs). The FARMCs are mandated to carry out a number of management advisory functions in close collaboration with the local government unit (LGU). The implementation of effective co-management practices at multiple scales of governance is proving to be an important approach to enabling shared authority over coastal and marine resources. Registered fishers and co-operatives have preferential rights to the fishery privileges issued by the LGU. The Indigenous People’s Rights Act (IPRA) requires the State to not only respect, recognize and protect the rights of Indigenous Peoples but also to preserve and protect their culture, traditions and institutions. Legal instruments, such as the Certificate of Ancestral Domain Title and Mangrove Stewardship Contracts, now also exist to give coastal communities a semblance of tenurial security. These instruments likewise encourage communities to take charge of resource management planning and implementation. Not all LGUs are recognizing and protecting legitimate tenure rights. While all LGUs are required to have a Coastal Resources Management (CRM) plan, including a fisheries management plan which recognizes tenure rights, there may be no implementation. Much of the recognition depends upon the priorities of the mayor.

Vietnam: At the end of 2017, Vietnam approved an amended fisheries law (Law No. 18/2017/QH14) that specifically supports co-management in the protection of fisheries resources in the country. Community organizations shall be recognized and authorized to manage the protection of fisheries resources. The new law also allocates/delegates fishing rights to the community

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Selling of reef fish in Coron, Palawan, Philippines. Tenure systems are facing increasing stress from booming markets, growing consumption and population growth

organizations. While the law and policies have stated the importance of fishing rights, there is not yet a clear legal framework document that explicitly provides an outline of what fishing rights are, and who has rights to which areas, both coastal and inland.

Securing Tenure Rights for Small-scale Fisheries

Experience and research continues to reinforce a key message that secure community-scale marine resource tenure and governance regimes can produce lasting and positive social, cultural, economic and ecological outcomes. These regimes are threatened, however, by a range of local and external factors, many of which are beyond the capacity of local institutions and communities to address. Tenure systems are facing increasing stress from booming markets, growing consumption, population growth, environmental degradation and climate change reduce the availability of land, fisheries and forests. In the face of such pressures, insecure tenure rights can often result in extreme poverty and hunger.

With the increasing pressure from external drivers and threats, there is an urgent need to legally recognize existing customary, indigenous and informal tenure rights, before they are permanently lost. Mapping the geographic extent of existing marine tenure regimes is needed to support legal recognition, and may also help to increase awareness of these regimes, and support compliance with local rules to restrict use and exclude outsiders as well as reduce infringement on rights.

In addition to sea tenure, there is an urgent need to recognize land tenure for small-scale fishers. In those countries where decentralization of fisheries management authority has not been effective in controlling access, further devolution of resource-use rights and responsibilities to local stakeholders provides the communities with the incentives for sustainable resource use as long as macro-scale issues are addressed through effective co-management arrangements.



Drying fish to sell in San Fernando, Philippines. Secure community-scale marine resource governance regimes can produce positive social, cultural, economic and ecological outcomes

There are a number of programming opportunities that highlight the need for multiple entry points and scales of intervention. These entry points highlight the need for a more holistic approach to (a) record and recognize the contribution small-scale fisheries to the sector at local and national levels; (b) develop coherent national and local policies and laws that support tenure and governance of small-scale fisheries; (c) defining and enforcing preferential use rights of nearshore waters to small-scale fishers, which helps tip the balance toward more equitable access to fisheries resources for coastal communities; (d) strengthen community-scale marine tenure institutions; (e) improve the capacity, effectiveness and direction of accountability of co-management arrangements to support community-based institutions; and (e) embed community-based management in an ecosystem approach to fisheries management. 3

For more

https://www.icsf.net/images/reports/pdf/english/issue_8/8_all.pdf

Local knowledge and fishery management: Background Study for Lombok workshop

https://www.icsf.net/images/proceedings/pdf/english/issue_87/87_Siem_Reap_Meet_with_cover_16_July_2015.pdf

The Siem Reap Meet Proceedings: Asserting Rights, Defining Responsibilities: Perspectives from Small-scale Fishing Communities on Coastal and Fisheries Management in Asia

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